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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 28TH DAY OF OCTOBER, 2022

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

SUIT NO.: FCT/HC/CV/2787/2020

BETWEEN:
CHIKA IGWE ------- CLAIMANT

AND

UNITED BANK FOR AFRICA PLC (UBA) ---- DEFENDANT

JUDGMENT

In this case, the Claimant, Chika Igwe is claiming the following Reliefs against the Defendant, United Bank for Africa PLC (UBA):

(1) A Declaration that the unilateral freezing of the account of the Claimant without an Order of a Court of competent jurisdiction is illegal, unlawful and unknown to Nigeria laws.

(2) A Declaration that the unilateral freezing of the account of the Claimant without the Claimant's

due knowledge or warning given to the Claimant violates Claimant's right to privacy as enshrined in Nigeria's Constitution 1999 as amended 2010.

(3) A Declaration that the Defendant's refusal to allow the Claimant use his account amounted to the tort of conversion.

(4) An Order of the Honourable Court directing the Defendant to unfreeze the Claimant's account as 2107247621 with account name as Chika Igwe.

(5) An Order of the Honourable Court directing the Defendant to never freeze the account of the Claimant without a proper and due notice.

(6) Award of Fifty Million Naira (₦50, 000,000.00) as special and general damages.

(7) Interest at the rate of 10% on the Judgment sum from the Day of Judgment till final liquidation.

(8) The sum of Five Hundred Thousand Naira (₦500, 000.00) only as cost of prosecuting this Suit.

He claimed that the Defendant unlawfully placed Post no Debit in his account domiciled in the said Bank.

In a summary, his contentions are:

(A) The Claimant entered into a formal agreement with the Defendant on account opening not oral agreement.

(B) That the contractual agreement was sealed with the signing of contract papers called Freedom Savings codenamed FREEBA, an account opening package with its terms and conditions clearly stipulated in its agreement papers signed between the Claimant and the Defendant.

(C) That the said General Terms and Conditions of Electronic banking account opening did not in any way state the limit or capacity of the said account of the Claimant neither did it state that the Defendant can place the said account of the Claimant on post no debit under any conditions whatsoever nor that the consent of the Claimant has been obtained to do so.

(D) The Claimant still maintains that he never had any oral agreement with the Defendant but that after his account was frozen, he was left with no

option than to report to the Defendant who then told him to upgrade his account and the Claimant's reaction and grievances was expressed in the two letters he wrote to the Defendant.

(E) The Defendant could not respond to the letters written by the Claimant seeking for reasons why his account was placed on no debit freeze without any form of notification to him despite the Defendant having access to him.

(F) The Defendant placed the account of the Claimant on no debit freeze without recourse to a Court Order.

(G) The reply filed by the Claimant did not raise new issues, and assuming, but not conceding it did, it can't be accompanied with a further Witness Statement on Oath as same is against the Rules of this Court of justice on pleadings in reply.

(H) The Claimant has shown also that where contract is breached, the consequence is a general damages which flows naturally to breach of contract.

(I) That the taken of the property of the Claimant without recourse to law is a grave act of violation of right to privacy as seen in Section 37 of the 1999 Constitution.

On the 6th of July, 2021 the Claimant opened and closed his case and tendered documents.

On the 30th of November, 2021 the Defendant called a Witness and closed its defence on the 7th of February, 2022. Matter was adjourned for adoption of Final Written Addresses.

In his Final Written Address, the Counsel for the Claimant on his behalf raised three (3) Issues for determination which are:

(1) What amounts to a breach of contract?

(2) Whether a client's account can be placed on Post no Debit freeze temporarily taken possession by a commercial bank or the Defendant without recourse to a Court Order first had and obtained?

(3) When is a reply appropriate in pleadings and how made?

