

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON THURSDAY THE 6TH DAY OF APRIL 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. CV/46/2022

BETWEEN

AMARACHUKWU OTI -----APPLICANT
AND
OPAY DIGITAL SERVICES LIMITED----- RESPONDENT

JUDGMENT

The Applicant brought this suit against the Respondent under the pursuant to **Order 2 Rule 1 of the Fundamental Rights Enforcement Procedure Rules and Sections 44 & 46 of the 1999 Constitution (as amended)**, praying the Court for the following reliefs;

1. A DECLARATION that the Respondent's act of placing a Post-No-Debit restriction on the Applicant's account number 7030776897 domiciled with the Respondent since August 2022 till date without any legal justification and thereby denying the Applicant access to his funds in the said account amounts to a breach of the Applicant's fundamental right guaranteed under Section 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
2. A DECLARATION that the Respondent's act of denying the Applicant access to the funds in its account number 7030776897 domiciled with the Respondent since August 2022 till date without any Order of Court of competent jurisdiction, and which acts frustrated and ruined the Applicant's business amounts to a breach of the Applicant's fundamental right guaranteed under Section 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
3. AN ORDER directing the Respondent to remove the unlawful Post-No Debit restriction placed on the Applicant's account number 7030776897 domiciled with them forthwith.
4. AN ORDER restraining the Respondent either by themselves, cronies from instigating further Post-No-Debit restriction on the Applicant's account number 7030776897.
5. AN ORDER directing the Respondent to pay to the Applicant the sum of N100,000,000.00 (One Hundred Million Naira) only as general damages for infringing and violating the Applicant's fundamental right to ownership of property by placing a post-

no-debit restriction on the Applicant's account for more than three now without any justifiable ground and in the process frustrated and ruined the Applicant's business and means of livelihood.

6. AN ORDER directing the Respondent to pay to the Applicant the sum of N200,000,000.00 (Two Hundred Million Naira) only as exemplary/punitive damages for its unconscionable infringement and violation of the Applicant's fundamental right to ownership of property by unlawfully and unjustly placing a restriction on the Applicant's account.
7. AN ORDER directing the Respondent to pay to the Applicant, the sum of N10,000,000.00 (Ten Million Naira) only, being cost of this Suit.
8. AN ORDER directing the Respondent to tender a public apology to the Applicant.
9. AND FOR SUCH FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is brought are as follows:

- a. The Applicant is a Legal Practitioner, called to the Nigerian Bar with license to practice law and represent clients anywhere in Nigeria.
- b. As a legal practitioner, the Applicant has for the past five years been in the business of law practice.
- c. The Applicant maintains account in various banks in Nigeria, including account number 7030776897 domiciled with the Respondent.
- d. As a legal practitioner, the Applicant has at all material times engaged in his lawful business and there has never been any complaint against him or his business.
- e. Sometime in August, 2022 while the Applicant was trying to carry out a transaction using the Respondent online platform, he discovered that he could no longer access his account.
- f. To his surprise, there was no prior communication whatsoever from any quarter, neither was he briefed by the Respondent on any reason for such restriction.
- g. The Applicant who attempted the transaction several times without any result thought it was a usual network issues but to his surprise, it was not.
- h. Sometime in August, 2022 while the Applicant was trying to carry out a transaction using the Respondent online platform, he discovered that he could no longer access his account.

