

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON TUESDAY, 10TH DAY OF JANUARY, 2023

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/1736/2018

BETWEEN

- 1. BASHIR YUSUF**
- 2. ISHAQ ABDULLAHI**
*[Trading under the name and
style of Ishaq Abdullahi & Sons]*



CLAIMANTS

AND

- 1. INSPECTOR GENERAL OF POLICE**
- 2. CAPITALFIELD INVESTMENT AND
TRUST LIMITED**
- 3. GUARANTY TRUST BANK PLC.**



DEFENDANTS

JUDGMENT

In paragraph 21 of the statement of claim filed on 8/5/2018 along with the writ of summons, the claimants seek the following reliefs against the defendants jointly and severally:

1. A declaration that the acts of the 1st defendant to wit: obtaining an *Ex parte* Order dated the 9th October, 2015 and instructing the claimants' Bank to debit the sums of Eleven Million, One Hundred

and Twenty Thousand Naira [N11,120,000.00] and Nine Million, Five Hundred and Eighty Eight Thousand, Nine Hundred Naira only [N9,588,900.00] from their UBA Account Numbers 2072627448 and 2077030319 vide a Bankers Order dated the 28th October, 2015 is wrongful, improper and unjustifiable.

2. An order of this Honourable Court directing the defendants to reverse the sums of Eleven Million, Five Thousand and Thirty-Eight Naira, Twenty Five Kobo [N11,005,038.25] and Nine Million, Five Hundred and EightyEight Thousand, Nine Hundred Naira only [N9,588,900.00] wrongfully debited from UBA Account Numbers 2072627448 and 2077030319 belonging to the claimants respectively which sums are in the 2nddefendant's Account Number 0003280107 with the 3rddefendant.
3. The sum of Ten Million Naira [N10,000,000.00] as general damages.
4. Cost of this action in the sum of Five Million Naira [N5,000,000.00].

At the trial, Ishaq Abdullahi [2ndclaimant] testified as PW1. He adopted his statement on oath filed on 8/5/2018 and tendered Exhibits 1, 1A, 1B, 2, 2A, 3 & 3A. Mustapha Muhammed was PW2. He adopted his statement on oath filed on 8/5/2018. Bashir Yusuf [1st claimant] testified

as PW3. He adopted his statement on oath filed on 9/9/2020 and tendered Exhibit 4.

On 23/6/2022, learned counsel for the 2nd defendant informed the Court that the 2nd defendant is resting its case on the claimants' case. Sarah Ugamah, a staff of the 3rd defendant, testified as DW1. She adopted her statement on oath filed on 10/7/2019.

Evidence of IshaqAbdulllahi[the 2nd Claimant] - PW1

The evidence of PW1 is that the 1st defendant is the Head of the Nigeria Police Force; the 2nd defendant is a financial management firm with its office situate at Victoria Island, Lagos State; while the 3rd defendant is a commercial bank. In September 2015, one Mustapha Muhammed, who is also a Bureau De Change operator in Wapa, Kano State, approached him and the 1st claimant for the purpose of exchange from Naira to US Dollars.

They agreed to sell 93,000 US Dollars to Mustapha Muhammed at the rate of N222.40. Mustapha Muhammed transferred from his account the sum of N9,588,900.00 into his [PW1] UBA account number 2077030319 and he [PW1] advanced the sum of 43,000 US Dollars to him. The 1st claimant also gave Mustapha Mohammed the sum of 50,000 US Dollars and received the sum of N11,120,000.00 in his [the 1st claimant]

UBA account number 2072627448. He has his statement of account showing the transfer of the said sum from account number 2066909778 [MZF Multitrade Services] in UBA belonging to Mustapha Muhammed. Sometime in October 2015, a lien was placed on his UBA account number 2077030319 in respect of the sum of N9,588,900.00 and same lien was also placed on the UBA account of the 1st claimant in respect of the sum of N11,120,000.00. They approached their bank to make enquiries about the lien. At the bank, they were shown a letter from the Nigeria Police Force titled: “*INVESTIGATION ACTIVITIES RE; ACCOUNT NAMES: 1. BASHIR YUSUF A/C NO. 2072627448, 2. ISAKU ABDULLAHI & SONS A/C NO: 2077030319*” and a Court Order dated 9/10/2015 obtained from Grade 1 Area Court, Gwagwa, Abuja wherein the 1st defendant applied for the freezing of his said account and that of the 1st claimant.

