

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA.

BEFORE HON. JUSTICE J.E. OBANOR
ON WEDNESDAY THE 14TH DAY OF JULY, 2021.

SUIT NO: FCT/HC/CV/216/2021

IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF
FUNDAMENTAL RIGHTS

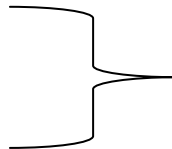
BETWEEN:

MAMUDA BELLO

.....APPLICANT

AND

- 1. FIDELITY BANK PLC**
- 2. ZENITH BANK PLC**
- 3. ACCESS BANK PLC**
- 4. TAJ BANK PLC**



RESPONDENTS

JUDGMENT

By a Motion on Notice filed on 28th January 2021 and predicated on Order 2 Rule 1 & 2 of the Fundamental Human Rights (Enforcement Procedure) Rules 2009, Sections 44(1) of the 1999 Constitution(as Amended) and inherent jurisdiction of the Honourable Court the Applicant seeks for the following reliefs: -

- “1. A declaration that the Respondents were in violation of the Applicant’s right guaranteed under Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria by placing Applicant’s account to wit: 4020760381, 6051326880, 5330477594 with Fidelity Bank Plc, 2005434073 with Zenith Bank Plc, 0777766200 with*

Access Bank Plc, 0000150072 with TAJ Bank Plc under restriction since August 2020 without a Court Order.

- (2). An Order of this Honourable Court directing the 2nd, 3rd, 4th, 5th and the 6th Respondents to remove the restriction placed on the Applicant's accounts with immediate effect.*
- (3). AN ORDER directing the 1st Respondent to return with immediate effect the sum of Forty Five Thousand Naira illegally deducted from the Applicant's account as bank charges.*
- (4). Damages in the sum of Three Million Naira each against the Respondents for the illegal freezing of the Applicant's accounts and for the untold hardship suffered by the Applicant since August 2020.*
- (5). And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this suit."*

The application was filed along with Applicant's Statement of Facts and description, Reliefs sought and grounds upon which the above reliefs are sought, a 26-paragraph affidavit deposed to by the Applicant himself and Written Address of the Applicant's Counsel in support of this application.

By the records of the Court, the Motion on Notice along with hearing notices were served on the 1st, 2nd, 3rd and 4th Respondents on 18th February, 2021. In opposition to the Motion, the 1st, 3rd and 4th Respondents filed their counter affidavit on 1st March 2021 while the 2nd Respondent filed its counter affidavit on 18th March 2021.

The 1st Respondent also filed on the same 1/3/2021, a Notice of Preliminary Objection challenging the competence of this suit and

urging the Court to strike out and/or dismiss the suit for being incompetent.

The Applicant did not file any response in opposition to the 1st Respondent's Notice of Preliminary Objection.

On 30/6/2021, the Court, in order to save time and resources, consolidated the hearing of the 1st Respondent's Preliminary Objection with the Applicant's Motion on Notice.

The Motion and Preliminary Objection were jointly heard on 30/6/2021 with Counsel for the 1st to 4th Respondents adopting their Written Addresses as their oral submissions, the Applicant being absent and not represented by Counsel. The court in line with Order 12 Rule 3 of Fundamental Rights Enforcement Procedure Rules 2009 deemed his written address as having been adopted.

For the reason that challenge to jurisdiction is a threshold issue which once raised the Court is under a duty to resolve same first, the Court shall proceed to consider the 1st Respondent's Notice of Preliminary Objection against the Applicant's suit and thereafter if necessary, consider the Applicant's Originating Motion on Notice.

As aforesaid, the 1st Respondent in the Preliminary Objection challenged the jurisdiction of the Court to entertain the Applicant's suit for being incompetent. The objection is predicated on five grounds, to wit:-

1. The Applicant's grouse vide his Originating Motion is that his account numbers: 400760381, 6051326880, 5330477594 domiciled with the 1st Respondent have allegedly been under restriction since August 2020 and supposed the wrongful debit of bank charges from his account in the cumulative sum of N45,000.00 (Forty Five Thousand Naira Only);
2. The Applicant and the Respondents share a banker/customer relationship which is purely contractual;

3. The Applicant's Originating Motion does not disclose a challenge to or an infraction of any provision of Chapter 4 of the Constitution of the Federal Republic of Nigeria but to a civil Contract transaction.
4. The Applicant's Originating Motion as presently constituted is grossly incompetent and
5. The Applicant's Originating Motion discloses no reasonable cause of action against the Respondents.