- i. To his surprise, there was no prior communication whatsoever from any quarter, neither was he briefed by the Respondent on any reason for such restriction.
- j. The Applicant who attempted the transaction several times without any result thought it was a usual network issues but to his surprise, it was not.
- k. Having exhausted all known options to access his account, the Applicant wrote an email to the Respondent, requesting to know why he was unable to access his account.
- l. To the consternation of the Applicant, it was a POST-NO-DEBIT RESTRICTION UNILATERALLY placed on the account of the Applicant by the Respondent for no just and verifiable reason.
- m. Against every known law in Nigeria, and in flagrant abuse of the Constitution of the Federal Republic of Nigeria and the Applicant's Fundamental Rights enshrined therein, particularly, section 44 of the 1999 Constitution of the Federal Republic of Nigeria (as Amended), the Respondent placed a post-no-debit restriction on the Applicant's account number 7030776897 domiciled with the Respondent.
- n. The reason for such restriction on the Applicant's account was never and is yet to be availed the Applicant who is currently frustrated in the United Kingdom where he is currently pursuing his LL.M Program.
- o. There was equally no Order of Court of Competent jurisdiction to that effect.
- p. The Applicant's account remained restricted since August 2022 and continued till date without any reason whatsoever and the Applicant is still finding it difficult to feed or clear his bills for paucity of fund.
- q. All attempts and appeals by the Applicant to the Respondent to remove the unlawful restriction on his account remains abortive.
- r. The Applicant has pursuant to several email correspondences sent by his Counsel Kalepron Attorneys to the Respondent demanded for the removal of the unlawful restriction placed on his account which constitute an infringement to his Constitutional Right to own movable and immovable assets anywhere in Nigeria, but the Respondent outrightly refused to lift the said restriction.
- s. Being a Nigerian Citizen, the rights of the Applicant as guaranteed by the constitution cannot be taken away save in a manner prescribed by the Constitution.

- t. The unlawful and unjust restriction of the Applicant's account and the consequential withholding of the funds therein by the Respondent is unconstitutional and a violation of the Applicant's right as guaranteed by Section 44 of the Constitution of the Federal republic of Nigeria, 1999 (as amended).
- u. The rights of the Applicant as guaranteed by the provisions of Section 44 of 1999 constitution of the Federal Republic of Nigeria 1999 (supra) is sacrosanct and cannot be violated save in a manner prescribed by the law.
- v. The Respondent deliberately is deliberately frustrating the Applicant's business and infringed on the Applicant's Constitutionally guaranteed right to own and control movable and immovable property.
- w. It is unlawful and unconstitutional for the Respondent to deny the Applicant usage of his funds domiciled with them without an Order of Court of competent jurisdiction mandating the Respondent to so act or at variance with the provisions of Section 44 of the 1999 Constitution (as amended) (supra).

In support of the originating motion is a 10 Paragraphs affidavit deposed to by David Uma, a Legal Practitioner in the law firm of Paraclete & Earth Increase LP, counsel to the Applicant, with Exhibits "A" – "A1" attached. Exhibits "A" are copies of email correspondences between the Applicant, Respondent & Applicant counsel and Exhibit "A1" certificate of compliance pursuant to Section 84 of the Evidence Act 2011. Also filed is a Written Address. The averments of the Applicant in the affidavit in support is on all fours with the grounds upon which this application is brought reproduced above.

In the written address, learned Counsel for the Applicant formulated a sole issue for determination to wit;

"Whether from the facts of this case and Affidavit evidence (including the exhibits annexed thereto) adduced Applicant is entitled to the reliefs sought?"

Summarily learned counsel submitted that from the totality of the affidavit evidence in support of this application, the Applicant has unequivocally established that his Constitutionally guaranteed right to ownership of property, in this case, his funds with the Respondent, and the dignity of his person was violently and brazenly breached by the Respondent. Relying on Section 44 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended). Counsel submitted that

in order for the Applicant to succeed in an application for the enforcement of his fundamental rights, what he needs to do is to show by credible, cogent oral or affidavit evidence, facts disclosing the act done or omission made by the Respondent which amounted to a breach of his right(s). citing **Okafor v. Lagos State Government (2017) 4 NWLR (Pt. 1556) Pg. 404 @ 433, Para. H.** Counsel submitted that the Applicant has via the Affidavit in support of this application and Exhibits A to A1 established that the Respondent grossly violated his fundamental right to the ownership of movable property. Hence the Applicant has sufficiently discharged the burden of proving that his right to ownership of movable property was breached by the Respondent. Counsel further submitted that **Order 11, Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009** provides that any person whose fundamental Human Rights has been breached, as is the case with the Applicant in the instant Application, is entitled to redress and remedy from this Court. He relied on **Think Ventures Ltd & 2 Ors v. Spice & Regler Ltd & Anor (2020) 5 AAQR 44** and **First Bank of Nigeria Plc & Ors v. Attorney-General of the Federation & Ors (2018) LPELR-46084 (SC).** Counsel also submitted that it is the position of the law that exemplary, punitive or aggravated damages should be awarded whenever the Respondent's conduct is sufficiently outrageous to merit punishment as where for instance, it discloses malice, fraud, cruelty, insolence of flagrant disregard of the law and the like. In support he referred the Court to **Sun Publishing Ltd. v. Aladinma Medicare Ltd. (2016) 9 NWLR (Pt. 1518).** Counsel urged this Honourable Court to hold that this application is meritorious and grant all the reliefs sought by the Applicant.

