IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON FRIDAY 23RD DAY OF JULY, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 9, MAITAMA, ABUJA

SUIT NO: FCT/HC/CV/758/2020

BETWEEN

MIRIAM MOSES VENTURE LTD. … … … … … CLAIMANT

AND

GUARANTY TRUST BANK PLC … … … … … DEFENDANT

JUDGMENT

The Claimant is a limited liability company registered to carry on business in Nigeria, as general goods merchants, *inter alia*. From facts deposed to by her Managing Director, **Moses Samanja Audu**, in support of the *Originating Summons* filed to commence the instant action on 20/12/2019, it is gathered that she engages in banker-customer relationship with the Defendant Bank by operating two accounts with her,

one domiciliary account and the other Naira account. Her case is that sometime in August, 2010, she attempted to withdraw money from her Naira account with No. 0022065044, at the Central Market, Kaduna, Branch of the Defendant; but could not access the account. His enquiries revealed that he could not access the accounts as a result of the "Post No Debit" restriction placed thereon upon the directive of the Economic and Financial Crimes Commission (EFCC). The Claimant maintained that there was no order of Court on which the Defendant acted to deny her access to her accounts.

The Claimant further stated that in the meantime, the EFCC charged her and her Managing Director to Court for the offence of operating a bank without licence; that the Federal High Court convicted both of them but that the judgment was later reversed on

appeal to the Court of Appeal, in a judgment delivered on 13/07/2018.

The Claimant further maintained that in spite of the Court of Appeal judgment; and after she had also asked her Solicitors to write to formally demand that the restriction be lifted; the Defendant continued to maintain the "Post No Debit" restriction of her accounts.

Being aggrieved by the continued denial of access to operate her accounts by the Defendant, the Claimant commenced the present action, whereby she prayed the Court for the determination of the questions set out as follows:

1. ***Whether by the combined provisions of Section 6(6) and 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) Sections 1 and 2, Administration of Criminal Justice Act or any other Law validly operating***

within the Federal Republic of Nigeria, the Defendant can validly freeze, block or in any other manner restrict or deny Claimant access to her bank accounts with account numbers 0022065051 and 0022065044 from August 2010 to date or to any other period and which accounts Claimant maintains with the Defendant without a Court order or any instructions from the Claimant to do so.

2. ***If the answer to question 1 is in the negative, whether the Claimant whose two bank accounts aforesaid were blocked and access to them totally denied since August, 2010, till date without a Court order is entitled to both general and exemplary damages against the Defendant for such reckless and unlawful act.***

Upon the determination of the questions set out in the foregoing, the Claimant thereby claimed against the Defendant the reliefs set out as follows:

1. *A declaration that the freezing, blocking and/or denial of total access to Claimant to her two Bank Accounts: Guaranty Trust Bank Account numbers 0022065051 and 0022065044 which Claimant maintains with the Defendant without a Court order or any instructions from the Claimant to do so from August, 2010 to date is illegal, unconstitutional and constitutes a flagrant breach of the banker-customer contract between the Claimant and Defendant.*

2. *A mandatory Order of this Honourable Court directing the Defendant to immediately unfreeze, unblock or remove any restriction of access on the Claimant to her accounts forthwith.*

3. *An Order of this Honourable Court directing the Defendant to avail the Claimant of a full Statement of her account from inception to date.*

4. *An Order of this Honourable Court directing the Defendant to restore and pay back into Claimant's Naira Account all moneys withdrawn or deducted by*

the Defendant from her account within this period when the account was blocked without the instructions or consent of the Claimant.

5. ***An injunction restraining the Defendant either by themselves, privies or agents howsoever from further blocking, freezing or in any other manner denying the Claimant access to her account without a valid Court Order.***

6. ***The sum of One Hundred Million Naira (₦100,000,000.00) against the Defendant as exemplary damages for their illegal and reckless blocking, freezing and depriving of the Claimant access to her account since August, 2010 to date.***

7. ***The sum of Fifty Million Naira as general damages.***

8. ***Any other Order(s) this Honourable Court may in the circumstances make.***

In support of the *Originating Summons*, the Claimant, through her Managing Director aforementioned,

deposed to an *Affidavit* of *19 paragraphs* to which were attached, Judgment of the Court of Appeal, Kaduna Division in *Appeal No. CA/K/278B/C/2017- Miriam Moses Ventures Ltd. Vs. Federal Republic of Nigeria*; and acknowledged copies of two letters written by the Claimant's Solicitors to the Defendant.

