

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA ABUJA**

**ON 22<sup>ND</sup> JULY, 2021**

**BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI**

**PRESIDING JUDGE**

**SUIT NO: FCT/HC/CV/3531/2 020**

**BETWEEN:**

**EMEKA EMMANUEL OKWUDILI**

.....

**APPLICANT**

**AND**

**UNITED BANK OF AFRICA (UBA) PLC**

.....

**DEFENDANT**

***APPEARANCES:***

***DR ADEKUNLE OLADAPO OTITOJU ESQ WITH BASSEY IMOHO ESQ FOR THE APPLICANT***

***OBINNA MBATA ESQ WITH ABIODUN FELIX ESQ FOR THE RESPONDENT***

**JUDGMENT**

The Applicant initiated this suit on 23<sup>rd</sup> December 2020 by way of originating summons, seeking the determination of the following questions:-

“1. Whether the Respondent can suo motu freeze the account of a customer without his consent or any court order to that effect.

2. Whether the Respondent have breached the fiduciary relationship between the Applicant and themselves.

3. Whether the Respondent is liable in damages for not honouring the mandates of the Applicant.”

Upon the determination of the questions, the Applicant sought the following reliefs:-”

- “1. A declaration that the Bank have no right to freeze/put a restriction on my account without my consent or a valid court order.
2. An order of the court against the Respondent to unfreeze my account or remove any lien placed on my account.
3. An order of court against the Respondent to pay Four Million Naira damages for unlawfully denying me of access to my account.”

The Applicant filed a 24 paragraph affidavit with 3 exhibits attached and marked Exhibit A, B and C, and a counsel’s written address in support of the originating summons.

The Respondent filed a 22 paragraph counter affidavit deposed to by Howard Adun, a staff of the Respondent, and counsel’s written address, both duly filed and served on 10<sup>th</sup> February 2021.

The Applicant responded with a 16 paragraph further affidavit of Olabode Joseph, junior counsel in the law firm of Messrs AdekunleOladapoOtitoju, Applicant’s counsel, and counsel’s written address.

The Respondent on the premise that new facts were raised in the Applicant’s further affidavit filed a further counter affidavit of 18 paragraphs deposed to by AdebowaleAdeyemo, a staff of the Respondent, and counsel’s written address.

From the affidavits and counter affidavits filed by both parties, the Applicant’s claim is that he is a customer of the Respondent having opened a savings account as a student with the Respondent, sometime in August 2020.

That he had been carrying on transactions in the bank with his account successfully for over 3 months without issues – see Exhibit A – the printed image of his ATM card.

He had about ₦7,513,000 in the said account.

That his last transaction on the said account was a withdrawal of ~~N~~100,000 via copy of debit receipt – Exhibit B.

That when he visited Abuja and tried to do some transactions and check his account, the Respondent prevented him from having access to his account, without his consent.

His enquiry as to what led to the restriction on his account met with no cogent answer.

That he has suffered serious pain and hardship owing to the Respondent's restriction on his only account in Nigeria.

That there is no court order enabling the Respondent to put a restriction on his account and that he has not been involved in any fraudulent activity to necessitate the restriction on his account.

He instructed his solicitor to write the Respondent via Exhibit C, demanding a reversal of the lien placed on his account.

The Respondent's answer to the Applicant is that it never at any time restricted the Applicant's account before the institution of this case nor did the Applicant enquire from the Respondent the reason for the alleged restriction.

It was further deposed that the Respondent has no reason to restrict the Applicant's account and did not prevent the Applicant from operating his said account, nor is the Respondent responsible for any pain and suffering of the Applicant, therefore the need to unfreeze the said account is uncalled for.

That the Respondent received Exhibit C, investigated same and found it to be without merit but was served with a lawsuit before it could respond.

In their respective written addresses before this court, while Dr. Adegunle Oladapo Otitoju for the Applicant urged the court to find in favour of the Applicant, Mr Felix Abiodun for the Respondent urged the court to dismiss the Applicant's case as he had failed to prove that his said account was frozen.

I have considered the affidavits, the counter affidavits and written and oral submissions of learned counsel on both sides.

The primary issue before this court is whether the Applicant has established that the Respondent froze his said savings account for which he seeks a declaration and other reliefs.

