THE CONSTITUTIONALITY OF UNILATERAL RESTRICTION OF INDIVIDUAL AND CORPORATE BANKS ACCOUNTS BY DEPOSIT MONEY BANKS AND ANTI-GRAFT AUTHORITIES IN NIGERIA*

Abstract

In recent years, the piquancy and frequency of occurrences of unilateral restrictions on banks customers' accounts, otherwise known as account freezing, has assumed a dangerous and worrisome dimension. This is usually ignited by alleged suspicious transactions in connection with such accounts. The 1999 Constitution of the Federal Republic of Nigeria (as amended) is the grundnorm and the *fons et origo* (the source of all other laws) of the land. Sections 36(5) and 43 of the said constitution preserves the fundamental rights of Citizens to presumption of innocence until proven guilty by a competent court of law and right to acquire and own moveable property anywhere in Nigeria. Ironically, the current trend of unilateral freezing of customers' bank accounts appears to be a flagrant infraction of the above fundamental rights of the citizens of Nigeria. This article therefore conducts a surgical operation of the relevant laws to assess the legality or otherwise of the current practice in the nation's financial institutions.

1. Introduction

Bankers customers relationship is a legal transaction which is contractual in nature[1]. Both bankers and customers have their corresponding legal rights and obligations. At the epicenter of Bankers obligations the safety of customers' deposits and unfettered access of customers to their funds on demand. A breach of this obligation will attract damages against banks.

At present, this right of bank customers is impugned with impunity by banks and anti graft agencies.

This article analyzes the extant laws in Nigeria to ascertain the legality of such unilateral embargo on customers accounts. The article is structured into six segments namely, abstract, introduction, obligations of banks to customers, analyses of extant laws, jurisdiction and conclusion.

2. Overview of Legal Obligations of Banks to Customers

The obligations of banks to her customers are sacrosanct. These sacred legal duties are well settled in a litany of judicial authorities, including *Nwosu v Zenith Bank Plc*[2]*; Balogun v N.B.N Ltd*[3]*; Agbonmagbe v C.F.A.O*[4]*; FBN Plc v Associated Motors Co. Ltd*[5]*; Agbanelo v U.B.N;*[6] *and Ekeorele v Union Bank of Nig. Plc.*[7] In *Nwosu v Zennith Bank Plc* (*Supra*), the court of Appeal chronicled the duties of a banker to a customer under a banker customer relationship as hereunder mentioned. Bankers owe their customers duties to:

(i) Receive money, cheques and other instruments;
(ii) To pay cheques and other withdrawal authorities properly drawn by the customer during banking hours at the branch where the account is kept or elsewhere as agreed;
(iii) To maintain secrecy concerning customer's account and other affairs;
(iv) To give reasonable notice to a customer before closing his account;
(v) To pay agreed interest on deposits;
(vi) To ensure that customer's money is safe to avoid wrongful dishonor of its customer's cheques;

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[1] *A.I. Inv. Ltd v Afribank Nig Plc* (2013) 9NWLR (Part 1359) p 380 Ratio 5.
[2] [2015] 9NWLR (part 1464) p.314 Ratio 5.
[3] [1978] 3SC P.155
[4] [1966] 1SCNLR P.367
[5] [1998] 10 NWLR (Part 570) p. 441
[6] [2000] 7NWLR (Part 666) p.534.
[7] [2000] 2CLAR p.229

(vii) To render statements of account to customer periodically or upon request; and
(viii) To exercise proper care and skill in carrying out the business he has agreed to transact for his customer.

Obligation in paragraphs b, c and f are the most vital to the customers. A breach of any of the above obligations renders the bank liable in damages. Accordingly, any wrongful dishonor of customer's cheque when the account has sufficient funds attracts damages. See *Nwosu v Zennith Bank Plc* (*Supra*) Ratio 9.

The general principle of banker customer/relationship requires that a bank which collects deposit from a customer is a debtor to the customer and an agent to the customer. Once a customer deposits money with a bank, the bank owes a legal duty to pay back the money as a debtor to the customer, the creditor.