Also subjoined to the *Originating Summons* is the Claimant's learned counsel's written address in support of thereof.

In response, one **Michael Aniekor,** Litigation Clerk, deposed to a *Counter Affidavit* of *7 main paragraphs* on behalf of the Defendant, on 20/02/2020, in which he substantially denied the claim of the Claimants. According to the Defendant, the Claimant's inability to access her accounts was a result of the introduction of the *Bank Verification Number* (BVN) policy introduced by the Central Bank of Nigeria (CBN), which required bank customers to process their BVN numbers; that it

was a result of the Claimant's failure to process her BVN that resulted in the restriction placed on her accounts; that the request by the EFCC to place a "Post No Debit" restriction on her accounts was observed for only 72 hours after which a fresh restriction was placed on her accounts pending when she will comply with the BVN policy. Attached to the *Counter Affidavit* were copies of the EFCC letter of 30th July, 2010, directing the Defendant to place a restriction on the Claimant's account; and a copy of the Memo issued by the CBN on 2nd November, 2015, with respect to the BVN policy. Also subjoined to the Defendant's *Counter Affidavit* is her learned counsel's written address.

The Claimant filed a *Further Affidavit* on 24/02/2020, in response to the Defendant's *Counter Affidavit*.

I had carefully considered the instant *Originating Summons*, the questions set down for resolution, the reliefs claimed by the Claimant and the facts deposed in the Affidavits filed to support the same; alongside the facts deposed in the *Counter Affidavit* filed by the Defendant. I had also carefully considered the totality of the written and oral arguments canvassed by learned counsel on the two sides of the divide, to which I shall endeavour to make reference as I consider needful in the course of this judgment.

In my view, the issues that have arisen for determination in this suit are twofold. Without prejudice to the issues formulated by the respective parties in their written addresses, I pinpoint the focal issues that have arisen in this suit succinctly as follows:

1. ***Is the Defendant entitled in law to freeze the Claimant's account either as a result of directive received from the EFCC or in pursuance of the***

CBN's BVN policy, in the manner done in the present case?

2. ***If issue (1) is resolved in the negative, has the Claimant established that the Defendant unlawfully denied her access to her account; and if so, whether she is not entitled to be compensated in damages in the circumstances?***

I shall proceed to determine the two issues together. Let me, for starters, state certain basic facts relevant to the determination of this suit, which parties have either admitted; or which were not in dispute; or which could be positively inferred from the affidavit evidence filed by both sides, namely:

1. That at the time material to the instant action, there existed a banker-customer relationship between the Defendant and the Claimant, whereby the Claimant maintains a Naira account with No. 0022065044 and a

Domiciliary account with No. 002065051 with the Defendant. (See *paragraph 4* of the Claimant's *Affidavit in support* and *paragraph 4* of the *Counter Affidavit*).

2. That by letter dated 30th July, 2010, the EFCC wrote to the Defendant to request the Bank "to place a notice of caution and stop any further outward transaction from the said account pending the outcome of" its investigations. (See *paragraph 6(ii)* of the *Counter Affidavit*).

3. That sometime in August, 2010, the Claimant, through her Managing Director and sole signatory to her accounts with the Defendant sought to withdraw money from her Naira account aforementioned, at the Defendant's Branch office near Central Market, Kaduna, but was unable to access his said account.

(See *paragraph 6* of the *Affidavit in support* and *paragraph 6(ii)* of the *Counter Affidavit*).

4. That the Claimant, through her Solicitors, wrote letters respectively dated 10th October, 2019 and 22nd October, 2019 directly to the Defendant's Managing Director, and through the Defendant's Ahmadu Bello Way, Garki 2, Abuja, Branch Manager, to demand an immediate lifting of suspension of the Claimant's accounts and allow the Claimant unrestrained access to the same. (See *paragraph 17* of the *Affidavit in support*; and letters attached as **Exhibits AA2** and **AA3**).

