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IN THE HIGH COURT OF LAGOS STATE.  
IN THE LAGOS JUDICIAL DIVISION.  
HOLDEN AT COURT NO. 52 FAST TRACK/COMMERCIAL DIVISION, TAPA COURTHOUSE  
TODAY THURSDAY THE 12<sup>TH</sup> DAY OF FEBRUARY, 2026  
BEFORE HON. JUSTICE A. M. IPAYE.

SUIT NO: LD/19478MFHR/2025

BETWEEN:

ESTHER AGBOOLA

APPLICANT

AND

FIDELITY BANK PLC

RESPONDENT

**JUDGMENT**

By an Originating Application dated 22<sup>nd</sup> April, 2025 and brought pursuant to Order 2 Rules 2 - 4 of the Fundamental Rights Enforcement Procedure Rules 2009; Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended); Sections 24(1) and 25 of the Nigeria Data Protection Act 2023 and under the Inherent Jurisdiction of this Honourable Court, the Applicant is seeking the following reliefs:

1. A DECLARATION that the Respondent's exposure, disclosure and processing of the Applicant's bank account details with a third party for the purpose of offsetting an unsubstantiated loan constitutes an interference with the Applicant's right to privacy guaranteed by Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.
2. A DECLARATION that the Respondent's processing of the Applicant's account number 6557242873 for an automatic loan recovery depleting all the money in her account is unfair and prejudicial to the Applicant and thereby violated the provision of section 24(1) (a) of the Nigeria Data protection Act 2023.
3. A DECLARATION that the Respondent's processing of the Applicant's account number 6557242873 for an automatic loan recovery is misleading, inaccurate and thereby violated the provision of Section 24(1) (e) of the Nigeria Data Protection Act 2023.
4. A DECLARATION that the Respondent lacked lawful basis to process the Applicant's account number 6557242873 for an automatic loan recovery and thereby violated the provision of Section 25 of the Nigeria Data protection Act 2023.
5. PERPETUAL INJUNCTION restraining the Respondent from further processing the Applicant's bank account for the said automatic loan recovery.
6. IMMEDIATE REVERSAL of the sum of Eleven Thousand, Nine Hundred and Twenty-Two Naira, Forty-One Kobo (N11,922.41) to the Applicant's account domiciled with the Respondent.

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7. GENERAL DAMAGES in the sum of N50,000,000 (Fifty Million Naira)
8. PRE-JUDGMENT INTEREST at the prevailing Central Bank of Nigeria's rate on the sum of Eleven Thousand, Nine Hundred and Twenty-Two Naira, Forty-One Kobo (N11,922.41) from the 19<sup>th</sup> April 2024 until Judgment is delivered in this case.
9. POST-JUDGEMENT INTEREST at the prevailing Central Bank of Nigeria's rate on the sum of judgment sum from the date of judgment until full and final liquidation of same.
10. CONSEQUENTIAL ORDER(S) that this Honourable Court may grant in the circumstances.

The application is supported by a 16-paragraph Affidavit deposed to by Esther Agboola the Applicant in this suit who averred that the Respondent is a commercial bank with an office in Marina, Lagos State. That the Applicant maintains an account number 6557242873 with the Respondent in which she saved money for her upkeep and other needs as a student. That she has never taken any loan from any financial institution and is not indebted to any of them.

That on the 19<sup>th</sup> day of April, 2025, the Respondent debited the sum of N11,922.41 from the account and that after the debit, she received a debit alert notification from the Respondent with the narration "SIRecovery". Evidence of the notification is attached and marked as Exhibit 1.

That since she did not authorize the transaction, she called the Respondent's customer care line and they informed her that she obtained a loan from a financial institution with which they shared her personal details with for the purpose of recovery.

That she has repeatedly informed the Respondent that she did not obtain any loan from any financial institution, hence that she is not indebted to anyone warranting the placing of automatic loan recovery on her account.

That since the issue remained unsolved, her cause of action against the Respondent are as follows:

- a. She did not obtain any loan from the financial institution hence the Respondent was wrong to have debited her account.
- b. They shared her account details and other personal data with a third party without any consent and thereby violated her right to privacy
- c. They opened an account and/or debited money in her account into a loan account for the benefit of a third party without her knowledge, consent or authority.
- d. They transacted with her account with them for payment of loan without her consent or authority.
- e. They placed an automatic loan recovery on her account without any lawful basis as she is not indebted to anyone.
- f. Their statement of outstanding loan with another financial institution on her account is misleading and inaccurate.
- g. Their processing of her account and removal of money therefrom is unfair and prejudicial.

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The Applicant averred that by the Respondent's breach of her privacy and data subject's right, she has suffered as follows:

- a. Denial of access to her funds.
- b. Destabilized plans and altered choices due to lack of funds.
- c. Untold hardship at the law school as she is unable to feed and buy necessities.
- d. Lack of concentration owing to lack of funds.
- e. Inability to buy books and feed well.
- f. Anxiety and mental depression due to the loss of her money.
- g. Feeling of harassment, dejection and helplessness as a result of the Respondent's maltreatment.

That the documents attached were printed via her HP Elitebook Laptop and HP Printer Laserjet MFP M26 pro (the devices) during a period over which the devices were used regularly to store or process information for the purposes of any activities regularly carried on over a period, whether for profit or not, by her.

That over that period there was regularly supplied to the devices in the ordinary course of those activities' information of the kind from which the information as contained is derived. That throughout the material part of that period the devices were operating properly and the information contained in the document attached reproduced is derived from the information supplied to the devices in the ordinary course of those activities.

The Respondent filed a 6-paragraph Counter-Affidavit deposed to by one David Etim, a Litigation Assistant at Covenant Chambers, Counsel to the Respondent in this suit wherein the Deponent averred that he was informed by Olushola Oyeyemi a Legal Officer with the Respondent on the 10<sup>th</sup> of November, 2025 vide an email as follows:

That the Respondent is duly licensed by the Central Bank of Nigeria (CBN) and operates in accordance with applicable banking laws and regulations.

That the Respondent is fully compliant with the Nigeria Data protection Regulation 2019 and the Nigeria Data Protection Act 2023 and has implemented and operates a comprehensive data protection/privacy policy available in its website [www.fidelitybank.ng/privacy](http://www.fidelitybank.ng/privacy).

That vide a Central Bank of Nigeria (CBN) Circular to all Banks and other financial institutions letter dated July 13, 2020, the Bankers Committee at its meeting of February 18, 2020 approved the Go-Live on the Global Standing Instruction (GSI) addressed to the Respondent informing her that the necessary protocols have been developed to facilitate a seamless implementation of the GSI process including eligible loans granted from August 28, 2019. Guidelines to regulate the operations of the Global Standing Instruction is hereby issued for implementation by all banks and other financial institutions with effect from August 1, 2020. The CBN 's circular letter and Guidelines on Global Standing Instruction (GSI) of July 2020 was attached and marked as Exhibits CC1 and CC2

That vide a Central Bank of Nigeria (CBN) Circular to all Banks and other financial institutions letter dated January 19, 2022, RE GLOBAL STANDING INSTRUCTION (GS1) INDIVIDUALS, the Respondent was informed that in furtherance of its mandate to promote financial system stability, the Central Bank of Nigeria (CBN) released the circular on

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Operational Guidelines on the Global Standing Instruction (GSI). That the initiative was conceived to fundamentally address the recurring instances of wilful loan default in the industry in order to identify and watch list recalcitrant loan defaulters, enhance loan recovery from all eligible and funded accounts/wallets in the industry, improve credit repayment culture and reduce non-performing loans in the Nigerian banking system. The GSI automated loan recovery feature applicable to all loans in the industry shall remain perpetually in place throughout the life of the loan and or until the loan is fully repaid. C.B.N's Circular letter dated January 19, 2022 was attached and marked as Exhibit CC3.

That upon her account opening, the personal data collected from Applicant as a customer of the Respondent, was done in accordance with lawful purpose, including Know Your Customer (KYC) compliance, fraud prevention and service delivery. That the Applicant consented in her individual account opening for the Respondent to use the information provided by her for the purpose of assessing and processing her banking requests, verifying her identity including anti-fraud checks and checking her financial history and if her banking requests are successful for administering her account, monitoring transactions to help identify illegal activity and keeping internal records. The Applicant's account opening package was attached and marked as Exhibit CC4.

