IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/2983/2020

DATE: : TUESDAY 8TH MARCH, 2022

BETWEEN:

MOHAMMED LAWAL YUNUSA …….PLAINTIFF

AND

GUARANTY TRUST BANK PLC. …DEFENDANT

JUDGMENT

The Claimant vide an amended Writ of Summons and Statement of claim dated 3rd March, 2021 and filed on same day commenced this action wherein he claims the following:

a. A Declaration that the restrictions imposed by the Defendant on the Claimant's Bank Accounts No: 0119072090 and 0138967761 domiciled with the Defendant between the periods of 3rd February – May, 2020, without conducting due diligence was unlawful, illegal and unjustifiable thus actionable.

b. A Declaration that the restrictions imposed by the Defendant on the Claimant's Bank Accounts No: 0119072090 and 0138967761 domiciled with the Defendant between the periods of 3rdFebruary – May, 2020 greatly impacted

negatively and caused serious hardship on the Claimant.

c. An Order Mandating and/or compelling the Defendant to pay the Claimant the sum of N50,000,000.00 (Fifty Million Naira) only as compensation for subjecting the Claimant to untold hardship and ridicule by acquaintances and members of his family for the inability to meet his family's basic needs when it matter most due to non-access to his Bank Accounts domiciled with the Defendant between the period of 3rd February, 2020 – May, 2020.

d. An Order compelling the Defendant to pay the Claimant the sum of N10,000,000.00 (Ten Million Naira) only being the legal expenses incurred by the Claimant in the process of

setting aside the Order and the cost of this action.

Upon service of the Writ on the Defendant and after pleadings were exchanged, the suit was set down for hearing.

The case of the Claimant as distilled from the statement of claim and Witness Statement on oath deposed to by Mohammed LawalYunusa, the Claimant in this Suit, is that sometime in February, 2020, a friend of the Claimant named Mr. Michael Ogwu, sent money to the Claimant through one of his (Claimant's) accounts domiciled with the Defendant for the payment of his tuition fee in the institution.

That on or about the 3rd day of February, 2020, the Claimant went to Keffi, Nasarawa State for the

purpose of effecting the payment of the tuition fee on behalf of the said friend (Mr. Michael Ogwu) and on his arrival, the Claimant proceeded to a bank where he made several attempts to make transaction through the Claimant's Account domiciled with the Defendant but proved abortive as the said Accounts are completely inaccessible.

The Claimant claims that on the 4th day of February, 2020, he went to the Defendant's branch, located at Central Business Area, Abuja where he met a customer care officer in person of Ene through whom he lodged a complaint over his ordeal at Keffi on the 3rd February, 2020. The said Customer Care Officer of the Defendant logged into her computer and after some routine check informed him (Claimant) that the Defendant has placed restrictions on his Accounts domiciled with her, which

explained why the Claimant cannot access the Accounts. That the Customer Care Officer, after Consultation with the Legal Department of the Defendant, informed the Claimant that the restriction was placed on the Claimant's Accounts in compliance with a Garnishee Order Nisi made on the 3rd February, 2020 by the District Court, Mpape Abuja, against the Claimant's accounts domiciled with the Defendant.

It is further the claim of the Claimant, that on his request, the Customer Care Officer further contacted the Legal Department of the Defendant who provided him with a copy of the said Order Nisi, which he immediately perused and to his (Claimant) surprise, the said Order Nisi was not directed at the Claimant as none of his Account numbers domiciled with the Defendant was mentioned, and none of the

names against which the Order was made, viz, **MONACHI GLOBAL CONCEPTS LIMITED; YUNUSA MOHAMMED AUWAL**, and **BASHIR MORGAN MOHAMMED** is the Claimant's name. that the Claimant probed further to see if the situation can be amicably resolved by explaining to the Defendant that the Claimant was neither a party or Judgment Debtor to any pending litigation whatsoever as at the time nor was he (Claimant) the party against whom the Order was made or issued, but he was told by the Customer Care Officer of the Defendant that nothing can be done about it, and the accounts would remain under restriction till further directive from the Court.

That after all efforts to amicably resolve the matter proved abortive including his request for a review of the process that led to the restrictions, he (Claimant)

engaged the services of a team of lawyers, who on his behalf, filed an application to be joined as an interested party in **SUIT NO.** ***CV/83/2019, BETWEEN JANUS CONSULTING NIGERIA LIMITED VS.MONACHI GLOBAL CONCEPTS LIMITED & ORS,***being the suit that gave birth to the said Order.That upon being joined to the said Suit No. CV/83/2019, the Claimant again took the pains of filing yet another application before the court, urging that the Defendant be mandated to lift the restriction wrongly and negligently placed on his Accounts domiciled with the Defendant and the said Application was granted on the 13th May, 2020.

