

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 27TH DAY OF MAY, 2021 VIA ZOOM
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE
SUIT NO.FCT/HC/CV/1644/18

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

LINACRES NIGERIA LIMITED.....CLAIMANT

AND

ACCESS BANK PLC.....DEFENDANT

JUDGMENT

The Claimant's Claim against the Defendant vide a Writ of Summons and Statement of Claim dated 30/04/18 is for the following:

- i. A declaration that the Defendant was in breach of its Contractual Obligations to the Claimant by the Post-No-Debit/Freezing Order placed on the Claimant's account domiciled with the Defendant with account number: 0013865061 without Legal authorization or justification known to law from on or about the 29th day of March 2018.
- ii. A Declaration that the Defendant was in breach of its contractual obligations to the Claimant by dishonouring the Claimant's cheque with Cheque leaf No. 34401496 drawn on

the Defendant when the Claimant had available and sufficient fund in its account domiciled with the Defendant to satisfy the instrument.

- iii. AN ORDER awarding cost of the Proceedings assessed at N5,800,000.00 (Five Million, Eight Hundred Thousand Naira) only, being Solicitor's fees and other disbursements.
- iv. AN ORDER awarding the sum of N4,238,000.00 (Four Million, Two Hundred and Thirty Eight Thousand Naira) only, as loss incurred in the Claimant's Training Farm as a result of the Claimant's inability to access funds from its current account domiciled with the Defendant due to the Post-No-Debit/Freezing order unlawfully placed on the Claimant's account by the Defendant.
- v. AN ORDER awarding the sum of N100,000,000.00 (One Hundred Million Naira) only, against the Defendant being general damages suffered by the Claimant as a result of the Post-No-Debit/Freezing order unlawfully placed on the Claimant's account and dishonouring of its cheque.
- vi. AN ORDER of perpetual injunction restraining the Defendant, either by itself or its agents, staff, officers or any person acting for or on behalf of the Defendant from further tampering with the Claimant's account or dishonouring the Claimant's cheques or money demand by whatever means, without lawful justification.
- vii. 10% post judgment interest from when the judgment is delivered until the judgment sum is finally liquidated.

Upon the service of the Writ of Summons, Statement of Claim and all other processes on the Defendant, the Defendant filed its Statement of Defence dated 15/10/18 accompanied with list of documents, witnesses, Defendant's Written Statement on Oath. The Defendant further filed a Motion Exparte dated 5/06/20 praying the Court to join EFCC as a third party to the proceedings. The motion was granted as prayed.

The Claimant called a sole witness in proof of its case. He is Ofana Paul Santus of Suite C04, Statement House, off Shehu Shagari Way, Central Business District Abuja FCT.

Succinctly, he deposed that he is the Managing Director of the Claimant. The Defendant carries out banking business. The Claimant operates a current bank account domiciled with the Defendant's Lagos Street Branch, Garki, Abuja with account No. 0013865061 since or about 2012. The account was opened for the purpose of the Claimant's businesses. That as at 29/03/18 it had a credit balance of N10,117,688.41.

On 29/03/18, the Claimant wanted to effect a debit transaction on the account but could not as he was informed that a Post No Debit Order had been placed on the account. The Defendant did not give him any official correspondence to that effect to enable him find out from EFCC. He was not informed by EFCC or the Defendant of the reason why the Post No Debit Order was placed. The Claimant is not a subject of any investigation by the EFCC. That he suffered loss and setback on his business as a result of the Defendant's negligence and failure to reverse the Post No Debit Order on his account. The Claimant's lawyer wrote a letter requesting an immediate reversal of the Post No Debit Order and issue an apology to the Claimant. The letter was rebutted and the lien on the account persists.

On 10/04/18, he issued a cheque for N100,000 on the same account but the cheque was dishonoured thereby depriving him access to the funds. The Defendant failed refused or neglected to exercise its contractual and fiduciary duties to the Claimant. The Claimant is entitled to access its funds any time it wishes.

The Defendant's action has caused the Claimant severe loss in business, immeasurable damages and reputation issues.

That on 5/03/18, the sum of N19,872,071.32k was paid into the Claimant's current account by the Federal Government of Nigeria through the Amnesty Programme. The contract was for Vocational Training and Empowerment/Business set up services on the empowerment of 25 Niger Delta Youths on Rice Processing in Cross River State under the Presidential Amnesty Programme. The Claimant procured 50 hectares of land situate at Okpoma, Yala Local Government Area for the purpose of training the 25 Niger Delta Youths. That each delegate was meant to have 2 hectares of farmland, one for Nursery and the other for transplanting, making a total of 50 hectares. The Claimant's inability to access the funds in its current account occasioned severe damages to the Claimant and a breach of the contract awarded to it by the Office of the Special Adviser to the President on Niger Delta.

