

# THE LEGALITY OF FREEZING BANK ACCOUNTS WITHOUT THE ORDER OF A COMPETENT COURT OF LAW



# Introduction

It is common knowledge that banks owe their customers duty of confidentiality. This means that the details of the bank account and the customer will not be revealed or divulged to a third party, and transactions conducted through the bank account must be kept private from unauthorised persons. This confidentiality rule forms the bedrock of modern banking practice. With this duty of care, the bank is expected to protect the customers' interests; within the ambit of the law. However, the duty of care owed to customers can be defied if the defiance aligns with the law. For example, it is without a doubt that the duty may be lawfully avoided where a court of competent jurisdiction orders that a customer's account is placed on '**caution**'. In such an instance, the bank may depart from the duty of care without any accompanying liability. However, this has exposed many banks to legal disputes with their customers.

In recent years, we have heard a lot of cases in which banks in compliance with the directive of prosecuting government agencies, freeze a particular bank account, depriving the bank account owner of the right to use such account for withdrawal, deposit and other related transactions.

The question that has always come to our minds is whether or not the banks have the right to freeze their customer's bank accounts by mere directives of prosecuting/law enforcement agencies. This question will be the main issue for determination in this article.

## **WHEN IS A CUSTOMER'S ACCOUNT FROZEN?**

A bank account is frozen when the account is said to be under restriction. A frozen account suggests that certain activities cannot be carried out by the customer operating the bank account. For example, the frozen account can still accept deposits but cannot withdraw or transfer money.

The account is placed under restriction without any prior notice duly given to the account owner. This can be very frustrating and embarrassing, leading to declining in customer business and mental breakdown in other cases. In simple terms, whatever is deposited into the account stays put; it cannot go out until it is unfrozen. This action may be predicated upon the fact that the account is suspected of being used for fraudulent means, for any terrorist activity, money laundering, or the banks do not comprehend the financial transaction of the customer, etc.

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Banks must monitor all customers' accounts to ensure they strictly comply with bank rules and regulations. Similarly, it is pertinent to state that by the law of obligations, a contractual relationship exists between the banks and their customers, making it not only obligatory but legal for every bank to pay its customer on demand by the customer.

Therefore, any banking institution breaches her contractual obligations to the customer if it disallows the customer access to his account at any time.<sup>1</sup> This is because the contractual relationship imposes a duty of care on the bank, the breach of which will impose on the bank liability for negligence.<sup>2</sup>

More so, a bank has no power or vires under any guise to unilaterally or inherently restrict, restrain, freeze or place a Post-No-Debit (PND) Alert on a customer's account except by order of court first sought, obtained. The Court of Appeal in *Fidelity Bank V Bayuja Ventures Ltd* held that it amounts to lawlessness and brigandage for the bank to unilaterally freeze a customer's account without an order of a court of competent jurisdiction. That such act is not just illegal but also unconstitutional.<sup>3</sup>

Furthermore, it is illegal for banks to freeze a customer's account by a mere directive from any prosecuting agency of the government like the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and other Related Offence Commission (ICPC), and the Nigerian Police Force, etc. without first obtaining a valid and competent order of a court. This action is unlawful, and one is entitled to remedy in law. In a situation where a person can justifiably establish a case of unlawful and illegal freezing of his account by banking Institutions, the customer is entitled to general damages as required by the law <sup>4</sup>.

The premise upon which the above principle is based is that by virtue of sections 43 or 44 (1) (2) (e) (k) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), a customer's account has both a constitutional and property right. With

regard to ownership of moveable property, unlawful interference or compulsory temporary taking of possession of the property is unlawful except justified by a judgment or an order of the court or for the purpose of any examination, investigation or enquiry.<sup>5</sup>

Consequently, where a bank freezes its customer's account or places a PND on such customer's account on mere directive of prosecuting government agencies without recourse had to obtain a court's order, the act of the bank is null and void and the bank becomes liable to the customer for unlawfully infringement and interference with the customer's property for which damages may arise against the bank for enforcement of the fundamental rights of the customer provided and protected by the Constitution of the Federal Republic of Nigeria 1999 (As Amended).<sup>6</sup>

The Courts have decided in plethora of cases that before freezing customer's account or placing any form of restraint on any customer's bank account, a bank must be satisfied that there is an order of the court to freeze the account of a customer and without an order of court, freezing a customer's account constitutes flagrant disregard and violation of the right of a customer.<sup>7</sup>

If at any time an account was frozen before obtaining a Court order to freeze their account, the customer may apply to enforce their fundamental right just as was seen in the case of *G.T.B. Plc v. Adedamola*.<sup>8</sup>

1 *Diamond Bank Ltd V. Mocok Onu Nig. Ltd* (2019) All FWLR, Part 1001, para 4

2 *S.T.B Ltd v. Anumnu* (2008) All FWLR Part 399, page 409, para 2

3 *Mali v. S.T.B. Ltd* (2008) All FWLR, Part 399.

4 *G.T.B. Plc v. Adedamola* (2019)

5 NWLR (PT 1664) 30 5 Section 43 and 44 of the 1999 constitution of the federal republic of Nigeria as Amended.

6 *Fidelity Bank Plc v. Bayuja Ventures Ltd* (2012) All FWLR Part 646, page 516, Para 6.

