

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

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

**COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 24
CASE NUMBER: SUIT NO. FCT/HC/CV/7718/2023
DATE: 31/1/2024**

BETWEEN:

ALUI ANITA ABIBAT.....CLAIMANT

AND

GUARANTY TRUST BANK PLC.....DEFENDANT

JUDGMENT

APPEARANCES:

.....
Patience Sharia Esq for the Defendant

This matter was instituted via an Originating Summons with suit No. FCT/HC/CV/7718/2023 dated 26th September, 2023 and filed on the same day, wherein Counsel to the Claimant seeks the determination of the following questions:

- “(1). Whether by virtue of the provisions of Section 34 of the Economic and Financial Crimes Commission (Establishment) Act 2004, the Defendant can in the absence of a Court Order and acting only on a letter/instruction of the Economic and Financial Crimes Commission freeze and suspend the Claimant’s account No. 0231063424 in the Defendant’s bank?***

- (2). Whether the freezing and/or suspension of the Claimant's account No. 0231063424 in the Defendant's bank without due process of law to wit- a Court Order is not reprehensible, cruel and an abuse of due process of law and equally a breach of contract of banker-customer relationship?**
- (3). If the answer to the above issues are answered against the Defendants, whether the Claimant is not entitled to damages."**

The Claimant prays the Court for the following reliefs:-

- "(1). A declaration that the suspension and freezing of the Claimant's account No. 0231063424 without due process of law, to wit, without a Court Order is reprehensive, abuse of due process of law and a breach of contract of banker customer relationship?**
- (2). The sum of N50, 000, 000.00 (Fifty Million Naira) as general damages for the acts of the Defendants in suspending, freezing and locking out the Claimant from the use of her account since on or about the 1st of September, 2023 till date.**
- (3). And any such further Order/Orders the Court may deem necessary to make in the circumstances of this case.**
- (4). 10 percent interest on the judgment sum from the date of judgment till the judgment sum is liquidated."**

In support of this is a 15-paragraph affidavit deposed to by the Claimant – Alui Anita Abibat, annexures marked Exhibits and a Written Address dated 26th September, 2023 and filed on same day.

In the said Written Address of the Claimant, Counsel reproduced the questions sought to be determined and reliefs sought before this Honourable Court as encapsulated in the Originating Summons and argued the issues together.

Counsel to the Claimant began by stating the case of the Claimant before the Honorable Court that the essential facts on which the Claimant's case rests is contained in the Claimant's affidavit.

It is the case of the Claimant's that, the Claimant maintains account no. 0231063424 in her name with the Defendant, the said account is what she uses to transact her business and take care of her family, dependents and her needs. That on or about the 1st of September, 2023, the Claimant discovered that her account was frozen and suspended by the Defendant and barred from any transaction on the account. That she could no longer have access nor withdraw/transfer money of the said account to do her business and meet her personal and family needs, and that upon enquiry, she was simply informed by the Defendant that they received instruction from the Economic and Financial Crimes Commission to freeze the account.

It is further the case of the Claimant that the Claimant continued to visit the bank to complain of her inability to operate her account and the response she kept getting was that her account is frozen and could not be operated by her, meanwhile, her account had sufficient funds to carry and accommodate the volume of transaction within the limit of its credit. That the Claimant had to cause her lawyer, Obi C. Nwakor Esq of Obi C. Nwakor & Co to write a Solicitor's letter on her behalf demanding a written explanation from the Defendants for the freezing and suspension of the account dated 13th September, 2023 addressed to the Area 3 Branch Manager Abuja where the Claimant's account is domiciled. That the Defendant failed, refused and/or neglected to make a response to the letter within five days as demanded in the Solicitor's letter and had still not unfreezed the account, hence this suit.

Counsel to the Claimant after stating the case of the Claimant began arguing the issues earlier raised before this Honourable Court. He began by stating that the Claimant has suffered and is still suffering deprivations, anguish, trauma and mental torture as a result of the suspension and freezing of her account by the Defendant, making her unable to effectively operate her business and making her resort to borrowing and begging for money from friends and well-wishers in order to sustain her family and meet pressing issues requiring money.

Counsel argued that the Defendant can only freeze the Claimant's account acting on a Court Order and not on the mere instruction of the Economic and Financial Crimes Commission and that this amounts to a breach of contract of banker-customer relationship, abuse of the rule of law, and high-handedness. He stated that the Defendant failed to make a response to the Solicitor's letter (Exhibit A) within five days as demanded and still continued to freeze the account, hence the filing of this suit.

Counsel also stated that the Claimant averred in her affidavit that she was informed at the customer service desk by the Defendant that they have instruction from the Economic and Financial Crimes Commission to freeze her account, hence raising the following questions; "whether Defendant by virtue of Section 34 of the Economic and Financial Crimes Commission (Establishment) Act 2004, can in the absence of a Court Order and acting only on an instruction of the Economic and Financial Crimes Commission to freeze and suspend the Claimant's account No. 0231063424 in the Defendant's bank?"

