IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 29TH DAY OF APRIL,2022

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO. FCT/HC/CV/2587/18

BETWEEN:

IGWE ANN OLACHI...CLAIMANT

AND

1. **GUARANTY TRUST BANK PLC**
2. **ECONOMIC AND FINANCIAL CRIMES COMMISSION(EFCC).....................................DEFENDANTS**

JUDGMENT

In an amended suit on the 10th May, 2019 Ann IgweOlachi filed this amended suit against the GTB and EFCC. The amendment came when Court granted the application to the 1st Defendant to join the 2nd Defendant. The Plaintiff seeks the following reliefs:

1. A Declaration that the freeze of her Account domiciled in the Wuse II Branch of GTB since June 2015 is illegal unlawful and oppressive and a breach of the Banker-Customer relationship between her and the 1st Defendant-GTB-Account No.0052662303
2. An Order directing the 1st Defendant to unfreeze her Account so domiciled in their bank.
3. An Order restraining the Defendant their agents, privies ,staff, assigns and other persons acting for and on their behalf from further restricting her from operating the Account.
4. N50,000,000.00 (Fifty Million Naira) as General Damagesagainst the 1st Defendant for freezing the said Account breaching the Banker-Customer relationship duty of care and for hardship caused her for the illegal action of the Defendant.

The Plaintiff did not make any claim against the 2nd Defendant. The said 2nd Defendant never participated in the proceeding they never filed any process in defence of the suit though they were served with all the processes in this suit.

The Plaintiff called one witness herself. She testified and was cross examined. She tendered 3 exhibits-Letter of her solicitor for the release of

her Account-the CTC of Judgment of Ashi j of the blessed memory in the case FCT/HC/CV/2407/15 Between Ann Igwe Olachi Vs EFCC.

The 1st Defendant called one witness and tendered a document –the 2nd Defendant letter/instructing to 1st Defendant to put a post no bill on the Plaintiff's Account.

It is the case of the Plaintiff that she opened Account with 1st Defendant at their Wuse II Branch. That sometimes in June 2015 she went to do some transaction on the account and was told that there is an "Order" of post no debit on the Account after she has waited for some time. But that prior to that the 2nd Defendant arrested interrogated and detained her over an issue involving her former boss-Abdulrasheed Maina, who was involved in Pension fraud. She filed a suit against the 2nd Defendant challenging her detention in suit FCT/CV/2407/15. She won the case and was awarded N200,000.00 (Two Hundred Thousand Naira) only as damages. When she could not access her property she filed a suit before this Court and won the case too.

But because she could not access her money in the Account she filed the present case seeking for an Order of this Court for the Defendants to

release her account. It was because she could not access her Account that made her to instruct her lawyer to write exhibit 1. She testified in Court and tendered 2 other documents in support. Urging Court to grant her all the reliefs as sought.

On their part the Defendant called only one witness. They tendered a document. The Defendant did not deny holding the Account of the Plaintiff but said that they did not freeze the Account rather that they put a post no Debit. That the Account allowed money to be deposited but they did not allow withdrawals to be made. That the action of the 1st Defendant is based on the instruction of the 2nd Defendant as contained in the letter written to them to withhold the Account. The Defendant Counsel tried to make a distinction between freezing Account and posting no debit on the Account.

The Plaintiff Counsel claimed that the 1st Defendant acknowledged receipt of the letter written to them by Plaintiff's Counsel but refused to reply to it. That refusal of the 1st Defendant to act on the letter show that the Defendant had accepted their "guilt" and admitted their wrong. He relied on the case of:

TILEY GYADO & CO NIG. LTD VS. ACCESS BANK PLC(2019) ALL FWLR (PT.1016) @359 PARA 7

That the 1st Defendant did not controvert the averments of the Claimant that the Plaintiff visited the Banking Hall of the 1st Defendant to make some transaction but was refused to do so by the 1st Defendant. That 1st Defendant did not deny that Plaintiff went to the said Bank several times to ask that the ban be lifted but it was refused. That all that amount to 1st Defendant admitting those facts and the Plaintiff's claim. He referred to the case of:

NTA VS. AIC LTD (2020) ALL FWLR (PT.1027) 794 @798

He urged the Count to so hold.

