

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 10

SUIT NO: FCT/HC/CV/349/2019

BETWEEN:

1. MOSES SAMANJA AUDU

2. SAMSON WALBE (Both Doing Business under
the Name:Moses & Samson.....**CLAIMANTS**

AND

POLARIS (SKYE) BANK LTD.....DEFENDANT

RULING

By an Originating Summons dated 18/11/2019, the Claimant is seeking for the determination of the following questions:-

- (1) Whether by the combined Provisions of Sections 6 (6) and 36 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), Sections 1 and 2, Administration of Criminal Justice Act 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 Claimants access to their Bank account with Account No. 1141060000724 with a credit balance of Fifty One Million, One Hundred and Forty One Thousand, Three Hundred and Thirty Naira, Fourteen Kobo

(₦51,141,330.14) from August, 2010 to date or any other period without a court order or instructions from Claimants to do so and which account Claimants maintain with the Defendant.

If the answer to question 1 above is in the negative:

- (2) Then whether the Claimants whose Bank account aforesaid is blocked and access to same 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:

Upon the determination of these questions, the Claimants seek the following relief;

1. A Declaration that the freezing, blocking and/or denial of total access to Claimants to their Bank Account with Account No. 1141060000724 with a credit balance of Fifty One Million, One Hundred and Forty One Thousand, Three Hundred and Thirty Naira, Fourteen Kobo (₦51,141,330.14) which Claimants jointly maintain with the Defendant without a court order or any instructions from the Claimants to do so from August, 2010 to date is illegal, unconstitutional and constitute a flagrant breach of the Claimant's right to fair hearing and banker – customer contract between the Claimant and Defendant.

2. A MANDATORY ORDER of this Honourable Court directing the Defendant to immediately unfreeze, unblock and remove any restriction of access on the Claimants to their bank accounts aforesaid forthwith.
3. An Order of this Honourable Court directing the Defendant to avail the Claimants a full Statement of their accounts from inception to date.
4. An Order of this Hon. Court directing the Defendant to restore and pay back forthwith into Claimant's Bank Account with Account No. 1141060000724 with a credit balance of Fifty One Million, One Hundred and Forty One Thousand, Three Hundred and Thirty Naira, Fourteen Kobo (₦51,141,330.14) which was the last credit balance in the account before it was frozen by Defendant.
5. An Injunction restraining the Defendant either by themselves, privies or agents howsoever from further blocking, freezing or in any other manner denying the Claimants access to their account without a VALID COURT ORDER.
6. The sum of One Hundred Million Naira (₦100,000,000.00) against the Defendant as exemplary damages for their illegal, and reckless blocking, freezing and depriving of the Claimants of access to their account since August, 2010 to date.
7. The sum of Fifty Million Naira as General Damages.

8. 10% interest on all the Judgment sums from the date of Judgment until the date they are liquidated.
9. Any other Order(s) this Honourable Court may in the circumstances make.

In support of the Originating Summons is a 23 Paragraph affidavit sworn to by one Moses Samanja Audu. Attached to the affidavit are Exhibits "AA1" – "AA6". In compliance with the Rules, filed a Written Address. Upon receipt of the counter affidavit, the Claimant filed a 15 Paragraph further affidavit dated 19/3/2020 and a Written Address in support.

In response, the Defendant filed a 14 paragraph counter-affidavit sworn to by Okechukwu Megwa, with 15 Exhibits marked as "A1" – "M1" attached and a Written Address, in urging the court to dismiss the Originating Summons.

Both Counsel adopted their Written Addresses in support of their respective position, in urging the court to allow the reliefs or dismiss same.

On 10/3/2020, the Defendant filed a Notice of Preliminary Objection (NPO), praying the court to strike out this Suit for want of jurisdiction, for being an abuse of court process and commenced with the wrong originating process. In support of the NPO is a 5 Paragraph affidavit sworn to by one Temilade Ojo, with Exhibits marked as "AA1" – "CC4" attached. Also filed is a Written Address, adopts same in support of the Preliminary Objection, in urging the court to dismiss the Originating Summons in Limme.

In response, to the NPO, the Claimant filed counter-affidavit of 6 Paragraphs dated 19/3/2020, sworn to by the 1st Claimant. Also filed is a Written Address, adopt same, in urging the court to dismiss the NPO.

In view of the NPO, it is necessary at this stage, in line with the law, to determine it before proceedings to the determination of the Originating Summons, since it bothers on jurisdiction on the court to hear.