PW1 further testified that the Court Order obtained from Grade 1 Area Court, Gwagwa, Abuja by the 1st defendant was an *Ex parte* Order, which therefore was to be valid pending the determination of a motion on notice. Based on this, they waited patiently to be served with the motion on notice by the 1st defendant. While waiting to be served with a motion on notice, his said account was debited in the sum of N9,588,900.00 and the 1st claimant's said account was debited in the sum of N11,005,038.25; these sums were credited to account number 0003280107

operated by the 2nddefendant with the 3rddefendant.They promptly went to their bank to make inquiries.

At their bank, they discovered that 1stdefendant through IGP Monitoring Unit submitted a Banker's Order dated 28/10/2015 instructing the bank to debit both accounts in the sums statedabove and credit the account of the 2nddefendant with the 3rd defendant, stating that the sums are allegedly proceeds of fraud having been received from one Dappef International Ltd. When they went to IGP Monitoring Unit, one ASP Usman intimated themof the complaint of the 2nddefendant against Dappef International Ltd. arising from an exchange transaction for which the said Dappef International Ltd. was being investigated for criminal breach of trust.

They informed ASP Usman about their transaction with Mustapha Muhammed, which did not involve Dappef International Ltd. and that he is not privy to the transaction between the 2nddefendant and Dappef International Ltd.The Police have arrested and arraigned the natural persons linked to Dappef International Ltd.[who the 2nddefendant transacted with] before the Chief Magistrate Court sitting at Wuse Zone 6, Abuja. He made a statement at the IGP Monitoring Unit.

Ishaq Abdullahi concluded that despite the confirmation of an exchange transaction between them and Mustapha Mohammed which did not involve Dappaf International Ltd. or the 2nd defendant, the 1st defendant has refused to take steps to reverse the amounts wrongly debited from their said accounts, which are in the 2nd defendant's said account in the 3rd defendant. The acts of the 1st defendant in obtaining an *Ex parte* Order and subsequently instructing his bank to debit the sum of N9,588,900.00 from his said account vide a Banker's Order has occasioned huge loss on his business and deprived him of his hard earned money.

PW1 tendered the following documents:

- i. Court Order dated 9/10/2015 made by *Hon. Moh'd S. O.* of Grade 1 Area Court, Gwagwa, Abuja in *Suit No. FCT/SCA/AC/CR/125/2015: Inspector General of Police v. Edward Tolonu & 2 Ors.*: Exhibit 1.
- ii. Receipt dated 12/11/2019 for N500.00 being payment for certified true copy: Exhibit 1A; and application for certified true copy dated 29/10/2019: Exhibit 1B.
- iii. Banker's Order dated 28/10/2015 issued by the Chief Magistrate Court, Abuja: Exhibit 2; the attached deposit slip dated 16/5/2018: Exhibit 2A.

- iv. Statement of account of Ishaq Abdullahi & Sons, UBA account number 207703019: Exhibit 3; attached Certificate of Compliance with the provisions of section 84 of the Evidence Act, 2011 dated 8/5/2018 signed by PW1: Exhibit 3A.

During cross examination of PW1 by learned counsel for 2nd defendant, he said he did not apply to set aside the Court Order to freeze his account. When PW1 was asked if he has proof that he paid the sum of 43,000 US Dollars to Mustapha Mohammed, he said Mustapha Mohammed can testify that he [the PW1] gave him 43,000 US Dollars.

When PW1 was cross examined by learned counsel for the 3rd defendant, he stated that the money debited from his account is with 2nd defendant.