5. That the Defendant did not respond to either of the said two letters.

6. That up until the date the instant action was filed, the Claimant was yet to have access to

her said accounts, aforementioned. (See *paragraph 8* of the Claimant's *Further Affidavit* and *paragraph 6(iii)* of the *Counter Affidavit*).

Having found the foregoing facts as clearly established as between the two parties; the next question that calls for resolution is as to the basis and legality of the denial of access to the Claimant's accounts by the Defendant.

The Claimant, through her Managing Director, who deposed to the Affidavit filed to support the action, stated that upon his inquiries, he was reliably informed by a staff of the Defendant, whose identity is not disclosed, that the Defendant blocked the Claimant's accounts and placed a "Post No Debit" restriction on the same upon the directives of the EFCC. The Claimant maintained that no Court order

was made available to him upon which the Defendant acted to so block his accounts.

In reaction to the Claimant's contention, the Defendant, on the one hand admitted that she received instructions from the EFCC, by letter of written to her in July, 2010, to restrict access to the Claimant's account; but that this restriction was maintained only for a period of 72 hours.

On the other hand, the Defendant further maintained that upon the introduction of the Central Bank of Nigeria's policy on Bank Verification Number (BVN), the Defendant placed a fresh restriction on the Claimant's accounts pending when she will comply with the BVN requirements. I refer to *paragraph 6* of the Defendant's *Counter Affidavit*.

From the evidence on record, the Defendant did not deny that she denied the Claimant access to her account. She merely gave reasons for taking the

course of action she took. I had examined the letter attached as **Exhibit A** to the *Counter Affidavit*, referred to in *paragraph 6(ii)* thereof. It was dated 30th July, 2010 and captioned **"INVESTIGATION ACTIVITIES."** By the letter, the EFCC requested the Defendant to furnish her with information with respect to the account of **MARIAM MOSES VENTURES**, which unmistakably is the Claimant in the instant action. In addition, the letter states further:

> ***"3. You are requested to place a notice of caution and stop any further outward transaction from the said account pending the conclusion of our investigation.***
>
> ***"4. This request is made pursuant to Section 38(1) and (2) of the Economic and Financial Crimes Establishment Act, 2004 and Section 20 of the Money Laundering (Prohibition) Act, 2004."***

Apparently, the bank complied with the instructions given by the EFCC as conveyed by the said letter,

Exhibit A. This was why, when the Claimant, through her Managing Director, sometime in August, 2010, attempted to make a withdrawal from her stated Naira account at the Defendant's Branch near Central Market, Kaduna, but could not access the account; and that upon his inquiry from the Bank's Branches in Kaduna and Abuja, he was reliably informed that the 'Post No Debit" instruction resulted from directives received from the EFCC.

The Defendant, in *paragraph 4* of her *Counter Affidavit*, categorically admitted the deposition in *paragraph 5* of the *Affidavit in support* of the *Originating Summons* to the extent that, sometime in August, 2010, the Claimant attempted to access his Naira Account at one of her Branches in Kaduna, but could not.

I have noted the Defendant's explanation in *paragraph 6(i)* of her *Counter Affidavit*, to the extent

that even though she blocked the Claimant's account upon the directive of the EFCC, but that the restriction was not sustained beyond the statutory period of 72 hours. The Defendant further explained that upon the introduction of the BVN policy by the CBN, the Defendant placed a fresh restriction on the Claimant's account pending when she will comply with the said policy.

Let me at this point state that I had examined the provision of **s. 38(1)** and **(2)** of the **EFCC Establishment Act** and **s. 20** of the **Money Laundering (Prohibition) Act**, pursuant to which the EFCC had purported, in the letter, **Exhibit A**, to direct the Defendant to suspend outward transactions on the Claimant's account.

S. 38 of the **EFCC Act**, captioned **"POWER TO RECEIVE INFORMATION WITHOUT HINDRANCES, ETC,"** provides as follows:

"(1) 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.

