



# Transadvisory Legal Successfully Represents Coinage Global Services Limited in a Landmark Case Affirming Court Order Requirement for Freezing Bank Accounts.



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## Introduction

On the 9th of July, 2024, the Court of Appeal, Abuja Division, delivered a landmark judgment in CA/ABJ/CV/51/2024 FIRST CITY MONUMENT BANK PLC v. COINAGE GLOBAL SERVICES LIMITED, reported in Law Pavilion Electronic Law Report (LPELR) 2024, 62670 (CA). The judgment re-affirmed the position of the law that a bank must seek and obtain an order from a court of competent jurisdiction before placing any form of restraint on a customer's account.

Transadvisory Legal ("the Firm") represented the Respondent - Coinage Global Services Ltd, in the Appeal. The judgment was decided in favour of the Respondent both at the trial Court and the Court of Appeal.

The judgment underscores the position of the law that a bank cannot unilaterally freeze or restrict a customer's account on mere suspicion of fraud without a valid Court order first had and obtained by a competent court. The power to grant this order is vested only on a Court of competent jurisdiction,,



therefore, where a bank suspects fraudulent activities in an account domiciled with it, it is obligated, in keeping with the provisions of Section 44(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), to obtain an order of a competent Court before taking any restrictive action against its customer's account.

In the succeeding subheadings, we shall highlight the suit's background and analyse the Court of Appeal Judgment in the light of the existing case law.

### Fact of the Case

Coinage Global Services Ltd (the Respondent) maintained an account with First City Monument Bank (FCMB) Plc (the Appellant). On the 3rd of December, 2021, while attempting to carry out an online banking transaction via the Appellant's mobile application to one of her clients, the Respondent discovered that her account, domiciled with the Appellant, had been placed on restriction without any prior notice or a court order authorizing such action. Upon inquiry, the Respondent was informed by an employee of the Appellant, specifically her account officer, that the restriction was imposed due to the receipt of a sum of NGN 30,000,000.00 (Thirty Million Naira only) from an unknown source, which was suspected to be proceeds of fraud.

Following the inquiry, the Respondent explained to the Appellant that she had no involvement in any fraudulent or illegal activities and clarified that she was engaged in legitimate currency trading (Bureau de Change). Despite providing this explanation, the Appellant refused to lift the restriction and instead informed her that the matter had been referred to the Commissioner of Police, Special Fraud Unit, for investigation, requesting her cooperation. As a law-abiding entity and a legitimate businessperson, the Respondent fully cooperated with the Commissioner of Police throughout the investigation, which ultimately exonerated her from any fraudulent dealings.

Upon the conclusion of the investigation and the Respondent exculpation, the Appellant unlawfully continued to maintain the restriction on her account without a valid court order. The Respondent therefore instituted an action for the gross violation of the Applicant's constitutional rights as guaranteed by



Sections 36(1) and (2) and 44(1) under the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

At the conclusion of the trial, the Court upheld the position of the Respondent that the placing a Post-No-Debit (PND) on the Respondent without a valid Court Order breached the Fundamental human rights as guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (as amended). The Court awarded the sum of NGN 500,000.00 (Five Hundred Thousand Naira only) as general damages against the Appellant for unlawfully restricting the Respondent's account without a valid court order from the 3rd of December, 2021, to the 17th of February, 2022, in violation of her fundamental human rights. The Court further awarded NGN 200,000.00 (Two Hundred Thousand Naira only) as the cost of the action against the Appellant.

The appellant dissatisfied with the decision of the Trial Court, appealed to the Court of Appeal.

### Summary of the Decision

The Court by a majority decision, decided inter alia, on the following issues:

1. Whether or not the bank has the responsibility of protecting its customer's funds in the face of impending cyber-attack.
2. Whether or not the trial Judge was right to give judgment on a matter before another Court of competent jurisdiction.

### Freezing of Account: Bank's Responsibility and Legal Procedure:

Freezing of an account entails the placement of certain restrictions or temporary ban on an account, thereby directly impacting a customer's ability from full access, use and enjoyment of their funds domiciled with a bank. Although, the account holder can continue to accept deposits, the holder is constrained from the activities of withdrawal or transfer from the account during this period. Banks often initiate account freezes when they have concerns about potential fraud or when there is suspicion that the account may be linked to fraudulent activities, money laundering, or terrorist financing.



While banks have a fiduciary duty to uphold a high standard of care in managing customer funds, they often face challenges in maintaining this balance when restrictions on accounts are necessary. It is imperative that any actions taken by the bank adhere strictly to legal guidelines to avoid any violations of the law.

