

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

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU, GODSPOWER EBAHOR & ORS**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/831/2021**

**BETWEEN:**

**HONOURABLE BERNARD BARIDA MIKKO.....CLAIMANT**

**VS**

**ACCESS BANK PLC.....DEFENDANT**

**RULING**

By a Notice of Preliminary Objection dated 6/12/2021 and filed same day, brought pursuant to Section 6(6) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended); Order 43 Rule 1(1)(2) of the Rules of Court and under the inherent jurisdiction of this court, the Defendant/Applicant seeks the following prayers;

- (1) An Order of this Honourable Court declining jurisdiction to hear this Suit as the jurisdiction of this Honourable Court has been ousted by Section 45 (2) of the Corrupt and Other Related Offences Act 2000.
- (2) An Order of this Honourable Court dismissing this suit for being an abuse of court process.
- (3) And the Omnibus relief.

The Preliminary Objection is premised on the following grounds;

In support of the application is a 17 Paragraph affidavit with three (3) annexure marked as Exhibit "A" "B" "C" sworn to by one Akin Olagunju Esq. a Counsel in the Law Firm of Applicant's Counsel. Also filed a Written Addresses dated 6/12/2021 and adopts same in support of the application. Defendant/Applicant in receipt of the response of Claimant/Respondent filed a further affidavit dated 2/2/2022 as well as a reply on point of law dated 2/2/2022. Also adopts same in support of the application.

Responding, on receipt of the processes, Claimant/Respondent filed a Counter-Affidavit of 10 Paragraphs dated 16/12/2021 deposed to by the Claimant/Respondent. Also filed a Written Address dated 16/12/2021, in asking the court to dismiss the Preliminary Objection. Claimant filed an affidavit of facts of 8 Paragraph deposed to by one Sarah Jeta Atumga Counsel in the Law Firm of Claimant/Respondent's Counsel on 15/2/2022 and a list of additional authority same day. Urge court to adopt all the Paragraph of the affidavits and the arguments contained in the Written Address in dismissing the Notice of Preliminary Objection of the Defendant.

In the Written Address of Applicant JoyEtiaba Esq. of Counsel formulated a sole issue for determination that is;

"Whether this Preliminary Objection is meritorious"

Submits that Section 45 (2) of the Corrupt and Other Related Offences Act 2000 oust the jurisdiction of the court to hear the suit. And on what may determine jurisdiction, commend court to the cases of Madukolu Vs

Nkemdilim (1962) 2 SCNR 341 Angadi Vs PDP & Ors (2018) LPELR – 44375 (SC).

Submits that jurisdiction may be circumscribed by a condition precedent created by a legislation which must be fulfilled before the court can entertain the suit; that Defendant/Applicant acted on the directive of the Chairman of the Independent Corrupt Practices and Other Related Commission, which directive was empowered by Section 45 (1-4) of the Corrupt Practices and Other Related Offences Act 2000. Refer to Paragraphs 4 to 15 of their affidavit in support of the application and also Exhibit "A". Submits further that said Act was the applicable law at the time Defendant/Applicant placed the "Post No Debit" on the account of the Claimant/Respondent. Refer to Onyema & Ors Vs Oputa & Anor (1987) LPELR 2736 (SC) Gani – Tarzan Marre Enterprises Ltd Vs Caravelle Resources and Investment Ltd & Anor (2011) LPELR – 4185 (CA). And the Defendant cannot be sued for compliance with the lawful directive in regard to Section 45 (2) of the Act. Refer to ANPP & Anor Vs Frank & Ors (2018) LPELR – 3783 (CA).

