

**M,IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY**

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

Date:- 10TH JULY, 2023

FCT/HC/CV/2589/2023

BETWEEN

UGONNA SUZANNE NWAUKWA-----

CLAIMANT

AND

FIRST CITY MONUMENT BANK LIMITED-----

DEFENDANT

JUDGMENT

By an Originating summons filed on 7th March, 2023 at the Court's Registry, the Claimant claims the following reliefs against the Defendant:-

1. A DECLARATION that the lien placed on the Claimant's bank account by the Defendant freezing the Claimant's account, Account No. 7053985015 with Account Name:

Nwaukwa Ugonna Suzanne maintained by the Defendant without an Order of Court of law/Court of competent jurisdiction is illegal and amounts to a breach of the Claimant's fundamental right as contained in Section 36 and 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

2. AN ORDER OF THIS HONOURABLE COURT mandating the Defendant to lift or discharge the lien and unfreeze the Claimant's Account No. 7053985015 with Account Name: Nwaukwa Ugonna Suzanne maintained by the Defendant.
3. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendant either by themselves, their servants, agents, functionaries, assigns whomsoever or howsoever described from further placing a lien on the Claimant's Account No. 7053985015 with Account Name: Nwaukwa Ugonna Suzanne maintained by the Defendant and from harassing, intimidating or in any other way interfering with the Claimant's fundamental right to acquire and own properties as protected by Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
4. AN ORDER OF THIS HONOURABLE COURT MANDATING the Defendant to pay the Claimant the sum of N500,000,000.00 (Five Hundred Million Naira Only) as compensation for the damages/losses suffered by the Claimant as a result of the unlawful and illegal placing of

a lien on the Claimant's account by the Defendant and other breaches of the Claimant's Constitutional Rights in accordance with Section 36 and 43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

5. AN ORDER OF THIS HONOURABLE COURT directing the Defendant to apologize in writing to the Defendant for infringement of her constitutionally guaranteed Fundamental Rights and in line with the provisions of Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
6. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the originating application is a 19 paragraph affidavit deposed to by the Claimant dated 7th March, 2023, attached to the affidavit are documents marked exhibit A and B respectively. The Claimant also filed a written address in support of the originating application.

The Defendant in opposition to the Claimant's application filed a 5 paragraph counter affidavit dated 12th April, 2023 deposed to by one Martins Anusionwu, an employee with the Defendant, attached to the affidavit are documents marked exhibit A and B respectively. The Defendant also filed a written address in support of the counter affidavit.

The Claimant in response filed a further and better affidavit dated 18th May, 2023 and filed on 22nd May, 2023 deposed to

by one Ifeanyi Ezechukwu, Counsel in the law firm representing the Claimant, attached to the further and better affidavit are documents marked exhibit A, B and C respectively. Also attached is a written address in support of the further and better affidavit.

The case of the Claimant is that her account, with Account No. 7053985015 and Account Name: Nwaukwa Ugonna Suzanne maintained by the Defendant is placed on a lien by the Defendant relying on an email sent to the Defendant by Lotus Bank Limited despite the fact that the Order of Mohammed A. Jibril Esq of Upper Area Court 1 Karu, Nasarawa state has no nexus with the Claimant. The Defendant has refused to remove or discharge the lien thereby continued denying the Claimant access to the funds in her account. The Claimant asserts that her business activities and transactions has been crippled by the lien order freezing her account by the Defendant relying on the email from Lotus Bank Limited and leaving the Claimant to be borrowing money to feed her family, fuel her vehicle and other activities and all her business transactions has been put on hold by the lien order freezing her account.

The hearing of the matter commenced and the Claimant through Counsel adopted the originating application and the further and better affidavit filed before this Honourable Court praying this Court to grant the prayers as contained therein. The Defendant similarly adopted its counter-

affidavit before this Court praying this Court to dismiss the Applicant's application.