Counsel stated that the answer to the above question will necessitate interpretation of Section 34 of the Economic and Financial Crimes Commission (EFCC) Act 2004 and placed reliance on the decision of the Court per Abiriyi JCA in the cases of **GTB V JOSHUA (2021) LPELR-53173 (CA); GTB PLC V ADEDAMOLA (2019) 5 NWLR (Pt.1664) 30 at 43 Paras E – F**, Counsel then stated that based on the above authorities, the Defendant is liable in damages for freezing the account of the Claimant without a Court Order.

Furthermore, on the issue of breach of contract, Counsel made reference to the following authorities **NWOSU V ZENITH BANK PLC (2015) NWLR (Pt.1464) 314; UNION BANK OF NIGERIA PLC V CHIMAEZE (2014) 4 SC 111 at 139; UNION BANK OF NIGERIA LIMITED V NWOYE (1996) 3 NWLR (Pt.435) 135 & AGBANELO V UBN (2000) 233 at 243.**

Counsel to the Claimant submitted that following the above cases it is not in doubt that the Defendant failed in its duty under its contract with the Claimant to exercise reasonable care and skill in carrying out its part with regard to the operation of the Claimant's account. Further reliance was placed on the case of **GTB PLC V ADEDAMOLA supra**

In the said Written Address, Counsel to the Claimant stated that the Claimant claims general damages from the Defendants. On this, Counsel relied on the cases of ***UNION BANK OF NIGERIA PLC V CHIMAEZE (supra); NCC V MOTOPHONE LTD (2019) 14 NWLR (Pt.1691) 1.***

Counsel submitted that the direct consequences of the breach by the Defendant in locking out the Claimant from her account can best be imagined, terming it a gross, reprehensible and cruel act, and flagrant disregard of the law.

In a further submission, Counsel stated that the Claimant caused a Solicitor's letter to be written to the Defendant with regards to the freezing of her account to show whether it acted in compliance with a Court Order. Counsel stated that the said letter-Exhibit 'A' was dated and served on the 13th September, 2023 giving the Defendant five days to response to same. However they failed, neglected and failed to heed to the demand by not responding or reply to the letter. With respect to the failure of the Defendants to reply to the said letter, Counsel relied on the cases of ***ZENON PETROLEUM & GAS V IDIRISIYA (2006) 8 NWLR (Pt.982) 231; GWANI V EBULE (1990) 5 NWLR (Pt.149) 210; IGA V AMAKRI (1996) 11 SC 1; TRADE BANK PLC V CHAMI (2003) 13 NWLR (Pt.836) 158.***

In his final submission, Counsel stated that the Defendant by not responding to or replying the Claimant's Solicitor's letter admitted that they were acting under no law or any power known to law, neither did they freeze the said account in compliance to any law or Order of Court.

In opposition, the Defendant's Counsel filed a 17-paragraph Counter Affidavit deposed to by one Esther Agbo, litigation secretary in the firm of Messrs Ojile and associates of 9th October, 2023 which was supported by a Written Address and filed on the same day.

In the said Written Address in support of the Counter Affidavit, two issues for determination were formulated and they are as follows:-

“ISSUE 1:

Whether in the circumstances of this case, the Claimant has proven her case as required of her by law.

ISSUE 2:

Whether the Claimant has established any cause of action whatsoever against the Defendant in persuading this Honourable Court to exercise its discretion in her favour.”

In arguing the first issue, Counsel to the Defendant stated that the law is trite that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist. Counsel then made reference to Section 131 of the Evidence Act 2011, and stated that the burden of proof lies with whoever alleges the existence of a fact and is never discharged until he proves it.

Consequently, Counsel referred to the cases of ***OBE V ABUBAKAR (2023) 13 NWLR (Pt.1901) Pg. 381@ Paras 1& 2; ARGUNGU & ANOR V ARGUNGU & ORS (2008) LPELR-4275 (CA); KALU V FRN & ORS (2012) LPELR-9287 (CA)***. He then stated, that not a single direct or cogent evidence was adduced by the Claimant in buttressing her allegations against the Defendant in line with the requirement of the law. Further reference was made on the cases of ***MAIHAJA V GAIDAM (2018) 4 NWLR (Pt. 1610) Pg. 454 and STATE V CHUKWU (2002) 6 NWLR (Pt.1825) Page 105, Para 20.***

In further arguing the issue, Counsel commended this Honourable Court to take a cursory look at the Claimant's Affidavit in support of her Originating Summons. He stated that all the allegations of fact made by the Claimant were not proven in order to substantiate her allegations against the Defendant. He stated that contrary to her assertions in paragraphs 4, 5, 6, 7, 10, 11, 12, 13 and 14 of her Affidavit in support of her Originating Summons, the Claimant failed to place before the Court any unimpeachable evidence that her account with the Defendant was restricted by the Defendant on the instructions of the Economic and Financial Crimes Commission (EFCC) or any other person or authority thereto.