That the legal relationship between the Claimant and Defendant is contractual in nature. The contractual relationship between the Defendant and the Claimant imposed a duty of care on the Defendant.

Discrepancy exists between the name of the Claimant and the names on the Order Nisi. The Defendant failed to exercise due diligence before restricting the Claimant's Account. The Defendant failed to request for more particular before restricting the Claimant's Account. That as a result of the wrong and unjustifiable attachment of my accounts, the Claimant was unable to access his Accounts between the period of 3rd February, 2020 – 13th May, 2020 and his salary was starched in the current Account aforementioned. That as a responsible husband and a father of 4 (four) children, the Claimant and his family encountered serious financial hardship and psychological trauma during the excruciating period of the lockdown due to non-access to his Accounts, including his Salary Account domiciled with the Defendant. Considering

the importance of salary in the life of a civil servant like the Claimant, he reached out to friends and associates for a soft loan but was not granted same by all the persons he contacted and/or approached.

That the Claimant was ridiculed and shamed by his neighbors and acquaintances owing to his inability to meet up with the basic needs of his family members. Bearing in mind the hardship that the Claimant was subjected to by the conduct of the Defendant, he instructed his lawyers to demand for a compensation from the Defendant which was done via a Demand Letter dated 20th May, 2020, and served on the Defendant at its Regional Office, Area 3, Garki, Abuja on the 20thMay, 2020. That the Defendant neither responds to the said letter nor paid the compensation.

PW1 tendered the following documents in evidence:

1. Garnishee Order Nisi
2. Application for Joinder
3. Order Setting Aside the Order Nisi
4. Demand Letter written to Guaranty Trust Bank Plc. (GTB) from LimanLiman& Co.

PW1 was cross-examined and subsequently discharged. Plaintiff closed its case to pave way for defence.

The Defendant opened itsdefence and called DW1 (BatholimewTundeMedupin), Account Officer with the Defendant. The case of the Defendant as distilled from the witness statement on oath of DW1 is as thus;

The Defendant vehemently denies the averments in paragraphs 1,5,6,10,11,12,13,14,15,16,17,18,19,20 and 21 of the Claimant's statement of claim and puts the Claimant to the strictest proof of the facts stated therein. The facts contained in the said paragraphs are within the exclusive knowledge of the Claimant and that the Claimant maintains two separate Accounts with the Defendant, the details of which are as follows:

Account Number: 0119072090

Account Name: Yunusa Mohammed Lawal

Account Number: 0138967761

Account Name: Yunusa Mohammed Lawal

The Defendant contends that it was served with the Garnishee Order Nisi of the Chief District Court,

Mpape, Abuja, FCT, on 3rd February, 2020 made by His Worship, Hon. Mohammed Zubairu sitting at Mpape attaching any money/debt due to or accruing to the Judgment Debtors from any account(s) in the name(s) of the Judgment Debtors of the outstanding Judgment debt in the sum of N4,550,000.00 (Four Million, Five Hundred and Fifty Thousand Naira) only. Further to the above, the names of the Judgment Debtors on the face of the Garnishee Order Nisi are Monachi Global Concept Ltd., Yunusa Mohammed Lawal and Bashir Morgan Mohammed, and the Applicant in the said Order sought four (4) distinct prayers against the "**Judgment Debtors"**simplicita which Orders, the Magistrate granted as prayed.

The Defendant avers further that the names of the Judgment Debtors were only mentioned in the

Prayer No.1 for the purpose of emphasis to wit there exist typo-graphical errors in the names as bolded and underlined thus: Monachi Global Concept Ltd., Yunusa Mohammed Auwal and Bashir Morgan Mohammed. That the typo-graphical errors with respect to the names of the Judgment Debtors are not the only typo-graphical errors or omissions in the said Garnishee Order Nisi served on the Defendant. It is clear that the Garnishee Order Nisi was directed at the Garnishees for which the Defendant is the 3rd Garnishee and that Order is with respect to the Judgment Debtors stated on the face of the Garnishee Order Nisi.

The Defendant also avers that the Claimant is the one and only "Yunusa Mohammed Lawal" in the Defendant's data base and the Defendant promptly complied with the Order of the Court by placing a

restriction on the account with the said name and subsequently showed cause to the court why the Order Nisi would not be made Absolute against it on the return date of the Garnishee Order Nisi which was the 26th February, 2020. That the Defendant complied with a valid Order of the Court made on the 3rd February, 2020 as it is its constitutional and civic responsibility to do.

Further to the above, the Defendant was again served with another Court Order dated 13th May, 2020 from the same court, by the same Magistrate and in the same suit with the Court Order dated 3rd February, 2020, setting aside the Garnishee Order Nisi dated 3rd February, 2020. The Defendant again immediately complied with the Order of Court date 13th May, 2020 which set aside its Order of 3rd

February, 2020 by lifting all restrictions on the Claimant's account.