There is evidence in the case file that the Respondent were duly served with the originating process in this suit. There is also evidence that they were served with hearing notices against each of the days that the matter came up for hearing. In spite of the service of the processes in this suit on the Respondent, they neither appeared in Court nor filed any process challenging the suit of the Applicant. On the 15th of February, 2023, learned Counsel for the Applicant argued the application of the Applicant and this Honourable Court adjourned for Judgment.

I have carefully read and digested the averments in the affidavit of the Applicant and submissions of the learned Counsel. As I have stated earlier, the suit is unchallenged, the Respondent having failed, refused or neglected to file any counter-affidavit challenging the facts

contained in the affidavit in support of the application; or a reply on point of law challenging the legal submissions contained in the written address in support of the application. This judgment is therefore on the unchallenged affidavit evidence of the Applicant. In **PROJECT ARCADE LTD & ANOR V. IGP & ORS (2022) LPELR-59127(CA)**, Per **SIRAJO, J.C.A** in (Pp. 14-15 paras. E-E) held.

*"Indeed, under Nigerian law, juristic and natural persons can invoke the fundamental rights provisions in the Constitution. However, the general position of the law is that in an action founded on the breach of a fundamental right, an applicant must succeed on the strength of his own case and not on the weakness of the defence. See *Jolayemi&Ors vs. Alaoye& Anor (2004) LPELR-1625 (SC)*. When a person alleges that his/her fundamental right to dignity is breached or likely to be breached, he or she must solidly put before the Court evidence to prove his allegation of such an infraction or likely infraction from the affidavit before the Court. See *Omame vs. NPF &Ors (2021) LPELR - 54747 (CA)*. Accordingly, the onus of proof is on an applicant to establish by credible and cogent evidence that he is entitled to the reliefs endorsed in the originating process - to wit, that his fundamental rights has been breached or is likely to be breached; and unless the applicant discharges this burden of proof on a balance of probabilities, the burden does not shift to the respondent."*

Hence, it is imperative that Applicant proves by credible affidavit evidence that his fundamental rights were infringed by the conducts or acts of the Respondent. To this end, therefore, this Honourable Court hereby formulates a single issue for determination, to wit:

"Whether or not the Applicant has made out a case to justify the grant of the reliefs sought in the originating motion".

This application is predicated on alleged violation of the Applicant's rights as guaranteed in Sections 44 of the 1999 Constitution of Nigeria (as amended). The general position of the law in our legal system is that the burden of proof first lies on the party who asserts a state of affairs and seeks the Court's favourable pronouncement on it to lead credible evidence in proof of it lest he fails. The burden of proof is always on the party who will fail if no further evidence is adduced as provided in **Sections 131 to 133 of the Evidence Act 2011**. The Applicant is alleging that his rights to property has been

infringed upon by the Respondent. **Section 44(1) of the 1999 Constitution of Nigeria** (as amended) provides;

“No moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that among other things-

(a) requires the prompt payment of compensation thereof and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