That the Claimant lost N4,238,000.00 due to its inability to access its funds. The details of the loss are in page 8 of the Testimony on oath. The contract was for a month and failure to access funds occasioned a delay. That it expended N5,775,000.00 as Solicitors fees to prosecute this action. That Claimant is entitled to damages. The Claimant's witness tendered the following exhibits.

Exhibit A – Duplicate of Award of Contract for the empowerment of 25 Niger Delta Youth and contract agreement.

Exhibit A1 – Bill of Charges dated 24/04/18.

Exhibit A2 – Payment Voucher.

Exhibit A3 & A4 – Claimant's Statement of Account and Certificate of Compliance.

Exhibit A5 – Letter from Karina Tunyan SAN & Co. demanding reversal of the Post No Debit Order dated 3/04/18.

Exhibit A6 – The Claimant's cheque of N100,000 presented at the Access Bank.

The Defendant's evidence is that the Claimant is its Customer. That Defendant received a letter from the Nigeria Police on

10/08/17 and another on 12/02/18 from the EFCC. That both letters are to the effect that the Claimant is being investigated in a case of criminal conspiracy conversion of public funds and money laundering. The Defendant received yet another letter from EFCC dated 22/03/2018 directing it to place Claimant's account on Post No Debit and furnish the Commission with the current balance in the account. The Defendant obeyed the directive.

The Defendant is not privy to any information as to how the Claimant proceeded to EFCC or the reasons why EFCC directed that the account be placed on Post No Debit except as was stated in letters dated 10/08/17 and 12/02/18. That it could not possibly give a satisfactory answer to the Claimant as it wanted. The Defendant received Claimant's Solicitor's letter but could not comply because the Post No Debit Order placed on the account can only be removed by the Defendant when a Counter directive is received from the EFCC. That Defendant acted in good faith. The Defendant has not been negligent in handling the Claimant's account. It did not breach any of its fiduciary

duties to the Claimant. The Defendant is not the cause of any damage suffered by the Claimant so it is not entitled to any damage. The Claimant is not entitled to Solicitors fees. That Defendant is not aware of any severe loss suffered by the Claimant as a result of the Post No Debit Order. The Defendant did not breach any contractual obligation.

The defence tendered the following Exhibits:

1. B – EFCC letter dated 12/02/18.
2. B1 – EFCC letter dated 10/08/18.
3. B2 – NPF letter dated 10/08/17.

Under Cross-Examination, he said Defendant did not receive a Court Order. That there was a prior understanding that there was a Court Order before it was treated. He does not have the Court Order. That since 2018, the account is still under lien. The Claimant has not been convicted of any criminal offence. The Defendant's Final Written Address dated 24/02/21 was adopted as Defendant's Final Argument. He canvassed that Claimant filed an amended Originating Process on 28/10/20. That it takes the place of the earlier subsisting one filed at the

commencement of the suit on 30/04/18. That when the amended Statement of Claim was filed, the life of the earlier Statement of Claim filed on 30/04/18 was terminated. That in the absence of the Originating Processes, issues cannot be joined by parties.

The Claimant contends that despite the leave granted to the Defendant on 16/06/20 to issue and serve the 3rd Party Notice, it was not issued and served hence there was no third party proceedings. The third party cannot be a Co-Defendant. That the Defendant who did not issue and serve a Third Party Notice, ill advised the Claimant to amend its Statement of Claim vide a letter dated 24/09/20 portraying falsely the fact that the Court ordered an amendment upon leave granted to issue third party notice. The Claimant on 28/10/20 simply reflected the joinder of the EFCC with respect to the third party proceedings only which is an independent action on the mistaken believe that the third party proceedings had commenced with an order for amendment.

By a Motion M/7379/20 dated 5/06/20, the Defendant/Applicant prayed this Court for an Order granting leave to issue and serve Third Party Notice on the Economic and Financial Crimes Commission (EFCC) being the proposed Third Party in this suit. And for such order or further orders as the Court may deem fit to make in the circumstance.

It was brought exparte as provided by the rules.