On Issue No. 1, on what amounts to a breach of contract, he submitted referring to the case of:

Nwolisah V. Nwabugoh
(2011) LPELR – 2115 (SC)

That a breach means that a party has acted contrary to the terms and conditions of the contract by non-performing or by performing the contract not in accordance with its terms or by wrongful repudiation of the contract. They also referred to the case of:

Cameroon Airlines V. Otutuizu
(2011) LPELR – 827

That there was no agreement between the parties that allows Defendant to unilaterally, without notice to the Claimant, freeze the account of the Claimant. That Claimant never gave consent to Defendant to freeze his account at will. That in the Freeba Scheme Account Opening it was not agreed that Claimant cannot carry out certain transaction above Three Hundred Thousand Naira (₦300, 000.00) or Five Hundred Thousand Naira (₦500, 000.00).

That there was no evidence to show that the parties entered into any contract where the Defendant can freeze his account at will.

Again, the Defendant never informed the Claimant that they can place a Post no Debit on his account upon

certain transaction. That there was nothing in the contract between the parties that authorizes the Defendant to act the way it did in this case. That the parties have a written contract agreement. That nothing was agreed orally. All these are confirmed by DW1 under Cross-examination and in their Statement of Defence.

That the document evidence tendered by the Defendant is a yardstick with which the veracity of their oral evidence is measured and assessed.

That the Claimant was never informed orally about the said freezing of his account without Court Order. That DW1 never said that the Claimant admitted or was informed about that. That such Oral Agreement never existed. That the Defendant had the Claimant's phone number, addresses (e-mail and house). They never invited him to do an upgrade of his account if need be.

That when the Claimant noticed that the account was frozen, he went to the Bank – Defendant to lay complaint and find out why. He was asked to write to the Manager. He wrote and requested for an upgrade of his account which was frozen without notice or any reason. It was after the freezing of the account that he was informed the reason for the freezing. That there is no law that provides that the account of a customer will be frozen – Post no Debit until he upgrade or provide necessary details. Even when he requested for a letter from the Defendant for better explanation, he was never given any letter. That the

Defendant acted ultra vires their power. He relied on the case of:

Matgon Nigeria Limited & Anor V. Nassarawa State Government & Ors
(2021) LPELR – 54191 (CA)

Where Court held that failure to respond to a business letter which by the virtue of its content requires a response, amounts to an admission. That failure of the Defendant to respond to the letters written by the Claimant amounts to admitting the fact that they agreed that they did not inform Claimant as required.

That the Freeba Scheme Account opening has no provision for account upgrade or provision for deposit limit or freezing of account on unilateral grounds. It is not contained in the terms and conditions of Electronic Banking. The Defendant is in breach of the contract between her and the Claimant. That Claimant is entitled to damages. He referred to the cases of:

Bilante International Limited V. NDIC
(2011) LPELR – 781 (SC)

Globe Motor Holdings Limited V. Ibraheem
(2021) LPELR – 54550 (CA)

On Issue No. 2, on whether the Claimant's account can be placed on Post no Debit by Defendant with Court Order sought or obtained, he submitted that the

Defendant or any other person has no right to put the Claimant's account on Post no Debit or freeze same without Order of Court. He referred to the cases of:

Diamond Bank V. Unaka & Ors
(2019) LPELR – 50350 (CA)

Polaris Bank Limited V. Yayamu Global Services Limited & Anor
(2022) LPELR – 57376 (CA)

That Defendant owes the Claimant a duty of care and owes the Claimant who is their customers a fiduciary duty of care. He relied on the case of:

Zenith Bank V. Waili
(2022) LPELR – 57349 (CA)

That the Defendant did not obtain any Court Order as required before placing the account on Post no Debit on the account. They did not obtain his consent too. It was not contained in the terms and condition of contract between the parties. That the Defendant has no right to manipulate the account of the Claimant at will. He referred to the case of:

Drogundade V. Sky Bank
(2020) LPELR – 52304 (CA)

That the Bank is negligent in this regard. He urged Court to so hold.

