

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**HOLDEN AT ABUJA**  
**ON WEDNESDAY 21ST DAY OF SEPTEMBER, 2022**  
**BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI**  
**SITTING AT COURT NO. 8, MAITAMA, ABUJA**

SUIT NO: FCT/HC/CV/112/2022

**BETWEEN:**

1. STAR SULTAN } NIGERIA LTD.  
CLAIMANTS }  
2. ENGR KABIRU USMAN

**AND**

FIRST CITY MONUMENT BANK PLC... ..  
DEFENDANT

**JUDGMENT**

The 1<sup>st</sup> Claimant, a Limited Liability Company, is one of the customers of the Defendant Bank. From facts deposed to by her Chief Executive Officer, **Engr. KabiruUsuman**, in support of the Originating Summons filed to commence the instant action on

02/03/2022, it is gathered that sometime in January 2022, the Defendant placed a Post No Debit (PND) restriction on the 1<sup>st</sup> Claimant's account domiciled with her; that this account blockade was discovered when he attempted to transact business on the account at one of the Branches of Defendant, on or about 10/01/2022. Upon inquiring from the Defendant as to the reason for the blockade of the 1<sup>st</sup> Claimant's account, he was informed that there was no fraudulent complain made against any of the Claimants. The Claimant also stated that there was no order of Court on which the Defendant acted to deny her access to her account.

Being aggrieved by the continued denial of access to operate the account by the Defendant, the Claimants commenced the present action whereby they prayed the Court for the determination of the questions set out as follows:

- 1. Whether in the circumstances of this suit, it is within the Powers of the 1<sup>st</sup> Defendant to place PND or any form of restriction whatsoever on the bank account of the Claimant to wit: 2096080024, domiciled with the 1<sup>st</sup> Defendant without lawful Court Order authorizing and/or directing same.**
- 2. Whether the conduct of the 1<sup>st</sup> Defendant placing PND on the bank account of the Claimant to wit: 2096080024, domiciled with 1<sup>st</sup> Defendant without lawful Court Order authorizing and/or directing same is not a breach of the fiduciary relationship owed to the Claimants.**
- 3. Whether it is within the Powers of the 1<sup>st</sup> Defendant to assume the statutory powers of security agencies saddled with the lawful authority to investigate financial frauds, crimes, fraudulent transactions and matter incidental thereto.**

Upon the determination of the questions set out in the foregoing, the Claimants thereby claimed against the Defendant the reliefs set out as follows:

- 1. A declaration that the 1<sup>st</sup> Defendant is in breach of Fiduciary duty and care owed to the Claimants, when the 1<sup>st</sup> Defendant on or about the 10<sup>th</sup> day of January, 2022 placed a no debit on the 1<sup>st</sup> Claimant's account number 2096080024 domiciled with the 1<sup>st</sup> Defendant.***
- 2. An order of this Honourable Court directing the 1<sup>st</sup> Defendant to immediately vacate the post no debit on all the 1<sup>st</sup> Plaintiff's accounts, as it is done without any express order of Court.***
- 3. An order directing the 1<sup>st</sup> Defendant to immediately allow the Claimants unconditional access to his bank account number 2096080024 and other related bank accounts domiciled with other banks without any further impediment.***
- 4. An order directing the 1<sup>st</sup> Defendant to pay to the number; 2096080024 the sum of One Billion Naira***

***(N1, 000, 000, 000.00) being special damages for the losses suffered by the Claimant as his business good will has been damaged by the act of the 1<sup>st</sup> Defendant.***

***5. An order directing the 1<sup>st</sup> Defendant to pay the Claimants the sum of Fifty Million Naira (N50, 000, 000.00) only, being general damages for the loss suffered during the period restriction was placed on the Claimants bank account by the 1<sup>st</sup> Defendant.***

In the course of proceedings, the Claimants withdrew the suit as against the erstwhile 2<sup>nd</sup> Defendant, leaving only the Bank to defend the action.

In support of the Originating Summons, the 1<sup>st</sup> Claimant's CEO aforementioned, deposed to an Affidavit of 20 paragraphs to which a number of documents were attached as exhibits. Also subjoined to the Summons is the Claimants' learned counsel's written submissions in support of the claim.

