

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN**  
**THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON 31<sup>ST</sup> DAY OF MARCH, 2021**  
**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**  
**MOTION NO: FCT/HC/M/12178/20**

**BETWEEN:**

**EMMANUEL EBERE IDIBIE..... PLAINTIFF/APPLICANT**

**AND**

**FIDELITY BANK PLC.....DEFENDANT/RESPONDENT**

**RULING**

The originating motion on notice brought pursuant to order 11R2 of the fundamental right (Enforcement Procedure) rules 2009 section 44 of the constitution of the FRN 1999 (as amended) and article 14 of the African Charter On human and Peoples right (enforcement and ratification) 2004 LFN 2004. Dated the 14<sup>th</sup> November, 2020 and filed on the 20<sup>th</sup> November, 2020.

Applicant is seeking:

- (i) A declaration that the freezing of the applicant account (saving account with the Respondent Fidelity Bank, with Account No: 6170762033.*

*Account Name: Emmanuel Ebere Idibie which was frozen (post no debit) without following due process of law by the defendant constitution an infraction of his right to own property cognizable and entrenched by section 44 of the constitution of the FRN and Article 14 of the African Charter on human and people Right (Enforcement and ratification) Act and therefore, unconstitutional, wrongful, illegal, null and void.*

- (ii) An Order directing the Defendant/Respondent to render a written and unqualified apology to the Plaintiff/Applicant for the brazen abuse of the applicants, right to our property as cognizable and entrenched by section of the constitution of the FRN 1999 as amended and Article 14 of the African Charter on human and peoples right (Enforcement and ratification) Act Cap 19 laws of the Federal Nigeria 2004.*
- (iii) An Order directing the defendant/Respondent to unfreeze the applicants account savings Account with the respondent Fidelity Bank, with account No: 617072033 Account Name: Emmanuel Ebere Idibie which was frozen (Post no debit) without following due processes of law.*
- (iv) An Order restraining the Defendant/Respondent and their agents from interfering with the account of the applicant except in accordance with due process of law.*
- (v) General damages of the sum of N5,000,000.00 against the Respondent for infriying on the fundamental human right of*

*the applicant to own property cognizable and guaranteed by section 44 of the constitution of the FRN, Article 14 of the African Charter on human and people Rights (enforcement and ratification) Act.*

- (vi) *An Order of perpetual injunction restraining the Defendant/Respondent by themselves including their servants officers agent and cohorts under any guise from further violating the fundamental human right of the applicant to own property cognizable and guaranteed by section 44 of the constitution of the FRN Article 14 of the African Charter on human and people rights (Enforcement & Ratification)Act.*

The facts of the case as deposed to by the applicant in his affidavit in support and the grounds upon which it is reliefs are sought are as follows:

- (1) That the applicant is a writer and is also known as Hymar David.
- (2) That he maintain a savings account with the Respondent with account No 6170762033, Account name: Emmanuel Ebere Idibie.
- (3) That the applicant also maintain a twitter account with the name Hymar David with the user name: @paganbaby while the Respondent twitter account name is fidelity bank with user name @fidelitybank plc.

- (4) That the applicant sureties contacted the Respondent via twitter when he had operational or access issues.
- (5) That on the 15/10/2020 applicant tried to transfer money from his account but got the feedback message of “error security violation”.
- (6) That applicant laid a complaint via twitter to the Respondent by 5:30pm and the Respondent replied by 7:34pm stating that applicant account was blocked and they do not know why it was blocked.
- (7) Applicant avers that the Respondent has failed up till date to tell him why his account is blocked or show him any legal comet authorizing same.
- (8) That his Fundamental Human Right to own property has been infringed upon and he has suffered damages, trauma indignation, discomfort, distress hardship and embarrassment as a result of it.

Attached to this application are exhibit A1, A2, B, C, D, E & F, a certificate of compliance to section 84 of the Evidence Act and applicant written address wherein applicant submit that the Respondent have no power legally to freeze applicants account without valid court order and that not even the police can do same without an order from the court. See **COMMISSIONER OF POLICE VS. IBRAHIM (2016) L PELR 41319 CA;** and submitted that by freezing applicants account without a court order, Respondents plundered the applicant right to fair hearing and to own

property as ordained by the constitution. Applicant further submits that general damages is the consequences of the wrong done to the applicant by the Respondent and the court ought to award such damages as would serve as a deterrent against naked arrogant, arbitrary and oppressive abuse of power and cited **MINISTRY OF INTERNAL AFFAIRS VS. DARMAN (1982) 3 NCLR 915 @ 928** Respondent entered a memo of appearance on the 8<sup>th</sup> February, 2021 with a motion on notice praying the court for extension of time to file and serve their conditional appearance Respondent also filed a Preliminary Objection dated and filed on the 8/2/21 on the ground that the applicant and the Respondent share a banker customer relationship.

