

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON THURSDAY THE 3^{1ST} DAY OF MARCH 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. CV/2887/2020

BETWEEN

1. COASTERNERS ENGINEERING & BUILDING SERVICES LTD
 2. MR KOLA ADEGOKE ===== APPLICANTS
- AND
- ZENITH BANK PLC=====RESPONDENT

JUDGMENT

The Applicants filed this instant suit pursuant to Section 6(6), Section 34 (1)(a), 35(1)(c) and 36(1) of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended), Order IIRule 1, and Order IIIRules 1 and 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and under the inherent jurisdiction of this honourable court praying the Court for the following reliefs:

1. A DECLARATION that the UNWARRANTED AND UNJUSTIFIABLE restriction(s) placed on the 1st Applicant's account, with Account No. 1013950063 domiciled in the Respondent's Bank and being operated by the 2nd Applicant since January/February 2019 or thereabout is unlawful, illegal, and a gross violation of the Fundamental Human Rights of the Applicant as enshrined under Sections 34, 35, 36, and 44 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).
2. AN ORDER directing the Respondent to lift any restriction or embargo whatsoever placed on the 1st Applicant's account no. 1013950063

domiciled in the Respondent's Bank without a valid Court Order, with immediate effect and without further delay.

3. AN ORDER of perpetual injunction restraining the Respondent from further placing any restriction or embargo on operation of the 1st Applicant's account without following due process of law.
4. AN ORDER for the payment of the sum of N300, 000, 000.00 (three hundred million naira) only by the Respondent as compensation for the continuous violation of the Applicants' fundamental human rights since January 2019 as well as the tendering of an unreserved apology to the Applicant for the infringement of the aforesaid rights.
5. And for such further orders or orders as the Honourable Court may deem fit to make in the circumstances in this case.

The grounds upon which the Applicants are seeking the above reliefs are as follows:

1. That the 1st Applicant is a limited liability company registered under the relevant laws of the Federal Republic of Nigeria carrying on the business of engineering services and had at all material time been rendering services to many Government agencies while paying its taxes as at when due until the restrictions placed upon its account by the Respondent herein prior to the filing of this application.
2. That the Respondent had never at any time notified the Applicants as required by law or contract as to the reason why restriction (s) is placed on the 1st Applicant's Zenith Bank account No. 1013950063 or reason(s) why the restriction cannot be removed.
3. That the Applicants' business has suffered heavily and the 2nd Applicant is unable to pay the numerous staff of the 1st Applicant on and off-site and the 1st Applicant has not been able to execute other contracts that had hitherto been awarded to it because of this restrictions.

4. That the Applicant's rights to personal dignity, liberty, freedom, business interest, and other fundamental rights were grossly infringed upon by the Respondent and will likely be further seriously jeopardized if the Honourable Court does not intervene as there are strong indications that Respondent's action may totally ground the operations of the Applicants which had already been subjected to more precarious treatment.

The facts that gave rise to this instant suit are as follows;The 1st Applicant has an account domiciled in the Respondent and the 2nd Applicant is a director, shareholder, and the sole signatory to the account. That sometime in January/February 2019 or thereabout the Respondent without any lawful justification placed a restriction on the said account. That while 2nd Applicant was trying to withdraw funds from the account 1013950063 of the 1st Applicant domiciled in the Respondent, in order to release the said funds for capital projects awarded to the 1st Applicant,2nd Applicant suddenly discovered that the account has been blocked. That 2nd Applicantmade efforts at communicating through mails and phone calls to the Branch office of the Respondent to find out why he was unable to operate the 1st Applicant's account, but the Respondent refused, neglected, and failed to respond positively to any of Applicants personal communication or that of their solicitor.That the restriction (s) placed on the 1st Applicant's account without any valid Court order has affected its business adversely as the 2nd Applicant had to resort to borrowing to pay the 1st Applicant's staff salaries since February 2019 or thereabout until he could no longer do so and many of the staff left with unpaid salary arrears, and the 2nd Applicant also finds it difficult to feed his family.

