

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE BWARI JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.**

BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA

SUIT NO. FCT/HC/CV/399/2020

BETWEEN:

IBRAHIM MUJAHEED

PLAINTIFF

AND

1. GUARANTY TRUST BANK

DEFENDANTS/RESPONDENTS

2. ECONOMIC AND FINANCIAL CRIME

COMMISSION

RULING

DELIVERED ON THE 19TH FEBRUARY 2021

By a motion on Notice, dated 29/12/2020 but filed on 30/12/2020, the Claimant/Applicant, that is, IBRAHIM MUJAHEED (Trading under the Name and Style of Azai General Enterprise) with Motion Number FCT/HC/BW/M/690, is seeking for the following reliefs:

1. AN ORDER of this Honourable Court ordering the 1st Defendant/Respondent to transfer the following sums of money from the Applicant's Account No. 0224690849 held by the Applicant with the 1st Defendant/Respondent to the following Account Numbers or persons in the following order, namely:

i) BLUE ANCHORAGE LTD

Zenith Bank Plc

Account No. 1017289617

Amount N7,000,000,000.00 (seven billion naira only)

Local currency transfer slip No. 11556886;

- ii) BROCKWELL PRACTICE Zenith Bank Plc
Account No. 1013298389
Amount N5,000,000,000.00 (five billion naira only)
Local currency transfer slip No. 11556887;
 - iii) DEZZAT GLOBAL INVESTMENT LTD
TAJ Bank
Account No. 0000129988
Amount N2,584,310,000.00 (two billion, five hundred and eighty-four million, three hundred and ten thousand naira only)
Local currency transfer slip No. 11556884
 - iv) OLUDOTUN SOWEMIMO GT Bank Plc
Account No. 0024480252
Amount N10,337,236,000.00 (ten billion, three hundred and thirty-seven million, two hundred and thirty-six thousand naira only)
Local currency transfer slip No. 11556885;
- respectively, pending the hearing and determination of the substantive suit;

2. **FOR SUCH FURTHER ORDER(S)** as this Court may deem fit to make in the circumstance.

The motion is predicated on the following grounds that is;

1. The 1st Defendant/Respondent has threatened to forfeit and transfer the Applicant's funds in the account into the Treasury Single Account (TSA) held by the Federal Government of Nigeria and domiciled in the Central Bank of Nigeria if there is no Court Order enabling them to allow the Applicant access to the Account.

2. The *res* subject matter of this suit will be destroyed before the Honourable Court has the opportunity to determine the dispute between the parties if this Application is not granted.
3. There is need to preserve the *res* of the suit pending the hearing of the substantive motion on notice.

The Applicant filed a 39-paragraph affidavit in support of the motion and a written address. The 2nd Respondent on being served with the application filed a 14 paragraphed Counter-affidavit in opposition to the application and also a Written Address. The 1st Respondent elected not to file any response.

The singular issue raised by the Applicant which I also find instructive to resolve this application is

Whether given all the facts and circumstances of this case, especially having regard to the supporting affidavit, this application ought to be granted.

Learned Counsel for the Applicant argued that this application is of such nature that is dependent on the exercise of discretion by this Court in one way or the other. Learned Counsel submitted that for the Court to exercise its discretion in favour of the Applicant, the Applicant must disclose reasons sufficient to convince the Court to exercise this discretion in his favour and preserve the *res*. The Applicant cited the case of *Bass & Matt. Enterprises Nig. Ltd. & Anor. V. Keystone Bank Ltd. & Ors.* (2015) 1 NWLR (pt. 1441) 609 @ 622 – 623. The Applicant then concluded by urging this Honourable Court to grant this Application pending the final determination of the substantive suit.

The 2nd defendant on the other hand submitted that the Plaintiff/Applicant has not placed any material sufficient enough to

warrant the court exercise its discretion in his favour and urged the Court to so hold.

I have carefully gone through all the processes filed by respective parties, adverted my mind to all the authorities cited. I shall proceed to treat the application based on the processes filed.

It is clear and I have double checked from the face of the motion and affidavit attached to this application, I will like to reproduced some of the paragraphs in the affidavit deposed to for ease of reference thus:-

Paras:-

8. That the said money was contributed or pooled by my business partners to start and operate a Bureau de Change business in Kano and Abuja, FCT, respectively.