Evidence of Mustapha Muhammed- PW2

In his evidence, PW2 stated that he is a Bureau de Change operator at the Wapa Market, Kano State. In September 2015, he was approached by one Matawalle Mohammed, a colleague in Kano Wapa Market who requested for exchange of Dollars on behalf of his client. He was not having enough Dollars at that time for the transaction. He approached the claimants and they confirmed the availability of US Dollars with

them. He informed Matawalle Mohammed who instructed his client to transfer the sum of N25,000,000.00 to his [PW2] account; the said sum was later transferred to his account by Dappef International Ltd.

The claimants agreed to advance US Dollars to him at the rate of N222.40. He transferred N11,120,000.00 into UBA account number 2072627448 belonging to the 1st claimant from his UBA account number 2066909778 [MZF Multi Trade Services]. He transferred the sum of N9,588,900.00 to UBA account number 2077030319 belonging to the 2nd claimant from his said account in exchange for 43,000 US Dollars. Upon conclusion of the transaction with the claimants, he handed over 93,000 US Dollars to Matawalle Mohammed and also gave the balance of N4,315,000.00 to him.

PW2 further testified that he was surprised when the claimants informed him about the acts of the 1st defendant to wit: obtaining a Court Order and subsequently instructing their bank to debit their said account numbers in the sum of N11,120,000.00 and N9,588,900.00 on the allegation that the said sums are proceeds of fraud. He made a statement at IGP Monitoring Unit at the Police Headquarters detailing the transaction between him and the claimants.

During cross examination of the PW2 by the 2nd defendant's counsel, he confirmed that Dappaf International Ltd. transferred N25,000,000.00 to his account.

When cross examined by the 3rd defendant's counsel, PW2 stated that the 3rd defendant was not part of the transaction that led to this case. He paid money to the claimants in their UBA account.

Evidence of Bashir Yusuf [the 1st Claimant]- PW3

The evidence of PW3 is similar to that of the PW1 [the 2nd claimant]. He confirmed that Mustapha Mohammed paid the sum of N11,120,000.00 into his UBA account number 2072627448 in exchange for 50,000 US Dollars. The statement of account of PW3 in UBA is Exhibit 4.

During cross examination of PW3 by the 2nd defendant's counsel, he stated that there is no order setting aside the Court Order by which his account was frozen. He confirmed that the money was removed from his account based on a Banker's Order submitted by the Police.

During cross examination of PW3 by the 3rd defendant's counsel, he said his money is in the 2nd defendant's account in the 3rd defendant.

Evidence of Sarah Ugamah-DW1

The evidence of DW1 is that the said funds referred to by the claimants were transferred to the 2nd defendant's account domiciled with the 3rd defendant. The 3rd defendant has no control over depositors' funds. Since the transfer of the funds to the 2nd defendant's account in 2015, the 2nd defendant had made several withdrawals from the said account prior to the institution of this suit. The said funds were no longer in the 2nd defendant's account, having been depleted by the 2nd defendant as there is no court order directing the 3rd defendant to restrict the 2nd defendant's account. The 3rd defendant has not occasioned any harm, injury or loss to the claimants.

When DW1 was cross examined by learned counsel for the claimants, he confirmed that the sums of N11,005,038.25 and N9,588,900.00 were transferred from the account of the claimants to the account of the 2nd defendant in the 3rd defendant. The 2nd defendant's account with the 3rd defendant is still active.

Issues for Determination:

At the end of the trial, Adetayo Adeyemo Esq. filed the 2nd defendant's final written address on 25/7/2022; C. I. Abengowe Esq. filed the 3rd defendant's final written address on 23/9/2022; while A. I. Muhammad

Esq. filed the claimants' final written address on 17/8/2022. The final written addresses of the parties were adopted on 11/10/2022.

Learned counsel for the 2nd defendant formulated these two issues for determination:

1. Whether the claimants' pleadings disclosed any cause of action, reasonable or otherwise, against the 2nd defendant.
2. Whether the claimants have proven their entitlement to the grant of the reliefs sought.

Learned counsel for 3rd defendant posed one issue for determination, viz:

Whether from the pleadings or the evidence before the Court, the claimants have established any cause of action against the 3rd defendant to entitle them to judgment against the 3rd defendant in this suit.