Attached to the originating motion is a seven (7) paragraphs affidavit with 6 exhibits marked Exhibit K1 to K6. Also filed is a written address wherein Applicants' Counsel raised two issues thus;

1. Whether the unlawful and unwarranted restriction(s) placed on the 1st Applicant's account making it impossible for the 2nd Applicant to operate

- since January/February 2019 or thereabout is not a gross violation and/or infringement of Applicant's right under Sections 34, 35, 36, and 44 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)?
2. Whether the Respondent is not liable to offer a public apology and pay adequate compensate the Applicants for the gross violation of their fundamental human rights for the unwarranted restrictions placed on their Bank Account with the Respondent?

Counsel arguing the issues submitted that from the facts as deposed in the affidavit, the rights of the Applicants have been infringed upon, are being infringed upon, and may likely be infringed upon if this Honourable Court does not intervene to enforce the Applicant's rights. Submitted that from paragraphs 4a, 4b, 4d, 4f, 4g, 4h, 4i, 4k, 4l, and 4m of the affidavit it shows clearly how without any legal basis or justification, the Respondent restricted the Applicants from having access to their accounts thereby crippling their operations against creditors expectations. Counsel submitted further that the actions leading to the restrictions purportedly placed on the 1st Applicant account without any legal justification constitute public embarrassment, ridicule, and dehumanizing treatment of the Applicants and thus amount to a gross violation of their fundamental rights under Section 34 of the 1999 Constitution.

Submitted that although it may be argued that the Applicants were never arrested or detained physically, but a restriction placed on Applicants means of survival such as a corporate Bank Account, is akin to the arrest and detention of the Applicants themselves. Submitted that the mere restriction placed on the 1st Applicant's account without any valid Court Order, is tantamount to evicting it forcefully from its legitimate place of business and thus constitutes a gross violation of the Applicant's right under Sections 35 of the 1999 Constitution (as Amended) which Applicants are entitled to compensation and an apology from the Respondent and it is immaterial that the Respondent intends to remove or lift the said restriction after a while.

Submitted further that the actions of the Respondent brought untold hardship on the Applicants who had been unable to conclude the execution of some construction projects awarded to it as a result of the unwarranted restriction(s); having been crippled financially and are now feeding from hand to mouth as they have no other source of livelihood. The resultant effect is that the 1st Applicant's right to freely move and do its business has been seriously curtailed by the Respondent which unnecessarily violates its right to freely operate its business as guaranteed under Section 41 of the Constitution.

Counsel submitted further that it is crystal clear from the affidavit evidence that neither the 1st nor the 2nd Applicant was notified or invited by the Respondent before a restriction was placed on the 1st Applicant's Bank account, which amounts to a breach of the Applicants' right as guaranteed under Section 36 of the 1999 Constitution (As amended), and thus the Respondent is liable to pay the Applicants who run legitimate businesses, for the hardship caused to them as a result of the unlawful restriction placed on the 1st Applicant's account without prior notice.

Counsel submitted finally that the unwarranted restriction placed on the 1st Applicant's account domicile with the Respondent without following the prescribed manner amounts to a breach of the Applicants' fundamental rights to own a moveable property.

Counsel therefore urged the court to resolve the two issues raised in favour of the Applicant and grant the reliefs as claimed in this application.

Counsel relied on the following cases:

1. Ekpu V. A.G Federation (1998) | H.R.L.R.A 391 at page 421
2. Chime & Ors V. Chime (1995) 6NWLR Part 404 page 734 at 765,
3. Nwangu V. Duru (2002) 2 NWLR Part 751, page 265 at page 279
4. Dibia V. Igwe (1998) 9NWLR Part 564 page 78 at page 85,
5. Kaigama V.Namnai (1996)4NWLR Part 441 page 162 at page 169

6. Denloye V. Medical & Dental Practitioners Disciplinary Committee (1968)
All NLR 306
7. Adeniyi V. Gov. Council, Yabatech (1993) 6NLWR Part 300 page 426 at
page 450
8. Guaranty Trust Bank V. Mr Akinsiku Adedamola & 2ors in Appeal No
CA/L/1285/15 delivered on March 1, 2019,

The Respondent in opposing this application, filed a preliminary objection and the accompanying documents praying the Court to dismiss or strike out this suit. Also filed is a counter affidavit of 28 paragraphs to the Applicant's originating application with one exhibit attached and marked as Exhibit ZB1 praying the court to dismiss the suit or strike out same.