The Defendant shall contend at the hearing of this Suit that the Defendant merely obeyed the Orders emanating from the Court and that it is not liable to the Claimant in this Suit or for the actions of the Court and/or Judgment Creditor in Suit No: **CV/83/2019** at the Chief District Court Abuja before His Worship Hon. Mohammed Zubairu sitting at Mpape. That this suit is brought in utmost bad faith against the Defendant and is a gold digging venture on the part of the Claimant. That the grant of these reliefs sought herein will be gravely prejudicial to the Defendant who merely obeyed the Orders emanating from the court. That the Claimant have merely employed the instrumentality of this

Honourable Court to annoy, harass and embarrass the Defendant in this suit.

Whereof, the Defendant prays that the Claimant's action be dismissed in its entirety with substantial cost against the Claimant as same is frivolous, vexatious and constitutes an abuse of Court process.

DW1 was cross-examined and accordingly dismissed

Defendant then closed its case to pave the way for the filing and adoption of final written addresses.

Defendant filed a 21 page final written address and a 7 page reply on points of law upon receipt of Claimant's 19 page final written address.

Defendant's counsel filed and formulated sole issue in their final address for determination to wit:-

- ***Whether or not in the entire circumstances of this case, the Claimant is entitled to the grant of the reliefs sought in this Suit.***

Learned counsel contends, that the Claimant is not entitled to the grant of the reliefs sought in this suit. The Claimant has failed woefully to support his claim with credible evidence.

The onus of proof rests on the Claimant to prove by credible evidence that he is entitled to the reliefs sought before this Honourable Court. Sections 131, 132, 133 and 135 of the Evidence Act, 2011 (as amended) were cited to buttress the above point.

KUDU VS. ALIYU (1992) 2 NWLR (Pt. 231) 615 at 620 was also cited.

Learned counsel contends, that Claimant has failed to discharge the onus placed on him.

On the contrary, the Defendant demonstrated before this Honourable Court through its sole witness, is a member of the team in charge of the Claimant's account and that Defendant's actions in this case was conducted in accordance with the law. The Defendant's witness confirmed to the Court that based on his research and banking records maintained by the Defendant, the Claimant's account were restricted Pursuant to Garnishee Order Nisi in Exhibit "C", granted by Senior District Court Mpape, Abuja and served on the Defendant.

Learned counsel submits, that the Defendant's witness under cross-examination stated that even though he is not a staff of the Court, the Defendant has a constitutional and civic duty to comply with an Order of Court served on it as it did in this case. The witness further confirmed to the Court that Claimant

is the one and only person known as 'Yunusa Mohammed'Lawal in the Defendant's data base. Also, the Claimant in this Suit controverted none of this piece of evidence tendered by the Defendant as constituting reason for restricting the Claimant's account. Rather, the Claimant himself admitted in his testimony before this Honourable Court that he was informed that his accounts were restricted Pursuant to an Order of the Court served on the Defendant.

Learned counsel further submits, that the law is firmly established beyond any disputation by virtue of Sections 20 and 123 of the Evidence Act, 2011 that facts admitted need no further proof.

PINA VS. MAI-ANGWA (2018) LPELR 44498 (SC) was cited.

It is submitted, that the allegations of facts as well as evidence of the Defendant as to the reason for the restriction having been admitted by the Claimant need no further proof in this case. It is trite, that by the provisions of Sections 135, 136 and 137 of the Evidence Act, 2011, the Claimant who alleged that the Defendant wrongly and negligently restricted his accounts has the burden duty to establish that the Defendant was negligent towards him. Where the Claimant, as in this case, pleads and relies on negligence by conduct or action of the Defendant, the Claimant must prove by evidence the conduct or action and the circumstances of its occurrence, which gave rise to the breach of duty of care owed the Claimant.

UTB (NIG) VS. OZOEMENA (2007) 3 NWLR 448 was cited.

Learned counsel also contends that the said Exhibits "A" and "B" relied upon by the Claimant in his bid to discharge the onus on him in this suit is a non-starter as the said exhibits goes to no issue in proof of the particulars of negligence alleged against the Defendant. Also, Reliefs A and B of the Claimant are declaratory reliefs. The law is that declaratory reliefs are not granted as a matter of course, it is discretionary and the discretion of the Court must be exercised judicially and judiciously.

ABDULLAHI VS. MILAND (2004) 5 NWLR (Pt. 866) 253 Paragraphs B – H was cited.

On the issue of damages claimed under Reliefs "D" and "C" of the Claimant's claim, Claimant has not proved anything to warrant grant of any damage and/or compensation or any other relief at all. This is

so as reliefs “C” and “D” claimed by the Claimant in this suit is predicated upon the success of Reliefs “A” and “B”.

TUKUR VS. GOVERNMENT OF GONGOLA STATE (1989) 4 NWLR (Pt. 117) 157 was cited.