The Claimant in its final address raised three (3) issues for determination to wit:-

1. Whether the illegal and unlawful placing of an Order of lien and freezing of the Claimant's account does not amount to a breach and infringement of the Claimant's fundamental rights as constitutionally guaranteed.
2. Whether the Defendant has the power to place a lien on the Claimant's account without an Order of a Court of competent jurisdiction.
3. Whether the Claimant is entitled to constitutional remedies of compensation and apology in writing.

Arguing on issue 1 above, it is the submission of the Claimant that from the totality of the facts stated in her affidavit, the Defendant has infringed on the constitutional right of the Claimant. That in as much as the Claimant is not being physically tortured, she is being tortured by the indefinite restriction of the Claimant from carrying on her daily business activities and transactions contrary to the provision of Section 43 of the Constitution. Counsel cited the case of ***UZOUKWU V EZEOMO II (1991) 6 NWLR (PT. 200) 708.***

Counsel to the Claimant in submission therefore urged the Court to resolve issue 1 in favour of the Claimant.

On issue 2, Counsel to the Claimant stated that it is trite that nobody has powers to place a lien on any bank account without a valid Court order from a Court of competent jurisdiction. Counsel cited the case of **EFOBA CONSTRUCTION AND ENGINEERING SERVICES LIMITED V ICPC & ANOR with suit no. FHC/L/CS/1796/2020**. Counsel stated that in the case at hand, the Defendant relied only on an email sent to the Defendant by Lotus Bank Limited to place lien on the account of the Claimant maintained by the Defendant in disregard of existing judgment of Courts in Nigeria that it is only upon obtaining an Order of Court that a Bank can place any form of restraint on a customer's account.

Counsel to the Claimant in conclusion urged the Court to resolve issue 2 in favour of the Claimant by holding that the Defendant has no power to place a lien and freeze the Claimant's account without an order of a Court of competent jurisdiction.

On issue three, Counsel to the Claimant submitted that the Claimant has shown that the lien placed on her account is unlawful and has equally shown that her rights as constitutionally guaranteed have been infringed upon by the Defendants and as such the Claimant is entitled to compensation and apology.

Counsel to the Claimant stated that the fact that the placing of a lien on the account of the Claimant is unlawful

gives him the right to compensation and apology. Counsel cited the case of **OKONKWO V OGBOGU (1996) 37 NWLR 580**. Counsel further stated that damages are awarded in deserving cases and the Claimant's case is a deserving case as the law presumes that damages flow naturally from the injury suffered by the victim as a result of the infraction of her fundamental rights.

Counsel in conclusion submitted that this is a deserving case where the entire relief of the Claimant ought to be granted and the lien on the Claimant's account lifted or discharged and the account unfrozen unconditionally. Counsel urged this Court to grant the reliefs of the Claimant and grant appropriate and adequate damages as compensation in favour of the Claimant.

In response to the Claimant's application, the Defendant in its written address raised two issues for determination thus:-

1. The law makes provisions for the banks to place a lien on a Customer's account, if there is Court Order to that effect. There is a Court Order mandating the Defendant to place a lien on a specific amount in the Claimant's account. Can the Defendant be held liable for obeying an existing Court Order?
2. It is a general principle of law, that in a declarative relief, the Claimant must prove that claims successfully on the strength of cogent and credible evidence even where the Defendant admits the claim. The Claimant in this case

has not proved her claims before this Honourable Court.
Should the claims be dismissed?

On issue 1, Counsel to the Defendant argued that the account of the Claimant was never frozen as alleged by the Claimant, that a frozen account does not permit any debit transactions as the Claimant had done various transfers and purchases on the account in question, before instituting this action and even after this action was filed.

Counsel submits that the Defendant does not place lien on an account without a Court Order authorizing her to do so. That in this case, the Defendant was mandated by a Court order stating categorically that a lien should be placed on the Claimant's account. Counsel in support cited the case of **EUROPEAN SOAPS & DETERGENT LTD V MW BEER & CO LTD (2017) LPELR – 41873(CA)**.

Counsel to the Defendant submitted on issue 1 that the Defendant acted on the order of the Court and has not done anything wrong to warrant the grant of the reliefs sought against her by the Claimant.