The Court took the Motion on 16/07/20 and ruled thus:

“I have read the Motion and Affidavit. I have also considered the Written Address of Counsel. I have particularly taken into consideration paragraph 6, 7 & 8 of the Affidavit. I am satisfied that the proposed Third Party may bear eventual liability either in whole or in part.

In the circumstance order is granted as prayed”.

The order granted is therefore that leave is granted the Defendant/Applicant to issue and serve Third Party Notice on the Economic and Financial Crime Commission (EFCC) being the proposed Third Party in this suit. The proposed Third Party

was not joined as a party to this action as the Defendant would want to portray. This Court did not grant any order for amendment of the processes or any processes for that matter. The filing of an amended Writ of Summons without an order of Court as provided under Order 25 of the High Court of the FCT (Civil Procedure) Rules 2018 is a futile exercise. What it means is that the said Amended Writ of Summons and Statement of Claim is not backed by law and can only be regarded as a mere surplusage or a dead/lifeless document. Even without a Notice of Discontinuance filed by the Claimant the Court would have struck out the said amended Writ of Summons.

In my view, the said Amended Writ of Summons dated 28/20/20 does not exist and I so hold.

The Defendant's Counsel further argued that the Defendant being a financial institution operating within the shores of Nigeria has a duty to its customers but is obligated by law to strictly adhere to the laws applicable in Nigeria as it relates to the regulation of the activities and operations of financial

institutions. Therefore the Defendant can by the compulsion of law be unable to fulfil its contractual obligation to its customer and therefore has engendered exceptions supported by Acts of Government.

Learned Counsel refer to Section 1, 6 & 7 of the EFCC Act and Section 6, 21 & 22 of the Money Laundering Act 2011. The Claimant's Counsel contends that the powers of the EFCC to give directives is not at large but must be in compliance with the Statute and within the enabling framework of the law. A directive that does not comply with the law he posits is illegal and the Defendant being a creation of the law is not under any obligation to abide by it at the detriment of its customer, hence exposes itself to liability. The Claimant's evidence simpliciter is that a Post No Debit Order was placed on its account without justification/Court Order.

The Defendant's evidence is that it was directed by EFCC to place a Post No Debit Order on the account of the Claimant vide

Exhibit B, B1 & B2. Exhibit B addressed to the Managing Director of Defendant dated 22/03/18 states:

“Refer to our letter reference No CR:3000/EFCC/ABJ/SIT-1/Vol./074 dated 12th February 2018 and your response Reference ABP/CIC/UE/JA/02/2018/0721 dated February 2018 on the above mentioned account.

2. In view of the above you are kindly requested to place the account on Post No Debit and furnish the Commission with current balance on the account.

3. Thank you for your usual cooperation”.

I have also read the Exhibit B1 which is to the effect that the commission is investigating a case of conspiracy, conversion of public funds and money laundry in which Claimant’s account featured prominently. The Defendant was asked to supply the EFCC of some documents. They claim to be doing that pursuant to Section 38 of the EFCC Act and Section 21 of the Money Laundering Prohibition Act. Exhibit B2 is a letter from the Nigeria Police to the Branch Manager, Access Bank PLC, Yenagoa dated 10/08/17 seeking the Bank to place a bait on the

account and arrest at sight. The relevant provision under the EFCC Act is Section 34.

I shall reproduce same:

“(1) Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorised by him may if satisfied that the money in the account of a person is made through the commission of an offence under this Act and or any of the enactments specified under Section 7 2a-f of this Act apply to the Court exparte for power to issue an Order as specified in form B of the schedule to this Act addressed to the Manager of the account or any person in control of the financial institution or designated non financial institution where the account is or believed by him to be or the head office of the bank, other financial institution or designated non financial institution

(2) The Chairman of the Commission, or any other authorised by him may by an Order issued under sub section (1) of this Section, direct the bank, other financial or designated non financial institution to supply any information and produce books and documents relating to the account and to stop

outward payment operations or transactions (including any bill of exchange) in respect of the account of the person”.

By Section 7 (2)(a) to f, the Commission is empowered to be the coordinating agency for the enforcement of her provisions of the:

- (1) Money Laundering Act 2004.
- (2) Advance Fee Fraud and Other Related Offences Act.
- (3) The Failed Banks (Recovery of Debt) and Financial Malpractices in Banks Act as amended.
- (4) The Banks and other Financial Institution Act.
- (5) The Miscellaneous Offences Act.
- (6) An other law or regulation relating to Economic and Financial Crimes including the Criminal Code and Penal Code.