2 Any person who –

(a) wilfully obstructs the Commission or any authorised officer of the Commission in the 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 authorised officer in accordance with the provisions 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 not below the sum of ₦500,000 or to both such imprisonment and fine."

S. 20 of the **Money Laundering (Prohibition) Act, 2004,** captioned **"POWER TO DEMAND AND OBTAIN RECORDS,"** (which law was applicable at the material time but is now repealed and replaced with the amended **Money Laundering (Prohibition) (Amended Act, 2014)**), also provides as follows:

> ***"20. For the purposes of this Act, the Director of Investigation or an officer of the Commission or Agency duly authorized in that behalf may demand, obtain and inspect the books and records of a financial institution to confirm compliance with the provisions of this Act."***

Given their natural meaning and interpretation, I do not think anyone should be confused as to the purport of these provisions. **S. 38** of the **EFCC Establishment Act** merely gives the Commissions the power to seek and receive information from any institution or establishment regarding offences the **Act** empowers it

to enforce; and further specifies punishment for any act of non-compliance with the provision.

On the other hand, **s. 20** of the **Money Laundering (Prohibition) Act** empowers the Commission to inspect the books and records of any financial institution to confirm compliance with the provisions of the law with respect to money laundering.

It is apparent that there is nothing in the provisions cited by the EFCC in its letter, **Exhibit A**, written to the Defendant, which empowered it to direct the bank to place restrictions on the account of any of the bank's customers and indeed the Claimant in the present case. There was therefore no lawful basis or justification for the Defendant to have complied with the said directive. I so hold.

The Defendant further deposed that she lifted the restrictions after 72 hours provided for by statute. Her learned counsel made reference to **s. 6(5)(a)** of the

Money Laundering (Prohibition) Act, as the basis for the purported lifting of the restriction.

I have examined this provision of the repealed **Act**. It relates to situations where a financial institution observes suspicious transactions in a customer's account, the bank shall seek information from the customer as to the origin of the funds and its destination and send a report of its findings to the Commission within 7 days; and that the Commission shall acknowledge receipt of the report and the acknowledgement may be accompanied by a request that the purported suspicious transaction be deferred for a period of not exceeding 72 hours.

This provision is totally unrelated to the case at hand. For one, under this provision **(s. 6(1)(c))**, the financial institution is under a duty to contact the customer in question, whose account is alleged to have been used to engage in money laundering. In the present case,

there is nothing on the record to show that when the Defendant received the letter from EFCC, she contacted the Claimant. There is also no evidence on the record that the Defendant compiled any report whatsoever with respect to any suspicious transactions in the Claimant's account which she sent to the EFCC. There is also no evidence of acknowledgment of the said non-existent report by the EFCC. There is no evidence that the EFCC requested that any particular transaction on the Claimant's action be deferred for any period whatsoever.

As a matter of fact, **s. 6(7)** of the **Act** provides as follows:

> ***"7. When it is not possible to ascertain the origin of the funds within the period of stoppage of the transaction, the Federal High Court may, at the request of the Commission, or other person or authority duly authorized in the behalf, order that***

the funds, accounts or securities referred to in the report be blocked."

This provision clearly demands, in order for the Commission to block any account, that it must first seek the order of the Federal High Court.

I am therefore clear in my mind that the Defendant's explanation that she sustained the order of the EFCC to block the Claimant's account for a statutory period of just 72 hours is at best an afterthought which has no legal or factual basis. I so hold.

In order to further debunk the Defendant's contention that the restriction on the Claimant's account was only maintained for a statutory period of 72 hours, my finding is that the Defendant failed to adduce any evidence or produce any document whatsoever to show that the EFCC communicated back to her to inform her that the purported investigation being undertaken on the Defendant, as stated in its letter,

Exhibit A, had been concluded; or to give any further directive to the Defendant to lift the restrictions on the Claimant's account; since, according to the letter, **Exhibit A**, the restriction on the Claimant's account, was to be maintained **"pending the conclusion of our investigation."**