Learned counsel submits that the Defendant merely complied with an Order of Court and as such, the Claimant has no valid claim against the Defendant. This law is that all persons and authorities shall enforce the decisions of courts established by law.Section 287(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and ***NGERE & ANOR VS. OKURUKET & ORS (2014) LPELR – 22882 (SC) (Pages 19 – 20 Paragraphs G – D)*** were cited. Similarly, the Claimant who alleged that his friend (Mr. Michael Ogwu) sent money to

one of his accounts and that the Defendant's compliance with an Order of Court resulted in his inability to meet the needs of his family, failed to give evidence in support of these facts. The failure of the Claimant to call those people to give evidence as to his assertions constitute lack of proof of any damage suffered by the Claimant.

Learned counsel contends that a corollary of the duty on the Defendant to comply with Exhibit "C" is the trite and settled principle of law that an Order of Court remains binding until it is set aside by a competent Court.

ALL PROGRESSIVE CONGRESS (APC) & 2 ORS VS. HON. DANLADI IDRIS KARFI & 2 ORS (2018) 6 NWLR (Pt. 1616) 479 At Page 519 Paragraphs D – F was cited.

The Claimant being aware that the reason for the restriction is in line with Exhibit “C” concealed this fact from this Honourable court. This is very fatal to the Claimant’s case as it constitutes withholding evidence which could be and is not produced would, if produced be unfavourable to the person who withholds of Section 167 (d) of the Evidence Act 2011.

Learned counsel contends further, that the Claimant is merely utilizing theinstrumentality of this Honourable Court to harass, intimidate and embarrass the Defendant who carried out its lawful function by restricting the accounts of Defendant in accordance with Exhibit “C”. Counsel argued that it is an abuse of Court process.

OGAR & ORS VS. IGBE & ORS (2019) LPELR – 48998 (SC) was cited.

Learned counsel concluded by urging this Honourable Court to hold that; the Defendant acted in accordance with the law and lawfully. Thus, committed no wrong whatsoever against the Claimant. The Claimant has failed to present cogent and compelling evidence to entitle him to the grant of the reliefs sought in this suit. This suit constitutes an abuse of court process.

This Honourable Court is urged to dismiss this Suit with substantial cost in favour of the Defendant.

On its part, Plaintifffiled written address and formulated a sole issue for determination, to-wit;-

- ***Whether the Claimant has not established his case based on preponderance of evidence as to be entitled to the Reliefs sought in this suit.***

Learned counsel submits that in the instant suit, it is not in dispute that the Claimant's Accounts were wrongly and unjustifiably restricted by the Defendant purporting to be relying on the Court's Order which in itself is contradictory as this fact has been established and admitted by Defendant's sole witness. Counsel posited that facts admitted need no further proof. It is also incontrovertible that the content of Exhibit "A" and "C" evidently points to the fact that the Claimant has no connection whatsoever with the Garnishee Order Nisi granted by the District Court Mpape on 3rd February, 2020 and that a concerted effort was made to clarify this fact to the Defendant but all entreaties to solve the

issue amicably at its preliminary stage between the Claimant and the Defendant proved surprisingly abortive as the Defendant maintained that nothing could be done to remedy the situation.

Learned counsel contends also that the line of defence of the Defendant in asserting that the Defendant was merely complying with a Court Order cannot hold water as it was duty bound to conduct due diligence before placing restriction on any account. This was even more necessary after the Claimant made it clear to the Defendant that the said Court Order does not relate to him. DW1 in his testimony admitted that the Claimant is not the same as the person addressed by Exhibit "C" during cross examination. Answer of the Defendant's sole witness is a breach of duty of bank to exercise reasonable care and skill.

MAINSTREET BANK LIMITED VS. JUUMANWIN NIGERIA LIMITED (2013) LPELR – 21855 CA Pp. 39 – 40 Paras F – B were cited.

Learned counsel submits, that the Defendant has placed heavy reliance on the content of the Garnishee Order Nisi (Exhibit "C") in an attempt to defend the instant suit. Unfortunately, no valid evidence, oral or documentary, has been adduced to assist the case of the Defendant. It is statutorily settled that once the content of an official proceeding has been reduced into writing, no oral evidence in respect of that eventually may be given except by way of that document itself. Section 128(1) Evidence Act, 2011 was cited. By the foregoing provisions of the Evidence Act, the content of the Exhibit "C" ipso facto speak for itself and the entire

oral evidence given by DW1 in relation to the Court Order cannot in anyway alter, add or vary the content of the said Exhibit "C".