That the Applicant further consented that her personal information may be shared with credit reference agencies, other lenders and third parties in assisting them in administering her account (including card issuing and archiving) for fraud prevention and detection purposes and for tracing debt/debtors in accordance with applicable data protecting regulations. That this explains why Nigeria Inter-Bank Settlement System (NIBSS) could get access to the Applicant's details and could trigger the Global Standing Instructions (GSI).

That there is a Service Level Agreement – Global Standing Instruction (GSI) Mandate Agreement between Nigeria Inter-Bank Settlement System and the Respondent to facilitate seamless recovery of delinquent credit advanced to borrowers by financial institutions. The service Level Agreement – Global Standing Instruction (GSI) Mandate Agreement between Nigeria Inter-Bank Settlement System and the Respondent was attached and marked as Exhibit CC5.

That contrary to the position of the Applicant that she was not indebted to any lender, the Respondent was informed that the Applicant obtained a loan from NIRSAL Microfinance Bank and by the agreed terms and conditions of the loan known only to the Applicant and NIRSAL Microfinance Bank, a Global Standing Instruction (GSI) was triggered by Nigeria Inter-Bank Settlement System (NIBSS) on bank accounts linked to the Applicant for repayment purposes in favour of NIRSAL Microfinance Bank and this has been clearly explained to the Applicant as she had stated in her Affidavit resulting in the auto recovery of the sum of N11,922.41 (Eleven Thousand, Nine Hundred and Twenty-Two Naira and Forty-One Kobo) on the 19<sup>th</sup> day of April 2024 from the Applicant's account number 655724873. Also, the Applicant's Statement of Account number 6557242873 shows the statement of affairs of the said account. The Applicant's Statement of Account was attached and marked as Exhibit CC6.

That the debit alert Notification from the Respondent with narration "SIRecovery" shows there was an automated loan recovery of the sum of N11,922.41 in line with Global Standing Instruction (GSI) towards the settlement of her debt with NIRSAL Microfinance Bank.

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That the Respondent is not wrong to have debited the Applicant's account with the sum of N11,922.41 automatically and the Respondent did not violate the Applicant's right to privacy. That the Respondent did not open an account and or debited money in the Applicant's account into a loan account for the benefit of a third party. That an automatic loan recovery was lawfully placed on the Applicant's account in line with Global Standard Instructions (GSI).

That the Respondent disputes the alleged suffering of the Applicant and that it is not responsible for what was allegedly suffered by the Applicant in paragraph 11 of her Affidavit in Support of Notice of Application.

That the Respondent had in no way and at no time processed the Applicant's data or opened a loan account and or debited money from her operative account into a loan account in any unlawful manner inconsistent with the fundamental rights of the Applicant as guaranteed under Section 37 of the Constitution of the Federal Republic of Nigeria 1999 as amended and or the Nigeria Data Protection Act 2023 or any other regulation or law.

That the Respondent is not liable to revert the sum of N11,922.41 (Eleven Thousand Nine Hundred and Twenty-Two Naira and Forty-One Kobo) and or pay interest on the said sum in view of the lawful nature of the debit. That the Applicant is not entitled to general damages in the sum of N50,000,000 (Fifty Million Naira) only or any other sum.

That it is important for NIRSAL Microfinance Bank to be Joined and added as a Co-Respondent to this suit and the grant of this application will not prejudice the parties on record.

The Applicant submitted a 7-paragraph Further-Affidavit deposed to by one Mayomikun Kajero, a Litigation Officer at the Law Firm of Olumide Babalola LP, Counsel to the Applicant.

The Deponent averred that in response to the Respondent's Counter-Affidavit in paragraph 2(g) the Applicant did not apply for the Loan Facility Covid-19 Targeted Credit Facility Intervention Scheme and the said fact is supported as follows:

- a. That the Loan was given to Applicants who had "Households with verifiable evidence of livelihood adversely impacted by COVID-19" but the Applicant was a twenty-one (21) year old and a law student at Obafemi Awolowo University when the Respondent falsely claimed she applied for the loan. The eligibility requirements as published on CBN's website was attached and marked as Exhibit ES.
- b. That the Applicant did not fill in any portal for application for a loan and she never imputed her personal data on any portal for such purpose.

The Deponent averred that in response to paragraph 2(h)(i), the Applicant never executed any Global Standing Instruction (GSI Mandate) and Loan Agreement, otherwise, the Respondent should produce same.

The Applicant submitted 5 issues for determination as follows:

- a. Whether or not the Respondent's exposure, disclosure and processing of the Applicant's bank account balance for the benefit of a third party for the purpose of

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offsetting an alleged loan constitutes an interference with the Applicant's right to privacy guaranteed by Section 37 of the Constitution of the Federal Republic of Nigeria 1999, as amended?

- b. Whether or not by the interpretation of Section 37 of the Constitution of the Federal Republic of Nigeria, a breach of any of the provisions of the Nigeria Data Protection Act, 2023, the Respondent constitute an interference with the right to privacy?
- c. Whether or not the Respondent's processing of the Applicant's account number 6557242873 for an automatic loan recovery depleting all the money in her account is unfair and prejudicial to the Applicant and thereby violated the provision of section 24(1)(a) of the Nigeria Data Protection Act 2023.
- d. Whether or not the Respondent's processing of the Applicant's account number 6557242873 for an automatic loan recovery is misleading, inaccurate and thereby violated the provision of section 24(1)(e) of the Nigeria Data Protection Act 2023.
- e. Whether or not the Respondent lacked lawful basis to process the Applicant's account number 6557242873 for an automatic loan recovery and thereby violated the provision of section 25 of the Nigeria Data Protection Act 2023?

#### **APPLICANT'S ARGUMENTS ON ISSUE NO. 1:**

*Whether or not the Respondent's exposure, disclosure and processing of the Applicant's bank account details for the benefit of a third party for the purpose the of offsetting an alleged loan constitutes an interference with the Applicant's right to privacy guaranteed by Section 37 of the Constitution of the Federal Republic of Nigeria, 1999, as amended?*

Learned Counsel to the Applicant submitted that this issue borders on financial privacy and the import of the provision of Section 37 of the Nigerian Constitution which guarantees privacy thus:

"The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected."

Counsel submitted that it is important to state that the Central Bank of Nigeria recognizes the relationship between accurate financial statements and customers' privacy at paragraph 5.4 of the CBN Consumer Protection Regulations thus:

#### **5.4 DATA PROTECTION AND PRIVACY**

*To ensure data protection and privacy of consumers, Institutions shall:*

*5.4.1 Protect the privacy and confidentiality of consumer information and assets against unauthorized access and be accountable for acts or omissions in respect thereof.*

*5.4.2...*

*5.4.3...*

*5.4.4...*

*5.4.6 Keep accurate and updated data of consumers always*

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Counsel submitted that the provision above clearly speaks to financial privacy from the regulator's perspective. That it mandates banks to protect customers' privacy by ensuring the confidentiality of their financial data and keeping same accurate and updated. That this is the crux of this suit.

Counsel submitted that as a proper foundation, the Supreme Court has defined the right to privacy in *MEDICAL DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL v. DR. JOHN OKONKWO* (2001) 7NWLR (Pt. 711) 206 thus:

*"The right to privacy implies a right to protect one's thought, conscience or religious belief and practice from coercive and unjustified intrusion; and, one's body from unauthorised invasion. The sum total of the rights of privacy... which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary."*

Counsel submitted that from the non-expansive definition above, it can be seen that privacy protects an individual from intrusion and leaves him/her with a choice to choose course for his life.

Counsel submitted that relating this to this case, that the Applicant has given evidence that she never obtained a loan and never authorised the debit but the Respondent's altered her chosen course of life.

Counsel submitted that in *NWALI v. EBONYI STATE INDEPENDENT ELECTORAL COMMISSION (EBSIEC) & ORS* (2014) LPELR-23682, the Court of Appeal shed light on the meaning of privacy:

*"The meaning of the term "privacy of citizens" is not directly obvious on its face.... I interpret the phrase "privacy of citizens" generally, liberally, and expansively to include privacy of citizens body, life, person, thought, belief, conscience, feelings, views, decisions (including his plans and choices), desires, health, relationships, character, material possessions, family life, activities et cetera."*

Counsel submitted that the decision above interprets privacy to include "decisions including plans and choices" and "material possessions" and these indices clearly resonate with the Applicant's "decision" to acquire "material possession" in the mould of funds which has been depleted by the Respondent's actions.