In his written address K.O. Ajana Esq of counsel for the 1st Respondent raised a sole issue for determination thus:

“Having regard to the state of the law, whether the Applicant's Originating Motion is properly constituted to clothe this Honourable Court with the requisite jurisdiction to entertain same.”

Arguing the issue, learned counsel submitted that Jurisdiction is the life-blood of any adjudication without which no proceedings however well conducted by the Court can be valid. It is therefore very vital and fundamental as it touches on the competence of a court to adjudicate on a matter. He referred to the cases of ***OHAKIM V. AGBASO (2010) 14NWLR (PT1226) 172 @ 216; PARAS E-F; CBN V OKOJIE (2015) 14NWLR (PT1479) 231 @ 252.*** Learned counsel maintained that a court is competent to entertain or hear a matter when it is properly constituted, the subject matter is within its jurisdiction and the case before the court initiated by due process of law as expounded in the case of ***MADUKOLU V. NKEMDILIM (1962) NSCC 374.*** He further submitted that the proper approach in a claim for the enforcement of fundamental rights is to examine the reliefs sought as well as the grounds for such reliefs along with the facts relied upon so as to determine whether indeed the claim falls under the Fundamental Rights Enforcement Procedure for the purpose of ascertaining whether the Court has the necessary jurisdiction to hear and determine the matter under that head. Counsel opined that the Applicant's Originating Motion on Notice discloses a challenge only to a civil contract transaction and not an infraction or threatened

infraction of any provision of Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria (as Amended). He referred the court to the Paragraphs 1, 3,9,12,13,14,19 and 20 of the Applicant's affidavit in support of the Originating Motion on Notice and submitted that the above paragraphs confirms a banker/customer relationship between the Applicant and the Respondents and a supposed breach of that relationship which arose from alleged restrictions of applicant's accounts and wrongful debit of bank charges which amount to breach of contract and nothing more as shown in Exhibit A3 (Demand letter) which alleged a breach of banker customer contractual relationship. Learned counsel commended to the court the cases ***AFRIBANK NIG PLC V ANUEBUNWA (2012) 4NWLR (PT 1291) 560 @ 573; IDRISU USMAN & ORS V INSPECTOR GENERAL OF POLICE & ORS (2018) LPELR-45311 (CA) @21-26; IGWE V. EZEANOCHIE (2009) LPELR-11885 (CA)***. Concluding, learned counsel submitted that the instant suit is not cognizable under the Fundamental Rights Enforcement Procedure as it amounts to a challenge to a supposed breach of contract and not a fundamental right guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (as amended). He therefore urged the Court to hold that the Applicant's suit is not one that can be maintained under the Fundamental Rights Enforcement Procedure.

Finally on the ground that the Applicant's motion discloses no reasonable cause of action against the Respondents, learned counsel submitted that in determining whether a reasonable cause of action exists in a case, the court has to consider the facts pleaded in the statement of claim, Originating summons or Originating Motion filed by the Applicant. He maintained that a matter cannot be heard on its merit unless there is a cause of action and it is only in such circumstance that the court can exercise its judicial powers. He relied on the authorities of ***ILIYASU V. RIJAU (2019) 16NWLR (PT 1697) 1 @ 22; AJAKAYE V. IDEHAI (1994) 8NWLR (PT 364) 504; SECTION 6(6)(B) OF 1999 CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA (AS AMENDED)***.

In conclusion learned counsel submitted that this court lacks the jurisdiction to entertain this suit because the Applicant's Originating Motion discloses a challenge only to a civil contract transaction and the suit discloses no reasonable cause of action against the 1st Respondent. He urged the court to strike out this suit for being grossly incompetent.

As aforesaid the Applicant did not file any response in opposition to the 1st Respondent's Notice of Preliminary Objection.

The thrust of the 1 Respondent's objection against the Applicant's suit is that it discloses a challenge only to a civil contract transaction and not a breach of fundamental right and no reasonable cause of action and for these reasons it is incompetent and the Court lacks the jurisdiction to entertain it.

