

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

BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 32
CASE NUMBER:	SUIT NO. FCT/HC/M/11849/20
DATE:	16TH JUNE, 2021

BETWEEN:

EAGLEFLY CONCEPT LIMITED.....APPLICANT

AND

FIRST CITY MONUMENT BANK LTD.....RESPONDENT

APPEARANCES:

Fidel Basse for the Applicant.

Chidi Ezenwafor Esq with Blessing Elen Esq for the Respondent.

JUDGMENT

By an Originating Motion on Notice dated 11th day of November 2020 and filed on the 12th day of November, 2020; the Applicant herein prayed this Court for the Enforcement of its Fundamental Rights.

The application is brought pursuant to Order 1, Rules 2, 3, 4 and 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Sections 44 and 46(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 14 of the African Charter on Human and People's Rights (Ratification and Enforcement Act, LFN, 2010), Article 17 of the Universal Declaration on Human and People's Rights and Order 11,

Order X and XII of the Fundamental Rights (Enforcement Procedure) Rules, 2009.

The Applicant herein, (Eaglefly Concept Limited) through its Counsel, Femi Adedeji Esq, prayed this Honourable Court for the following: -

- “(1). A Declaration that the freezing of the Applicant’s account number 2858034027 with account name EAGLEFLY CONCEPT LIMITED domiciled with the Respondent; in 2018 without due process of law is unconstitutional, null, and void and a violation of the Applicant’s right to own property as enshrined under the provisions of Section 44 of the Constitution of the Federal Republic of Nigeria 1999 as amended, Article 17 of United Nations Declaration of Human Rights and Article 14 of the African Charter of Human and People’s Rights.**
- 2. AN ORDER of this Honourable Court directing the Defendant to lift the restrictions placed on the Applicant’s account number 2858034027 with account name EAGLEFLY CONCEPT LIMITED domiciled with the Respondent.**
- 3. AN ORDER of Perpetual Injunction restraining the Defendants whether by themselves, their agents, privies or servants from interfering with the account number 28580934027 with account name EAGLEFLY CONCEPT LIMITED domiciled with the Respondent; without due process of law.**
- 4. AN ORDER of this Honourable Court mandating the Defendant to pay to the Applicant the sum of N10, Million as general damages for the unlawful freezing of account number 2858034037 with account name EAGLEFLY CONCEPT LIMITED domiciled with the Respondent.**
- 5. AN ORDER of this Honourable Court mandating the Defendant to pay to the Applicant the sum of N5 Million as punitive, compensatory and exemplary damages for the unlawful freezing of account numbers 2858034027 with**

account name EAGLEFLY CONCEPT LIMITED domiciled with the Respondent.

6. AND ANY OTHER ORDER(S) as the Honourable Court may deem fit to make in the circumstance of the case.”

In support of the application is the name and description of the Applicant, three grounds predicated the Reliefs Sought, An Affidavit in support of the application comprised of 10 paragraphs deposed to by Femi Adedeji Esq, Counsel engaged by the Applicant to prosecute the suit on its behalf, as well as a Written Address dated 11th day of November, 2020.

Meanwhile, in opposition to this application, the Respondent (First City Monument Bank Limited) filed a Counter Affidavit of 6 paragraphs deposed to by I. K. Nwafor, a Solicitor in the office of bearing Sache & Associates Solicitor to the Respondent. Exhibits marked Exhibits A and B, and a Written Address dated 25th day of February, 2021.

In the Applicant's Written Address in support of this application, three issues for determination were formulated by Femi Adedeji Esq, as follows: -

- “1. Whether the freezing by the Respondent of the Applicant's account with account numbers 2858034027 with account name Eaglefly Concept Limited domiciled with the Respondent was lawful and followed due process of law.**
- 2. Whether the freezing by the Respondent of the Applicant's account numbers 2858034027 with Account name Eaglefly Concept Limited domiciled with the Respondent was not unconstitutional and a violation of the Applicant's right to own moveable property provided for by Section 44(1) of the Constitution of Nigeria 1999 as Amended and Article 14 of the African Charter on Human and People's Rights.**
- 3. Whether the Applicant is not entitled to the payment of N10, 000, 000.00 (Ten Million Naira) as general damages and N5, 000, 000.00 (Five Million Naira) as punitive, compensatory and exemplary damages only payable by the Respondent as a result of the aforesaid violation of Applicant's fundamental rights to own property.**