The customer is the principal while the bank is the agent. It follows that the bank is under legal obligation to honour any cheque or other instruments drawn by the customer in so far as there is enough funds in the customers account. A breach of this legal obligation has consequential damages against the bank. See the case of *Oyerinde v Access Bank Plc*[8] *UBA v Marcusa;*[9] *Citibank of Nig. Ltd v Ikediashi.*[10] The above general principle is not however, an absolute rule. Existence of any legal impediment may justify refusal of a bank to honour withdrawal demand by a customer. See *Diamond Bank Ltd v Ugochukwu.*[11]

2.1 Overview of Legal Obligations of a Bank Customer

2.1.1 Obligation to Make Demands on the Bank

A customer who deposits his money, documents or other valuables with the bank, is entitled in to recover same from the bank on an agreed date and or time or whenever the customer so desires. Where there is an understanding at the time of deposit of the money, documents or other valuables on the date and or time of recovery, then at the time of entering into the contract to make the deposit there is a future determined date of collection of the money, documents or other valuables. This obligation is extended to allow or permit the customer to demand for a post-dated payment under a post-dated cheque. Where under the terms of the agreement or the contract between the bank and the customer or by the custom of the bank, the customer is to demand orally or in writing, the return of the money, documents or other valuables, by way of reminding the bank of the date previously agreed, the customer shall do so. In practice, the bank already design a template in the form of a prescribed form to be completed by the customer before recovering such valuables.

It is possible for a customer to make a deposit of his money, documents or other valuables with the bank, without at that time of deposit agreeing with the bank on the date and or time of collection. In this circumstance, the customer on desiring to collect the money, documents of other valuables shall notify the bank of such desire.[12]

Accordingly, once a customer desires to collect his/her money, documents or other valuables at the bank of deposit, the customer has an obligation to make a demand for them. A customer must compulsorily fulfill this obligation before he/she would be due to collect the money, documents or other valuables in default of which the customer is entitled to claim breach of contract for failure of the bank to deliver it to him/her. This is so because the bank would not be expected to allow the collection of the money, documents or other valuables for which no demand has been made on it in

[8] [2014] LPELR -23461 (CA)
[9] [2015] LPELR-40397 (CA)
[10] [2014] LPELR-22447
[11] [2008] 1NWLR (part 1067) p.1
[12] Ajanwachukwu, MA, *Banking Law and Regulations in Nigeria* (Tink Graphics, Enugu, Nigeria, 2016) 265.

respect thereof. Therefore, the bank would also not be liable in refusal to re-deliver when no demand for same has not been made on it. Without demand, the bank would not know and cannot know that the customer desires a return of the valuables or documents. The bank cannot grant a request or demand that has not been made and is not expected to from time to time, ask customer whether he/she was desirous of collecting his/her money, documents or other valuables.
It follows that a bank has an obligation to return the money, document or other valuables of the customer with it, the customer has the obligation to demand from the bank a return of them.

2.1.2. Obligation Not to Facilitate Fraud
A customer is duty bound not to make demand that is tainted with illegality such as money laundering in connection with his account. The customer must ensure that the slip(s) is/are drawn in such a manner that extra figures or words cannot be inserted therein by a fraudulent paying cashier of the bank and the excess sum of money occasioned by the inserted figures withdrawn and kept by the fraudulent paying cahier for himself or herself. If it is cheque that a customer has drawn up, payable to him, similar precaution must be taken, to avert the advantage that might be taken of it by fraudulent paying cashier of the bank. Where the cheque(s) is/are to be presented for payment by a third party and the proceeds returned to the drawer or the payee, there is the extra risk of the insertion of extra figures or words in the amount to be paid out by the bank. With all these risks, a customer of a bank has an obligation to draw up the instrument of withdrawal of money from the bank (Withdrawal slip(s)) or cheque(s)) in a manner that could not facilitate fraud.

