

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI –ABUJA**

**HIS LORDSHIP: HON.JUSTICE M.S. IDRIS**

**COURT NUMBER: 28**

**Date:- 4<sup>TH</sup> JULY, 2022**

**FCT/HC/CV/0500/2017**

**BETWEEN**

**1. TRIPOD RESOURCES LIMITED  
2. MR OBI OGOH**

}

**CLAIMANTS**

**AND**

**POLARIS BANK LIMITED -----**

**DEFENDANT**

**JUDGEMENT**

The Claimant commenced this suit by an amended writ of summons dated and filed on 12<sup>th</sup> October,2018, seeking for the following reliefs:-

- i. A Declaration that the action of the Defendant in not allowing the Claimants operate its accounts maintained with the Defendant for no just cause is wrong, illegal and unlawful.
- ii. Special damages of the sum of N6, 000,000.00(Six Million Naira) and \$100,000.00 (One Hundred Thousand US Dollars) only.
- iii. N500, 000,000.00 (Five Hundred Million Naira) only as general damages.
- iv. Cost.

The Defendant filed a statement of defence on 19<sup>th</sup> November,2018, and in response, the Claimant filed a Reply to the Statement of defence on 10<sup>th</sup> December,2018.

A summary of the Claimants case as can be deduced from the Statement of Claim is that the Defendant unlawfully denied the Claimant access to his account with No 1770396729, 1770394062 and 2600000926, and that this denial led to a frustration of a contract agreement between the Claimants and one Professor George Odabi.

On the other hand, the Defendant in their statement of defence maintained that they placed a Post No Debit (PND) on only one account of the Claimant with account No 1770396729, and not on three accounts as claimed by the Claimant. The Defendant maintained that their action was based on the Police instruction and a court order, which were shown to the Claimant, and that they complied with extant CBN regulation in so doing. They further stated that when the instructions were later given to them to lift the PND restriction on the Claimants account, they complied, and that the Claimant have been transacting on the account since then.

The matter was set down for fast track hearing, which commenced on 17<sup>th</sup> February, 2022. On that date, the 2<sup>nd</sup> Claimant adopted his witness statement on oath, and the following documents were tendered and admitted in evidence:-

- i. A letter from ChimezeOjiabo& Associates dated 4<sup>th</sup> May, 2017 marked as Ex. 1
- ii. A reply from Sky Bank to ChimezeOjiabo& Associates dated 5<sup>th</sup> May,2017 marked as Ex. 2
- iii. A letter from Skye Bank to Chimeze Ojiabo& Associates dated 10<sup>th</sup> May,2017 marked as Ex. 3
- iv. Letter from Chimeze Ojiabo& Associates to Inspector General of Police dated 6<sup>th</sup> October,2017 as Ex. 4.
- v. Letter from Skye bank to the MD of the 1<sup>st</sup> Claimant dated 4<sup>th</sup> October,2017 as Ex. 5
- vi. A Business Facilitation Agreement between Mr. George Odabi and the Mr. Obi Ogoh dated 23<sup>rd</sup> October,2017 as Ex. 6
- vii. Letter from the law firm of I. I Nwafor& Co, addressed to the Managing Director of the 1<sup>st</sup> Claimant dated 20<sup>th</sup> November, 2017 as Ex. 7

viii. Letter dated 23<sup>rd</sup> November, 2017 to I.I Nwafor by the Claimant as Ex.8

The 2<sup>nd</sup> Claimant was accordingly cross examined by counsel to the Defendant.

On 6<sup>th</sup> April, 2022, the Defendant opened her case, and called one George Melifonwu, a staff the Defendant, who adopted his witness statement on oath filed on 30<sup>th</sup> March,2022. The Defendant tendered some documentary evidence through the witness namely:-

- i. CTC of Investigation Activities dated 13<sup>th</sup> March, 2017 and a CTC of a court order from a Magistrate Court marked as DW1
- ii. CBN Circular titled "Establishment of Industry Fraud Desks" dated June 11, 2015 marked as DW2

The Defence witness was cross examined by counsel to the Claimants, and the Bankers Order dated 7 November, 2017 was tendered and admitted in evidence as exhibit DW3.

At the close of hearing, the Defendant filed a final written address on 21<sup>st</sup> April,2022. The Claimants filed a final written address on 4<sup>th</sup> May,2022, and additional authorities on 19<sup>th</sup> May,2022.

The Defendant filed a reply to Claimants Counsel Written Address on Points of Law on 19<sup>th</sup> May,2022.