For his part, learned counsel for the claimants distilled these two issues for resolution:

1. Whether having regards to the totality of evidence before this Honourable Court, both oral and documentary, the claimants have

proved their case on the balance of probabilities against the defendants to entitle them to the reliefs sought.

2. Whether the claimants are not entitled to damages against the defendants.

Submissions of Learned Counsel for the 2nd Defendant:

Adetayo Adeyemo Esq. relied on **Rinco Constrction Co. v. Veepee Ind. Ltd. [2005] 9 NWLR [Pt. 929] 85** and other cases for the meaning of cause of action, which consists of two elements namely: [i] the wrongful act of the defendant which gives the claimant his cause of complaint; and [ii] the consequent damage. He referred to some averments in the statement of claim and submitted that there was no allegation of wrongdoing made against the 2nd defendant. This underscores the 2nd defendant's decision to rest its case on that of the claimants. He submitted that the claimants have not disclosed any cause of action against the 2nd defendant.

The 2nd defendant's counsel also submitted that the claimants are not entitled to the grant of the declaration sought in relief 1. He stated that the 8th Edition of Black's Law Dictionary at page 1644 defines "*wrongful*" as an act of doing something "*contrary to law*". At page 773, "*improper*" is defined to mean "*fraudulent*". He posited that the implication of the use of the word "*improper*" is that the *ex parte* Order dated 9/10/2015

was fraudulently obtained by the 1st defendant. It was submitted that the claimants' allegation against the 1st defendant, which has the element of crime was not proved beyond reasonable doubt as required by section 135 of the Evidence Act, 2011.

The further submission of learned counsel for the 2nd defendant is that the Court Order [Exhibit 1] and the Banker's Order [Exhibit 2] show that due legal process was followed by the 1st defendant. The claimants also failed to prove the assertion in relief 1 on balance of probabilities. There is no pleading or evidence to prove that due process was not followed in obtaining the *ex parte* Order and the Bankers' Order. There is nothing to show that the said Orders were obtained wrongfully or unjustifiably.

In respect of relief 2, Mr. Adetayo Adeyemo argued that the claimants' accounts were debited based on a valid Court Order and a Banker's Order, both of which have not been challenged by the claimants till date. Assuming the said *ex parte* Order and Banker's Order were wrongful and unjustifiable, the appropriate step to be taken by the claimants is to apply to the same courts which gave the Orders to set them aside. The law is that a person affected by the judgment of a court which is a nullity is entitled to have the same court set it aside *ex debito justitia*. He referred to the case of **Nigerian Ports Authority v. Dr.**

Sama Ekpo Sama & Anor. [2019] LCN 13387 [CA]; [2016] LPELR-40126 [CA].

Mr. Adetayo reasoned that since this Court is not the court that made the Orders, it cannot be asked to vacate same except the Orders are appealed against to this Court and as this is not an appeal, the relief must fail. The implication of the failure of the claimants to challenge the said Orders is that the 2nd defendant was not wrong to have received the monies into its account. He concluded that relief 2 seeking the order of reversal of the said sum cannot be granted since the Orders were not challenged at the appropriate courts where they were made.

In respect of reliefs 3 and 4, the 2nd defendant's counsel submitted that these reliefs, which are predicated on reliefs 1 and 2 are bound to fail since the claimants failed to prove reliefs 1 and 2.

Submissions of Learned Counsel for the 3rd Defendant:

C. I. Abengowe Esq. submitted that no wrongdoing or wrongful act was ascribed to the 3rd defendant in the statement of claim. The 3rd defendant bears no liability to the claimants in this suit as it did not obtain any *ex parte* order against them and did not participate in any debit of monies from the accounts of the claimants in UBA. He referred to **Ibrahim v. Osim [1988] 3 NWLR [Pt. 82] 257** for the meaning of cause of action; and

submitted that the claimants have not established any cause of action against the 3rd defendant.

The 3rd defendant's counsel further argued that the claimants are not entitled to general damages against the 3rd defendant. He referred to Gege v. Nande [2006] LPELR-7679 [CA] on principles for the award of general damages. There is no wrongdoing by the 3rd defendant by reason of the inflow of monies into the 2nd defendant's account, which said monies were "*quickly dissipated*" by the 2nd defendant. There was no way the 3rd defendant could restrict the 2nd defendant from having access to the disputed monies in its account as there was no court order to that effect.