Jurisdiction overtime has been described as the live wire of any judicial proceedings and once challenged the court must determine it once and for all, the failure to do so would amount to waste of the judicial time of court, if it is found that indeed it has no jurisdiction to hear. See case of Daewood Nig Ltd Vs Project Masters (Nig) Ltd (2010) LPELR – 4010 per Thomas JCA stated thus;

“It is no more in dispute that an issue on jurisdiction of the court must first of all, be determined, because jurisdiction of all, court or even the parties, is the live wire on which the matter is hinged, more so the issue is premised on the Notice of Preliminary Objection.....”. See also Inakoju Vs Adeleke (2007) 4 NWLR (PT.1025) 423 SC; Ntuks Vs N.P.A. (2007) 12 NWLR (PT.1051) 392 SC.

To determine this issue, resort must be made to this Writ of Summons and Statement of Claim, as in this instant Suit, the questions set out for determination and the reliefs sought see case of Osigwe Vs PSPLS Management Consortium Ltd (2009) 3 NWLR (PT.1128) Pg 387 @ 399 Para E.

In the Defendants NPO, dated 10/3/2020, prays for the following orders:-

- (1) An Order of this Hon. Court striking out this Suit for want of jurisdiction and being an abuse of court process.
- (2) An Order of this Hon. Court striking out this Suit for being commenced with the wrong Originating Process.
- (3) Omnibus Prayer.

The grounds upon which the application is predicated are as follows:-

- (1) There is a valid Appeal No. SC 4/2019 pending at the Supreme Court of Nigeria, challenging the Court of Appeal's decision in Appeal No. CA/K/278^A/C/2017 which quashed the Federal High Court's conviction of the Claimant's in the Suit No. FHC/KD/36^C/2012.
- (2) The Supreme Court has not yet decided the said Appeal No. SC/4/2019.
- (3) Given the contentious nature of the issues involved in this Suit, commencing this Suit by Originating Summons makes this Suit incompetent.
- (4) This Hon. Court lacks the jurisdiction to adjudicate over this Suit.

In this instant application of the Defendant, the NPO is predicated on the facts contained in Paragraphs 3 (a – i) of the supporting affidavit, the attached Exhibits and the written submission of counsel, is to the effect,

simply that because of the pending appeal at the SC in Suit No. SC/4/2019, yet to be determined and with these fact not disclosed to court by the Claimant and because of the hostile, and contentious nature of the Suit as presented by the Claimants Originating Summons is not best mode of commencement, in all urged the court to strike out this Suit for being incompetent and abuse of court process and lacking in jurisdiction. Defendant's Counsel commended the court with judicial authorities in support in his Written Address.

On the other hand, the Claimants contend vide Para 4 (a-d) of their counter-affidavit in opposing, submits that the instant application is distinct from what is before the Supreme Court relied upon by the Defendant amongst other reasons, the Defendant is not a party to the appeal at the Supreme; the issues are completely different both cases. That in this case the Claimants are calling for the determination of the right of the Defendant to freeze their account without a valid court order and not the issue boarding on criminal appeal at the Supreme Court. In all make the case of the Claimant one within the purview of commencing it vide the Originating Summons, and not hostile or contentious. In all counsel commended the court to several judicial authorities in their Written Address in support.

Having carefully giving an insightful consideration to the affidavit evidence, the written submission, and the judicial authorities cited, in their arguments for and against the grant of the reliefs sought in this instant NPO, sequel to the Originating Summons, the court finds that there is only one (1) issue that calls for determination; which is;

“Whether or not this Suit as presently constituted, in the face of the grounds of the objection is competent therefore robbing this court with the jurisdiction to hear and determine”.

This main issue, as formulated by this court encapsulate all the issues relied on the parties as issues for determination.

To determine this instant application, like I have earlier stated in this Ruling, recourse must be made to the Originating Summons, questions for determination and reliefs to enable the court consider the substance of the application of the objector.

A careful perusal of the questions and reliefs in the Originating Summons, gives a pointer that the instant Suit is predicated on the alleged freezing of the account of Claimants by the Defendant without the order of court to do so. See relief 1 – 8 and questions set for determination as contained in the Originating Summons. Also Para 4 – 9 of the supporting of the Claimant/Respondent to the Originating Summons.

In this instant application, the crux of the objector i.e Defendant is that there is a pending Appeal at the Supreme Court, challenging the decision of Court of Appeal vide Suit No. SC/4/2019, further that there is a valid Order of Court enabling the Defendant to freeze the accounts of the Claimants. Relies heavily on Exhibits “AA1:”, “CC1” - “CC4”.