Learned Counsel to the Defendant raised two issues in their written address to wit:-

1. Whether the Defendant's placing of PND on the account of the Claimants was in order, in view of the Court Order and extant Central Bank Nigeria regulations.
2. Whether the Claimants have proved their entitlement to special and general damages from this court in view of the evidence placed before the court.

On issue 1, counsel relied on the case of ***SHUGABA V. UBN (1999) LPELR-3068 (SC)***, to argue that orders of court are meant to be obeyed, and the Defendant's actions was nothing short of obedience to a lawful

court order, as evidenced in Exhibit DW1. Counsel made reference to Paragraph 3 of Exhibit DW2 which authorize the Defendant to "Block and Place No Debit restrictions on all accounts upon receipt of fraud complaint". He argued therefore, that the act of the Defendant cannot be said to be illegal and unlawful since same was done in compliance with the circular of CBN.

On issue 2, learned counsel maintained that the Claimants are not entitled to the special and general damages sought from this court, as they have not in any way pleaded with particulars, the special damages they are claiming. Counsel cited the case of **ENEB V. OROR& ANOR (2016) LPELR 40830**, where the court held that special damages must be specifically pleaded with distinct particularity and it must be strictly proved. Counsel further urged the court not to grant general damages sought by the Claimants, as the Claimants have failed to prove their entitlement of general damages from the evidence led.

On his part, counsel to the Claimants generated three legal issues for this court's determination to wit:-

- i. Whether based on the preponderance of evidence adduced by the Claimants in the establishment of their claims, the Claimants have proved her case to be entitled to the reliefs sought.
- ii. Whether the Defendant adduced evidence of a probative value in defence of this suit to warrant dismissal of this suit.
- iii. If the answer to Issue No. 1 is in the affirmative and Issue No. 2 is in the negative, whether the Claimants are entitled to her monetary claims and damages before the Court.

On issue I and 2, counsel admitted that the crux of the Claimants case is whether the Defendant was justified in the placing of a Post No Debit (PND) on the account of the 1<sup>st</sup> Claimant with account No. 1770396729.

Counsel argued that going by the fact that Exhibit 3, the purported Court Order to place the Claimants account on PND was granted or made on the 9<sup>th</sup> of May, 2017, six clear days after the Claimants first got wind of the fact that their account was placed on PND, as evidenced in Exhibit 4, it is

obvious that the Defendant acted in clear violation of the law. In other words, counsel contention is that the Defendant procured the Court Order in a desperate attempt to justify the placing of the Claimants account on PND. Counsel argued that no Court Order existed as at May 3<sup>rd</sup>, 2017, when the Claimant was told by an officer of the Defendant that their account is on PND.

Counsel cited the case of ***GTB PLC V. ADEDAMOLA (2019) 5 NWLR (PT. 1664) 30 @ 43 PARAS E-F*** where the Court held that "before freezing customer's account or placing any form of restraint on any Bank account, the bank must be satisfied that there an order of Court".

Counsel also argued that on the authority of ***ROYAL PETROLEUM CO. LTD V. FIRST BANK OF NIG. LTD (1997) 7 NBLR (PT. 1) P. 125***, the Defendant was bound to accept the Claimants cheque.

Claimant's counsel holds the view that Exhibit DW1, a purported court order granted on 13<sup>th</sup> March, 2017 was manufactured by the Defendant in connivance with the Police to cover up for their blunder, after they might have noticed that Exhibit 1 did not pass as a defence in law and in fact. Counsel observed that no explanation whatsoever was offered for these two conflicting court orders, and that these clearly shows that the two court orders are of questionable origin and should be discountenanced by the court.

Counsel further argued that the incidence that took place on the 10<sup>th</sup> of November, 2017, when the 2<sup>nd</sup> Claimant went to Bank to withdraw N800,000.00, which was forcefully collected from him by the Bank security on the ground that the payment was made in error and that his account was still on a PND, notwithstanding that Exhibit DW3 dated 7<sup>th</sup> November 2017, was received by the Defendant on 8<sup>th</sup> November, 2017, ordering them to lift the PND on the Claimants account, clearly shows that the Defendant had breached its duty owed the Claimants to allow them unhindered access to their account. Counsel referred to the case of ***UBA V. OSO (2016) LPELR- 40110 (CA)***.

