

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/1962/2019

BETWEEN:

- 1. ZOMI INDUSTRIES LIMITED**
- 2. CHIEF VINCENT VICTOR UTULU.....CLAIMANTS**

VS

- 1. UNITED BANK FOR AFRICA PLC**
- 2. ECONOMIC AND FINANCIAL CRIMES COMMISSION(EFCC)
.....DEFENDANTS**

RULING/JUDGMENT

By an Amended Originating Summons filed on 24/11/2020, the Claimant seek the determination of the following questions:-

1. Whether the 1st Defendant has the powers and can exercise any right while suit FHC/PH/CS/24/2018 was pending at a Federal High Court Port Harcourt division to make any form of debit from the Claimants account number 1015774100?
2. Whether the 1st Defendant did not breach its Contractual Obligations towards the Claimants when it refused to honourcheque issued by the Claimants when the account has a

credit balance to pay the cheque presented for payment and without authorization from the Claimants unlawfully debited account number 1015774100 to the sum ₦5,000,000.00?

And upon the determination of these questions, the Claimant seeks the following reliefs:-

1. a Declaration of this Hon. Court to the effect that the 1st Defendant has no contractual powers to effect or make any transfer of funds in the Claimants account number 1015774100 to either its head office or to any other account whatsoever name designated without the prior authorization or agreement with the Claimants.
2. A further declaration of this Hon. Court to the effect that the 1st Defendant has no powers or authorization to debit and or reverse any amount particularly the sum of ₦5,000,000.00 standing to the credit of the Claimants without the Claimants authorization.
3. A Declaration of this Hon. Court to the effect that the 1st Defendant is under a banker/customer obligation to honour and pay any cheque particularly cheques numbers 42585374 and 42585380 all dated the 15/04/2019 drawn in favour of Benjamin Solicitors and issued by the Claimants particularly on account number 1015774100 owned and maintained by the Claimants with the 1st Defendant.
4. A declaration of this Hon. Court to the effect that the 1st Defendant's refusal to honour both cheque numbers 42585374

and 42585380 all dated the 15/04/2019 drawn in favour of Benjamin Solicitors and issued by the Claimants, presented for payment as at the 18th April 2019 and 10th May 2019 were stamped and dishonored and the account balance fully standing to the credit of both cheques amounts to a breach of banker customer obligations and contractual relation entitling the Claimants to damages.

5. An Order of this Hon. Court directing the 1st Defendant to forthwith return and recredit into the Claimants account number 1015774100 the sum of ₦5,000,000.00 it unlawfully debited on the 14th May 2019.
6. An Order of this Hon. Court directing the 1st Defendant to honour and pay Claimants cheque numbers 42585374 and 42585380 all dated the 15/04/2019 drawn in favour of Benjamin Solicitors and issued by the Claimants and any other cheque drawn and issued in respect to account number 1015774100 maintained with the 1st Defendant.
7. An Order of this Hon. Court for cost of ₦2,000,000.00 (Two Million Naira) as general damages and inclusive of the cost of this suit against the 1st Defendant on their deliberate failure and refusal to honour and pay the amount as drawn on cheque number 42585374 and 42585380 issued by the Claimants and inconveniences suffered by the 1st Defendant's illegal activities in the Claimant's account 1015774100.

In support of the Originating Summons is an affidavit of 29 Paragraph sworn to by one KaluOkpu with Exhibits attached and marked "A" "B" "C" "D" "E" "F" "G" "H" "I" "J" and "K". Also filed a further and better affidavit of 12 Paragraph. In support of the Originating Summons. In response to 2nd Defendant Counter-affidavit filed a further affidavit of 12 Paragraph. Also filed a Written Address dated 23/11/2020, adopt the address, in urging the court to grant the reliefs sought.

Upon being served with the processes, 1st Defendant filed a counter-affidavit of 12 Paragraph deposed to by KingsleyUgwueke with one(1) Exhibit attached and marked "UBAI". Also filed a Written Address, adopt the said Address, in urging the court to dismiss this suit for being unmeritorious and not to grant any of the reliefs sought.

