

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**

**COURT: 28**

**DATE: 13<sup>TH</sup> DECEMBER, 2021**

**FCT/HC/HC/CV/6233/20**

**BETWEEN**

**SADARE OLUMIDE DAMILOLA-----**

**APPLICANT/RESPONDENT**

**AND**

**UNITED BANK FOR AFRICA PLC (UBA).....**

**RESPONDENT/APPLICANT**

## **JUDGMENT**

By a motion on notice no. M/6233/21 brought pursuant to order 43 rule 1 and 2 of the High Court Civil procedure rules and under the inherent jurisdiction of this Court same is dated 20<sup>th</sup> September, 2021 and filed on the 28<sup>th</sup> September, 2021.

After seeking and obtaining an order to strike out prayer two, Applicant is asking the Court for the following:-

1. An order striking out this suit GWD/CV/93/2021 which is before this Court for being incompetent.
2. And for such other order (s) as this Court may deem fit to make in the circumstances.

The facts as contained in the affidavit in support dated 28<sup>th</sup> September, 2021 and deposed to by one Nnaemeka Nweke, a staff of the law firm of Counsel to the Applicant are as follows:-

That the complaint of the Applicant against the Respondent only demonstrates a case of breach of banker/Customer contractual relationship and not a breach of fundamental rights.

That the remedy available to a party who alleges that there is a breach of banker/customers contract is in damages.

That this suit as presently brought against the Respondent does not support an action for enforcement of fundamental Right and consequently cannot invoke the jurisdiction of the Court.

That the reliefs sought by the Applicant have to do with an alleged breach of banker /customer contract and fiduciary duty.

In their written address Counsel on behalf of the Applicant formulated a sole issue viz:-

*"Whether in view of the facts and circumstances of this case, the complaint of the Applicant herein against the Respondent does not represent a case of breach of contract"*

In describing the banker/customer relationship Counsel relied on ***ALLIED BANK OF NIGERIA PLC VS JONAS AKUBUEZE 91997) LPELR 429 (SC) UBN PLC VS N.M OKPARACHIMAEZE (2014) LPELR 226999(SC)***. Counsel submit that on the authority of ***WEMA BANK PLC VS OSILARU (2008) 10 NWLR (pt. 1094) 150*** which states in part that the customers monies in the hand of the banker are not in the control of the customer but in control of the banker payable to the customer when a demand is made. That if anything happened to the money thereafter either the banker will be on the loss and where a demand is made of the money by the customer and the bank refuses the customers cause of action is damages under their contractual relationship.

That the issue of breach of right to own property by compulsory acquisition of property does not apply to this case as the property in question (the money) is in custody and control of the banker. Counsel submits that the commencing of the present action against the Respondent under the enforcement of fundamental rights have robbed this Court of the requisite jurisdiction to hear this Case. Relying in the case of ***FIRST CITY MONUMENT BANK PLC VS LINUS G. NYAMA (2014) LPELR 23973 CA***. Counsel submits that not all matters can be maintained under the

fundamental rights enforcement procedure Rules and that under the Fundamental rights enforcement procedure rules, a condition precedent to the exercise of the Courts jurisdiction is that the enforcement of fundamental rights of the security of enforcement thereof should be the main claim and not the accessory claim Counsel urged the Court to hold that the present suit is incompetent and same be strike out. On the other hand Counsel on behalf of the Respondent filed a counter affidavit in opposition to Applicants motion on notice dated and filed on the 14<sup>th</sup> October, 2021 wherein deponent one Alhaji Salisu Isah Esq a legal practitioner in the law firm of Counsel to the Respondent (Sadare Olumide Damilola) avers.

That Applicant paragraph I - IV of affidavit in support of their motion are untrue.

That the restriction placed by the Applicant on the Respondent's accounts since July 2020 without any formal communication as to reason why his account was frozen is a breach of the Respondent fundamental rights to fair hearing.

That the Respondent is under serious distraught and great hardship as he can barely feed his family and meet basic financial

needs. That the Respondent's Counsel in their written address on behalf of the Respondent formulated two issues:-

1. Whether the action of the Respondent's bank particularly the lien restriction placed on the Applicant bank account does not constitute a breach of the Applicant fundamental rights and whether same is not illegal and unlawful.
2. Whether in view of the facts and circumstances surrounding this case affidavit evidence before the Court and the accompanying exhibit the Applicant is entitled to the reliefs sought. On issue one Counsel on behalf of the Respondents relied on ***KOTOYE VS CBN (1989) 1 NWLR (pt.98) 419*** and submit that there is a gross violation of the Applicant's property rights as constitutionally guaranteed under chapters 44 of the 1999 Constitution. Counsel submit that the Applicant has a legal right over the subject matter (the money) standing to its credit in the account with the Applicant. That the balance of connivance tilts more to the respondent side as it is prove to suffer greater hardship if this application is refused.