Counsel also stated that the Claimant also failed to mention the name of the Defendant's staff (from the name tags usually worn by the Defendant's staff) whom she claimed informed her that her account was restricted by the instructions of the Economic and Financial Crimes Commission

(EFCC), thus failing to discharge the burden of proof required of her by law.

Upon making reference to paragraph 6 of the Claimant Affidavit, Counsel to the Defendant submitted that “customer service desk” is not a natural person that could communicate with the Claimant on the alleged statement made regarding the Claimant’s account. Counsel further submitted that while he concedes to the fact that “customer service desk” of the Defendant is manned by human beings (staff of the Defendant), the staff usually wear a name tag on their chest for easy identification. Counsel stated that the Claimant failed to establish before the Honourable Court any transaction she initiated or tried to initiate on any of the Defendant’s payment channels that informed her that her account was restricted and that the reason for the said restriction was based on the instruction of the Economic and Financial Crimes Commission (EFCC) or any other authority. He stated that the requirement expected of the claimant is much more than just asserting but must also place cogent and direct evidence supporting her assertions. Reliance was placed on the case of **ARGUNGU & ANOR V ARGUNGU & ORS (supra)**.

In a further submission, Counsel stated that the law does not give room to this Honourable Court to speculate on evidence not before it, and placed reliance on the cases of **GABA v TSOIDA (2020) 5 NWLR (Pt.1716) at Pg.7; AGIP (NIG) LTD V AGIP PETROLI INTERNATIONAL (2010) 5 NWLR (Pt.1187) 348 at 413 Para B; OGUNZEE V STATE (1998) 5 NWLR (Pt.551) 521; IKENTA BEST (NIG) LTD V A.G. RIVERS STATE (2008) LPELR -1476; GALADIMA V THE STATE (2012) LPELR-15530**.

In another submission, Counsel stated that the first main relief of the Claimant is declaratory in nature and that it is trite law that declaratory reliefs would only be granted where the Claimant is entitled to the relief. Reliance was placed on the cases of **ANYANRU V MANDILAS LTD (2007) 4 SCNJ 258; PDP V EKEAGBARA & ORS (2016) LPELR- 40849 (CA); NYESOM V PETERSIDE (2016) 7 NWLR (Pt.152) P. 452 @ 535**.

Consequently, Counsel submitted that even if the Defendant did not file a Counter-Affidavit (defence) in this matter, the Claimant must prove and succeed on the strength of her case and not on the weakness of the defence. Counsel relied on the case of **SADIQ V BALARABE (2020) LPELR-152114 (CA)**.

In his final submission on the issue, Counsel stated that the failure of the Claimant to lead cogent and direct evidence to show how the Defendant restricted her account on the instructions of the Economic and Financial Crimes Commission (EFCC) is not only fatal to her case but incurably bad for her. He stated that the burden of proving this assertion is on the Claimant and she has failed to do so. Reliance was placed on Section 131 of the Evidence Act 2011 and the cases of **OBE V ABUBAKAR (supra); ARGUNGU & ANOR V ARGUNGU & ORS (supra); KALU V FRN & ORS (supra).**

Counsel then urged this Honourable court to resolve the issue in his favour.

In arguing the second issue, which states thus:-

“Whether the Claimant has established any cause of action whatsoever against the Defendant in persuading this Honourable Court to exercise its discretion in her favour.”

Counsel relied on the definition of reasonable cause of action in the case of **RINCO CONSTRUCTION COMPANY LTD V VEEPEE INDUSTRIES LTD & ANOR (2005) LPELR-2949 (SC) at Pg. 14 and the cases of IBRAHIM V OSIM (1988) 3 NWLR (Pt.82) 257; OSHOBOJA V AMUDA & ORS (1992) 6 NWLR (Pt.250) 690; SPDC NIG LTD & ANOR V X. M FEDERAL LTD & ANOR (2006) 16 NWLR (Pt.1004) 189.**

Counsel stated that the law is trite that whenever issue of reasonable cause of action is raised, it is the Statement of Claim or as in the instant case, the Affidavit in support of the Originating Summons that ought to be considered. He stated that so long as the Statement of Claim/Affidavit evidence discloses some cause of action, or raises some questions which can be decided by a Judge, there is reasonable cause of action. Reliance was placed on the cases of **YUSUF & ORS V AKINDIPE & ORS (2000) 8 NWLR (Pt.669) 376 and BARBUS & CO. (NIG) LTD & ANOR V OKAFOR –UDEJI (2018) LPELR-44501 (SC).**

Consequently, Counsel urged the Honourable Court to take a cursory look at the Claimant's supporting Affidavit to her Originating Summons and it will be discovered that the Claimant has not established any wrong/infracton by the Defendant done against her.

