

**IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU, GODSPOWER EBAHOR & ORS

COURT NO: 6

SUIT NO: FCT/HC/CV/1846/2020

BETWEEN:

TOLUHI ANDREW SEYE.....CLAIMANT

VS

GUARANTY TRUST BANK PLC.....DEFENDANT

JUDGMENT

By on Originating Summons, filed on 16/6/2020, the Claimant is seeking for the determination of the following questions:-

- (1) Whether by virtue of Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 the Claimant is entitled to own immovable or moveable properties.
- (2) Whether by virtue of Section 36 and Section 44 (1) (b) of the 1999 Constitution, the Claimant is entitled to be heard before any decision with respect to its right to own property is deprived of it.
- (3) Whether by virtue of contractual duty of care and confidentiality between the Defendant and the Claimant (Banker – Customer Relationship) enunciated in the locus

Classicus of Tournier Vs National Provincial & Union Bank of England (1924) I KB 461 which has been followed by Pletorial of decisions by our superior court in cases such as UBA Vs CAC (2014) LPELR – 22475 and now part of our banking jurisprudence, the Defendant’s action of placing a Post-no-debit order and or freezing of the Claimant’s saving account with account with account number 0025587206 without prior information, consent or authorization whatsoever is not illegal and amounts to a breach of confidentiality.

- (4) Whether by virtue of Bank customer relationship between the Claimant and the Defendant as reiterated in the Court of Appealdecision in Diamond Bank Ltd Vs General Securities & Finance Company Ltd (2008) LPELR- 4035 CA, the Defendant did not Ultra Vires its power by freezing and/or placing a Post-No-Debit restriction on the Claimants account thereby depriving the Claimant access to the operation of its account is justifiable.

The reliefs sought upon determination of the questions, are;

- (1) An Order of this Honourable Court declaring the freezing and/or Post-No-Debt restriction place in the Claimant’s account by the Defendant without a valid order of court as illegal, null and void.
- (2) An Order of this Hon. Court directing the Defendant to immediately unfreeze and/or remove the Post-No-Debit

restriction on the Claimant saving account with Account Number 0025587206 domiciled with the Defendants forthwith.

- (3) An Order of mandatory Injunction restraining the Defendants, its officer, agents from further freezing and/or placing any restriction on the Plaintiff's account with Number 0025587206 on whatever basis not prescribed by law.
- (4) An order of this Hon. Court granting general Damages in the sum of ₦100,000,000.00 (One Hundred Million Naira) only for depriving the Claimant access to the operation of its account with the Defendant.

It is the case of the Claimant, that by Constitutional Provisions, the Claimant is entitled to own and maintain moveable immovable properties. That the Defendant is a Commercial Bank in FCT, Abuja and Nigeria at large and the Claimant maintain an account with them on account No. 002558706. That sometimes on the 10/4/2019, applied for its account Statement, but was denied. And between the 18th and 21st day of April, 2019, the Claimant sought withdrawal from its account, but was denied. And on inquiring was informed by the Defendant that a Post-No-Debit Order was placed on the account. That there was no consent or prescribed order of court of law. Further that the Claimant have not been invited or summoned to court in connection with any criminal investigation into its account. Consequent upon all of these the Claimant took out this action against the Defendant.

In the Defendant case, by Paras 3 (a) denies the said Paragraphs of the Claimants affidavit on grounds that the facts are not within their knowledge, also denies the facts as stated by the Claimants in Paras 4 (a) and states that the Defendants acted based on a letter dated 9/9/2018 from the Nigeria Police of a pending investigation into the Claimant's account, with further request to it and culminating into an order of a No-Post-Debit on the said account pursuant to Order of Court obtained from FCT Magistrate Court sitting in Wuse Zone 2, Abuja on 19/11/2018. That the Defendant a law abiding Corporate citizen duly complied with the said order, restricting the Claimants account and should not be penalized from obeying Court Order.

In the Written Address of Claimant, settled by A. A. Olatekunbi Esq three (3) issues were distilled for determination to wit:

- (1) Whether the Defendant can lawfully place a lien on the Claimant's account without valid Order of Court.
- (2) Whether by virtue of the relationship between the Claimant and the Defendant the Defendant is not in breach of its duty of care and confidentiality and ultra-vires its power by the unilateral freezing of the Claimant's account thereby rendering the action illegal, null and void.
- (3) Whether the Claimant is not entitled to damages at large against the Defendant for the illegal freezing of its account.

On issue 1, relying on the Provisions of Sections 34 of the EFCC Act and Section 10 (6) of Money Laundry Act, that the Defendant cannot proceed to freeze a customer's account without a valid Court Order. And also referred to several judicial authorities to support this contention above. Finally, that the Defendant acted ultra vires when there is nothing to show that the Claimant is being investigated or taken to any Court of law on a criminal charge, that it is incumbent on the Defendant to justify this source of its authority to freezing the Claimant's account in line with the position of the law as stated in the case of Diamond Bank Ltd Vs General Security & Finance Company Ltd (2008) LPELR -4035 (CA) Pg 12. And urge the court to hold that the Defendant acted ultra-Vires in freezing the account of the Claimant without a valid Court Order.

On issues 2 and 3 argued together, contend that it is trite that there is a Bank/Customer Relationship established which is contractual and fiduciary in nature, hence the Defendant in their treatment of Claimant account, ought to exercise dulydiligence and not disclose to a third party. That it is on the Defendant to show proof that it did exercise due diligence in that relationship. That the failure to honour the Claimant's instruction amounted to breach and this the Claimant is entitled to damages. The Claimant referred this court to several judicial authorities to support her contention. And urge the court to grant their reliefs.