In response, one **Martins Anusionwu**, deposed to a Counter Affidavit of 28 paragraphs on behalf of the Defendant on 01/04/2022. The Defendant did not deny that the 1<sup>st</sup> Claimant was her customer at all material times; she however hinged her defence essentially on the contention that the nature of the 1<sup>st</sup> Claimant's businesses is not known to her. The Defendant further contended that the name of the 2<sup>nd</sup> Claimant is not included amongst the Particular of Directors of the 1<sup>st</sup> Claimant and as such is unknown to her. The Defendant made reference to letters written through her counsel, one to the 1<sup>st</sup> Claimant of the fraudulent transfer carried out through its account and the other to the Commissioner of Police to report the purported fraudulent deposits into the 1<sup>st</sup> Claimant's account.

The Defendant however denied placing a PND on the 1<sup>st</sup> Claimant's account.

The Claimants filed a Reply on 14/06/2022, in response to the Defendant's Counter Affidavit.

I had carefully considered the instant Originating Summons, the questions set down for resolution, the reliefs claimed by the Claimants and the facts deposed in the Affidavits filed to support the same; alongside the facts deposed in the Counter Affidavit filed by the Defendant. I had also carefully considered the totality of the written and oral arguments canvassed by learned counsel on the two sides of the divide, to which I shall endeavour to make reference as I consider needful in the course of this judgment.

As I had noted earlier on, the fact that at the material time, there was an existing Banker-Customer relationship between the Defendant and the 1<sup>st</sup> Claimant is not in dispute. The evidence before the Court is that the 1<sup>st</sup> Claimant operates a Corporate

Current Account No. 2096080024 with the Defendant. This fact, contained in paragraph 6 of the Affidavit in support of the Originating Summons is admitted by the Defendant in paragraph 15 of the Counter Affidavit.

The focal issue in dispute to be resolved is therefore whether or not the Defendant placed a Post No Debit restriction on the 1<sup>st</sup> Claimant's said account as alleged; and if so, whether or not the Claimants are entitled to the reliefs claimed in this action.

The case of the Claimants in relation to the issue in dispute is as contained in the depositions in paragraphs 12 and 14 of the Affidavit in support of the Originating Summons wherein the 2<sup>nd</sup> Claimant deposed as follows:

***“12. That on or about the 10<sup>th</sup> day of January, 2022, a big client/customer approached us for business transactions, and I went to one of the offices***



***of the 1<sup>st</sup> Defendant and had a shock/embarrassment of my life before my client, as the 1<sup>st</sup> Defendant assumed the power of a Court and placed Post No Debit on all the 1<sup>st</sup> Claimant's bank accounts, on the 1<sup>st</sup> Defendant's mere personal suspicion.***

***14. That I went back to the 1<sup>st</sup> Defendant's office to inquire the reason(s) behind their action, whether there is any complain of fraud or related issue against me and/or my company that warrant (sic) them to do that, but the 1<sup>st</sup> Defendant answered in the negative, hence the reason to approach this Court."***

In her defence, it is deposed and contended on behalf of the Defendant that there was no time she placed a PND on the 1<sup>st</sup> Claimant's account; but that the 1<sup>st</sup> Claimant's Managing Director had been declared wanted for various issues of fraud by the EFCC. It is deposed categorically in paragraphs 23 and 27 of the Counter Affidavit as follows:

***“23. That the 1<sup>st</sup> Claimant (sic) never freeze (sic) or put a Post No Debit alert on the 1<sup>st</sup> Claimant’s account.***

***27. That at no time were the 1<sup>st</sup> Claimant’s cheque(s) refused, ATM request turned down or electronic transfer declined by the 1<sup>st</sup> Defendant.”***

Even though the Defendant categorically denied placing a restriction on the account of the 1<sup>st</sup> Claimant domiciled with her, the contents of the letters attached as **Exhibits DB** and **DC** to the Counter Affidavit may have suggested otherwise, in my view. **Exhibit DB** is a letter dated 12<sup>th</sup> January, 2022, written by one **Oluwatoyin Demuren Fajemisin (Mrs.)** of **Lanre Ogunlesi & Co.**, Legal Practitioners, on behalf of and as Solicitors to First City Monument Bank Plc. In the said letter captioned – **RE: STEALING, ILLEGAL AND FRAUDULENT TRANSFER OF VARIOUS SUMS OF**

**MONIES FROM ACCOUNTS IN FIRST CITY MONUMENT BANK TO YOUR COMPANY ACCOUNT WITH FIRST CITY MONUMENT BANK PLC. IN RE: NOTICE OF INTENTION TO COMMENCE LEGAL ACTION** – it is alleged that it was discovered, on 8 January, 2022, that certain unauthorized and fraudulent debits, involving stolen monies were performed on the accounts of some of the Bank’s customers and the monies were transferred to the accounts of the 1<sup>st</sup> Claimant and some other customers of the Bank; that the total stolen money transferred to the Claimant’s account amounted to the sum of **₦320,000,000.00 (Three Hundred and Twenty Million Naira)** only. It is further stated in the said letter, written to the 1<sup>st</sup> Claimant, as follows:

*“We are applying for a pre-emptive Order in order to prevent the dissipation of the funds in your account in our client’s Bank and we write to notify you of the fraud and solicit your cooperation in*

*preventing the fraudulent persons, individuals and or organizations from benefiting from the fraudulent activities.”*

Even though the Defendant, through her Solicitors, made it clear to the 1<sup>st</sup> Claimant that they were going to apply for a pre-emptive order to prevent dissipation of the 1<sup>st</sup> Claimant’s account; it is apparent that the Defendant effected the restriction without obtaining any such order, as alleged by the Claimants. At least no evidence of any such pre-emptive order is made available to this Court.

As a follow up to **Exhibit DB**, the Defendant, again, through the same Solicitors, on 12 January, 2022, wrote another letter, **Exhibit DC**, to the Commissioner of Police, Special Fraud Unit, Ikoyi, Lagos. In the said letter, also captioned – **STEALING, PERPETRATION OF FRAUD AND ILLEGAL TRANSFER OF FUNDS FROM SOME ACCOUNTS IN ACCESS BANK PLC., ECO BANK**

**PLC, FIRST BANK OF NIGERIA LIMITED, GUARANTY TRUST HOLDING COMPANY PLC, STANBIC IBTC BANK PLC, KEYSTONE BANK LIMITED, PROVIDUS BANK PLC, STERLING BANK PLC, UNITED BANK FOR AFRICA PLC, UNION BANK OF NIGERIA PLC, ZENITH BANK PLC, FIRST CITY MONUMENT BANK PLC, WEMA BANK PLC, PAYCOM (OPAY), FIDELITY BANK PLC, FLUTTERWAVETECHNOLOGY SOLUTIONS LIMITED AND CAPRICON DIGITAL LIMITED—the Defendant’s Solicitors informed the Police of the purported fraudulent funds transfers from the Bank’s customers accounts to various accounts in the Banks mentioned in the caption. It is further stated in the letter as follows:**

***“h. On 10<sup>th</sup> January, 2022, our client alerted the Managing Directors of the Primary beneficiary Banks requesting for restrictions to be placed on the accounts in their Banks but they have requested for the Police involvement and a Court Order.***

*In view of the above, we are requesting that you direct that the matter be thoroughly investigated and in the meantime, compel the authorities in the Banks involved not to allow or permit any debit into the accounts involved pending the Police Investigation.”*

The inference to be drawn from **Exhibit DC** is also that the Defendant is not interested in obtaining Court order in order to place restrictions on the 1<sup>st</sup> Claimant’s account but had gone ahead to do so with the intention to use the Police involvement as a cover up.

As a result the Defendant’s bare denial that she did not place any restrictions on the 1<sup>st</sup> Claimant’s account is a mere face-saving statement to pull the wool over the face of this Court.

It is apparent, as shown particularly in **Exhibit DC**, that the Defendant, by requesting the Police to compel the authorities of the other Banks mentioned

in the letter not to allow or permit any debit to be undertaken in the accounts domiciled with them, was merely trying to extend the action she had already taken with respect to the 1<sup>st</sup> Claimant's account to the other Banks alleged to have been involved in the alleged fraud. I so hold.

As such, on the basis of the preponderance of evidence on record, my finding is that the Defendant indeed placed a restriction on transactional activities on the 1<sup>st</sup> Claimant's account, on or about 10 January, 2022.

It should be further stated that there is no evidence that the Defendant secured a Court order, as required by law before clamping the 1<sup>st</sup> Claimant's said account with a PND restriction. Learned Defendant's counsel had not drawn the attention of the Court to; neither am I aware of any law that authorizes any financial institution to block the

account of her customers indefinitely, without a Court order as the Defendant has done in the instant case.