Moreso, Counsel submitted that the law is settled that where the originating process discloses no cause of action, the suit is liable to be struck out and the action dismissed. On this, Counsel placed reliance on the Supreme Court decision in the case of **A.G. FEDERATION V A.G OF ABIA STATE & ORS (2001) LPELR-24862 (SC)**.

In his final submission, Counsel urged this Honourable Court to resolve the issue in favour of the Defendant by striking out and dismissing the Claimant's action with heavy cost for non-disclosure of a reasonable cause of action against the Defendant.

In response to the Counter Affidavit of the Defendant, the Claimant filed a 12-paragraph Further and Better Affidavit deposed to by the claimant – Alui Anita Abibat, dated and filed 27th November, 2023 which was supported by a Written Address dated 24th November, 2023 and filed on the 27th November, 2023.

In the said Written Address, Counsel to the Claimant began by stating that the information supplied by Mr. Oluwaseun Alao (the legal officer of the Defendant) is of no probative value and cannot be relied on as evidence because the said information deals with the operation of the Claimant's account. Reference was then made to the case of **CITIZEN INT'L BANK V SCOA (NIG) LTD (2006) 18 NWLR (Pt.1011) 332 at 335 Para G – H**.

In this vain, Counsel stated that the legal officer of the Defendant who is in Lagos cannot give information on the Claimant's account (which is in Kubwa Abuja) without disclosing the source of his information, particulars of his informant, place, time and circumstances of the information as it is outside the chores and schedule of the information. As similarly held in the **CITIZEN INT'L BANK** case above. He stated that in the absence of any such deposition from Mr. Oluwaseun Alao (the legal officer) with respect to his depositions in paragraphs 8, 9 10, 11 and 12 of his Counter Affidavit, should therefore be discountenanced.

Moreso, Counsel stated that a legal officer does not operate accounts of customers of a bank, to know when a customer's account is not functioning or restricted, as it is not in his schedule of duties and all information given to the Defendant are not of the said legal officer's personal knowledge particularly where he did not depose that he works at the Kubwa branch office of the Defendant or was present during the incident leading to this

suit. Counsel stated that the legal officer's failure to provide the source of his information offends the mandatory provision of Section 115(1)(2)(3) and (4) of the Evidence Act and thus liable to be struck out.

Further reliance was placed on the cases of **BARCLAYS BANK NIG. LTD V CBN (1976) 6 SC 175; CHIEF R. I. OSIAN V FLOUR MILL OF NIGERIA LTD (1968) ALL NLR 423.**

In another submission, Counsel to the Defendant stated that assuming without conceding that the Counter Affidavit of the Defendants has any probative value, the Claimant has however filed a Further and Better Affidavit in reply to the Counter Affidavit. He stated that the law provides that in a situation such as this in which facts are provable by affidavit and one of the parties deposes to certain facts, his adversary has a duty to swear to an affidavit to the contrary if he disputes the facts, and where such a party fails to do so, such facts are regarded as duly established. Counsel also stated that it is equally settled that failure to swear to an affidavit where there is a Counter Affidavit which is unchallenged. The Counter Affidavit is deemed admitted as correct and the Court is at liberty to accept it as true and correct.

On this, Counsel placed reliance on the following cases: **THE HONDA PLACE LTD V GLOBE MOTORS (2005) 7 SC (Pt.111) 182; AJOMALE v YADNT (NO.2) (1991) 5 SC 201; HENRY STEPHENS ENGR. LTD V YAKUBU (2009) 5-6 SC (Pt.1) 66; SENTINEL ASSURANCE CO LTD V SOCIETE GENERALE BANK NIG. LTD (1992) 2 NWLR (Pt.224) 495.**

In a further submission, Counsel stated that it is only the issues framed in the Originating Summons that are to be determined by the Court and nothing more. He stated that the basis of the Originating Summons is on the issues formulated for determination and that the Claimant formulated three issues for determination as contained in the Originating Summons. Counsel submitted that in determining these issues, the principle of law that civil cases are decided on the balance of probabilities is equally applicable in cases where evidence is by way of affidavit.

Reliance was placed on **ODOFIN V MOGAJI (1978) 4 SC 91; WOLUCHEM V GUDI (1981) 5 SC 291.**

Furthermore, Counsel to the Claimant submitted that the evidence of the Claimant as contained in her affidavit in support of the Originating Summons and her Further and Better Affidavit is more admissible, more relevant, more credible, more conclusive and more probable. After a brief recap of the fact of this case Counsel stated that the discredited Counter Affidavit of the Defendant admitted that the Claimant actually came to their Kubwa office to complain about her inability to transact on her account with the Defendant, which is an admission that the account was frozen, otherwise the Claimant would not have gone to make a complaint. Reference was made to the provision of Section 167 of the Evidence Act 2011.

