

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,

ON TUESDAY THE
23RD DAY OF NOVEMBER, 2021.

BETWEEN:

SUIT NO: B/150^{OS}/2021

IKPONMWOSA FRIDAY --- --- --- --- --- --- CLAIMANT

AND

- | | | |
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| <p><i>1. ZENITH BANK PLC</i></p> <p><i>2. The Branch Manager, Zenith Bank Plc,</i>
<i>Sokponba Road, Benin City, Edo State.</i></p> | } | <i>-----DEFENDANTS</i> |
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JUDGMENT

This is a judgment on an Originating Summons brought pursuant to Order 3 Rules (1), (2) and (3) of Edo State High Court (Civil Procedure) Rules, 2018 and under the inherent jurisdiction of the Court.

In the Originating Summons, the Claimant is praying the Court for the determination of the following questions:

1. Whether the Defendants have the power to place a post no-debit order or restriction on the Claimant's Account No: 2258981751 without any valid order from the court of competent Jurisdiction; and
2. Whether by their action the Defendants are not in breach of the duty of care which they owe the claimant as their customer.

Upon the determination of the aforesaid questions, the Claimant is seeking the following reliefs:

1. An order of this Honourable court directing/mandating the Defendants to immediately remove a post no-debit order/restriction placed on the Claimant's Account No: 2258981751;
2. An order of this Honourable court for perpetual injunction restraining the Defendants from unlawfully placing of any further post no-debit order or any restriction at all on the claimant's account No: 2258981751;
3. The sum of N500, 000.00 (Five Hundred Thousand Naira) only as general damages; and
4. For such other relief(s) in law or equity not limited to the cost of this suit.

The Originating Summons is supported by an affidavit of 16 paragraph and the Written Address of the learned counsel for the Claimant. In his written address, the learned counsel for the Claimant, ***O.G.Odaze Esq.*** formulated a sole issue for determination as follows:

“Whether or not the Defendants have the power to freeze the Claimant's Account without being furnished with an order of court of competent jurisdiction.”

Arguing the sole issue for determination, the learned counsel submitted that the Defendants have no power to freeze or place a no debit order or restriction on the Claimant's Account No: 2258981751 without a lawful order of a court of competent jurisdiction. For this submission, he relied on the case of ***Dangabar V. FRN (2014) 12 NWLR (pt. 1422) 611*** where the Court of Appeal held thus:

“... only when an ex-parte Order has been made by the court that the Chairman of the Economic and Financial Crimes Commission will issue an order specified in schedule B of the Act addressed to the manager of the Bank or any person in control of the account to freeze the account”.

Learned counsel also referred to the case of ***Diamond Bank Ltd V Partnership Investment Company & Anor (2009) 18, NWLR (pt. 1172) 67*** where the Court held that a banker is not at liberty to unilaterally block, freeze or suspend the operation of the account of its customer indefinitely under the pretence that it acted at the instance of a 3rd party without paying due attention to statutory provisions regulating the conduct of the 3rd party.

He posited that in the instant case where the Defendants placed a post no-debit order/restriction on the Claimant's Account No: 2258981751 without a lawful order of a court of competent Jurisdiction, such an action is wrongful, unjustifiable and illegal and amounts to a breach of a duty of care which the

Defendants owe the Claimant. He emphasised that a bank cannot freeze or place a post no-debit order/restriction on a customer's account without an order of a court of competent jurisdiction.

In conclusion, he urged the Court to grant the reliefs sought in the overall interest of justice.

In opposition to this suit, the Defendants filed a Counter-Affidavit of 10 paragraphs and a Written Address of their counsel. In his written address, the learned counsel for the Defendants, *Austin Ajayi Esq.* formulated a sole issue for determination as follows:

“Whether the Defendants are bound to obey Order of a Court of a competent Jurisdiction, including the Order dated May 28, 2021 in Suit No: B/CD/427M21 between C.O.P vs. Zenith Bank Plc. & Friday Ikponwonsa.”

Opening his arguments, the learned counsel submitted that the sole issue for determination formulated by the Claimant is completely irrelevant to the determination of this case in view of the contents of Exhibit O.A in the Defendant's Counter Affidavit. He posited that it is completely idle for this Court to dissipate its precious time and energy on the issue raised by the Claimant.