In arguing issue one, learned Counsel submitted that the law is settled that for a bank such as the Respondent to lawfully place a restriction on a customer's account, it must satisfy itself that there is a valid Order of Court authorizing such. On this, reference was made to the case of **GTB PLC V ADE DAMOLA (2019) 5 NWLR (PT. 1664) 30 at 43, Para E, per Abubakar J.C.A.**

It is submitted that in the instant case, the Respondent had a responsibility to verify that indeed there was a valid Order of Court authorizing them to place a restraint on the Applicant's account before going ahead to place a restriction on the Applicant's account.

That in the instant case, the Respondent who owes a duty to act with care while dealing and handling monies in their account, merely relied on a directive of the E.F.C.C and placed restriction on the Applicant's account.

The Court is therefore urged to hold in the Applicant's favour.

On issue two, it is submitted that it is an established principle of law that "fundamental rights" are rights that are inherent in man and by virtue of his being human or human person such as the Applicant, and that these rights are inalienable, immutable and inherent, and cannot be taken away from any person without a lawful justification.

Learned Counsel placed reliance on the Supreme Court decision in the case of **CHIEF (MRS) OLUFUNMILAYO RANSOM KUTI & ORS V ATTORNEY-GENERAL OF THE FEDERATION (1985) 2 NWLR (PT. 6)(Pg. 211) at 229, Para, H – B, Per ESO JSC.**

Reliance was also placed on Section 1(1) of the 1999 Constitution (as amended); Section 44(1) of the Constitution (supra) as well as the case of **EZE V GOV, ABIA STATE (2010) 15 NWLR (Part 1216) at 324, Per Owoade J. C.A, Article 14 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act and the case of MRS. LILIAN ADAEGO OKORO V OBIZUO OLUCHUKWU IFEDIOHA SUIT NO. HAM/86/2018, per Honourable Justice I. M. Njaka of Imo State High Court.**

In support Counsel cited the case of **BOSE OLAGUNJU V EFCC (2019) LCN/13730 (CA)**, and submitted that the freezing of the Applicant's

account amounts to denying them access to their property. The Respondent has not given any lawful justification for the freezing of the Applicant's accounts thereby infringing on their fundamental right to own property without lawful justification. The Court is urged to resolve issue two in favour of the Applicant.

On issue three, it is submitted that it is settled law that where there is a wrong, there must be a remedy. Reliance was placed on the case of **OKONKWO V OGBOWU (1996) 5 NWLR (Pt. 499) 420; JIM JAJA V C.O.P RIVERS STATE (2015) 1 N. H. R. L. R, (P. 256 at 273) per MUNTAKA-COOMASSIE J.S.C; SUNDAY AWOYERA V I.G.P & ANOR (2009) CHR, 120.**

It is submitted therefore, that from the facts and circumstances of this case, it is common knowledge that a business runs when it is able to access funds. That any attempt or restriction on the business access to its funds is an attempt to strangulate and kill the business. It is submitted moreso, that the action of the Respondent is an interference with the Applicant's right to property and it is crystal clear that they have caused untold hardship and damages to the Applicants.

That it is trite law that an Applicant seeking redress for the infringement of his fundamental right is in addition to a declaratory injunction also entitled to the award of damages as compensatory damages of the said breach.

On this, learned Counsel referred to the cases of **ABIOLA V ABACHA (1998) 1 HRLRA 447; ELOICHIN NIG. LTD V VICTOR MBADIWE (1986) (PT. 14) ANLR; DRAME V EVENGELO & ORS (1978) 2 ALL ER 437, per Lord Denning; FUGU V PRESIDENT (2009 - 2010) CHR P. AT 20 -21; OKERE V AROGUN DADE (2009 - 2010) CHR P. 22 at 58 to 59; DR. ALEXANDER GAADI & ORS V COMMANDER IN CHIEF OF THE NIGERIAN ARMED FORCES (unreported Suit Nos. FHC/KD/CS/6/2002 & FHC/MKD/CS/41/2001 (Consolidated suits); SIR KOLOINDI ASO & ORS V THE PRESIDENT & COMMANDER IN CHIEF OF THE ARMED FORCES OF THE FEDERAL REPUBLIC OF NIGERIA AND ORS (unreported suit NO: FHC/PH/CP/11/2000).**

The Court is urged to consider the award of N10, 000, 000.00 (Ten Million Naira only) and N5, 000, 000.00 (Five Million Naira) as general and

punitive, compensatory and exemplary damages in favour of the Applicant having established that the Respondent flagrantly violated their fundamental right as such they are entitled to the said awards.