In another submission, Counsel stated that the letter of the Defendant to the Claimant's Counsel - Exhibit C says the opposite of the deposition in their Counter Affidavit particularly paragraph 9 which is the plank of the Defendant's case; "that the Claimant's account was immediately investigated and was informed right on the spot that her account had no problem". Counsel stated that this was a material contradiction to their letter Exhibit C which was dated 13th September, 2023 but served on the 4th of October, 2023 which stated that the Defendant had commenced internal enquiries into the issues raised in Exhibit A. The Claimant's lawyers letter to the Defendant and that a response will be communicated to the Claimant's Counsel upon the conclusion of the Bank's enquiries but no communications of any finding of the said enquiries has been communicated till date. Counsel then raised the question whether the account was immediately investigated and the Claimant informed on the spot that her account had no problems, or that they had commenced enquiries and will communicate the outcome to the Claimant's Counsel upon conclusion? He stated that these contradictions were material and robbed the Counter Affidavit of any probative value. Reliance was placed on the cases of ***IGBA & ORS V ANGBANDE & ORS (2021) LPELR-53295 (CA)*** and ***MAKAAN V HANGEM & ORS (2018) LPELR-4401 (CA)***.

Moreso, Counsel stated that Exhibit C is the Defendant's document and as argued in the address in support of the Originating Summons, the said reply is not one properly so called being silent on the reason for the Claimant inability in operating her account as there has been no written response to that effect till date. He stated that this act of the Claimant is an admission by conduct that the Claimant's account was frozen for reasons best known to the Defendants.

Reliance was placed on the cases of **GWANI V EBULE (supra) and TRADE BANK PLC V CHAMI (supra)**.

In a further submission Counsel stated that assuming without conceding that the Defendants were not acting on the instruction of the Economic and Financial Crimes Commission (EFCC), the Defendant cannot therefore unilaterally freeze the account of the Claimant. Reference was made to the case of **AROGUNDADE V SKYE BANK PLC (2020) LPELR-52304 (CA)**.

In response to the Written Address in support of the Defendant's Counter Affidavit, Counsel to the Claimant submitted that the claim of the Defendant that the Claimant did not adduce any proof to substantiate her claim is not true. He stated that all the exhibits in this case prove the restriction placed on the Claimant's account coupled with admission of the Defendants to investigate same. He stated that if there was no freezing of the Claimant's account, there would be no need for the investigation of the said freezing by the Defendants.

In response to the argument of the Defendant in paragraphs 4.7 – 4.9 of its Written Address with respect to the name of the staff at the customer care service desk, Counsel to the Claimant stated that the address of Counsel cannot take the place of evidence.

He stated that there was no evidence contained in the Counter Affidavit that the Defendant's staff wears or usually wear name tags for identification and that it does not lie in the mouth of Counsel to give such evidence in the absence of any evidence adducing along that line. Counsel then made reference to the case of **HAMIDU & ANOR V KADUNA ELECTRICITY DISTRIBUTION CO. LTD (2019) LPELR-48281 (CA)**.

Consequently, Counsel expressed his happiness on the admission of the Defendant in the Counter Affidavit that the Claimant did indeed come to its Kubwa office to lay a complaint on her inability to transact on her account domiciled with them.

Counsel in his final submission stated that there is no receivable affidavit evidence on the part of the Defendants before this Honourable Court due to the contradictions between the said Affidavit and their Exhibit C and that there is no power in the Defendant to unilaterally or on the instruction of the

Economic and Financial Crimes Commission (EFCC) to freeze the account of the Claimant without an Order of Court. He therefore urged this Honourable Court to answer the prayers of the Claimant.

I have carefully considered the Originating Summons, Affidavit and Written Address of the Claimant.

I have equally considered the Counter Affidavit and Written Argument of the Defendant.

In the same vein, I have carefully perused the Further and Better Affidavit of the Claimant as well as his reply on point of law and annexures attached therewith.

Having earlier stated the facts of this issue, I shall now delve into the substance of this matter. Therefore without further ado, it is the humble opinion of this Honourable Court that the issues for determination are:-

- “(1). The answers to the three questions raised by the Claimant in her Originating Summons.***
- (2). Whether the Claimant has proven her case to be entitled to the relief sought.”***

Now to the substance of this judgment.

ISSUE ONE

“The Answer to the three questions raised by the Claimant in her Originating Summons.”

The three questions raised before this Honourable Court in this matter are as follows: -

- “(1). Whether by virtue of the provisions of Section 34 of the Economic and Financial Crimes Commission (Establishment) Act 2004, the Defendant can in the absence of a Court Order and acting only on a letter/instruction of the Economic and Financial Crimes***

Commission freeze and suspend the Claimant's account No. 0231063424 in the Defendant's bank?