In enforcing all the above laws, the Chairman or any officer authorised by him must apply to Court *ex parte* for power to issue an order. Exhibit B, B1 & B2 are not such orders issued pursuant to Section 34 of the EFCC Act. They are letters requesting the bank to produce bank documents of a customer

and a directive instructing the bank to freeze the account of the Claimant. The Defendant could not tender any order issuing from the Court. The best the Defendant tendered Exhibit B, B1 & B2 fall short of the provisions of Section 34 of the EFCC Act.

In *U. N. T. V. M. B Vs Nnoli (1994) 8 NWLR (PT. 363) 376* which Claimant's Counsel also cited, the Supreme Court held per Oguntade JSC:

“Where a statutory requirement for the exercise of a legal authority is laid down, it is expected that the public body vested with the authority would follow the requirement to the detail. The non observance..... renders the decision itself a nullity. The Defendant out of cowardice or fear failed to demand for a Court order from the EFCC before clamping on the Claimant's account by imposing a Post No Debit restriction on the Claimant's account”.

Our Courts are not silent in castigating banks which behave like Lilliputians, sack their responsibilities when approached by

EFCC or other law enforcement agencies to do what is not permitted by law.

In *OLAGUNJU VS. EFCC (2019) LPELR-4846*, the Court of Appeal held:

“From the earliest times, it was acknowledged that Governments were instituted among men for the purpose of protecting the human subject in his person and in his property and for this natural law axiom modern governments were subjected to law and eschewed from acting arbitrarily. This was the substratum of the basic Bills of Rights including the Magna Carter 1215 Basic right’s created by law even by the Constitution are not absolute and for exigencies may be derogated from but always in accordance with due process. It is in this light that the provisions of Section 34 of the EFCC Act must be construed.... The Section creates due process that must be followed before the Chairman or anyone acting on his behalf must follow before he can interfere or restrict any person in the operation or enjoyment of his bank account..... As no exparte order was sought and obtained before clamping on a citizen’s finances, that exercise is a nullity. The EFCC is and should be a useful watchdog and not

a monster out to devour or intimidate people. Per NONYEREM OKORONKWO JCA:

“A Court order is a condition precedent for the exercise of the EFCC power to freeze an account pursuant to the provisions of Section 34(1) of the EFCC Act”.

“The EFCC has no power to give direct instructions to banks to freeze the account of a customer without an order of Court. So doing constitutes a flagrant disregard and violation of the rights of a customer...”.

In *GUARANTY TRUST BANK PLC VS. MR AKINSIKU ADEDAMOLA & ORS (2019) LPELR-47310 (CA)* the Court held:

“....the EFCC has no powers to give direct instructions to a bank to freeze the account of a customer without an order of Court....”.

The Defendant in the instant case was jittery and fearful, abandoned its duty and responsibility to its customer by freezing the Claimant’s account without being served with an order of

Court, The act is patently illegal and the argument of Defendant's Counsel in this regard do not represent the position of the law and I so hold.

On whether from the facts pleaded and evidence led, the Claimant is entitled to the reliefs sought as it relates to relief III, IV & V. The Claimant's Counsel argues that Claim IV was specifically pleaded and strictly proved. That the Claims are easily discernible and supported by documentary evidence. That the evidence was completely unchallenged. That relief 3 is also in the realm of special damages. He submits that it is grantable in view of recent judicial pronouncement. On exemplary damages he canvassed that the brazen and reckless conduct of the Defendant is a classic case for this Court to grant punitive damages in addition to general damages.

In respect of relief 3, Learned Defendant's Counsel argues that it is a strange practice and unknown to law. He urges the Court to refuse the Claim as unreasonable and a misconception. He further argued that the Claimant failed to prove that it is entitled

to same. That there is no evidence of payment of such professional fee. That an invoice cannot suffice. That the Claim for N4,238,000 is also for special damages. That the Claimant set out to deceive this Court by claiming that it lost the entire money allegedly released to it for a training farm. That Exhibit A2& B1 contradict the claim as they are inconsistent with the relief. That at the time the cheque was dishonoured the balance in Claimant's account was N10,132,688.41 only. That the failure of the Claimant to perform its obligation under its contract was not as a result of the Post No Debit Order. That in the award of general damages against a Defendant as in this case, the Claimant must prove his Claim. That Claimant has failed to prove that he is entitled to any of the reliefs claimed.