In FCMB Plc. Vs. CP-Tech Construction Co. Ltd. [2015] LPELR-25006(CA), the relationship between a banker and her customer is described in the following words:

***“A bank as a going concern undertakes numerous and highly professional services for its customer. It normally would act as agent for its customers in all circumstances where there is a relationship with third parties, such as the collection of cheques and bills, the payment of third party cheques or bills, the remitting of money abroad, the purchase of property or of stocks and shares, the effecting of insurance cover, etc. .... In the performance of these services, the law sets and expects from a banker a minimum standard of conduct, care and skill. Where there is a short-fall from this standard, in the course of performing a service, the tort of***



***negligence becomes relevant. Thus, a banker owes to his customer a further duty to execute these functions and services with a reasonable standard of professionalism. If the banker is found careless or wanting in dealing with the affairs of the customer, he is liable to the customer for breach of his contractual duty.”***

In the instant case, the evidence established on record is that the Defendant had continued to deny the 1<sup>st</sup> Claimant access to her account with her since January, 2022. It is laughable that the Defendant, rather than respond to the real issue in controversy in this case, engaged on a frolic by contending in one breath, in the Counter Affidavit, that the 2<sup>nd</sup> Claimant, who claims to be the alter ego of the 1<sup>st</sup> Claimant, is unknown to her. Yet, in another breath, in paragraph 22 of the same Counter Affidavit, it is deposed that the 2<sup>nd</sup> Defendant has been declared wanted by the

EFCC, thereby indirectly recognizing him as the person who operated the said 1<sup>st</sup> Claimant's account.

I must therefore hold that the Defendant is liable to the 1<sup>st</sup> Claimant for breach of her contractual duties and fiduciary obligations; by her unlawful action in blocking the 1<sup>st</sup> Claimant's account sometime in January, 2022, thereby denying her rightful access to the account, up to date, without any lawful justification.

The Defendant had also made reference to a letter dated 2<sup>nd</sup> February, 2022, written to her Managing Director by the EFCC, attached as **Exhibit DA** to the Counter Affidavit. In the letter, the EFCC informed the Bank that she was investigating a case of computer related fraud against some accounts in her Bank, including the 1<sup>st</sup> Claimant's account; and that by the said letter, alerted the Bank of the fraud for **“prompt necessary action;”** and that the account

holders be apprehended whenever they were sighted and take them to the nearest Police Station.

There is nothing in the said letter written by the EFCC that authorized the Defendant to clamp the 1<sup>st</sup> Claimant's account. The requests made by the EFCC are clear on the face of the letter. Even if the EFCC had directed the Defendant to clamp the 1<sup>st</sup> Claimant's account, such directive would have been unlawful without being accompanied by a valid Court order.

The position of the law, with respect to the exercise of the powers conferred on the EFCC under the provision of **s. 34** of the **EFCC Establishment Act**, has been given judicial interpretation in a number of cases. In *GTB Vs. Adedamola* [2019]5 NWLR (Pt. 1664) 30 @ 43, cited by the Claimants' learned counsel, the Court of Appeal interpreted the provision of **s. 34(1)** of the **EFCC Establishment Act**,

and held, *per* **Tijjani Abubakar, JCA (now JSC)**, as follows:

***“The above provisions are in accord with the decision of the lower Court. The Economic and Financial Crimes Commission has no powers to give direct instructions to Banks to freeze the Account of a Customer, without an order of Court, so doing constitutes a flagrant disregard and violation of the rights of a Customer. I must add that, the judiciary has the onerous duty of preserving and protecting the rule of law, the principles of rule of law are that, both the governor and the governed are subject to rule of law. The Courts must rise to the occasion, speak and frown against arrogant display of powers by an arm of Government. It is in the interest of both Government and citizens that laws are respected, as respect for the rule of rule promotes order, peace and decency in all societies, we are not an exception. Our Financial institutions must not be complacent and appear toothless in the***

***face of brazen and reckless violence to the rights of their customers. Whenever there is a specific provision regulating the procedure of doing a particular act, that procedure must be followed.”***

The Court of Appeal went further to affirm the lower Court’s decision as follows:

***“Even if the Applicant was alleged to have committed a criminal offence, EFCC cannot on its own direct the Bank to place restriction on his accounts in the Bank without an order of Court. The law allows EFCC to come even with ex-parte application to obtain an order freezing the account of any suspect that has lodgments that is suspected to be proceeds of crime. No law imposes a unilateral power on the EFCC to deal with the applicant this way.***

***Again Guaranty Trust Bank has no obligation to act on EFCC’S instructions or directives without an order of Court....”***

See also Olagunju Vs. EFCC [2019] LPELR-31125(CA) which followed the above-cited case.

I must further note that it is on record that the 2<sup>nd</sup> Claimant had attended proceedings in this suit in this court on a number of occasions as representing the 1<sup>st</sup> Claimant. If indeed the Defendant's claim was true that the EFCC had declared him wanted, how then did he attend proceedings in this suit freely without any let or hindrance from any quarters. It must mean that the Defendant's claim that the 2<sup>nd</sup> Claimant had been declared wanted was false and I so hold.