In another vein, the Defendant further justified her action to resume suspension of operations of the Claimant's account in view of her failure to comply with the BVN policy introduced by the CBN. To support her contention, the Defendant attached to her Counter Affidavit as **Exhibit B**, document dated 2nd November, 2015. It was a Memo issued by the Central Bank of Nigeria (CBN), to **"All Deposit Money Banks (DMBs)"** captioned **"EXTENSION OF BVN FOR NIGERIA BANK CUSTOMERS IN DIASPORA AND OTHER RELATED MATTERS."**

The relevant portion of the Memo states as follows:

"As part of the overall strategy for ensuring successful implementation of the BVN Project, the Central Bank of Nigeria issued a circular stipulating that by October, 31, 2015: all Nigerian Banks' Customers should have the BVN attached to their accounts. Any bank customer without the BVN would be deemed to have "Inadequate KYC."

….all the DMBs are hereby requested to note and implement the following:

a) Nigeria resident's bank account without the BVN would be operated as "NO CUSTOMER INITIATED DEBIT" account until the account holder obtain and attach a BVN to the account;

b) Nigeria resident's bank account without the BVN will still continue to receive credit inflows (in cash and electronically) and will neither be deactivated nor confiscated;

c) DMBs are required to educate their customers on the aforementioned clarifications;…"

By my understanding, the effect of the CBN's Memo reproduced in the foregoing is that up until 2nd November, 2015, the date of the Memo, there was no obligation on the part of the Banks to prevent Nigerian resident customers from debiting their accounts. Furthermore, as the Memo states, it was also incumbent on the Banks, from the date of the Memo, to educate their customers, who, as of that date, have not linked their accounts to BVN, as to the implication of not doing so.

Now, as I had held earlier on, the Defendant's claim that her restriction on the Claimant's account was not sustained beyond the unfounded "statutory period" of 72 hours was a mere afterthought. As I also held, there is no evidence that the EFCC wrote back to the Defendant to inform her that she had concluded her

investigations on the Claimant company. I therefore believe the Claimant's deposition that from the time the EFCC wrote to the Defendant to place restriction on her account, through the period she was prosecuted at the Federal High Court in Kaduna, Kaduna State, till judgment was delivered in the case, through the period she appealed the judgment and won at the Court of Appeal, the Defendant had continued to restrict access to her account. I so hold.

The Claimant, through her Managing Director, deposed categorically in *paragraph 4* of his *Further Affidavit* that from when the Claimant's account was blocked in 2010, up till 2012, when he and the Claimant were charged to Court, the account remained frozen as he could not access it. It is further deposed in *paragraph 5* of the *Further Affidavit* that the CBN introduced the BVN Policy in 2015, a period

of five years after the Claimant's account was frozen. The Defendant did not deny these depositions.

What is therefore clear, in the first instance, is that from the period when the Defendant placed the Claimant's accounts under restriction in 2010, up till 2nd November, 2015, when the CBN issued the Memo regarding the BVN policy, attached to the *Counter Affidavit*, **Exhibit B**, the "Post No Debit" restriction placed on the Claimant's accounts by the Defendant remained in force.

Again, in *paragraph 8* of the *Further Affidavit* deposed to by her Managing Director, the Claimant further states as follows:

> ***"8. That I have since obtained my BVN and the Defendant did not at any time inform the Claimant that suspension on her account which was placed in August 2010 has been lifted or the circumstances of a new suspension due to BVN."***

The Defendant did not deny these depositions. I must therefore hold that there is no evidence that the Defendant informed or educated the Claimant, when the BVN policy was introduced in 2015, that fresh restrictions were placed on her accounts on account of her failure to comply with the BVN policy requirement for her accounts.

Again, the Claimant's Solicitors wrote two letters, aforementioned, to the Defendant. Copies of the letters were attached as **Exhibits AA2** and **AA3** to the *Affidavit in support*. On their faces, the letters were acknowledged at the Defendant's Head Office at Akin Adesola Street, Victoria Island, Lagos. The second letter was equally shown on its face to have been acknowledged at the Garki II Branch of the Defendant. By the said letter, the Claimant's Solicitors demanded for an immediate lifting of the suspension and unfreezing the Claimant's accounts; since there

was no Court order upon which the accounts were suspended.