Learned counsel further contends, that also being the Officer or authority that authored or typed the said Court Order, DW1 cannot be in a position to insist that the name Yunusa Mohammed Auwal contained in page 2 of Exhibit "C" is merely a typographical error. Any line of evidence given by DW1 in this regard is nothing but documentary and oral hearsay and is inadmissible altogether. The law has since been settled that hearsay evidence is not admissible in proof of any fact in issue. Sections 37 and 38 of the Evidence Act, 2011 and ***ONOVO VS. MBA (2014) 14 NWLR (Pt. 1427) Pg. 391 at 417 Paragraphs C – E*** were cited, where the Supreme Court reiterated the position that hearsay evidence

has no probative value. It is elementary law that what the Court looks at in determining the Plaintiff/Claimant's cause of action is the Writ of Summons and the averments in the statement of claim as filed by the Claimant. Deducing from the contents of the writ of summons and the averments in the statement of claim, the case of the Claimant in the main, centers on the wrongful and unjustifiable restriction imposed on the Claimant's accounts domiciled with the Defendant for about 4 months thereby occasioning the Claimant great hardship especially during the period of the Covid-19 pandemic.

Learned counsel also submits that the claim and relief sought by the Claimant as contained in page 8 of the Claimant's statement of claim is not only established but cogently backed by evidence. The

Defendant in this case acted negligently when it continued to restrict the Claimant access to his account despite early rectify the issue and despite the glaring difficulty it occasioned the Claimant.

UBA PLC. VS. SAMBA PET. CO. LTD. (2002)16 NWLR (Pt. 793) Pg. 402 – 403, Paragraphs H – B was cited.

Learned counsel submits, that after the Claimant had taken steps to be joined in the proceedings that gave rise to the Garnishee Order and setting aside of the said Order, the Claimant instructed his lawyers to write to the Defendant for compensation. Letter under reference is dated the 20th day of May, 2020 demanding the Defendant to accordingly pay compensation to the Claimant but this option was considered by the Defendant not being capable of

responding to thus, the Claimant was left with the only option of approaching this Honourable Court. It is rather the lackadaisical attitude with which the Defendant handled the complaint of the Claimant that necessitated this action.

Learned counsel concludes by urging this Honourable Court to solve the issue formulated for determination in favour of the Claimant and against the Defendant and also grant all the reliefs sought by the Claimant on the following grounds:

a. That the suit of the claimant do not constitute an abuse of the process of this Honourable Court.

b. That the name on the body of Exhibit "C" (Yunusa Mohammed Auwal) is not the same with that of the Claimant (Mohammed LawalYunusa)

c. That the account placed under restriction by the Defendant is that of Mohammed LawalYunusa and not Yunusa Mohammed Auwal

d. That DW1 is not a staff of the District Court Mpape, hence is not in a position to say if the name contained in Exhibit "C" is a typographical error or not.

e. That the Defendant failed and/or neglected to carry out due diligence before imposing restriction on the Claimant's Accounts and this is a breach of care owed the Claimant by the Defendant under the banker customer relationship.

f. That the act of the Defendant's action has been proved to be seriously injurious to the Claimant.

In turn, the Defendants filed reply on points of law to the Claimant's final address filed on 12th November, 2021.

Learned counsel submits,this Honourable Court is empowered to take judicial notice of the records of its proceedings. Section 122(2)(m) of the Evidence Act, 2011 was cited. Majority of the proceedings/evidence reproduced in paragraphs 3.2, 4.2,.3.4 and 6.11 of the Claimant's final written address do not form part of the proceedings of this Court. It is also pertinent that the purported evidence of DW1 reproduced at paragraph 6.3 of the Claimant's address does not emanate or form part of the evidence before this Honourable Court because defence counsel raised an objection to the question that elicited the purported evidence and the objection was sustained by Court. This Honourable Court is

urged to take judicial notice of the proceedings of the Court and discountenance the purported proceedings/evidence reproduced by the Claimant in his final address, which do not form part of the records of the Court but from the figment of imagination of the Claimant.

Learned counsel contends that, at paragraphs 4.1 and 6.2 of the Claimant's final address, the Claimant admitted that Exhibit "C" the Garnishee Order Nisi is contradictory but at paragraphs 3.4, 6.7, 6.11 and 7.1 of the same address, the Claimant relied on the testimony of DW1 to argue that there is no typographical error in Exhibit "C". By the doctrine of estoppel, a party is not allowed to blow hot and cold to affirm one time and deny at the other time. This Honourable Court is urged to discountenance

the submissions of the Claimant for being inconsistent.

LAWA VS. HON. COMM. FOR LANDS, HOUSING & SURVEY, OYO STATE (2013) LPELR – 2 1114;

UDE VS NWARA & ANOR (1993)2 NWLR (Pt. 278) 602 at 638.