As stated above, I have read and digested the averments in the Applicant’s affidavit and exhibit A (copies of email correspondences between the Applicant, Respondent & Applicant counsel). There is no gainsaying that the Applicant’s bank account was placed on “Temporary hold” by the Respondent and that the account was restricted on the alleged incessant large inflow of funds. Therefore, the Applicant has established that his account was placed on restriction by the Respondent. The burden of proof is however not static as it shifts from party to party until the issue in contention is resolved. Now the question to be answered is “was the Applicant’s rights infringed upon by the restriction placed on his account by the Respondent?”. By the email correspondence the Respondent admitted restricting the account of the Applicant although with an alleged order of court and directed the Applicant to the Cryptography and Cybercrime Unit (CCU) of the Force Intelligence Bureau, Abuja to resolve the issues. The Applicant’s legal representative (Kalepron Attorneys) in the email correspondence demanded a copy of the court order with which the account was restricted from the Respondent and the said order of court was not made available to the Applicant or his legal representation. In **GTB v. ADEDAMOLA & ORS (2019) LPELR-47310(CA)** the court in upholding the judgment of the trial court and dismissing the appeal with cost held that The Economic and Financial Crimes Commission has no powers to give direct instructions to Bank to freeze the Account of a Customer, without an order of Court, so doing constitutes a flagrant disregard and violation of the rights of a Customer and the Bank has no obligation to act on such instructions or directives without an order of court.

As aforesaid, Respondent were served with the originating process and hearing notices but they choose not to respond nor were they legally represented. Therefore, this court is convinced that the Applicant's account was placed on hold by the Respondent without any justification as Respondent's failure to justify its action is a failure by the Respondent to discharge its burden of prove shifted to the Respondent by the Applicant.

The Applicant is also claiming N200,000,000.00 (Two Hundred Million Naira) against the Respondent as exemplary/punitive damages for its unconscionable infringement and violation of the Applicant's Fundamental Right to ownership of property by unlawfully and unjustly placing a restriction on the Applicant's account. Exemplary damages are awarded where the conducts of the Respondent is oppressive, arbitrary and unconstitutional. In **WILLIAMS VS. DAILY TIMES OF (NIG) LTD (1990) LPELR- 3487 (SC)**, the Supreme Court held;

“There has always been a difference between exemplary and aggravated damages. Exemplary damages are usually awarded where statutes prescribe them and apart from this, they are only awarded for two categories to wit (1) oppressive, arbitrary or unconstitutional action by servants of the government... (2) where the defendant's act which has been held to be tortious was done with a guilty knowledge, the motive being that the chances of economic advantage outweigh the chances of economic or even (perhaps) physical penalty. (Another act of deliberateness) ...”

In this instance, the Respondent is not a servant of the government. They only fell into a grave error when they restricted the Applicant's account without evidence of Court order. And it is for that reason that I award a sum of N10,000,000 (Ten Million Naira) only as general damages in favour of the Applicant and against the Respondent. We should remember that general damages are awarded as a result of what the law presume to be the direct or probable consequence of the act complained of but the quantification thereof is at the discretion of the court.

Consequently, it is hereby ordered as follows;

1. It is hereby declared that the Respondent's act of placing a Post-No-Debit restriction on the Applicant's account number 7030776897 domiciled with the Respondent since August 2022 till date without any legal justification and

thereby denying the Applicant access to his funds in the said account amounts to a breach of the Applicant's fundamental right guaranteed under Section 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

2. It is hereby declared that the Respondent's act of denying the Applicant access to the funds in its account number 7030776897 domiciled with the Respondent since August 2022 till date without any Order of Court of competent jurisdiction amounts to a breach of the Applicant's fundamental right guaranteed under Section 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
3. The Respondent is hereby directed to remove the unlawful Post-No Debit restriction placed on the Applicant's account number 7030776897 domiciled with them forthwith.
4. An Order of Injunction is hereby granted restraining the Respondent either by themselves, cronies from instigating further Post-No-Debit restriction on the Applicant's account number 7030776897 without due process of law.
5. The sum of N10,000,000 (Ten Million Naira) only is awarded as general damages in favour of the Applicant and against the Respondent.
6. AN ORDER directing the Respondent to pay to the Applicant, the sum of N2,000,000.00 (Two Million Naira) only, being cost of this Suit.
7. The Respondent is hereby directed to tender a public apology to the Applicant in any of the national dailies within 6 weeks from the date of this judgment.

Parties: Absent

Appearances: G. C. Eze appearing for the Applicant. Respondent is not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
6TH APRIL, 2023