If a customer draws up an instrument in such a manner that could facilitate fraud and it indeed facilitates fraud, the bank that has paid the fraud not noticing the fraud would properly debit the account of the customer. A customer who therefore draw up his/its instrument in a manner that facilitated fraud, which fraud was not discovered by the bank does so at his/her risk.[13]

2.1.3. Obligation to Notify the Bank Promptly of Fraud
A bank customer owes a duty to inform the bank of any fraudulent transaction without delay. A banker who has acted carefully, reasonably and prudently must inform the customer of any suspected withdrawal instrument, and in its own interest must refuse to honour payments on withdrawal instruments that are tainted with fraud, the customer is under obligation to inform the bank and promptly too, of any fraud on his/her account, by reason of forgery of figures and or signatures on withdrawal instruments. If a customer fails to inform the bank of fraud promptly when the customer would have stopped payment and the bank makes payment, the customer cannot be heard to complain that his/her account was improperly debited.[14]
In *Nigerian Advertising Service Ltd v United Bank for Africa Ltd*,[15] it was held that estoppel may arise through the breach by a customer of his duty to his banker to inform him that he has discovered that his signature is being forged on cheques. If a customer fails in this duty he represents in effect that later (sic) signatures, though in fact forged, are genuine, and he will be stopped from contending against his banker that payment should not have been made on such signatures.[16]

A customer can only complain of debiting his/her account on payments made on a forged withdrawal instrument(s) if the bank had made the payment, but not otherwise. Consequently, if no disclosure of fraud or forgery was made by a customer but as at the time of non disclosure, the bank has not made any payment, the customer cannot be said to be liable for non-disclosure. In *Nigeria Advertising Services Ltd v. United Bank for Africa* (Supra), the court held that:

[13] In *London Joint Sock Bank v Macmillan & Arthur* [1918] AC 777.
[14] In *Greenwood v Martins Bank* (1933) AC 51.
[15] [1933-1966] 1 NBLR 365.
[16] Ratio 1.

> The mere silence of the customer for a period after learning of the forgery of his signature during which time the position of the bank is not altered, cannot be held to be an admission of liability.[17]

2.1.4 Obligation to Pay for Facility Granted

A customer to whom the bank has advanced facility by way of loan or overdraft has an obligation to pay for same, on the due date. This is so because a debtor must satisfy his indebtedness, more so, in the case of banker-customer relationship, the facility advanced to a customer is part of the fund of other customers of the bank, which the bank is bound to pay to them on demand of same or part thereof. Again, an overdraft to a customer is not a gift to such customer, neither is it a charitable gift to the customer. It is purely business concern principally established to make a profit out of trading on money.

In a bank-customer contract for the advance of a facility to a customer, one of the issues most certainly agreed on is the time of payment. Once the period of payment is due, the obligation of the customer to repay crystallizes. Where therefore the time is due and the obligation of the customer to pay also due, but the customer is in default, the banker may as a result of breach of the obligation proceed against the customer to enforce the remedies available to it, pursuant to the agreement reached between it and the customer on the grant of the facility.

2.1.5 Obligation to Pay Bank Charges and for the Service Rendered.

While the deposit of valuables and money in a bank in a safe custody are services that the bank render and the customer to whom they are services that the bank render and the customer to whom they are rendered pay for, all other services rendered to the customer in addition to the safe keeping, attract additional payment by way of bank charges and payment for services rendered. This is so because nothing is free under the planet earth.

Bank charges and payment for services rendered come by way of bank deductions from the money of the customers with them for all manner of services rendered to the customers, including sending valuables to the person(s) instructed by the customers, of alert of credit or debit or month end balance to the customers, issuance of cheque books to the customers, 'managements of the facility' granted the customers etc. Almost always, the charges and payments that are to be made are within the exclusive knowledge of the bank and never the customer, who only knows that he/it has deposited valuables with a bank or opened an account with a bank and expects the bank to obey his/her instructions with respect to the valuables or that his/her instruments shall be honoured and that facility would be granted to him/her. The attention of the customers are almost always not drawn to the charges and payments that shall be made on the various services that the banks could render to them. It is only when the bank desires to know from the customer, whether the customer is interested in a particular service of the bank that the bank may disclose to the customer, the cost implications of rendering such services. For instance, in some banks, credit and debit alerts are not sent to customers, unless the bank has disclosed the availability of such service to the customer and both agree. While making the disclosure, the bank reveals to the customer the cost implications so that the customer decides whether or not, that would be part of the services that the bank shall render to him/her.