On issue 2, Counsel to the Defendant stated that the onus of proof is upon the Claimant in any matter. Counsel cited **Section 131 and 132 of the Evidence Act** and the case of **OKESHOLA V MILITARY GOVERNOR OF OYO STATE (2003) FWLR (PT. 19) PG 492 at 50051, PARAS G-A**, that it is clear that the Claimant has not proved its case before this Honourable Court.

Counsel to the Defendant submitted that the community reading of the authorities cited and bringing same to bear with this case, shows that the Claimant has failed woefully to prove her case against the Defendant. Counsel therefore urged this Court to dismiss the Claimant's case in its entirety with heavy cost.

The Claimant in response to the Defendant's counter-affidavit filed a further and better affidavit and in its written address raised 2 issues for determination to wit:-

1. Whether an order made against a stranger or a non-party to a suit is not binding on such party?
2. Whether the District or Area Court is clothed with the Jurisdictional powers to grant an ex-parte application placing a lien on the Claimant's bank account?

On issue 1, Counsel to the Claimant argued that the cause of action arose when the Claimant discovered she could not withdraw money from her account maintained by the Defendant, that the said inability of the Claimant to utilize the funds therein was as a result of a Court order dated 15th February, 2023 emanating from the Upper Area Court in Suit No: UAC/MG/CV53/2023 between Idris Mohammad Kabir v Abuja Declutter Homes & 2 ors. That in the above-mentioned Court order, the Claimant was neither designated as a party to the suit nor did her name or bank details feature in the body of the said Court order.

Counsel to the Claimant submits that it is trite that judgment inter-parties is only binding on the parties. Counsel cited the cases of **ALHAJI SUKURATU AMIDA & ORS V TAIYE OSHOBOJA (1984) LPELR – 463 (SC)** and **NIGERIAN NAVY & ORS V NVY CAPTAIN D.O LABINJO 329/2009, (2012) JELR 51408 (SC)** in support of the position that the afore-mentioned Court order should not prejudice the Claimant in any way howsoever as the Claimant was not a party to the action.

On issue two, Counsel to the Claimant submits that there are no written laws clothing an Area Court or Magistrate/District Court with such powers to freeze a person's account via ex-parte order. Counsel stated that Section 34 of the Economic and Financial Crimes Act allows for obtaining of freezing order ex-parte from either the Federal High Court or the State High Court.

Counsel to the Claimant in conclusion submitted that from the judicial authorities cited and documents from both parties before this Honourable Court, the Court should grant the reliefs sought by the Claimant and discountenance the case of the Defendant in its entirety.

In view of the settled position of the law as it relates to the facts and substance of this case, the submissions of Counsel to the Claimant and Defendant, the issues formulated by the Claimant and Defendant can be accommodated under the sole issue formulated by the Court thus:-

“Whether the Claimant has proved its claims on a balance of probabilities to entitle it to any or all of the Reliefs sought”.

The above issue is not raised as an alternative to the issues raised by the parties on both side of the aisle, but the issues canvassed by the parties can and shall be cumulatively considered under the above issue. See **SANUSI V AMOYEGUN (1992) 4 NWLR (Pt. 237) 527**. The issue thus raised has in the Court’s considered opinion brought out with sufficient clarity and focus, the pith of the contest which has been brought to Court for adjudication by parties to this action.

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their case. At the conclusion of trial proper, the real issue(s) which the Court would ultimately resolve must be manifestly clear. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of the critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **OVERSEAS CONSTRUCTION LTD V CREEK ENTERPRISE LTD & ANOR (1985)3 NWLR (PT13) 407 AT 418**, the Supreme Court instructively stated as follows:-

“By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the reliefs he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff’s case collapses and the defendant wins”.

It is therefore guided by the above wise exhortation that I would proceed to determine this case based on the issue I have raised and also consider the evidence and submissions of Counsel.