In conclusion, the Court is urged to find that the application has merit and to make the Declarations and Orders sought herein.

On the Respondent's part, a sole issue for determination was formulated by learned Respondent's Counsel Chidi Ezenwafor Esq, in the Written Address which is: -

“Whether the Respondent is liable to the Applicant for complying with the provision of the law complying with a request lawfully made by the Economic and Financial Crimes Commission?”

Arguing the issue, learned Counsel submitted that the law is settled that every citizen of this great nation is bound by the provisions of the law to obey same and act in accordance with such statutory provisions. Reliance was placed on the case of ***GENERAL SANI ABACHA & ORS V CHIEF GANI FAWEHINMI (SC 45/1997) (2000) NGSC 17 (28 APRIL 2000)***.

That where an agency of the government in the exercise of its powers and obligations as created by its enabling statute, makes or directs a request to a person or institution in furtherance of its mandate, such directions or requests made pursuant to statutory provisions of Section 38 of the Economic and Financial Crimes Commission Act, individuals and corporations are bound by law to obey and comply with requests or enquiries made by officers of the Commission to it in the exercise of their lawful mandate.

It is submitted moreso, that from the foregoing provisions and giving it a literal interpretation, the Commission can validly request from any person, authority, corporation or company without let or hindrance in respect of information that is connected with any offence it is empowered to enforce. That failure to accord to such request or comply with same is a crime which upon conviction carries a jail term of 5 years and a fine of N20, 000 (Twenty Thousand Naira only).

It is submitted further, that the Commission can validly in the course of an ongoing investigation, demand from a financial institution any information that will aid investigation which may include to obtain and inspect the books and records or to order that the account of any of its customers be placed on a post no debit (PND) pending the determination of the investigation. That where such demand or request is made, failure to adhere is a crime and which attracts punishments of jail term and fine. That in this case, the Respondent's act of adhering to the request of the Commission is nothing geared towards depriving the Applicant of its constitutional right as provided, but merely a strict adherence to a lawful request made by the Commission and nothing more.

It is submitted on this premise, that the law is settled that the Court cannot be used as an instrument of subversion of statutes under the guise of enforcing Fundamental Rights. Reference was made to the case of ***BADEJO V MINISTER OF EDUCATION (1996) 9 – 10 SCNJ, 51.***

Consequently, learned Counsel submitted that the Respondent in good faith believing that the Commission had done the needful, acted by placing the Applicant's account on PND.

But, that when the Respondent discovered that the Commission failed to comply with the standard procedure as required by law in respect of this subject matter, the Respondent in light of the circumstance, took the extra steps to write a letter to the Commission dated 21st July, 2019, reminding and urging the Commission to do the needful, which is to seek and obtain a Court Order in the circumstance, regularize and validate the continued effect of the PND placed on the account.

That all these measures on the part of the Respondent goes to show its unwillingness to deprive the Applicant of its constitutional right.

It is submitted further that although it is an established principle of law that fundamental rights are rights that are inherent in man by virtue of his being human or human person such as the Applicant in this case and these rights are inalienable, immutable, and inherent, it follows, however and in line with Section 45(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), same provides that nothing in Chapter IV of the Constitution can invalidate any law that is reasonably justifiable in a democratic society; in the interest of defence, public safety, public order, public morality or

public health, or for the purpose of protecting the rights and freedom of other persons.

It is submitted that moreso, that from the aforementioned provision of the Constitution and the conditions provided therein, Section 38(1) of the Economic and Financial Crimes Commission Act and Section 21 of the Money Laundering Act are laws reasonably justifiable and capable of strict adherence and thereby a justification on the part of the Respondent who acted by placing on the Applicant's account Post No Debit (PND). Reliance was placed in the case of **SOLOMON OKADARA V ATTORNEY GENERAL OF THE FEDERATION (2019) LCN/12768(68)**.