On Issue No. 3, on when a Reply can be made and how, he submitted, relying on the case of:

Nkpa V. Champions Newspaper
(2016) LPELR – 40063 (CA)

That a reply should not raise new Issues or evidence. That Claimant did not raise any Issue in his Reply and did not put forward any too contrary to what Defendant said. That the Reply by Defendant that it should accompany its Reply with additional Witness Statement on Oath does not hold water. He referred to the case of:

Nkpa V. Champions Newspaper Supra

That by the provision of the High Court Rules, a Reply should be accompanied by Additional Witness Statement on Oath or any document. That action of the Defendant amounts to conversion. He referred to the case of:

Trade Bank V. Banilux Nigeria Limited
(2003) LPELR – 3262 (SC)

They also used the account after taken possession of it as shown in the Defendant's Statement of Defence. That the Claimant had established the tort of conversion against the Defendant. Hence he deserves his Reliefs. He relied on the cases of:

Ibrahim V. Suleiman
(2020) LPELR – 52747 (CA)

Mohammed V. Adetunji

He urged Court to grant the Claimant all his Reliefs.

On their own part, the Defendant called a Witness. It is the story of the Defendant that Claimant opened an account with the Defendant on April, 2018 on an account that required less documentation. That the Account is Freeba Scheme. It only requires the Claimant's passport on the account opening form. The said Freeba Scheme has certain condition of not lodging more than Fifty Thousand Naira (₦50, 000.00) into the account at a time – per day. The Defendant claimed that the Defendant explained this to the Claimant and that he abided by that. That he was also told that once he pays in more than Fifty Thousand Naira (₦50, 000.00) in to the Freeba Scheme Account, that the account is so automated that it will trigger off and the account will automatically be placed on Post no Debit and he will not be able to operate same. But that he has a right to apply to upgrade same Account if he (Claimant) wants to change to the normal Savings Account. That the Claimant signed up for it. Again, that the Claimant was informed that the account cannot accommodate any amount more than Three Hundred Thousand Naira (₦300, 000.00) to Five Hundred Thousand Naira (₦500, 000.00) otherwise the system will automatically freeze the account. That Claimant signed up for that too. That he operated the account as such for two (2) years until the 2020. Meanwhile, he was informed

that where he opts to upgrade the account, that he must provide document of valid identification like Utility Bill to confirm his address. That he should also make an application in writing. That those documents will help the Bank to carry out due diligence on the Claimant before the Account is returned to normal account opening.

But on the 18th of September, 2020 the Claimant, in violation of the agreement on Freeba Scheme, lodged Seventy Nine Thousand Naira (₦79, 000.00) only in a lump sum into the said account. That the system automatically was triggered off, a system which orchestrated freeze. The account was blocked. That the Claimant was informed by the by the Bank – Defendant when he went to inquire why his account was frozen and placed Post no Debit. The Bank also asked him to provide the required documentation to upgrade his account to Regular Savings Account. He provided the necessary information four (4) days later on the 22nd September, 2020. The Bank then upgraded his account. He had access to the account as the Post no Debit was removed immediately and there was no further inhibition.

That the challenges faced between 18th to 21st September, 2020 was self-inflicted because the Claimant breached the terms and condition of the Freeba Scheme Account Opening.

That the Debit on the Claimant's Account on the 21st September, 2020 was based on monthly system generated

routine debit for SMS which service the Claimant subscribed for. That the Defendant is not in breach of the Claimant's right to privacy or fiduciary duty too. They supported their submission by tendering three (3) documents which are:

- *Freedom Saving Account Opening Package.*
- *Account Statement of the Claimant.*
- *Claimant's letter to the Defendant's Bank – Request to upgrade my Account No 2107247621 – Chika Igwe.*

The Defendant called one Witness, and in their Final Written Address they raised one Issue for determination which is:

> **"Whether by evidence led by the Claimant, he is entitled to the Reliefs sought in this Suit?"**

They first respondent by tackling the inconsistencies in the Claimant's Reliefs. That in the Writ the Reliefs are 8 and in the Statement of Claim, they are 6 though wrongly numbered and 9 Reliefs in that Writ. That the Reliefs in the Statement of Claim prevails. They relied on the case of:

Garan V. Olomu
(2013) LPELR – 20340 (SC)

That the Claim in the Writ was abandoned. That what is between the Claimant and the Defendant is simple contract.