Submits further that this subject matter of the suit is within the jurisdiction of this court, however, there is a feature of the legislation which oust the jurisdiction of this court which is the use of the word "shall" and which connotes compulsion, failure of which goes to the root of the Suit. Refer to Gold mark (Nig) Ltd & Ors Vs Ibrahim Co. Ltd & Ors (2012) LPELR – 9349 Galadima Vs Tambai & Ors (2000) LPELR – 1302, Bamaiyi Vs A – G Federation (2001) 12 NWLR (PT. 727) 468 @ 497 Para F – G, Dohun Vs Igbo – Etit LGA (2013) 7 NWLR (PT. 1352) 15 Paras A – E, Ifezue Vs

Mbadugha (1984) 1 SCNL 427, Oyeyipo Vs Oyinloye (1987) 1 NWLR (PT. 50) Achineku Vs Ishagba, (1988) 4 NWLR (PT. 89) 411. Emordi Vs Igbeke (2011) 9 NWLR (PT. 1251) 24 @ 35 Para A – B. Submits that in the interpretation of statutes clear and unambiguous words should be given their ordinary meaning. Refer to AG Bayelsa State Vs AG Rivers State (2006) 18 NWLR (PT. 1012) 596, Niger Progress Ltd Vs NEL Corp (1989) 3 NWLR (PT. 107) 68 and Garba Vs Federal Civil Service Commission (1988) 1 NWLR (PT. 71) 449.

Submits that since the word "shall" in the Section 45(2) when given its ordinary meaning connotes compulsion, leaves court with no discretion for where a legislation lays down a procedure for doing a thing, there should be no other method as applying any other way would amount to illegality. Refer to Okereke Vs Yaradua & Ors (2008) LPELR 2446 (SC). C.C.B Plc Vs The A.G Anambra State (1992) 10 SC NJ 137 @ 163 and Buhari Vs Yusuf (2003) 4 NWLR (PT. 841) 446 @ 498.

Submits that having not complied with Section 45(2) of the Act, this Suit is incompetent and an abuse of court processes and ought to be dismissed. Refer to Kore & Anor Vs INEC & Ors (2008) LPELR – 4407 Raymond S. Dangote Vs Civil Service Commission, Plateau State & Ors (2001) LPELR 959 (SC) and Ezegbu Vs Faiths Ltd (1992) 1 NWLR (PT. 216) 197. Commend court to the case of Saraki Vs Kotoye (1992) 9 NWLR (PT. 204) 156 SC @ 188 Paras F – H Arubo Vs Aiyelecel (1993) 3 NWLR (PT. 280) 126 @ 146; Guaranty Trust Bank Plc Vs Innoson Nigeria Limited (2018) LPELR – 48686 Chief Great Ovedje Ogboru & Anor Vs Dr. Emmanuel

Euretan Uduaghan & Ors (2013) LPELR – 20894 (SC) on what may constitute abuse of court process.

Submits finally that the only order the court can make on cases of abuse of court process is order of dismissal. Refer to Adesanoye Vs Adewole (2000) 9 NWLR (PT. 127) 671, Alhaji Muhammed Maigari Dingyadi & Anor Vs Independent National Electoral Commission & Ors (2011) 2 PELR – 950 (SC) and Senator Alphonsus Uba Igbeke Vs Lady Margery Okadigbo & Ors (2013) LPELR – 20664. Urge court to hold that the Provision of Section 45 (2) of the Act ousts the Jurisdiction of this Honourable Court.

In the Written Address of the Claimant/Respondent, Counsel formulated two issues for determination which is;

1. Whether in the determination of jurisdiction this Honourable Court is confined only to the Claimant's Writ of Summons and Statement of Claim.
2. Whether Section 45(1) (2) and (3) of the Corrupt Practices and Other Related Offences Act, 2000 (CPA) 15 Capable of divesting this Honourable Court its constitutional jurisdiction and/or restricting the Claimant's access to court.

The submission of Respondent Counsel in summary is that in the determination of jurisdiction, the court is confined to the originating process. Defendant by their claim failed to look at the claims of the Claimant/Respondent wholly but decided to isolate the issue of the lawfulness of the "Post No Debit" placed on Claimant's account. And

whereas she ought to have informed the Claimant the reason behind her action despite several request for explanation.

Submits that Applicant's Exhibit "A" was made contrary to Section 83 (3) of the Evidence Act 2011, thus inadmissible. Refer to Ladoja Vs Ajimobi (2016) 10 NWLR (PT. 1519) and B.B Apugo & Sons Ltd Vs O.H.M.B (2016) NWLR (PT. 1529) 206.