On the Exhibit 3, the Plaintiff Counsel held that the Letter written to the 1st Defendant by 2nd Defendant is a public document and as such is not qualified to be admitted as proper foundation was not laid for its reception as an exhibit. He referred to S.109 EA. He relied on the case of:

UMOGBAI VS. AIYEMHOBA (2002) ALL FWLR (PT.132) 192 @198 A-D

NORTHWEST ENERGY NIG. LTD VS. IBAFON OIL LTD (2014) LPELR-24133(CA)

That Exhibit 3 tendered by the Defendant was not certified and should therefore be expunged. That there was no justification to admit Exhibit 3 as it failed to meet the provisions of: S.89 & 90 EA 2011 as amended.

That 1st Defendant did not deny that there is a banker-customer relationship between it and the Plaintiff. That the restriction placed on the plaintiff account was based solely on the purported letter from the 2nd Defendant. That Claimant was denied access to her account for a period of 6years and still counting. That the Detention of the Plaintiff was declared unlawful and illegal by the Judgment of Court per Ashi J, of the blessed memory, and that N200,000.00 (Two Hundred Thousand Naira) only was awarded as damages. That the detention of Plaintiff property was declared unlawful and that Court ordered the immediate release of the said properties. That the Plaintiff visited the 1st Defendant for the release of her Account but all were to no avail and that her lawyer wrote to 1st Defendant but they did not reply.

In her Final written address the Plaintiff Counsel raised an issue for determination which is:

"whether the Denial of Access and failure of the of the 1st Defendant to allow the Plaintiff access to her account without a lawful Court Order is not a wanton breach of the Plaintiff's right and or banker-customer relationship between the Claimant and the Defendant."

He submitted that the denial of access to Plaintiff is unlawful, oppressive and breach of the Banker-Customer relationship. He referred to paragraph 2 & 7 of the plaintiff's statement of Claim and paragraph 2 & 5 of 1stDefendants amended statement of Defence and hold that there is a banker-customer relationship which the 1st Defendant breached. He referred to the case of:

FIDELITY BANK VS. ONWUKA (2017) LPELR-42839

ODUATE VS. FIRST BANK (2019) LPELR-47353(CA)

He submitted that denying plaintiff access to her account breach the 1st Defendant's duty to the Plaintiff to safe guard her money and pay on demand.

That 1st Defendant failed to abide by the laid down procedure and observe the legal requirement necessary for imposition of such

restrictions. That the 1st Defendant failed to get an Order of a Court before they placed restriction on the account. He referred to S.34(1) EFCC Act. He also relied on the case of:

ADEDAMOLA VS. GTB (2019) LPELR- 47310 (CA)

That action of the Defendant was wanton violation of the Claimants right and due process and that it made the Plaintiff to suffer untold hardship.

That Defendant breached its duty of care to Plaintiff and it fiduciary duty to pay money to plaintiff upon demand since her account was in credit at that time. He referred to the case of:

HABIB BANK VS KOYA (1992) 7 NWLR (PT.251)

That 1st Defendant furnishing 2nd Defendant with CTC of plaintiff's account opening statement, statement of account from inception and other relevant documents constitutes a breach of the 1st Defendants duty to Plaintiff and therefore violated the plaintiff's right to privacy under S. 37 1999 Constitution federal Republic of Nigeria (as amended).

That the Defendant did not follow due procedure required for the recognised exception to disclose those information as laid down in the case of:

TURNER VS. NAT.PRUDENT BANK OF ENGLAND (1923) ALL ELR 550

And as followed in the Nigerian case of:
FIDELITY BANK VS. ONWUKA Supra.