It is submitted, that the Respondent has also shown by the Counter Affidavit in response, that there are special circumstances upon which this Honourable Court should exercise its discretion in favour of the Respondent and dismiss this application especially as the Respondent only acted in obedience of a valid directive by the Economic and Financial Crimes Commission without intention of injury to the Applicant.

That it is the trend all over the world to prevent the accused person from retaining the proceeds of his crime and to deprive him of whatever benefit he may have derived from his criminal conduct.

On the Constitutionality or otherwise of the Respondent's act, it is submitted that pursuant to Sections 43 and 45 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) all citizens of this country have the right to acquire and own property anywhere in Nigeria and their property should not be compulsorily acquired without payment of compensation; but that there is a caveat that this right to property is not absolute.

Reliance was placed on Section 44(2)(k) of Constitution (supra) as the exception in that regard.

That on this premise, the intention of the law makers is to validate any law such as Sections 28 and 29 of the E.F.C.C. Act which allows temporary taking over of assets of the accused persons pending the hearing and determination of a criminal case that has been pending against him. Reliance was placed on the case of **DR. B. O. AKINGBOLA V THE CHAIRMAN ECONOMIC AND FINANCIAL CRIMES COMMISSION**

(unreported) Appeal No. CA/L/388/10 delivered on 2nd March 2012 per Bada, J.C.A, (PP. 34 -35, Paras A – B) in the case of: ESAI DANGABAR V FEDERAL REPUBLIC OF NIGERIA (2012) LPELR – 19732 (CA).

On the Injunctive reliefs, general damages, punitive, compensatory and exemplary damages being sought by the Applicant, it is submitted by the learned Counsel that the Applicant is not entitled to the said reliefs. That award of Perpetual Injunction is based on final determination of the rights of the parties, and it is intended to prevent permanent infringement of those rights and obviate the necessity of bringing action after action in respect of every such infringement. Reliance was placed on the case of ***MRS NNEKA AGUEJIOFOR V EMMANUEL AFAM NWAKALOR (2010) LPELR – 4691 (CA) Per Augie J.C.A. (as he then was) (Now Augie J. S. C.)***.

It is submitted moreso, that in the case at hand, the Applicant failed to lead evidence to establish or show a right or interest the Court could protect by that Order, and an actual, threatened or likely infringement or violation of that right or interest by the other party. That in this case the Applicant is not entitled to any Order of Perpetual Injunction, since no right has been established to exist here to warrant the grant of same. Reliance was placed on the cases of ***C.B.N V AHMED (2001) 28 W.R.N 38 and UNION BEVERAGES V PEPSI COLA (1994) 2 S.C.N.J 157.***

That such an Order can only be granted where a party has successfully, proved its case on the balance of probability. Reliance was placed on the cases of ***ADENIRAN V ALAO (1992) 2 NWLR (Pt. 223) 350 at 372; per Mustapha, J.C.A 24, paras A – F; KAN INT'L DEVELOPMENT LTD V LITTLEL ACORNS TURNKEY PROJECTS LTD & ANOR (2018) LPELR – 45291 (CA).***

On the relief sought by the Applicant for general, punitive, compensatory and exemplary damages, learned Counsel submitted that the primary object of an award of damages is to compensate the Plaintiff for the harm done to him or a possible secondary object is to punish the Defendant for his conduct in inflicting that harm. However, exemplary, compensatory, vindictive and even retributory damages come into play whenever the Defendant's conduct is sufficiently outrageous to merit punishment as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of law and the like.

Counsel relied on the case of **ODIBA V AZEGE (1998) LPELR – 2215 (SC) 15, Per Mohammed J.S.C.**

On the conditions enumerated by the Supreme Court on the award of exemplary damages, learned Counsel cited the case of **ODIBA & ANOR (supra) per Ogwuegbu J.S.C. (at P. 24), Paras D –F.**

Overall, learned Counsel's contention is that in the instant case, the Applicant through its supporting Affidavit has failed to establish entitlement to the reliefs sought. That it is the Affidavit evidence which the Court must meticulously peruse in order to reach a just determination of the application. In this regard, learned Counsel cited the cases of **BASSEY MKANTA MBANA V W/PC JANET & ORS (2015) ALL FWLR (Pt. 767) 766 at 784, per NWEZE, JCA (as he then was); UKAOBASI V EZIMORA & ORS (2016) LPELR – 40174 (CA).**