Finally refer to the case of Ojo & Anor Vs FRN (2008) LPELR – 5155 (CA) on the role of court to ensure that substantial justice is done.

On issue two, submits that Section 45 of the CPA appears to create ouster Clause which takes away the right of aggrieved persons to challenge actions taken by appropriate authorities, but the courts have been consisted in holding that laws which oust or tend to restrict the jurisdiction of court are construed strictly since they are laws which deprive citizens of free access to the courts. Refer to Kalango Vs Gov. Bayelsa State (229) 7 NWLR (T. 1139).

Submits finally that the Section 45 (1) (2) and (3) is inconsistent with the Provisions of Section 6 (6) (a) (b) of the 1999 Constitution (As Amended) and should not avail the Defendant/Respondent. Refer to Blaid Construction Limited & Anor Vs Federal Republic of Nigeria (FHC/ABJ/CS/132/2019) where the court reversed the directive of ICPC issued pursuant to the power granted under Section 45(1) of the CPA. As well as the case of Blaid Construction Limited Vs Access Bank Plc where the court held that the ICPC lacked powers to order banks to place a Post-No-Debit alert on bank accounts without first obtaining an order of court and

adjudge such action as illegal and in breach of the Banker – Customer Relationship between the parties. Urge court to hold that Defendant/Applicant's lacks merit.

In her reply on point of law Defendant/Applicant's Counsel submits that Claimant/Respondent misconceives the purport of Section 45(2) of the Corrupt Practices and Other Related Offences Act 2000, under which the jurisdiction of court is being challenged. Refer to Coca Cola Nig Ltd Vs Akinsanya (2017) 17 NWLR (PT. 1593) 74 @ 122 Para C – D. And that the issue raised by the Claimant/Respondent is for the substantive Suit, which cannot be address at this stage of the case. Refer to Saraki Vs Kotoye (1990) 4 NWLR (PT. 143) 144 @ 149, Shanu Vs Afribank (Nig) Plc (2002) 17 NWLR (PT. 795) 185 @ 230 – 231.

On the Exhibit "A", submits that the document speaks for itself, submission of Counsel cannot override the date contained in the said Exhibit. Submits that Exhibit "C" was made on 25/3/2021 before the pendency of this suit, hence wrong for Counsel to misdirect the court that same was made contrary to Section 83 (3) of the Evidence Act. And the question of the Admissibility of Exhibit "C" cannot be raised at this interlocutory stage of trial. Refer to Chief of Air Staff Vs Iyeh (2005) 6 NWLR (PT. 922) 496 @ 547 Odutola Vs Kayode (1994) 2 NWLR (PT. 321) 1 @ 21, Nwosu Vs Imo State E.S.A. (1990) 2 NWLR (PT. 135) 688, Boko Vs Nungwu & Ors (2018) LPELR – 45890.

Defendant/Applicant Counsel urge court to discountenance the cases cited by Claimant/Respondent's Counsel as they are not applicable to the instant

case, as the facts are not the same. Refer to *Emeka Vs Okadigbo* (2012) 18 NWLR (PT. 1331) 55 @ 96 Paras G – H and *Access Bank Plc Vs Onwuliri* (2021) 6 NWLR (PT. 1773) 391 @ 418 – 419.

On the Claimant's Counsel's submission that the Exhibit "A" could have been backdated, submit that such claim amounts to allegation of forgery and where allegation of crime is raised in a civil suit same must be particularized and proved strictly beyond reasonable doubt. Refer to Section 135 (1) (2) of the Evidence Act, case of *Ukeje & Anor Vs Ukeje* (2014) LPELR – 22724 *Igbinosa Vs Aiyobagbiegbe* (1969) 1 ANLR 99, *Famuroti Vs Agbeke* (1991) 5 NWLR (PT. 189) 1.