It should be stated that at the hearing of this suit, the 2nd Defendant was not represented by Counsel and its processes were not adopted. However, the court has a duty and indeed bound to take judicial notice of all processes filed in a matter before it. See MTN VsAnene (2018) LPELR – 4444 (CA). I shall, therefore, deem the processes filed by the 2nd Defendant as proper and consider same.

The 2nd Defendant, with leave of court, filed a counter – affidavit of 22 Paragraph on 16/3/2021 deposed to by one Kelvin Kpughi with eight (8) Exhibits attached and marked "EFCC1-8". Also filed a Written Address dated 1/3/2021 but filed on 16/3/2021.

In the Written Address of Claimant, Counsel for Claimant Darlington Owhoji formulated two (2) issues for determination namely:-

1. Whether the 1st Defendant has the power and can exercise any right while suit FHC/PHC/CS/24/2018 was pending at the Federal High Court Port Harcourt Division to make any form of debit from Claimant's account number 1015744110?
2. Whether the 1st Defendant breach its contractual obligations towards the Claimants when it refused to honour cheques issued by the Claimants when the accounts have enough credit balance to pay the cheque and without authorization and agreement debited account Number 1015774100 to the sum ₦5,000,000.00?

On issue 1, submits its trite law that once a suit is pending before a court of competent jurisdiction, the status quo must be maintained. He relied on the definition of "Lispendis" in Black's Law Dictionary and case of First Bank & Anor. Vs Hamidawa Ltd & Anor. (2018) LPELR – 44260 (CA) and submit 1st Defendant had no authority to conduct any transaction in the Claimants account while a suit was pending.

On issue 2, submits that the refusal to honour Exhibits "1" and "J" of Claimants amount to a breach of the mandate of a customer by 1st Defendant which entitle Claimants to claim for damages. He commended the court to some judicial authorities; First Bank Vs Akiri (2014) All FWLR (PT. 739) 1139; Allied Bank of Nigeria Vs Akubueze (1997) LPELR-429 (SC). Submits banks cannot unilaterally open account or debit or credit accounts contrary to agreements made between parties and cited FBN Vs Jibo (2013) LPELR – 20712 (CA). That in the instance, there is no agreement between Claimants and 1st Defendant as to any debit in the Claimant's account.

In the Written Address of 1st Defendant settled by Hafsat .I. Usman, two (2) issues was submitted for determination;

1. Whether in view of the facts and circumstance of this case, this case can be fairly and justly determined via originating summons in the absence of Economic and Financial Crimes Commission (EFCC) and K.T Offshores Ltd.
2. Whether in view of the facts and circumstances of this case and the 1st Defendant counter-affidavit, this suit is not liable to be dismissed by this Hon. Court.

On issue 1, submits this case is highly contentious because it dwells more on contentious facts rather than interpretation of any law, refer the court to the affidavit and the attached Exhibits and counter affidavit and the annexed Exhibit "UBA I". Urge the court to take judicial notice of the contentions nature of the case in line with Section 122(1) and (2) (m) Evidence Act, 2011 and refer to Alfa VsIdoko (2018) 5 NWLR (PT. 1611).

On issue 2, refer the court to the averments contained in 1st Defendant's Counter-affidavit and stated that sequel to Petition of K.T Offshores Ltd and in exercise of their powers under Section 38 (1) and (2) of the EFCC (Establishment) Act, 2004 and Section 21 Money Laundering (Prohibition) Act 2012 As Amended, 2nd Defendant placed a post no debit order on account of 1st Claimant and urge 1st Defendant to keep the inflow funds into the account safe and in compliance transferred the fraudulent inflow funds to its head office for safe keeping and 2nd Defendant directed 1st to reverse the funds back to its source account (K.T Offshores Ltd) and 1st

Defendant complied, more so that no contrary order of court to 1st Defendant not to comply. Submit 1st Defendant acted in good faith in compliance with directive of 2nd Defendant and cannot be faulted for doing so.

In the Written Address of 2nd Defendant, EsinOtuEbipade K. of Counsel formulated two (2) issues for determination namely:

1. Whether this suit discloses any cause or reasonable cause of action against the Economic and Financial Crimes Commission (EFCC).
2. Whether failure to establish a reasonable cause of action can entitle the Claimants to the reliefs sought in their Originating Summons.

