IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: **JAMILA OMEKE & ORS**

COURT NUMBER: **HIGH COURT NO. 22**

CASE NUMBER: **SUIT NO. FCT/HC/CV/2194/2024**

DATE: **16/07/2025**

BETWEEN:
PAULYN O. ABHULIMEN SAN .....CLAIMANT
(Trading Under the name and style of Abhulimen and Co.)
AND
1. ZENITH BANK PLC
2. THE NIGERIA POLICE FORCE .....DEFENDANTS

APPEARANCE:
O.S. Kehinde Esq for the Claimant.
Grace Ehusani Esq with Obinna Obegonu Esq for the 1st Defendant.
2nd Defendant unrepresented.

RULING/JUDGMENT

By a writ of summons with suit no. FCT/HC/CV/2194/2024 dated 18th March, 2024 and filed on 30th April 2024, Counsel to the claimant prayed this Honourable court for the following reliefs:-

1. A DECLARATION that there is a banker-customer relationship between the claimant and the defendant.
2. A DECLARATION that an Order to freeze a bank account cannot validly be granted ex-parte to last indefinitely

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3. A DECLARATION that the chief Magistrate Court of Nasarawa State, sitting at Mararaba Gurku, lacked the jurisdiction to make an Order to freeze the claimant's Zenith Bank Plc's account (Account Number: 1012272348) based on an ex-parte application.
4. A DECLARATION that the act of freezing the Claimant's Zenith Bank Plc's account (Account Number: 1012272348) without a valid order of a Court of competent jurisdiction is a breach of the Banker- Customer relationship between the claimant and the Defendant.
5. A DECLARATION that the 1st Defendant's failure to timely inform the claimant that her account had been frozen constitutes a breach of the duty of care the 1st Defendant owes to the claimant.
6. AN ORDER of this Honourable Court directing the 1st Defendant to vacate the Post No Debit (PND) order placed on the claimant's account
7. AN ORDER of this Honourable Court directing the defendants to tender an unreserved apology to the claimant in 2 (Two) National Newspapers and on their websites for the embarrassment, psychological trauma, financial distress, emotional stress and grave inconveniences suffered by the claimant.
8. AN ORDER of this Honourable Court directing the defendants jointly and severally to pay the sum of ₦300,000,000.00 (Three Hundred Million Naira) to the claimant as General Damages for the embarrassment, psychological trauma, financial distress, emotional stress and grave inconveniences suffered by the claimant due to the defendants' actions.
9. AN ORDER of this Honourable Court directing the defendants jointly and severally to pay the sum of ₦25,000,000.00 (Twenty- Five Million Naira, only) to the claimant as costs of this action.
10. Other Reliefs as this Honourable Court may deem fit to award in the circumstances of this case.

This was supported by a 29-paragraph witness statement on oath deposed to by one Paulyn O. Abhulimen- the claimant in this matter, list of documents to be relied on, list of witnesses to be called upon all dated 30th April, 2024, a certificate of pre-action counselling dated 29th April, 2024 and annextures in support of the writ.

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The 1st defendant on the other hand filed it's statement of defence dated and filed 28th May, 2024, which was supported by a 38- paragraph witness statement on oath deposed to by one Obiajulu Okafor- the Relationship Service Manager of the Transcorp Hilton Branch of the 1st Defendant, dated 28th May 2024, annextures in support, list of documents to be relied upon and list of witnesses to be called.

The Claimant then filed a statement of reply to the 1st defendant's statement of defence dated 13th September 2024, and filed 19th September, 2024 and this was supported by a 21- paragraph additional witness statement on oath deposed to by the claimant in this matter- Paulyn O. Abhulimen, dated and filed 19th September, 2024.

Examination in-chief of cw1 commenced on the 2nd of February, 2025 and the following documents were tendered through CW1 admitted in evidence and marked as follows;

1. Certificate of registration of Abhulimen and Co marked 'Exhibit A1'
2. Letter from the Claimant to the defendant dated 12th March, 2024, marked 'Exhibit A2'
3. Letter from the Defendant to the Claimant dated 13th March, 2024, Marked 'Exhibit A3'
4. Letter from the claimant to the defendant dated 13th March 2024, marked 'Exhibit A4'
5. Letter of Authority from the claimant to Kehinde & Partners, LP dated 15th March 2024, marked 'Exhibit A5'
6. Bill of charges of Kehinde and Partners dated 1st April, 2024, marked 'Exhibit A6'