In the Written Address of the Defendant settled by C.P. Oli Esq, only one (1) sole issue was distilled for determination to wit:

“Whether in the circumstance of this case, the Claimant is entitled to the reliefs sought against the Defendant in the instant case”.

And contend, relying on Exhibit “GTB1” in support of their Counter-Affidavit and Paras 5 therefore, that they acted on a lawful directive from Law Enforcement Agency based on a Court order forwarded vide the Exhibits “GTB1”. That it would be disobedience to court to refuse to comply as law abiding corporate citizen, to a subsisting order of court. That the said court order has not been set aside nor appealed against by the Claimant. In all urge the court to refuse the reliefs sought by the Claimant, as the Defendant have not breached the Claimant right.

Having carefully considered this written submission of counsel, the judicial authorities cited, the court finds that only one issue calls for determination;

“Whether the Claimant in this instant has shown satisfactorily facts to entitled him to the reliefs sought.

Firstly, I shall deal with issue 2 of the Claimant submission. From the affidavit evidence and submission of both counsel, it is not in doubt that the both parties are in Agreement that there is a Banker/Customer Relationship. While, the Defendant concede that the Claimant has a right to own property vide Section 44 (1) of 1999 Constitution of the Federal Republic of Nigeria (As Amended), but by Section 44 (2) (k) of the 1999 Constitution, that right can be temporarily taken and that in this instance based on the Court Order placed by on it by the Nigeria Police – Exhibit “GTB1”. Clearly from all of these, there is no dispute on whether or not there is a Banker/Customer relationship.

The question that follows; is whether in course their relationship as in this instant suit, has the Defendant breach that relationship which will result to the claim for damages. I shall come to this latter.

On the main issue of contention, whether the Defendant can lawfully place a lien on the Claimant' account without a valid court order.

The Defendant by their Paras 4 (a – e) of their Counter-Affidavit contend that their action to place a lien was in furtherance of the Order of Court obtained from the Magistrate Court, Wuse Zone 2 by the Nigerian Police, in a letter dated 9/9/2018 with the accompanying order of court. The said order of court is attached as Exhibit "GTB1"

Granted that orders of Court must be obeyed, moreso there is no appeal or application to set aside, it must be noted in this instant case, the said Exhibit "GTB1" is not readable or very illegible. This court requested the Defendant to furnish it with a clearer copy, but when they did vide a further affidavit vide Exhibit "GTB2", the copy attached is also not readable. This court is unable to ascertain the validity of the document – Exhibit "GTB1 & 2". It leaves the court to question the validity of the said document purportedly to be the basis of the compliance by the Defendant.

On exercise of due diligence, it is the practice of Banks upon receipt of Orders of Court in respect of Post-No-Debit, approach the said issuing court to confirm the said order, which the said court is expected to confirm with endorsement on a clean copy. This was not done in this case. This leave this court to ask, the very vexed question, is the Magistrate Court of

the FCT, having the powers to make order of Post-No-Debit as it did in this instant case.

The point was raised by the Claimant in their oral adumbration, to the effect that the Magistrate Court do not have the powers to make such order and referred this court to the Unreported decision of Hon. Justice Ekwo .J. in the case of Mrs Enuice Oddiri (Nee Esisio) & 3 ORS Vs Zenith Bank & 6 Ors in Suit No. FHC/ABJ/1635/2019 to the effect that the Magistrate has no jurisdiction to make such orders. The Defendant did not contend this position of the Claimant.

Granted that this court is not bound by the decision of the court to that instance referred, but merely persuasive. I am however, persuaded to hold that the Magistrate Court, indeed has no powers to make that order. I so hold.

Having found that, that order of Post-No-Debit is without jurisdiction, it then leaves the court to consider the issue three (3) whether the Claimant is entitled to damages.

The grant or otherwise of this relief is at the discretion of the court, to be exercised judicially and judiciously. General damages covers losses which are not capable of exact qualification. Though it need not and should not be specially pleaded, however, it is law that some evidence of such damages is required.

See Taylor Vs Oghenevo (2012) ALL FWLR (PT. 610) 1358 @ 1362 – 1363.

In this instance, having found that the Defendant's compliance with the Order of Court of the Magistrate Court, Wuse II, which this court has held to be without jurisdiction, consequently, that act of Post-No-Debit, relieving the Claimant from having access to their account to do their legitimate business, in the court firm view, is sufficient to enable this court grant this relief. I however, state that it is at the exercise of the Court's discretion.

From all of these, I answer the questions 1, 2, 3 and 4 in the affirmative.

Accordingly, Judgment entered as follows:-

- (1) An Order declaring the freezing and/or Post-No-Debt restriction place in the Claimant's account by the Defendants without a valid Order of Court as illegal, null and void.
- (2) An Order of this Hon. Court directing the Defendants to immediately unfreeze and/or remove the Post-No-Debit restriction on the Claimant saving account with Account Number 0025587206 domiciled with the Defendants forthwith.
- (3) An Order of Mandatory Injunction restraining the Defendants, its officer, agents from further freezing and/or placing any restriction on the Plaintiff's account with Number 0025587206 on whatever basis not prescribed by law.
- (4) An sum of of ₦1,000,000.00 (One Million Naira) only is hereby granted as general damages for depriving the Claimant access to the operation of its account with the Defendant.

This is the Judgment of Court.

Signed.

HON. JUSTICE C.O. AGBAZA

Presiding Judge.

13/10/2022

Appearance

A. A. OLUTEKUNBI ESQ FOR THE CLAIMANT

KODINLEYE ARINZE ESQ FOR THE DEFENDANT