The Defendant did not deny in her *Counter Affidavit* that the letters were received. Worse still she did not respond to the letters. The position of the law is that where a party fails to respond to a letter which by the nature of its contents requires a response or a rebuttal of some sort, the party will be deemed to have admitted the contents of the letter. See *Gwani Vs. Ebule [1990] 5 NWLR (Pt. 149) 201; Trade Bank Plc Vs. Chami [2003] 13 NWLR (Pt. 836) 158; Zenon Petrol & Gas Vs. Idrissiya Ltd. [2006] 8 NWLR (Pt. 982) 221; Nagebu Co. (Nig.) Ltd. Vs. Unity Bank Plc. [2014] 7 NWLR (Pt. 1405) 42; Bagobiri Vs. Unity Bank Plc [2016] LPELR-41161(CA); Doyin Motors Ltd. Vs. SPDC (Nig.) Ltd. & Ors. [2018] LPELR-44108(CA).*

In the instant case, the letters, **Exhibit AA2** and **AA3,** the Claimant's Solicitors narrated the case of the

Claimant, of how, sometime in 2010, the Bank blocked her accounts upon the EFCC's directive without Court order; how the EFCC later charged the Claimant and her Managing Director to the Federal High Court, sitting in Kaduna; how the Court convicted them and how they appealed the conviction to the Court of Appeal; how, by judgment delivered on 13th July, 2018, the Court of Appeal, Kaduna Division upheld the appeal and set aside the judgment and conviction passed by the lower Court; how the Bank had continued to deny the Claimant access to her accounts even after their conviction was quashed, without Court order; how, by the letters, the Claimant demanded for an immediate lifting of the suspension of her accounts, *inter alia*. The Defendant did not deem it needful to deny the contents of the said letters. The Court must therefore accept the position of things, as set out in the letters, as between the Claimant and the Defendant, as true and I so hold.

The Court further holds that the Defendant introduced the issue of non registration for BVN as a reason for clamping the Claimant's account as a ridiculous afterthought which cannot avail for the Defendant in the circumstances of this case.

The Defendant, in *paragraph 6(iii)* of her *Counter Affidavit*, deposed that:

> ***"The Defendant is ready and willing to allow the Claimant operate her account provided she complies with the Central Bank of Nigeria's policy on BVN by having its directors or proprietors carry out the necessary biometric exercise and by submitting relevant documents to the Defendant for this purpose."***

For one, this deposition is an admission on the part of the Defendant that, as alleged by the Claimant, she had continued to clamp her accounts with the bank.

Moreover, the Defendant failed to depose to any evidence to establish that she, at anytime, informed the Claimant that, apart from the EFCC directive, her accounts were blocked as a result of the CBN's BVN policy. This posture is clearly contrary to the directive of the CBN in the Memo the Defendant attached as **Exhibit B** to her *Counter Affidavit*, in which the CBN required the Banks to educate their customers as to the effect of failure to register for their BVN.

As I had found and held earlier on, the EFCC proceeded on the wrong provision of the **EFCC Establishment Act** and the **Money Laundering (Prohibition) Act**, to direct the Defendant to stop further operations on the Claimant's accounts with the bank. I go further to state that even if the EFCC had exercised its powers under the appropriate provision of **s. 34** of the **EFCC Establishment Act**, to request a bank to freeze the account of any customer, the

exercise of that power, by the same law, must be preceded by an order obtained from a Court of competent jurisdiction. This is trite the position of the law, as emphasized by the Court of Appeal in *GTB Vs. Adedamola [2019] 5 NWLR (Pt. 1664) 30 @ 43*, cited by the Claimant's learned counsel, where the Court interpreted the provision of **s. 34(1)** of the **EFCC Establishment Act**, and held, *per* **Tijjani Abubakar, JCA** (now **JSC**), as follows:

> ***"The above provisions are in accord with the decision of the lower Court. 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 a Customer. I must add that, the judiciary has the onerous duty of preserving and protecting the rule of law, the principles of rule of law are that, both the governor and the governed are subject to***

rule of law. The Courts must rise to the occasion, speak and frown against arrogant display of powers by an arm of Government. It is in the interest of both Government and citizens that laws are respected, as respect for the rule of rule promotes order, peace and decency in all societies, we are not an exception. 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."