That there was no unilateral freezing of the Claimant's account as the challenge was self-inflicted. That it was Claimant that breached the contract between him and the Defendant. That Claimant did not prove that the Freeba Scheme was breached by Defendant as he violated the terms of the contract by lodging more than the required and agreed amount into the Account. That Claimant cannot benefit from his own wrong. They referred to the case of:

Teribe V. Adeyemo
(2010) LPELR – 3143 (SC)

That the Defendant cannot pay Claimant damages on an error made by the Claimant. That he confirmed that he opened Account in the Freeba Scheme. That when he was informed of the reason for the Post no Debit he took steps to provide documents for upgrade of his Account. That immediately his Account was operational again. That Claimant knew about the restriction that is why he gladly and eagerly provided the documents for the upgrade because he was in the know about the conditions and terms of the Freeba Scheme. That he never argued or challenged Defendant when he was made to provide the documents for identification.

That the Reply of the Claimant to Defendant's Statement of Defence without attaching Witness Statement on Oath is improper and should there be discountenanced and the

Reply deemed as abandoned since it has no Witness Statement on Oath to herald it. They relied on the case of:

Suttolk Pet. Services V. Adnan Research Dev. V. Minister of FCT
(2019) 1 NWLR (PT. 1655) 10 @ 32

They urged Court to strike out the pleadings.

That Claimant providing the documents after the freezing of the Account means that he is aware of the restrictions in the Freeba Scheme Account Opening and that he subscribed to it. That there was no unilateral freezing of his Account. That his Account was upgraded immediately and as such, Defendant is not liable to pay any damage to the Claimant having not breached any terms of the contract.

That Claimant did not provide evidence of second freezing of his Account. They urged Court to hold that the Account of the Claimant was not frozen the second time. That his action caused the Post No Debit on his account. They urged Court to dismiss prayer No. 1.

On claim of violation of Claimant's privacy, they submitted that they was no unilateral freezing of the Account of the Claimant. That the Defendant did not violate the Claimant's privacy as enshrined in the **S. 37 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). That the relationship between the Claimant and the Defendant is banker – customer

founded upon contract. That **S. 37** is for protection of citizen's privacy to how telephone, correspondence, conversation and the like. That action of the Defendant did not violate the provision of **S. 37 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended).

That the Claimant's right to privacy was not violated. They urged Court to discountenance the claim and dismiss the head claim in its totality. That the Reliefs No. 1 – 3 should be dismissed having been Declaratory and not proven. They relied on the case of:

Ayanru V. Mandikas Limited
(2007) 10 NWLR (PT. 1043) 427 – 478

On the 3rd Relief, the Defendant submitted that the Defendant did not convert the Claimant's fund or his Account as alleged upon freezing of the Account of the Claimant. That the Defendant unfroze the Account and allowed the Claimant access to his Account after he upgraded willingly. Hence, the Defendant did not dominate the property of the Claimant. That Defendant did not refuse to surrender Claimant's Account after he provided the documents for upgrade as it defroze the Account immediately. They referred to **paragraph 16 of the Statement of Claim.** That Claimant admitted that fact in his testimony in chief and Cross-examination too. They urged Court to dismiss the claim on conversion.

On payment of Fifty Million Naira (₦50, 000,000.00) Damages, they submitted that Claimant is not entitled to any damages as the Defendant committed no wrong against him. They urged Court to enter Judgment in the Defendant's favour and dismiss the case of the Claimant.

