

IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON FRIDAY, THE 20TH DAY OF DECEMBER, 2024

BEFORE THEIR LORDSHIPS:

ABBA BELLO MOHAMMED
PETER CHUDI OBIORAH
OKON EFRETI ABANG

JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL

APPEAL NO. CA/A/CV/155/2023

BETWEEN:

GUARANTY TRUST BANK ===== APPELLANT

AND

1. EBISI AUGUSTINE CHIJOKE
2. INSPECTOR GENERAL OF POLICE === RESPONDENTS

JUDGMENT

[DELIVERED BY OKON EFRETI ABANG, JCA]

This is an appeal against the decision of the High Court of the Federal Capital Territory, Abuja delivered on 1/12/2022 in favour of the 1st Respondent. The 1st Respondent at the trial Court instituted this Suit via Originating Motion on Notice dated 15/9/22 for the enforcement of his fundamental right wherein 15 injunctive and declaratory reliefs were sought against the Appellant and the 2nd

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Sign: Zainab Nassim
ZAINAB NASSIM
Principal Registrar
Date: 31-12-2024
TheNigerialawyer

Respondent. At the trial Court, the 1st Respondent stated that the freezing of his account by the Appellant was illegal, unlawful, arbitrary and accentuated by bad faith.

It was the Appellant's case that it acted under the directives of the Police who served it with a letter accompanied by an Order made by a Magistrate Court to place restrictions on the account of the 1st Respondent pending the outcome of investigations being carried out by the 2nd Respondent.

The 1st Respondent went further to file a Further Affidavit challenging the continued restrictions placed on his account despite the Order which the Appellant relied on to restrict his account having been set aside.

The 1st Respondent on his part presented the following facts. That he is a customer of the Appellant. That in the course of the business transaction, the 2nd Respondent through the Assistant Inspector-General of Police Zone 2 Lagos obtained a purported Banker's Orders from a Magistrate Court Ibadan Oyo State to freeze his account domiciled in the Appellant pursuant to an alien enactment described as the Banker's Orders Act 1847. The Appellant acted on this purported Order and froze the 1st Respondent's account. The 1st

Respondent later filed an application before the Magistrate Court in Ibadan Oyo State that made the Order to set it aside. That Court on 30/5/22 set aside the Banker's Orders.

The Order vacating the Banker's Orders was served on the Appellant same day 30/5/22. That despite the service of the Order vacating the Banker's Orders, the Appellant refused to lift the restrictions placed on the account for more than 4 months till 3/10/2022. See Exhibit EB.13.

Aggrieved with the Appellant and 2nd Respondent's action, the 1st Respondent filed the suit leading to this appeal vide an Originating Motion on Notice against the Appellant and the 2nd Respondent at the trial Court. The suit challenged the Appellant's restriction of his bank account on the basis of a purported Banker's Orders made pursuant to a non-existent law i.e. the Banker's Orders Act 1847 which was unlawfully procured by the 2nd Respondent. That the Appellant refused to promptly lift the restriction on the 1st Respondent's bank account even after it was duly served with the Order vacating the said restriction. There is also incidental claims for general damages for the breach of Banker/Customer duty of care.

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That the 2nd Respondent has no power to apply for the Banker's Orders. That the Appellant has no power to restrict his account on the basis of such Order. That the Banker's Orders has been decalred illegal in the following cases;

CLEMENT EWE OSEMENE V GUARANTY TRUST BANK in Suit No. LD/1961/GCM/2007, EUNICE ODDIN & 4 ORS V ZENITH BANK & 6 ORS in Suit No. FHC/ABJ/1635/2019 wherein the Appellant and the 2nd Respondent were parties.

That the Appellant and 2nd Respondent's action constituted a violation of his fundamental rights to own property as guaranteed by Section 44 of 1999 Constitution as amended and the African Charter on Human And Peoples Right.

The 2nd Respondent although duly served with all processes and hearing notices, failed and/or neglected to defend the action at the trial Court. The Appellant according to the 1st Respondent did not materially dispute the facts of the instant appeal but hinged its defence on what it described as its duty to obey an Order issued by a Court of competent jurisdiction and the lawful directives from the Police.