The grounds for the Respondent's preliminary objection are that it is improper and incompetent to join two or several applicants for the purpose of securing the enforcement of their fundamental rights and that the instant suit/action is not maintainable by recourse to the Fundamental Rights Procedure and as such this Court lacks the requisite jurisdiction to hear and/or determine this instant suit as same has not been initiated by due process of law. In support of the Notice of Preliminary Objection, the Respondent/Applicant filed a 12 paragraph affidavit, sworn to by Remigius Ugwu and attached to the affidavit is an Exhibit, marked as Exhibit ZB1.

Counsel in the preliminary objection raised a sole issue for determination which is closely related with the first issue raised in the written address attached to the counter affidavit opposing the substantive originating motion. The Respondent in the counter affidavit stated that the Respondent did not freeze the applicant's account but placed a restriction on the said account for 72 hours in compliance with the lawful instruction of the EFCC. Attached to the Originating summons, is a document marked as Exhibit ZB1, which is the letter

from EFCC to the Respondent. Also filed is a written address raising two issues for determination as follows;

1. "Whether from the provision of the Fundamental Rights (Enforcement Procedure) Rules 2009, Rules of Court and Practice as well as the provision of the 1999 Constitution of the Federal Republic of Nigeria (as Amended), the Applicants' suit is properly instituted?"
2. "Assuming but not conceding that the Applicants' suit as presently constituted is properly instituted, Whether having regard to the facts and circumstances of this case, the Applicants have made out any case for the Respondent to answer, to necessitate the court granting the reliefs sought".

Counsel arguing the 1st issue which is the same issue raised in the preliminary objection submitted that the 1st and 2nd Applicants cannot file an application for the enforcement of fundamental rights as the right allegedly violated is personal to individuals and the Applicants failed to bring their application separately or in a representative capacity and the nullity of the initiating process is very fundamental and goes to the root of the action. Counsel urged the Court to hold that the instant application/suit filed by the 1st and 2nd Applicants is defective, incurably bad, and therefore incompetent to invoke the jurisdiction of the Honourable Court to entertain this suit.

Counsel submitted further that from the facts deposed to in the Applicants' Affidavit in Support of the Originating Summons, this suit cannot be validly brought by an application under the Fundamental Rights (Enforcement Procedure) Rules, 2009, for alleged unwarranted blockage of the Applicants' accounts maintained with the Respondent/Applicant. Submitted that nowhere in the supporting Affidavit did the Applicants specifically show how the Respondent by its action or inaction violated or threatened to violate the constitutionally guaranteed rights of the Applicants to ownership of movable and/or immovable property. Counsel submitted finally that where a person alleges the breach of his rights as opposed to his fundamental rights in the

manner done in this instant suit, the action could be brought by Writ of Summons and urged the Court to hold that this Court lacks requisite jurisdiction to entertain this case on the basis that the Applicants incompetently instituted this suit and the Court accordingly lacks jurisdiction to entertain and adjudicate the instant suit.

Arguing the second issue which is "Assuming but not conceding that the Applicants' suit as presently constituted is properly instituted, Whether having regard to the facts and circumstances of this case, the Applicants have made out any case for the Respondent to answer, to necessitate the court granting the reliefs sought, Counsel submitted that the Applicants have not made out any case for the Respondent to answer to necessitate the Court granting the reliefs sought against the Respondent.

Counsel submitted that there is no law barring any agency from conducting investigations where necessary in relation to any crime, however, it behooves such agency to do so within the ambit of the law as Section 44 (2) (k) of the constitution has given these agencies the right to take temporary possession of movable and immovable properties for the purpose of investigation or inquiry. Submitted further that Section 7 (1) & (2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004, in effect empowers the EFCC to set in motion the process of investigation where there is an allegation of commission of crime. Submitted that Section 6 (5) (b) of the Money Laundering (Prohibition) Act, 2011(as amended), reveals that the Economic and Financial Crimes Commission Chairman has the power to freeze any account under investigation, however such restriction is not meant to exceed the 72 hours prescribed by law. Counsel submitted that the restriction placed on Applicant's account was lifted after 72 hours and there is no evidence of any failed transaction in respect of the said account number encountered/recorded by the 1st Applicant since the restriction was lifted. Submitted that the Respondent's obedience to the directives of an agency of the government while exercising due caution as

required by the law will never constitute an infraction in the instant case rather to do otherwise would inevitably attract sanctions, Counsel submitted finally that there is a legal and civic obligation on the part of the Respondent to comply with the directives of the EFCC especially in the manner it has done as in the instant suit and therefore cannot be faulted on that ground and urged the Court to dismiss the Applicant's case.