Against this the Claimant/Respondent, contention simply, is that this Suit borders on the action of the Defendant freezing their account without a valid Order of Court and that they are not party to the Appeals both at the Court

of Appeal and Supreme Court, being matters relating to the criminal acquittal being challenged and not a civil case of acting without a valid court order against the account of the Claimants. And contend that the Exhibits "CC!" – "CC4" relied on by the Defendants as the order relied to freeze their accounts are merely Interlocutory and not final, therefore cannot give them any legality to so act.

Having carefully identified the issues in contention between the parties next is to consider the issues as raised.

Firstly, on the issue of that is based on the pending appeal at the Supreme Court over the appeal of the Court of Appeals decision in Suit No. CA/K/e78^B/C/2017, that the jurisdiction of this Court is ousted by the simple fact that where an appeal has been entered the Lower Court ceases to have any jurisdiction to determine the matter until the appeal is determined. That to do otherwise will also amount to abuse of court process. Commended the court to several juridical authorities, of particular reference, see *Shodeinde Vs Registered Trustees, Ahmadiyya Movement* (2001 FWLR (PT.59) 1065 (SC)); Also *Registered Trustees, The Living Christ Mission Vs Aduba* (2000) FWLR (PT. 6) 911 SC and Exhibits "AA1", "BB1" relied.

The Claimant merely contends here that this pending appeal at the Supreme Court is not against them and is criminal appeal not civil appeal against their main claim in the Originating Summons.

I have carefully perused the Exhibits "AA1", "BB1" all clearly shows that it is a criminal appeal against the quashing of the conviction of the Respondent

and a further perusal reveals that is not against the issue in contention by the Claimant, that is, the freezing of their account by the Defendant.

Granted that, is trite that where an appeal has been entered at the Supreme Court, the Lower Court should refrain from proceeding in the matter until the determination of the Appeal, in this instant, the issues for appeal clearly is not one which is the main issue in contention by the Claimant against the Defendant, therefore, this submission of the objector, cannot fly and rather enures in favour of the Claimant.

On the issue of whether or not the freezing of the account of the Claimants by the Defendant is supported by a valid Court order. While the Defendant/Objector relies heavily on Exhibits "CC1" – "CC4" of their supporting affidavit, the Claimant contend that the said orders as per Exhibits "CC1" – "CC4" are merely interlocutory and not final judgment, therefore, no legal support for the action of the Defendant.

In determining this recourse, shall be made to the definition of Interlocutory and Final. In *Nigeria AGIP Oil Company Ltd Vs Nkweke & Ors (2016) LPELR (SC)* defines as;

"Anything Interlocutory connotes, provisional, interim, temporary and not final. It is an occurrence which intervenes between the commencement and the end of a Suit which decides some point or matter, but is not a final decision of the whole, controversy.

....A Final Order or Judgment at law is one which brings to an end the right of the parties in an action".

The question that begs for the asking is whether the said order relied on Exhibits "CC1" – "CC4" are final orders of court determining the rights of the parties.

It is noted that granted that this is not a final order of court, but there is evidence of compliance of the said order of the court in Exhibit "CC1" – "CC4" vide, Exhibit 1, J, L attached to counter affidavit all to Original Manager's cheque evidencing payment into the account of Chief Registrar of the High Court of Justice, Kaduna in compliance with the order of court. This order and its compliance were never challenged by the Claimant/ Respondent. This court is empowered to look at its records in considering the issues for determination. See case of Agbareh Vs Mimrah (2008) ALL FWLR (PT.409) Para D – F. Consequent upon that exercise in line with the Agbareh Vs Mimrah (Supra), including the Exhibit "I", "j", "l" attached to the counter-affidavit in opposition of originating summons, the court finds that there is a valid court order and compliance thereof, which no evidence of Appeal against that decision. More, importantly a careful perusal of the issues in contention in the Originating Summons, the court finds that grounds set out for the reliefs – that freezing the Claimants account without a valid court order cannot stand. Therefore, it is the holding of the court that this objectors grounds succeed and enures in their favour. Consequently, this being the main issue as it relates to the Originating Summons, which the Defendant/Objector filed this NPO and this court having found in favour of the Defendant/Objectors has merit and should succeed. Consequently, it would be of no moment to proceed to deal with the Originating Summons. It is hereby dismissed.

No orders as to cost. Parties to bear their cost.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

10/3/2021

APPEARANCE:

IGWE OGOCHUKWU ESQ FOR THE CLAIMANTS

IKECHUKWU IWUOZO FOR THE DEFENDANT