Counsel submitted that the unauthorised debit from the Applicant's account statement represent an unauthorised manipulation of her financial information which are private facts within the realm of her privacy rights.

Counsel submitted that privacy rights include the expectation that personal data, such as financial records will be accurately maintained and safeguarded. The bank's failure to ensure this accuracy directly compromises the Applicant's control over her financial information.

Counsel submitted that the Applicant's ability to make informed financial decisions is a fundamental aspect of her privacy rights. That this interference not only affected the

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Applicant's immediate financial plans but also impacted her long-term financial planning and autonomy.

Counsel submitted that That the mishandling of the Applicant's financial data raises concerns about the bank's ability to protect her information from unauthorized access or misuse. That this breach of confidentiality violates the Applicant's expectation of privacy regarding her financial affairs.

Counsel urged this Honourable Court to resolve this issue in favour of the Applicant.

## ARGUMENTS CANVASSED BY THE APPLICANT ON ISSUE NO. 2:

*Whether or not by the interpretation of Section 37 of the Constitution of the Federal Republic of Nigeria, 1999, as amended, a breach of any of the provisions of the Nigeria Data Protection Act, 2023, by the Respondent constitute an interference with the right to privacy?*

Learned Counsel to the Applicant submitted that it is important to, from the outset, emphasize that this suit predominantly borders on the concept of data protection which notion has been interpreted by the Court of Appeal to be subsumed under the right to privacy guaranteed by Section 37 of the Nigerian Constitution, 1999. Counsel cited INCORPORATED TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE & ORS. v. NATIONAL IDENTITY MANAGEMENT COMMISSION (2021) LPELR- 55623, ALL FWLR (Pt.1146),166 that:

*"...The trial court had, in my view, rightly held that the right to the privacy of citizens as guaranteed under the section includes the right to protection of personal information and personal data."*

Counsel submitted that in the same case, on the objectives of the Nigeria Data Protection Regulation (NDPR) 2019, an extant regulation preserved by Section 64 of the Nigeria Data Protection Act 2023 the Court held that:

*"As rightly observed in paragraph 26 of the Appellant's brief of argument, the preamble of the NDPR 2019 indicates that the argument, the NDPR was made as a result of concerns and contributions of stakeholders on the issue of privacy and protection of personal data."*

Counsel submitted that on nexus between NDPR and right to privacy under the Constitution, the Court of Appeal, held in INCORPORATED TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE & ORS. v. NATIONAL IDENTITY MANAGEMENT COMMISSION (Supra):

*"On the relationship between the NDPR 2019 and section 37 of the CFRN 1999, it is pertinent for me to state that the CFRN 1999 makes provision in chapter IV guaranteeing the various fundamental rights of citizens. But as I stated earlier, the nature and scope of those rights and even their limitations are in most instances, furthered by other statutes, regulations or other legal instruments. It is in this instance that the NDPR must be construed as providing one of such legal instruments that protects and safeguards the right to privacy of citizens as it relates to the Protection of their personal information or data which the trial court had rightly adjudged at page 89 of the record to be part of the right to privacy guaranteed by Section 37 of the CFRN."*

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Counsel submitted that it is worthy of note that the Federal High Court sitting in Awka also declared in Suit No. FHC/AWK/CS/116/2020 between DIGITAL RIGHTS LAWYERS INITIATIVE v. MINISTER OF TRADE & INVESTMENT & ORS. that:

*"...by virtue of articles 1.1(a), 2.2, & 2.3 of the Nigeria Data Protection Regulation (NDPR) 2019, data protection is guaranteed under right to private and family life provided under section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)."*

Counsel submitted that it is without doubt that, in addition to the relevant provisions of the Nigeria Data Protection Act 2023 (NDPA), that this application is brought under Section 37 of the Constitution of the Federal Republic of Nigeria which provides thus:

*"The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected."*

Counsel submitted that in NWALI v. EBONYI STATE INDEPENDENT ELECTORAL COMMISSION (EBSIEC) & ORS. (2014) LPELR-23682, the Court of Appeal in explaining the meaning of privacy held that:

*"The meaning of the term "privacy of citizens" is not directly obvious on its face. It is obviously very wide as it does not define the specific aspect of the privacy of citizen it protects. A citizen is ordinarily a human being constituting of his body, his life, his person, thought, conscience, belief, decisions (including his plans and choices), desires, his health, his relationships, character, possession, family etc If there are no other provisions of the Constitution requiring or suggesting the contrary, the Court must apply the word or phrase generally, and will have no power to restrict its application to specific situations. For the above reasons, I interpret the phrase "privacy of citizens" generally, liberally, and expansively to include privacy of citizens' body, life, person thought, belief, conscience, feelings, views. decisions (including his plans and choices) desires, health, relationships, character, material possessions, family life, activities et cetera."*

Counsel submitted that the objectives of NDPA are found in Section 1 of the Act thus:

- a. *Safeguard the fundamental rights and freedoms, and the interests of data subjects, as guaranteed under the Constitution of the Federal Republic of Nigeria 1999;*
- b. ....
- c. *Promote data processing practices that safeguard the security of personal data and privacy of data subjects;*
- d. ....
- e. ....
- f. *Ensure that data controllers and data processors fulfil their obligations to data subjects."*

Counsel submitted that the Applicant has given evidence in her Affidavit that the Respondent has been processing her personal data without lawful basis, and that they have refused to comply with their obligations under the relevant privacy laws.

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Counsel submitted that on how lack of transparency and non-provision of information interferes with the right to privacy, that the Court of Appeal in *NWALI v EBSIEC (SUPRA)* defines the privacy of citizens to include:

*".... Citizens' body, life, person, thought, belief, conscience, feelings, views, decisions (including his plans and choices), desires, health, relationships, character, material possessions, family life, activities et cetera"*

Counsel submitted that non-provision of information on the processing of an individual's personal data undoubtedly interferes with his decisions, plans and choices on such information especially as it relates to his right to object to processing or restrict further processing of data.

Counsel submitted that at page 13 to 14 of a book titled 'Privacy and Data Protection Law in Nigeria' written by Olumide Babalola and published in 2021 by Noetico Repertum with ISBN 9789789964598, the concept of privacy has been defined as follows:

*"Autonomy or control over the intimacies of personal identity" by Tom Gerety. Page 13.  
"An individual's right to have control of information or data" by Lauren Henty Scholz. Page 14.  
"The individual's ability to control the circulation of information relating to him" by Arthur Miller. Page 14.*

Counsel submitted that in the context of this case, the Applicant's denial of rights over her robs her of considerable control over the use of her personal information in the Respondent's custody.

Counsel submitted that the Respondent's failure to respect the Applicant's data subjects right as guaranteed by the NDPA has led to the avoidable violation of the Applicant's right to privacy and urges this Honourable Court to so hold.

**ARGUMENTS CANVASSED BY THE APPLICANT ON ISSUE NO. 3:**

*Whether or not the Respondent's processing of the Applicant's account number 6557242873 for an automatic loan recovery depleting all the money in her account is unfair and prejudicial to the Applicant and thereby violated the provision of Section 24(1)(a) of the Nigeria Data Protection Act 2023.*

Learned Counsel to the Applicant submitted that Section 24(1)(a) of the Nigeria Data Protection Act (NDPA) encapsulates the principles of fairness and provides as follows:

*"(1) A data controller or data processor shall ensure that personal data is (a) processed in a fair, lawful and transparent manner."*

That this principle provides that, personal data should not be processed in a manner that prejudices the data subject, in this case. That the Applicant has given evidence that, the processing of his account details to debit his account of such huge amount without his consent or authorisation is unfair and prejudicial.

