THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON MONDAY THE 28TH DAY OF OCTOBER, 2024
BEFORE HIS LORDSHIP, HON. JUSTICE G.K. OLOTU
JUDGE

SUIT NO: FHC/ABJ/CS/1104/2021

BETWEEN

MAJOR AKEEM ADEROGBA OSENI ..... **APPLICANT**

AND

1. **THE NIGERIA ARMY**
2. **FIRST CITY MONUMENT BANK PLC** ..... **RESPONDENTS**

FEDERAL HIGH COURT
ABUJA
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JUDGMENT

1. INTRODUCTION AND RELIEFS OF THE APPLICANT

This Judgment is in respect of Applicant's application dated 13th September, 2021 and filed on 22nd September 2021 for the enforcement of the Applicant's Fundamental Rights. The specific reliefs sought by the Applicant are as follows:-

"1. **A DECLARATION that the act of the 2nd Respondent placing the personal account of the**

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Applicant domiciled at First City Monument Bank Plc, (FCMB), with account number: 2656152013 on a post-no-debit (PND) from February 2020, till date on directives of the 1st Respondent, without a valid Court Order nor affording the Applicant adequate time and facility to be heard is illegal, wrongful, unlawful and constitutes a blatant violation of the Applicant's fundamental rights to fair hearing, presumption of innocence, right to own moveable and immoveable property anywhere in Nigeria as enshrined in sections 36 (1), 36 (5), 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria as altered; sections 1 (1) and (2) of the Administration of Criminal Justice Act, 2015 and articles 2, 3 (2), 4 and 7 (2) of the African charter on human and peoples' rights (Ratification and Enforcement) Act Cap A9 laws of the federation of Nigeria, 2004.

2. A DECLARATION that the dehumanization of the Applicant by the operatives of the 1st Respondent while in their custody for period of 10 months is

illegal, wrongful, unlawful and constitute a blatant violation of his fundamental rights as enshrined in sections 35 (1), (3), (4), 37 and 41 (1) of the 1999 Constitution of the Federal Republic of Nigeria as altered, sections 1 (1), (2) and 30 (1), (2), 32 (1) (2) and (3) of the Administration of Criminal Justice Act, 2015, and Articles 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and enforcement) act cap A9 laws of the federation of Nigeria, 2004.

3. A DECLARATION that the continuous denial of the Applicant access to his funds is a blatant disregard of his constitutional provision to own movable and immovable property, as there was no court order granted to that regard, therefore illegal, wrongful, unlawful and constitutes a blatant violation of the Applicant's fundamental rights as enshrined in sections 35 (1), (3), 41 {l), and 43 of the 1999 Constitution of the Federal Republic of Nigeria as altered, and sections 1 (1), (2) and 30 (1), (2) 32 (1), (2) 32 (1), (2) and (3)

of the Administration of Criminal Justice act, 2015, and articles 6 and 12 of the African Charter on Human and Peoples' rights' (ratification and Enforcement) act cap A9 laws of the Federation of Nigeria, 2004.

4. A DECLARATION that the dehumanization of the Applicant by placing him on handcuff and leg chain from 11th February, 2020 to 9th April, 2020 while in custody by the operatives of the 1st Respondent without complying with the provisions of section 293 (1) of the Administration of Criminal Justice Act, 2015, regulating the remand of a suspect, is illegal, unlawful, null and void and of no effect whatsoever.

5. A DECLARATION that the detention of the Applicant in a guardroom with handcuff and leg chain by the operatives of the 1st Respondent prior to confirmation of his sentence by the army council is illegal, wrongful, unlawful and constitutes a blatant violation of Applicant's fundamental rights as enshrined in sections 35 (1), (3), and 41 (1) of the 1999 Cons9tution of the

Federal Republic of Nigeria as altered, and sections 1 (1), (2) and 30 (1), (2) 32 (1), (2) 32 (1), (2) and (3) of the Administration of Criminal Justice Act, 2015, and articles 6 and 12 of the African charter on human and people's rights ratification and enforcement) act cap A9 laws of the federation of Nigeria, 2004.

6. A DECLARATION that the conduct of search on the Applicant's private apartment at flat 1 block 4, pentville estate, Lokogoma, Abuja and removal of sum of ten million, one hundred thousand naira (#10,100,000.00) cash, and valuables (iPhone 11 pro, apple watch series 5, cz smart citizen watch, 2x aviator series watch, aviator sunglass, gold necklace and ring) valued at the sum of six million five hundred and fifty thousand naira (#6,550,000.00) only, without a warrant by the operatives of the 1st Respondent is illegal, unlawful, null and void and a violation of the Applicant's right to privacy of his home.

7. A DECLARATION that the Applicant is entitled to public apology and adequate compensation from

the 1st and 2nd Respondents as provided for in sections 35 (6) and 46 (2) of the of the 1999 Constitution of the Federal Republic of Nigeria as altered, sections 314 (1) and 323 (1) and (2) of the Administration of Criminal Justice Act, 2015, for the blatant violation of the Applicant's rights without following the due process of law.

8. AN ORDER of directing the 2nd Respondent to release the Applicant's account from post-no-debit forthwith.

9. AN ORDER of this honourable court directing the 1st Respondent to tender a public apology in at least three national dailies to the Applicant for the blatant violation of his fundamental rights without following all necessary due process of law.

10. AN ORDER of perpetual injunction restraining the Respondents whether by themselves, agents, employees, operatives, detectives, servants, directives, privies and investigating officer(s), or however and by whatever name called, from further putting the bank account of the Applicant

on post-no-debit (PND) without resorting to the necessary legal procedure put in place for the appropriate authorities to put the bank account on a post-no-debit in line with the provisions of sections 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999, as altered., on the basis of the facts and circumstances of this matter.

11. AN ORDER of this honourable court directing the 1st and 2nd Respondents to pay to the Applicant the sum of ₦2,000,000,000.00 (two billion naira) only as general and exemplary damages for the wanton and grave violation of the Applicant's rights without following the due process of law.

12. AN ORDER directing the 1st Respondent to pay to the Applicant the sum of sixteen million, six hundred- and fifty thousand naira (₦16,650,000.00) only being the sum of ten million, one hundred thousand naira (₦10,100,000.00) cash carted away from the Applicant's private apartment , and the monetary value of the following items: (iPhone 11 pro,

apple watch series 5, cz smart citizen watch, 2x aviator series watch, aviator sunglass, gold necklace and ring) valued at the sum of six million five hundred and fifty thousand naira (₦6,550,000.00) only, without a warrant by the operatives of the 1st Respondent.