Submissions of Learned Counsel for the Claimants:

The standpoint of A. I. Muhammad Esq. is that the claimants proved their case through their unchallenged evidence, which firmly established that there was an exchange transaction from Naira to Dollar between them and Mustapha Muhammed [the PW2] to the exclusion of any third party. The election of the 2nd defendant not to call evidence is obviously because it has no defence to the claims of the claimants in the light of the quality and credibility of the evidence put forward by the claimants.

Mr. A. I. Muhammad further stated that the claimants' claims are not rooted in the Order [Exhibit 1] as the said Order only placed a lien on their accounts. He however argued that the said Order, Exhibit 1, is a nullity as Gwagwa Area Court *"lacks the jurisdiction to entertain criminal matters talk less of granting such Order."* He referred to section 13 of the Federal Capital Territory Area Courts [Repeal and Enactment] Act 2010. At paragraphs 3.7 & 3.8 of the claimants' final address, counsel also referred to some decisions of Hon. Judges of this Court to support his view that the Area Courts of FCT, Abuja lack jurisdiction to entertain criminal matters.

The claimants' counsel also contended that the Order [Exhibit 1] is null and void, therefore, it is not necessary or mandatory for the claimants to have it set aside especially as the Order was not the basis for debiting their accounts. He relied on **Anthony Okoro v. State [2012] LPELR-7846 [SC]** to support the view that when a judge makes a null order or one without jurisdiction, it is advisable but not mandatory to go to court to set it aside. The only reason for going to court is to have it put on record that it has been set aside. Counsel reasoned that since Exhibit 1 was granted without jurisdiction, it means that it never existed and setting it aside is a matter of formality but not a mandatory act required of the claimants.

With respect to the Banker's Order [Exhibit 2], Mr. Muhammad submitted that it did not emanate from a legal proceeding properly initiated with an appropriate originating process. A court order can only emanate from a pending suit properly instituted before a competent court. Section 7 of the Banker's Book Evidence Act, 1879 [wrongly written by the 1st defendant in Exhibit 2 as Bankers Act, 1879] - pursuant to which Exhibit 2 was served on the bank of the claimants - provides:

"On the application of any party to a legal proceeding, a court or judge may order that such party be at liberty to inspect and take copies of any entries in a Bankers' book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court or judge otherwise directs."

The claimants' counsel submitted that the said section 7 can only be relied upon by the 1st defendant to inspect and/or take copies of entries in the banker's book of a party in the course of a legal proceeding and not to debit amount[s] in an account. The Banker's Order [Exhibit 2] did not comply with the conditions in section 7 as there was no legal proceedings on the basis of which it was issued and Exhibit 2 went

beyond the limits of inspecting or taking copies of entries in the banker's book. Therefore, Exhibit 2 is null and void *ab initio*.

He relied on United Bank for Africa Plc. v. Chief [Engr.] Etim Okon Edet & Ors. [2014] LPELR-24243 [CA] to support the principle that a court order amounts to a nullity when it has been made without jurisdiction or when there has been non-compliance with a fundamental procedural rule. It was submitted that being a nullity, Exhibit 2 never existed and setting it aside is a matter of formality and not a mandatory act.

In paragraph 3.16 of the claimants' final address, counsel made the point that Banker's Order *"has been repeatedly abused by the 1st Defendant who resort to it at the slightest opportunity to cause the debiting of accounts under investigation by the Nigeria Police Force. Worse still, the said Banker's Order is usually brought pursuant to non-existent laws and under non-existent legal proceedings to the detriment of innocent account holders such as the Claimants."*

In urging the Court to grant the claimants' reliefs, A. I. Muhammad Esq. further argued that the 1st & 2nd defendants did not adduce any evidence to show that the claimants are linked to the transaction between the 2nd defendant and Dappaf International Ltd. for which the

2nd defendant reported Dappaf International Ltd. to the 1st defendant. By instructing the bank of the claimants to debit their accounts vide Exhibit 2 and credit the account of the 2nd defendant, the 1st defendant was imposing an obligation on the claimants in respect of a contract in which they were not parties.