He said that the only relevant issue which is germane to the just determination of this case is the sole issue raised by the Defendants. He questioned whether the Defendants can ignore the sacred order of the Edo State High Court, dated the 28th of May, 2021, in Suit No: B/CD/427M/21 which was served on the Defendants. He said that the answer is an emphatic ‘No’ and he referred to the case of *Wamini vs Gali & Ors (2008) CALPERL* where the court stated thus: ***“Now, ordinarily every good citizen owes a binding duty to obey and ensure obedience and compliance with all laws properly enacted by our legislature to govern every aspect of our personal life. That duty is both legal, moral and social on all citizens and other people who live in our country”***

He urged this Court to utilize the Counter Affidavit deposed to by the 2nd Defendant in this case and submitted that in the light of the circumstances of this case, it would be tantamount to impudence and foolhardiness for the Defendants to disobey an order of the Criminal Division of the Edo State High Court served on the Defendant. He said that to do so is to suffer adverse consequences of the disobedience of the Court Order. He therefore urged the Court to resolve the issue in favour of the Defendants and dismiss the Suit with aggravated cost against the Claimant, in the sum of NGN 100,000 for the following reasons:

1. The Claimant deliberately misled the Honourable Court to the effect that there was no Order of Court served on the Defendants before his account was placed on POST NO DEBIT status; and
2. The Claimant deliberately caused the Defendants to incur expenses in defending the Suit when he knew or ought to know that the suit is vexatious and does not have a reasonable cause of action.

In response to the Defendants Counter-Affidavit, the Claimant filed a Further and Better Affidavit of 15 paragraphs in support of the Originating Summons. His learned counsel also filed a Reply on Points of Law to the Defendant's Counter-Affidavit.

In his Reply on Points of Law, the learned counsel submitted that the Claimant is entitled to the reliefs sought. He contended that Exhibit O.A/, the Court Order which the Defendants attached to their Counter-Affidavit is a public document and cited Section 102 of the Evidence Act, 2011 as amended. He submitted that it is trite law that a public document is only admissible in evidence in its original form or a certified true copy and he relied on the case of ***Ogunleye V. Aina (2011) 3 NWLR (PT. 1235) 497*** where the Court of Appeal held that the only categories of public documents that are admissible in evidence are either the original documents themselves or their certified true copies and no other. He cited ***section 90 (1) (c) of the Evidence Act, 2011 as amended and Ogboru V. Uduaghan (2011) 2 NWLR***. He submitted that Exhibit OA/Court Order is neither the original copy nor a certified true copy.

At the hearing of the originating summons on the 2nd of November, 2021, the learned counsel for the Claimant informed the Court that he was abandoning his Further and Better Affidavit as well as Reliefs 2 and 3 of his Originating Summons and he urged the Court to grant only Relief 1.

Taking a cue from the concessions made by the learned counsel for the Claimant, the learned counsel for the Defendants informed the Court that at that stage, he was no longer opposed to the granting of Relief 1 of the Originating Summons. However, he said that they will still be asking for N100, 000.00 (one hundred thousand naira) as costs against the Claimant.

I have carefully examined all the Court processes filed by the learned counsel for the parties in this suit together with the oral concessions which they made at the hearing of this suit. From the concessions made by both counsels, it is apparent that the issues between the parties have been resolved amicably.

Both parties are *ad idem* that Relief 1 of the Originating Summons should be granted. In the said Relief 1, the Claimant is seeking an order of this Honourable court directing/mandating the Defendants to immediately remove a post no-debit order/restriction placed on the Claimant's Account No: 2258981751.

Sequel to the salient concessions made by the learned counsels for the parties, I am of the view that Relief 1 of the Originating Summons should be granted forthwith. Furthermore, I am of the view that the Defendants are entitled to costs to cushion the effect of the expenses incurred in defending this suit.

In the event, in answer to Question One of this Originating Summons, I hold that the Defendants have no power to place a post no-debit order or restriction on the Claimant's Account No: 2258981751 without any valid order from a court of competent Jurisdiction.

On Question Two on whether by their action the Defendants are not in breach of the duty of care which they owe the Claimant as their customer, I am of the view that this second question has been overtaken by events.

Consequently, I hereby grant Relief 1 of the Originating Summons as follows: *An order of this Honourable Court directing/mandating the Defendants to immediately remove a post no-debit order/restriction placed on the Claimant's Account No: 2258981751.*

The sum of N100, 000.00 (one hundred thousand naira) is awarded to the Defendants as costs.

P.A.AKHIHIERO
JUDGE
23/11/21

COUNSEL:

O.G.ODAZE ESQ.....CLAIMANT
AUSTIN AJAYI ESQ.....DEFENDANTS