13. AND FOR SUCH FURTHER OR OTHER ORDERS as the honourable court may deem fit to make in the circumstance."

2. THE GROUNDS UPON WHICH THE APPLICATION IS FOUNDED ARE AS FOLLOWS:

i. On the 23rd February, 2017, major general IM Obot (rtd), chief of staff army headquarters garrison (COS AHQ Gar), summoned the Applicant (as a field officer for the week), to his office. On getting to the office, the Applicant met lieutenant colonel A. Usman (N/10518), commanding officer administrative battalion (CO Admin Bn) AHQ Gar and Captain S. Aruwa, acting officer commanding (Ag OC) AHQ gar military police (MP).

ii. That the COS told the Applicant and the other officers that the Ag OC MP just reported an attempted jail break by lance corporal Benjamin Collins (deceased), and he directed the Applicant to go there alongside other officers to take out the soldier, drill and relocate him to a separate detention facility within the cantonment.

iii. The Applicant and other officers in obedience left his office and jointly identified a new cell in the Admin Bn new blocks. Thereafter, the CO Admin Bn being the most senior instructed Ag OC MP to handover the soldier to the Applicant for drill. The Applicant told the CO Admin Bn that he was going to frog jump, forward roll and counsel the soldier, and he nodded his head in affirmation of the Applicant's suggestion.

iv. The Applicant went to the AHQ Gar detention facility in company of two officers (Major OU Osawe (N/12004), and Captain S. Amosu (N/13041), both of AHQ Gar, then Ag OC MP handed over the soldier to the Applicant, who drove him to the training shed where second

lieutenant (2Lt) Dogary (N/16390) was waiting to drill him. The Applicant gave the same order to drill him to 2Lt Dogary, while he sat there with Major Osawe to supervise the drill.

v. Few minutes of the drill, the Applicant counselled the soldier and invited the CO Admin Bn for his remarks. The CO Admin Bn came, admonished the soldier and ordered his return to the earlier identify facility, and the Applicant complied with the instruction immediately.

vi. The Applicant's attention was subsequently drawn later that day (during his routine checks as the field officer for the week at the facility), that the deceased soldier was struggling with his leg cuffs. On seeing his condition, the Applicant quickly summoned the Ag OC MP, who was in charge of the detention facility, and they both drove the soldier to the defence headquarters medical center where he was confirmed dead after their arrival.

vii. The Applicant was thereupon court-martialled along with Major Osawe, Captain Amosu and 2Lt Dogary on a lone count of manslaughter. The General Court Martial panel which sat at the command officers' mess, Asokoro, Abuja, consisted of brigadier general GA Umelo (N/9052) - President and major DO Ehicheoya (N11502) - judge advocate delivered its findings, on the 7th of February, 2020.

viii. While Captain Amosu was acquitted at the point of sentence on the 7th of February, 2020, the other two officers who were jointly charged with the Applicant were discharged and acquitted during Confirmation by the army council on the 24th of November, 2020, and the Applicant was sentenced to ten (10) years imprisonment, which prison term he is currently serving.

ix. The Applicant has since lodged an appeal against his conviction at the Court of Appeal, Abuja division.

x. The Applicant's conviction which is now a subject matter of appeal has nothing whatsoever to do with his property right which is constitutionally guaranteed.

xi. The Applicant being in a financial fix as he has his family to cater for and needed to send money to them, made several efforts to make online transactions from his bank account number 2656152013, F; City Monument Bank PI (FCMB) but was declined payment despite F7 e availability of funds in the said account on the ground that 4 Respondent has arbitrarily placed a post no debit (PND) on the said account without a prior court order and in any manner known to law. He also sent his friend in person of Nnamdi Egwuoba to the bank with his FCMB cheques numbers 17690020 and 17690022 issued on the 38 and 4U of February, 2021, to the tune of ₦450,000.00 (Four hundred and fifty thousand naira only), and ₦300, 000.00 (three hundred thousand naira only) respectively, but he was also declined Payment despite the availability of funds

in the said account on the ground that the 1st Respondent has arbitrarily placed a post no debit(PND) on the said account without a prior court order and in any manner known to law.

xii. That worried about what the problem could be, the Applicant sent emails to the bank customer care service and placed a call to his account officer, who informed him that the bank had received a letter of instruction from the officials of the 1st Respondent directing that the Applicant's account be placed on a post-no-debit (PND) without a valid order of court.

xiii. That the Applicant has committed no offence known to law to warrant the arbitrary denial of his property right as constitutionally guaranteed and without regard to law as done by the Respondents.

xiv. That even if the Applicant has committed any offence known to law the Respondents cannot unilaterally place a restriction on his bank

account without a valid and a subsisting court order.

xv. The freezing of the Applicant's personal accounts without a valid court order, search on his apartment without valid search warrant and subsequent dehumanization of the Applicant by the 1st and 2nd Respondents is illegal, wrongful, unlawful and constitutes a blatant violation of his fundamental rights as enshrined in sections 36 (1), 36 (5) 43 and 44 of the 1999 Constitution Of the Federal Republic of Nigeria as altered, sections 1 (1) and (2) of the Administration of Criminal Justice Act, 2015, and Articles 2, 3 (2), 4 and 7 (2) of the African charter on human and peoples' rights ratification and enforcement) act cap A9 laws of the federation of Nigeria, 2004, sections 35 (1), (3), (4), 37 and 41 (1) of tne 1999 Constitution of the Federal Republic of Nigeria as altered, sections 1 (1), (2) and 30 (1), (2), 32 (1) (2) and (3) Of the administration of criminal justice act, 2015, and articles 6 and 12 of the African charter on human and peoples' rights ,

ratification and enforcement) act cap A9 laws of the federation of Nigeria, 2004.

3. PROCESSES IN SUPPORT OF THE APPLICATION

The processes filed in support of the Application are as follows:

1) The Applicant filed a 7 paragraph Affidavit deposed to by one Usman Salihu, a Litigation Secretary in the Law Firm of Mike Ozekhome's Chambers, with the following Exhibits:

   a) **Exhibit AE1** – Applicant's Notice of Appeal against his conviction By 1st Respondent, referred to in paragraph 2 of the Affidavit in support.

   b) **Exhibits AE2 and AE3** respectively are the Applicant's FCMB cheques tendered for payment but were dishonoured/rejected by the Bank on the instruction of the 1st Respondent without a Court Order, with numbers 17690020 and 17690022 respectively, - paragraph 5(0) in support of the Affidavit.

   c) **Exhibits AE4 and AE5** respectively are Applicant's email to the bank's customer service to ascertain the cause of Post-No- Debit (PND) on his account and the Bank's Written response to the email, referred to in paragraph 5 (p) of the Affidavit in support.

d) **Exhibits AE6A to AE6B** are the Applicant's receipts of purchase of aforelisted valuables for special damages, referred to in paragraph 5(r) of the Affidavit in support.

2) Statement in support.

3) A Written Address in compliance of the Rules of this Court.

4) A Further Affidavit in opposition to the 2nd Respondent's Counter-Affidavit filed on 22nd September, 2021.

5a) A Further Affidavit of 14 paragraphs filed on 26th May, 2022 and deposed to, by one Usman Salihu.

5b) Accompanying Written Address.

6a) A Further Affidavit of 12 paragraphs dated and filed on 26th day of May, 2022, deposed to by the said Usman Salihu

6b) A Written Address in compliance with the Rules of this Court.