Counsel referred to the doctrine of privity of contract and posited that a contract cannot confer rights or impose obligations on any person except parties to it. A stranger cannot acquire rights or incur obligations arising from a contract to which he is not a party. He relied on **Coast Oil Ltd. v. Tuboscope Vetco Int'l & Anor. [2019] LPELR-46450 [CA]** among others.

In paragraphs 3.19 to 3.21 of claimants' final address, A. I. Muhammad Esq. submitted that the claimants have disclosed a reasonable cause of action against the defendants. He concluded that since the claimants were not privies to the transaction between the 2nd defendant and Dappaf International Ltd., debiting their accounts with the said sums which were credited into the account of the 2nd defendant vide Exhibit 2 was wrongful and unjustifiable. Therefore, the claimants have proved their claims.

Finally, in paragraphs 4.1 & 4.2 of claimants' final address, their learned counsel stated that general damages are damages which the law implies

or presumes to have accrued from the wrong complained of. It is awarded to assuage a loss which flows from the defendant's act and need not be specifically pleaded. He relied on Adamawa State Government & Anor. v. Simon Umaru & Ors. [2021] LPELR-55659 [CA] on principles guiding the award of general damages; and submitted that claimants are entitled to the award of general damages.

Decision of the Court:

From the evidence adduced at the trial and the submissions of learned counsel, the Court is of the opinion that the issue for determination is whether the claimants are entitled to the reliefs sought.

The claimants' first relief is a declaratory order. It is trite law that a party seeking a declaratory relief must adduce credible and sufficient evidence to prove his case. He must succeed on the strength of his case and not on the weakness of the case of the adverse party. See the case of Arowolo v. Olowookere [2011] 18 NWLR [Pt. 1278] 280. In this case, the claimants have the burden to establish by credible and sufficient evidence that they are entitled to the declaratory relief and the other reliefs sought.

At this juncture, it is necessary to highlight some pieces of evidence which I considersalient or material in this case. These are:

- a) The sum of N11,120,000.00paid by Mustapha Muhammed [PW2] to the 1st claimant's account number 2072627448 in UBA and the sum of N9,588,900.00 paid by Mustapha Muhammed to the 2nd claimant's account number 2077030319 in UBA were paid to the account of Mustapha Muhammed by Dappaf International Ltd., the client of Matawalle Mohammed.
- b) Sometime in October 2015, a lien was placed on the said accounts of the claimants for the sums stated above. When the claimants went to their bank [UBA] to make inquiry about the lien, they were shown a letter from the Nigeria Police Force titled: *Investigation Activities*in respect of their said accounts and a court order obtained from Grade 1 Area Court, Gwagwa, Abuja [Exhibit 1].
- c) In Exhibit 1, the Grade 1 Area Court, Gwagwagranted *ex parte*orders to freeze the said accounts of the claimants in UBA“*pending the determination of the motion on notice already filed.*”The said orders in Exhibit 1 were granted based on the application of the Inspector General of Police [the 1st defendant in this case].

- d) While the claimants were waiting to be served with the motion on notice referred to in Exhibit 1, their said accounts were respectively debited with the sums of N11,005,038.25 and N9,588,900.00. These sums were credited to the account of the 2nd defendant in the 3rd defendant.
- e) When they went to their bank, they were informed that the 1st defendant submitted a Banker's Order dated 28/10/2015 [Exhibit 2] instructing UBA to debit their accounts with the above stated sums and credit the account of the 2nd defendant with the sums "*stating that the sums are allegedly proceeds of fraud having been received from one Dapef International Limited by the claimants.*"
- f) When the claimants went to the office of the IGP Monitoring Unit, ASP Usman informed them "*about the complaint of the 2nd Defendant against one Dapef International Limited arising from an exchange transaction for which the said Dapef International Limited was being investigated for criminal breach of trust.*"
- g) The Police have arrested and arraigned the natural persons linked to Dapef International Ltd. whom the 2nd defendant transacted with at the Chief Magistrate Court, Wuse Zone 6, Abuja.