The Respondent's Counsel relied on the following cases:

1. R.T.F.T.C.I.N vs Ikwecheigh (2000) 13 NWLR Part 683
2. Mr. Solomon Kporharor & Anor. vs Mr. Michael Yedi & Ors. (2017) LPELR-42418 (CA)
3. Udo vs Robson & Ors (2018) LPELR 45183 (CA)
4. Braithwaite vs Skye Bank Plc (2013) 5 NWLR (pt1346) pp 18 paras. E-F; 22,
5. Madukolu vs Nkemdilim (1962) 1 All NLR 581 at pages 589-590,
6. Tukur vs Government of Taraba State (1997) 6 NWLR (Pt 510) 549.
7. Egbuonu vs Borno Radio Television Corporation (1997) 12 NWLR (PT 531) 21;
8. W.A.E.C vs Akinkunmi (2008) 4 SC 1 at 16-18,
9. Bello vs Attorney General of Oyo State (1986) 5 NWLR (Part 45) 828 at876.
10. Uwazuruonye vs Gov. Imo State (2013) NWLR Pt 1355 at pg 28 p. 56-57.
11. Fidelity Bank Ple vs Onwuka (2017) LPELR-42839 (CA)
12. Tournier vs National Prudential Bank of England (1923) All ER 550 (1924) 1 KB 461.
13. Aminu Tanko vs the State (2009) 4 NWLR (PT. 1131) 430;
14. C.C.B. (NIG) Ple vs AG Anambra State (1992) 8 NWLR (PT261)528.
15. Chartered Brains Ltd vs Intercity Bank Plc (2009) 49WRN 111.

In opposing the preliminary objection, the Applicant filed a 5 paragraph Counter affidavit and a written address wherein Counsel raised a sole issue which is Whether the Respondent's application on technical grounds can be used to defeat the Applicants' application for the enforcement of their fundamental human rights infringed upon by the Respondent.

Counsel submitted that there is nowhere in the constitution of the Federal Republic of Nigeria 1999 as amended, that a party or parties are precluded from bringing an action jointly as Applicants.

Counsel submitted that the subject matter complained of comes within the contemplation of chapter IV of the 1999 Constitution as well as the African charter on Human and Peoples Right (Ratification and Enforcement) Act as the unlawful act of the Respondent without fair hearing and due notice to the Applicant has unfairly and seriously affected the livelihood, dignity, and the right to own movable property of the Applicants. Counsel therefore urged the Court to dismiss the preliminary objection filed.

Counsel relied on the cases of;

1. Peenok Investment Ltd v. HOTEL Presidential (1982) 12 5. page 1
2. Bello v. INEC 2ORS (2010) 2-3 S part II page 128 at page 157 paragraphs 10-15
3. Chime & Ors V. Chime (1995) 6NWLR Part 404 page 734 at 765,

I have examined the entirety of the Applicant's application, together with the preliminary objection and counter affidavit of respective parties and in determining this instant suit, this Court will first resolve the preliminary objection filed by the Respondent to determine whether or not this Court has jurisdiction to entertain the substantive suit. In doing so, the issue to be resolved is "Whether this suit as filed is competent for this Court to entertain same."

The Respondent in the preliminary objection is contending that it is improper and incompetent to join two or several Applicants for the purpose of securing the enforcement of their fundamental rights. The Applicant in opposing the application contended that the interest of the parties in this case are closely interwoven as the 2nd Applicant is the sole signatory to the 1st Applicant's account.

The law is well noted that fundamental rights are rights that are considered to be claims of their own kind (*sui generis*) and enjoy different procedural rules, which is the fundamental right (Enforcement Procedure) Rules 2009 (RREP Rules).

By virtue of Order II Rule 1 of the FREPRules any person who alleges that any of the fundamental rights provided for in the Constitution and to which he is entitled has been being or is likely to be infringed may apply to the Court in the state where the infringement occurs or is likely to occur for redress. As right submitted by Respondent's Counsel fundamental rights under chapter IV are viewed as inherent to each person as can be seen in introductory words in Section 46(1) of the 1999 Constitution of Nigeria (as amended).