What then are the remedies available to the Claimants, since, as it is often said, where there is a wrong, there is a remedy (*ubi jus ibi remedium*)?

Apart from seeking orders to vacate the said restriction placed on the 1<sup>st</sup> Claimant's account and

allow her immediate access to the same, the Claimants have also claimed against the Defendant, the sums of **₦1,000,000,000.00 (One Billion Naira)** only and **₦50,000,000.00(Fifty Million Naira)** only as special and general damages respectively.

The 2<sup>nd</sup> Claimant had deposed in paragraphs 17 and 18 of the Affidavit in support of the Originating Summons, as follows:

***“17. That this illegal act of the 1<sup>st</sup> Defendant made life a living hell for me, my family and even my business good will was destroyed as my long aged customers and client I had strong business relationships with have far long abandoned me since this incident as they no longer believe in me, because of the illegal act of the 1<sup>st</sup> Defendant.***

***18. That I made several spirited efforts but all were frustrated by the 1<sup>st</sup> Defendant as the 1<sup>st</sup> Defendant kept on posting us.”***

Again in paragraph 7 of the Further Affidavit filed by the Claimants on 11/05/2022, it is further deposed as follows:

***“7. ... The account is still on restriction as we speak, as the Claimants have not been able to access the account.”***

The Defendant did not deny these depositions in her Counter Affidavit filed to oppose this action.

It was held in Citibank Nigeria Limited Vs. Ikediashi [2014] LPELR-22447(CA), that a cause of action will accrue where the Bank refuses to allow a customer access to the credit in his account on demand; and that such act by the Bank in disallowing a customer's request to have access to the credit in his account constitutes a breach of contract for which the Bank is liable in damages. See also Balogun Vs. N.B.N Ltd. [1978] 11 NSCC 135; UBN Vs. Nwoye [1990] 2 NWLR (Pt.130) 231.



Again, in First Bank Vs. Oronsanye [2019] LPELR-33261(CA), the relationship of banker and customer was further underscored as follows:

***“...the contractual relationship between the Appellant and the Respondent imposes a duty of care on the Appellant as a Banking institution, the breach of which will impose on the bank a liability of negligence. Negligence by a bank consists of any act or omission in the course of performing services for a customer that is not in accordance with the standard of conduct reasonably expected of a banker in such circumstances. See. United Nig Insurance Co. Vs. Muslim Bank of West Africa [1972] 4 SC 67.”***

The implication of the position of the law on the instant case is that the 1<sup>st</sup> Claimant is entitled to damages for the breach committed by the Defendant by denying the Claimants access to the 1<sup>st</sup> Claimant's account with her.

I should state that the Claimants have however failed to depose to concrete facts to support their claim for special damages, which the law expects must be specially pleaded and strictly proved.

In the final analysis, I hereby resolve the three questions set out in the Originating Summons in favour of the Claimants. The result being that the Claimants' claim succeeds in substantial part. Accordingly, I hereby enter judgment in favour of the Claimants against the Defendant, upon terms set out as follows:

- 1. It is hereby declared that the Defendant is in breach of Fiduciary duty and care owed to the 1<sup>st</sup> Claimant, by her action, on or about the 10<sup>th</sup> day of January, 2022, in placing a Post No Debit restriction on the 1<sup>st</sup> Claimant's account number 2096080024 domiciled with the Defendant.***

- 2. It is hereby ordered that the Defendant shall forthwith vacate the Post No Debit or any form of restriction howsoever called placed on the 1<sup>st</sup> Claimant's account aforementioned, as same was done without any express order of Court.**
- 3. It is hereby further ordered that the Defendant shall allow the 1<sup>st</sup> Claimant have immediate and unconditional access to her bank account number 2096080024 domiciled with her.**
- 4. The sum of ₦5,000,000.00 (Five Million Naira) only, is hereby awarded in favour of the 1<sup>st</sup> Claimant against the Defendant as general damages for the unlawful restriction on the 1<sup>st</sup> Claimant's account aforementioned.**
- 5. I award costs of this action, in the sum of ₦250,000.00 (Two hundred and Fifty thousand**

***Naira) only, in favour of the 1<sup>st</sup> Claimant against the Defendant.***

**OLUKAYODE A. ADENIYI**

***(Presiding Judge)***

**21/09/2022**

**Legal representation:**

**E. I. Nwafor, Esq. – *for the Claimants***

**Ademola Adewoye, Esq. (with I. Ighorhiohwanu (Miss)– *for the Defendant***