- (2). Whether the freezing and/or suspension of the Claimant's account No. 0231063424 in the Defendant's bank without due process of law to wit- a Court Order is not reprehensible, cruel and an abuse of due process of law and equally a breach of contract of banker-customer relationship?**
- (3). If the answer to the above issues are answered against the Defendants, whether the Claimant is not entitled to damages."**

I shall be taking the above questions one after the other.

On the first question:

"(1). Whether by virtue of the provisions of Section 34 of the Economic and Financial Crimes Commission (Establishment) Act 2004, the Defendant can in the absence of a Court Order and acting only on a letter/instruction of the Economic and Financial Crimes Commission freeze and suspend the Claimant's account No. 0231063424 in the Defendant's bank?

Before answering the above question, we first of all have to understand the import of the provision of Section 34 of the Economic and Financial Crimes Commission (Establishment) Act 2004. Section 34 provides thus:-

"Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorized by him may, if satisfied that the money in the account of a person is made through the commission of an offence under this Act or any enactments specified under Section 7(2)(a) – (f) of this Act, apply to the Court ex-parte for power to issue or instruct a bank examiner or such other appropriate regulatory authority to issue an order as specified in Form B of the Schedule to this Act, addressed to the manager of the bank or any person in control of the financial institution where the

account is or believed by him to be or the head office of the bank or other financial institution to freeze the account.”

- 2. The Chairman of the Commission, or any officer authorized by him may by an Order issued under subsection (1) of this Section, or by any subsequent Order, direct the bank or other financial institution to supply any information and produce books and documents relating to the account and to stop all outward payments, operations or transactions (including any bill of exchange) in respect of the account of the arrested person.***
- 3. The manager or any other person in control of the financial institution shall take necessary steps to comply with the requirements of the Order made pursuant to subsection (2) of this section.***
- 4. In this section -***
 - (a). “Bank” has the meaning given to it in the banks and other Financial Institutions Act 1999 as amended; 1999 No. 25.***
 - (b). The reference to an Order issued includes a reference to any Order, directions or requirement addressed to the manager of a bank or any other officer of a bank which directs the manager or such officer to stop all outward payments, operations or transactions in respect of any account with the bank.”***

From subsection one above, it can be understood that the Chairman of the Economic and Financial Crimes Commission (EFCC) or any other officer authorized by him, upon being satisfied that the money in the account of a person is obtained by the commission of an offence under the Economic and Financial Crimes Commission Act or any of the enactments listed under Section 7 (2)(a) – (f) of the Act has the power to apply to the Court via an ex-parte motion seeking an Order to freeze such account. It is clear that the Chairman of the Economic and Financial Crimes Commission or any officer so authorized by him needs an Order of a Court to carry out such freezing, and it is upon the instruction of the Court to so act that the

addressee bank will obey. Therefore the correct procedure will be to first obtain permission from the Court, before proceeding to the bank where such account is domiciled before the freezing of the said account can be effected.

Subsection 2 goes further to encapsulate the power an officer of the Economic and Financial Crimes Commission (who has obtained an Order of Court for freezing of an account) has, or any subsequent Order in this regards to include:

- (i). Instructing the said bank or financial institution to provide any information or produce books and documents relating to the account of the accused.
- (ii). Directing the said bank or financial institutions to stop all outward payments, operations or transactions including any bill of exchange in respect of the account of the arrested person.

Subsection 3 provides that the manger of the addressee bank must take all necessary steps to comply with the requirements of the Order pursuant to Subsection 2. Therefore if the Order requires the bank to provide specific information on the account of the accused person or to stop all transactions with respect to the said account, it must do so. The use of the word “shall” in the provision makes it mandatory. It connotes a command which must be given a compulsory meaning. See the cases of *BAMAIYI V A.G OF FED* (2001) 90Ircn 2738; *ACHINEKU V ISHAGBA* (1988) NWLR PT.89 411

Subsection 4 of the Economic and Financial Crimes Commission Act on the other hand, is the interpretation section, which defines what the Act refers to as a bank and what an Order issued under the said Section 34 refers to.

To sum it all up, Section 34 of the Economic and Financial Crimes Commission Act provides the Chairman of the Economic and Financial Crimes Commission or any officer authorized by him, with the power to have an account freezed and information on an account produced, upon an Order duly obtained from the Court. Anything done outside this provision in the course of freezing the account of an accused person will amount to a violation of the law and may attract sanctions. I so hold.