Section 46(1) of the 1999 Constitution which provides for the right of action in fundamental rights enforcement used a singular language as follows.

"Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress".

Looking at the above provision, it can be said that the use of the word "any" connotes singular. Be that as it may, the law is trite of interpretation of statutes that words in the singular which are used in a statute are interpreted to include the plural and words in the plural to include the singular. See Section 14b of the Interpretation Act Cap. 192 LFN 1990. Thus, for fundamental right proceedings,

the preamble of the Rules which is made pursuant to section 46(3) of the 1999 Constitution is to the effect that

“The Court shall constantly and conscientiously seek to give effect to the overriding objectives of these Rules at every stage of human rights action, especially whenever it exercises any power given it by these Rules or any other law and whenever it applies or interprets any rule.

Hence, the use of the word any person can be said to also be read in the plural in view of Section 14 b of the Interpretation Act.

The Supreme Court have on several occasions given judgments in Fundamental right cases where there are joint applicants. Although the issue of joint application was not raised in the **Diamond Bank PLC VS. OPARA & 2 ORS** case of **FIRST BANK OF NIGERIA PLC & 4 ORS VS. A.G FEDERATION (2018) 7 NWLR (pt. 1617)**, the supreme Court delivered judgments in these cases which clearly has joint Applicants. This therefore goes to show that the Supreme Court has reinforced the preamble of the FRER Rules which allows joint applications as well as the provisions of Section 14 of the interpretation Act which requires that in the interpretation of Section 46(1) of the 1999 Constitution, the singular word “*any person*” should be construed to include “*persons*”. This is the position of the Court in the case of **INCORPORATED TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE & ORS v. NIMC (2021) LPELR-55623(CA)** where the Court held that

“I would still, even if perfunctorily, consider the legal position on joint applicants in an application for the enforcement of fundamental rights. There has been a good number of conflicting decisions of this Court on the point, the most recent decisions which I was able to find being GOVT OF ENUGU STATE vs. ONYA (2021) LPELR - 52688 (CA) delivered by the Enugu Division on 28th January, 2021, which held that joint applicants can bring an application to enforce fundamental

rights. Au contraire, in AEDC vs. AKALIRO (2021) LPELR - 54212 (CA) which was delivered by the Makurdi Division on 31st March, 2021, it was held that an application by joint applicants was incompetent. The right to seek redress for evisceration of fundamental rights is by Section 46 (1) of the 1999 Constitution vested in any person. The said stipulation reads: "Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress." See also Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, which is similarly worded for any person to seek redress. The critical question is whether the phrase any person as used in the provision can be construed to include more than one person or whether it is limited to only one person. Where it is wide enough to include more than one person, then it necessarily follows that joint applicants can be bring an application but where it cannot be so construed then an application by the joint applicants will be incompetent. Let me hasten to state that even if the phrase any person denotes singular, by Section 14 of the Interpretation Act, in construing enactments, words in the singular include the plural and words in the plural include the singular. See COKER vs. ADETAYO (1996) 6 NWLR (PT 454) 258 at 266, UDEH vs. THE STATE (1999) LPELR (3292) 1 at 16-17 and APGA vs. OHAZULUIKE (2011) LPELR (9175) 1 at 24-25. Furthermore, the adjective employed in the provisions of Section 46 (1) of the 1999 Constitution and Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 is any. It qualifies the noun, person. The Merriam-Webster Online Dictionary defines the word any as an adjective which could be one or more, an undetermined number and when used as a pronoun, the word any can be singular or plural in construction. See also the online

dictionary, Dictionary.com. So the word any and the phrase any person cannot be construed as referable and restricted to an individual. No. It conduces to more than one individual. In the circumstances, it is my considered and informed view that in so far as the applicants have a common grievance and common interest, and that it is on the same factual situation that they predicate the evisceration of their fundamental rights, they can bring a joint application for redress. It is for the foregoing reason and the more elaborate and comprehensive reasoning and conclusion in the leading judgment of my learned brother, that I avow my concurrence with the conclusion in the leading judgment that joint applicants can bring an application for the enforcement of their fundamental rights.”

Consequently, going by the above authority, it is my view and I so hold that the Applicants, having a common interest in the alleged infraction, particularly as the 2nd Applicant is the alter ego of the 1st Applicant, the instant suit can be filed jointly for redress.