9. That the said amount was paid and/or transferred into the account at various times in the following manner, namely:

a. On 9th July, 2017, the sum of ~~N~~4,500,000,000.00 was deposited into the account;

b. On 16th July, 2017, the sum of ~~N~~9,000,000,000.00 was deposited into the account;

c. On 7th August, 2017, the sum of ~~N~~2,441,000,000.00 was deposited into the account;

d. On 4th September, 2017, the sum of ~~N~~4,500.000,000.00 was deposited into the account; bringing it to a total credit balance of ~~N~~25,441,843,091.43.

Copies of the SMS alert messages are herewith attached and marked Exhibit A and B, respectively.

10. That the money was deposited into the account in order to facilitate the opening and running of Bureau de Change business both in Kano and Abuja.

11. That I was mandated by my said business partners to make enquiries and understudy the business in order to know the cost of registering the business and open offices both in Kano and Abuja, and the running costs of the business in the two cities.

12. That following my enquiries, I discovered that the business is capital intensive and also requires huge sum of money for registration with the Corporate Affairs Commission as well as with the relevant regulatory agencies and as the starting financial base.

14. That I engaged solicitors for the registration of the business and when I went to the Area 3, Garki, Abuja, office of the 1st Defendant to make withdrawals from the account for that purpose, I was told by officials of the 1st Defendant there that the 2nd Defendant had placed a lien on the account, thus denying me access to the funds in the account.

15. That I took the matter up with the 2nd Defendant/Respondent its Headquarters here in Abuja, and the 2nd Defendant said that they suspected the money to be proceeds of crime, and they had to invoke their powers under the relevant laws to place a post-no-debit order pending the outcome of their investigations into the sources of the funds.

16. That the 2nd Defendant/ Respondent assured me that as soon as their investigation is concluded and nothing incriminating was found against me and my business name in relation to the

account, the 2nd Defendant would lift the lien on the account to allow me access to the funds in the account.

17. That sometime in or about July, 2020, the 2nd Defendant/Respondent informed him that they have concluded their own investigation, and have therefore cleared the account and unblocked it, and that the 1st Defendant/ Respondent should give me free access to the funds in the account.

18. That after receiving the "good news" from the 2nd Defendant, I went again to transact on the account, but the 2nd Defendant/Respondent insisted that I could not transact on the account.

19. That I made several efforts to get access to the money in the account so as to facilitate my business, but the 1st Defendant still denied me access to the funds in the account.

20. That when I threatened to report the matter to the regulatory agency, the Central Bank of Nigeria, the 1st Defendant open up that the lien placed on the account by the 2nd Defendant had actually been lifted, but that they would not still allow me access to the account until there was an order from a court of competent jurisdiction enabling to do so.

21. That I have made several efforts to get official printout of statement of account on the account, but the 1st Defendant/Respondent has deliberately foiled my several attempts to get official statement of this account.

25. That the 1st Defendant/Respondent has threatened and assured me that if there is no court order to operate and transact on the account before the end of December, 2020, that the funds in the account would be forfeited and eventually transferred into the Treasury Single Account (TSA) operated by the Federal Government and domiciled with the Central Bank of Nigeria, as a matter of policy.

26. That at all times material to the bringing of this suit, I have been denied access to my Account Number 0224690849 operated with the 1st Defendant/Respondent and I have not been allowed access to the funds in the account and cannot operate it notwithstanding that there are sufficient funds in the account from which to make withdrawals.

27. That at all times material to the bringing of this suit, my said account is an interest-yielding account attracting from the 1st Defendant/Respondent pro rata the credit balance in the account calculated on a monthly basis.

28. That at all times to the blocking of the account by the Defendants and also to the bringing of this suit, I have a total sum of N25,441,843,091.43 as credit balance in the said account.

29. That since the transfer and/or deposit of the sum of ~~N~~25,441,893.43 into the account since July, 2017, no withdrawal whatsoever has been made from the account by me Claimant or by any other person on my authority.

31. That I have also made efforts to get printout of the statement of account on-line, but the Defendant has also willfully withheld it from me.

32. That the threat of the 1st Defendant/Respondent to forfeit the Applicant's funds in the account to the Federal Government is serious and can be carried through any time without notice to the Applicant.

33. That I undertake to pay damages in the event that this application becomes frivolous and ought not to have been granted in the first place.

35. That I guarantee safety of the funds in the various accounts to which they would have been paid or transferred if this application is granted.

36. That there is real urgency and real need for his application to be granted in order to preserve the res of the suit, and put the parties in status quo pending the determination of the substantive suit.

On the other hand the 2nd defendant file a counter affidavit to the said motion on notice in which I will also reproduce some of the deposition thus:- paras. 4, 5, 6, 7, 8, 9, 10, 11 and 12.