On the conflict in the date Exhibit "A" was made, submits that the deponent has deposed to a Further and Better Affidavit and even if there was no Further and Better Affidavit, it is trite that document speaks for itself and one cannot read what is not contained therein. Also trite that oral evidence is inadmissible to vary, add or contradict the contents of a document. Refer to *Ahmed Vs Central Bank of Nigeria* (2013) 11 NWLR (PT. 1365) 352 @ 374 Para A-C, *Ogundele & Anor Vs Agiri & Anor* (2009) LPELR 2328. *Union Bank of Nigeria Ltd Vs Professor Albert Ojo Ozigi* (1994) LPELR – 3389, *Bisolo Nigeria Ltd & Anor Vs Afribank Nigeria Plc & Ors* (2013) LPELR – 22062. *Egharevba Vs Osagie* (2010) All FWLR (PT. 513) 1255.

On the constitutionality or otherwise of Section 45 of the ICPC Act, submits that court should discountenance the issue two formulated by Claimant/Respondent as they rely on an unknown law in their Written



Address as the only valid and subsisting Corrupt Practices and Other Related Offence Act is that of 2000. Refer to A.G Ondo State Vs Attorney General of the Federation and Ors (2002) 9 NWLR (PT. 772) 222 and Temple Nwankwoala Vs FRN (2018) LPELR – 43891 (SC). And if court holds otherwise submits that, Section 45 (2) of CPA oust the jurisdiction of this court. Refer to Coca Cola (Nig) Ltd Vs Akinsanya (2017) 17 NWLR (PT. 1593) @ 142 – 143 Para G – B Nwosu Vs Imo State E.S.A. (1990) 2 NWLR (PT. 135) 688.

Submits that this court is not bound by the cases cited in Paragraph 3.16 – 3.17 of their Written Address and the Federal High Court and State High Courts are of coordinate jurisdiction. Refer to Barclays Bank Vs Hassan (1961) 1 ANLR 861. Again the cases are Unreported Cases and Claimant failed to provide Certified True Copy of the Unreported Judgments as required by law, urge court to discountenance the unreported decisions cited by the Claimant’s Counsel. Refer to Major General Kayode Oni (Rtd) & 4 Ors Vs Governor of Ekiti State & Anor (2019) LPELR – 46413 (SC).

I have carefully considered the Affidavit evidence of the parties, the written submission of Counsel as well as their adumbration on their various positions on the issue in contention and the judicial and statutory authorities cited. In view of the simplicity of the facts of this application it is my informed view that this case does not call for a proliferation of issues for determination. Indeed a sole issue will suffice for the determination of this application that is;

“Whether this court has the requisite jurisdiction to entertain this suit in view of the Provisions of Section 45 (2) of the Corrupt and Other Related Offence Act 2000”

First on the two objections raised by Claimant/Respondent’s that the Applicant’s letter dated 25<sup>th</sup> March 2021 Exhibit “C” was prepared in anticipation of the proceeding and that the purported letter dated 28<sup>th</sup> August 2020 (Exhibit “A”) was non-existent at the time of the filing of the suit. It is trite law that document Exhibited in affidavit forms part of the affidavit and document, in an affidavit must not be objected to until the substantive action comes up for hearing. See *University of Ilorin Vs Oyalana* (2001) All FWLR (PT. 83) 2193 @ 2209 Para E and *C.R.P.D.I.C Ltd Vs Obongha* (2001) All FWLR (PT. 54) 353 @ 370 – 371 Para H – A therefore this ground of objection cannot avail the Claimant/Respondent.

On the unreported decisions of court cited by Claimant/Respondent’s Counsel and the contentions of the Defendant/Applicant’s Counsel, the Claimant’s Counsel has furnished the court with Certified True Copies of the Unreported Judgment and it is permissible for Counsel to tender Certified True Copy of Public document from the Bar as held in the case of *Aregbesola Vs Oyinlola* (2009) All FWLR (PT. 472) 1147 @ 1181 Para B.

On the issue distilled by the court as that which calls for determination, it is settled that a court can assume jurisdiction on a suit, when the court is properly constitutes as regards numbers and qualifications of the members of the bench And no member is disqualified for one reason or the other; the subject matter of the case is within its jurisdiction, and there is no

feature in the case which prevents the court from exercising its jurisdiction and the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of Jurisdiction. See *Madukolu Vs Nkemdilim* (1962) 1 All NLR 587 SC. And where a court lacks jurisdiction but goes ahead to hear and determine a suit amounts to an exercise in futility as any decision reached will be a nullity. See *Lufthansa Airlines Vs Odiese* (2006) 7 NWLR (PT. 978) 34 @ 72 Paras D – G.