That the Defendant failed to ascertain the existence of same and obtain it from the 2nd Defendant amounts to a breach of the 1st Defendants fiduciary duty of care. It also betrayed and breached its duty of confidentiality.

Again that 1st Defendant failed in its contractual duty to accede to the demand for payment by the plaintiff as shown in paragraph 8 of her written Address.

Again that since the 1st Defendant breached those fiduciary duties that they are liable to pay damages to plaintiff for breach of contract. He relied on the decision on the following cases:

WEMA BANK VS OSILARU SUPRA.

ALLIED BANK VS AKABUEZE SUPRA.

BANK OF THE NORTH VS SALEH SUPRA

BALOGUN VS BANK OF THE NORTH

That the bank had earlier in 2018 admitted its wrong by approaching the Plaintiff to admit its error and then asked her to go withdraw the Suit before the 1st Defendant can allow her access to her account. But Plaintiff refused to fall for that trap. That the witness of the1st Defendant refusing to lift the ban on the said account is malicious and that they are liable to pay punitive damages as well as general damages to the Plaintiff. The Plaintiff Counsel cited the case of:

UKPAI VS. OMOREGIE & ORS (2019) LPELR-47206(CA)

ADEDAMOLA VS. GTB(2019) LPELR-47310

That by the maxim of "Ubi Jus Ibi remedium"- "where there is a wrong there is a remedy".

Plaintiff counsel urged the Court to resolve the sole issue in her favour and hold that denial of access to Claimant to access her fund in the Bank is illegal, unlawful, oppressive and constituted a breach of Banker-Customer relationship between the parties. That Plaintiff had suffered tremendous hardship all these years that her account was restricted.

He urged Court to so hold and grant all her claims and award interest of 10% on the

Judgment sum and until Judgment sum is fully liquidated.

In their Final Address the 1st Defendant raised two issues for determination which are:

"Whether from the pleadings and evidence laid this Court can grant the declaratory Reliefs sought for as a matter of course solely on the weakness of the Defendants case."

"Whether the Court can grant ancillary Relief where the Plaintiff fails to prove its principal Reliefs."

That since the main Relief is declaratory that Plaintiff must succeed on the strength of her case and not on the weakness of the Defence or on any admission by the Defendant. That Plaintiff failed to show any evidence that when she tried to access her account via a Cheque issued or other means of withdrawal that she was refused access and such cheque dishonoured or marked with the phrase- "Drawers Attention Required"

That Exhibit 1 the Judgment of Late Ashi J., does not have any probative value since it cannot be used to prove that the 1st Defendant denied the Plaintiff access to her fund or that

after the Judgment there was still restriction on the account.

That under cross-examination PW1, the Plaintiff admitted that she has no document to show that she was denied access to the Account when she wanted to withdraw money there from. She only claim that her ATM which is her evidence is in her house not before the Court. That Court should not grant the said relief which is declaratory. He relied on the case of:

JUDICIAL SERVICE COMMITTEE & ORS VS. OMO (1990) 6 NWLR (PT.157) 407 @458-459

That the Plaintiff did not discharge the burden of proof of the declaratory Relief. He relied on the case of:

ALHASSAN & ANOR VS ISHAKU (2016) LPELR-40083

INEC VS ADELEKE (2019) LPELR-47545 (CA)

That Exhibit 1 has no nexus with the 1st Defendant and does not prove that the 1st Defendant denied the Plaintiff access to her Account. That the same Exhibit 1 has no probative value being a Judgment obtained against the 2nd Defendant and that 1st Defendant was not a party to it. He urged the Court to

discountenance it. He referred to the following case:

ACN VS LAMIDO (2012) 8 NWLR (PT1303) 560

BALAMI VS INEC (2008) 19 NWLR (PT.1120) 246

BELGORE VS AHMED (2013) 8 NWLR (PT.1355) 60 @100

That Exhibit 1 failed to prove that 1st Defendant placed restriction on the said Account.

