



DUALE, OVIA &
ALEX-ADEDIPE

REFLECTIONS ON THE JUDGMENT OF THE COURT OF APPEAL IN APPEAL NO: CA/EK/48/2024 BE- TWEEN KUDA MICROFINANCE BANK LIMITED V. MRS. AMARACHI KENNETH BLESSING DELIVERED ON THE 13TH OF MARCH 2025





INTRODUCTION:

The Court of Appeal of Nigeria (the **Appellate Court**) delivered judgment in **Appeal No. CA/EK/48/2024** between **Kuda Microfinance Bank Limited V. Mrs. Amarachi Kenneth Blessing** on the 13th of March 2025.

In the case under review, Kuda Microfinance Bank Limited, as Defendant at the lower Court appealed the Judgment of the Federal High Court of Nigeria, sitting at Ado Ekiti, which was delivered on the 7th of May 2024. This appeal bordered on the legality or otherwise of a restriction placed on the account of a customer of a bank.



BRIEF SUMMARY OF FACTS:

The Respondent as Plaintiff in the trial court, vide an Originating Summons commenced an action for the enforcement of her fundamental right against the Appellant sued as Defendant. The Plaintiff as customer of the Defendant had her bank account domiciled with the Defendant restricted upon reports of a suspicious/fraudulent transactional inflow. The Respondent, as Plaintiff vide her suit sought for the determination of the following questions:

- ***Whether the defendant has the power to freeze the account of the Plaintiff without obtaining Court order***

- ***Whether on the Construction of section 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and without obtaining Court order the Defendant has not infringed on the Plaintiffs Right to property?***
- ***Whether on the basis of a purported complaint and without a Court order, the Defendant has the legal right to freeze the Plaintiffs Bank Account and denies the plaintiff access to her funds***

Consequent to the issues for determination, the Plaintiff sought the following reliefs amongst others to wit;

- ***A Declaration that the purported freezing of the plaintiff's Bank Account by the Defendant without Bank Order and/or Order of freezing Bank Account by a Court of competent jurisdiction is illegal, null and void.***
- ***A Declaration that the freezing of the Plaintiff's Bank Account without Bank Order and/or Order of freezing Bank Account by a Court of competent jurisdiction is a violation of the Plaintiffs right to property as enshrined in Section 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)***
- ***An order of this Honorable Court to unfreeze and permit the Plaintiff to have unfettered access to her Bank Account Domiciled with the Defendant.***



Despite the Defendant's contention that it acted pursuant to the Central Bank of Nigeria (CBN) Circulars of 11th June 2015, 13th September 2018 and the terms and conditions agreed by both parties respectively, the trial court answered questions 1 and 3 in favor of the Plaintiff/Respondent and granted reliefs 1,3, and 4 sought by the Plaintiff/Respondent. The Defendant/Appellant, being dissatisfied with the decision of the trial court, appealed to the Court of Appeal.

Gleaning from the grounds of appeal raised by the Appellant, the Court of Appeal in resolving the appeal before it adopted the issues raised by the Appellant as issues sufficient to dispose of the appeal before it. The said issues herein paraphrased are follows:

1. *Whether having regard to the evidence adduced at the trial (CBN Regulations, Terms and Conditions of account opening and operation etc.),*

the lower court decision was not wrong when it found in Favour of the respondent / plaintiff and granted the reliefs sought.



THE JUDGMENT OF THE COURT OF APPEAL; A NEW DISPENSATION IN BANK-ING DISPUTES AND OTHER INCIDENTAL MATTERS

The Court of Appeal, in resolving the above issues made reference to the decision of the lower court where the lower court held as follows:

“On the whole, I agree with the submission of the learned counsel to the plaintiff that the defendant unilaterally without any valid court order restrained, blocked or froze the plaintiff’s account with her. This act is a breach of the right of the plaintiff to the funds she lodged with the defendant.”

From the above, it is clear that the lower Court excluded from consideration both the CBN regulation BPS/DIR/GEN/CIR/02/004 of 11th June 2015 and regulation BPS/DIR/GEN/CIR/05/011 of 13th September, 2018 as well as the terms and conditions of account opening and operation which the Defendant relied on in the Lower Court.

The Court of Appeal in a well-considered judgement rightly held that the CBN Guidelines and Regulations are as good as binding laws for observance by banks and are applicable in any contract entered between a bank and its customers. As subsidiary legislations, all financial institutions must comply with the guidelines or regulations issued by the Central Bank of Nigeria. See **ACCESS BANK V. OGBOJA (2022) 1 NWLR (PT 1812) 547 @ 575 – 576.**

The justices of the Court of Appeal further held that a community reading of the terms and conditions between the customer and the bank viz a viz the CBN Guidelines and regulations, a bank would not have to go through the hurdle of obtaining a Court Order before it can restrict the account of its customer in the event of a suspicious or fraudulent transaction.



LEGAL ANALYSIS:

A careful consideration of the facts of the case and the decision of the Court of Appeal in the case at hand leaves us with a hand full of questions on pertinent issues such as the place of Section 34 of the EFCC Act¹ in cases of fraudulent transactions as well as the type of transactions envisaged by the CBN Regulations and the terms and conditions of account opening and operation, that would warrant the restriction of an account?