4. That paragraphs 15, 16, 17, and 18 of the affidavit in support of the originating motion are denied as false and misleading

5. That the 2nd Defendant/Respondent is saddled with the responsibility of investigating and prosecuting every alleged economic and financial crimes in Nigeria.

6. That the 2nd Defendant/Respondent receives complaint in a form of petition or intelligence report in the process of discharging its responsibility regarding, any alleged economic or financial crimes and act upon it by swinging into investigation.

7. That the 2nd Defendant/Respondent upon being served with the Applicant's processes, conducted preliminary inquiry into the matter but so far was unable to trace any complaint or intelligence report relating to the Applicant with relation to the alleged freezing of his account.

8. That from the preliminary inquiries conducted by the 2nd Defendant/Respondent, it reveals that so far there was no evidence to show that the 2nd Respondent has issued any instruction whatsoever for placing Post No Debit on the account of the Applicant relating to any alleged economic or financial crimes

9. That from the affidavit in support of the motion and the preliminary investigation into the matter, there is no cause of action whatsoever against the 2nd Defendant/Respondent.

10. That the 2nd Respondent was empowered by law to venture into investigation of any alleged crime of economic and financial crimes in Nigeria and will commence investigation into this matter.

11. That contrary to the deposition of the Applicant in paragraph 26, 32, and 34 of his Affidavit in support, there is nothing to establish the facts deposed to in the affidavit.

12. That contrary to the deposition in paragraph 36 of the of the Applicant's affidavit there is no valid facts establishing the urgency

claimed by the applicant as the alleged freezing of the account occurred since July 2017 almost four years now.

From the record of this Court the 1st defendant was duly served with all the processes and hearing notice which notified the 1st defendant the case is coming up on 3rd February, 2021 and same was received by the 1st defendant on the 15th January, 2021, the 1st defendant neither appear in court nor file any response to this application in which they have a ample of time to do so.

Having stated the facts deposed to by the applicant and the 2nd defendant in support of their position. I will like to adopt the two issues formulated by the 2nd defendant to resolve this application, the issues for determination read thus:-

A. Whether or not the Respondents has the power to investigate and prosecute a suspect upon a reasonable suspicion of having committed economic and financial crimes.

B. Whether from the affidavit in support of the originating motion before the court and the circumstances of the case, the applicant has made out a case to warrant the grant of his prayers.

In resolving issue one it is pertinent to state that no doubt the 2nd Defendant/Respondent have power to investigate and prosecute any person whether an individual or corporate body committed or suspected to have engage in Economic and Financial related Crimes the 2nd Defendant/Respondent counsel made a brilliant submission to buttress his argument against this application but however learned counsel misapplied the authorities and statutory provision to this application at hand the applicant is not challenging the powers vested in the 2nd

Defendant/Respondent to investigate and prosecute a person suspected to have committed economic and financial crime the main crux of the applicant application is stated in paragraphs 15, 16, 17, 18, 19, 20 and 21 as reproduced above is purely on non access to his account with the 1st defendant in which the applicant was denied access based on the information that the 2nd defendant has put lien on the said account with the 1st Defendant/Respondent.

Assuming without conceding the 2nd defendant has power to investigate and prosecute as provided in the EFCC enabling laws 2004, **“did the 2nd defendant/Respondent has power to freeze an individual account without due process of the law?”** I think no, under the same enabling status creating the 2nd Defendant/Respondent, the 2nd defendant/Respondent only have power to put lien on an account suspected of illegal or economic and financial related crimes only by seeking and obtaining court Order to place such account on post no debit. See section 34(1), (2) and (3) of EFCC Act 2004 and the case DAN GABAR Vs. F. R. N (2014) 12 NWLR (Pt.1222) pg 611 where it was held thus:-

“it is only when an Exparte Order has been made by the Court that the chairman of EFCC will issue an Order specified in schedule B of the Act addressed to the manager of the bank or any person in control of the account to freeze the account.”

Having cited the authorities above it seems to me therefore that the legislative intent behind the EFCC Act is not to scuttle or undermine the contractual rights of account holders and/or the duties of care skill owned by a banker to its customer, nor does the Act confer any

untrammelled power or liberty on the EFCC to direct or requested the 1st Defendant/Respondent to freeze or place post no debit restriction on applicant's account without first seeking and obtaining Order of court on that behalf.

In this case at hand even though the 2nd defendant/Respondent in its counter affidavit in paras: 7, 8 and 9 which earlier reproduce above the 2nd Defendant/Respondent denied any case against the applicant stating that upon Preliminary inquires the 2nd defendant/Respondent was not able to trace any complain or intelligence report relating to the applicant with relation to alleged freezing of his account and also state in paragraph 8 that there was no evidence that the 2nd Defendant/Respondent has issued any instruction to place post no debit of the applicant account relating to any alleged economic or financial crime.