On the nature of claim that could be brought under the Fundamental Rights (Enforcement Procedure) Rules. In ***UZOUKWU V. EZEONU II (1991) 6NWLR (200) 708, the court held Per Nasir P.C.A. that;***

“ It is not every right of the Petitioner which is involved here. It is only the right which falls within the provisions of Chapter IV. No right outside the provisions of Chapter IV can found an action under the jurisdiction of the Court provided by Section 42. As earlier stated in this judgment the court can exercise very wide powers under subsection (2) of Section 42 for the purpose of enforcing or securing the enforcement of the right within the state. So if a right does not fall within any of the provisions of Chapter IV no declaration or any other Ruling or Judgment can be made in the name of Fundamental Rights. Clear, unambiguous and serious as the right infringed may be the court cannot raise its status to be that of a fundamental right if in fact it cannot be spelt out of Chapter IV. The Applicant must look for his right elsewhere under the common law or statute law.”

The Supreme Court also took time to consider what is meant by “cause of action”, “reasonable cause of action” and factors to consider

in determining whether or not a suit discloses same *in DANTATA V. MOHAMMED (2000) 7 NWLR (Pt.664) p.176*. It defined a phrase “*cause of action*” in these words:-

“The phrase “cause of action” means simply a factual situation the existence of which entitles one person to obtain a remedy against another person. It is a fact or combination of facts which when proved would entitle a Plaintiff to a remedy against a Defendant. It consists of every fact which would be necessary for the Plaintiff to prove, if traversed, in order to support his right to judgment of the Court. That is, the fact or combination of facts which gave rise to a right to sue. It is a cause for an action in the Courts to determine a disputed matter.”

The Court also explained that, it comprises the averment or averments in the Plaintiff’s statement of Claim that discloses his right to institute an action for a wrongful act alleged. With respect to the phrase “reasonable cause of action,” the Court explained it thus:-

“A reasonable cause of action” is a cause of action which, when only the allegations in the Statement of Claim are considered, has some chance of success.”

With regard to the factors to consider in determining whether a suit discloses reasonable cause of action, the Court directed thus:-

“In order to determine whether the Statement of Claim has disclosed a reasonable cause of action, what the Court should consider are the contents of the Statement of Claim and not the extent to which one relief can co-exist with another.

Having considered the contents of the Statement of Claim, deemed to have been admitted, the question is whether the cause of action has some chance of

success, notwithstanding that it may be weak or not likely to succeed. Thus, it is irrelevant to consider the weakness of the Plaintiff's claim. What is important is to examine the averments in the Statement of Claim and see if they disclose some cause of action or raise some questions fit to be decided by the Court ...”

Therefore to determine whether a reasonable cause of action exists or not the court has to consider the facts as pleaded in the statement of claim, Originating Summons or Originating Motion. See ***also ILIYASU V. RIJAU (2019) 16NWLR (PT 1697) 1.***

Being properly guided by the foregoing guidelines, the crucial question is whether or not the depositions in the Applicant's Affidavit in support of the Motion on Notice as well as Statement of facts herein (deemed to be admitted by the Respondents for the purpose of determination of this objection) raises a reasonable cause of action or qualifies as such that could be entertained under the Fundamental Rights Enforcement. It is not part of the duties of the Court in this exercise to determine the weakness or strength of the Applicant's case

In line with the foregoing, I have examined the facts in the Applicant's Originating Motion on Notice, the gravamen of his case is that he is the signatory to the following accounts 4020760381, 6051326880,5330477594 with Fidelity Bank PLC, 2005434073 with Zenith Bank PLC, 0777766200 with Access Bank PLC, 0000150072 with TAJ Bank PLC. When he went to do some financial transactions on the 25th of August 2020 in an Automated Teller Machine with his Master Card, he discovered that a restriction had been placed on all his accounts above by the Respondents. When he went to the branch office of the 1st Respondent at Corporate Affairs Commission, Wuse Zone 5 building to inquire about the reason why they placed a restriction on his account, he was informed by the branch manager that they placed the restriction on his account because they were investigating an unusual inflow of some funds into his savings account. He was given the impression by the 1st Respondent that they were acting pursuant to a court order. He quickly applied for his