On the address of Counsel, it is submitted that the address of Counsel is no more than a handmaid in adjudication and cannot take the place of the hard facts required to constitute credible evidence. That no amount of brilliance in a final address can make up for the lack of evidence to prove and establish or to disprove and demolish points in issue. Counsel relied on the cases of **MICHIKA L.G. V NATIONAL POPULATION COMMISSION (1998) 11 NWLR (Pt. 573) 20; TAPSHANG V LEKRET (2000) 13 NWLR (Pt. 684) 381; per Dongban – Mensem, JCA in the case of IROEGBU V MV CALABAR COURIER (2008) 5 NWLR (Pt. 1079) 147 at 107, Paras F – G.**

Finally, learned Counsel urged the Court to discountenance and dismiss the reliefs sought by the Applicant for the reasons set out and resolve the matter in favour of the Respondent.

Now, I have carefully considered this application for the enforcement of the fundamental rights of the Applicant.

The applicant Eaglefly Concept Limited is described in the Statement in support of the application as a company Incorporated under the Companies and Allied Matters Act to do business of general contract among other objectives. Further is that the Applicant is the holder of account 2858034027 with account name Eaglefly Concept Limited domiciled with the Respondent; FIRST CITY MONUMENT BANK LIMITED.

Having carefully analyzed the contents of the Originating Motion including the reliefs sought, the grounds predicated same, the Supporting Affidavit, the Written Address as well as the Respondent's Counter Affidavit, the Exhibits annexed and the Written Address. It is my considered opinion that the issue for determination is whether the Applicant herein has established its case to be entitled to the reliefs sought?

The Applicant has predicated the following grounds upon which the reliefs are sought namely: -

1. ***The freezing of the Applicant's account numbers 2858034027 with account name Eaglefly Concept Limited domiciled with the Respondent; FIRST CITY MONUMENT BANK LIMITED on or about June 2018 did not follow due process of law and was in breach of the Applicant's right to own property.***
2. ***That the freezing of the Applicant's Accounts domiciled with the Respondent has caused untold hardship on the day to day running of the businesses of the Applicant.***
3. ***The Applicant is entitled to specific, general, exemplary and punitive damages on account of the said violations.***

Now although the Applicant is a corporate entity having a juristic personality (and whose affairs is conducted through its agents, like the Managing Directors, Directors and others) the law is well settled that such a corporate entity can sue and be sued. This applies even to fundamental rights cases. Please see the cases of ***KELVIN PETERSIDE V IMB (1993) 2 NWLR (Pt. 278) 710; ONYEKWULUYE V BENUE STATE GOVERNMENT (2008) 8 NWLR (Pt. 28) 614; OMEGBA & ORS V DG NBC (2001) 1 FHCLR 547; ROBINSON INTERNATIONAL INSPECTORATE LTD V ISEC HOHI (2001) 1 FHCLR 410; CONCORD PRESS NIG LTD V AG FEDERATION & ORS (1998) 1HRLRA 488.***

Generally, in all fundamental rights enforcement cases, the Applicant who alleges that any of the provisions of Chapter IV of the 1999 Constitution (as

amended) has been, is being or likely to be infringed in relation to him, may apply to a High Court in that State for redress.

Please see Section 46(1)(2) of the 1999 Constitution of Federal Republic of Nigeria (as amended).

Now, the main grouse of the Applicant as distilled from the supporting affidavit, is that sometime in April 2018, in the course of running the affairs of the Applicant's company, it was discovered that its account was frozen by the Respondent. That upon inquiry, the Respondent gave its reason for such restriction on the Applicant's account based on the directive of the Economic and Financial Crimes Commission (EFCC).

It is averred particularly in paragraphs 5 and 7 thereof, that it is illegal for the Respondent to freeze the Applicant's account without an Order of a Court of competent jurisdiction and that in the instant case there is no Order of Court permitting the Respondent to place restriction on the Applicant's account.

However, on the part of the Respondent, in the Counter Affidavit to this Originating Motion, particularly paragraph 4a- k thereof, among other things averred that it acted pursuant to a letter dated April 2018 from the Economic and Financial Crimes Commission with the caption INVESTIGATION ACTIVITIES, EAGLEFLY INTERNATIONAL CONCEPT LIMITED, 2858034027, and pursuant to same placed restriction on withdrawals from the Applicant's account.