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The trial Court on 1/12/22 following the decision of this Court in the case of **ACCESS BANK VS AGBA SIERE (2022) LPELR - 58489** held that a Magistrate Court has no power to issue a Banker's Orders made pursuant to a non-existing Banker's Orders Act 1847. That the action of the Appellant freezing the 1st Respondent's account based on the purported Order was unlawful and violated the 1st Respondent's fundamental rights. The trial Court also held that Appellant's restriction of the 1st Respondent's account from 30/5/22 when the Order setting aside the Banker's Orders was served on it till 3/10/22 when the restriction was finally lifted breached the 1st Respondent's right to fair hearing.

The Appellant did not appeal against the specific findings of facts relating to award of damages in the matter in favour of the 1st Respondent but appealed against the whole decision. Of course this is in order because where the appeal is allowed, the whole decision of the trial Court would be set aside.

The 2nd Respondent did not appear in Court on 17/10/24 when the appeal was argued and was not represented by Counsel

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though duly served with hearing notice on 30/9/24 of the Court proceedings.

However this Court, stumbled on the brief of argument filed by him on 17/7/23. Having regard to the provisions of Order 19 rule 9(4) of the Court of Appeal Rules, 2021, I have a duty to consider the 2nd Respondent's brief to ascertain whether or not he is in support of the Judgment of the trial Court subject of the appeal. This is so notwithstanding that it did not participate in the proceedings at the trial Court. I note here that the 2nd Respondent did not file an appeal against the judgment of the trial Court.

In the introductory part of his brief, the 2nd Respondent stated that the 1st Respondent's case at the trial Court against himself and the Appellant was that his account was restricted by the Appellant based on the Post No Debit (PND) Order made pursuant to Banker's Orders Act 1847. He obtained the Order from the Magistrate Court in Ibadan Oyo State on 9/6/20 in the course of investigation of the 1st Respondent's account domiciled with the Appellant following a complaint by one Adebayo Ilyas Williams. That the 1st Respondent stated that the restriction of his account

violates his fundamental Rights under the provisions of Sections 34 and 44(1) of 1999 Constitution and Section 14 of the African Charter on Human and Peoples Rights. Consequently the Appellant sought several declaratory and injunctive reliefs against the Respondents at the trial Court. Before the appeal was argued, the 1st Respondent drew the Court's attention to an application he filed on 12/4/2023 brought pursuant to Order 6 rule(1) of the Court of Appeal Rules 2021 and under the inherent jurisdiction of the Court praying the Court to strike out grounds 1, 2 & 3 of the Appellant's Notice of Appeal for being scandalous, incompetent and constituting an abuse of Court's process, academic and hypothetical.

The 1st Respondent also prayed the Court to strike out issues 1, 2 & 3 distilled in the Appellant's brief being predicated on incompetent grounds. There is an affidavit in support of 4 paragraphs filed on 12/4/23 together with a written address of the same date.

The Appellant opposed the application by filing a counter affidavit of 6 paragraphs filed on 15/6/2023 again with a written address of the same date.

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In the course of his oral argument, learned Counsel for the Appellant Chief C. P. Oli challenged the competence of the application being filed in violation of the provisions of Order 10 rule 1 of the Court of Appeal Rules 2021. That the 1st Respondent under the Rules of Court is expected to have filed a Notice of Preliminary Objection and argument in support of same presented in the 1st Respondent's brief of argument. This the 1st Respondent did not do. Learned Counsel urged the Court to strike out the application for being incompetent.

My Lords I have considered the argument of Segun Fiki 1st Respondent's learned Counsel on this issue and the authority cited by him in this regard.

No doubt the procedure adopted by the 1st Respondent in challenging the competence of the Appellant's grounds of appeal is irregular having regard to the provisions of Order 10 rule 1 of the Court of Appeal Rules 2021. It provides that a formal Notice of Preliminary Objection ought to have been filed before hearing of the appeal giving the Appellant 3 clear days notice. That the Respondent shall rely on a preliminary objection challenging Court's jurisdiction to

entertain the appeal. However, since it is an application that challenges the jurisdiction of this Court to entertain the appeal, the Court is inclined to consider the purpose the application was filed and not the form or the manner wherein it was filed.