bank statement with the 1st Respondent and discovered that the said allegation was false. Copies of his bank statement of account from Fidelity Bank Plc were attached as Exhibit A1 and A2. He brought the revelation to the attention of 1st Respondent and the fact that the other Respondents have equally placed a restriction on all the accounts he held with them as a result of the decision of the 1st Respondent and they assured him that they will rectify the issue within 2 working days. The 1st Respondent later admitted to him that the mistake was as a result of an internal irregularity by their staff who mistyped his bank verification number (BVN) and that it was no longer as a result of unusual inflow of funds in his account. The respondent failed and/or refused to unfreeze his account since August 2020 even after the 1st Respondent admitted their mistake and consequently promised to make restitution for their mistake which occasioned hardship on him. He had suffered untold hardship and had been unable to attend to his family, medical and other personal responsibilities. Left with no option, he had to borrow and as a result incurred a huge debt profile. The 1st Respondent lifted the restriction on the 6th of January 2021 and arbitrarily debited his account with Twenty Thousand (20,000) naira and Twenty Five Thousand (25,000) naira respectively on the 7th of January 2021. He inquired from the 1st Respondent as to why his account was debited with a cumulative sum of Forty Five Thousand (45,000) naira on the 7th of January 2021 and they told him that the said amount was for bank charges for transactions he carried out in July 2020. The said debit is irresponsible, abusive and unconscionable as the 1st Respondent actually charged and debited his account at source when he carried out all his transactions in July 2020. His solicitor caused a letter to be written to the 1st Respondent on the 8th of January 2021 demanding for restitution and compensation from the 1st Respondent. Copy of the said letter was attached Exhibit A3. The 1st Respondent neglected to take action after being served with exhibit A3. All the Respondents erroneously made him believe that they were acting pursuant to an order of court. He had been in psychological trauma and unable to attend to pressing personal and family commitments since August 2020 due to the action of the Respondents. The 2nd, 3rd and 4th Respondents have continued to place restriction on his accounts in their respective banks till date.

The 1st Respondent have equally refused to return the Forty Five Thousand(45,000)naira illegally deducted from his account as bank charges. The Respondents acted in bad faith and it will be in the interest of justice to grant this application.

There is no gainsaying the fact that by the above, the Applicant/Respondent has disclosed, at least an issue fit for adjudication by Court. This is the issue of whether or not the restrictions and deductions or charges made on his accounts by the Respondent/Applicant is justified in law. This issue constitute not just cause of action but reasonable causes of action which the Court ought to adjudicate upon and determining between the Respondents and the Applicant. As directed by the Supreme Court in the **DANTATA V. MOHAMMED** case, supra, it is not part of the duties of the Court at this stage to consider the weakness of the Applicant/Respondent's case. That is irrelevant at this stage. Whether or not the case is strong or weak is a matter that will be determined on the merit.

Having established that there is a reasonable cause of action the next question is whether or not the action is such that can be maintained under the Fundamental Rights Enforcement Procedure. His Lordship, Niki Tobi, JCA(as he then was) had this to say **in PETERSIDE V. I.M.B. (1993) 2NWLR (PT 278) 712 @ 718-719**

“It has now become a fashion or style for parties to push or force the provisions of Chapter IV into most claims which cannot in law be accommodated by the Chapter, parties at times take undue advantage of the general and at times nebulous provision of the Chapter and try to tailor in their actions even when the size of the ‘cloth’ does not fit into it.... Counsel by his professional calling and expertise may dexterously frame a claim or relief to have the semblance of a breach of a constitutional right as contained in Chapter IV of the Constitution....A trial judge should in such circumstances be able to apply the eye of an eagle to scrupulously examine the character and context of the claim with a view to removing the chaff from the grain and come to grips with the camouflage or disguise in the action.” In line to the above admonition I have carefully examined the character

and context of the claim by Applicant/Respondent and I am of the view that the case bothers on the propriety or otherwise of the alleged restriction of the Applicant/Respondent's account as well as mismanagement of his accounts through wrongful deductions and charges from his account in the cumulative sum of N45,000(Forty Five Thousand Naira) Only. This alleged improper management of account giving rise to breach of contract between a customer and his banks can be pursued via civil action but definitely not as a breach of fundamental right. By reason of the foregoing, this preliminary succeeds and this court holds that this action was commenced wrongly as a fundamental rights enforcement action and is liable to be struck out.

In the light of this, the objection succeeds and this case is hereby struck out.

I make no order as to cost.

Signed
Hon. Judge
14/7/2021.

LEGAL REPRESENTATIONS

1. N. P. Edeh Esq. for the Applicant/Respondent.
2. K.O. Ajana Esq for the 1st Respondent/Applicant.
3. U.C. Ndubuisi for the 2nd Respondent.
4. J.C. Akunnakwe for the 3rd Respondent.
5. Gospel Adams for the 4th Respondent.