Although the banks do not agree with customers on numerous charges and payment for services rendered and do not ask to be paid but just debit the account of other customer with money deducted as payment for bank charges and for services rendered, the customers do not raise any objection. They acquiesce. The reasons for the acquiescence may well include that the customers think that such deductions are negligible and should be ignored or that the deductions are negligible and should be

[17] Ratio 2.

ignored or that the deductions are worth being deduction, in cognizable of the services being rendered by the banks for which the deductions have been made, or that it is the practice or custom of banks to make such deductions, or that to allow the deductions and continue the bank-customer relationship is a preferred option to discontinuing the relationship just to avoid the deductions. Whatever the reason is or reasons are, once a customer has acquiesced to a particular deduction, grave doubts are expressed as to whatever on a subsequent transaction, he/she can object to a deduction made in a similar transaction. Such a customer would on a subsequent transaction be deemed to have by conduct and implication accepted that in transactions of that nature, his/her account should be debited with charges.

3. Laws on Bank Account Freezing in Other Common Law Jurisdictions

3.1. England and Australia

At common law, account freezing was not well regulated until 1975. However, a dramatic change occurred on 22 May 1975 when the English Court of Appeal set off arguably the greatest piece of judicial activism in modern times.[18] That judicial pronouncement was handed down in the case of Nippon Yusen Kaisha v Karageorgis.[19] In this case, the court granted *ex parte* freezing order. The reason was that otherwise the assets were in danger of being removed from the jurisdiction so as to frustrate a money judgment which Japanese shipowners had against Greek charterers for the hire of a ship. The charterers had disappeared but had funds in London banks. The Court of Appeal indicated that the order be notified to the banks. This order is known as freezing injunction in England.The above decision was followed in a month later by the Court of Appeal in a similar emergency case that arose in *Mareva Compania Naviera SA v International Bulkcarriers SA* (The Mareva).[20] In that case, shipowners were owed money for charter hire and the charterer had money in a London bank. An ex parte interim freezing injunction was made stopping the funds from being taken out of the jurisdiction. The notice of the said injunction was served on the bank. For decades, this new form of relief was called a Mareva injunction. At present, it is known as freezing injunction in England and freezing order in Australia. These terms now appear in the respective rules of court.

3.1.1 Court Rules and Practice Notes

In Australian jurisdiction, bank account freezing order is not a product of Act of Parliament but were developed from harmonized rules of court and practice notes. Since 2006, such rules and practice notes have been adopted by all Australian superior courts. Such harmonised rules and practice notes are useful because they restate the case law in a form which offers clear guidance and certainty to litigants. They were drafted by the Harmonisation Committee of the Council of Chief Justices of Australia and New Zealand. The Harmonisation Committee attempts, not always successfully, to ensure that important aspects of procedure are uniform or harmonized throughout the Australian jurisdictions.[21]

In England the freezing injunction came to be recognized in Section 37 of the Supreme Court Act 1981, which provides as follows:

(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so;

(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just; and

[18] Justice Peter Biscoe, [2011]. "Transnational Freezing Orders", a Paper delivered at Magdalen College, Oxford to the Post-graduate course on Commercial Conflict of Laws conducted by Sydney Law School. P 1

[19] [1975] 1 WLR 1093, [1975] 3 ALL ER 282, (1975) 2 Lloyd's Rep 137.

[20] [1975] 2 Lloyd's Rep 509, [1980] 1 All ER 213

[21] *Ibid.,* Justice Peter Biscoe Transnational Freezing Orders p. 2.

(3) The power of the High Court under subsection (1) to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the High Court, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled, resident or present within that jurisdiction.

Also Section 25 of English Civil Jurisdiction and Judgments Act 1982, as extended in 1997, empowers the High Court to grant all forms of freestanding interim relief, including freezing injunctions and search orders, in relation to substantive proceedings anywhere in the world unless, in the opinion of the court, the fact that the court has no jurisdiction apart from this section in relation to the subject matter of the proceedings in question makes it inexpedient for the court to grant it. The original, Section 25 conferred a statutory jurisdiction to grant freestanding interim relief of any nature, including Mareva relief, but only in aid of proceedings brought or to be brought in a Contracting State to the Brussels Convention 1969.
Section 25 was extended to Lugano Convention countries by the Civil Jurisdiction and Judgments Act 1991. In 1997 however, (after Mercedes Benz AG v Leiduck[22]) it was extended to proceedings anywhere in the world by the Civil Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1997.