It is an application that questions the Court's jurisdiction. It can be raised in any manner or form provided the Appellant is put on Notice. There is no miscarriage of justice here.

The application was also brought under the inherent jurisdiction of the Court as preserved under the provisions of Section 6(6)(b) of 1999 Constitution as amended. That the Court's jurisdiction extends to all matters between persons or between government or authority and to any person in Nigeria and to all actions and proceedings relating thereto for the determination of any application as to the civil rights and obligations of that person.

Though it is desirable for the 1st Respondent to comply with the provisions of Order 10 rule (1) of the Rules of Court 2021 since the Rules were meant to be obeyed but failure to do so should not inhibit the Court from deciding the application on its merit under its inherent powers preserved under the

provisions of Section 6(6)(b) of 1999 Constitution as amended which is the supreme law of the land.

Beyond this, the penalty for the failure to comply with the provisions of Order 10 rule (1) of the Rules of Court is provided in the provisions of Order 10 rule 3 of the Court of Appeal Rules 2021. That is where the Respondent fails to comply with the provisions of Order 10 rule 1 supra, that the Court may refuse to entertain the objection or may adjourn the hearing of the appeal. Since the operative word used in the provisions of Order 10 rule 3 of the Rules of Court is "may" which is not a word of command, I am inclined to exercise my discretion in favour of the 1st Respondent in determining the merit of the application since it challenges the jurisdiction of this Court to entertain the appeal. I will now proceed and briefly determine the application on its merit.

The 1st Respondent in his application filed on 12/4/2023 challenged the competence of Appellant's three grounds of appeal filed on 7/12/2023 that is located at pages 276 to 280 of the record.



The three grounds of appeal without their particulars are hereby reproduced as follows:

Ground One - Error in law

"The trial court erred in law when it held that the appellant ought not to have complied with a court order when it was served on the appellant."

Ground Two - Error in law

That the trial court erred in law when it held that the restriction placed on the 1st Respondent's account pursuant to an order of court amounted to a breach of the 1st Respondent's Fundamental Right.

Ground three - Error in law

The trial court erred in law when it conducted the proceedings of 14/10/2022 wherein parties adopted their processes in a make shift court."

My Lords the law is settled without reproach that an aggrieved party to a Judgment or Ruling of a trial court has a Constitutional right of appeal against the said decision, that is if it is an appeal against a final decision of the trial Court. However if it is an appeal against interlocutory decision, he is required to obtain leave of court to do so

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except the ground of appeal is a ground of law simplicifer.

See the following enactments -

(i) Section 241(i)(a) - (f) and section 242(i) of 1999

Constitution as amended provides:

"An appeal shall lie from decision of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases -

(i) a - f

(ii) Section 242 of 1999 Constitution as amended provides:

"Subject to the provisions of Section 241 of this Constitution, an appeal shall lie from the decisions of the Federal High Court or a High Court to the Court of Appeal with the leave of the Federal High Court or a High Court or the Court of Appeal."

Again the provisions of Section 318 of the same Constitution defines a decision to mean any determination of that Court and includes judgment, act, Order, conviction, sentence or recommendation.

Appeal is always against the decision of the trial Court. Put differently, if a Court of law did not decide an issue, there

cannot be an appeal. In a legal parlance, an appeal is filed against the decision of the Court not against a statement made in passing by the Court in a judgment. This is so even if it is based on grave Constitutional importance, it must be predicated on the ratio decidendi of the Court in a Judgment or the Ruling appealed against. See the following decisions of the Supreme Court:

EGBE V ALHAJI (1990) 1 NWLR (PT. 128) P. 546 AT 590, MOHAMMED V STATE (2022) LPELR - 57830 SC.

Applying the above principles of law to the objection raised by the 1st Respondent, I shall now consider grounds 1 and 3 of the Appellant's grounds of appeal.