ON ISUE NO.2: He submitted that ancillary relief cannot be granted since plaintiff could not establish and prove the main relief. He relied on the case of:

NWORGU VS. ATUMA &ORS (2013) 11 NWLR (PT.1364) 117 @136

He urged Court to hold that the plaintiff did not discharge the evidential burden on her in proving the declaratory Reliefs sought.

Upon receipt of the 1st Defendant Final Address the Plaintiff Counsel filed a reply on points of Law. He submitted as follows;

On the issue of tendering of one Exhibit which is the Judgment in the between the Plaintiff and 2nd Defendant, he referred to testimony of PW1

who tendered 2 documents Exhibit P2-letter of Demand by her solicitor dated 4/5/18 and Exhibit P1.

That it is the Defendant that tendered only one Exhibit which is Exhibit 3. That the Exhibit P2 is the letter which the Plaintiff's solicitor wrote to Defendant demanding defendant to remove the Post No debit placed on her Account since 2015. That Defendant did not reply to the said letter which amounts to an admission on the claim. She relied on the case of:

TILLEY GYADO & CO NIG.LTD VS. ACCESS BANK (2019) ALL FWLR (PT.1016)359

On the Declaratory Reliefs being proved only on the strength of Plaintiff's case. She submitted that it is erroneous for Defendant to say so. That she called a witness and tendered 2 documents which were admitted and obtained evidence from Defendant sole witness during cross examination when DW1 admitted that the Account was frozen and claimant could not have access to the said Account. That DW1 blamed EFCC on that action that with the cogent and credible evidence the Plaintiff proved his claim.

On pleadings and Evidence being at variance with the Written Address. That Defendant's in

their Final address abandoned it pleadings and its evidence to the effect that Account of the Plaintiff remained frozen till date from 2015. That it has the instruction of EFCC to do so. That evidence of the Defendant is full of inconsistencies. She referred to the case of:

SADIQ VS. BALARABE (2020) LPELR-52114

On the attitude of the Defendant she submitted that Defendant on record admitted that it restricted the Plaintiff's access to their account since 2015. But will be willing to remove the restriction on the condition that plaintiff withdraws the Suit. Yet the same Defendant claims that Plaintiff did not prove her case to warrant the reliefs sought. That Defendant who was to file its written address failed to do so and refused to serve the Plaintiff when it filed same. That Plaintiff has to obtain a copy of the Address in order to ensure that adoption of Final address is not truncated.

She urged Court to grant her claims with award of interest at the rate of 10% from date of Judgment till the Final Liquidation.

COURT

It is a common parlance in the contract world that parties are bound by the term of contract they have entered into. Pacta Sunt Servanda.

Be that a contract of sale of land or other material or Bank contract with it's customer any failure of any party to fulfil its contractual obligation is a breach of such contract. If proved it attracts payment of Damages which can be punitive and/or exemplary as the case may be.

Again in a standard customer Bank contractual relationship it is incumbent on a Bank to keep its fiduciary obligation to its customer; such obligation entails keeping the confidentiality of its customer Account details. Such obligation can only be "breached" if and only if there is a Court Order mandating the Bank to divulge such information about a customer account and transaction details. Bank has the duty and obligation to allow the customer access to her money kept in the custody of the Bank at all times. Such access includes honouring of any cheque raised by the customer as long as there is sufficient funds in the Account. It also entails making payment for and on behalf of the customer as per the customer instruction. For

example allowing cash withdrawals as the case may be. Such duty includes allowing customer access to make withdrawals through the ATM which has become part of our daily financial method of transaction; and other Electronic money transfer system in line with global best practices. Any denial of access through such Electronic money transfer system of monetary transaction will be a breach of such obligation by the bank. On the above see, Article 7 of Code of Banking Practice. See also the case of**:**

UBA VS CAC & ORS (2016) LPELR-40469 (CA)

No Bank has the right to disclose the bank details of a customer without his/her consent and authorisation. This is eloquently stated in the case of:

HABIB BANK LTD VS KOYA (1992) 7 NWLR (PT.251)

Where the Court held that Banks owe their customers the duty of care secrecy and confidentiality. This duty continues even after the customer has stopped patronizing the Bank see the case of:

(**FIDELITY BANK VS ONWUKA (2017) LPELR-42839(CA)**

ODULATE VS FIRST BANK (2019) LPELR-47353 (CA) and the on English case of:

TURNER VS NATIONAL PRUDENT BANK OF ENGLAND (1923) ALL ER 550.