At this juncture I resolve this issue in favour of the applicant against 2nd Defendant/Respondent. Since the 2nd Defendant/Respondent did not find any intelligence report against the applicant account as stated in their counter affidavit and have no case against the applicant even if the EFCC have power to investigate the applicant but have no power to place a lien to freeze or place post no debit on the applicant account since there is no complain or intelligence report on related economic and financial crime against the said account.

On the other hand the 1st defendant reneged to appear nor file any process in contention to the applicant application which the 1st defendant were duly served neither challenge or contravent the applicant

deposition in the said affidavit evidence. It is trite law that uncontradicted or uncontroverted affidavit evidence is deemed admitted.

See the case of OKIKE Vs. LPDC (2005) 15 NWLR (Pt.949) pg 7 at 471 S.C and OSHAFUN MI & ANOR Vs. ADEPOJU & ANORS (2014) LPELR – 23073 (CA).

It is a trite law that when a piece of evidence is uncontraverted, court can Act on same. See the case of NWOKOLO Vs. NWOKOLO (2018) LPELR – 45035 (CA).

Without much belaboured I cannot but find and hold that the 1st Defendant/Respondent breached the banker/customer relationship between it and the applicant by failing to exercise due care and skill required of an Ordinarily prudent banker when it placed the applicant account on indefinite post no debit status assuming at the instance of the 2nd Defendant/Respondent without insisting on being furnished with an Order of court to that effect as provides in section 34 (1) (2) and (3) of EFCC Act and thereby wrongfully denied the applicant access to the funds standing to its credit in the said account.

The placement of restriction by the 1st Defendant/Respondent on the applicant account in this peculiar facts and circumstance of this application is patently illegal, wrongful and unjustifiable. A banker has contractual relationship with the customer and must give up the amount standing to the credit of the customer on demand. See the case of STANDARD TRUST BANK LTD Vs. BARRISTER EZENWA ANUMNU pg 154-155 and UNION BANK OF NIGERIA LTD.

At this point is my humble view that a banker has no power to arbitrarily freeze or keep frozen the account of its customer since September 2017

claiming to freeze the account at the instance of 3rd assuming without conceding even if it is at the instance of the 3rd party that is the 2nd Defendant/Respondent is ultra vires on the power conferred on it under the EFCC enabling Laws.

The banker has no right to unilaterally block freeze or suspend the operation of the account of its customer indefinitely under the pretext that the 1st Defendant/Respondent acted at the instance of the 3rd party the 2nd Defendant/Respondent without paying due attention to statutory provisions requesting the conduct of the 3rd party (the 2nd Respondent.) See DANGABAR Vs. F R N (supra).

I find and hold that the applicant application has merit and it succeeds, it is hereby ordered as follows:-

1. That the 1st Defendant/Respondent shall immediately lift the post no debit placed on the applicant account with account No. 0224690849 with the 1st Defendant/Respondent and allow the applicant access to it account without any hindrance.
2. That the 1st Defendant/Respondent to transfer as prayed by the applicant the following sums of money from the Applicant's Account No. 0224690849 held by the Applicant with the 1st Defendant/Respondent to the following Account Numbers or persons in the following order, namely:
 - v) BLUE ANCHORAGE LTD
Zenith Bank Plc
Account No. 1017289617
Amount N7,000,000,000.00 (seven billion naira only)
Local currency transfer slip No. 11556886;

- vi) BROCKWELL PRACTICE Zenith Bank Plc
Account No. 1013298389
Amount N5,000,000,000.00 (five billion naira only)
Local currency transfer slip No. 11556887;
- vii) DEZZAT GLOBAL INVESTMENT LTD
TAJ Bank
Account No. 0000129988
Amount N2,584,310,000.00 (two billion, five hundred and eighty-four million, three hundred and ten thousand naira only)
Local currency transfer slip No. 11556884
- viii) OLUDOTUN SOWEMIMO GT Bank Plc
Account No. 0024480252
Amount N10,337,236,000.00 (ten billion, three hundred and thirty-seven million, two hundred and thirty-six thousand naira only)
Local currency transfer slip No. 11556885;
respectively, pending the hearing and determination of the substantive suit;

This shall be the ruling of the court.

APPEARANCE

Akosa Egbunilce Esq. for the 2nd Respondent.

The applicant is absent in court.

Sign
OHon. Judge
19/02/2021