Concerning Appellant's ground 1 in its Notice of Appeal filed 7/12/22, there is no where in the judgment of the trial Court subject of this appeal that the Court held that the Appellant ought not to have complied with the Court's Order when it was served on it. Ground one of the Appellant's grounds of appeal is not predicated on the judgment appealed against. The said ground of appeal is based on the imagination of the Appellant. The only findings the trial Court made in this regard at page 26 of the additional record of appeal filed on

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25/9/24 was that the Respondents knew or reasonably ought to know that the Order it procured and served on the 1st Respondent (Appellant herein) was predicated on a non existing law and from incompetent source. I must equally say that the 1st Respondent (now Appellant) has a duty to take steps to vacate it having been a party to exhibits A6 nad A7 as it owes the Appellant a duty of care under their contractual obligations. Therefore ground one of the Appellant's ground of appeal filed on 7/12/22 is not an appeal against the decision of trial Court within the confines of Section 241(1)(a) of 1999 Constitution as amended. The said ground is incompetent and deserving to be struck out.

As regard ground 3, that the trial Court erred in law when it conducted the proceedings of 14/10/22 wherein parties adopted their processes in a make shift Court.

Again this did not arise from the judgment subject of appeal. There is no portion of the trial Court's judgment subject of this appeal that reference was made to proceedings being conducted from the make shift Court. It is not clear from the records where the Appellant got ground three from certainly not from the judgment delivered by the trial Court

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on 1/12/22. If the issue was raised and the trial Court did not take a decision on it, the Appellant can not appeal as of right but seek leave of Court to do so. Having not applied for leave and same granted, the ground is incompetent. Filing an appeal against a judgment of a Court of law is not a child's play. Learned Counsel engaged in appellate practice in this Court should not fumble and gamble with the rights of parties that briefed them. A party in the class of the Appellant, an established well known financial institution with seasoned legal practitioners in its employment should be interested in seeing the processes counsel filed in Court for them. A party may have a good case on appeal but where the grounds of appeal are incompetent, the appellate jurisdiction of this Court under Section 241(1)a of 1999 Constitution as amended cannot be activated. There is nothing a Court can do.

The law as I understand it is settled and requires no restatement that an issue flowing from a ground of appeal must be founded and/or rooted in the judgment of the Court appealed against touching on the ratio decidendi the said judgment. In order to invoke the jurisdiction of the appellate Court the grounds of appeal must attack the ratio decidendi

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of the judgment. That the alleged fact that the trial Court stated that the Appellant ought to have complied with Banker's Orders served on it or that the trial Court sat on 14/10/22 in a make shift Court did not arise from the judgment of the trial Court subject of appeal. Therefore Grounds 1 and 3 are incompetent and are accordingly struck out.

Issues 1 and 3 predicated on the incompetent grounds are incompetent and are accordingly struck out. See **NZE V ONYEACHUGWO (2021) LPELR 66658 SC.**

However Appellant's ground 2 of its Notice is a valid ground. Contrary to the argument of the 1st Respondent, the Appellant's ground 2 is not vague, academic or hypothetical or incompetent. It arose from the judgment appealed against. See pages 29, 30, 32 of the additional record which is the judgment of the trial Court wherein the trial Court held:

"I therefore hold that the 1st Respondent's (sic) in breach of the applicant's fundamental rights from the 11th of June 2020 when the applicants found out his account was restricted till the day it was lifted.

The consequential effect is that it is liable for the

breach of the applicant's fundamental right as enshrined in Section 44 of the Constitution as amended."

Appellant's ground 2 is not vague. It is clear and capable of being understood. It is therefore competent. Issue 2 predicated on the said ground 2 is also competent.

Therefore the 1st Respondent's application filed on 12/4/23 succeeds in part. While appellant's grounds 1 and 3, are incompetent and are accordingly struck out with their issues 1 and 3, the appellant's ground 2 is valid and competent and the appeal will be determined solely on appellant's issue 2.

The Appellant filed its brief of argument on 10/3/23 and at page 3 thereof it formulated 3 issues for determination. The Appellant's issues 1 and 3 have been struck out having been predicated on incompetent grounds 1 and 3 of the Appellant's Notice of Appeal filed on 7/12/2022.