As stated earlier such duty extends to withdrawal through Debit Card (ATM) and Electronic money transfers and other E-payment methods-flash me cash etc. In all those transaction it is incumbent on the bank to honour such instructions and at the same time keep the confidentiality and ensure that it carried out the duty of care imposed on it. That is the decision of the Court in the case of:

AFRICAN TRUST BANK LTD VS. PARTNERSHIP INVESTMENT COMPANY LTD (2003) LPELR-1280

DIAMOND BANK VS OJUKWU (2012) BELR 109 @120

ACCESS BANK VS MFCCS (2012) 2 BELR 1 @ 13

BANK OF THE NORTH VS SALEH (1999) LPELR-6544

Any failure of the bank to keep the confidentiality and maintain the duty of care calls for payment of damages. But to earn that

damages it is incumbent on the customer to prove and establish that such obligation was breached by the Bank. Award of such damages is not as a matter of course. It is earned by proof of the act. It is an onus which the Plaintiff will definitely discharge. Once discharged, the Court will not hesitate to award damages. That is what the Court held in the following cases:

ALLIED BANK VS AKABUEZE (1997) 6 NWLR (PT.509) 374

AFRI BANK VS A.I INVESTMENT LTD

ADEDAMOLA VS GTB (2019) LPELR-47310 (CA)

WEMA BANK VS OSILARU (2007) LPELR CA/1/168/2004

And in the most recent case of:

UKPAI VS OMOREGIE & ORS (2019) LPELR-47206 (CA)

Where it is established that there is breach of the duty of care and confidentiality the Court in awarding damages may weigh if there was malice in the negligence. Where that is so the Court may raise the bar of the damage and make it exemplary and very punitive. See the Court decision on that in the case of:

UKPAI VS OMOREGIE SUPRA

EKOCHIM NIG. LTD VS MBADIWE (1986) LPELR-1119 (SC)

KABO AIR VS MOHAMMED (2014) LPELR-23614 (CA)

In that case such exemplary damages need not be pleaded.

It is imperative to state that the only exception to the breach of duty or care and confidentiality is where there is a Post No debit on the Account. But for the Bank to be exonerated where it obeyed the call for post No debit it must ensure that such instruction to Post No Debit is heralded by an Order of Court. This means that before a Bank can honour the call by the person or security organisation instruction to Post No Debit on the account of any customer, it must ensure that such instruction is in writing and that such instruction has an Order of Court of competent Jurisdiction authorising the Application/Instruction to Post No Debit. In that case the person that had asked for the post no debit must first apply to Court for an Order-Exparte for leave to place such post no debit. Such Order must be sought and obtained. It must also be served on the Bank along with the

Post No Debit instruction. Unless and until it is done like that, the Bank shall not honour it. If the bank honours such instruction without the Court Order sought and obtained before hand, it is a red flag. The owner of the Account can upon proof of same be entitled to be paid damages by the Bank as the Court will hold that the bank has by such action breached its fundamental obligation and fiduciary duty to its customer. See the case of:

ODUTOLA VS DIAMOND BANK

LD/ADR/800/17

ADEDAMOLA VS GTB SUPRA

EROMOSELE VS WERMER & ORS (2014) LPELR-22183(CA)

In this case having summarise the stances of the Plaintiff as presented in establishment and proof of the case against Defendants and the 1st Defendant defence in the testimony of its lone witness and the single document it presented before the Court as against the 2 Documents presented by plaintiff in proof of its case and her testimony too together with the decisions of the Courts in the several cases cited above and the Court analysis can it be said that the Plaintiff had established that the 1st Defendant violated,

breached and neglected to fulfil its fiduciary obligation and duty by not allowing the Plaintiff access to her money domiciled and in the custody of the 1st Defendant without a lawful order of the Court? Is the 1st Defendant failure to ensure that there was an Order of competent jurisdiction before adhering to the application by 2nd Defendant to Post No Debit on the Account of plaintiff a breach of 1st Defendant duty of care and Banker-customer relationship between claimant and 1st Defendant?