On issue 1, submits this suit does not disclose any reasonable cause of action against EFCC and as such Claimants not entitle to any of the reliefs sought. That the EFCC has responsibility to enforce the Provisions of the EFCC Act, Advance Fee Fraud Act and other Fraud related offences. Refer to Section 6 (A), 46 of EFCC Act and Section 1 Advance Fee Fraud and other Offences Act and submit that neither 2nd Defendant nor her agent violated the Fundamental Rights of Claimants. That for any suit to succeed against a party, there must be cause of action against the party being sued, the absence of which terminates this suit from the very foundation. He relied on case of Ecu-Line N.V VsAdelekan (2001) 10 NWLR (PT. 721) 261, Military Administrator, AkwaIbom State VsObong (2001) NWLR (PT.

694) 214, 235. That Claimants from the affidavit have not disclosed any cause of action against EFCC to entitle them to any of the reliefs sought.

On issue 2, submit that if the issue 1 is established and upheld, it means Claimants cannot be entitled to the reliefs sought as the latter automatically flows from the former.

I have given insightful consideration to the affidavit evidence, the written submissions of Counsel, the statutory and judicial authorities cited in their argument for and against the grant of the reliefs sought as well as the annexed Exhibits and find that only one (1) issue calls for determination and that is;

“Whether or not the Claimants have made out a case against the Defendants and entitle to the reliefs sought in this suit”

It is the contention of the 1st Defendant that their actions regarding the Claimants account with them was to comply with the directions of the 2nd Defendant, the EFCC in exercise of their powers under the EFCC Act. The 2nd Defendant, the EFCC on the other hand contend that the Claimants have no cause of action and thus not entitled to any of the reliefs sought, that it is their responsibility, to enforce the provisions of the EFCC Act, Advance Fee Fraud and other Fraud related offences Act.

It is not in contention that the 2nd Defendant the EFCC is statutory empowered to enforce the Provisions of the Act as canvassed. See Section 6 (A) of the EFCC (Establishment) Act. However, in the exercise of such statutory power or duty, it must be done in accordance with law. See *OnahVsOkenwa* (2010) 7 NWLR (PT. 1194) 512. The law is now settled

that the EFCC 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 right of a customer. See the case of GTB VsAdedamola&Ors (2019) LPELR – 47310 (CA). The question here is; whether there was a court order in place or authorization of Claimants upon which the 1st Defendant acted when the 1st Defendant debited the account of the Claimants and/or reverse money standing to the credit of the Claimants? The Answer is No. From the affidavit evidence of 1st Defendant and their annexed Exhibit “UBA I”, there is nothing to show that 1st Defendant acted on the existence of an Order of court or authorization of the Claimants when 1st Defendant debited and/or reversed money standing to the credit of the Claimants.

Now it is settled law that the relationship between a bank and its customer is contractual. See the case of UBA PlcVsUzochukwu (2017) LPELR – 42787 (CA). And it is also law that a bank is under obligation to honour a cheque issued by its customer provided the customer has sufficient funds in his account to satisfy the amount payable on the cheque as failure or refusal by the bank to honour the cheque amount to a breach of contract which would render the bank liable in damages. See Citibank Nig Ltd VsIkediasi (2014) LPELR – 22447 CA. See Dike Vs African Continental Bank Ltd (2000) 5 NWLR (PT. 657) 441.

On the issue raised by the 1st Defendant faulting the Originating Summons procedure adopted by the Claimants in commencing this suit and contending that it is highly contentious case and further that the case

cannot effectively be determined without the presence of K.T Offshore Ltd or the court joining K.T Offshore Ltd as party, that is the company in which the funds standing to the credit of the Claimants were reversed to by 1st Defendant, these contentions by the 1st Defendant are untenable and cannot be sustained. First, there is nothing contentious about this case. It is simply on whether or not the requirement of the law was complied with. Secondly, the presence of K.T Offshore Ltd is not necessary for the court to determine whether or not the requirement of the law was complied with. On the contention by 1st Defendant that they cannot be faulted because they only acted to comply with the directions of the 2nd Defendant, the EFCC. Again, the argument is not tenable, I see it as shifting their responsibility to the 2nd Defendant.