The Law is trite that civil cases are decided on the balance of probabilities, that is, the preponderance of the evidence. The Court arrives at this by placing the totality of evidence by parties on an imaginary scale to determine which side’s evidence is heavier and accordingly preponderates. The party whose evidence is heavier succeeds in the case. See **DR. USENI UWAH & ANOR V DR. EDMUNDSON T. AKPABIO & ANOR (2014) 2MJSC (Pt.11) 108 @ 113**. Moreso, the success or failure of the case of the Claimant is predicated first on the nature of his pleadings and secondly, the evidence led in support of his averments. In the same vein, the success or failure of the defence of the Defendant is based on the averment in his statement of defence and the evidence led in support thereof. See **RAMONU RUFAL APENA & ANOR V**

OBA FATAI AILERU & ANOR. (2014) 6-7 MJSC (Pt.11) 184 @ 188.

I have given a calm and resolute consideration to the facts that led to the institution of this action, the counter-affidavit, and the arguments canvassed by the learned counsel to the Respondent in his written address. I wish to start by saying that it is trite that there is a contractual relationship between a bank and its customer. See **UNITED BANK FOR AFRICA PLC V YARO BAKEYAWA YAHUZA (2014) LPELR 23976 CA; similarly in OSAWAYE V NATIONAL BANK OF NIGERIA LTD (1974) NCCR 474**, the Court held:

“The relationship between a bank and customer is one of debtor and creditor with additional feature that banker is only liable to repay the customers on payments being demanded”

There is no obligation on the part of the banker or debtor to seek out his creditor, the customer and pay him, obligation is only to pay the customer or some persons nominated by the customer when the customer makes a demand or gives direction for payment. There is therefore an implied duty that a banker in dealing with the accounts of its customer must exercise utmost diligence, skill and care otherwise, the customer can take the bank up in breach of duty of care. See **WEMA BANK PLC V ALHAJI IDOWU F. SALARIN OSILARU (2008) 10 NWLR Pg. 170**, where the Court asked, what is the duty of care owed by a bank to its customer?, and stated

thus: **“A bank has a duty to exercise reasonable care and skill including interpreting, ascertaining and acting in accordance with the instruction of the customer”**. See also **AGBANALO V UNION BANK OF NIGERIA (2000) A SC PT. 1 @ 243**.

In the case of **STB LTD V ANUMNU (2008) 14 NWLR PG.154**, the Court per Adekeye JCA held: *“A bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its part with regard to the operation with its contract and its customers. This duty extended to the whole range of banking business within the contract”*. *“This duty applies to interpreting, ascertaining and acting in accordance with the instructions of the customer”*, See **TOM TOTAL NIGERIA LTD V SKYE BANK (2017) LPELR-CA/L/456/2007”**.

It is not uncommon these days that banks place a lien on their customer's account while acting on the instruction of prosecuting agencies or based on order of the court to investigate or place a lien on such account. This is not out of place, however such orders from court must be valid and from a court of competent jurisdiction. The bank must verify such orders before taking any step on the customer's account. This is to forestall unnecessary infringements on the rights of customers based on any order from a court.

After all, the duty of a bank is to its customer first, negligence may arise where the bank breaches the implied

duty to observe the standard expected of a reasonable banker in respect of dealing with the customer's account, and the onus of proof that it is not negligent lies on the bank.

A careful evaluation of the facts deposed by the Applicant indicates that she noticed she could no longer make transactions on her account from the 21st day of February 2023 and after which she caused her lawyer to write to the Defendant on the 23rd of February 2023 demanding the removal of the lien. The complaint laid by the Claimant through her lawyer shows in the Claimants' exhibit B that same was received by the Defendant and a return letter dated 28th February 2023 sent to the Claimant's solicitor acknowledging the Claimant's concerns and indicating intention to investigate the Claimant's concerns accordingly.

It is also pertinent to point out that the Court order exhibited by the Claimant and Defendant are two different orders obtained on two different dates. The order exhibited by the Claimant was obtained on the 15th day of February 2023 and neither the Claimant nor the Defendant was a party to that suit. How come the Defendant gave effect to this order when neither the Claimant nor Defendant parties to the said suit?

The Defendant also exhibited another Court order they relied on to place a lien on the Claimant's account, the order is dated 3rd of March 2023.