It is the humble view of this Court that the Claimant had established with the 2 documents tendered especially through the letter from her solicitor and through her oral testimony in Court that the 1st Defendant had breached her bank-customer obligation and right in his case. Failure of the 1st Defendant to ensure that there is a Court Order sought and obtained before posting No debit in the Account of the Claimant is a breach of that duty. Laying bare the Account of the Claimant to 2nd Defendant without her knowledge and consent is also a breach of duty. Not allowing her access to her money when she went to the ATM t make some withdrawals is a breach of the duty by 1st Defendant.

Again keeping her in the bank for several hours before informing her that there is a Post No Debit on her account is a breach too. There is no doubt that she suffered because of the said post no debit which was done without an Order of Court sought and duly obtained. She is entitled to damages because she obviously suffered because of that action by the 1st Defendant.

In her testimony in Chief she started the gory details of what happened the day she went to take money from her account through the ATM and subsequently how she waited endlessly for the bank to tell her why her ATM card was not operational only for the manager to tell her later that there was placed on her Account Post No Debit based on the instruction and Application of the 2nd Defendant without a Court Order. The 2nd Defendant did not deny that fact. They were joined as a party as 2nd Defendant and was served with all the documents and processes filed by both parties. They did not file any document in defence. They did not call any witness or had Counsel representation. They did not file any Final Address. It is very obvious that they had by their action admitted all the Claimant had said in both her testimony in chief, cross-examination and also through the documents tendered. The 1st defendant had

through their DW1 informed Court that they acted based on the instructions of the 2nd Defendant to Post No Debit on the Account. It is imperative to state that the 1st Defendant continued to act on the Post No Debit instruction for 6 whole years and still counting that this matter has lasted.

Even after the Claimant had asked them to lift the Ban based on the Judgment of a Court of competent jurisdiction Late Coram Ashi J, of the blessed memory, the 1st Defendant refused to lift the Post No Debit Ban on the Account. They tenaciously held unto the Post No Debit instruction. See exhibit 2

Going by the averments in the Statement of Claim and defence it is not in doubt that the Claimant maintain an Account with the 1st defendant-Account No. 0052662303 which is domiciled in the said Branch of the 1st Defendant at Wuse II. In the letter the Solicitor on behalf of the Plaintiff lamented about the illegal and unlawful restrictions placed on the Account denying the Claimant Access to her money without due notification, her consent and Court Order as required by Law. That letter was written on the 4/5/18. The letter was delivered to the 1st and it acknowledged receipt on the

4/5/18 at 4:08 pm at the same Wuse II branch where the Claimant opened the Account. In paragraph 2 the solicitor had lamented thus:

"that your bank has unjustly and illegally restricted and prevented our Client (Claimant) from operating the Account for close to 3 years ……from 2015".

As the Claimant PW1 had stated in her testimony in Court, the letter also showed that there has been several attempts to operate the Account and also several effort made and visits made to the branch to see if the Account can be operated; all were to no avail.

In all those occasions the bank according to the letter in Paragraph 3:

"Your staff have kept our client waiting without any positive results….and has asked our client to check back".

To crown it all the letter stated further in paragraph 3

"Your bank has neither given any reason nor shown any valid Court Order for the arbitrary action of the Bank."

In Order to support her oral testimony and prove her case the above document was tendered by

PW1 and admitted as Exhibit 1. It is surprising to this Court that 1st Defendant counsel/1st Defendant in all its Final Address did not mention that this document was tendered in Court by PW1. The same document was served on the 1st Defendant Counsel and he had no objection as to its admissibility.