On the first issue, it is the case that the Appellant from 3rd December, 2021 to 16th February, 2022; on a mere suspicion unilaterally without following the due process prescribed by law, placed restriction on the account of the Respondent. The Court of Appeal held that where there is a Banker/Customer relationship between parties, there exist a fiduciary relationship which imposes on the banker a duty to exercise reasonable care and skill in managing its customers' funds and carrying out their instructions. The duty owed by the bank to its customer is the duty to honour a customer's request for his money, as long as the money the bank holds for such a customer is sufficient enough to satisfy the customer's request. The Appellant is under obligation to grant the Respondent access to the fund in the Respondent's account once the funds available in the Respondent's account can cover the Respondent's demand. If the Appellant deemed it necessary for any reason that the circumstances surrounding the Respondent's account warranted the restriction of the account; it must first seek and obtain the order of a Court before it could do so. There must be a court order before a bank can freeze, place a caution or any form of restrain on the account of its customer. The failure of the Appellant to first seek and obtain the order of Court before placing the restriction on the account of the Respondent is a gross violation of the law notwithstanding the fact that it owes the Respondent the strict duty to protect its money domiciled in its bank.

The court held that *"The position is that no person or authority shall take compulsory possession of a moveable or an immovable property or interest of another thereto except in the manner and for the purposes prescribed by law. Therefore, a bank cannot unilaterally restrain its customer's account for whatever reason save by due process of law. There is no known law that empowers power to grant this order is vested only on a Court of competent jurisdiction, therefore, where a bank suspects fraudulent activities in an account domiciled with it in keeping with the provisions of Section 44(2) of the 1999 Constitution, it must obtain an order of a competent Court before restraining its customer's account. See GTB PLC V. ADEGOKE (2022) LPELR CA. Anything*



*to the contrary will amount to a violation of the rule of law. Suspicion, no matter how strong, cannot and should not replace legal procedure provided by law to uphold the fundamental human rights of citizens."*

### Commentary on the Decision

The Court of appeal further reinstate the decision that *"There is no known law that empowers a bank to unilaterally and without the order of a Court of competent jurisdiction addressed to it; restrain an account of a customer under any guise."* The implication of this decision is that there is limitation on the discretionary powers of banks and, by extension regulatory or law enforcement authorities that often act in concert with banks to freeze accounts. In **COMRADE KIRI MOHAMMED & ANOR v. COMRADE BENSON EKASA & ORS<sup>1</sup>**, the Court defines an Order as: *"A Court order is a direction issued by a Court requiring a person to do a thing or restraining a person from doing a thing. It is the pronouncement of the Court on any issue before it. It can come as a directive or as a pronouncement. It is binding on all parties it is set aside either by way of appeal or by the same Court that made the order."*

While banks are obligated to monitor and report suspicious transactions under the Money Laundering (Prevention and Prohibition) Act and the Central Bank of Nigeria (CBN) guidelines, they cannot take unilateral action to freeze an account, doing otherwise will amount to banks taking law into its own hands, thereby breaching the fundamental right of its customers. Bank act as custodians of customers' funds and must respect the customers' legal rights, except where expressly overridden by a lawful Court Order from a competent Court. This reinforce the principle that banks do not have judicial powers or known law backing it up to unilaterally restrict access to their customers property.

Even in situation where the regulatory agency such as the Economic Financial Crime Commission request a bank to freeze a customer's account, it is imperative to note that the law mandates that a court order must first be obtained, as outlined in Section 34 of the EFCC Act and Section 15 of the Money Laundering (Prevention and Prohibition) Act, 2022, before the commission can place surveillance on the bank account of such customer of the bank in a bid to identify and locate proceeds, properties, objects or other things related

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<sup>1</sup> (2022) LPELR-57133(CA)



to the commission of an offence under the Act or any other law. The most a bank can do in response to an EFCC directive is to temporarily halt suspicious transactions for up to 72 hours without a court order, as permitted by Section 7 of the Money Laundering Act.

Upon the expiration of the 72 hours, should the EFCC need to continue its investigation, it is essential that a court order is secured to maintain the freeze on the account. If such an order is not obtained, the financial institution is required to lift the freeze, safeguarding the fundamental rights of the account holder. See **UBA PLC V. A-G BENUE STATE & ORS<sup>2</sup>** and **UNITED BANK FOR AFRICA, PLC V. ERIBA JUDE-BELA EJE & ORS (2022)<sup>3</sup>**.

In special and rare cases, the CBN may issue specific directives to freeze account where systemic risks are involved. Even in such circumstance Section, 97 of the Banks and Other Financial Institution Act (BOFIA) 2020, empowers the CBN Governor to make an ex-parte application to the Federal High Court for an order freezing any account where it has reasons to believe that the transactions undertaken in any account with any bank, specialized bank or other financial institutions are such as may involve the commission of any criminal offence under any law of the Federal High Court verifying on oath.