The Respondent is also contending that from the facts deposed to in support of the Applicant’s case, this suit cannot be validly filed under the fundamental rights enforcement Rules (2009) for the alleged unwarranted blockage of the 1st Applicant’s account maintained with the Respondent as the subject matter of the application does not fall within the matters provided for under Chapter IV.

In an application for the enforcement of fundamental rights, it is a condition precedent that the enforcement of the fundamental right should be the main claim and not an accessory claim and where the main or principal claim is not the enforcement of a fundamental right as it relates to Chapter IV of the Constitution, the jurisdiction of the Court cannot be properly invoked, and the suit would be incompetent. In order to determine whether the action of the Applicant is appropriately commenced under the FREP Rules all the Court is required to examine at this particular point are the reliefs as claimed by the

Applicant to decipher whether the reliefs are such that can stand on alleged violation of any of the fundamental rights guaranteed by Chapter IV of the Constitution. The Applicant in relief 1 which is the principal relief is seeking for

“A DECLARATION that the UNWARRANTED AND UNJUSTIFIABLE restriction(s) placed on the 1st Applicant's account, with Account No. 1013950063 domiciled in the Respondent's Bank and being operated by the 2nd Applicant since January/February 2019 or thereabout is unlawful, illegal, and a gross violation of the Fundamental Human Rights of the Applicant as enshrined under Sections 34, 35, 36, and 44 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).”

The above relief which is the principal reliefs seeking for a declaration that the unjustified restriction of the 1st Applicant's account of violation of the Applicant's fundamental rights to dignity, personal liberty, fair hearing, and right against compulsory acquisition of property, which are rights guaranteed by Chapter IV of the 1999 Constitution. Whether or not these claims are meritorious is not what this Court is however entitled to determine at this stage of the proceedings but will be dealt in the latter body of this judgment.

Now going to the substantive claim, the issue to be determined is “**whether the Applicants have made out a case to be entitled to the reliefs sought**”. It is Applicants' contention that the unlawful and unwarranted restrictions placed on the Applicants' account amounts to a gross violation of section 34, 35, 36 and 44 of the 1999 Constitution.

The Respondent is contending that the said restriction was done in compliance with the law and this suit as presently filed for unwarranted blockage of Applicant's account maintained with the Respondent cannot be maintained under the FREP Rules. The question therefore that begs to be answered at this point is whether or not this claim as constituted can be maintained under the

FREP Rules. To answer this question, it will be pertinent to look at the provisions in Chapter IV alleged to have been breached by the Respondent in this suit. The said sections are section 34, 35, 36 and 44 of the 1999 Constitution. These provisions provides as follows:-

34- Every individual is entitled to respect for the dignity of his person.

35- Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law -

36- In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality

44- No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things.

As it relates to Section 34 and 35 which deals with dignity of human persons and right to personal liberty; the Applicants are contending that the unwarranted restriction on the 1st Applicant's account has infringed on the Applicants right to dignity and personal liberty as the inability of the 1st Applicant to access its account drove the 2nd Applicant to resort to borrowing to

pay the 1st Applicant's staff salary as well as inability of the 2nd Applicant to feed his family. From the contents of the affidavit the alleged infraction was done against the 1st Applicant and not the 2nd Applicant, as it is the 1st Applicant (a company) whose account was allegedly restricted. The law is trite that a company can enforce any provision of Chapter 4 of the 1999 Constitution which applies to it. See the case of **ONYEKWULUJE V. BENUE STATE GOVT. (2005) 8 NWLR (pt. 928) 614.**

However, unlike cases with a natural person, not all the rights provided for in Chapter 4 of the 1999 Constitution applies to a company or an artificial person. Examples of such right that only ensures to natural persons are right to life, right to human dignity, and privacy of family life right to personal liberty, or right to freedom of movement. These rights are incapable of being applied to artificial person hence cannot be enforced by them as having been infringed as it relates to them. However, other rights such as right to fair hearing, right to freedom of expression, freedom from discrimination and right to freedom of compulsory acquisition of property are both available to artificial and natural persons. See the case of **FIRST BANK OF NIGERIA PLC V. A.G. FEDERATION (supra).**

Hence, looking at the claim of the Applicants it is my view that the Applicants have not successfully proved that their freedom of personal liberty and dignity of human person has been infringed upon as it was the 1st Applicant's account that was restricted and Section 34 and 35 of the 1999 Constitution cannot be invoked by an artificial person. The said breach of these rights cannot stand against the 1st Applicant, and I so hold.