This Court also was surprised that the said 1st Defendant/1st Defendant Counsel could, after hearing the testimony and perusing the said Exhibit 1 state that the PW1 did not prove her case in this suit. Of course not making any submission against the said document means simply that the 1st Defendant had admitted the document. This Court of course attaches full weight on the document-Exhibit 1 because it shows that the 1st Defendant did not allow the PW1 access to her Account. No reason was given. Most importantly the 1st Defendant did not respond or even reply to the letter to deny or admit the content of the said letter. The said letter threw more light on the issue as contained in the claim of the PW1.

That Exhibit is not only relevant, it has proved the case of the Plaintiff in that regard. It concretised the oral testimony of the Plaintiff too. The DW1 had told Court that there action

was based on the instruction of the 2nd Defendant which was tendered as Exhibit 3- Letter of 2/7/15.

Meanwhile going by the date on the letter dated 4/5/18 it shows that the Post No Debit had lasted for over 3 years and still continuing having been written since 2/7/15 since the Claimant had suffered untold hardship based on that post No Debit.

Most importantly, it is imperative to state that in the said letter the 2nd Defendant had instructed the 1st Defendant to furnish it with the following information under the under listed document:-

Account opening documents of the Plaintiff, Her statement of account from the time when she opened the said account, and all other relevant documents and even other accounts mentioned by the Claimant.

It is imperative to state that these documents are supposed to be held in utmost confidentiality and care by the Bank-1st Defendant. The 1st Defendant was not suppose to disclose these documents and their content to anyone including the 2nd Defendant without consent and notification of the Plaintiff.

Yes in as much as the 2nd Defendant –EFCC has a right under the Act establishing it to ask for such document in the course of investigation of criminal offence bordering on financial corruption and they have right to ask banks to Post No Debit on such Account, going by S.38 (1) & (2) EFCC Act, the same Act provided that for 1st Defendant to do so effectively, it must sought and obtain an order of Court by filing and moving an exparte Application to that effect.

In this case the 1st Defendant –EFCC did not obtain that Order as provided for in S.34(1) EFCC ACT 2004. Failure to obtain such Court Order before issuing the instruction (via Exhibit 3) to 1stDefendant to Post No Debit on the Account of the PW1 /Claimant makes their action illegal and unlawful. Also the failure of the Bank to insist on having an Order of Court sought and obtained by the 1st Defendant as required by S.34 (1) EFCC ACT 2004 before placing the Post No Debit on the Account violated their obligation to PW1/Claimant to who they owe a fiduciary duty of care and confidentiality. Again the failure of the 1st Defendant to inform the PW1/Claimant about the Post No Debit before hand and the fact that the said 1st Defendant released the documents listed in Exhibit 3 to the 2nd Defendant without a

Court Order and consent of Claimant also is a breach of the said duty. So this Court boldly holds.

Also holding unto the Post No Debit for all these years 6 years and still counting is also bad and violated the Plaintiffs right and breached the bank-customer relationship. No investigation lasts in perpetuity-Not even concluding investigation as the 1st Defendant claimed and not charging the Plaintiff to Court all this while has infringed on her right and a breached of the duty of care and confidentiality by the bank.

The Plaintiff had through her water-tight testimony and the consistency in her (cross-examination and testimony in chief)–evidence established that the action of the 1st Defendant breached their bank-customer relationship. She had shown that the Post No debit instruction by the 2nd Defendant without Court Order as required by S.34 (1) EFCC ACT 2004 is unlawful and illegal that the bank ought not to have obeyed that and denied her access to her account domiciled with it. Denying the Claimant access to her Account by freezing the said account is illegal, unlawful,oppressive, malicious and a gross breach of banker-customer relationship. So this Court holds and declares.