#### **The inconsistency of the CBN guideline in BPS/DIR/GEN/CIR/02/004 with Section 44 of the 1999 Constitution.**

The Central Bank of Nigeria (CBN), through its circular BPS/DIR/GEN/CIR/02/004 dated June 11, 2015, titled 'Establishment of Industry Fraud Desks,' mandates Deposit Money Banks (DMBs), Mobile Money Operators (MMOs), switches, and all payment service providers to establish industry fraud desks within their organizations.<sup>4</sup> These desks are responsible for addressing complaints related to fraudulent transactions and are authorized to impose 'No Debit' restrictions or block accounts upon receiving fraud complaints. However, this directive has raised potential issues regarding its consistency with Section 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

It is without dispute that the Circular is an effort at combatting fraud within the banking industry to enable swift and prompt action to mitigate the risk of fraud,

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<sup>2</sup> LPELR-58695 (CA)

<sup>3</sup> (2022) LPELR-57973 (CA)

<sup>4</sup> <https://www.cbn.gov.ng/out/2015/bpsd/circular%20on%20the%20establishment%20of%20industry%20fraud%20desk.pdf> accessed on the 17th of December, 2024.



protect victims, and maintain the integrity of the financial system. However, paragraph 3 of the services to be offered by the frauds desk which empowers the fraud desk, to "Block and/or Place No Debit restrictions on accounts upon receipt of fraud complaint" literally without any court order raises significant concerns. This provision effectively usurps the judiciary's authority, as the unilateral actions taken by banks under this directive amount to an arbitrary deprivation of property rights. The absence of judicial oversight before imposing such restrictions renders this provision inconsistent with Section 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Section 44(1) provides that:

***"No moveable property or any interest in an immovable property shall be taken possession of compulsorily, and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that requires the prompt payment of compensation."***

This provision essentially safeguards individuals from arbitrary seizure or interference with their property rights, without due process of law. While there are exceptions, these exceptions are generally confined to circumstances involving typically involve public interest, emergencies, or national security, and they must be justified under law and accompanied by procedural safeguards. Per Abubakar, JCA advising financial institutions in **GTB v. AKINSIKUN ADEDAMOLA & ANOR**,<sup>5</sup> held that: "Our financial institutions must not be complacent, reticent and toothless in the face of brazen and reckless violence to the rights of their customers. Whenever there is specific provision regulating the procedure of doing a particular act, that procedure must be followed".

This Circular conflict with constitutional guarantees, as Section 44 stipulates that any compulsory restriction of property rights, such as freezing an account must comply with the due process of law. However, many banks, acting under this Circular, tend to place a Post-No-Debit (PND) restriction on accounts upon suspicion of fraud without obtaining a prior court order or adhering to legal procedures. Section 44 of the Constitution emphasizes that any interference with property rights must follow due process of law. The unilateral freezing

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<sup>5</sup> (2019) 5 NWLR (Pt.1664)



of accounts without judicial approval undermines the procedural safeguards guaranteed by the Constitution.

Section 44 requires that any compulsory acquisition or restriction of property rights must be accompanied by provisions for prompt compensation. The CBN guideline does not address situations where accounts are unjustly frozen or wrongly flagged, leaving affected account holders without recourse to compensation, further deepening its inconsistency with the Constitution.

Another issue that raises potential inconsistency with the Constitution is the violation of presumption of innocence contrary to Section 36(5) of the Constitution of the Federal Republic of Nigeria (as amended). Restricting access to an account based solely on a mere suspicion on fraud allegation arguably undermines the presumption of innocence enshrined in the Nigerian Constitution. Until a court determines culpability, imposing a “No Debit” order might be seen as punitive rather than preventive, creating a constitutional tension. It is the role of the court to determine and pronounced that a fraud has occurred, which further supports the necessity of obtaining a court order before placing a constraint on a customer account.

The Constitution vests the judiciary with the authority to adjudicate matters relating to property rights, ensuring that matters are handled in a manner consistent with legal principles and due process. Therefore, the act of the CBN guideline bypassing the judicial role, authorizing banks to take what amounts to quasi-judicial actions in blocking accounts could be interpreted as an administrative overreach, this might render the guideline ultra vires in the context of constitutional law.

While it could be argued that Section 44 (2) (k) of the Constitution allows for interference with property rights in the interest of the public or for protecting the rights of others, as its primary objective of the Circular is to address the pressing issue of financial fraud and protecting/safeguarding the financial system and victims, it is crucial that its implementation does not violate constitutional protections.