PROCESSES FILED BY THE RESPONDENTS IN DEFENCE OF THE APPLICANT'S ACTION

THE 1ST RESPONDENT

The 1st Respondent defended this action by filing -

1) A Counter-Affidavit in opposition, of 9 paragraphs on 8th December, 2021. The Counter Affidavit was deposed to

by one Lt. U.B Nelson, of the Army Headquarters, Legal Services.

2) A Written Address on 8th day of December, 2021.

THE 2ND RESPONDENT

The 2nd Respondent defended this action by filing -

1) A Counter-Affidavit of 17 paragraphs on 29th November 2021

2) A Written Address in compliance with the Rules of this Court.

3) A Further Counter-Affidavit of 5 paragraphs in reply to the 1st Respondent's Counter Affidavit on 23rd March, 2022. The deponent is one Charles Asomba, Customer Service Manager with the 2nd Respondent. One exhibit was attached thereto as Exhibit 1 (this is the instruction of the 1st Respondent to the 2nd Respondent to place a Post-No-Debit (PND) on the Plaintiff's salary account and is dated 10th February, 2020 and signed by one Major I. Haruna for Director of Army Finance and Accounts). See paragraph 5 of the 2nd Respondent's Further Affidavit

4) An 11 paragraph Further Counter-Affidavit on 27th June, 2022 in reply to the Applicant's Further Affidavit with

Exhibit AI attached, (this is a Certified True Copy of the Statement of account, showing that the Applicant withdrew the sum of **₦2,000,000.00 (Two million naira)** twice from his said account with the 2nd Respondent on 1st April 2022). See paragraph 8 of the 2nd Respondent's Further Affidavit.

FACTS OF THE CASE

I have decided to look at the facts of this case along the different reliefs/heads of claim sought by the Applicant. My personal view has identified three major heads of claims as follows:-

1. Post no Dept (PND) – Reliefs 1, 2, 8, 10
2. Dehumanization of Applicant while in custody/detention prior to confirmation of sentence - Prayers 2, 4 and 5.
3. Illegal search of the Applicant's residence - Prayers 6 and 12

POST NO DEBIT

The Applicant who is the bread winner of his family made several efforts to make online transactions from his bank account Number 2656152013 First City Monument Bank (FCMB) i.e 2nd Respondent but was declined payment despite availability of funds in the said account. On inquiries from the 2nd Respondent, he was informed that the 2nd Respondent on the arbitrary instruction of the 1st

Respondent had placed a post no debt (PND) on his account without obtaining a prior Court order. The Applicant tendered several cheques and emails to support his story.

The Photocopies of two cheques issued by the Applicant to his friend, Nnamdi Egwuoba listed as Exhibits AE2 and AE3 dated 3rd February, 2021 and 4th February, 2021 respectively, show the bank's stamp showing that they were tendered and received by the Bank. However, the Post no Debt (PND) was not endorsed on either of them. However, Exhibits AE4 and AE5 are email exchanges between the Applicant and 2nd Respondent on the issue.

In Exhibit AE4 dated 23rd January, 2021(3.55pm), the Applicant wrote:-

> **"I have been trying to make transaction on my account since March, 2020 without success. The response I got was "incomplete transactions" I contacted your customer care by phone sometimes in December, 2020 and was told that there was "POST NO DEBIT on my account. I would like to know the status of my account as at today"**

Exhibit AE5 is the 2nd Respondent's Reply. It is dated 23rd January, 2021 (4.06pm). it's response goes thus:-

"Dear Mr. Oseni Akeem, thank you for your mail. Please be informed that your account is presently on Post No Debt (Post No Debit)". Kindly visit the nearest branch with written instructions for further assistance."

From these exhibits alone, the fact of the placing of POST NO DEBIT on the Applicant's account by the 2nd Respondent is established.

The 2nd Respondent adduced evidence vide paragraphs 6 - 8 of its Further Counter Affidavit as follows:-

"6. **Contrary to paragraph 5(m) to 5(q) of Salihu's Further Affidavit, I reiterate the fact that PND placed on the Applicant's account has long been lifted and the Applicant has since been running the account even after the alleged presentation of his cheques.**

7. I know as a fact that on 7 February 2020, 1 April 2022 and 7 April 2022 the Applicant withdrew the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira Only), N4,000,000.00 (Four Million Naira Only) and N50,000.00 (Fifty Thousand Naira

Only) respectively from his account with the 2nd Respondent.

8. I know as of fact also that the Applicant's withdrawal of N4,000,000.00 (Four Million Naira Only) on 11th April 2022 as indicated above was done in two separate transactions i.e. the Applicant withdrew the sum of 2,000,000.00 (Two Million Naira Only) twice on 1 April 2022. The Applicant's Statement of Account is herewith attached and marked as Exhibit A1."

The purport of the 2nd Respondent's evidence is that the Post No Debit (PND) placed on the Applicant's account "**had long been lifted and that the Applicant has since been running the account even after the alleged presentation of his cheques.** The several instances that the 2nd Respondent gave to show that the Applicant had been withdrawing money from his account are all in the year 2020/2022

1). 7th February, 2020 (N250,000 withdrawal)

2). 1st April, 2022 (N4,000,000 withdrawal)

3). 7th April, 2022 (N50, 000)

The Applicant filed this action in this Court on 22nd September, 2021. Apart from the first withdrawal, all the others were made about 7 months after the filing of this action. Moreover, the 2nd Respondent did not challenge the email exchanges on the issue between them. Both were made 23rd January, 2021 and confirm that the POST NO DEBIT was firmly in place on the Applicant's account.

The 1st Respondent's response to the Applicant's averment on the issue can be found in paragraphs 6(f) and (g) of the Counter Affidavit thus:-

"**f. that with respect to paragraph 5 (p) of the Applicant's affidavit in support, it is stated that the 1st Respondent did not issue any directive to the 2nd Respondent to place the Applicant's account on Post-No-Debit (PND)**

g. that the 2nd Respondent is not subject to the directives of the 1st Respondent in its banking operations; and even if a directives was given to place the Applicant's account on Post No Debit (PND), which is not conceded, the 2nd Respondent is not bound by such directive; and in this case, no directive was given to the 2nd Respondent by the 1st Respondent to place the

Applicant's account with the 2nd Respondent on Post No Debit (PND)."

So, we see that the 1st Respondent's response is a total denial of the allegation that it issued a directive to the 2nd Respondent to freeze the Applicant's account and went ahead to disclaim the 2nd Respondent's freezing of the Applicant's account.

The 2nd Respondent quickly tendered Exhibit 1 via paragraphs 5 and 6 of its Further Counter Affidavit of 23rd March, 2022 as follows:-

"5. **Contrary to paragraph 6 (f) of Lt. Nelson's Affidavit, the 2nd Respondent received a directive to place a Post No Debit on the Plaintiffs' salary account vide a letter of instruction dated 10 February, 2020 signed by one Major I. Haruna for Director of Army Finance and Accounts. Copy of the said directive is herewith attached and marked as Exhibit 1.**

6. **In response to paragraphs 6(g) of Lt. Nelson's Affidavit, being a salary account, the said account was opened for the Plaintiff on the directive of the 1st Respondent. As such, the 2nd respondent does not always have prerogative to act independently where**

and when there is a directive from the 1st Respondent to freeze any of its employees' salary account."