COURT

In every contract agreement, parties are bound by the terms of contract they have entered into. This is captured in the Latin Maxim **"Pacta Sunt Servanda."**

Again, in any banker – customer relationship, the Bank owes fiduciary duty to the customer. But in that, the customer must have access to its fund domiciled in the Bank. Again, if there is any restriction in the Account, the customer must be informed. Where there is a Post No Debit, there must be an Order of Court and it must follow due procedure permitted by law. The above is the standard operations in the normal standard Account Opening Plan. But these days of electronic money business and transactions, Banks had developed several methods of Account Opening. Each of such Account Opening method or scheme has its own conditions and terms which are often different from the normal Account opening. One of such scheme may be lesser stringent condition on what is required to open an Account. It may entail lesser number of documents to be presented for the Account opening or lesser number of days within which to open such Account or even higher or lower interest rate

payable or chargeable and other incentaries. All these are done for ease of business for the customer and Bank and for the Bank to maximize profit and get and retain their customer and expand their clientele too.

A standard Account opening requires there would be customer to provide certain information and documents too. It takes a certain period so that the Bank can properly profile and investigate a customer and to do a good background check on such customer. Oftentimes, the customer is required to present a surety or another customer who the Bank knows and who had done some transactions with the Bank. All those are the normal standard procedure and due diligence done in order to safeguard the investment of the would-be customer and the Bank too.

In this case, the Court had analyzed and summarized as it were the evidence of the Claimant and Defendant as presented by their sole Witnesses. The question is, is the Bank negligent and had it failed in its fiduciary duties to the Claimant in that the freezing of the account of the Claimant is unlawful, illegal and contrary to the Contract Agreement and unknown to the law? Did the action of the Bank violate the right to privacy of the Claimant as alleged and does it then tantamount to conversion of the Claimant's fund by the Defendant? Was the freezing of the Account of the Claimant improperly done by the Defendant bearing in mind that the Account opened by

the Claimant was known and designated as Freeba Scheme Account, a fact known to the Claimant upon the time the Account was opened and as such he is or is not entitled to Damages?

Without answering the questions seriatim per se, it is the humble view of this Court that the Bank is not negligent in freezing the Account of the Claimant. This is so because from inception and by the nature and name of the Account, it was a Special Account Opening Scheme. It came with conditions. It was not like the regular normal Account opening which requires certain stringent conditions and presentation of documents and scrutiny and background investigations. The Claimant knows that and he subscribed to that Scheme. In his testimony in chief and under the fierce of Cross-examination even in his Statement of Claim he admitted, confirmed that the Account he opened was a Freeba Scheme Account. He also confirmed that he only gave his passport photograph and name – Biodata without more and that the Account was opened immediately. He knows that the Account comes with these conditions. He abided by those conditions for two (2) whole years. Meanwhile, he opened the Account as a Youth Corper and operated it beyond his youth corp years. He was aware of the restriction on the Account because of its special nature, terms and condition. So when he, for reason best known to him, decided to test the resolver of the Account and the Bank and violated the terms and condition of the Account, he

has himself to blame. His action triggered off the Post No Debit automatically.

The Claimant, as a lawyer, cannot deny having knowledge of the restriction and limitation in the Freeba Scheme Account because, as a lawyer he ought to know and must, as a reasonable man and any reasonable lawyer will do, have asked question why the Account is called Freeba Scheme Account. So since he played by the rule initially for two (2) years and decided to breach the Terms and Condition, he, the Claimant, cannot therefore turn around to benefit from his own negligence by crying wolf as he is doing in this case just to benefit from his wrong.

This Court holds that the Bank is NOT NEGLIGENT. The freezing of the Account was done in based on the Agreement of the parties which prohibits the Claimant from depositing more than Fifty Thousand Naira (₦50, 000.00) at a time into the Account or having more than Three Hundred Thousand Naira (₦300, 000.00) to Five Hundred Thousand Naira (₦500, 000.00) in the said Account. The freezing of the Account – Post No Debit by the Defendant is automatic as it was programmed to be so. The Claimant knows that. It was the action of the Claimant that caused the freezing of the Account. He was negligent. So the freezing of the Account was lawful, legal and in accordance with the Agreement of the parties as per the nature of the type of the Account. So this Court holds. Placing Post No Debit on the Account is legal

because by opening the Freeba Scheme Account, the Claimant agreed to both implied and written conditions and terms of the Agreement on Freeba Scheme Account. He cannot turn around to cry wolf.