In the past, a lacuna existed in English law because the House of Lords in The Siskina[23] held that an English court has no jurisdiction to grant a Mareva injunction against foreign respondent otherwise than in support of a cause of action which the English court has jurisdiction to enforce. The decision was reversed by Section 25.
In England the freezing injunction and assets disclosure order is recognized in Rule 25 of the Civil Procedure Rules 1998, which relevantly provides for interim remedies, to wit:
Orders for interim remedies 25.1 — (1) The court may grant the following interim remedies … (f) an order (referred to as a 'freezing injunction (GL)'): (i) restraining a party from removing from the jurisdiction assets located there; or (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;
(g) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction;
… (4) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.
Contrary to the Australian harmonised rules and practice note, the English rules and Practice Direction 25A, Interim Injunctions refer only briefly to freezing injunctions. The main value of the English practice direction lies in its example form.

3.2 Procedure for Award of Account Freezing Order in England and Australia

3.2.1 Ex Parte Application

It is a required procedure for freezing orders to be made ex parte in the first instance and for the proceedings to be made returnable before the court within a day or two thereafter. The rationale is that prior notice may prompt the feared dissipation or dealing with assets. On the essential elements for grant of freezing ex parte order, the harmonized rules of court recognizes that a claimant for a freezing order must prove two things, to *wit*:
(i) that it has a good arguable case; and
(ii) that there is a danger that a judgment or prospective judgment will be wholly or partly

[22] [1996] AC 284.
[23] *Siskina v Distos Compania Naviera SA* (The Siskina) [1979] AC 210.

unsatisfied because the respondent or another person might abscond or their assets might be removed from the jurisdiction or disposed of, dealt with or diminished in value.

3.2.2 Undertaking as to Damages

Every applicant for an interim freezing order is normally required to give the court an undertaking in damages (in England, it is called a cross undertaking). The purpose is to ensure that the respondent and third parties will receive compensation for any loss they suffer by reason of the grant of the interim freezing order if it eventuates that it ought not to have been granted. The form of the undertaking is set out in the example form of freezing order in the Australian practice note and the English practice direction.

3.2.3 Disclosure of Material Facts

It is mandatory for a claimant to completely disclose material facts whenever freezing orders are sought *ex parte*. Failure to make full disclosure may result in the order being refused, or vacated and the claimant's undertaking in damages being called upon. The duty of disclosure is stated in the Australian harmonized practice note at [19]. The leading English case is *Brink's Mat Ltd v Elcombe*.[24] The following principles stated by Ralph Gibson LJ were approved by the Court of Appeal in *Behbehani v Salem*[25] (omitting citations):

(1) The duty of the applicant is to make a full and fair disclosure of all the material facts.

(2) The material facts are those which it is material for the judge to know in dealing with the application as made: materiality is to be decided by the court and not by the assessment of the applicant or his legal advisers.

(3) The applicant must make proper inquiries before making the application. The duty of disclosure therefore applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had made such inquiries.

(4) The extent of the inquiries which are held to be proper, and therefore necessary, must depend on all the circumstances of the case including (a) the nature of the case which the applicant is making; and the order for which application is made and the probable effect of the order on the defendant; and (b) the degree of legitimate urgency and the time available for the making of inquiries.

(5) If material non-disclosure is established the court will be astute to ensure that a plaintiff who obtains an *ex parte* injunction without full disclosure is deprived of any advantage he may have derived by that breach of duty.

(6) Whether the fact not disclosed is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depends upon the importance of the fact to the issues which were to be decided by the judge on the application. The answer to the question whether the nondisclosure was innocent, in the sense that the fact was not known to the applicant or that its relevance was not perceived, is an important consideration but not decisive by reason of the duty on the applicant to make all proper inquiries and to give careful consideration to the case being presented.