Exhibit 1 is a letter from the 1st Respondent's Army Personal Pay Office to the 2nd Defendant dated 10th February, 2020. It is titled **"AUTHORITY TO FREEZE SALARY ACCOUNT OFFICER MAJOR ADEROGBA AKEEN OSENI (N/12/27).** The contents of the letter reads thus:-

"1. I am directed to request you please freeze the salary account of the above named officer until you receive further directive from this office.

2. Thank you for your usual cooperation"

Exhibit 1 exposed the 1st Respondent's bare faced lies about its denial of instructing the 2nd Respondent to freeze the Applicant's account.

It is well settled and established that before any banking institution can place a post no debit on anybody's account it must obtain a valid Court order authorising it to do so. The Court of Appeal in the case of GTB V. ADEDAMOLA & ORS (2019) LPELR – 47310 (CA), admonished our financial institutions on the need not to be complacent, and appear

toothless in the face of a brazen and reckless violence to the rights of their customers. The appellate court restated thus:

> "***let me go back to the thin issue to resolve in this appeal. The compressed facts constituting basis for placing restriction on the account of the 1st Respondent by the Appellant was following an instruction from the Economic and Financial Crimes Commission. In fact, the 1st Respondent said so expressly in his affidavit and the statement in support of the application. At paragraph 20 of the affidavit, the Applicant/1st Respondent said as follows. "That the order frozen my Bank account was done as a result of crime allegedly committed by another person which I am not privy to". Again, at page 46 of the records of appeal, the Applicant said he was informed by his bank that his account was placed under restriction by the Economic and Financial Crimes Commission, paragraphs 7 to 14 of the affidavit in support. On 1st Respondent's own showing from the paragraphs in the support, the bank action was on***

instructions because there were allegations of crime surrounding the operations of the account. The lower court found the action of the Appellant, 2nd and 3rd Respondents as a violation of the fundamental Right of the 1st Respondent. The learned trial judge at page 51 of the records of appeal said as follows: " .. In this case there is no evidence that the Applicant committed any criminal offence, or was even reasonably suspected to have committed any offence. The EFCC has not come up with anything suggestive that Akinshiku Roy mentioned the Applicant as having conspired to commit the alleged offence he was accused of. Even if the Applicant was alleged to have committed a criminal offence, EFCC cannot on its own direct the bank to place restriction on his accounts in the bank without an order of court. The law allows EFCC to come even with ex-parte application to obtain an order freezing the account of any suspect that has lodgments that is suspected to be proceeds of crime. No law imposes a unilateral power on

the EFCC to deal with the applicant this way. Again Guaranty Trust Bank has no obligation to act on EFCC'S instructions or directives without an order of court.. .." The above is the reasoning of the learned trial judge. I decided to check the provisions of the law relating to the powers of the Economic and Financial Crimes Commission to issue instructions to banks to freeze bank accounts of customers, I read the provisions of section 34(1) of the Economic and Financial Crimes (Establishment) Act 2004, the section provides as follows: 34 (1) Notwithstanding anything contained in any other enactment or law, the chairman of the commission or any officer authorized by him may, if satisfied that the money in the account of a person is made through the commission of an offence under this act or any enactments specified under section 7(2) (a)-(f) of this act, apply to the court ex-parte for power to issue or instruct a bank examiner or such other appropriate regulatory authority to issue an order as specified in Form

B of the schedule to this act, addressed to the manager of the bank or any person in control of the financial institution where the account is or believed by him to be or the head office of the bank or other financial institution to freeze the account... The above provisions are in accord with the decision of the lower court. The Economic and Financial Crimes Commission has no powers to give direct instructions to bank to freeze the account of a customer, without an order of court, so doing constitutes a flagrant disregard and violation of the rights of a customer. I must add that, the judiciary has the onerous duty of preserving and protecting the rule of law, the principles of rule of law are that, both the governor and the governed are subject to rule of law. The courts must rise to the occasion speak and frown against arrogant display of powers by an arm of government. It is in the interest of both government and citizens that laws are respected, as respect for the rule of law promotes order, peace and decency in all

societies, we are not an exception. Our financial institutions must not be complacent and appear toothless in the face of brazen and reckless violence to the rights of their customers. Whenever there is a specific provision regulating the procedure of doing a particular act, that procedure must be followed." Per_ABUBAKAR, J.C.A. (Pp. 21-24, Paras. A-F. (Emphasis supplied)".

Furthermore, it was held in the case of **OLAGUNJU v. EFCC (2019) LPELR-48461(CA)** thus:

"...The Respondent by its action, deprived the Appellant access to her money on the two accounts maintained at heritage bank and by so doing breached the provisions of section 44 (1) (K) of the Constitution of the Federal Republic of Nigeria as amended and section 34 (1) of the EFCC Act. The wordings of section 34(1) of the EFCC Act in my view are not capable of any interpretation other than that a court order is a condition precedent for the exercise of the

Respondent's power to freeze an account suspected to harbour proceeds of a crime. Failure of the Respondent to obtain a Court Order prior to giving directive to heritage bank to freeze the Appellant's accounts is ultra vires its powers and I so hold." **Per OJO, JC.A. (Pp. 18-26, Paras. E-B).**

What is clear from the evidence before the Court is that the Respondents are complicit in the illegal placing of a post no debit on the Applicant's account. Contrary to the 1st Respondent's denial, Exhibit 1 written by the it to the 2nd Defendant confirms the illegal conspiracy between both Respondents. The 2nd Respondent which is a banking institution knowingly and illegally acted on the instructions written to it by the 1st Respondent in Exhibit 1 to freeze the Applicant's accounts. Both of them must face the legal consequences of their illegal action jointly and severally.