The Court of Appeal went further to affirm the lower Court's decision as follows:

"Even if the Applicant was alleged to have committed a criminal offence, EFCC cannot on its own direct the Bank to place restriction on his accounts in the Bank without an order of Court. The law allows EFCC to come even with ex-parte application to obtain an order freezing the account

of any suspect that has lodgments that is suspected to be proceeds of crime. No law imposes a unilateral power on the EFCC to deal with the applicant this way.

Again Guaranty Trust Bank has no obligation to act on EFCC'S instructions or directives without an order of Court....”

See also Olagunju Vs. EFCC *[2019] LPELR-31125(CA)* which followed the above-cited case.

It is regrettable that the Defendant Bank, in the present case, fell into the same error she fell into in the above cited case. She acted on the directives of the EFCC to deny the Claimant access to her accounts with her, without Court order. It is no longer a matter for debate that where the EFCC, Police or any security agency for that matter, issue a directive to a bank to suspend transactions on a customer’s account; the bank is under no obligation to accede to the directive except it is accompanied with a clear order

obtained from a Court of competent jurisdiction and the Bank would have stood on the firm legal ground for so doing. I so hold.

As it is often said, ignorance of the law is no excuse. The Defendant had no lawful justification whatsoever to have blocked the Claimant's account, either for one day, or for 72 hours or for as long as was done in the present case, without a Court order backing up such action. The Defendant clearly breached the fiduciary relationship it had with the Claimant by proceeding to block her accounts as was done in the instant case. I so hold.

In *FCMB Plc. Vs. CP-Tech Construction Co. Ltd. [2015] LPELR-25006(CA)*, the relationship between a banker and her customer is described in the following words:

> ***"A bank as a going concern undertakes numerous and highly professional services for its customer. It normally would act as agent for its customers in all***

circumstances where there is a relationship with third parties, such as the collection of cheques and bills, the payment of third party cheques or bills, the remitting of money abroad, the purchase of property or of stocks and shares, the effecting of insurance cover, etc. …. In the performance of these services, the law sets and expects from a banker a minimum standard of conduct, care and skill. Where there is a short-fall from this standard, in the course of performing a service, the tort of negligence becomes relevant. Thus, a banker owes to his customer a further duty to execute these functions and services with a reasonable standard of professionalism. If the banker is found careless or wanting in dealing with the affairs of the customer, he is liable to the customer for breach of his contractual duty."

In the instant case, the evidence established on record is that the Defendant was found wanting in dealing with the accounts of the Claimant domiciled in her bank. Therefore, apart from infringing on the

Claimant's fundamental rights to own property preserved by the provision of **s. 44(1)** of the **Constitution**; the Defendant is further liable to the Claimant for breach of her contractual duties and obligations; firstly, by blocking the Claimant's account from 2nd August, 2010, when she received the letter from EFCC directing her to block the Claimant's account and thereby denying her access to the account from 2010-2015; and subsequently, in 2015 and thereafter, by failing to allow the Claimant access to her account in order to perfect the BVN registration.

What then are the remedies available to the Claimant, since, as it is often said, where there is a wrong, there is a remedy *(ubi jus ibi remedium)*?

Apart from seeking mandatory order of the Court to compel the Defendant to unfreeze her account, the

Claimant has made claims for general and exemplary damages.

The Claimant deposes in *paragraphs 13, 14 and 15* of her *Affidavit in support* of the *Originating Summons* as follows:

> ***"13. That I know as a fact that as at the time when the Naira Current Account was blocked, it had a credit balance of over Thirty Million Naira (₦30,000,000.00).***
>
> ***14. That these monies are part of investors' funds paid into the Claimant company which the Defendant have (sic-has) simply locked up without any Court order and made the Claimant company to go under.***
>
> ***15. That I know as a fact that the Claimant needs this money to restart her business and pay off investors whose funds were trapped in that account due to the unlawful blocking or freezing of the Claimant's account."***

The Defendant did not deny these depositions in the terse *Counter Affidavit* filed to oppose this action.