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Counsel submitted that on the principle of fairness and what it entails in the book titled "Annotated Nigeria Data Protection 2023", the authors Olumide Babalola and Paolo Babalola state thus:

***"Fairness:***

*This provides that data must not be collected or otherwise processed by deceit or by prejudicial or unjust means but always putting the data subject into consideration.*

*Processing must not be vindictive, insensitive or misleading to data subjects or others. The principle imposes a duty on controllers to comprehensively take into account the interests of data subjects in achieving their 'data processing goals. It must be such processing that the data subject may reasonably anticipate."*

Counsel submitted that in Suit No. LD/15873MFHR/2023 between OLUMIDE BABALOLA v. SUNDAY EGBEDE by Sule-Amzat, J., delivered on 3rd day of December, 2024 the Court pronounced on fairness as follows:

*"You must use personal data in a way that is fair. This means you must not process the data in a way that is unduly detrimental, unexpected or misleading to the individuals concerned."*

Counsel submitted that the nucleus of fairness is that data subjects must be fully aware of the processing activities and the complete circumstances surrounding them. That in this suit, the Applicant who never obtained any loan never expected that her account details would be shared with a third party for the purpose of offsetting any loan, hence it was unfair.

Counsel submitted that the principle of fairness embodies the ethical foundation of data protection, mandating that personal data be processed in a manner consistent with the reasonable expectations of the data subject. That this principle emphasizes that any processing must avoid causing adverse effects or unjustified prejudice to the data subject. That in essence, fairness requires that data handling practices respect the rights and interests of individuals, ensuring that their personal information is treated with the utmost consideration and integrity.

Counsel submitted that in this case, the Applicant has given evidence that the Respondent debited her account without her consent and she never obtained any loan. That this processing is unfair to the Applicant as it has not only dented her self-esteem, it has also subjected her to financial and emotional injuries. Hence, the Respondent's processing of the Applicant's financial statement is unfair and in violation of the Nigeria Data Protection Act 2023.

**ARGUMENTS CANVASSED BY THE APPLICANT ON ISSUE NO. 4:**

*Whether or not the Respondent's processing of the Applicant's account number 6557242873 for an automatic loan recovery is misleading, inaccurate and thereby violated the provision of Section 24(1)(e) of the Nigeria Data Protection Act 2023.*

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Counsel urged this Honourable Court to resolve this issue in favour of the Applicant. "He who asserts must prove. In the instant case, it was the case of the 3<sup>rd</sup> respondent that he was screened and cleared to contest the election. The burden was on him to prove that he was actually screened and cleared. (P. 597, para. D)."

ICHEONWO (1999) 4 NWLR (Pt.60) 587 thus: Counsel submitted that by the Applicant's statement the burden of proof has now been shifted to the Respondent to prove the accuracy of their statement of indebtedness since they are the ones asserting. Counsel referred this Honourable Court to the decision in *CHUKWU v. the detriment of the Applicant.*

Counsel submitted that this principle provides that, personal data should be accurate but the Applicant has given evidence that she neither took a loan nor was indebted to any financial institution contrary to the Respondent's statement, hence this principle has been breached to the purposes for which the personal data is collected or is further processed."

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...
- (g) accurate, complete not misleading, and, necessary, kept up to date having regard to the purposes for which the personal data is collected or is further processed."

"(1) A data controller or data processors shall ensure that personal data is

encapsulates the principles of accuracy and provides as follows: Counsel submitted that Section 24(1)(e) of the Nigeria Data Protection Act (NDPA)

debited and this has led to loss of some money. Counsel submitted that the Applicant has given evidence that the Respondent made a misleading statement that she is indebted to a financial institution, hence her account was

constitute her personal data. Counsel submitted that a person's bank statement constitutes his/her economic identity and status that the Applicant's financial transactions as reflected in her statement of account

"Any information relating to an individual, who can be identified or is identifiable, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, cultural, social, or economic identity of that individual."

Learned Counsel submitted that in data protection parlance, a person's bank statement constitutes his personal data since such information relates to or identifies that person and his transactions. Section 65 of the NDPA defines the term 'personal data' as:

Counsel concluded that from the foregoing the Respondent's processing of the Applicant's personal information without complying with the provisions of the NDPA negatively impacts and interferes with the Applicant's right to privacy guaranteed by the Constitution of the

Counsel submitted that since the Applicant has given evidence that she did not obtain any loan, it is unlawful for the Respondent to debit her account without evidence of indebtedness.

Counsel submitted that the Respondent's lack of lawful basis for processing the Applicant's account details demonstrate a breach of the Nigeria Data Protection Act 2023.

Counsel submitted that the Applicant never gave consent for her account to be used for any loan transaction, that she never consented to the Respondent's withdrawal as she is not a party to any loan contract and there exists no other lawful basis for such debit.

- i. for the performance of a contract to which the data subject is a party or to take steps at the request of the data subject prior to entering into a contract for compliance with a legal obligation to which the data controller or data processor is subject
  - iii. to protect the vital interest of the data subject of another person.
  - iv. for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller or data processor, or
  - v. for the purposes of the legitimate interests pursued by the data controller or data processor, or by a third party whom the data is disclosed.
- b. The processing is necessary:
- a. The data subject has given and not withdrawn consent for the specific purpose or purpose of which personal data is to be processed or
- "Without prejudices to the principles set out in this Act, data processing shall be lawful where;

That for processing to be lawful, it must have been done under one of the following grounds provided under Section 25(1) of the Nigeria Data Protection Act 2023 (NDPA) which provides thus:

Counsel submitted that under Section 25 of the Nigeria Data Protection Act 2023 (NDPA), the processing of personal data must be lawful.

Whether or not the Respondent lacked lawful basis to process the Applicant's account number 6557242873 for an automatic loan recovery and thereby violated the provision of Section 25 of the Nigeria Data Protection Act 2023?

ARGUMENTS CANVASED BY THE APPLICANT ON ISSUE NO. 5:

Federal Republic of Nigeria, 1999 as amended and the Applicant is entitled to damages for such infraction.

The Respondent submitted a sole issue for determination as follows:

*"Whether the Respondent has breached the privacy and data subjects right of the Applicant based on the facts and circumstances of this case."*

In replying to the Applicant's issues 1 and 2, the learned Counsel to the Respondent submitted that the Respondent did not expose, disclose and process the Applicant's bank account details for the benefit of a third party for the purpose of offsetting an alleged loan. That the Respondent did not interfere with the Applicant's right to privacy as guaranteed under Section 37 of the Constitution of the Federal Republic of Nigeria 1999.

Counsel submitted that the Central Bank of Nigeria (CBN) Framework prohibits financial institutions from disclosing customer information without consent and requires them to have data protection measures in place as seen in the provisions set out hereunder:

- 5.4 DATA PROTECTION AND PRIVACY of the CBN Consumer Protection Regulation:
- 5.4.2 Obtain the written consent of consumers to collect and process their personal data for specific purpose and provide them with the option to withdraw the consent at any time.
  - 5.4.3 Not transfer personal data of consumers to a third party, without their express consent, except in compliance with a legal obligation.
  - 5.4.4 Inform consumers whenever their data is exchanged with an authorized third party, stating details of the exchange.

Counsel submitted that the Respondent had obtained the written consent of the Applicant to collect and process the personal data as can be seen from the signed account opening package. Counsel referred to CBN letter dated 20<sup>th</sup> December, 2019 on Issuance of Consumer Protection Regulations. That the Respondent did protect the Applicant's privacy by ensuring confidentiality of her financial data and keeping same accurate and updated.

Counsel submitted that Section 37 of the Constitution of the Federal Republic of Nigeria 1999, as amended provides that the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

Counsel submitted that the Constitution falls short of imposing any specific or general obligation or duty on persons to protect the personal information of individuals that enters lawfully into their possession and is stored by such persons.

Counsel submitted that the right to privacy under the Nigerian Law is not an easy one due to the absence of a universal definition of the concept of privacy. That this was correctly captured in the Australian case of AUSTRALIAN BROADCASTING COMMISSION v. LENA GAME MEATS PTY LTD. (2001) 185 ALR 1 where the Court recognizing the hardship posed by an attempt to define privacy stated as follows:

*"There is a large area in between what is necessarily public and what is necessarily private. An activity is not private simply because it is not done in public. Certain kinds*

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*of information about a person, such as information relating to health, personal relationship or finances may be easy to identify as private. The requirement that disclosure or observation of information or conduct would be highly offensive to a reasonable person of ordinary sensibilities is in many circumstances a useful practical test of what is private."*

Counsel also cited Kirby, J. in *GROSSE v. PURVIS* (2003) QDC 151 an actionable right to privacy accrues where a person intentionally intrudes in a way that is seen as very offensive to a reasonable man of ordinary sensibilities and which results in the Claimant suffering mental, psychological or emotional harm or distress or which inhibits the Claimant from engaging in an act which he is legally entitled to engage in. Thus, the test for what amounts to a violation of the right to privacy is objective rather than a subjective one.