In ***CHRISTOPHER U. NWANJI VS. COASTAL SERVICES LTD (2004) LPELR 2016***, the Supreme Court held that special damages must be pleaded and strictly proved. A Claimant for special damages has an obligation to particularise any item of damage and that the said obligation to particularise arises not because of the nature of the loss is necessarily unusual but because the Claimant has the advantage of being able to base his

claim on a precise calculation so as to give the Defendant access to the facts which make the calculation possible. The Supreme Court further held aligning with Uwaifo JCA as he then was in ***IHEKWOABA VS. ACB LTD*** thus:

“The issue of damages an aspect of Solicitors fees is not one that lends itself support in this country”.

The above position of the law was followed by the Court of Appeal in ***FIRST BANK & ORS VS. EROMOSELE (2019) LPELR 47823 (CA)***.

Furthermore, the Claimant pleaded the Claim of N5,775,000.00 as Solicitors fee to prosecute this case in paragraph 32 of the Claim. The particulars of the Claim are also endorsed. The Defendant in paragraph 14 of its Statement of Defence denies the said paragraph amongst others and averred that the Claimant is not entitled to the said relief. It then behoves on the Claimant to prove its claim on the balance of probability and preponderance of evidence.

It is a specific damage. It must be strictly proved. The Claimant tendered the bill of charges but failed to tender any receipt for Professional/legal fees paid.

In the circumstance and for reasons proffered the relief iii fails and it is accordingly refused.

On relief (iv), Exhibit A is the award letter dated 13/11/17. Exhibit A1 is the Agreement between the Claimant and the Government of the Federal Republic of Nigeria dated 21/12/2017.

In Exhibit A1 – The payment voucher for N4,738,000.00 is dated 2/03/18.

In Exhibit A4, on 05-March 2018, there is a lodgement of N19,872,0000 into the account of the Claimant in question. The Claimant's evidence is that it procured 50 hectares of land situate at Okpoma, Yala Local Government for the purpose of training the 25 Niger Delta Youths. That its inability to access funds in the account domiciled with the Defendant has

occasioned severe damages. That he lost the sum of N4,238,000 only from the amount paid to by the Federal Government. The particulars of special damages was specifically pleaded and particularised in paragraph 27 of the Claim.

The Claimant's evidence strictly proving same is contained in its Witness Statement on Oath particularly paragraph 32. I do not agree with the Defendant's argument to the contrary. Claim IV is proved and I so hold.

Relief V is for general damages. In ***ACCESS BANK PLC VS. UGWU (2013) LPELR-20735 (CA)***, the Court held:

“Now general damages mean such as the law implies or presumes to have accrued from the wrong complained of, for the reason that they are its immediate, direct and proximate result or such as necessarily results from the injury or such as did in fact result from the wrong directing and proximately and without reference to the special character, condition or circumstance of the Claimant”.

General damages are such as the Court may give in the opinion of a reasonable man. It need not be punitive. It is such that will flow naturally from the consequences of the breach. General damages need not be pleaded or strictly proved.

In the circumstance of this case, the unlawful restriction of the Claimant's account caused natural, psychological consequences.

The Claimant is therefore entitled to damages. Judgment is hereby entered in favour of the Claimant against the Defendant as follows:

1. It is declared that the Defendant is in breach of its Contractual Obligation to the Claimant by the Post-No-Debit/Freezing Order placed on the Claimant's account domiciled with the Defendant with account No. 0013865061 without legal authorization or justification whatsoever known to law.
2. It is further declared that the Defendant was in breach of its Contractual Obligation to the Claimant by dishonouring the Claimant's cheque with cheque leaf No. 34401496 drawn on the Defendant when the Claimant had available and sufficient funds in its account domiciled with the Defendant to satisfy the instrument.

3. The Defendant shall pay to the Claimant the sum of N4,238,000 only as loss incurred in the Claimant's Training Farm as a result of the Claimant's inability to access funds from its current account domiciled with the Defendant due to the Post-No-Debit/Freezing Order unlawfully placed on the Claimant's account by the Defendant.
4. N20 Million as general damages.
5. An Order of perpetual injunction restraining the Defendant either by itself or its agents, staff, officers or any person acting for or on behalf of the Defendant from further tampering with the Claimant's account or dishonouring the Claimant's cheques or money demand by whatever means without lawful justification.
6. 10% interest on the judgment sum from the date of judgment until the judgment sum is finally liquidated.
7. N20,000 as cost of the action.

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HON. JUSTICE U.P. KEKEMEKE

(HOH. JUDGE)

27/05/2021