The subsisting issue 2 states as follows:

"Having regards to the circumstances of the facts of the 1st Respondent's case at the trial Court whether it can be said that the 1st Respondent's fundamental Rights was breached by the Appellant as envisaged by the Constitution."

The 1st Respondent adopts the Appellant's issue 2 in his Appellant's brief filed on 12/4/23. The 2nd Respondent at page 5 of his brief formulated a sole issue for determination as regard whether the trial Court was right when it held that the 1st Respondent's fundamental Rights was breached by the 2nd Respondent based on the Post No Debit Order by a Court of Competent jurisdiction.

Before I go further in this judgment, it is proper to point out that the 2nd Respondent did not file any appeal against the trial Court's judgment. Where he has not appealed against the judgment, his primary duty is to support the judgment and not to present argument in support of the appeal filed by the Appellant. I have gone through the 2nd Respondent's argument, he prayed this Court to set aside judgment of the trial Court. Under the Rules of Court, he cannot do this without filing an appeal. Having not filed an appeal in this matter, the Court will certainly disown the 2nd Respondent's argument in his brief filed on 17/7/23.

On the surviving appellant's issue 2, learned Counsel for the Appellant made reference to the provisions of Sections 34 and 44(1) of 1999 Constitution as amended and Article 14 of



the African Charter on Human and Peoples' Right, 1st Respondent's verifying affidavit of facts and submitted that there is no nexus to the facts in issue at the trial Court which is that a Post No Debit Order was placed on the 1st Respondent's account pursuant to a valid Order of Court and the fact that the 1st Respondent's Fundamental Rights enshrined in Chapter IV of the Constitution was breached.

That for the 1st Respondent to invoke the provisions of section 44(1) of 1999 Constitution as amended, a person must have used some level of violent physical action to enter into occupation or physical control of the property or must have used violent force or threat to acquire the interest in an immovable property.

Learned Counsel contended that there is nothing on record to buttress the 1st Respondent's claim that the appellant compulsorily took possession of the money in the 1st Respondent's bank account with the intention of permanently depriving him of its use, that this should be so because the restriction on his account was simply Post No Debit Order.

That post no debit restriction was placed on his account pursuant to a valid Court Order.

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That there cannot be a violation of the provisions of Section 44(1) of the 1999 Constitution as amended if the 1st Respondent's property was acquired through execution of a valid Order of Court.

That where a bank's customer is unable to operate his account because of restriction placed on his account, that the cause of action that will arise therein is simply a purely contractual issue in a case of banker/customer relationship and not a breach of fundamental Right. Learned Counsel relied on **WEMA BANK V OSILERU (2007) LPELR 8960 CA.**

That a temporary restriction on withdrawals from an account without more does not by any stretch of imagination amount to a compulsory possession of the funds in the 1st Respondent's account domiciled in the Appellant. That the 1st Respondent's cause of action is simply contractual and cannot be sustained under the Fundamental Rights' Enforcement Procedure Rules.

Appellant's Counsel at the close of his argument on issue 2 at page 11 of his brief did not urge the Court to resolve issue 2 in favour of the Appellant. It is however assumed that is what

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the Appellant's Counsel prayed for though not expressed on record.

My Lords I have again considered the 1st Respondent's argument in his issues 1 & 2 at pages 5 to 12 of his brief, I think it is not proper for the 1st Respondent to argue his issues 1 and 2 together. The 1st Respondent should have avoided this strategy.

Having challenged the competence of the Appellant's grounds 1, 2 & 3 and without knowing what the Court's decision would be, he should have avoided the temptation or the urge of arguing together issues 1 and 2 predicated on appellant's grounds 1 and 2 of the Appellant's ground of appeal filed on 7/12/22. Now the Court has struck out Appellant's issue 1 which is predicated on Appellant's ground 1 of its notice of appeal, it means therefore the appellant's issue 1 no longer exist. The 1st Respondent's issue 1 is similar to the Appellant's issue 1 that has been struck out. Therefore the 1st Respondent cannot in his brief argue his issue 2 together with his issue 1 predicated on Appellant's ground one that has been struck out. My view here is that the 1st Respondent's issue 1 predicated on incompetent ground 1 of the Appellant's

grounds of appeal contaminates the 1st Respondent's issue 2 predicated on Appellant valid ground 2. I note here that the 1st Respondent did not file any Respondent notice.

