

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 13 WUSE ZONE 2
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
THIS 17TH DAY OF NOVEMBER, 2021
SUIT NO: FCT/HC/CV/628/2019**

BETWEEN:

DR FLORENCE IKECHUKWU -----PLAINTIFF
(SUING BY HER LAWFUL ATTORNEY MRS. LAWRENCE ANNETH)

AND

ZENITH BANK PLC -----DEFENDANT

*C. C. TOM-ONUWUGHA appears with C. I. IDOKO for the plaintiff.
SAMSON ESEKHAIGBE for the defendant.*

RULING

The plaintiff suing through her attorney Lawrence Anneth claimed that the defendant unlawfully restricted her savings account No. 2215873684 which account was opened in the defendant's Transcorp Hilton Hotel branch, Maitama, Abuja. She discovered this on the 18th day of May 2019 when she logged into her online banking application to engage in internet banking in order to transfer some funds to one Engineer Marcillinus A. Ukanwa who was building a house for her at plot C/14B Okohia Layout, LÁrcade Avenue Owerri, Imo State and also to some other persons. She instructed her solicitor to write to the defendant demanding that the wrong be remedied, and a letter dated 11th day of June 2019 was written to the defendant, but the defendant has failed, refused and neglected to respond to her letter above mentioned till date. Consequently the plaintiff instituted the instant action claiming the following relief.

- a. A declaration that the hold placed on the plaintiff's savings account No. 2251873684 by the defendant thereby preventing and or refusing the plaintiff access to her money and or funds in the custody of the defendant is wrong and unlawful.

- b. A declaration that the defendant is not entitled to deny the plaintiff access to her money and or funds in the hands or custody of the defendant.
- c. An order directing the defendant to lift the hold placed on the said savings account and allow the plaintiff immediate unrestricted and unconditional access to her money and or funds in the hands or custody of the defendant.
- d. An order restraining the defendant, its agents, servants and or officers from in whatsoever manner preventing or refusing the plaintiff access to her money and or funds in the hands and or custody of the defendant.
- e. **₦300,000,000 (Three Hundred Million Naira)** being damages for the said wrongful and unlawful acts.

Reacting to the plaintiff's action, the defendants filed a notice of preliminary objection seeking for a dismissal of the suit for being an abuse of court process upon the following grounds:

- 1. That the subject matter in this suit is the same as that in suit No. MISC/MCY/189/19 decided by Hon. Mrs O. Kusanu Chief Magistrate of the Chief Magistrate Court, Ebute Meta, Yaba, Lagos.
- 2. That the parties in the two suits are substantially the same with the exception of the victims of the plaintiff's action.
- 3. That this extant suit No. FCT/HC/CV/628/19 is an exercise in forum shopping and an attempt to relitigate on matters already decided by a court of competent jurisdiction.
- 4. That this action is incompetent, contrary to public policy, vexatious and instituted merely to annoy, intimidate and harass the defendants.

The facts in support of the preliminary objection are as contained in the 5 paragraph affidavit of one Austin Akechi a litigation manager in the firm of Messrs B. E. Offiong & Co Solicitors to the defendant/applicant. In paragraph 3a-q, the deponent averred that the parties in this suit were

parties in suit No. MISC/MCY/189/19 decided by the Chief Magistrate Court, Ebute Meta, Yaba, Lagos on the 19th of December 2019. That the case was a case of Criminal Complaint of obtaining money by false pretence brought against the plaintiff by one Chief Ekpeyoung Fuller, CEO of Extended Zeal Nigeria Ltd. That the plaintiff in concert others at large while presenting themselves to be dealers in Foreign Exchange led the said CEO of Extended Zeal Nigeria Ltd to pay in money into her account in exchange for U.S. Dollars equivalent.

That the said Chief Ekpeyoung Fuller was deceived into paying the sum of **₦6, 580,000 (Six Million Five Hundred and eighty Thousand Naira)** into the account of the plaintiff/respondent maintained with the defendant under the pretext of supplying him in exchange the sum of **USD32,000 (Thirty Two Thousand US Dollars)** which his company needed to import certain products. That after the Naira payment was made by the said CEO of Extended Zeal Nigeria Ltd as directed by the plaintiff into her account with the defendant, she stopped answering her victims calls, and neither was the promised US Dollars paid in exchange for which the Naira consideration was lodged into her account. The victim reported the scam/theft to the police issuing the bankers order and setting process in motion for the arrest of the plaintiff. A copy of the police letter of investigation to which is attached the bankers' order is attached and marked as Exhibit ZB2.

That since then the plaintiff has never been seen in person again. She has variously tried to transfer the stolen money through internet banking but to no avail. That while the police was still looking for her and keeping an eye on activities in account No. 1003500942, the plaintiff surreptitiously opened another account online with account No. 2251873684 at the defendant's Transcorp Hilton Hotel branch, Maitama, Abuja and sought to transfer through internet banking the stolen amount in account No. 1003500942 to her new account with account No. 2251873684. The victim as a result of not being able to apprehend the plaintiff approached the court seeking for an order to compel the defendant to reverse the

sum of ~~₦~~**₦6, 580,000 (Six Million Five Hundred and eighty Thousand Naira)** from the plaintiff's account No. 1003500942 back to the victim of the criminal enterprise.