On the issue raised by 2nd Defendant that the Claimants have no cause of action and further that 2nd Defendant has the responsibility of enforcing the EFCC Act, Advance Fee Fraud and other related Acts and that Claimants are pre-empting 2nd Defendant from carrying out their statutory duties and evasive of being prosecuted. I am not in agreement with this argument by 2nd Defendant. First, it is trite that a cause of action will accrue when the bank refuses to pay a customer's cheque when in fact he has funds to his credit at least an amount equivalent to that endorsed on the cheque he has issued on his account with the bank. See *Citibank Nig Ltd Vs Ikediashi* (Supra). And on the contention that they have the responsibility of enforcing the EFCC Act, Advance Fee Fraud and other related Acts. It is not in contention that the 2nd Defendant, the EFCC is indeed saddled with the responsibility under the Act to enforce the EFCC Act and it is not the

practice to issue a judicial fiat to prevent the 2nd Defendant, the EFCC from exercising its statutory powers. However, in so doing, must abide by the law and this they failed to do in the instant case.

Now to the reliefs sought.

The reliefs 1-4 of the Claimants are declaratory reliefs. And it is settled law that in an application for declaratory relief the Applicant must satisfy the court with credible evidence that he is entitled to such declaratory relief. Therefore where the Applicant in his evidence fails to prove his claim for declaratory relief, the claim must be dismissed. See the case of AgbanaVsOwa (2004) 13 NWLR (PT. 889) @ 17. The court having found that the 1st Defendant debited and/or reverse money standing to the credit of the Claimants without the authorization of Claimants or order of court, I have not difficulty of finding that these reliefs as contained in reliefs 1, 2, 3, 4 have been proved by the Claimants and therefore entitled to the relief 1, 2, 3, 4 as prayed.

On relief 5, having also find that the 1st Defendant debited and/or reversed money standing to the credit of the Claimants without Claimants authorization or order of court, the Claimants are also entitled to the relief 5.

On relief 6, it also avails the Claimants the court having found that 1st Defendant debited and/or reverse money standing to the credit of the Claimants without their authorization or order of court.

On relief 7, on claim for cost and general damages. Cost follows events and the award of cost is discretionary on the part of the court. See

MekwunyeVs Emirates Airlines (2020) All FWLR (PT. 1029) 1 (SC). I shall therefore, exercise my discretion in this regard. On general damages the grant of general damages is at the discretion of the court which must be exercised judicially and judiciously. It covers losses which are not capable of exact qualification. Though it need not and should not be specifically pleaded, however, it is law that some evidence of such damages is required. See Taylor VsOgheneovo (2012) All FWLR (PT. 610) 1358 @ 1362 – 1363. See Julius Berger (Nig) PlcVsOgundehin (2013) All FWLR (PT. 676) 497 @ 502. In this instant the Claimants did not provide any evidence of damages suffered or any loss in proof. It is on this basis I refuse the award of general damages.

From all of these, the reliefs of the Claimants succeed in parts and the findings of the court are as follows.

1. Reliefs 1, 2, 3, 4 succeeds and are hereby granted as prayed.
2. Relief 5 also granted. The 1st Defendant is hereby ordered to forthwith return and re-accredit into the Claimants account number 1015774100 the sum of ₦5,000,000.00 it unlawfully debited on the 14th may 2019.
3. Relief 6 also granted. The 1st Defendant is also hereby ordered to honour and pay Claimants cheque number 42585374 and 42585380 all dated 15/04/2019 drawn in favour of Benjamin Solicitors and issued by the Claimants and any other chequedrawn and issued in respect to account number 1015774100 maintained with the 1st Defendant.

4. On relief 7, it is also hereby ordered that the 1st Defendant shall pay sum of ₦50,000.00 (Fifty Thousand Naira) only as cost of this suit.

The claim for general damages fails and it is hereby dismissed.

This is the judgment of the court.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

3/2/2022

APPEARANCE:

DARLINGTON OWHOJI – FOR THE CLAIMANTS

U.O. SULE (SAN) WITH CATHERINE .O. EGBODO – FOR THE 1ST DEFENDANT.

NO APPEARANCE FOR THE 2ND DEFENDANT