It is obvious from the laws of the above common law jurisdictions that bank account freezing is not a unilateral act. It requires an order of the court. Such orders are usually granted *ex parte*, upon meritorious application by applicant. The writer shall now proceed to consider Nigerian legislations on the matter.

4. Analyses of Extant Laws on Account Freezing in Nigeria

For a comprehensive understanding of the current position of the law on the subject matter of inquiry in this article, it is expedient to reproduce the tangential provisions of the statues under investigation.

.[24] [1988] 1 WLR 1350; 3 ALL ER 188.

[25] [1988] 1 WLR 723 at 726, [1989] 2 All ER 143.

The statutes include Bank and Other Financial Institutions Act, 2020, Money Laundering (Prevention and Prohibition) Act, 2022, Economic and Financial Crimes Act, 2004 and Corrupt Practices and Other Related Offences Act, 2000.

First, Section 15(1) of the Money Laundering Act, 2022, Provides thus 'A competent authority under an order of the Federal Flight Court Obtained upon an *ex-parte* application, supported by a sworn declaration, made by an authorized officer of the competent authority justifying the request, may in order to identify and locate proceeds, properties, objects or other things related to the commission of an offence under this Act, or any other law; place any bank account or any other account comparable to a bank account under surveillance'.

Similarly, section 97(1) of Banks and Other Financial Institutions Act, 2020, provides as follows, 'Notwithstanding anything contained in any other enactment, where the Governor (Central Bank Governor) has reason to believe that transactions undertaken in any account with any bank, specialized bank or other financial institutions are such as may involve the commission of thy criminal offence under any law, their Governor may make an *ex-parte* application for an order of the Federal Flight Court verifying on Oath the reasons for the Governors belief, and on obtaining such court order, direct or cause a direction to be issued to the manager of the bank, specialized bank, or other financial institutions where the account is situated, or believed to be, or in the alternative, to the head office of such bank … directing a bank, specialized bank, or other financial institutions to freeze the account'.

In the same vein, Section 34(1) of the Economic and Financial Crimes Act, 2004 reads thus 'Notwithstanding anything contained in any other enactment or law, the chairman of the commission or any office 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 enactment 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'.

On its part, Section 45 of Corrupt Practices and Other Related Offences Act, 2000, reads as follows, 'Where the chairman of the commission is satisfied on information given to him by an officer of the commission, that any movable property, including any monetary instrument, or any accretion thereto which is the subject matter of investigation under this Act, is in possession, custody or control of a bank or financial institution he may, notwithstanding any written law or rule of law to the contrary by order direct the bank or financial institution not to part with, deal in, or otherwise dispose of such property, or any part thereof until such other is evoked or varied'.

The common denominator in all the above provisions is the requirement of *ex-parte* order of the Court, expect section 45 of the ICPC Act, which can hardly be supported by any law.
A cursory analysis of the foregoing provisions of the law reveals that only section 45 of the ICPC Act gave absolute power to the commission chairman to place surveillance on suspicious bank account without recourse to court order first sought and obtained. It is the writter's considered view that the foregoing albatross ICPC Act is *ultra vires* the powers the legislature, and rides roughshod to recent judicial pronouncements. Avalanche of judicial authorities abounds to show that no person or institution has power unilaterally to place a restriction on the account of a customer[26] In *GTBANK v Adedamola & Ors;*[27] Abubakar, JCA, (as he then was) categorically held that the EFCC under Section

[26] *Arogundade v Skyebank Plc* (2020) LCN114 & 93 (CA).
[27] [2019] LPELR-47310 (CA).

34 of the EFCC Act, has no power to instruct a bank to freeze the account of a customer without obtaining a court order. Similarly, in *Guaranty Trust Bank Plc v Odeyemi Oluyinka Joshua*,[28] the Court of Appeal held that the bank must ensure that there is an order of Court before it proceeds to freeze the account of any person. It further held that without an order of the Court, the EFCC cannot direct the freezing of the account of any person and where EFCC has not fully complied with the provisions of the law, the bank had no business obeying an unlawful directive.