It is imperative to state that the role of Banks and their predominant business is the receipts of monies and deposit of Accounts, payment of cheques and instruments paid in by customers. The Bank also has the duty under its contract with its customers to exercise reasonable care and skill in carrying out its obligation and its side of the contract with regards to its operation within the contract with its customers. That duty to exercise reasonable care and skill extends to the whole range of business within the contract Agreement with the customers. Failure to do the above by the 1st Defendant in this case is a breach of that duty to the Claimant in this case. So this Court holds. On the above see the following cases:

UBA PLC VS G.S IND NIG LTD

(2011) 8 NWLR (PT.1250) 590

STB LTD V ANUMNA

(2008) 14 NWLR (PT.1106) 125

In every claim, it is heralded by a declaration that the act of the Defendant which the Plaintiff seeks redress against is wrong. It is upon that declaration that the other prayers are predicated. This is because there is no how a Court can make Order for an action to be taken

against an act without declaring that such action or inaction by the Defendant is unlawful and illegal. It is unless and until the Plaintiff, had through her testimony-evidence and documents in support, proved such that Court can declared such action illegal and unlawful.

In this case, contrary to the submission of the 1st defendant counsel that the 1st prayer and main claim of the Plaintiff in this case is declaratory and as such ancillary, and contrary to the submission of the 1st Defendant Counsel that burden of declaratory reliefs is not discharged by the admission of the opposing party, it is imperative to state that facts admitted in such a situation by the opposing party need no proof. In that case the Plaintiff need not waste her time to prove such fact. In this case it is not in doubt that the Plaintiff/PW1's Account was frozen by the 1st Defendant illegally and unlawfully the 1st Defendant having frozen the Account without an Order of Court as required by S.34 (1)EFCC ACT 2004 That fact of freezing the Account without Court Order is not controverted. It was not denied. The Plaintiff need not prove it further. See the case of:

ADEDAMOLA VS GTB (2019) LPELR-47310 (CA)

Where the Court held that:

“before freezing customers Account or placing any form of restriction on any Bank Account the bank must be satisfied that there is an order of the Court. By provision of S. 34(1) of the EFCC ACT 2004, the EFCC has no power to give direct instruction to Bank to freeze the account of a Customer without an Order of Court. So doing constitute a flagrant disregard and violation of the right of the Customer.”

This Court still maintains that Exhibit 3 –letter from EFCC addressed to the 1st Defendant dated 2/7/15, though a photocopy is a private document though issued by a public office since the document was addressed personally to the 1st Defendant. It is and has become a private document and the 1st defendant tendering a photocopy suffices. But this Court still holds that the EFCC should have obtained an Order of Court and the Bank should not have frozen the said account without seeking the authorization to do so backed by the said order of court of competent jurisdiction in accordance with the provision of the S.34 (1) EFCC ACT 2004.

That is why this Court had repeatedly and severally stated and held that freezing of the Account of the Plaintiff in this case was done

illegally and unlawfully. So this court holds and declares. It is therefore a breach of the banker-customer relation. It is also a violation of the provision of S.34 (1) EFCC ACT 2004 by the 2nd Defendant who gave the instruction without the required Court Order.

This court therefore holds that the Claimant had established its claim in this case. The Court therefore ordered the 1st Defendants to release and immediately unfreeze the Account of the Plaintiff, Igwe Ann Olachi, Account No. 0052662303, domiciled with the Wuse II Branch of the 1st Defendant, forthwith.

The Court also Orders and restrains the Defendant, her agents, staff, assigns, privies and all other persons acting or purporting to act on her behalf from further restricting the Claimant from operating the said Account No. 0052662303.

The 1st Defendants are to pay to the Claimant the sum of N50,000,000.00 (Fifty Million Naira) as general damages and as exemplary for unlawfully freezing the Account of the Claimant, for the breach of Banker-Customer duty of care relationship and for the hardship and embarrassment and psychological trauma

suffered by the Claimant because of the illegal action of the Defendant.

This is the Judgment of this Court delivered today the ………day of ………………2022 by me.

……………………………………

K.N.OGBONNAYA

HON. JUDGE