7 *Fidelity Bank Plc v. Bayuja Ventures Ltd* (2012) All FWLR Part 646, page 516, Para 6.

8 *G.T.B. Plc v. Adedamola* (2019) 5 NWLR (PT 1664) 30.

## **CIRCUMSTANCES WHERE THE LAW PERMITS PROSECUTING ENFORCEMENT AGENCIES TO RESTRICT A CUSTOMER'S ACCOUNT.**

The general principle of law is as explained above; however, it is imperative to mention that there are certain circumstances allowed by law under which a prosecuting/ law enforcement Agency may freeze an individual account. Accounts are usually put on restrictions by these agencies when such accounts are suspected of being used for the commission of financial crimes.

This is a mandatory preventive step backed by law. Indeed, Section 34 (1) of the EFCC Act 2004 <sup>9</sup> empowers the Commission to freeze any account suspected of being used for financial crimes. The section stipulates that "The Chairman of the Commission or any officer authorised 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 authority to freeze the account."

More so, A Similar provision in the Money Laundering Prohibition Act 2012 (as amended), also empowers the EFCC Chairman or his representatives to place a stop order on any account or transaction suspected to be involved in any crime.

"Section 6 (5) (b) of the Money Laundering Act provides: Notwithstanding the provisions of paragraph (a) of this subsection, the Chairman of the Economic and Financial Crimes Commission or his authorized representative shall place a stop Order not exceeding 72 hours on any account or transaction if it is discovered in the course of their duties that such account or transaction is suspected to be involved in any crime."

By the provision of Section 6 (7)" Where it is not possible to ascertain the origin of the funds within the period of stoppage of the transaction, the Federal High Court may, at the request of the commission, or other persons or authority duly authorized in that behalf, order that the funds, accounts or securities referred to in the report be blocked." Section 6 (8) states that "An order made by the Federal High Court under Sub-section (7) of this section shall be enforced forthwith."

Consequently, By virtue of the above provisions, it is not in doubt that these agencies have the power to place a stop order or freeze an account suspected to be involved in financial crime for 72 hours, without a Court order. However, upon the expiration of the 72 hours and where the commission is not done with its activities in respect of the account, a Court order has to be obtained to extend the life of the order freezing the account.<sup>10</sup> Where the required Court order is not made available, the stop order or freezing the account lapses and the financial institution is obliged to unfreeze the account. Where a Customer's account is frozen in perpetuity, or even beyond two days, there must be a Court order, validating such an act.

## **THE PROCEDURE FOR UNFREEZING A BANK ACCOUNT**

Law enforcement agencies or banks lack the power to unilaterally freeze a customer's account based on a pending criminal investigation or commission of a crime without a court order. That being said, it is important to state that where a court of competent jurisdiction makes an order freezing a particular account, such an account is legally restricted within the bounds of the law.

Furthermore, when a customer discovers that a bank account has been frozen by the

<sup>9</sup> Economic & Financial Crimes Commission Act 2004

<sup>10</sup> Money Laundering Act 2012



bank, such account can be unfrozen by approaching the particular Court granting the order to unfreeze the bank account. Therefore, the first step to unfreeze a bank account that has been frozen by order of the Court as a result of suspicion of the activities in account is to hire a lawyer to investigate the specific order freezing the account.

To unfreeze a bank account frozen on the order of a court, the affected account holder can approach the Court to vacate the order. The Court may unfreeze the account only if the Judge is satisfied that the order was granted erroneously or as a result of misrepresentation of facts by the law enforcement agency that obtained the initial order freezing the Court.<sup>11</sup> The order of court given to vacate the restriction on the Customer's account shall be served on the bank for the unfreezing of the account. The bank is duty-bound at all times to obey an order of the court.

Thus upon service of the order of the court on the bank, the restriction shall be lifted.

## CONCLUSION

It is an established principle of law that no executive agency of government with prosecutorial powers has the power to place a Post No Debit (PND) on any bank account without a valid court order. The rationale behind this principle is to stop these agencies from unlawful use of powers, leading to confusion and finally anarchy.

However, this does not in any way imply, that when the proper procedure for freezing these accounts used in perpetuating fraud is adhered to by these agencies, such accounts cannot be put under restriction. But the most important element is that these agencies do not possess the monopoly of power to put any account under restriction without the court ordering same.

## REFERENCES

1. Diamond Bank Ltd V. Mocok Onu Nig. Ltd (2019) All FWLR, Part 1001, para4
2. S.T.B Ltd v. Anumnu (2008)All FWLR Part 399, page 409, para2
3. Mali v. S.T.B. Ltd (2008) All FWLR, Part 399.
4. Section 43 and 44 of the 1999 constitution of the federal republic of Nigeria as Amended.
5. Fidelity Bank Plc v. Bayuja Ventures Ltd (2012) All FWLR Part 646, page 516, Para 6.
6. G.T.B. Plc v. Adedamola (2019)5 NWLR (PT 1664) 30
7. Money Laundering Act 2012.
8. Economic & Financial Crimes Commission Act 2004.

## Disclaimer:

This article is for information purposes, it may not reflect the current state of the law, and is therefore not intended to provide legal advice, guidance on litigation, or commentary on any pending case or legislation.

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<sup>11</sup> <https://www.resolutionlawng.com/how-to-unfreeze-a-bank-account-in-nigeria/>