For clarity, the CBN Regulation and Guideline of 11th June 2015 BPS/DIR/GEN/CIR/02/004 provides for the establishment of an Industry Fraud Desk by all Deposit Money Banks. **Paragraph 3** of the said Regulation and Guideline empowers banks to via their fraud desk, **BLOCK AND / OR PLACE NO DEBIT RESTRICTIONS ON ACCOUNTS UPON RECIEPT OF FRAUD COMPLAINT.** The simple rationale for this ambit of power bestowed on the fraud desk of financial institutions is to curtail internet fraud, bearing in mind how billions of Naira can fly across continents in seconds.

On the other hand, reliance was also placed on the terms and conditions of account opening between the Bank and its customer to restrict the Bank account of the Respondent. In analyzing the said terms and conditions agreed by both parties, **Paragraph E** clearly states that **“THE BANK RESERVES THE RIGHT TO CLOSE, SUSPEND, FREEZE OR LIMIT ACCESS TO A CUSTOMERS ACCOUNT IF - (E) THERE IS A REPORT OF, OR ITS INVESTIGATIONS REVEAL THAT A CUSTOMER HAVE ENGAGED IN FRAUDULENT OR SUSPICIOUS ACTIVITY WITH HIS/HER KUDA ACCOUNT.”**

1 EFCC ACT 2004



From the above, it is observed that both the CBN Guideline and the terms and conditions share the same breath as to the nature/type of transaction which would necessitate invoking the power of a bank via its fraud desk to unilaterally block, freeze, or restrict a customer's account without any need to first obtain a court order as has been the norm or be exposed to any legal consequences for doing so. It is also without any doubt that the transactions spotlighted here are fraudulent or suspicious transactions as contemplated under the CBN Guidelines and terms and conditions between the bank and the customer and not erroneous transactions. The ambiguity that should have been cleared by the Court or by the draftsman of the CBN Guidelines is the question of what constitutes a fraudulent transaction. Is it simply a transaction that is an offspring of a fraudulent/criminal activity or whether this definition also extends to recipients of money based on the first fraudulent transaction i.e. 2nd and 3rd level beneficiaries. It is also unclear whether this definition of "fraudulent transaction" extends to 2nd and 3rd level beneficiaries who often give value for transactions that resulted in the payments made to them by the beneficiaries of these alleged fraud.



Regarding the restriction of accounts, it is suggested that the law should be adjusted and codified to match the strength and technique of modern financial crimes as well as keep up with current realities, as banks cannot be on the queue for a court order which takes days or weeks, if not months for assignment, hearing, and ruling on applications filed to restrict accounts of customers suspected to have committed fraud or benefitted from proceeds of such alleged fraud, while the beneficiaries of this monies dissipate the whole funds.

Over time, it has been the law that before a bank can place restriction on the bank account of a customer upon the suspicion of the commission of a financial crime either on its own volition or on the instruction of any law enforcement agency like the EFCC, an order from a competent Court must first be sought and obtained before such account can be restricted. See the case of **FCMB PLC v. COINAGE GLOBAL SERVICES² (2024) LPELR-62670(CA)**. For context, see **APPENDIX 1 (60B)** of the



Banks and other Financial Institutions Act³, which provides that *Notwithstanding anything contained in any other enactment, where the Governor has reason to believe that transactions undertaken in any bank account with any licensed bank are such as may involve the commission of any criminal offence under any law, he may make ex parte application for an order of the Federal High Court verifying on oath the reasons for his belief, and on obtaining such Court Order direct or cause direction to be issued to the manager of the bank where the account is situated or believed to be or in the alternative to the head office of such bank directing the bank to freeze forthwith all transactions.*

Section. 34 of the EFCC Act provides that (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 6 (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 two provisions cited above seem not to be in touch with the current realities of financial crimes in Nigeria. Hence, it is safe and right to say that the intentions of the drafts man of the CBN Regulations and Guidelines of 11th June 2015, 13th September, 2018 and that of the EFCC Act is one which does not envisage Nigeria’s major banking problems, one of which is the issue of system glitches and the different forms of fraudulent transactions in Nigeria. The former is a situation where there is a major system malfunction leaving the banks security compromised, leading to the uncontrollable/random transfer of monies from the bank to several accounts/beneficiaries some of which are orchestrators of the havoc while others are innocent beneficiaries. When this happens, most beneficiaries take advantage of the glitch and attempt to move the funds to other bank accounts or quickly dissipate the sums in order to wipe off all trails. In this situation, waiting for a court order would be medicine after death, and the said court order no matter its contents would most of the time be death on arrival and of no moment.

However, in order to strike a balance and avoid arbitrariness, beneficiaries who submit themselves to the bank and other law enforcement agencies for the purpose of clarifying their involvement should be allowed to operate their account, insofar as the minimum balance is up to the amount of the alleged fraudulent amount received. Also, a time frame should be set for banks and other financial institutions within which complaints of this nature would be resolved, which ideally should not exceed 48 hours. This can be achieved by way of legislative intervention.



CONCLUSION

It is on this footing that we commend the Court of Appeal for clearly and boldly holding that “a bank has the power to place a restriction on an account when fraud or suspicious activity is reported on that account. Unlike what was obtainable before, there is no need for a Court order before the restriction is placed”. This decision has no doubt strengthened the fight against the rampant financial crimes besetting the banking and financial ecosystem in Nigeria.

It is advised that considering the hierarchy of laws in Nigeria between a subsidiary legislation and an Act of the National Assembly, all Acts that regulate financial crimes and banking in one way the other should be amended or altered to suit the new trail set forth by the Court of Appeal in the case at hand.

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