The said letter is annexed as Exhibit A.

Further, Respondent averred in paragraph 4e as follows: -

“That following the temporary restriction on withdrawals placed on the Applicant’s account as instructed by the Commission and several demands on the Commission for a valid Order of Court to fully restrict the account, Respondent by a letter dated 21st July 2019 formally wrote to the Commission demanding that they provide a valid Court Order for the continued enforcement of the directive to place a PND on Applicant’s account. Same is annexed as Exhibit B.”

However, in paragraph 4f, the Respondent denies freezing the Applicant's account as alleged, and averred that it only restricted withdrawals from the account as directed by the Commission. Reasons given that failure to comply attracts a jail term of 5 years and a fine.

I also refer to paragraphs 4g and h thereof.

Interestingly, it is averred further in paragraph 4 i and j of the said Counter Affidavit states thus: -

“That on the failure of the Commission to provide the Respondent with a valid Court Order, the Respondent lifted the restriction placed on the account.

That there is no form of restriction now on the account”.

I have had time to go through Exhibits A and B annexed to the Respondent's Counter Affidavit, which clearly confirm averments of the Respondent in that regard.

Indeed, by the provisions of Section 38(1)(2) of the Economic and Financial Crimes Commission Act as well as Section 21 of the Money Laundry Act, the Economic and Financial Crimes Commission is no doubt empowered to seek and receive information in furtherance of its investigation. For the purpose of clarity, I hereby reproduce the said Sections hereunder thus: -

“38(1) of the Act:

The Commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act.

38(2) of the Act:

A person who:

a. Wilfully obstructs the Commission or any authorized officer of the Commission in exercise of any of the powers conferred on the Commission by this Act; or

b. Fails to comply with any lawful enquiry or requirements made by any authorized officer in accordance with the provision of this Act, commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years or to a fine of twenty thousand Naira or both such imprisonment and fine.

Section 21 of the Money Laundry Act:

“For the purposes of this Act, the Director of Investigation or an Officer of the Ministry, Commission, or Agency duly authorized in that behalf may demand, obtain and inspect the books and records of the financial institution or Designated Non-Financial Institution to confirm compliance with the provisions of this Act.”

Consequently therefore, this Court appreciates the argument of Respondent’s Counsel in the Written Address on the whole issue however, Counsel himself alluded to the fact that after Respondent placed restrictions on the said account which was made in good faith, it discovered that the Commission failed to comply with the standard procedure as required by law in respect of this subject matter.

Please see paragraph 3:5 of the Respondent’s address.

Therefore, Respondent does not deny placing restriction on the said account albeit temporarily. But, the bottom line here is at some point the Applicant could not access its account due to the Respondent’s action.

Consequently, it is the submission of Applicant’s Counsel in that regard, that pursuant to the provisions of Sections 46(1) and 44(1) of the Constitution (supra) and Article 14 of the African Charter on Human and People’s Rights (Ratification and Enforcement) Act Cap A9 LFN 2004, Respondent in the instant case acted without following due process of law and in total disregard of the Applicant’s right to own property.

Now, Section 44(1) of the Constitution (supra) provides thus: -

“No moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes of prescribed by a law among other things...”

Likewise, Article 14 of the African Charter and Human and People’s Rights (Ratification and Enforcement) Act provides thus: -

“The right to property shall be guaranteed. It may only be encroached upon in the interest of the public need or in the general interest of the community and in accordance with the provisions of appropriate laws”.

As stated earlier the Respondent is well aware that a valid Court Order is required to enable it to continue enforcement of E.F.C.C directive in relation to Applicant’s account. This is more glaring when one considers the contents of Exhibit B, written by Respondent addressed to the Commission.

The letter states in part that it had complied with Post No Debit (PND) instruction, but still required a valid Court Order for the continued enforcement of the directive after the hours in line with the extant regulations or to issue a fresh letter to justify the continued freezing of the said account.

From the evidence adduced by the Applicant in the supporting affidavit, the account was frozen sometime in April 2018, while the Respondent’s letter to the Commission, (Exhibit B) is dated June 21, 2019.