The above section was given judicial flavor in the case of **GTB V JOSHUA (2021) LPELR-53173 (CA) per ABIRIYI JCA** where the Court held:-

“It is clear from a reading of the entire Section 34 of the EFCC Act that the Commission if satisfied that the money in the account of any person is made through the commission of an offence may apply to the Court ex-parte for the power to freeze the account. The EFCC may by an Order issued by the Court direct the freezing of the account. The bank shall then take necessary steps to comply with the requirements of the Order. “Order” rings a loud bell in both subsections (2) and (3) of the said Section 34 of the EFCC Act. This is not surprising because the freezing of the account of a person will be done if the money is reasonably subjected by the Court to have been made through the commission of an offence. It is then that the Court makes the Order sought by the EFCC. Without that Order, the Economic and Financial Crimes Commission cannot direct the freezing of the account of any person. Without the order, the bank or any financial institution cannot freeze the account of any person. The Order of the Court is the basis for any other action under the section as allegation that money is made through the commission of an offence is a serious allegation. It is for this reason that the bank must ensure that there is an Order of Court before it proceeds to freeze the account of any person. That is what Section 34(3) means by the bank taking necessary steps to comply with the Order. In my view, a bank fails to enquire whether or not EFCC had obtained an Order of Court at its peril.”

Similarly held in the case of **AROGUNDADE V SKYE BANK (2020) LPELR-52304 (CA)** the Court held thus:-

“...The Respondent based on those criminal matters against the Appellant had unilaterally placed a restriction and caution on all the accounts of the Appellant with the Respondent. This is the reason for the restriction on the Appellant’s accounts. The Respondent never obtained any Court Order to do that but went on unilaterally to place the restriction on the accounts of the Appellant. Is this a legitimate action which the law allows and permit? I generally do not think so. NO person or institution

has power unilaterally to place a restriction on the account of a customer. No law allows for such act or action. In a civilized society people abide by the law and consequences are suffered for the violation of the law. This Court has condemned unilateral action of freezing customers account without a Court Order.”

From the above judicial interpretation given by the Honourable Court of Appeal and upon a critical analysis of the said Section 34 of the Economic and Financial Crimes Commission Act by this Honourable Court, it is clear that the Defendant in this case cannot in the absence of a Court Order freeze the Claimant’s account No. 0231063424. Therefore this Honourable Court answers the first question raised in the negative. I so hold.

On the second question:

“(2). Whether freezing and/or suspension of the Claimant’s account No. 0231063424 in the Defendant’s bank without due process of law to wit – a Court Order is not reprehensive, cruel and an abuse of process of law and equally a breach of contract of banker customer relationship?”

It is trite law that when there is a laid down procedure of law to do a particular act, that procedure must be followed. Anything done otherwise, will amount to a disregard and violation of the law and in some cases such as this one an abuse of power and due process of law. Where such procedure may affect the rights of a citizen a non-compliance of such procedure will amount to a violation of the rights of such citizen. In other words, when the law prescribes a mode for doing a thing, only that method and no other method, must be adopted and followed. See **MARWA V ZIYAKO (2012) 6 NWLR (Pt.1216) P. 360, Paras B – C (SC)**.

On the issue of the breach of contract of banker customer relationship, it is settled that the relationship between a banker and its customer is that of debtor and creditor. Where there is a breach, the defaulting party will be liable to damages for a breach of contract. This was the position of the Court in the case of **GTB V DIEUDONNE (2017) LPELR -43559 (CA) per GEORGEWILL JCA**, where the Court held thus:-

“The law is well settled that the relationship between a Banker and its customer is that of Debtor and Creditor as well as

principal and agent, such that once a customer pays money into his account with the bank, the bank becomes his debtor, while the customer becomes the Creditor to the bank. A bank is also an agent of its customer who in turn becomes the principal and the Bank is thus bound in law and under a duty to carry out the instructions of its customer within the ambit of the law that governs their banker-customer relationship. This I must reiterate is one that carries with it a duty of care and which must therefore, be diligently exercised by the bank since the predominant business of the bank is banking, which in the main consist of receipt of monies on deposits on accounts of its customers and the payment of cheques drawn on it as well as the collection of cheques paid in by its customer.”

In the case of ***FIDELITY BANK V ONWUKA (2017) LPELR – 42839 (CA)***, the Court held inter alia:-

“It is the receipt of money either from or an account of its customer that constitutes a banker into debtor of the customer. Thus when a banker credits the account of a customer with a certain sum of money, the banker becomes a debtor to the customer to the extent of the credit. It is to be noted that the ordinary customer rank is an unsecured creditor in the liquidation of the bank. The concept of debtor and creditor in the banker and customer relationship are not static. The banker may in certain cases become the creditor, while the customer assumes the position of a debtor. For instance where a banker grants overdrafts to its customer and debits the customer’s account with sum or value of the overdraft, the customer becomes a debtor to the banker to an amount equal to the credit. Accordingly, after the reconciliation of the banker and customer’s account, which party is the creditor, can sue if demand for payment is not complied with.”