The Applicant also contended that the illegal post no debit on his account by the Respondent without affording him the right to be heard, constitutes a blatant violation of his fundamental rights to fair hearing, presumption of innocence, right to own movable and immoveable property

anywhere in Nigeria as enshrined in section 36 (1) and (5), 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria. Section 1(1) and (2) of the Administration of Criminal Justice Act, 2015, and Articles 2, 3, (2), 4 and 7 (2) of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap. The Supreme Court has held in a plethora of cases that fair hearing is breached where parties are not afforded the opportunity to be heard. See ***CHIEF GANI FAWEHINMI V NIGERIAN BAR ASSOCIATION & 4 ORS (NO 1) (S.C. 229/1986)/1989] NGSC 36 (14 APRIL 1989).***

It is well settled that the principle of fair hearing is a cardinal pillar of natural justice. Our case law is replete with authorities on the fair hearing principle, for example:-

> ***1). NEWSWATCH COMMUNICATIONS LIMITED V. ALHAJI IBRAHIM ATTAR (2006) 12 NWLR (Pt. 993) 144. The term 'fair hearing' is in most cases synonymous with fair trial and natural justice, an issue which clearly is at the threshold of our legal system and thus once there has been a denial of fair hearing the whole proceedings***

automatically become vitiated. A denial of fair hearing can ensue from the conduct of the court in the hearing of a case or in the judgment or ruling of the court. However, the true test of fair hearing is the impression of a reasonable person who was present at the trial whether from the observation justice has been done in the case. See OTAPO V. SUNMONU (1987) 2 NWLR (Pt. 58) 587; WILSON V. AG OF BENDEL STATE (1985) 1 NWLR (Pt. 4) 572. See also A. U. AMADI V. THOMAS APLIN & COL TD (1972) All NLR 413; MOHAMMED OLADAPO OJENGBEDE V. M.O. ESAN & ANOR (2001) 18 NWLR (Pt. 746) 771. The right to fair hearing is very fundamental and failure by a court to observe it would invariably vitiate both the proceedings and judgment of such a court, notwithstanding the merit or otherwise of the cases of the parties or indeed how meticulous the proceedings were conducted or even how

sound the resultant judgment was on the merit".

2). of **OKIKE v. LPDC & ORS (2005) LPELR-7466(CA)** held thus:

> ***"Fair hearing implies hearing the parties or giving them the opportunity to be heard. In KOTOYE V. C.B.N (1989) 1NWLR (Pt. 98) 419, it was held that rule of fair hearing is not a technical one. It is one of substance; the question is not whether injustice had been done because of lack of hearing. It is whether a party entitled to fair hearing is entitled to be heard before deciding his case had in fact been given an opportunity of a fair hearing."*** **Per BA'ABA, J.C.A (Pp. 31-32, paras. G-A".**

In the case of obtaining a Court order to freeze the Applicant's account, it is settled that this order can be obtained exparte if it is shown prima facie that the accounts hold proceeds of crime.

In the present case, there are no facts to show that the Applicant's account had proceeds of crime and could therefore be frozen by Court order by an exparte application and without the need to grant the Applicant fair hearing before freezing his account

3). **ASSAMS & ORS v. ARARUME & ORS (2015) LPELR- 40828(SC)** that:

> ***"Natural justice demands that a party must be heard before the case against him is determined. Despite overwhelming evidence of eating the forbidden fruit the Lord Almighty still gave Adam a hearing before condemning him. See Genesis 3:9 -19. Once a party can satisfy the court that his right to fair hearing was infringed, he is entitled to a remedy. AKEREDOLU V. AKINREMI (1986) 2 NWLR (Pt.25) p.710 UNONGO V. AKU (1983) 2 SCNLR (P.332)."*** **Per RHODES-VIVOUR, J.S.C. (P. 16, Paras. D-F).**

It is clear from the foregoing and I so hold that the Respondents ought to have obtained a valid court order and afforded the Applicant adequate time and facility to defend himself before placing his personal account on a Post No Debit (PND). Having not done so, they must face the consequences of their action.

RAID OF APPLICANT'S RESIDENCE

The Applicant averred in paragraph 5(r)(s)(t)(u)(v)(w) etc of the affidavit in support of the application that the 1st Respondent invaded his private apartment at Flat 1 Block 4, Pentville Estate, Lokogoma Abuja, on the 7th February, 2020 and maintained its presence in the Applicant's premises through its officers till the next day, 8th February, 2020. He averred further that the 1st Respondent conducted the search without search warrant and carted away several personal items belonging to the Applicant. Here is the exact averment from the Applicant's paragraph 5(r):-

> **"That in a gestapo, and in a military-like manner, the Respondent conducted a search on the Applicant's private apartment of Flat I block 4, Pentvile Estate Lokogoma Abuja and removed the sum of ten million, one hundred thousand naira (#10,100,000.00) cash, and valuables (Iphone**

11Pro, apple watch series 5, cz smart citizen watch, 2x aviator series watch, aviator sunglass, gold necklace and ring) valued at the sum of six million five hundred and fifty thousand naira (#6,550,000.00) only, without a warrant.

SPECIAL DAMAGES:

Gold Necklace - $7950x#500=

#3,975,000.00

Gold Ring - $370

x#500=

185,000.00

IPhone 11Pro -

$1300x#500=

650,000.00

Apple Series 5 Watch -

$400x#500=.

#200,000.00

Citizen CZ Smart Watch - $350x#500=

#175,000.00

Aviator Series MIG Watch - $630 x#500=

 # 315,000.00

Aviator Auto Bristol Scout Watch - $1250 x #500;=

 # 625,000.00

Cartier Aviators Sunglass - $850 x#500=

 # 425,000.00

Cash Worth - $20,200x#500 =#10,100,000.00

TOTAL - $33300 x #500=#16,650,000.00

The Applicant receipts of purchase of the above listed valuables are herein attached and marked as EXHIBITS AE6A to AE6F.

The 1st Respondent denied this allegation just as it did with respect to the one about Post No Debit. See particularly paragraphs 6(m)(iii) of 1st Respondent's Counter Affidavit:-

"That the 1st Respondent did not at any point in time conduct a search on the Applicant's apartment "in a Gestapo style and military like manner" or howsoever, and therefore knows nothing about the purported cash sum and items said to have been "removed" "by the operatives of the 1st Respondent" as claimed by the Applicant."

The 1st Respondent having lied and been discredited about the Applicant's averment about the Post No Debit in the same Counter Affidavit, this Court cannot pick and choose the averments of the 1st Respondent to believe and not to believe. I take the 1st Respondent's denial in this regard with a pinch of salt and believe the Applicant's averment in this regard. Based on the foregoing, I cannot regard the 1st Respondent's evidence before this Court as evidence of truth.

Moreover, it is undisputed and crystal clear that the position of the 1st Respondent on the issue of the search on the private premises of the Applicant is synonymous with the 1st Respondent's stance on the issue of placing Post-No-Debit on the Applicant's salary account, thus making that fact/evidence on the Post-No-Debit as a facta probatia of this issue of search on the private premises admissible without more and this issue is resolved in favour of the

Applicant. It follows that if the 1st Respondent lied about the Post No Debit issue, then it is possible that it also lied on this issue of raid on the Applicant's residence.

The Court of Appeal held in **EZEMBA V. IBENEME & ANOR (2000) LPELR-10527 (CA)** on the issue of when credibility will not be accorded to the evidence of a witness as follows -

> **"in the light of all the above and more, the learned trial Judge described the appellant as a witness unworthy to be accorded any credibility. I think the Judge was right. In Adepoju Ayanwale & Ors v. Babalola Atanda & Anor. (1988) All NLR (Reprint) 24 at 38; (1998) 1 NWLR (Pt. 68) 22 the Supreme Court observed that:**
>
> **"No witness is entitled to the honour of credibility when he has two material inconsistent evidence given on oath by him on record. Such a witness does not deserve to be described as truthful."**

The Applicant's claim for the recovery of the value of the personal items removed from his residence by the 1st Respondent during the "**gestapo**" and "**military like raid on his residence in the area**

of special damages is substantiated. In Shell BP v. Cole & Ors (1978) NSCC 96, the Supreme Court held that the claims of the Respondent during the nature of special damages must be strictly proved. The law requires that a strict proof of evidence is required to show the same particularity as is necessary for the pleading.