From the foregoing facts, three points are remarkable or significant. The first is that in 2015, the claimants were informed that the monies paid to them by Mustapha Muhammed were *“allegedly proceeds of fraud”* in respect of which Dappaf International Ltd. *“was being investigated for criminal breach of trust.”* The claimants did not sue Mustapha Mohammed who paid the monies to them but called him as a witness in this case.

The second point is that in October 2015, the claimants became aware of the Order made by Grade 1 Area Court, Gwagwa, Abuja dated 9/10/2015 [Exhibit 1] to freeze their said accounts in UBA. Also in October 2015, the claimants became aware of the Banker’s Order dated 28/10/2015 [Exhibit 2] issued by the Magistrate Court, Abuja based on which their accounts were debited with the sums aforesaid and credited to the said account of the 2nd defendant in the 3rd defendant.

From October 2015 until 8/5/2018 when this suit was filed, the claimants did not initiate any legal proceeding to challenge the validity of the said Orders [Exhibits 1 and 2] such as an application before the respective courts that granted the Orders to set aside the Orders or an application for judicial review before the High Court to quash the Orders.

The third point worthy of note flows from the fact that the persons linked to Dappaf International Ltd. have been arraigned at the Chief Magistrate Court, Wuse Zone 6, Abuja. Since that charge has not been determined, my respectful view is that no decision has been made by that Magistrate Court as to whether or not the monies paid to the account of the claimants by Mustapha Muhammed [the PW2] - which were paid to him by Dappaf International Ltd. - are proceeds of crime.

Let me now consider the reliefs of the claimants. In **relief 1**, the claimants seek a declaration of the Court that the acts of the 1st defendant to wit: [i] obtaining an *ex parte* Order dated 9/10/2015 [Exhibit 1]; and [ii] instructing the claimants' bank [UBA] to debit the said sums from their respective accounts in UBA vide a Banker's Order dated 28/10/2015 [Exhibit 2] are wrongful, improper and unjustifiable.

There is need to emphasize the obvious point that the 1st defendant made an *ex parte* application to the Grade 1 Area Court, Gwagwa for the grant of the Order in Exhibit 1 to freeze the said accounts of the claimants. That court in exercise of its judicial powers granted the Order. Similarly, the 1st defendant made the application to the Magistrate Court of the FCT, Abuja for the issuance of Banker's Order in the terms set out in the

application. The Magistrate Court in exercise of its judicial powers issued the Banker's Order.

The Court agrees with learned counsel for the 2nd defendant that there is no averment in the statement of claim or evidence of the claimants to prove that the applications made by the 1st defendant before the Orders [Exhibits 1 and 2] were respectively granted by Grade 1 Area Court, Gwagwa and the Magistrate Court were/are wrongful, improper and unjustifiable. Every person has a right to make an application to a court. The court has the discretion to grant or refuse the application. Therefore, the Court finds no basis to grant the declaratory order sought in relief 1.

In **relief 2**, the claimants seek an order directing the defendants to reverse the said sums "*wrongfully debited*" from their UBA accounts aforesaid which sums are in the 2nd defendant's account number 0003280107 with the 3rd defendant.

As I said earlier, the accounts of the claimants were debited with the said sums based on the Banker's Order [Exhibit 2] issued by a Magistrate. Flowing from my views in respect of relief 1, I hold the humble opinion that the claimants ought to have challenged the validity

of the Orders[Exhibits 1 & 2] since October 2015 instead of challenging the applications made by the 1st defendant for the grant of the Orders.

Even in this action, the claimants did not seek any order to invalidate or strike down the *ex parte* Order [Exhibit 1] and/or the Banker's Order [Exhibit 2]. Thus, I hold the considered opinion that the arguments put forward by A. I. Muhammad Esq. in support of the view that the *ex parte* Order [Exhibit 1] and the Banker's Order [Exhibit 2] were made without jurisdiction and therefore invalid, null and void are not appropriate or relevant in this proceeding. With due respect, the arguments are suitable or relevant in a proceeding to set aside or quash the said Orders.