The Applicants are also urging on the Court to declare that the unwarranted and unjustified restriction of the 1st Applicant's account amounts to a violation of the Applicant's fundamental right provided for in Section 36 and 44 of the 1999 Constitution, which provides that a person shall be entitled to a fair hearing within a reasonable time by a court and no moveable property or any interest in

an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law, respectively.

The Applicants from the affidavit evidence attached in proof of their case, stated that sometime in December 2018/January 2019, while 2nd Applicant was trying to withdraw funds from the account no. 1013950063 belonging to the 1st Applicant domicile with the Respondent, he discovered that the account has been blocked. That several other attempts were made to withdraw or transfer funds from the said account to no avail. That he made several efforts to communicate with the Respondent via mails and calls to inquire why he was unable to withdraw from his account, but the Respondent failed to respond to all Applicants efforts which prompted 2nd Applicant to instruct the 1st Applicant's solicitors to write to the Respondent which is Exhibit K5. That the 1st Applicant's account was restricted without obtaining a Court order. That the Respondent failed to exercise caution before placing restriction on the Applicant's account else it would have contacted the Applicants informing them of the development. That because of the action of the Respondent, the Applicants right to fair hearing amongst other rights were breached.

On the other hand, the Respondent from their counter affidavit stated that it placed a restriction on the said account in compliance with the lawful instruction of the Economic and Financial Crimes Commission (EFCC), via its letter as in Exhibit ZB1, which said restriction was lifted on the 11th of January 2019. That the Respondent did not freeze the account of the 2nd Applicant at any time whatsoever as the said Account no. 1013950063 is a corporate account to the 1st applicant only.

Having carefully perused the affidavit evidence of the Applicant and the Respondent, the question to be answered at this point is whether the Applicant's account was restricted by the Respondent without due process of

the law thereby violating the fundamental right of the Applicant? The Applicant in proof of the fact that there was a post no debit on his account, tendered Exhibit K8 titled “COMPLAINT OVER THE UNWARRANTED RESTRICTION(S) PLACED ON ACCOUNT NO. 1013950063 BELONGING TO COASTERNES ENGINEERING & BUILDING SERVICES LTD: DEMAND FOR COMPENSATION” wherein the Applicant’s solicitor brought the Applicant’s predicament to the attention of the Respondent. The Respondent on their part did not respond to the said letter. However, from the contents of their counter affidavit, the Respondent are not denying that it indeed restricted the 1st Applicant’s account. The admission by the Respondent is sufficient proof that the Applicant’s account was unilaterally restricted by the Respondent without due process.

Be that as it may, can it be said that the said restriction placed on the Applicant’s account constitute a breach of the Applicant’s fundamental human right as provided for in Sections 36 and 44 of the 1999 Constitution. Section 44 of the 1999 Constitution provides

44. (1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things –

Subsection 2 of Section 44 provides thus:

(2) Nothing in subsection (1) of this section shall be construed as affecting any general law.

(a) (b) (c) ----- (d) (e)(f) (g)
.....(h) (i) (j)

(k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;

Now looking at the above, when the provisions of Section 44 (1) and (2) (k) of the 1999 Constitution are read together, it would be obvious that Section 44 (2)

(k) is part of the provisions that are intended to derogate from the provisions of Section 44 (1). Section 44 (2) (k) of the Constitution provides that nothing in sub-section (1) of Section 44 of the Constitution shall be construed as affecting any general law relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry. It is clear from paragraphs of the Counter-Affidavit that the said restriction carried out on the Applicant's account was due to the letter from EFCC wherein it stated that the 1st Applicant's account is under investigation.

Whether the said restriction was done in accordance to the rule of law is not one that can be determined under the Fundamental Right enforcement procedure.

Section 44(2)(k) of Constitution has validated by its making an exception the temporary seizure of property suspected to be proceed of some unlawful activities during investigation from the general prohibition against the taking "possession compulsorily" of any property under Section 44(1) of the Constitution. See the case of DANGABAR v. FRN (2014) 12 NWLR (pt. 1422) 575 at page 607 wherein the Court held that

"the rights to acquire and own property guaranteed by Sections 43 and 44 of the Constitution are not absolute and that "Section 44(2)(k) of the said Constitution creates (an) exception". The provisions of Section 44(2)(k) of the Constitution intends that nothing in subsection (1) of Section 44 of the Constitution shall be construed to prohibit the temporary taking of possession of property (subject of an investigation or enquiry) for the purpose of the said investigation or enquiry.