that the freezing of the Respondent's account without prior notice or justification even if such act was on the basis of any criminal litigation is a contravention of section 36 of the 1999

Constitution which entitles the Respondent to the right to fair hearing. Counsel submits that there is no law that confer power to the bank to freeze customers account and cited ***ACB INTERNATIONAL BANK PLC VS ADIELE (2013)3 BFLR page 30 at 42-43, FIDELITY BANK PLC VS BAYUJA VENTURES & ANOR (2013) 1 BFLR PP 134-135 AND GTB VS ADEDAMOLA (2019) LPELR 47318 (CA).***

On issue two Counsel on behalf of the Respondent submits that Respondent is entitled to the reliefs sought. See ***JIM – JAJA VS COP RIVER STATE (2013) ALL FWLR (pt665) 203- 216 paragraph D-E.*** Same contends that where a party fails to responds to a business letter as the bank in this case has refused to respond to letter, the party will be deemed to have admits the content of the letter see ***BAGOSIRI VS UNITY BANK PLC (2016) LPELR 41161 CA.*** Counsel urged the Court to grant the reliefs sought by the Respondent.

In consideration of the above position as cited in the processes filed by both learned gentlemen for and against. Particularly the affidavit attached to the application of the Applicant motion on notice and the exhibits attached as well as the counter affidavit attached and the exhibits attached by the Respondent.

Both parties admitted the facts that the Respondent account with the Applicant bank have been frozen since 22<sup>nd</sup> July, 2020 (see paragraph 5 of Respondent counter affidavit in opposition to motion on notice and paragraph 1.2 of Applicant's written address where Applicant's Counsel in giving a summary of the case states that:-

*"However on the 22<sup>nd</sup> day of July 2020 he attempted to make a transaction from his account but the transaction was unsuccessful"*

This fact stated above was not contravened by the Applicant and therefore deemed admitted see ***OGOEJEFOR VS OGOEJEFO (2006) B1 SC (pt1) 157.*** Also both parties admitted that the Respondent made a complaint to the bank through his account officer and his lawyer and same did not get any reply see Applicant paragraph 1.3 of written address and a letter attached to the original application before this Court. From the facts and circumstances of this case the question to be asked here is this application properly brought before this Court in line with requirement of the law and rules provided for the enforcement of someone's fundamental rights particularly the Respondent in this case. The answer is simply no. this can clearly be seen from the

content of both the Applicant and the Respondent counter affidavit filed in this Court.

The position of the law is that for a claim to qualify as falling under fundamental rights it must be clear that the principal reliefs sought is for the enforcement or for securing of a fundamental right and not, from the nature of the claim, to redress a grievance that is ancillary to the principal reliefs which itself is not ipso factos a claim for the enforcement of Fundamental right. Thus, where the alleged breach of a fundamental right is ancillary or incidental to the substantial claims of the ordinary civil or common law nature it will be incompetent to constitute the claim as one for the enforcement of a fundamental right see ***FRN & ANOR VS IFEGWU (2003) 15 NWLR (pt. 842) 113 at 180, TUKUR VS GOVT OF TARABA STATE (1997) 6 NWLR (pt. 549) and see TRUCKS NIG LTD VS ANIGBORO (2001) 2 NWLR (pt 696) 159. ABDULLAHI VS AKOR (2006) 2 SCNJ 59*** per S.A Akintau JSC. Looking at the facts of the case as disclosed by affidavit evidence it is very clear that this application brought by the Respondent does not fall within the contemplation of the Fundament Enforcement Procedure Rules. On the otherhand an action for breach of contract or any similar to it is only commenced by a writ of summons that being so. The



present action should have been commenced by a writ of summons see **JACK VS UNIVERSITY (2004) 1 SCNJ 244. PER A.I Katisna Alu JSC.** It should be noted that where the main claim or principal claims is not the enforcement or securing the enforcement of a fundamental right, the jurisdiction of the Court cannot be properly exercised as it will be incompetent see **MADUKOLU & ORS VS NKENDLIM (1962) 2 SCNIR 341 also BORNO RADIO TELEVISION CORPORATION VS BASSIL EGBUONU 91997) 12 NWLR (pt53) 29 and GAFERS KWARA STATE (2007) 2 SCNJ 58** per Muhammad Mohammed J.S.C. In conclusion, for an action of breach of contract cannot be brought under this arrangement see **FCMB VS NYAMA (2014) LPELR 23973 CA.**

*"An action for breach of contract cannot be brought under the Fundamental Rights Procedure Rules the application of an enforcement procedure is inappropriate in the circumstances"*

Consequently same is being refused.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**  
**13/12/2021**