Continuing his argument on issues 1 & 2, counsel decried that even after an order was served on the Defendant on 8<sup>th</sup> November, 2017 to lift the PND on the Claimants account, the Defendant still failed to act promptly on the claimants cheque for transfer of N6, 000,000 to Professor George Odabi on 15<sup>th</sup> November, 2017, thereby causing the Claimant to lose \$1,000,000.00 (One Million Dollars). Counsel noted that the Defendant's conduct in this respect was negligent. See **LINTON IND. TRAINING CO. (NIG.) LTD V. CBN (2015) 4 NWLR (PT. 1449) P.94.**

In summary, counsel urged the court to discountenance Exhibit 3 and Exhibit DW3 as both have material contradictions and questionable origins. **KAYILI V. YILBUK (2015) 7 NWLR PART 1457 PAGE 26 AT 77 PARA C.**

On issue 3, learned counsel to the claimant submitted that when evidence led is unchallenged, special damages are deemed proved. He referred amongst others to the case of **NWABUOKO V. OTTOH (1901) 2 SCNLR 232; A. G OYO STATE V. FAIRLAKES HOTELS (1988) 12 S.C (PT. 1).** Counsel also submitted that the standard of proof in this case where evidence in support is unchallenged, the burden on the Plaintiff to prove her entitlement to general damages, is discharged upon a minimum proof. Counsel therefore urge the Court to grant all the reliefs sought, as the Claimant has proved her case.

In the Defendant's reply to Claimants counsel written address on points of law, it was submitted on behalf of the Defendant, that paragraph 5.06 and 5.07 of the Claimants written address contains issues of crime because it is replete with words "*procure*" and "*connivance*" with the police to procure exhibit 3, and that the Claimant has failed to prove same beyond reasonable doubt. It was further submitted that the Defendant relied on Exhibit DW1 and 2 in placing a PND on the Claimant's account dated March 13<sup>th</sup> 2017 , and not on exhibit 3 dated 9<sup>th</sup> May 2017.

After a critical and dispassionate appraisal of the facts in issue in this case, I am of the firm view that the following two issues are capable of properly determining the dispute between parties herein:-

1. Whether from documentary evidences placed before this Honourable Court, and in the light of extant laws/ regulations, the Defendant acted lawfully and justifiably in placing a PND on the 1<sup>st</sup> Claimants account no. 1770396729.
2. Whether the Claimants have proved their entitlement to special and general damages from this court in view of the evidence placed before the Court.

On issue 1, I think it is now an elementary principle of law that a Bank has no right or power, by itself, to freeze the account of a customer, be it its staff or otherwise, and/or to prevent such a customer with money standing to his credit in his account from accessing the money - ***FIRST CITY MONUMENT BANK PLC VS ABDUL GAFARU& CO LTD (2017) LPELR 42452(CA).***

Where a Bank takes it upon itself to freeze the account of a customer or prevent a customer with money standing to his credit in his account from accessing the money, simply because of an allegation of fraud made against such a customer, it will amount to self-help and it is illegal and wrongful - ***FIDELITY BANK PLC VS BAYUJA VENTURES LTD (2010) LPELR 8873(CA).***

A bank cannot arrogate to itself the right to freeze any customer's account without an Order of Court. No one is allowed to take laws into its own hands. Civility demands that when a bank notices any suspicious issue about a customer's account and it is certain that there is the need to freeze the account of the customer for any number of days, necessity is laid upon the bank to report the issue to law enforcement agencies who will approach the Court to secure order to freeze the account. The law is settled and sacrosanct that for a bank to freeze, place a caution or any form of restraints on its customer's account, there must be a Court order. See - ***GTB V. REGISTERED TRUSTEES OF NETWORK OF PEOPLE LIVING WITH HIV AIDS IN NIGERIA (NEPWHAN) 2021 LPELR 54609 (CA); GTB V. ADEDAMOLA&ORS., (2019) LPELR - 47310 (CA)***

Having established that no bank has the power to place any form of restriction on a customer's account without a court order, the question that begs for answer is whether in the instant case, the Defendant had obtained a valid Court Order before placing a PND on the 1<sup>st</sup> Claimants account no. 1770396729.

There are two exhibits in this case jostling to answer the above concern. These are exhibit 3 and exhibit DW1.

Exhibit 3 is a Court Order issued by a Magistrate Court in Port Harcourt on 9<sup>th</sup> of May, 2017, ordering the Placing of a PND on the Claimant's account no. 1770396729. This Order was attached in a reply letter by the Defendant to the Claimants dated 10<sup>th</sup> May, 2017. The Defendant did not object to the admissibility of exhibit 3, and has not denied that the said document emanated from him.

The Claimants through their solicitor as can be seen in exhibit 4, wrote to the Inspector General of Police, decrying that they had applied for a CTC of the Court Order and the Petition which led to obtaining of the said order, but have not been availed of it.