Learned counsel further submits, that contrary to the arguments in paragraphs 6.13, 6.14, 6.15, 6.16 and 7.0(a) – (f) of the Claimant's address, the Claimant has not established any loss whatsoever suffered by him to warrant the grant of his reliefs in this suit or any relief at all. It is not sufficient for the Claimant to make blanket allegations of negligence against the Defendant without giving credible evidence to establish his allegations. The Claimant must as of

necessity plead and give credible evidence to support his clam for negligence and expose the fault or liability of the Defendant.

Learned counsel also submits, that it has been stated consistently in judicial pronouncements that damage(s) and negligence must co-exist in an action for negligence. By this basic principle of tort, the two elements of negligence and damages are interwoven as there can be no action in negligence without damage. Thus, in the instant case, assuming without conceding that the Defendant is even negligent as argued by the Claimant, such negligence alone does not give a cause of action in the absence of proof of actual damage by the Claimant as negligence and damages must co-exist.

IJERE VS. BENDEL FEEDS AND FLOUR MILLS LTD. (2008) 16 NWLR (Pt. 1119) 300 was cited.

Learned counsel submits that the burden on the Claimant is particularly heavier where in the instant case, his reliefs are declaratory. The Claimant who claims declaratory reliefs must satisfy the Court upon pleadings and cogent evidence that he is entitled to declaratory reliefs. It is settled that declaratory reliefs are not granted on the platter of gold notwithstanding default of defence or any admission in the Defendant's pleading.

AKINBADE VS. BABATUNDE (2018) 7 NWLR (Pt. 1618) 366 at 388 Paragraphs D – F was cited. The fact that the Defendant did not tender its

database containing the name of the Claimant in this case is of no mement.

Learned counsel concluded by entreating this Honourable Court not to accede to the reliefs of the Applicant and dismiss this suit for being unmeritorious. Lacking in its entirety.

COURT:-

I have read and assimilated the case of the Plaintiff as testified by PW1 and the documents tendered on one part, and the case of the Defendant and equally the documents tendered on the other part.

It is an elementary principle of law concerning the Tort of Negligence, that for a Plaintiff to succeed in an action for negligence, it must in addition to pleading such a fact, establish the particulars of negligence relied on, state and establish duty of care

owed him by the Defendant,the fact upon which the duty is founded and breach of that duty by the Defendant and evidence given in that regard.

It is instructive to note that reliefs 1 and 2 claimed by Claimant are declaratory in nature, and the law with respect to declaratory relief is clear. Such reliefs shall succeed on the evidence adduced and not on admission or lack of defence.

See ***AGBAJE VS FASHOLA & ORS (2008) 6 NWLR (Pt. 1082).***

Indeed, judicial pronouncements are ad-idem that declaratory reliefs are never granted based on admission or on default of filing defence.

MOTUWASE VS.SORUNGBE (1988) NWLR (Pt. 92) 90.

Where a Court is called upon to make a declaration of right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the Court by evidence and not the admission in pleadings.

SAMESI VS.IGBE & ORS (2011) LPELR 4412.

I shall therefore beam my search light on the evidence before the Court to ascertain who has the support of the law bearing in mind that the kernel of the Plaintiff's case is predicated on negligence.

It is the law, through a long line of decided authorities and statutes that whoever desires a court to give it judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts indeed exist. See section 131 (1) Evidence Act, 2011.

I now gravitate to the claim of Claimant which is predicated on negligence… what then is negligence in law?

The Black's Law Dictionary defines negligence to mean the failure to exercise the standard of care that a reasonable person would have exercised in a similar situation, any conduct that falls below the legal standard established to protect others against an unreasonable risk of harm, except for conduct that intentionally, wantonly, or willfully disregardful of others rights.

An omission or failure to do something which a reasonable man under similar circumstances would do or doing of something which a reasonable and prudent person would not do.

See ***PROGRESS MORNING STAR TRANSPORT & TRADE CO. LTD. & ANOR VS OGHOR (2018) LPELR 46274 (CA).***

Indeed for a Plaintiff to succeed in his claim for negligence, he must establish the following essential-elements:-

i. That the Defendant owed the Plaintiff a duty of care of the subject matter.

ii. That the Defendant breached that duty.

iii. That the breach resulted in or caused the injury suffered by the Plaintiff.

iv. That the Plaintiff suffered monetary losses.

BRAWAL SHIPPING NIG.LTD. VS.OMETRACO INTERNATIONAL LTD. (2011) LPELR 9258 (CA).

Having mentioned the four elements of negligence above; I shall peruse the evidence before the Court to ascertain whether the Defendant owes the Plaintiff a duty of care.

The issue of duty of care is synonymous with a claim in negligence. It is one of the constituent elements to be established in a case predicated on negligence.

UBA PLC. VS. COMRADE CYCLE LTD. & ANOR (2013) LPELR (20737) CA.

What amounts to a duty of care and when it can be presumed can never be exhausted. It can be remote or proximate. It depends on the circumstances of the case but it must always be reasonably inferred. In some cases, the Courts have even held that a Defendant may still owe a duty of care to the

Plaintiff even when there is no direct relationship or contract between them.