This presupposes that if the order the Defendant relied on was obtained on the 3rd of March 2023, and the Defendant restricted the Claimant's account sometime in February, then Defendant acted without a valid order of Court up until the purported order of 3rd March 2023. The Statement of the Claimant's account exhibited by the Defendant shows the Claimant did not make any withdrawal on the account throughout the month of March 2023. The acknowledgement letter issued by the Defendant to the Claimant's solicitors presupposes that the Claimant's account was restricted which gave rise to her causing her Lawyer to write to the Defendant in this regard. The Claimant could not have embarked on all of these without having a genuine concern in that regard.

I find the purported court order placing a lien on the applicant's account and further ordering the reversal of monies in the account of the Applicant, without prior notice to the Applicant, obnoxious and strange to the natural law principle of Audi Alterem Patem, and the right to fair hearing as guaranteed by the Constitution.

I, also find that it is a violation of the Claimant's right against compulsory acquisition of her right or interest over movable and immovable property in any part of Nigeria without due

process of law under Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Suffice to say that the Claimant has therefore sufficiently established before this court that the Defendant breached her constitutionally guaranteed right and based on the careful analysis of the Exhibits pleaded before this court and the facts deposed therein by the Claimant and Defendant, as well as the arguments canvassed by both counsel and my findings, I hereby resolve the issue raised herein by this court in favour of the Claimant and therefore order as follows:-

1. A DECLARATION that the lien placed on the Claimant's bank account by the Defendant freezing the Claimant's account, Account No. 7053985015 with Account Name: Nwaukwa Ugonna Suzanne maintained by the Defendant without an Order of Court of law/Court of competent jurisdiction is illegal and amounts to a breach of the Claimant's fundamental right as contained in Section 36 and 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
2. AN ORDER OF THIS HONOURABLE COURT mandating the Defendant to lift or discharge the lien and unfreeze the Claimant's Account No. 7053985015 with Account Name: Nwaukwa Ugonna Suzanne maintained by the Defendant.

3. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendant either by themselves, their servants, agents, functionaries, assigns whomsoever or howsoever described from further placing a lien on the Claimant's Account No. 7053985015 with Account Name: Nwaukwa Ugonna Suzanne maintained by the Defendant and from harassing, intimidating or in any other way interfering with the Claimant's fundamental right to acquire and own properties as protected by Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) without following the due process of law and without putting the Applicant on notice.

On the award of damages, in fundamental rights action, damages automatically accrue once the Defendant is adjudged to have violated the fundamental right of the Claimant. See **SKYE BANK V NJOKU & ORS (2016) LPELR 40447 (CA)**.

The Court will however take into consideration the following factors on the quantum of damages to be awarded:-

1. The frequency of the type of violation in recent times;
2. The continually depreciating value of the Naira;
3. The motivation of the violator;
4. Status of the Applicant/Claimant;

5. The conduct of the parties generally particularly the Respondent/Defendant. See **IGP & ORS V IKP & ANOR (2015) LPELER 40630 (CA)**

The essence and purpose of award of damages for breaching fundamental rights is to reasonably compensate the Claimant and not an avenue for gold mine. The Defendant in this instant case appeared to have acted hastily and recklessly on an improper Court order in placing a lien on the Claimant's account with them. The Defendant ought to have been more meticulous, prudent and circumspect in the dealing with the customer's account. They cannot be absolved of paying compensation to the Claimant. I have taken into consideration all the factors stated in the authorities above, no doubt the Claimant must have suffered some pecuniary losses such as filing of the instant action, payment of fees to her counsel, and some psychological stress and deprivations when she discovered that the account was placed on lien. It is more depressing to consider that the Claimant had to survive through other means in the absence of any access to her account. It is therefore in consideration of this that I order as follows:-

General, punitive and exemplary damages of N2,000,000.00 (Two Million Naira) is awarded in favour of the Claimant against the Defendant for infringement of the constitutionally guaranteed fundamental rights of the Claimant.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Ifeanyi k. ezechukwu:- For the Claimant.

Ademola Adewoye:- For the Defendant