This clearly indicates that for at least a year up to the time Exhibit B was written by Respondent, the restriction on Applicant’s account was still subsisting.

The Applicant alleges that the continued restriction of the Applicant’s account by the Respondent has caused untold hardship on the smooth running of the Applicant’s business.

On this premise, please see paragraph 8 of Applicant’s supporting affidavit.

Indeed, any responsible corporate body in receipt of correspondence such as Exhibit A is expected no doubt to comply with directives to aid the authority concerned with all relevant information pursuant to its investigations.

Nevertheless, it must be borne in mind that such compliance must be within a procedure permitted by law. A bank or financial institution is expected in such instances to also act prudently by ensuring not only compliance with the said directives, but also to protect and not infringe upon the rights of its customers. It must be in a manner permitted by law.

No doubt, freezing of accounts suspected of being used for commission of financial crimes is a mandatory investigative step backed by law.

Section 34(1) of the E. F.C.C. Act, 2004, empowers the Commission to freeze any account suspected of being used for financial crimes. The Section stipulates that, ***“the Chairman of the Commission or any officer authorized by him may, if satisfied that the money in the account of person is made through the Commission of an offence under this Act or any enactment specified under Section 6(2)(a)-(f) of this Act, apply to the Court ex-parte for power to issue or instruct a bank examiner or such other appropriate authority to freeze the account”***

(Underlining mine for emphasis).

It is against this background that the Court held in the case of ***GUARANTY TRUST BANK V MR. AKINSIKU ADEDAMOLA (2019) LPELR – 47310 (CA), per Abubakar J.C.A at PP. 21 – 24, Para A – F***, as follows:

“...The Economic and Financial Crimes Commission has no powers to give direct instructions to bank to freeze the Account of a customer, without an Order of Court, so doing constitutes a flagrant disregard and violation of the rights of the customer.... Our financial institutions must not be complacent and appear toothless in the face of brazen and reckless violence to the rights of their customers. Whenever there is a specific provision regulating the procedure of doing a particular act, that procedure must be followed.”

From the above, it therefore follows that the Respondent's placing of a PND on the account of the Applicant on instructions of the E. F.C.C, is not within the ambit of the law, it was made without an Order of Court. The duty of care owed the Applicant by the Respondent was clearly breached, which has occasioned loss and hardship to the Applicant.

See also the case of ***DANGABAR V FRN (2012) LPELR – 19732 (CA)***.

On the whole, it is my considered opinion that the Applicant has proved its case to be entitled to the reliefs sought, with the exception of relief for exemplary and/or punitive damages since Applicant has not shown, that the Respondent's conduct discloses fraud, malice, cruelty, insolence or the like. Please see the case of ***ODIBA V AZEGE (1998) LPELR-2215 (SC)***.

G.K.F INVESTMENT (NIG) LTD V NITEL PLC (2009) LPELR-1294 (SC).

The sole issue for determination is hereby resolved in favour of the Applicant against the Respondent.

In conclusion, it is hereby declared and ordered as follows: -

- (1). The freezing of the Applicant's account number 2858034027 with account name Eaglefly Concept Limited domiciled with the Respondent, in 2018 without due process of law, is unconstitutional, null and void and a violation of the Applicant's right to own property as enshrined under the provisions of Section 44 of the Constitution of Federal Republic of Nigeria 1999 (as amended) Articles 17 of the United Nations declaration of Human Rights and Article 14 of the African Charter of Human and People's Rights.
2. The Respondent is hereby directed to lift any restrictions placed on the Applicant's account number 2858034027 with account name Eaglefly Concept Limited domiciled with the Respondent in the absence of a valid Court Order in that regard.
3. This Honourable Court hereby grants an Order of Perpetual Injunction restraining the Respondents whether by themselves, their agents, privies or servants from interfering with the account numbers 2858034027 with account name Eaglefly Concept Limited domiciled with the Respondent, without due process of law.

4. The sum of N5, 000, 000.00 (Five Million Naira) only is hereby awarded as general damages in favour of Applicant against the Respondent, for the unlawful placing of a Post No Debt (PND) on Applicant's account number 2858034027 with account name Eaglefly Concept Limited domiciled with the Respondent.
5. Relief no. 5 fails and is accordingly refused and dismissed.

Signed:

Hon. Justice Samirah Umar Bature.
16/6/2021