The court heard the application of the plaintiff's victim and granted same on the 19th December 2019. The said Order was served on the defendant and in compliance with the said order, the defendant on the 15th January issued a managers cheque for **₦6, 580,000 (Six Million Five Hundred and eighty Thousand Naira)** in favour of Extended Zeal Nigeria Ltd. That the decision in the subject matter by the Chief Magistrate was final and on merit and the plaintiff has not appealed against same.

Conversely the plaintiff in response to the preliminary objection stated that in 2015, she had need to send **USD32,000 (Thirty Two Thousand US Dollars)** to Nigeria for the purpose of making payment for the medical treatment of her family members. That a friend linked her to one Miss Victoria Akpu living in New York City USA who agreed to pay the equivalent of that money into her account with defendant in Nigeria. And that subsequently she observed that her account into which the money was paid into was blocked with no explanation from the defendant or her account officer. She contacted her lawyer in Nigeria who quickly notified the defendant of the wrongful freezing of the account and requested for an explanation. And that subsequently she learnt that her account was frozen as a result of a controversy involving one Mr. Fuller Ekpeyoung who had some kind of relationship with Miss Victoria Akpu.

That the said Miss Victoria Akpu decided to withhold Mr. Ekpeyoung's money in her possession in revenge of their misunderstanding or failed business. And that all efforts to reach Mr. Fuller Ekpeyoung and Miss Victoria Akpu to urge them to keep her out of their business since she had no connection whatsoever with them. The plaintiff claimed that she was not aware of any bank order, police matter or any warrant of arrest or investigation. She however admitted that the two accounts belong to her. She attributed her reasons for opening the two accounts to the

nature of her business and convenience. She claimed that she is not aware of any matter and was not served and was not served with hearing notice or court process before the magistrate court or any other court. She further stated that she had a balance of **₦11,678,882.89 (Eleven Million Six Hundred and Seventy Eight Thousand Eight Hundred and Eighty Two Naira Eighty Nine Kobo)** in 2251873684 with the defendant. The both parties are present in the previous suit, but the present parties and issues, subject matter are different and that the decision of the Magistrate court did not determine any of the issues presented in this suit.

Both parties have filed their respective written address in support of their affidavit and counter-affidavit. The issue for determination pointedly is whether the institution of the present suit is caught by the doctrine of res judicata. The res in the instant suit and the one before the Chief Magistrate court in Lagos in account No. 2251873684 (savings) being the account of the plaintiff with the defendant. The account was a subject of investigative activities by the Nigerian Police and to which the order of Chief Magistrate court, Yaba, Lagos was related. And it was this same account the plaintiff in the instant case claimed was wrongly put on hold by the defendant. Both the plaintiff in this case and the defendant were parties (respondents) in the suit at Chief Magistrate court, Yaba.

The order of the Magistrate court was as contained in Exh ZB3, to the effect that the 1st respondent reverse the sum of **₦6, 580,000 (Six Million Five Hundred and eighty Thousand Naira)** currently in Zenith Bank Plc account No. 2251873684 maintained by the 2nd respondent on the ground that the applicant was induced by pretence to make the transfer.

This is a full and final judgement as it relates to the account, the plaintiff as rightly pointed out by the defendant's counsel in the case at hand did not appeal the judgement of the court. The issue as to whether the account was wrongly placed on hold would only fly if there was a successful appeal against the judgement of the Magistrate court. I

endorse the submission of learned counsel to the defendant, that the judgement of the Chief Magistrate court, Yaba, Lagos subsists until it is set aside by a court of competent jurisdiction. The filing of the instant action by the plaintiff is an abuse of process of court. She is estopped from taking a fresh cause of action on an issue that have been settled by the court of competent jurisdiction.

On what constitutes estoppel per rem judicata, the Court of Appeal in the case of **ATECHIMO & ORS V OJO & ORS (2015) LPELR 19976 CA** held:

“The primary effect of a plea of estoppel per rem judicata is to disable a party from pursuing claims or issues in a claim that have been considered and distinctly decided in an earlier suit. It affects the competence of a cause of action of a party and not, directly the jurisdiction of the court. It is this strictly speaking not and cannot be synonymous to appeal of want of jurisdiction on the part of a court to entertain a claim.” – Per Abiru JCA.

See also **UKAEGBU V UGOJI & ORS (1991) LPELR 3338 (SC)**, **OMOICHEFE V ESEKHOMO (1993) LPELR 2649 SC**, **MAKIN & ORS V FUTMINNA & ORS (2011) LPELR 15514 SC**.

The plea of res judicata, it is trite operates not only against the parties but also against the jurisdiction of the court itself and robs the court of its jurisdiction to entertain the same cause of action on the same issues previously determined by a court of competent jurisdiction.

The plaintiff’s action before this court is nothing but a forum-shopping and will not be allowed by this court. In conclusion, I uphold the preliminary objection of the defendant’s counsel and in consequence dismiss the plaintiff’s action in its entirety.

Signed

**Hon. Judge
17/11/2021**