AGBON MAGBE BANK NIG.LTD. VS.C.F.A.O (1996) ANLR SC. 130.

It is pertinent to note, that the relationship between the Plaintiff and the Defendant is purely that of Banker-Customer hence contractual, wherein the Plaintiff's accounts were put on restriction thereby making it inaccessible. The Defendant put restrictions on the account of the Plaintiff pursuant to a Court Order, Garnishee Order Nisi.

Once it is shown that an individual or corporate body has a bank account with a named bank, the relationship then without much ado becomes contractual and the parties are clearly bound by the terms of their contract. In view of the nature of the

relationship, the customer of the bank neither has the authority nor the control of monies standing in his credit in an account with the Bank..what the customer has is a contractual right to demand repayment of such monies.

WEMA BANK PLC. VS. OSILARU (2001) LPELR 8960(CA).

In the instant case, the Defendant contended that they have the constitutional and civic duty to comply with an Order of Court served on it as it did. The Plaintiff is the one and only 'Mohammed Lawal' in the Defendant's data base. That the said Exhibits "A" and "B" relied upon by the Plaintiff in his bid to discharge the onus on him in this suit is a non-starter as the said exhibits goes to no issue in proof of the particulars of negligence alleged against the

Defendant. To this end, the Defendant maintained that this duty of care has been exercised diligently.

On his part, the Plaintiff maintained that the Defendant breached the duty of care owed him in that Defendant failed to exercise due dilligence before restricting the Plaintiff's account with Numbers **0119072090** and **0138967761**. The Defendant failed to request for more particulars before restricting the Plaintiff's account. The Plaintiff probed further and was informed that said restriction was placed on his account pursuant to a Garnishee Order Nisi made on the 3rd February, 2020 by the District Court, Mpape, Abuja, against the Claimant's accounts domiciled by the Defendant.

Furthermore, by Exhibit "A" i.e Garnishee Order Nisi dated 3rd February, 2020, it is clear that the

Court Order was not directed at the Plaintiff as none of his Account Numbers domiciled with the Defendant was mentioned, and none of the names against which the Order was made; ***MONACHI GLOBAL CONCEPTS LIMITED, YUNUSA MOHAMMED AUWAL*** and ***BASHIR MORGAN MOHAMMED.***

This position was fortified by the evidence of DW1 who testified as the sole witness for the Defendant..under cross – examination, DW1 stated as follows:-

XXX:- What is the name on Exhibit "C"?

Ans:- Yunusa Mohammed Awwal.

XXX:- The account you attached is that of Yunusa Mohammed Lawal and not Awwal?

Ans:- Yes.

DW1 clearly understood the difference in the names when under cross – examination he gave the said answers. This indeed is an admission against interest in law.

See the case of ***ALH. HASSAN BELLO & SONS LTD. & ANOR VS ZENITH BANK (2018) LPELR – 43792 (CA)***Section 24 Evidence Act, 2011.

Where a bank holds itself to be professionally competent and skilled to carry out certain obligations involved in a transaction, if it shirks from that responsibility, it is negligent prima facie in that it owed the customer a duty of care which it shirked.

NEKA VS.ACB (2004) 3 MJSC 118 (Pt. 152).

Indeed, the Plaintiff made efforts to settle the issue amicably by explaining to the Defendant that the Plaintiff was neither a party or Judgment Debtor to any pending litigation at the time nor was he the party against whom the Order was made or issued, but was told by a Customer Care Officer of the Defendant that nothing can be done and the accounts would remain under restriction till further directive from the Court. Consequently, the Plaintiff engaged the services of his Lawyers who on his behalf filed an application for joinder in respect of matter with Suit No. **CV/83/2019**, **between*JANUS CONSULTING NIG.LTD. VS. MONACHI GLOBAL CONCEPTS LTD. & ORS*** being the genesis suit that produced the Order.

The Plaintiff went further to apply to the Court, urging that the Defendant be mandated to lift the

restrictions wrongly placed on his Accounts domiciled with the Defendant, and said Application was granted on the 13th March, 2020.

The Court in the evaluation of the evidence on negligence is duty bound to evaluate and consider the totality of the evidence led by each party. The Court should therein place it on the imaginary scale of justice to see which side of the two weighs more credible than the other.

The scale of justice though imaginary is still the scale of justice; and the scale of truth. Such a scale will automatically repel and expel any and all false evidence. What ought to go into that imaginary scale should therefore be no other than credible evidence. What is therefore necessary in deciding what goes into the imaginary scale is the value, credibility and

quality as well as the probative essence of the evidence.