It is my humble view that the Applicant has shown by his reliefs that, the grounds upon which the reliefs are founded and documentary exhibits to plead and prove the exact value of the items the 1st Respondent seized from the Applicant's residence. Consequently, I am of the view that the Applicant's relief for special damages is proved as required by law.

DEHUMANISING TREATMENT OF THE APPLICANT

The Applicant claimed that 1st Respondent's act of subjecting him to dehumanizing and inhuman treatment by placing him on handcuff and leg chain from the 11th February, 2020 to 9th April, 2020 while in custody by the operatives of the 1st Respondent without complying with the provisions of section 293(1) of the Administration of Criminal Justice Act 2015 regulating the remand of a suspect is illegal. See the paragraphs 5(q) and 6(e) of the Applicant's Affidavit.

The Applicant's Affidavit is support shows his exact averments thus:-

"(q) **That the Applicant was subjected to the most dehumanizing and inhuman treatment by the 1st Respondent by placing him on handcuff and leg chain from 11th February, 2020 to 9th April, 2020 while in custody by the operatives of the 1st Respondent.**

(e) That the act of subjecting the Applicant to the most dehumanizing and inhuman treatment by the 1st Respondent by placing him on handcuff and leg chain from 11th February, 2020 to 9th April, 2020 while in custody by the operatives of the 1st Respondent without complying with the provisions of section 293(1) of the Administration of Criminal Justice Act, 2015 regulating the remand of a suspect, is illegal, unlawful, null and void and of no effect whatsoever."

See also paragraphs 5(f) and (g) of the Applicant's Further Affidavit in response to the 1st Respondent's Counter Affidavit thus:-

(f) **That he knows as a fact that the 1st Respondent's banal denial as contained in paragraph 6(d) of its counter affidavit that the Applicant's fundamental**

right was in any way violated while in custody, nor placed in handcuff, leg chain and dehumanizing manner prior to his transfer to.

(g) The 1st Respondent detained the Applicant from 9th February, 2022 till 17th December, 2020 about ten (10) months and (8) days before he was transferred to Kuje Prison on 17th December, 2020.

As is typical of the 1st Respondent, he denied the Applicant's averment on the issue.

The 1st Respondent first sought justification for conduct by alleging that the Applicant escaped from custody.

The Applicant replied that the allegation of escape from custody is not justification for the dehumanizing or inhuman treatment inflicted on him.

In another breadth, the 1st Respondent denied their allegation. It averred in its Counter Affidavit that it did not in anyway violate the Applicant's right while in its custody prior to his transfer to the Kuje Correctional Centre to serve his 10 year sentence. In paragraph 6(h), (i) & (j) of the 1st Respondent's Counter Affidavit, the 1st Respondent, averred that -

"h. That with respect to paragraph 4 (q) of the Applicant's affidavit, it is stated on behalf of the 1st Respondent that the Applicant was not placed on handcuff and leg chain at any point in time in the course of his detention while awaiting the confirmation of his conviction and sentence by the General Court Martial.

i. That prior to and in the course of his trial by the General Court Martial, the Applicant was not kept in any custodial restraint. It was only after his conviction for the offence of manslaughter and sentence to 10 years imprisonment that he was kept in custody in line with the provisions and requirement of the Armed Forces Act which required persons sentenced to any term of imprisonment or more serious punishment to be kept in detention pending the confirmation of such conviction and sentences by the confirming authority.

j. That while in detention awaiting confirmation by the confirming authority, the Appellant was neither handcuffed, leg chained or dehumanized or ill-treated in any manner as his full rights consistent

with his status as a detainee and convict in lawful custody were accorded him and same were by no means violated or infringed upon."

Having found earlier in this Judgment that the 1st Respondent is economical with the truth, it is difficult to believe any testimony from it. Borrowing from the language of the Supreme Court in **Ezemba v. Ibeneme (Supra),** the 1st Respondent and its witness who have been found not to be witnesses of truth does not deserve to have their evidence to be relied upon as truthful. The entire content of their affidavit would be regard as untrue.

Having dislodged the evidence of the 1st Respondent on this issue, all that is left before the Court is the evidence of the Applicant. It is unchallenged and can be relied upon as the truth of the facts they contain. Consequently, I find that the Applicant's unchallenged averments on the issue are sufficient to establish the truth of his contention against the 1st Respondent.

With specific reference to the Applicant's averment that he was detained in the 1st Respondent's custody from 11th February, 2024 till 9th April, 2020 and while there, he was subjected to dehumanizing and inhuman treatment and placed on handcuff and leg chains.

The Court Martial gave its findings/sentence on 7th February, 2020. According to section 148(1) and (2) of the Armed Forces Act which provides as follows:-

"(1) **where a court-marital finds the accused guilty of a charge, the record of the proceedings of the court-martial shall be transmitted within sixty days from the date of the finding to the confirming authority for confirmation of the finding and sentence of the court-martial on that charge.**

(2) Where the record of proceedings of a court-martial, other than proceedings resulting in sentence of death or life imprisonment, are not transmitted within sixty days as aforesaid, and the accused remains in custody, he shall be released unconditionally pending such confirmation or review.

(3) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court-martial until it is confirmed."

From the provisions of the section 148 (1) of the Armed Forces Act, the findings/sentence of the Court-Martial which passed a 10 year

sentence on the Applicant should have been transmitted to the confirming authority i.e Army Council within the 60 days from the date of the finding for confirmation of the finding and sentence of the Court-Martial

Sub-section 2 of section 148 also provides that where the record of proceedings of a court-martial that did not result in a sentence of death or life imprisonment, are not transmitted with 60 days, and the accused remain in custody, he shall be released unconditionally pending such confirmation or review.

Sub-section 3 gives insight to the previous provisions, when it says that a finding of guilt or sentence of a Court Martial shall not be treated as a finding or sentence of the Court Martial until it is confirmed.

Counting 60 days from 7th February, 2020 when the Court Martial gave its findings, takes us to 8th April, 2020. So, the 1st Respondent had until 8th April 2020 to forward the findings of the Court Martial to the confirming Authority. There is no evidence before this Court that the 1st Respondent complied with this statutory requirement, however, there is evidence from the Applicant that during the 60 day period, the Applicant remained in the custody of the 1st Respondent. And also remained in the custody of the 1st

Respondent from then to 24th November, 2020 when the Army Council confirmed the Court Martial finding and sentence. What is clear is that after expiration of the 60 days on 8th April, 2020, the Applicant statutorily had no business being in the custody of the 1st Respondent by virtue of section 148 (2) of the Army Council Act which provides that where record of proceedings of a court martial, other then proceedings resulting in a sentence of death or life imprisonment (this is not the case of the Applicant, his sentence was 10 years imprisonment). The law says that if his sentence was not confirmed within 60 days, and he is still in custody, he shall be released unconditionally pending such review/confirmation.