To reconcile the potential conflict, the guideline could be amended to mandate

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banks to obtain a court order before placing a “No Debit” restriction, ensuring compliance with due process, otherwise, to accommodate this, would be to amend the provision of the constitution. This approach would involve that a bill of such be proposed and passed by a two-thirds majority of the Senate and House of Representatives. The bill must be approved by the states House of Assembly of at least two-thirds of the 36 states.

The CBN guideline under BPS/DIR/GEN/CIR/02/004, although well-intentioned, presents significant risks of inconsistency with Section 44 of the 1999 Constitution, particularly regarding due process and property rights. Without judicial oversight, safeguards against abuse, and mechanisms for redress, the directive could face legal challenges. Striking a balance between combating financial fraud and upholding constitutional rights is essential to ensure both the integrity of the financial system and the protection of individual liberties.

The judgment in **FCMB Plc v Coinage Global (SUPRA)** underscores the fact that banks can no longer hide under the guideline in circular BPS/DIR/GEN/CIR/02/004 regulation and BPS/DIR/GEN/CIR/05/011 dated the 13th day of September 2018, regulation that referenced the later in paragraph 10.3 (wrong transfer due to fraud), to temporarily freeze and put a restriction on their customers account. The law is that, such acts must be backed up with a valid order of court in line with Section 6 of the Constitution of the Federal Republic of Nigeria (as amended).

### Abuse of Court Process

A common legal issue associated with the freezing of accounts by banks arises when an aggrieved customer files a lawsuit against the bank for restraining their account, particularly in the absence of a prior court order. In such cases, banks often raise an objection, citing abuse of court process, and urge the court to strike out the matter on the grounds that the bank has already instituted a related action before the court. In determining what constitute an abuse of court process, the Court of Appeal in the instant suit held that ***“There are no hard and fast rules in detecting the absence or presence of abuse of Court process in an action. A Court is enjoined to examine each case, predicated on***



*its facts and circumstances, in order to ascertain if it displays an abuse of Court process or not. The factual antecedents of each case have to be matched with the negative elements of abuse of Court process. The barometer to gauge the existence of abuse of Court process is the presence of a multiplicity of suits bordering on the same issues and subject matter between the same parties". See BI COURTNEY LTD V. ASO SAVINGS AND LOAN PLC (2023) 17 NWLR (PT. 1912) 1 CA.*

On the Second issue, the major thrust of the Appellant's case was that by virtue of an existing case with Suit No. LD/5384/2021(Exhibit FCMB3) between the Appellant herein (First City Monument Bank Plc) as the Applicant and one Salimon Yisau Ojo & 7 Ors; with the Respondent, as the 8th Respondent before the Lagos State High Court, the subsequent institution of a this case by the Respondent against the Appellant alone in the High Court of FCT amount to an abuse of court process and ought to be struck out.

The Court of Appeal upholding the position of the Respondent, and distinguishing the case instituted in Lagos State High Court by the Appellant from the judgment appealed against, held that it is without dispute that the part of the suit determined and decided on, upon which this appeal lies is entirely different from the matter pending before the Lagos State High Court. The subject matter of the suit of the Respondent, as determined by the trial Court in the suit subject of this appeal, does not in any way constitute or amount to an abuse of Court process. The reliefs of the two referred suits show that the sole subject matter of the matter instituted in Lagos State High Court was the reversal of the sum of monies allegedly fraudulently transferred into the Respondent's account domiciled with the Appellant. The issue therein was whether the operation of the Respondent's account domiciled with the Appellant is subject of fraud. On the other hand, the suit which judgment is subject of this appeal, has the fundamental human right of the Respondent as the principal subject matter, the issue being the illegality of the freezing of the Respondent's account domiciled with the Appellant. So strictly the subject matters are not the same; the parties are also not the same. Specifically, Per Uchechukwu Onyemenam, J.C.A. (Delivering the Leading Judgment), held that ***For there to be an abuse of Court process owing to multiplicity of actions; both the parties and subject matters must be the same and not just similar. The***



*conditions are conjunctive and not disjunctive.*

Following the decision of the Court of Appeal, when a restriction is placed on a customer's account without a court order, the customer's institution of a suit in a competent court to challenge the infringement of their fundamental rights will not amount to an abuse of court process. This holds true even if the bank has already instituted an action against the customer's account for alleged fraud, provided that the principal subject matter and reliefs sought in both cases are not identical, despite the parties being the same.

## Conclusion

The freezing of accounts is a sensitive issue that requires strict adherence to the rule of law. Consequently, banks must ensure their actions are supported by a valid court order before placing a Post-No-Debit (PND), caution, or any form of restraint on a customer's account. Banks must exercise caution and operate within the confines of the law, regardless of the urgency or circumstances warranting the restriction. Failure to do so may expose them to legal consequences. By prioritizing legal compliance, banks not only protect themselves from liability but also uphold the trust and confidence of their customers.