In the instant case, the grounds for Defendant/Applicant objection is that the jurisdiction of this court is ousted by Section 45 (2) of the Corrupt and Other Related Offences Act, 2000 which reads;

Section 45;

- (1) Where the chairman of the commission is satisfied on information given to him by an officer of the commission that any movable property, including any monetary instrument or any accretion thereto which is the subject matter of any investigation under this Act or evidence in relation to the commission of such offence is in the possession, custody or control of a bank or financial institution, he may not withstanding any other written law or rule of law to the contrary by order direct the bank or financial institution not to part with, deal in, or otherwise dispose of such property or any part thereof until the order is revoked or varied.
- (2) No bank, agent or employee of a bank shall on account of such compliance, be liable to any prosecution or to any civil

proceedings or claim by any person under or by virtue of any law, contract, agreement or arrangement, or otherwise.

The ground of Defendant/Applicant's objection calls for an interpretation of the Provision of the Section 45 (2) with regard to the claim before the court, as it is trite that in the consideration of whether or not a court has jurisdiction to hear and determine a matter, the court is guided by the claim before it, by critically looking at the Writ of Summons and the Statement of Claim. See *Gafar Vs Gov of Kwara State* (2007) 4 NWLR (PT. 1024) 375. And in the interpretation of the said Provisions of the Act, the court shall be guided by the Provisions of Section 6(6) (a) (b) of the 1999 Constitution and the decision in the case of *A – G Bendel State Vs Agbofodoh* (1999) 2 NWLR (PT. 592) 476 where the Supreme Court held that;

“Where a person's right of access to court is taken away or restricted (Ouster Clauses) by either the constitution or any statute, the language of such Provision is usually construed very cautiously and strictly. In the course of interpreting such Provision, its language will not be extended beyond its least onerous meaning unless clear words are used to justify such extension”

Applying the above principles to the instant case, I find that the Claimant/Respondent in Paragraph 18 (a) (g) of Statement of Claim, claims relief against the Defendant/Applicant for placing a Post-No-Debit order on his account which act, Defendant/Applicant claims is in pursuant to the directive of the Chairman of the Independent Corrupt Practices and Other

Related Offences Commission vide Exhibit "A". And in giving the ordinary meaning to the clear and unambiguous words of the Provisions of Section 45 (2) of the Corrupt and Other Related Offences Act 2000, the court holds that this Provision imposes a restriction on the powers of the court to entertain a civil proceeding or claim against a bank who acted as in this case in compliance with a directive emanating from the Chairman of the Independent Corrupt Practices and Other Related Offences Commission. It is trite that the court guards its jurisdiction jealously but the fact of this application falls squarely within the four corners of the cold embrace of the ouster Provisions of Section 45 (2) of the Corrupt Practices and Other Related Offences Act. The hands of the court is tied and has no alternative them to hold that this court lacks jurisdiction. The case of Blaid Construction Limited & Anor Vs Federal Republic of Nigeria (FHC/ABJ/CS/132/2019) cited by the Defendant/Respondent cannot avail them as the facts are distinct from the facts of this application.

From all of these and having found that there is a feature of the case which prevents this court from exercising its jurisdiction this court holds that this application has merit and should succeed. Accordingly this suit is hereby struck out for lack of jurisdiction.

**Signed**  
**HON. JUSTICE C.O. AGBAZA**  
Presiding Judge  
14/11/2022

**APPEARANCE:**

MADU JOE-KYARI GADZAMA ESQ. WITH SARAH JETA ATUNGA ESQ. LOVE CHUKWEMERIJE ESQ. PROMISE ENIYIWU GODWIN ESQ. FOR THE CLAIMANT/RESPONDENT.

CATHERINE C. OKONKWO ESQ. FOR THE DEFENDANT/APPLICANT