It was held in *Citibank Nigeria Limited Vs. Ikediashi [2014] LPELR-22447(CA)*, that a cause of action will accrue where the bank refuses to allow a customer access to the credit in his account on demand; and that such act by the bank in disallowing a customer's request to have access to the credit in his account constitutes a breach of contract for which the bank is liable in damages. See also *Balogun Vs. N.B.N Ltd. [1978] 11 NSCC 135; UBN Vs. Nwoye [1990] 2 NWLR (Pt. 130) 231.*

Again, in *First Bank Vs. Oronsanye [2019] LPELR-33261(CA)*, the relationship of banker and customer was further underscored as follows:

> ***"…the contractual relationship between the Appellant and the Respondent imposes a duty of care on the Appellant as a Banking institution, the breach of which will impose on the bank a liability of negligence. Negligence by a bank consists of any act or omission in the course of performing services***

for a customer that is not in accordance with the standard of conduct reasonably expected of a banker in such circumstances. See. United Nig Insurance Co. Vs. Muslim Bank of West Africa [1972] 4 SC 67."

The implication of the position of the law on the instant case is that the Claimant is entitled to damages not just for breach of contract; but also for exemplary damages, as claimed, resulting from the shabby manner in which the Defendant handled her accounts domiciled with then bank. As was held in *Ezeagu Vs. Nwonu [2016] LPELR-40164(CA)*, exemplary damages are extra compensation, meant to punish the defendant for breaching the legal right of the claimant, particularly where the Defendant's conduct has been shown or demonstrated to be tainted or coloured with malice, fraud, insolence, flagrant disregard for the Claimant's human rights and dignity, etc.

In the present case, the Defendant was aware that the monies in the Claimant's Naira account consisted of depositors' funds invested with her; yet she continued to unlawfully deny her access to her account for upwards of nine (9) years and still counting, thereby leading to the collapse of the company's business. These conducts are not only reckless and condemnable; but deserves to be punished punitively. I so hold.

Over all, I hereby resolve the two issues set out for determination in the foregoing in favour of the Claimant. The result being that question (1) set out in the *Originating Summons* is resolved in the negative and question (2) is resolved in the positive.

I note, in conclusion that relief (4) claimed by the Claimant praying the Court to direct the Defendant to pay back into her Naira account all monies withdrawn or deducted from her account within the period the

account was blocked, is speculative as it is not backed by any concrete evidence of any such deductions. As such the relief cannot be sustained.

In the final analysis, I hereby enter judgment in favour of the Claimant against the Defendant, upon terms set out as follows:

1. ***It is hereby declared that the action of the Defendant, freezing, blocking and/or denial of total access to the Claimant to her two Bank Accounts with numbers 0022065051 and 0022065044, domiciled with the Defendant without a Court order or any instructions from the Claimant to do so, from August, 2010 to date is illegal, unconstitutional and constitutes a flagrant breach of the banker-customer contract between the Claimant and Defendant.***

2. ***The Defendant is hereby ordered to forthwith unfreeze, unblock and/or remove all forms of***

restrictions of access on the Claimant to her accounts aforementioned.

3. ***Consequent to (2) above, the Defendant is hereby ordered to avail the Claimant full statements of her accounts from inception to date.***

4. ***The Defendant is hereby restrained, either by herself, privies or agents howsoever from further blocking, freezing or in any other manner denying the Claimant access to her accounts with the bank without a valid Court Order.***

5. ***The sum of ₦10,000,000.00 (Ten Million Naira) only is hereby awarded in favour of the Claimant against the Defendant for the Defendant's breach of her contractual obligations to the Claimant.***

6. ***The sum of ₦5,000,000.00 (Five Million Naira) only, is hereby further awarded in favour of the Claimant against the Defendant as exemplary***

damages for the Defendant's unconstitutional, reckless and unwarranted protracted freezing of the Claimant's account from August, 2010 to date.

7.I award costs of this action, in the sum of ₦200,000.00 (Two Hundred Thousand Naira) only, in favour of the Claimant against the Defendant.

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
23/07/2021

***Legal representation*:**

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Nsikak Udoh, Esq. – *for the Defendant*