In addition, the Court held in the case of ***WEMA BANK PLC V OYENUBI (2018) LPELR-46690 (CA)*** thus:-

“Now, in the relationship between a banker, such as the Appellant, and its customer, such as the Respondent, commission of error in the management of the account and

funds of the customer is not part of the duties of the banker and thus would constitute negligence if it results into damages or loss to the customer, it clearly being a breach of the banker's duty of care if owed its customer."

It can be seen from the deposition in both the affidavits of the Claimant and the Respondents that there indeed exists a banker customer relationship between them. I so hold.

Paragraph 2 of the Claimant's affidavit in support of Originating Summons states thus:-

"(2). That I maintain account No. 0231063424 in my name with the Defendant and the account is operational as I use same in running my business and other sundry issues."

This statement was further corroborated by the Defendant's admission in paragraph 6 of its Counter Affidavit to the Claimant's Originating Summons which states thus:-

"(6). That the Defendant admits paragraph 2 of the Affidavit in support of the Claimant's Originating Summons only to the extent that the Claimant maintained and operates account number No. 0231063424 with the Defendant."

From the foregoing, it is clear that a banker-customer relationship between the Claimant and the Defendant has been established. Without further ado, this Honourable Court hereby answers the second question raised in the affirmative. I so hold.

On the third and final question:

"(3). If the answer to the above issues are answered against the Defendants, whether the Claimant is not entitled to damages."

ISSUE 2

"Whether the Claimant has proven her case to be entitled to the relief sought."

Order 2 Rule 3(5) provides that an Originating Summons shall be accompanied by:

- (a). An affidavit setting out the facts relied upon
- (b). All the exhibits to be relied upon
- (c). A Written Address in support of the application
- (d). Certificate of Pre-action Counselling.

Looking at the processes filed by the claimant before this Honourable court, it is clear that the Claimant has successfully satisfied all of the above requirements.

It is settled principle of law that he who asserts must prove. Section 131 of the Evidence Act 2011 provides:-

“(1). Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exists.

(2). When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

In establishing her case, the Claimant deposed in paragraphs 4- 6 of her Affidavit in support of Originating Summons thus:-

“Paragraph 4: That I discovered on or about 1st of September 2023, that the Defendant stopped me from any further operations of my account and/or transactions/transfers of money from the said account through all channels and suspended and froze the account and every attempt to transfer money from the said account was declined with a feedback that the account is suspended.

Paragraph 5: That as at 1st September, 2023 my account was in credit with enough funds in it to cover any transaction within the limit of the funds therein.

Paragraph 6. That on further inquiry from the Defendant's branch in Kubwa where I live, I was informed at the customer services desk of the bank that they have instruction from the Economic and Financial Crimes Commission to freeze my account without any further details."

The Claimant further supported her claim by tendering Exhibit B, the notification of the restriction on her account, which was not disputed by the Defendant. Exhibit C, a reply letter by the Defendants to the Claimant stating that internal enquires shall be conducted on the complaint lodged by the Claimant further proves that there was indeed a restriction on the Claimant's account which she had lodged a complaint on.

The Defendant had denied placing any restriction on the Claimant's account in the depositions in its Counter Affidavit to the Originating Summons. However, the evidence produced by the Claimant proves that there was indeed a restriction placed on her account by the Defendant.

Having earlier established that the Defendant cannot unilaterally place any restriction on the account of the Claimant without a Court Order and that a banker customer relationship and duty of care had been breached I will be right to say that the Claimant has duly established her case and satisfied the requirements of the law to be entitled to reliefs sought. I so hold.

I am aware that the restriction placed on the Claimant's account has been lifted. Nevertheless, it does not change the fact that the Claimant has incurred losses due to the said restriction. Where a wrong has been done, there must be a remedy; ubi jus ibi remedium. A party should not be made to suffer a loss or damage in vain. In the case of **UBA PLC V OGUNDOKUN (2009) 6 NWLR (Pt.1138) Pg. 450** the Court held that the rationale for awarding damages is to compensate the aggrieved party for the loss sustained or place him in a near as possible position as he would have been if he had not suffered damage or injury for which he is claiming compensation.

Consequently and without further ado, the issue for determination is hereby resolved in favour of the Claimant.

Having considered the totality of the facts, circumstances and evidence before this Honourable Court, it is hereby ordered as follows:-

- (1). The suspension and freezing of the Claimant's account **No. 0231063424** without due process of law without a Court Order is hereby declared an abuse of due process of law and a breach of contract of banker customer relationship.
- (2). The sum of **₦2, 000, 000.00 (Two Million Naira)** is hereby awarded as general damages against the Defendant to be paid to the Claimant.
- (3). No order as to interest on post judgment sum.

Signed:

Hon. Justice S. U. Bature
31/1/2024.