See ***ONWUKA VS. EDIALA (1989)1 NWLR (Pt. 96) 183 at 208 – 209.***

For emphasis, negligence is the tort that protects a person from careless action from another, that can injure or harm him. The law places a duty of care upon such person that once he breaches such a duty and injury results, damages to repair the injury can always be claimed.

See ***ODULATE VS. FIRST BANK (2019) LPELR – 47353 (CA).***

Defendant being a bank is certainly in a position to have known that the name on the said Order Nisi has an "Awwal" and not "Lawal".

Lawal and Awwal are two different names as stated by Defendant's witness.

Placing restrictions on the accounts of the Claimant was not done with any regard to the Claimant's name and interest.

From what has played out in the above case, the Defendant was in breach of its duty of care to the Plaintiff: I so hold.

The totality of the facts, evidence and testimony before the Court, points that the Plaintiff has established that the Court Order i.e Garnishee Order Nisi that was enforced on him even without being a party to the litigation thereby inconveniencing him has exposed him to unreasonable financial hardship and trauma during the excruciating period of the lockdown due to non-access of his Account

including his salary account domiciled with the Defendant. The Plaintiff being the bread winner of his family even took necessary steps to convey his grievance vide a letter dated 20th May, 2020 by his Solicitors Liman, Liman& Co. and further request for compensation for the inconveniences. He was subjected to by the Defendant, but nothing was done to that effect. Even though the Defendant unreasonably placed restrictions on the Accounts of the Plaintiff amounted to negligence and recklessness without justification.

If the Plaintiff has a right he must of necessity have the means to vindicate it; and a remedy, if he is injured in the enjoyment or exercise of it; and indeed, it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal.

The maxim ubijus ibiremedium is simply the latinrendition of the above principle.

This maxim is so fundamental to the administration of justice that where there is no remedy provided either by the common law or by statute, the court has been urged to create one.

The Court cannot therefore be deterred by the novelty of an action… the facts of each case ought to be considered. If the factual situation exists, the Court would surely provide remedy.

The legendary lord Denning, M.R., paraphrased above situation in ***PACKER VS PACKER (1954) Page 15 at Page 22*** in the following words:-

> ***"What is the argument on the other side? Only this that no case has been found in which it had been done before. That argument does not***

appeal to me in the least. If we never do anything, which has never been done before, we shall never get anywhere. The law will not stand still whilst the rest of the world goes on and that will be bad for both. The law is an equal dispenser of justice, and leaves none without a remedy for his right. It is a basic and elementary principle of common law that wherever there is a wrong, legal or injuria that is, there ought to be a remedy to redress that wrong. Ubijus ibiremedium is the common law principle".

The evidence of DW1, as I said earlier; comprised the Defence of the Defendant.

Claimant has been injured in law arising from the careless conduct of the Defendant who did not

exercise due care and diligence in garnishing the account of the Claimant. Claimant has been able to place before this Court evidence which Defendant's witness has complemented by stating that the name of the Claimant is not the same with the name on the Order of Court.

The defence of Defendant by the admission of its sole witness has compromised the case of the Defendant in favour of the Claimant.

Claimant's case has been established and shall be entitled to the declaratory reliefs sought as per reliefs 1 and 2.

I hereby grant the said reliefs 1 and 2 as endorsed on the Writ of Summons and Claims, as follows:-

1. That the restrictions imposed by the Defendant on the Claimant's Bank Accounts No:

0119072090 and 0138967761 domiciled with the Defendant between the periods of 3rd February – May, 2020, without conducting due diligence was unlawful, illegal and unjustifiable thus actionable.

2. That the restrictions imposed by the Defendant on the Claimant's Bank Accounts No: 0119072090 and 0138967761 domiciled with the Defendant between the periods of 3rd February – May, 2020 greatly impacted negatively and caused serious hardship on the Claimant.

Now that I have come to the conclusion that Defendant was negligent and that such has caused hardship on the Claimant, I shall assuage the pain of

Claimant by compensating him in damages as claimed in relief 3.

General damages means such as the law itself implies or presumes to have accrued from the wrong complained of, for the reason that they are its immediate, direct and proximate result without reference to the special character or circumstances of the Claimant.

This is what the Judge can give without pointing out any measures by which they are assessed, except the opinion of a reasonable man.

Claimant has clearly suffered on account of careless and negligent conduct of the Defendant and is entitled to be assuaged in damages.

I hereby award the sum of N5,000,000.00 (Five Million Naira) as damages.

I also hereby Order Defendant to pay Plaintiff N1,000,000.00 (One Million Naira) being expenses incurred in an attempt to set aside the initial Order Nisi.

Above is the Judgment of this Court.

Justice Y. Halilu
Hon. Judge
8th March, 2022

APPEARANCES

Y.D. Dangana, Esq. with Wushi R.B., Esq. – for the Claimant.

AyotundeOgundeye, Esq. with Sunny O., Esq. and ChinyereOkonna, Esq. – for the Defendant.