The implication of this is that in the absence of the review or confirmation of the 10 years imprisonment on the Applicant on 8th April, 2020, he should have been released unconditionally, pending such review/confirmation. But the 1st Respondent kept the Applicant in its custody after 8th April, 2020 till 24th November, 2020 when the Army Council confirmed the finding and sentence on him by the Court-Martial. The implication of this is that keeping the Applicant in custody for that period (7 months and 16 days) to await the confirmation of the Army Council is illegal, ultra vires, null and void and gross abuse of power. Obviously, the 1st Respondent did not avert its mind to the provisions of section 148 (1)-(3)

particularly sub-section 3 that a finding of a guilt or sentence of a court martial shall not be treated as a finding or sentence of the court martial until it is confirmed. It is my humble belief that the 1st Respondent's disregard of these provisions probably led to error in keeping the Applicant in its custody as a convict.

1st Respondent justified its conduct by its averment in paragraph 6(d) of Counter Affidavit thus;

> " **That while in detention awaiting confirmation by the confirmation authority, the Appellant was neither handcuffed, leg chained or dehumanized or ill-treated in any manner as his full rights consistent with his status as a detainee and convict in lawful custody were accorded him and same were by no means violated infringed upon.**"

I am of the view that the 1st Respondent's averment is erroneous and is contrary to the provisions of the section 148 of the Army Forces Act. From that law, the 1st Respondent had no business keeping the Applicant in its detention beyond 8th April 2020 – 24th November, 2020 to await the confirmation of his sentence. So, keeping the Applicant in unlawful custody means that everything about the illegal detention and custody of the Applicant is also

illegal. In addition to discreting 1st Respondent's denial, I reiterate as per my earlier findings that the 1st Respondent's denial of dehumanization and maltreatment the Applicant cannot hold any water.

11. THE ISSUES FOR DETERMINATION

The Applicant formulated a sole issue for determination, to wit –

> ***"Whether the Applicant's fundamental rights have been breached, are being breached, and will likely still be breached by the conducts and actions of the Respondents, such as will entitle the Applicant to the grant of the reliefs sought from this Honourable Court"***

The 1st Respondent formulated a sole issue for determination in this application, to wit:-

> ***"Whether going by the Affidavit in support of Applicant's Suit, he has placed sufficient materials before this Honourable Court on which the reliefs claimed can be sustained against the 1st Respondent?"***

The 2nd Respondent formulated two issues for determination, to wit:-

"1. ***Whether, considering the direct allegations against the 2nd Respondent, the Fundamental Rights (Enforcement procedure) Rules is an appropriate mode to pursue the alleged cause of action in the circumstance?***

2. ***Whether there is credible evidence that the 2nd Respondent in fact violated the Applicant's Fundamental Human Right?"***

I have carefully considered the respective issues formulated by the Applicant and the Respondents, I am of the view that the issue formulated by the Applicant captures the essence of the suit he brought to court. I therefore adopt the Applicant's issue for determination of this suit.

I have already evaluated and considered the evidence adduced by the Applicant in support of this case and also the evidence adduced by each Respondent against it earlier in this Judgment. Based on that, I find and I resolve based on the sole issue formulated by the Applicant as follows:-

That I find that the Applicant's fundamental rights have been breached, are being breached, by the

conduct and actions of the Respondents and consequently, the Applicant is entitled to the grant of the reliefs sought.

1) The evaluation of this issue formulated for determination revolves principally around two sections of the Constitution: -

a) Section 35 of the Constitution which provides as follows:-

"1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law –

(a) In execution of the sentence or order of a court in respect of criminal offence of which he has been found guilty;

(b) By reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;

(c) For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a

criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(e) In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(f) For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto;

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the

maximum period of imprisonment prescribed for the offence".

Section 46 of the Constitution provides as follows:-

"1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress".

See ***FRN Vs. Ifegwu (2003) 15 NWLR 133 @ 216 – 217 paragraphs C-13,*** where the Supreme Court restated the position and importance of the Fundamental Rights, as follows –

"The fundamental rights entrenched in the Constitution are very important, so much that an individual whose rights have been infringed or contravened has the right to seek redress in a competent court of law. As it is, the enforcement procedure is in three limbs. The first limb is that the fundamental right in Chapter 4 has been physically contravened or infringed. In other words, the act of contravention or infringement is completed and the Plaintiff goes to court to seek for a

redress. The second limb is that the fundamental right is being contravened or infringed...

"Here, the act of contravention or infringement may or may not be completed; but in the case of latter, there is sufficient overt act on the part of the Respondents that the process of contravention or infringement is physically on the hands of the Respondents and that the contravention or infringement is in existence substantially. In the third limb, there is likelihood that the Respondents will contravene, or infringe the fundamental right or rights of the Plaintiff. While the first and second limbs may ripen together in certain situations, the third limb of the subsection is entirely different. By the third limb, a Plaintiff or Applicant need not wait for the completion or last act of contravention or infringement".

The Applicant alleged several acts of infringements against the Respondents in the course of his detention. I have already found

for the Applicant in this Judgment in respect of the infringements of his fundamental rights in these respects:-

a) The joint action of the Respondents to place on the personal account of the Applicant a Post-No-Debit from sometime in March, 2020 through to January, 2021, without a valid court order or affording the Applicant the right to be heard as constitutionally guaranteed.

b) The action of the 1st Respondent to conduct search in a gestapo manner and remove cash and valuables from the Applicant's private apartment without a valid search warrant.

c) The dehumanizing treatment of placing the Applicant on handcuffs and leg chains while in the custody of the 1st Respondent before the confirmation of his sentence by the Army Council,

d) Failure of the 1st Respondent to grant bail to the Applicant within 24 hours or 48 hours of his arrest/detention and pending confirmation of his sentence by the Army Council.

It is crystal clear that these statutory provisions are in conformity with:-

a) the provisions of Section 35(1) & (4) of the 1999 Constitution of the Nigeria-

> **"1. Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by Law -**
>
> **a) for the purpose of bringing before a Court in execution of the order of a Court or upon reasonable suspicion of his having committed a Criminal offence. to such extent as may be reasonably necessary to prevent his committing Criminal offence.**
>
> **4(a) In the case of an arrest or detention, in any place where there is a Court of competent jurisdiction within a radius of forty kilometres, a period of one day ...**

b) the provisions of Article 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, which provide as follows:-

"Every individual shall have the right to liberty and to the security of his person No one maybe deprived of his freedom except for reasons and conditions previously laid down by Law.

In particular, no one may be arbitrarily arrested or detained."