That the applicant originating motion does not disclose a challenge to an infraction of any provision of chapter 4 of the constitution of the FRN or the African Charter on human and People Right (ratification and enforcement) Act but to a Civil Contract Transaction.

That the applicant originating motion is premature inchoate and Incompetent and same discloses no reasonable cause of action against the Respondent.

Respondent also attached a written address.

In Respondent Counter Affidavit in opposition to applicant motion deposed to by One Elisha Okoh litigation secretary in the law firm of counsel to Respondent dated and filed on the 8/2/21 deponent on behalf

of the Respondent denied paragraph 2,3,5,7, to 15 of the Applicants supporting affidavit.

That the CBN undertook a Preliminary investigation on the Plaintiff account maintain with Respondent on the suspicions of transaction by the applicant that violated the provision of the law and so on the 15/10/20 CBN directed and instructed the Respondent to post No debt on the applicant account directive of which the Respondent is bound to abide by.

That due to the sensitivity of the information applicant was informed on social media after Inquiring that his account was blocked and adviced to visit on branch of the Respondent for further assistance.

That CBN on the 20/10/20 applied for an order exparte from the court sanctioning its directives to the Respondent to freez all transaction on applicants account.

On the 4/1/20 the said order was granted and enrolled.

That the applicant was aware of the subsisting of court order freezing his account and that the fundamental Rights of the Applicant has not been breached.

That the applicant is at liberty to apply to the federal high court to vary or discharge the said expare order of 4/11/20 and that applicants originating motion is a gross abuse of court process. Attached to this

Counter Affidavit is One Exhibit FB1 and a written address. The applicant filed a reply on point of law to Respondent Counter Affidavit dated 12/2/21 and filed on the 15/2/21 and a reply on point of the law to respondent Preliminary Objection dated 12/2/21 and filed on the 15/2/21. Defendant/Respondent replied on point of law dated 1/3/21 and filed on the 2/3/21. Having reproduced the position of both sides aforesaid. It is imperative to look at the provision of section 97 (BOFIA) 2020 Act.

- (1) Notwithstanding anything contained in any other enactment, where the Governor has reason to believe that transaction undertaken in any account with any bank, specialized banks or other financial institutions are such as may involve the commission of any criminal offence under any law, the governor may make an ex parte application for an order of the federal high court verifying on oath the reasons for the Governor beliefs, and on obtaining such court order direct or cause a direction to be issued to the manager of the bank, specialized bank or other financial institution where the account is situated or believed to be or in the alternative to the head office of such bank specialized bank or other financial institution to freez the account.*
- (2) The manager of a bank specialized bank other financial institution in which a directive has been issued or an account under subsection (1) shall on receipt of such directive, suspend all*

*transaction related to such account for such period as may be specified in the directive.*

- (3) Where an account has been frozen under this section the Governor shall refer the matter to the*
- a. Nig police Force.*
  - b. NDLEA.*
  - c. EFCC.*
  - d. Any other law enforcement authority or appropriate regulatory authority. Provided that where the matter relates to the contravention of the provision of this Act or other enactment administered by the bank, the Governor may cause such matter to be investigated by the Bank. From the facts contained on the Respondent Counter Affidavit same did not obtain a court order before freezing the applicants account see paragraphs 8, 9, 10 of Applicant affidavit pursuant to order 11 R3 of the fundamental right (enforcement procedure) rules 2009 and paragraph 51x 5x1 5x11 of the Respondents Counter Affidavits in opposition to applicant originating motion on notice. Notwithstanding the non-compliance complain wth the provision of section 97 BOFIA and the admission in favour of the Respondent Counter Affidavit. nevertheless I would like to place on record although the order of the Federal high court going by the process filed in this court same was obtained before the freezing of the applicants account this court lacks the capacity to entertain this application reason been that the*



*federal high court and this court are court of concurrent jurisdiction therefore this court cannot give a way that would be in conflict of the FIHC's order granted to the Respondent although from the process filed the applicants have a glow case but I would refused the application been this is clear on abuse of court process if the application worries to challenge the order he can file same before the FIHC or alternatively he can go on appeal against same.*

I have carefully gone through all the process filed the applicant on the CA filed. An Order granted by a compliant court of jurisdiction that order must be obeyed whether rightly or wrongly granted unless and until same is being set aside. On appeal or by the same court that initially granted the order for the reason stated above I would not dwell in the application of infraction and other grounds for this application. Instead I hereby struck out the application.

Signed  
Hon. Judge  
3/3/2021