Counsel also submitted that the right to privacy is not absolute but its derogation must abide by constitutional provisions, specifically, the provision of Section 45 of the Constitution of the Federal Republic of Nigeria 1999 as amended which provides for the conditions, circumstances and purposes that can legitimately derogate from the rights to privacy.

Counsel submitted that the conduct of the Respondent has not put the privacy of the Applicant at risk and the Respondent has demonstrated legitimate ground of the Applicant's indebtedness to NIRSAL Microfinance which overrides his right under Section 37 of the 1999 Constitution. Counsel further submitted that the debit of the sum of N11,922.41 from her account is an automated loan recovery triggered by NIBSS Global Standard Instruction (GSI). That the Respondent did not fail to ensure accuracy of the Applicant's data. That there is no compromise of the Applicant's financial information. Counsel referred this Honourable Court to the Guidelines on Global Standing Instruction (GSI) Individuals of July 2020.

- Credit Risk Management System (CRMS) - A regulatory credit database where participating institutions submit specific information on borrowers.
- Debit Logic - The business rules that guide the execution of a GS1 trigger. The debit logic defines:
  - i. The types /categories of accounts that are valid for a GSI Trigger.
  - ii. The criteria of preference by which these accounts are ordered.
  - iii. The computation of the specific amount to be recovered from each identified account.
- Default - Failure to repay a loan according to the terms in the executed offer letter and its classification consistent with CBN 's Prudential Guidelines
- GSI – Global Standing Instruction
- GSI Available Balance – The funds in a customer's qualifying account, that is available for GS1 Trigger.
- GSI Mandate – An instruction (written or digital) executed by a borrower being an account holder in a participating Financial Institution, authorizing the recovery of an amount specified by the creditor from any/all accounts maintained by the account holder across all Participating Financial Institutions.

- GSI stakeholders – Borrower(s), Creditor bank, Pfls, NIBSS and CBN.
- GSI Trigger – An electronic instruction from a Creditor Bank to initiate a GSI Transaction (upon default by the borrower) subject to the provisions of the CBN Prudential Guidelines.
- NIBSS – Nigeria Inter-Bank Settlement System Plc
- Participating Financial Institutions (PFIs) – All CBN license financial institutions that are connected to NIBSS Instant Payment (NIP) Platform.
- GSI Reversal – An electronic instruction by a creditor bank requesting the reversal or withdrawal of a GSI Trigger.

Counsel submitted that there is unauthorized debit on an alleged non-existence faulty information. That the Respondent did not interfere with the Applicant's immediate financial plans and her statement of account cannot show any long-term financial planning and autonomy. That at no time, did the Respondent mishandle the Applicant's financial data and that the said deduction was a triggered automated loan recovery.

Counsel submitted that it should be noted that by the interpretation of section 37 of the Constitution of the Federal Republic of Nigeria 1999, the Applicant did not breach any of the provisions of the Nigeria Data Protection Act 2023. That also, there is no cogent evidence in the Applicant's Affidavit that points to the fact that the Respondent has been processing the Applicant's personal data without lawful basis. That it is not true that the Respondent has refused to comply with her obligations under the privacy laws.

Counsel submitted that the decision in the case of *NWALI v. EBONYI STATE INDEPENDENT ELECTORAL COMMISSION & ORS (2014) LPELR-23682* does not apply to the case at hand because the Applicant herein is a customer of the Respondent and stored his personal data in the course of opening an account with Respondent. That the sum of N11,922.41 was an automated loan recovery and not humanly generated by the Respondent.

Counsel submitted that Section 45 of the Constitution of the Federal Republic of Nigeria 1999 as amended provides thus:

*(1) Nothing in Sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health or (b) for the purpose of protecting the rights and freedom of other persons.*

Counsel submitted that Section 45 of the Constitution introduces the following:

- a. The legislation must be justifiable in a democratic society.
- b. The law must have been made.
  - i. In the interest of defence, public safety, public order, public morality or public health, or

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- ii. For the purpose of protecting the rights and freedom of other persons.

Counsel submitted that the automatic loan recovery debit GSI triggered was applied in order to protect the interest of NIRSAL Microfinance Bank based on the Guidelines on Global Standing Instruction (GSI). Suffice is to note that the CBN issued the guidelines in Global Standing Instructions to enhance loan recovery across the banking sector.

Counsel further submitted that based on the said Guidelines on Global Standing Instruction (GSI), the GSI shall serve as a last resort by a creditor bank, without recourse to the borrower, to recover past due obligations (Principal and accrued interest only, excluding any penal charges) from a defaulting borrower through a direct set off from deposits/investments held in the Borrowers qualifying bank accounts with participating financial institutions.

Counsel further submitted that Section 3 of the Nigeria Data Protection Act 2023 (NDPA) excludes the following processing activities from the obligations under Part V of the NDPA:

- a. Processing activities carried out by a competent authority for the purposes of prevention or investigation, detection, prosecution, or adjudication of a criminal offence or the execution of a criminal penalty in accordance with any applicable law.
- b. Carried out by a competent authority for the purpose of the prevention or control of a national public health emergency.
- c. Carried out by a competent authority as is necessary for national security
- d. In respect of publication in the public interest for journalism, educational, artistic and literary purposes to the extent that such obligations and rights are incompatible with such purposes.
- e. Necessary for the establishment, exercise or defence of legal claims, whether in court proceedings or in an administrative or out of court procedure. (Emphasis supplied).

Counsel submitted that Section 1 is about the objectives of the Nigeria Data Protection Act (NDPA) 2023:

- a. Safeguard the fundamental rights and freedom and the interests of data subjects as guaranteed under the Constitution of the Federal Republic of Nigeria 1999.
- b. Provide for the regulation of processing of personal data.
- c. Promote data processing practices that safeguard the security of personal data and privacy of data subjects.
- d. Ensure the personal data is processed in a fair, lawful and accountable manner.
- e. Protect data subject rights and provide means of recourse and remedies in the event of the breach of the data subject's rights.
- f. Ensure that data controllers and data processors fulfil their obligations to data subjects.
- g. Establish an impartial, independent and effective regulatory Commission to superintend over data protection and privacy issues and supervise data controllers and data processors.

Counsel submitted that Section 39 (1) of Nigeria Data Protection Act (NDPA) 2023 requires Data Controller and Data Processor to implement appropriate technical and organizational

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measures to ensure the security, integrity and confidentiality of Personal Data in its possession.

Counsel submitted that the Respondent did not deny the Applicant her rights over her personal data in respect of her personal information in the Respondent's custody. That the Respondent did not fail to respect the Applicant's data subject as guaranteed by the NDPA 2023 but the deduction of the said sum of N11,922.41 was GSI triggered outside the control of the Respondent.

In reply to the Applicant's issues 3, 4 and 5, Counsel submitted that according to the Nigeria Data Protection Act (NDPA) 2023, a Personal Data breach means a breach of security of a Data Controller or Data Processor leading to or likely to lead to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

Counsel submitted that the Respondent did not breach the personal data of the Applicant unlawfully that the Respondent is guided by the Guidelines on Global Standing Instruction (GSI) July 2020 and the signed Service Level Agreement Global Standing Instruction Mandate Agreement between Nigeria Inter Bank Settlement System (NIBSS) and the Respondent.

That the Nigeria Data Protection Act (NDPA) 2023 defines processing as an operation or set of operations which is performed on Personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaption or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction, and does not include the mere transit of data originating outside Nigeria

Counsel submitted that Section 24 (1) of the Nigeria Data Protection Act (NDPA) 2023 provides that Personal Data shall be processed in a fair, lawful and transparent manner. That it also provides that Personal Data is to be collected for specific, explicit and legitimate purposes and is not to be further processed in a way incompatible with these purposes.