Again, in *UBA Plc v Yahuza*,[29] it was held that it is trite law that customers monies in the hand of the banker are not in the custody or under the control of the customer and such money remains the property in the custody and control of the bankers, and payable to the customer when a demand is made. Thus, if anything happens to the money thereafter, for example, theft of money or unauthorized withdrawals, it is the banker, not the customer that bears the loss. See *Wema Bank Plc v Osilari;*[30] *Allied Bank of Nig. Ltd v Akubueze*[31] and *Bank of the North Ltd v Yau*[32]

A duty is placed on every bank to notify the customer of any status change on his account see the case of *British and French Bank Ltd v Opialeye*[33] and *Nwosu v Zenith Bank Plc* (*Supra).*
In fact, the recent decision in Arogundade v Skyebank (*supra*) is exhaustive on the issue that unilateral surveillance on bank account without court order is unlawful.

The writer finds the reigning arbitrary practice not only illegal, but unconstitutional, null and void. What is more, the practice is tantamount to conviction of an accused before trial. This is contrary to section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which guarantees the fundamental rights of every citizen to presumption of innocence until proven guilty by a competent court of law. In the instant practice, banks and anti graft agencies place the restriction before the suspect is charged to court. It is also a breach of fundamental right to own movable property without interference as guaranteed under section 43 of the Constitution.

4.1 Duration of the *Ex-parte* Order

It must be noted that even when an order is granted, it is made *ex-parte*. Ex-parte order has a life span of 7 days which is renewable for another 7 days after which it lapses. See Federal High Court (Civil Procedure) Rules, 2019.[34]
It is submitted that the proper approach is for the anti graft agencies to conclude their investigation, prefer a charge before the appropriate Court, and apply for interlocutory or prohibitory injunction restraining the accused and the bank from dealing with the account pending the final determination of the charge.

4.2 Exception to Court Order Rule

A new exception emerged under the Money Laundering Act, 2022. Section 7(6) thereof gave EFCC the power to block bank account without court order for 72 hours, where there is reasonable suspicion of frequency of transaction in connection with an account, or proceeds of crimes of money laundering or terrorism financing. Such temporary restriction lapses after 72 hours and banks are permitted to allow customers access to their funds. This was affirmed by the Court of Appeal in *UBA Plc v A.G Benue State & Ors.*[35]

[28] [2021] LPELR -53173 (CA).
[29] [2014] LPELR-23976.
[30] [2008] 10NWLR (Part 1094) p.150.
[31] [1997] 6NWLR (Part 509) p. 374.
[32] [2001] 5SC (Part 1) p. 121.
[33] [1962] LPELR-25173 (SC).
[34] Order 26 Rule 10 thereof.
[35] [2022] LPELR-58695 (CA).

5. Jurisdiction.

A chaotic situation pervades across the financial institutions in the ensuing confusion over the practice. It is common for police officer to rush and obtain order to freeze account from Magistrate's Court. This has no legal foundation whatsoever.

A community reading of section 251(1) (d) of the 1999 Constitution of Nigeria (as amended), section 34(1) of EFCC Act, 97(1) of Banks and Other Financial Institutions Act, 15 of Money Laundering (Prevention and Prohibition) Act and 52 of BOFIA, 2020, irresistibly shows that jurisdiction to freeze account is vested in the Federal High Court, High Court of FCT and the State High Court. Court is defined in section 46 of EFCC Act, 2004, to include Federal High Court, FCT High Court and State High Court. Therefore, it is not all comers' affairs and any order granted other that the categories of Superior Courts mentioned above is null and void.

6. Conclusion

It is safe to conclude after lucid analysis above that neither bank nor anti-graft authorities have the power to unilaterally freeze the account of a bank customer in Nigeria without a Court Order first sought and obtained. Both foreign laws and Nigerian statutes are in agreement that a court order is mandatory before a bank account can be frozen or restricted. Unilateral surveillance on individual bank account is unconstitutional, null and void. Damages shall lie against bank and anti-graft agency for unilateral restriction of bank account. Banks are duty bound to honour cheques, withdrawal slips demanded by customers once the account is funded. The jurisdiction to order for surveillance on bank accounts is vested on the Federal High Court, FCT High Court, State High Courts. EFCC can only unilaterally restrict bank account for a maximum of 72 hours, and e*x-parte* order abate after a maximum of 14 days.