This brings me to the argument of learned counsel for the claimants that the *ex parte* Order [Exhibit 1] and the Banker's Order [Exhibit 2] are null, void, non-existent and therefore it is not necessary for the claimants to apply to set aside the Orders. It was submitted that the claimants did not need to apply to court to set aside the Orders as they never existed and setting them aside "*is a matter of formality not a mandatory act*". He relied on the case of **Anthony Okoro v. State [supra]** in support of his view.

The Court rejects the above submission. The law is firmly established that an order made by a court is valid until it is set aside. Where a person

holds the opinion that an order made by a court is invalid, null and void, he ought to apply to the court that made the order or a higher court to set it aside or to quash it. The person is not entitled to disobey the order or treat it as non-existent until it is set aside. In **Babatunde & Ors. v. Olatunji & Anor. [2000] LPELR-697 [SC] @ 13-15**, His Lordship, Katsina-Alu, JSC [as he then was, later CJN] made the position clear thus:

"A judgment of a Court of competent jurisdiction remains valid and binding, even where the person affected by it believes that it is void, until it is set aside by a Court of competent jurisdiction. In Chuk v. Cremer (1846) 1 Coop. temp. Cott. 342; 47 E. R. 884 Lord Cottenham, L. C. said: "A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. ... That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be disobeyed. ..."

In **Olajuwon v. Adeleye & Ors. [2019] LPELR-47862 [CA]**, the position of the law was restated that an order of a court of competent jurisdiction

remains valid until it is set aside by the same Court or the Appellate Court. See also Majeologbe v. Solarin [2015] LPELR-25588 [CA].

It is noteworthy that the case of Anthony Okoro v. State [supra] relied upon by the claimants' counsel does not support his view that an invalid order or an order made without jurisdiction by a court should be treated as non-existent or disobeyed. At *page 41 of the Report, His Lordship, Rhodes-Vivour, JSC* stated thus:

"When a judge makes a null order or one without jurisdiction it is advisable but not mandatory to go to Court to set it aside. The only reason for going to Court is to have it put on record that it has been set aside. Where on the other hand a null order, such as the one under review does not affect anyone, and no one is prejudiced by it, neither was there a miscarriage of justice by it, it is better ignored." [Underlining mine].

The decision of the Court is that since the said accounts of the claimants were debited with the said sums and credited to the account of the 2nd defendant pursuant to, or in obedience of, the Banker's Order issued by a Magistrate Court, and the Order has not been set aside, this Court cannot grant relief 2 in this proceeding to reverse the said sums.

The second reason why the Court cannot grant the order sought in relief 2 in this proceeding is that no decision has been made as to whether or not the sums of N11,120,000.00 and N9,588,900.00 respectively paid to the accounts of the claimants by Mustapha Muhammed [which were paid to him by Dappaf International Ltd.] are proceeds of fraud. This is because the charge against the persons linked to Dappaf International Ltd. has not been determined. This means that the claimants have not established that the said sums were "*wrongfully debited*" from their accounts.

Relief 3 is a claim for general damages. Without much ado, there is no basis to grant this relief since relief 1 and 2 on which it is predicated are not granted.

Conclusion:

All said, the claimants' claims are not granted. In the light of the peculiar facts of this case, it is ordered that the claimants are at liberty to institute an action to claim the sums of N11,005,038.25 and N9,588,900.00 respectively debited from their UBA account numbers 2072627448 and 2077030319 and credited to 2nd defendant's account number 0003280107 with the 3rd defendant if:

- i. the Court Order dated 9/10/2015 [Exhibit 1] and Banker's Order dated 28/10/2015 [Exhibit 2] are set aside or quashed; and
- ii. there is a decision that the sums aforesaid paid to the accounts of the claimants by Mustapha Muhammed [which were paid to him by Dapgef International Ltd.] are not proceeds of fraud.

The parties shall bear their costs.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Learned Counsel:

1. Abdullahi Abdulhakeem Ago Esq. for the 2nd defendant.
2. C. J. Abengowe Esq. for the 3rd defendant.