Therefore the Court can not carry out a surgical operation to determine which of the 1st Respondent's argument in the two issues argued together that relates to the 1st Respondent's issue 1 which is predicated on incompetent ground of appeal and which portion of his argument relates to his issue 2 predicated on the Appellant's valid ground 2 of its Notice of Appeal filed on 7/12/22.

The resultant effect here is that the 1st Respondent's 1st and 2nd issues argued together are incompetent and accordingly struck out.

Now the argument of the Appellant in his issue 2 stands unchallenged. The Court is enjoined to act on the unchallenged argument with respect to the Appellant surviving issue 2 provided it represents the position of the law on the subject matter of the appeal.

This is a serious lesson to the 1st Respondent that having raised objection to the competence of the appellant's 3 grounds of appeal should have avoided arguing two issues

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together since he is not in position to know which of the grounds will survive the appeal.

It is settled law that argument or submissions on incompetent grounds of appeal and/or issues for determination cannot be lumped together with those of competent issues for determination. Where such is done, it will not be the business of the court to separate arguments in respect of the valid issues from the invalid ones because such an exercise may involve the court descending into the arena of dispute which often beclouds the Judgment of the

Court. See **IKPEAZU V. OTTI** (2016) 8 NWLR PT. 1513

p. 39, **KOREDE V. ADEDOKUN** (2001) 15 NWLR pt. 736

p. 483, **CPC OMBUGADU** (2013) 18 NWLR pt. 1385 p.

66, **KHALI V. YARDUA** (2003) 16 NWLR pt. 847 446. In the above cases, valid issues for determination in the appeals were argued together with invalid issues. Both the valid and invalid issues were accordingly struck out.

In this matter, the trial court made some findings against the 2nd Respondent the Inspector General of Police. He has no appeal against the Judgment. Those findings subsist and binding on the Inspector General of Police.

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As regard the appellant's issue 2, the 2nd Respondent procured Banker's Orders made pursuant to Banker's Orders Act 1847 from Ibadan the Magistrate Court of Oyo State and served the order on the Appellant and pursuant to the order the Appellant restricted the account of the 1st Respondent.

I think there was nothing wrong in the appellant attaching or restricting the account of the 1st Respondent based on the Order served on it having been satisfied that the Order was made by a Magistrate Court of Oyo State Ibadan. Even if the order was irregular or even void, so long as it was a subsisting Order of Court, the appellant had no choice but had an uncompromising duty to act on it.

In **OLUFEMI ODU V. CHIEF JALAOSU (2005) LPELR 9340 SC** held thus:

"The plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. This is so even in cases where the person affected by an order believes it to be irregular or even void so

long as it exists the order must be obeyed to the latter."

Contrary to the views expressed by the trial court, I do not think it is the duty of the Appellant upon being served with an order made by a court of law to determine whether or not the order was made by a court of competent jurisdiction. The 1999 constitution as amended has not conferred judicial powers on the appellant to determine whether or not the order served on it was made by a court of competent jurisdiction. Such powers is conferred on a court of law by virtue of the provisions of section 6 sub sections 1 to 3 of 1999 constitution as amended except it is obvious on the face of the order that it was not made by court of law. For instance, in the case **ACCESS BANK V. AGBASIERE (2019) LPELR - 47310 CA** where the order was made by Supreme Magistrate Court of Federal Capital Territory Dutse in which case, the appellant may carry out an investigation to ascertain if such court exists before acting on the order. In this case the order was made by

"Magistrate Court holden at Ibadan

North East Two Road Ibadan

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Before His Lordship

T. Oladiran (Mr.) Chief Magistrate"

It is clear in this case that the order was made by a Court of law. Whether it is a court of competent jurisdiction or not is not for the Appellant to determine but by a Court of law under the provisions of section 6(1) - (3) of 1999 Constitution as amended.