I find paragraph 7 and 8 of the Exhibit 4 interesting. There, the Claimants solicitor stated:-

*"7. Our Client through his solicitor also applied from the Registrar of the Magistrate Court of Rivers State, Port Harcourt District for a certified true copy of the alleged order but the solicitor was informed that there was nothing to certify for him because there was no copy of the Order in the custody of the Court and the Order did not proceed from any formal motion filed in that court.."*

*8. The Police at Olu-Obasanjo have not up till today formally notified our client of the alleged petition against it nor invited it in connection with the said petition"*



I am unable to confirm if the court order of 9<sup>th</sup> May in exhibit 3 is certified. Be that as it may, the said order was made on 9<sup>th</sup> May, 2017, almost 6 days after the Claimant first noticed that his account had been freezed. It would have been easy at this point to resolve that the act of the Defendant in placing a PND on the Claimants account between 3<sup>rd</sup> to 8<sup>th</sup> of May before the Court Order was obtained on the 9<sup>th</sup> of May, 2017, was illegal, but I am also conscious of exhibit DW1 tendered by the Defendant's witness at trial. Exhibit DW1. The Defendant in Paragraph 3 (ii) of her statement of Defence pleaded that the PND was placed on the account transaction by the Nigerian Police sometimes on or about 13<sup>th</sup> March 2017 through a police letter of investigation and court order, i.e., DW1.

Exhibit DW1 is letter from the Divisional Police Officer Olu-Obasanjo Way, Port Harcourt, dated 13<sup>th</sup> March 2017, ordering the Defendant to place a PND on the 1<sup>st</sup> Claimant's account, and attached to the letter is a Magistrate Court Order dated 13<sup>th</sup> March, 2017.

I have carefully read the order of the Magistrate Court of 13<sup>th</sup> March, 2017, and I hereby reproduce it:-

*"Upon going through the above Application, and in the interest of Justice it is hereby ordered that the Bank Account no 1770396729, Tripod Resources Limited of Skye Bank Plc maintained at the Bank of Messers. You are to assist the Police to furnish them with the above information to enable completed their investigation"*

The above order is very clear, and need no interpretation. I have not seen anywhere in the order where the court ordered the Defendant to place the Claimant's account on PND. It is therefore fallacious to consider the Magistrate Court Order of 13<sup>th</sup> March, 2017 as an order for the freezing of the 1<sup>st</sup> Claimant's account. The only person that ordered the Defendant to place the Claimant's account on PND from Exhibit DW1 was the Divisional Police Office.

The question now is, did the Divisional Police Officer, Olu-Obasanjo Way, have such power to place a PND on the Claimant's account?

In this case there is no evidence that the applicant committed any criminal offence, or was even reasonably suspected to have committed any offence. Even if the Applicant was alleged to have committed a criminal offence, the Police cannot on its own direct the Bank to place restriction on his accounts in the Bank without an order of Court, so doing constitutes a flagrant disregard and violation of the rights of a Customer. ***AROGUNDADE V. SKYE BANK (2020) LPELR-52304(CA)***

No law imposes a unilateral power on the Police to deal with the Claimant this way. Again the Defendant has no obligation to act on the Police instructions or directives without an order of Court. ***GT BANK VS. ADEDAMOLA&AMP; ORS (2019) LPELR-47310 (CA)***

Paragraph 3 of Exhibit DW2 relied on by the Defendant as authorizing it to "Block and Place No Debit restrictions on all accounts upon receipt of fraud complaint" cannot take the place of an established rule of law.

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 everyone is 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 law 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 point I am laboring to make here is to drive home the point that generally the Police has no right whatsoever to place a restriction on the account of the Claimant unilaterally. This is both legally and morally unacceptable. The law frowns against unilateral use of power by any person or institution hence the doctrine of separation of power was

entrenched in our Constitution. This is also why the law recognizes the fact that there is no absolute fundamental right as the right of one stop where that of another begins. For emphasis sake, I will state again that the Police has no right whatsoever to unilaterally place a restriction order on the accounts of the Claimant not even for the best of reasons. If such action is allowed, the bank and the Police can abuse such powers.

The point must be made and clearly too that the relationship of the Claimant as the customer to the Defendant is such that for as long as the Claimant has his account with the Defendant funded, the Claimant can deal with the money as it likes and does not need the permission of the Defendant to deal with the money as he pleases.