A community reading of the said constitutional and statutory provisions show that the Applicant's Fundamental Rights were flagrantly breached by the 1st Respondent. Decided case law very strongly support the violations of the law. **See Shugaba Vs. Minister of Internal Affairs (1981) 3 NCLR 427, Agbakoba Vs. The Director, S.S.S (1994) 6 NWLR (Pt. 351) 692, Okize Vs. COP (2014) LPELR 23012 (CA) PP 30 – 31** where the Court of Appeal held that–

"It is unfortunate that the Appellant has been incarcerated since 8th September, 2011, when the law presumes his innocence until proved otherwise. The Constitutional right to personal liberty of a person is sacrosanct, even for an accused person".

This case underscores the importance of the protection of the fundamental rights of person under the Constitution. The Constitution regards those rights as sacred and sacrosanct

CONCLUSION

After a careful evaluation and consideration of the Applicants' case against the defences presented by the 1st and 2nd Respondents, respectively, I find and hold that the Applicant has established his case of flagrant breach of his fundamental rights against the Defendants. I will now consider the Reliefs sought against the Defendants.

The general principle of remedy of a breach of fundamental rights flows from the Constitution and the general principle of **"Ubi jus ibi remedium"** which means- **"where there is a right, there is a remedy".** Section 35(5) of the Constitution provides as follows:-

> **"Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person."**

The Reliefs in respect of the Post No Debit issue are Reliefs 1, 3, 8 and 10. The two Respondents have been found

culpable and liable severally and jointly in this regard. Consequently, I make the following orders:-

1). Relief 1 - Ordered as Prayed

2). Relief 3 - Ordered as Prayed

3). Relief 8 - This has been overtaken by events because the 2nd Respondent has since released the Applicant's account from Post No Debit forthwith.

4). Relief 10- Ordered as Prayed.

The Reliefs in respect of the illegal search/raid of the Applicant's residence are Reliefs 6 and 12 and are against the 1st Respondent alone.

1). Relief 6- Ordered as Prayed.

2) Relief 12- Ordered as Prayed.

The Reliefs relating to the dehumanisation of the Applicant while in the custody of the 1st Respondent are Reliefs 2, 4 and 5 against the 1st Respondent.

1). Relief 2 - Ordered as Prayed

2). Relief 4 - Ordered as Prayed

3). Relief 5- Ordered as prayed.

The remaining reliefs in Reliefs 7, 9, 11, and 13, are of general application to all the heads of claim and so I will deal within them accordingly.

1). Relief 7- Ordered as Prayed

2). Relief 9- Ordered as Prayed.

3). Relief 11- This is a claim in general and exemplary damages for the wanton and grave violation of the Applicant's fundamental rights but it is ordered for two national Dailies.

General damages has been defined as "**damages which the law implies or presumes to have accrued from the wrong complained of or as the immediate, direct and proximate result of or the necessary results of the wrong complained of".** It is awarded by the Court where it cannot point at any measure to assess the loss caused by the wrong complained of except the opinion and judgment of a reasonable man. The quantum need not be pleaded and proved. See **Rockonol Properties Co. Ltd v. Nitel Plc (2001) 14 NWLR (Pt 733) 468, 493.**

"Exemplary Damages has been described as-

"Damages which are, in nature, awards made with a possible secondary object of punishing the defendant for his conduct in inflicting harm on the plaintiff. They are made in addition to the normal compensatory damages" and "should be awarded only in the following cases: "in cases of oppressive, arbitrary or unconstitutional acts by Government servants where the defendants' conduct had been calculated by him to make a profit for himself which might well exceed the compensation payable to the plaintiff where expressly, authorised by statute".

The rationale for the award of exemplary damages was stated by the apex court to be "that the action of the defendant is such that the damages awarded against him are intended to punish the defendant and to vindicate the strength of the law and not merely as compensation for the injured Plaintiff. See Cassel v. Broome (1972) All ER 801, 829. The classes of damages known to law do not seem

closed as quite a host of others though relatively less important classes of damages do exist.

The evidence before the Court shows that Respondents acted arbitrarily and in excess of their powers in their dealings with the Applicant, particularly in these respects:-

1) The joint action of the Respondents to place the personal account of the Applicant on a Post-No-Debit since the February, 2020 till date, without a valid court order or affording the Applicant the right to be heard as constitutionally guaranteed.
2) The action of the 1st Respondent to conduct search in a gestapo manner and remove cash and valuables from the Applicant's private apartment without a valid search warrant.
3) The dehumanizing treatment of placing the Applicant on handcuff and leg chain while in custody of the 1st Respondent before the confirmation of his sentence by the Army Council,
4) Failure of the 1st Respondent to grant bail to the Applicant within 24 hours or 48 hours of his arrest/detention pending confirmation of his sentence by the Army Council.

The 1st Respondent denied placing the Applicant on handcuff and leg chain in paragraph 6(h) of the Counter-Affidavit, but did not controvert the Applicant's detention period (from 11th day of February, 2020 to 9th day of April, 2020.

Moreover, the 1st Respondent's search of the Applicant's residence was unwarranted, unjustifiable and unnecessary. The Applicant was being investigated for manslaughter that allegedly took place in the office, so I cannot see the reason behind the search conducted on his residence which is not even in the office location. It was not implicated in the investigation and Court Martial of manslaughter against the Applicant, the 1st Respondent's conduct was clearly motivated by malice, bias, prejudice and ill motives to embarrass the Applicant in his residential neighbourhood far away from the office. Even when the search revealed nothing on the first day, they stayed in the Estate till next day to emphasis their abuse of power.

This is the reason why I labelled the raid on the Applicant's house unwarranted and unjustifiable. It exposes the 1st Respondent's arbitrary and abusive use of its power.

Also, we can see that the 1st and 2nd Respondents connived and conspired to illegally freeze the Applicant's account. The 1st Respondent usurped the power of the Court to order a freezing of the account by instructing the 2nd Respondent to freeze the Applicant's account. Ironically, the Applicant's finance was not implicated in the investigation of the case of manslaughter against him.

And the 2nd Respondent knowing better, either for fear of the 1st Respondent or for reasons best known to it obeyed the 1st Respondent's instructions and froze the Applicant's account. Whatever angle their conducts are viewed from, they acted clearly outside their powers.

They probably thought that they are above the law. But the principle of exemplary damages will now tell them and show them that they are not above the law, and that the law is no respect of anyone who breaks it. It was a big stick which it uses and will now use to correct the abusive and excessive tendencies of the Respondents.

The 1st Respondent also acted in excess of its powers in dehumanising the Applicant, etc

The Applicant claimed the sum of N2 billion naira award of general and exemplary damages.

I award N100 million as general damages and N300 million as exemplary damages against the Respondents jointly and severally in favour of the Applicant.

HON. JUSTICE G.K. OLOTU
JUDGE

28th October, 2024

APPEARANCES: **A.B. Abdulwahab,** with **A.A. Okuribido** and **O.E. Oluwa Adamis** for the Applicant

Unekwu Enegbami for the 1st Respondent.

Hila Ngutswen for the 2nd Respondent