This case is slightly different from the facts of the case of **GTB V. ADEDAMOLA & ORS (2019) LPELR 47310** that I had the singular privilege to decide when I presided at the Federal High Court, Lagos Division in 2014 before my elevation to the Court of Appeal Bench. This Court affirmed my decision.

In **GTB V. ADEDEMOLA** supra there was no order of court served on the same appellant before attaching the account of the Respondent in that case based on instructions of EFCC. In this case, there was an Order of Court served on the Appellant though it was later vacated. To this extent, the appellant did nothing wrong in restricting the account of the 1st Respondent as at the time the Order was served because it was backed by an order of court.

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(Underlining mine for emphasis)

At the time of service of the order and its compliance, it was not for the appellant to determine whether the Magistrate Court had jurisdiction to make the order or whether it was made by court of competent jurisdiction or the Banker's Orders Act was still a subsisting law in Nigeria. The Appellant had no duty to consider the issues raised above.

The turning point in this Judgment and this is where I have a duty to depart from the Appellant that is why did the appellant fail to inform the 1st Respondent immediately the Banker's Orders was served on it restricting his account domiciled with it. The second reason that I am departing from the Appellant is why it failed to lift the order of restriction for upwards of 4 months upon the order vacating the said Banker's Orders having been served on it. To this extent and having regard to the questionable/callous action of the Appellant, I agree with the trial court that having regard to the facts of this case, the Appellant violated the 1st Respondent's Fundamental Right as envisaged by 1999 Constitution as amended.

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My Lords in this case for more than one year, the appellant wilfully refused and or neglected to inform the 1st Respondent the reason for the restriction of his account. On 11/6/2020, the 1st Respondent was unable to operate his account though the account was well funded. On 19/11/2021 more than a year, the 1st Respondent caused his solicitor to write to the appellant to know why his account was restricted. The appellant failed to respond to the letter and did not lift the restriction. It was only in the Appellant's counter affidavit filed in Court that the appellant for the first time informed the 1st Respondent that his account was restricted by an Order of Court.

The Order was made on 9/6/2020 and account of the 1st Respondent attached since 9th June, 2020, the 1st Respondent was only told through a court process about a year later. The restriction was only removed on 3/10/22 about 2 years 4 months.

The question is why did the appellant not disclose the reason for restriction of the account to the 1st Respondent at the earliest opportunity. As if that was not sufficient, the order was vacated on 30/5/2022 and the order served on the bank

same day see exhibit A3. The appellant acknowledged receipt of the order same day yet failed to remove the restriction for upwards of 4 months. The restriction was removed on 3/10/2022. For 28 months, the 1st Respondent a businessman, a renowned customer with appellant was unable to operate his account that was well funded, this is man inhumanity to man in this earthly world.

Though upon being served with the Banker's Orders unlawfully procured by the 2nd Respondent, the appellant had no judicial powers to determine if the Magistrate Court that made the Order was a court of competent jurisdiction but having been a party to the Judgments in Suit No. LA/1961/GCM/2017 - OSEMENE & ORS V. GTB PLC delivered on 24/5/2019, and Suit No. FHC/ABJ/CS/1635/2019 between E. ONDIRI & 4 ORS V. ZENITH BANK PLC & 6 ORS (inclusive of GTB) delivered on 6/10/2020 that declared that a Magistrate Court has no power to issue a Banker's Orders either by virtue of section 89 of the Evidence Act or by non-existent Banker's Orders Act 1847, the appellant in this appeal ought to have taken urgent steps to have the Order vacated.

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The appellant did not do this instead got the order, hurriedly restricted the account of the 1st Respondent, failed to inform the 1st Respondent even where the demand was made. The appellant however preferred to feed fat on the account of the 1st Respondent reasonably believed to have traded with the funds in his account thereby making commercial interest from it for upwards of 28 months.