In ***WEMA BANK PLC VS OSILARU (2008) 10 NWLR (PT1094) 150***, the Court held:

*“This power of the Respondent over the money in the bank is limited to the right of the Appellant who is the true owner of the money. The Respondent is under obligation to honour all instructions of the Appellant over his money in the Respondent's custody. Once the Appellant gives an instruction as to withdrawal from the account of the Appellant, the Respondent is to obey. The legal implication of this is that whatever powers the Respondent have over the money deposited by the Appellant is limited to the power of the Appellant. The Respondent is under obligation to obey all legitimate instructions of the Appellant on the accounts he has with the Respondent.”*

Having established that there was no valid court order as at 13<sup>th</sup> of March, 2017, warranting a placing of PND on the Claimant's account, I hereby resolve issue 1 in favour of the Claimants, and I hold that the action of placing a PND on the 1<sup>st</sup> Claimant account no. 1770396729, was illegal. I so hold!

In exhibit 3, the Court actually ordered the Defendant to stop further transaction on the Claimant's account nationwide. This implies that the only valid order to place a PND was that obtained on 9<sup>th</sup> May, 2017. However, the law requires that public documents such as exhibit 3 should be certified. See **section 104 of the Evidence Act 2011**. Exhibit 3 as tendered and admitted before this court is not the original copy, and was not certified. It was admitted because it was relevant. However, the court has the power determine at the end of hearing, while writing its judgment, what weight to attach on evidence adduced, whether oral or documentary. At the end of hearing, the judge would have been fully exposed to the totality of the evidence before him. He would then be in a proper position to attach probative value on any piece of evidence. ***AKPAN V. UNICAL (2016) LPELR-41242(CA)***

Exhibit 3 being an uncertified public document is not entitled to be given credence and weight. I so hold!

On issue 2, it is instructive to note that Special damages must be specially pleaded and strictly proved by the claimant. To succeed in a claim for special damages the claimant must plead the special damages and give necessary particulars and adduce credible evidence in support. The claimant must satisfy the Court as to how the sum claimed as special damages was quantified. ***ONYIORAH V. ONYIORAH & ANOR (2019) LPELR-49096(SC)***

Undoubtedly the rule that special damages must be strictly proved applies to cases of tort. In effect the rule requires anyone asking for special damages to prove strictly that he did suffer such special damages as he claimed. This however does not mean that the law requires a minimum measure of evidence or that the law lays down a special category of evidence required to establish entitlement to special damages. What is required is that the person claiming should establish his entitlement to that type of damages by credible evidence of such a character as would suggest that he indeed is entitled to an award under that head, otherwise the general law of evidence as to proof by preponderance or weight usual in

civil cases operates. ***OSHINJINRIN&ORS V. ELIAS &ORS (1970)***  
***LPELR-2799(SC)***

The Claimant's claim for special damages of N6,000,000 and \$100,000.00, in my opinion, has not been sufficiently. The Defendant's in paragraph 14 of their statement of Defence averred that the cheque in the sum of N6,000,000 to George Odabi was honoured, and the 2<sup>nd</sup> Claimant in paragraphs 8 of his additional witness statement, clearly admitted that the said cheque was honoured and the money was paid into the account of George Odabi. His only grouse is that the cheque was not promptly honoured.

The Claimants cannot claim special damages against the Defendant on the above ground because it is not stated at what time, the said Prof. George Odabi arrived at the Bank to present the cheque and what time the money was paid to Prof.Odabi, so as to establish that the defendant's delay frustrated the agreement between the Claimant and Prof. George Odabi as showed in exhibit 6. Relief 2 sought by the Claimant is therefore refused. I so hold.

Cases that are civil in nature same are determined based on balance of probability. From the entire evidence adduced before the Court, the Claimant have to my mind not satisfied this Court for same to be granted. I have gone through the entire evidence. The defence failed to show the Court in detail how such circumstance occurred. In the course of defence. I am quite aware that order granted by the Court whether right or wrong granted such order must be obeyed strictly.

As it can be seen in the judgment what the bank did is acting based on the report made by the police is nothing but flagrant disregard to the laid down laws regarding such an order same should be obtained from the facts and circumstance of this case it should be noted that it is helpful to always remember that technical justices is not justice at all and a Court of law should distance itself. Court of law should not be unduly tired down by technicalities, particular where no miscarriage of justice would be occasioned. Justice can only be done in substance and not by imposing it with mere technical procedural irregularities that occasioned no miscarriage

of justice. Where the facts are glaringly clear, the Court should ignore mere technicalities in order to do substantive justice. See ***FANFA OIL VS A.G FED(2013)18 NWLR (PT852) 453 AKAN VS BOB (2010) 17 NWLR (PT 1223) 421.***

1. Consequently relief 1 is hereby granted in favour of the Claimant
2. N2,000,000.00 only is hereby awarded against the Defendant in favour of the 1<sup>st</sup> Claimant as general damages.
3. No order as to cost.

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**HON. JUSTICE M.S IDRIS  
(PRESIDING JUDGE)**