The Claimant is very well aware of the condition that was why he rushed to apply for the upgrading of the Account and also presented all the regular documents which are required for opening of a Standard Account in the Bank like NIN etc.

Again, after he upgraded, he was granted access to his Account after some days and Post No Debit automatically lifted. From all indication it is clear that the Post No Debit was even for the benefit of the Claimant. The Claimant had confirmed that before he applied for the upgrade of the Account, that he never had any accumulated fund over Three Hundred Thousand Naira (₦300, 000.00) to Five Hundred Thousand Naira (₦500, 000.00) in the said Account. This clearly shows that the Claimant knows and is aware of the restriction on the said Account to that effect; when he applied for upgrade he readily attached documents.

So the Bank placing a Post No Debit on the Account automatically does not require any Court Order as the parties had agreed it will happen if the condition and terms are violated. The Bank is therefore not liable.

Though the Claimant claimed that the Account was frozen or Post No Debit placed on it from 24th September, 2020 to 2nd October, 2020 yet he confirmed that he made a debit transaction of Twenty Thousand Naira (₦20, 000.00) on the 24th September, 2020. He also confirmed that he made another transfer on One Thousand Naira (₦1, 000.00) on the same day – 24th September, 2020 in the same Account. This shows that there is contradiction and inconsistencies in the testimony of the Claimant/PW1. This Court feels strongly that he is not a Witness of truth.

Contrary to the submission of the Claimant that the Defendant converted his fund, this Court holds that the Defendant did not in any way convert the Claimant's fund as he erroneously claims. He had not established that his fund in the custody and domiciled in the Defendant was in any way converted. The Defendant never tampered with the said money. They only placed a Post No Debit as agreed based on the nature of the Account – Freeba Scheme Account. That action of the Defendant is not conversion. So this Court holds.

Again, on issue of claim of violation of the Claimant's privacy as the Claimant claims, this Court finds it difficult to place the claim of violation of privacy in the action of the Defendant in this case. There is not privacy about opening a specialized Account in which the parties have agreed as to the limitation of funds to be deposited in a day and the cap on the amount to be in the Account. The

Defendant did not interfere with the Account beyond the Agreement reached by the parties. Issue of privacy as provided under **CAP 4 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) does not involve money in the Account of a citizen. It concerns telephone rights and the like. So the Claimant raising allegation of violation of Privacy Right is highly misconceived and misappropriated in this case. There is no such thing as violation of privacy of the Claimant. There is no issue of privacy in the opening and operation of a citizen's Bank Account in a specialized Account opening as the Freeba Scheme Account. So this Court holds.

It is elementary that in any Reply it should be centered or responding to issues raised and not raising of new issues. When a Reply raises new issues, it is no longer Reply. This is known by all lawyers. This Court will not waste its judicial time to dwell on that.

Since it is glaringly clear that it was the negligence of the Claimant and his violation of the terms and condition of the Freeba Scheme that triggered and caused the automatic freezing and placing of Post No Debit on his Account with the Defendant, he is not entitled to any damage to be paid to his as the Defendant is not negligent and the action of the Defendant is legal and very lawful. Besides, the Claimant has not established that the action of the Defendant was illegal and unlawful or that the

place of Post No Debit on the said Account tantamounted to conversion. He is not entitled to any payment of Damages. It is trite that whoever asserts must prove. The Claimant asserted but did not prove his case on preponderance of the evidence he had placed before this Court. Therefore, his Suit is not meritorious and it therefore fails.

The Defendant's action is legal and lawful. The Defendant did not violate the Claimant's right to privacy. It did not convert his funds too.

This Suit lack merit and it is therefore DISMISSED.

Agreement is Agreement.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2022 by me.

K.N. OGBONNAYA
HON. JUDGE