My Lords I agree with the trial Court that the conduct of the appellant on the defenceless 1st Respondent is an affront on our Constitution and the law. This impunity by the individuals working for the appellant must abate here and now. The appellant acted recklessly in bad faith and exhibited unnecessary arrogance to the extreme to the detriment of the 1st Respondent. The appellant failed to inform the 1st Respondent of the restriction on his account for over one year and even where the Order was vacated, it failed to timeously lift the restriction.

Even where the applicant took steps to set aside the Banker's Orders illegally obtained from the Magistrate Court, the appellant exhibited highhandedness and oppressive conduct with impunity to the 1st Respondent.

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I entirely agree with the trial court that the court must act progressively now to deter such actions and protect the integrity and the processes under the Constitution.

Even though there is no appeal against the amount awarded by the trial court as general damages, I think it was deserving to award exemplary and aggravated damages against the Appellant in this matter.

The appellant on its issue 2 submitted that the imposition of a post no debit order on the 1st Respondent account can only give rise to a cause of action in contract and not fundamental rights.

My Lords I disagree with the appellant on this. Incidental or consequential relief can be brought in a fundamental right's suit. It is my view that where an account is restricted without an order of Court for instance when the Bank's Orders was vacated from 30/5/2022 and for 4 months thereafter the restriction was not lifted yet there was no more court order restricting the account of the 1st Respondent, the latter day restriction of the 1st Respondent's account without court order was in violation of

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the 1st Respondent propriety right under section 44(1) of 1999 Constitution as amended.

In DANGABAR V. FEDERAL REPUBLIC OF NIGERIA (2012) LPELR - 19732 CA held:

"consequently the order of the Applicant to freeze the Respondent's bank accounts without an order of court to that effect is a flagrant violation of the fundamental right guaranteed by section 44 of the Constitution"

See EFCC V. UBOH (2022) LPELR - 57968 CA.

In conclusion, the Appellant's lone surviving issue is resolved in favour of the 1st Respondent against the Appellant. The appeal lacks merit and it is accordingly dismissed. The Judgment of the trial court delivered on 1/12/2022 is hereby affirmed. Cost of N300,000.00 is hereby awarded in favour of the 1st Respondent payable by the Appellant forthwith.



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JUSTICE, COURT OF APPEAL

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Sign:	ZAINAB A. KASSIM
Principal Registrar II	
Date: 31 - 12 - 2024	

APPEARANCES:

Chief C. P. Oli with him

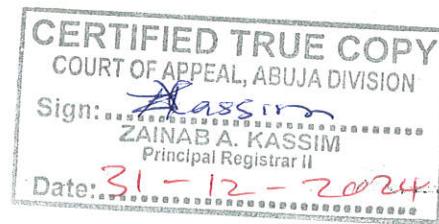
L. K. Onyemkpa

Regina L. Nwali for the appellant

C. Ojukwu (SAN) for the 1st Respondent with him

Segun Fiki

O. C. Ojiyi

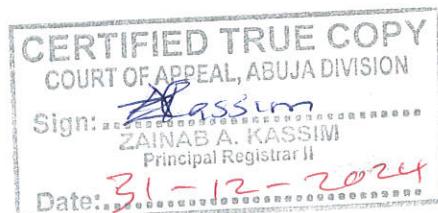


CA/A/CV/155/2023

ABBA BELLO MOHAMMED, JCA

I had the privilege of reading a draft of the leading judgment just delivered by my learned brother, OKON EFRETI ABANG, JCA. I agree with and adopt the reasons and conclusions stated therein. I also dismiss this appeal and abide by the consequential orders made in the leading judgment.


ABBA BELLO MOHAMMED
JUSTICE, COURT OF APPEAL



CA/A/CV/155/2023

PETER CHUDI OBIORAH, JCA

I have had the privilege of reading, in draft, the judgment just delivered by my Lord, OKON EFRETI ABANG, JCA. I am in total agreement with the reasoning, resolution of the issues and conclusion reached by my Lord. I agree that there is no merit in this appeal, which I hereby dismiss.

I abide by the orders made in the leading judgment.



PETER CHUDI OBIORAH

JUSTICE, COURT OF APPEAL