Counsel submitted that the Respondent has processed the Applicant's personal data in a fair, lawful and transparent manner. That the Respondent did not deplete all the money in the Applicant's account number 6557242873 as the balance in the Applicant's account as at 19th day of April 2024 was the sum of N11,922.4. That in fact, the GSI available balance is the funds in a customer's qualifying account, that is the available for GSI trigger. It is also important to note that what was triggered was the GSI Trigger amount of the outstanding principal amount and accrued interest (consistent with the terms in an executed offer letter between the Applicant and NIRSAL Microfinance Bank. The balance in the Applicant's account as at 2nd day of October 2025 is the sum of N1,196.92 as can be seen from the Applicant's statement of account.

That Section 24 (1) (b) of the Nigeria Data Protection Act (NDPA) 2023 provides that a Data Controller or Data Processor shall ensure that Personal Data is collected for specified, explicit and legitimate purposes and not further processed in a way that is incompatible with those purposes.

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Counsel submitted that the Applicant's personal data was obtained when the Applicant was opening account with the Respondent and same was accurately stored. That the Applicant unknown to the Respondent obtained a loan from NIRSAL Microfinance and the automatic loan recovery by NIBSS triggered the debit of the sum of N11,922.41 from the Applicant's account. That the sharing of the Applicant's personal data is system built that is beyond the control of the Respondent based on regulatory framework governing the activities of the Respondent as a licensed bank under the control of Central Bank of Nigeria (CBN).

Counsel further submitted that the Respondent did not cause any adverse effect or unjustified prejudice to the Applicant and the personal data and information of the Applicant has been treated with utmost consideration and integrity.

That Schedule 1, paragraph 1(ii) of the NDPA General Application and Implementation Directive (GAID) further clarifies that the principle of transparency entails due disclosure of all material facts that may help a Data Subject and the NDPC to make informed decisions.

Counsel submitted that Section 25 of the Nigeria Data Protection Act (NDPA) 2023 provides the lawful basis for the processing of Personal Data.

- a. the Data Subject has given and not withdrawn consent for the specific purpose or purposes for which Personal Data is to be processed.
- b. the processing is necessary:
  - i. for the performance of a contract to which the Data Subject is a party or in order to take steps at the request of the data Subject prior to entering into a contract.
  - ii. For compliance with a legal obligation to which the Data Controller or Data Processor is subject.
  - iii. protect the vital interests of the Data Subject or of another person.
  - iv. for the performance of a task carried out in the public interest or in the exercise of official public mandate vested in the Data Controller.
  - v. for the purposes of the legitimate interests pursued by the Data Controller or Data Processor, or by a third party to whom the data is disclosed.

Counsel submitted that the Applicant has given his consent vide the account opening package signed with the Respondent that his personal data can be shared in any loan obligation. That the Respondent has not received any letter withdrawing his consent for the specific purpose for which Personal Data is to be processed. That the Respondent lawfully respect the data handling practices and rights and interest of the Respondent. That it is lawful on a cursory look at the GSI Trigger involving NIRSAL Microfinance Bank and Service level Agreement on GSI mandate involving the Respondent and NIBSS.

Counsel submitted that Section 24(3) of the Nigeria Data Protection Act (NDPA) 2023 provides that a Data Controller or Data Processor owes a duty of care in respect of Data Processing, and shall demonstrate accountability in respect of the principle contained in the NDPA. That in addition, the NDPA requires data processing of a third party to be governed by a written contract between the third party and the Data Controller. Accordingly, any person engaging a third party to process Personal Data obtained from Data Subjects is required to ensure the third party's strict adherence to the terms of such written contracts and the provisions of the NDPA.

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Counsel submitted that there is a written contract between the Applicant and the Respondent and the Respondent is also bound to the various circulars issued to it by the CBN.

Counsel further submitted that the interests of the Respondent and the CBN override the rights of that of the Applicant under the following circumstances:

- a. The data is used to exercise the right to freedom of expression an information subject to the limits of derogation permitted under section 45 of the 1999 Constitution and other safeguards of the NDPA.
- b. The data processing is necessary
  - i. To comply with a legal ruling or obligation.
  - ii. To perform task carried out in the public interest or when exercising an organization official authority.

Counsel submitted that Section 25 (1) (b) (ii) and (IV) of the Nigeria Data Protection Act (NDPA) 2023 provides that data processing shall be lawful where the processing is necessary for compliance with a legal obligation to which the Data Controller or Data Processor is subject and for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Data Controller or Data Processor.

Counsel submitted that Section 27(g) of the Nigeria Data Protection Act (NDPA) 2023 provides that before a Data Controller collects Personal Data directly from a Data Subject, the Data Controller must inform the Data Subject of the existence of automated decision making, including profiling, significance, and envisaged consequences of such processing for the Data Subject and the right to object to and challenge such processing.

Counsel submitted that the Applicant is aware of the automated decision making with the signing of the account opening package with the Respondent.

Counsel submitted that according to Section 37 of the Nigeria Data Protection Act (NDPA) 2023 a Data Controller or Processor shall implement appropriate technical and organization measures to ensure security, integrity and confidentiality of Personal Data in its possession under its control, including protections against accidental or unlawful destruction, loss, misuse, alteration, unauthorized disclosure exits. Where data is being transferred to a third party, such transfer will be governed by a contract between both the Data Controller and the third party in relation to the protection of the data of the Data Subject.

Counsel submitted that the Applicant's processing is necessary for compliance with a legal obligation to which the Data Controller or Data Processor is subject. That for the avoidance, the Respondent's data processing is subject to CBN Guidelines on Global Standing Instruction (GSI) Individuals July 2020; Operational Guidelines on the Global Standing Instruction (GSI) and the Service Level Agreement Global Standing instruction (GSI) Mandate Agreement between NIBSS and the Respondent.

Counsel submitted that the sum of N11,922.41 was an automatic loan recovery debit from the Applicant's account, which was triggered by NIBSS Global Standard Instruction (GSI) no huge amount was debited from the Applicant's account.

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Counsel submitted that Guidelines for the Management of Personal data by Public Institutions (PIs) in Nigeria 2020 apply to all public institutions in Nigeria, including ministries departments, agencies, institutions, public corporations, public funded ventures and incorporated entities with government shareholding, either at the Federal, State or Local levels, that process the personal data of a data subject. That the Guidelines mandate all to protect personal data in any incidence of processing of such data. That this context retains the same meaning it has under the NDPR. That all forms of personal data of a Nigerian citizen, resident or non-Nigerian individual that has interactions with Participating Financial Institutions (PFIs) or such Participating Financial Institutions (PFIs) shall have access to the personal data in furtherance of a statutory or administrative purpose, are to be protected in accordance with the NDPR or any other law or regulation in force in Nigeria.

Counsel submitted that the Participating Financial Institutions (PFIs) shall have access to the Applicant's personal data based on the Guidelines on Global Standing Instruction (GSI) July 2020 and the signed Service Level Agreement Global Standing Instruction Mandate Agreement between Nigeria Inter Bank Settlement System (NIBSS) and the Respondent.

That it was held in the case of UNION BANK of NIGERIA LTD. v. PROF. A.O. OZIGI (1994) 3 NWLR (Pt.333) 385 that where a document is clear the operative words in it should be given their simple an ordinary grammatical meaning.

That it is trite law that a document speaks for itself, oral testimony is inadmissible to vary, add to or take away from the content of a document. Counsel cited the cases of N.I.D.B. v. OLALOMI INDUSTRIES LTD. (2002) 5 NWLR (Pt. 761) 532; BIJOU NIGERIA LTD v. OSIDAROHWO (1992) 6 NWLR (PT. 249) 643.

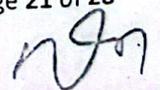
Counsel submitted that the Guidelines on Global Standing Instruction (GSI) July 2020 and the signed Service Level Agreement Global Standing Instruction Mandate Agreement between Nigeria Inter Bank Settlement System (NIBSS) and the Respondent are clear and they speak for themselves and requires no further proof.

That the Credit Reporting Act 2017 provides for the licensing and regulation of Credit Bureaus which primarily collect information and prepare credit reports on legal persons. That these reports may be utilized by potential lenders to determine the creditworthiness of loan applicants.

Counsel submitted that Section 6 of the Credit Reporting Act 2017 provides for data protection and imposes a duty on Credit Bureaus to ensure the accuracy, security and confidentiality of personal data collected and stored by them. That in specific instances, the CRA also recognizes the rights of aggrieved individuals to seek redress in court for the breach of their rights in relation to their personal data. Counsel referred this Honourable Court to Sections 6 and 9 of CRA 2017.