In **DR BEN CHUKWURAH V SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED (1993) LPELR-864 (SC) AT PAGE 64-65 PARAS B-B**, Karibi Whyte JSC (of blessed memory) on the governing principles of declaratory reliefs had this to say:-

“The procedure for seeking a relief by means of a declaration is very common in cases of disputes as to the title land. It is also the usual procedure adopted in challenging the validity of appointment – see **FASHANU V GOVERNMENT OF WESTERN REGION (1955 - 56) WRNLR 238** or recognition of chiefs. It has now assumed considerable importance as a procedural device for ascertaining and determining the rights of parties or for the determination of a point of law.

Although the power to make a binding declaration of right is a discretionary power, the Plaintiff must establish a right in relation to which the declaration can be made. Hence, the court will not generally decide hypothetical questions, declarations will be granted even when the relief has been rendered unnecessary by the lapse of time for the action to be tried, if at the time the action was brought it raised substantial issues of law. The claim to which the declaratory reliefs relates must be substantial – A declaration will only be granted where there is a breach. See **MELLSTROM V GARNER (1970) 2 ALL E.R. 9.**

It is the practice that a declaratory relief will be granted where the Plaintiff is entitled to relief in the fullest meaning of the word.

Furthermore, the relief claimed must be something which it would not be unlawful or unconstitutional or inequitable for the court to grant. It should also not be contrary to the accepted principles upon which court

exercises its jurisdiction. See **GUARANTY TRUST CO. V HANNAY (1951) 2 KB AT 572.**” (Emphasis mine)

In **ADEOYE & ORS V ONI (2016) LPELR – 40187 CA, PAGE 13-14 PARA F-A**, the court per Abiriyi JCA was clear that:-

“A declaratory relief will be refused where the Plaintiff fails to establish his alleged entitlement to the satisfaction of the court. See **OGOLO & ORS V OGOLO & ORS (2003) 18 NWLR (PT 852) 494.**”

In the present suit, it is the Applicant that claims a declaratory relief, therefore he must succeed on the strength of his own case.

The grouse of the Applicant is that the Defendant restricted or froze his account without his consent. The onus is on the Applicant to prove that his said account with the Respondent was frozen by the Respondent. The Applicant’s affidavit exhibited 3 exhibits marked A, B and C.

Exhibit A is a printed image of his ATM card given to him by the Respondent. Exhibit B is the debit receipt of his debit transaction on his account on Tuesday December 1, 2020. Exhibit C is the letter from his solicitor complaining that the Applicant’s account had been placed on lien despite no court order permitting such.

The letter was dated December 21, 2020 and gave the Respondent 3 hours to remove the said lien. The Respondent received the letter on 22<sup>nd</sup> December 2020.

By the following day 23<sup>rd</sup> December 2020 the Applicant had filed the originating summons and same was served on the Respondent on 29<sup>th</sup> December 2020.

It is clear that the Applicant did not give the Respondent time to make a written response to the complaint in Exhibit C before filing this suit. The Respondent as I stated earlier, denied ever placing the Applicant’s account on

lien. The onus was on the Applicant to prove that he tried to operate the said account, but was denied access by the Respondent.

The Applicant failed to prove this. He exhibited no automated teller machine (ATM) receipt, point of sale (POS) receipt or cheque or other bank instrument to show that he attempted any transaction on the said account which was declined or refused by the Respondent.

The court will take judicial notice that all banking transactions are either documentary or electronic banking transactions and not by word of mouth or oral.

The Applicant tendered no documentary or electronic evidence that his transactions on the said account were denied by the Respondent. He left the evidence to speculation.

It is trite law that the court is not permitted to speculate on evidence not placed before it. See **AMASA & ORS V THE CHAIRMAN NATIONAL POPULATION COMMISSION & ORS (2014) LPELR -22722 CA PAGE 22, PARA A, PER Moore Aseimo Abraham Odumeu JCA; AJANAKU & ANOR V OSUMA (2013) LPELR – 20518 CA PAGE 36 PARA A, per Kekere-Ekun JCA (as she then was).**

The court is not permitted to speculate on anything at all. In the absence of cogent and compellable evidence that the Applicant's account was indeed frozen by the Respondent, I must hold that the Applicant has failed to prove his case.

Accordingly, his entire case is hereby dismissed.

Obi: We do not ask for costs

Court: No costs awarded.

**Hon. Judge**