It is my view and I so hold that the said restriction placed on the Applicant's account admittedly not done in accordance with the law, the claim of the Applicant cannot be sustained under Section 44 of the 1999 constitution.

The Applicant is also urging on this Court to hold that the said restriction on the Applicant's account was done in violation of Section 36 of the 1999 Constitution.

For the Applicants to be entitled to redress, Applicant must first produce reasonably sufficient and credible evidence before the Court to show and satisfactorily establish a real and factual breach or contravention of the right alleged. Until such evidence is produced, which prima facie shows or establish a factual breach or contravention of this fundamental rights guaranteed under Chapter IV of the Constitution, the application before a Court for the enforcement of such right will fail and be dismissed out-rightly. The Respondent on their part submitted that there is no law barring any agency from conducting investigations where necessary in relation to any crime, however, it behoved on such agency to do so within the ambit of the law. The question therefore is, was the said restriction done in violation of Section 36 of the 1999 Constitution? The Respondent have not denied that they indeed restricted the Applicant's account but said restriction was done in accordance in compliance with Section 7 (1) and (2) and Section 38 of the Economic and Financial Crimes Commission (Establishment) Act 2004; Section 21 and 6(5) (b) of the Money Laundering Act.

Now looking at Section 36, the entirety of the said provision is in relation toright to a hearing that is fair within a reasonable time in any lawful court or tribunal in the Country to enforce his/her rights against any Government or person, and such a Court or tribunal shall be formed in a way to secure its independence and impartiality.

This provision cannot be said to prevail in circumstances such as the facts as stated in this instant case. The act of freezing the 1st Applicants account cannot be said to amount to a breach of the Applicant's right to fair hearing.No doubt the unwarranted and unjustified restriction amount to an infraction. That

infraction cannot therefore be said to constitute a breach of Applicant's right as provided for under fair hearing.

Although there is an undisputed fact that the account was restricted, there are laws that allow for the restrictions of account such as the EFCC Act and Money Laundering Prohibition Act 2011.

It can be said that the Constitution in Section 36(2) provides for where fair hearing can be dispensed with.

The said section provides:

Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law

36 (2)(a) provides

“provides for an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person”

The above provisions gave an exception to laws that authorises any government or authority power to determine issues that affect the rights of a person as long as the person whose rights may be affected is afforded an opportunity to defend himself before the authority that is to administer a sentence or take any decision that would affect such a person's rights and obligations. This therefore means that if the law allows for the right of the person to be affected to have representation, it would be said that the right of that person was breached if a decision was reached in their absence.

Section 34(1) of the Economic and Financial Crimes (Establishment) Act 2004, provides as follows:

34 (1) Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorized by him may, if satisfied that the money in the account of a person is made through the commission of an offence under this Act or any enactments specified under Section 7 (2) (a)-(f) of this Act , apply to the Court ex-parte for power to issue or instruct a bank examiner or such other appropriate regulatory authority to issue an order as specified in Form B of the Schedule to this Act, addressed to the manager of the bank or any person in control of the financial institution where the account is or believed by him to be or the head office of the bank or other financial institution to freeze the account.

The above law therefore dispenses with the representation or notification of the Applicant before the freezing of an account as such application can be made ex-parte.

I completely agree with the Applicants' Counsel's argument that the Respondent ought not to obey the directive of the EFCC without a Court order, however, the restriction of the 1st Applicant's account without a valid Court order cannot successfully be dealt with under Section 36 of the 1999 Constitution or any of the provisions of Chapter IV of the 1999 Constitution. The constitution is clear as to the rights that can be sued by an Applicant upon any violation and this case under contemplation cannot stand under any of the provisions of chapter 4 of the 1999 constitution. I agree with the Respondent's Counsel that this case cannot successfully be dealt with under the Fundamental Right enforcement Procedure Rules, consequently, the Applicant's case is hereby struck out.

Parties: Absent

Respondent:AdetolaOlulenuEsq. appearing for the Applicant. B. C. Uzoma appearing for the Respondent.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
31/03/2022**