Counsel submitted that the Respondent had in no way and at no time processed the Applicant's data or opened a loan account/and or debited money from her operative account into a loan account in any unlawful manner inconsistent with the fundamental rights of the applicant as guaranteed under the Constitution of the Federal Republic of Nigeria as amended and or National Data Protection Act 2023 or any other regulation or law.

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Counsel submitted that the CBN is the regulator and the obligor is the Credit Bureaus whilst the consequences of non-compliance is the revocation or suspension of license and /or fine. That in relation to data protection, while Section 37 of the Constitution of the Federal Republic of Nigeria protects the confidentiality of communication which makes it distinct from comprehensive data protection legislation, the question to ask is can it be used in conjunction with the Nigeria Data Protection Regulation (NDPR).

Counsel submitted that the purported breach of personal data is justified by law based on the facts and circumstances of this case.

That the Nigeria Data Protection Act (NDPA) 2023 provides for Automated Decision Making. This means a decision based solely on automated processing by automated means, without any human involvement.

That according to Nigeria Data Protection Act (NDPA) 2023, a personal data breach means a breach of security of a data controller or data processor leading to or likely lead to the accidental or unlawful destruction, loss, alteration, un-authorized disclosure of or access to, personal data transmitted, stored or otherwise processed.

Counsel submitted that Section 65 of the Nigeria Data Protection Act (NDPA) 2023 defines personal data as any information relating to an individual, who can be identified or identifiable, directly or indirectly in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, cultural, social or economic identity of that individual.

Counsel submitted that a person's bank statement does not constitute his/her economic identity and status, hence that the Applicant's financial transactions as reflected in her statement of account does not constitute her personal data.

That Section 24 (1) (c) of Nigeria Data Protection Act (NDPA) 2023 provides that Personal Data must be adequate, relevant and limited to the minimum necessary for the purposes for which the personal data was collected or further processed.

Counsel submitted that the Applicant's personal data is accurate and further stated that the Applicant took a loan from NIRSAL Microfinance Bank resulting in automatic loan recovery been placed on the Applicant's account. Also, from the Exhibits tendered it is clear that the Respondent's personal data is accurate, complete and not misleading

Counsel further submitted that Section 24(1) (f) of the Nigeria Data Protection Act (NDPA) 2023 provides that a data Controller or Data Processor shall ensure that Personal data is processed in a manner that ensures appropriate security of the Personal Data, including protection against unauthorized or unlawful processing, access, loss, destruction, damage, or any form of data breach.

Counsel submitted that the Respondent has ensured that the personal data of the Applicant is processed where his personal data is not breached except where it was lawful in respect of the automatic loan recovery of her debt to NIRSAL Microfinance Bank in the sum of N11,922.41.

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That it was held in the case of ACHEBE v. NWOSU (2003) 7 NWLR (Pt 818) 103 that fundamental rights enforcement procedure is designed for a summary mode of dispute resolution and is unsuitable for a contentious action laden with controversy.

Counsel submitted that Data Subjects are entitled under Section 34 of the NDPA 2023 to lodge a complaint with the NDPA within 72 hours of becoming aware of the breach.

That the Applicant rather than lodge a complaint as provided under the Act, has failed to do so but rather filed this frivolous and vexatious matter.

Counsel concluded by urging this Honourable Court to dismiss the application of Applicant with substantial costs because:

1. The Respondent had in no way and at no time processed the Applicant's data or opened a loan account and or debited money from her operative account into a loan account in any unlawful manner inconsistent with the fundamental rights of the Applicant as guaranteed under the Section 37 of the Constitution of the Federal Republic of Nigeria 1999 as amended and or the Nigeria Data Protect Act 2023 or any other regulation or law .
2. The Respondent dully complies with the Applicant's right to privacy under Section 37 of the 1999 Constitution as amended and did not unlawfully process the Applicant's personal data/information.
3. The lawful acts of the Respondent show that the Applicant is not entitled to the immediate reversal of the sum of N11,922.41 with purported interest pre and post judgment interest as well as the general damages of N50, 000, 000 (Fifty million naira) only or any other sums at all.
4. It is only the creditor bank NIRSAL Microfinance Bank that can order for GSI reversal.

The Applicant filed a Reply on Points of Law wherein the learned Applicant's Counsel submitted that the GSI mandate and Loan Agreement is not attached and our law is settled to the effect that he who asserts must prove but, in this case, the Respondent has not furnished documentary evidence substantiating their claim that the Applicant executed a GSI and Loan Agreement in their favour.

That the Respondent must be reminded that this case is a Fundamental Rights Enforcement which is fought on Affidavit evidence. Counsel cited OKWECHE v. OCHICHE (2022) LPELR 56542 (CA), in which the Court of Appeal held that:

*"it is not in doubt that enforcement of fundamental right through a civil action is often fought on the basis of affidavit evidence which includes documents attached to the affidavit of parties as exhibits. It is upon the affidavit evidence the court determines whether the action is established or not. That the Court's finding is not subject to the figment of imagination or intuition of the judex adjudicating over the matter. The court must confine itself to the facts and supporting documents (if any) in the affidavit"*

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Counsel submitted that in the instant case, the Respondent has not attached any document showing that the Applicant gave a GSI mandate upon which they accessed her personal (financial) information in a bid to trigger GSI.

That the effect of withholding such vital evidence was discussed in the case of FRAMO (NIG) LTD v. DAODU (1993) 3 NWLR (PT. 281) 372 thus:

*"By virtue of Section 149(d) of the Evidence Act cap 112 Laws of the Federation of Nigeria 1990 the presumption of law is that evidence which could be produced but was not produced, would if it had been produced, have been unfavourable to the person who withholds it."*

That the Applicant was 21 years and a single law student when she was alleged to have applied for a loan meant for persons with households.

That before the loan could be granted, an eligible applicant ought to have submitted certain executed paper works but in the instant case, the Respondent has not produced anything signed by the Applicant.

Counsel concluded by urging this Honourable Court to resolve all the issues in favour of the Applicant.

#### **RESOLUTION OF THE ISSUES:**

Having carefully reviewed the Originating Application, Affidavits, Exhibits and Written Addresses of Counsel, this Court is of the view that the issues formulated by the Applicant can be conveniently compressed into the following issues:

1. Whether the Respondent's disclosure, processing and use of the Applicant's bank account details for the purpose of an automatic loan recovery constituted an interference with the Applicant's right to privacy guaranteed under Section 37 of the Constitution.
2. Whether the Respondent's processing of the Applicant's personal and financial data complied with the principles of fairness, accuracy and lawfulness under Sections 24 and 25 of the Nigeria Data Protection Act 2023.
3. Whether, in the circumstances of this case, the Applicant is entitled to the declaratory, injunctive and monetary reliefs sought.

#### **RESOLUTION OF ISSUE 1:**

*Whether the Respondent's disclosure, processing and use of the Applicant's bank account details for the purpose of an automatic loan recovery constituted an interference with the Applicant's right to privacy guaranteed under Section 37 of the Constitution.*

This matter was brought pursuant to the Fundamental Rights (Enforcement Procedure) Rules 2009, on the alleged violation of the Applicant's right to privacy under Section 37 of the

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Constitution of the Federal Republic of Nigeria 1999 (as amended) and breach of the Nigeria Data Protection Act 2023 (NDPA).

The Honourable Court is enjoined to adopt a broad and liberal approach in determining applications for enforcement of fundamental rights. See *RANSOME-KUTI v. ATTORNEY GENERAL OF THE FEDERATION* (1985) 2 NWLR (Pt.6) 211 and *ABACHA v. FAWEHINMI* (2000) 6 NWLR (Pt.660) 228.

Section 37 of the Constitution provides thus:

*"The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected."*

The Supreme Court in *MEDICAL AND DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL v. OKONWO* (2001) 7 NWLR (Pt. 711) 206 held that privacy encompasses protection against unjustified intrusion and the right to be left alone.

I agree with Learned Applicant's Counsel that financial information and bank account details fall within "material possessions" and "economic identity". A person's bank balance transaction history and account identity are private.

This position is further re-enforced in the case of *INCORPORATED TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE v. NIMC* (2021) LPELR 55623 (CA), where the Court of Appeal held that protection of personal data is part of the constitutional right to privacy.

The Applicant's evidence is that:

1. She never obtained a loan
2. Her account was debited with narration "SIRecovery".
3. She did not execute any GSI mandate or loan agreement.

The Respondent asserts that the Global System Initiative (GSI) was triggered based on a loan allegedly obtained from NIRSAL Microfinance Bank. However, no loan agreement, no GSI mandate and no proof of Applicant's digital execution were exhibited.

It is settled law that he who asserts must prove. See *CHUWU v. ICHEONWO* (1999) 4 NWLR (Pt.600) 587. In the case of *UNITY BANK V. AHMED* (2019) LPELR-47395(SC) the Supreme Court Per BAGE, J.S.C held:

*"...In civil suits, unlike criminal cases, the burden of proof keeps oscillating among the parties. The Evidence Act 2011 says it all in Sections 131-134. For the purpose of burden of proof in civil suit, the Act states thus:*

*"131. Burden of proof.*

*(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 exist.*

*(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.*

*132. On whom burden of proof lies.*

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*The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*

**133. Burden of proof in civil cases.**

*(1) In civil cases the burden of first proving existence or non - existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.*

*(2) If the party referred to in Subsection (1) of this section adduces evidence which ought reasonably to satisfy the Court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.*

*(3) Where there are conflicting presumptions, the case is the same as if there were conflicting evidence.*

**134. Standard of proof in civil cases. The burden of proof shall be discharged on the balance of probabilities in all civil proceedings."**

Where a party alleges existence of a document, failure to produce it attracts the presumption that it would be unfavourable if produced. See FRAMO (NIG.) LTD. v. DUODU (1993) 3 NWLR (Pt. 281) 372; Section 167(d) of the Evidence Act 2011. In the absence of proof of any mandate or loan obligation traceable to the Applicant, the Court finds that the Respondent permitted the Applicant's financial data and funds to be used for the benefit of a third party without lawful justification.

This constitutes an unjustified intrusion into the Applicant's financial situation and therefore an interference with her right to privacy.

## **RESOLUTION OF ISSUE NO. 2:**

*Whether the Respondent's processing of the Applicant's personal and financial data complied with the principles of fairness, accuracy and lawfulness under Sections 24 and 25 of the Nigeria Data Protection Act 2023.*

Sections 24 and 25 of the NDPA impose mandatory obligations on data controllers to ensure that personal data is:

- a. processed fairly, lawfully and transparently;
- b. accurate, not misleading and up to date; and
- c. processed only where there exists a lawful basis.

### **(a) Fairness and Transparency**

The principle of fairness requires that personal data must not be processed in a manner that is unexpected, prejudicial or unjust to the data subject. The Applicant's account was debited in full based on an alleged indebtedness she consistently denied. No prior notice, explanation, or opportunity to challenge the alleged loan was given before the debit occurred. This Court finds that such processing **could not have been reasonably anticipated by the Applicant** and was manifestly prejudicial, particularly considering her status as a student dependent on the funds for basic sustenance.

### **(b) Accuracy and Non-Misleading Processing**

By presenting the Applicant as a loan defaulter and effecting recovery against her account without proof of any loan agreement, the Respondent processed the Applicant's personal

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data on an **unverified and disputed premise**. The burden rested on the Respondent, as the asserting party, to establish the accuracy of the alleged indebtedness. This burden was not discharged.

**(c) Lawful Basis**

Section 25 NDPA clearly stipulates that consent, contractual necessity, or a clear legal obligation must exist to justify processing. Regulatory frameworks such as the GSI Guidelines do not operate in vacuum; they presuppose the existence of a valid loan and an executed GSI mandate by the borrower. The Respondent deposed to the fact that the Applicant executed a GSI mandate. The Applicant denied executing GSI mandate or loan agreement and put the Respondent to the strictest proof. The Respondent failed to proffer any document in proof of the alleged GSI mandate and the loan agreement and therefore failed to discharge the evidential burden in proof of the GSI mandate and the said loan. Where such foundational documents are absent, the invocation of GSI is legally unsustainable. See Okoye & Ors. V. Nwankwo (2014) LPELR-23172(SC).

Accordingly, this Court holds that the Respondent lacked a lawful basis to process the Applicant's account data for automatic loan recovery.

This Court holds that the Applicant has proved her case on the balance of probabilities. The Respondent's reliance on regulatory mechanisms without establishing the Applicant's consent or indebtedness is insufficient in law.

This issue is also resolved in favour of the Applicant.

**RESOLUTION OF ISSUE NO. 3:**

*Whether, in the circumstances of this case, the Applicant is entitled to the declaratory, injunctive and monetary reliefs sought.*

The Court of Appeal per Mbaba, J.C.A held in SSS & Ors. V. Incorporated Trustees of the Peace Corps of Nigeria & Ors. (2019) LPELR-47274(CA):

*"The law is trite, that once it is adjudged that the fundamental rights of an Applicant has been violated, damages is inferred and activated, as the Applicant is entitled to compensation in damages. The quantum of damages awardable is always at the discretion of the trial Court, depending on the gravity of the violation and claims/parties affected. See the case of Iwunne Vs Egbuchulem & Ors (2016) 40515 CA, where it was held:*

*"On the allegation that the damages was not proved by credible evidence and that the person who, in fact, caused the damages must be established, Appellants' Counsel appeared to have forgotten that general damages need not be specifically pleaded or proved, as the same tends to flow from the act/conduct of the defendant complained against. And in fundamental rights matters, damages automatically accrue, once there is evidence of breach or violation of Applicants fundamental right(s). See Section 35(6) of the 1999 Constitution and the case of Ozide & Ors Vs Ewuzie & Ors (2015) LPELR - 24482 CA.*

*In Igweokolo Vs Akpoyibo & Ors (2017) LPELR - 41882 CA My Lord Ikyegh, JCA held:*

*"Once violation of a fundamental right is proved, the award of meaningful damages in form of compensation must automatically follow whether asked for or not by the Claimant, in addition to the order of written apology..."*

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Having found that the Applicant's constitutional and statutory rights were violated, the Claimant is entitled to the reliefs claimed excluding the Pre-Judgment Interest which is declined there being no contractual or statutory basis established. However, post-judgment interest shall accrue at the rate of 10% per annum on the judgment sum until full liquidation.

On the claim for ₦50,000,000 as general damages, I hold that damages in fundamental rights cases must be compensatory and not punitive. Considering the nature of the breach, the hardship occasioned to the Applicant, and the need for proportionality, this Court is of the view that the sum of ₦50,000,000.00 is not proportional to the hardship occasioned by the Applicant and same will therefore be reduced accordingly.

Judgment is therefore entered as follows:

1. **IT IS DECLARED** that the Respondent's exposure, disclosure and processing of the Applicant's bank account details for the purpose of offsetting an alleged loan constitutes a violation of the Applicant's right to privacy under Section 37 of the Constitution.
2. **IT IS DECLARED** that the Respondent's processing of the Applicant's account violated Sections 24 and 25 of the Nigeria Data Protection Act 2023.
3. **AN ORDER OF PERPETUAL INJUNCTION** is hereby granted restraining the Respondent from further processing the Applicant's bank account for automatic loan recovery in respect of the alleged loan.
4. **IT IS ORDERED** that the Respondent shall immediately refund the sum of ₦11,922.41 to the Applicant.
5. **IT IS FURTHER ORDERED** that the Respondent shall pay the sum of ₦2,000,000.00 as general damages to the Applicant.
6. **IT IS ALSO ORDERED** that Post-judgment Interest shall accrue at 10% per annum on the total judgment sum until full and final liquidation.
7. **Cost of ₦300,000.00** is awarded in favour of the Applicant.

DATED this 12<sup>th</sup> February 2026

*Hon. Justice A. M. Ipaye*  
High Court of Lagos State

Honourable Justice A. M. Ipaye  
High Court of Lagos State

**DUROSINMI B.S.**  
Commissioner For Oaths  
Fast Track  
Lagos High Court

COUNSEL:  
Muhib Owodunni holding the brief of Olumide Babalola for the Applicant  
Oluseyi Olukoga for the Respondent

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Casher pls collect ₦5,600 for CTC