During the examination-in- chief of DW1 which took place on the 26th of February, 2025, the following documents were admitted in evidence and marked as follows;

1. A letter from the Deputy Commissioner of police CID, FCT Command Abuja dated 4th December, 2023 was marked 'Exhibit B1'
2. A Court order of chief magistrate court Nasarawa, Holden at Mararaba Gurku made on the 4th of December, 2023 was marked 'Exhibit B2'

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3. A Zenith Bank letter dated May 7th, 2024 addressed to the Managing Counsel, Greenfileds Legal Practitioners was marked 'Exhibit B3'
4. A central Bank of Nigeria Circular dated June 11, 2015 was marked 'Exhibit B4'
5. A certificate of compliance was marked 'Exhibit B5'.

The 1st defendant filed its final written address dated and filed 26th March, 2025, however the claimant filed a motion on notice applying for the amendment of her statement of claim to include an additional prayer. Therefore, this Honourable Court shall first consider the pending application of the claimant, before delving into the judgment proper.

By a Motion on Notice with Motion No.: M/5/51/25 dated 9th April, 2025 and filed on the 10th of April, 2025, counsel to the claimant was heard praying for the following;

1. AN ORDER of this Honourable Court granting leave to the applicant to amend her statement of claim to include an additional prayer in terms of the underlined portions in the proposed statement of claim attached herewith as Exhibit A
2. AN ORDER of this Honourable Court deeming the already filed amended statement of claim as properly filed and served
3. AND FOR SUCH FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances of this suit.

The Grounds upon which the application was made are as follows;

1. The Claimant/Applicant commenced this suit on the 30th of April, 2024
2. The 1st defendant, upon receipt of the writ of summons and statement of claim, filed a statement of defence on 28th May, 2024
3. The Applicant seeks to amend her Statement of Claim to include a new prayer to aid the just determination of this case
4. The grant of this application will not prejudice any of the Respondents.

The application was supported by a 5- paragraph affidavit deposed to by one Kemi Esene- the Practice Manager in the Law Firm of Kehinde and

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Partners LP(Counsel to the applicants) and a written address dated 9th April, 2024 and filed 10th April, 2024.

In the written address filed in support of the motion, a sole issue for determination was formulated thus:-

> ***"Whether in the circumstance of this suit, the applicant is entitled to the grant of the reliefs sought."***

Counsel began by stating that he shall be arguing the said issue for determination under two sub-issues and they are:-

a) ***"This application calls for the exercise of discretionary powers of the court which ought to be exercised judicially and judiciously***
b) ***The Court will grant an amendment where it will not overreach the other party."***

In arguing the first sub-issue, counsel to the applicant submitted that the application required the exercise of the discretionary powers of the court, and such discretion was to be exercised judicially and judiciously. He argued that amendments were grantable where they would not overreach the opposing party. Reference was made to **Order 24, Rule 1** of the **High Court of the Federal Capital Territory (Civil Procedure Rules) 2025**, which permits parties to amend their processes up to twice before judgment. Counsel emphasized the discretionary nature of such applications and relied on the cases of **AKINYEMI V. ODU'A INVESTMENT CO LTD (2012) 17 NWLR (PT. 1329) 209 AT 242, PARAGRAPH G**, AND **CBN V. OKOJIE (2002) 8 NWLR (PT. 768) 48, PARAGRAPH H.**

Counsel submitted that credible and cogent reasons for the amendment had been disclosed in the affidavit in support of the application, and that the purpose of the amendment was to ensure that the real issues in controversy between the parties were determined. He then submitted that the judicial and judicious exercise of the discretion of this Honourable Court would be to grant this application and urged the Court to so hold.

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In arguing the second sub-issue, Counsel stated that a Court of law will readily rant an application for amendment at any time in the before judgment as long as the other party will not be overreached by the amendment and reliance was placed on the cases of **MELIFONWU V. EGBUNIKE (2001) 1 NWLR (PT. 694) 271 AT 280, PARAGRAPH A,** AND **NDDC V. PRECISION ASSO LTD (2006) 16 NWLR (PT. 1006) 527 AT 559, PARAGRAPH C.**

Counsel further submitted that the defendant/respondent would not be overreached by the proposed amendment, as the relief being introduced was already rooted in the pleadings, particularly in Paragraph 20(n) of the Statement of Claim, where it was alleged that the first defendant had failed to notify the claimant that the account had been frozen pursuant to a court order.

He stated that the proposed amendment raised no new issue and was unlikely to surprise the defendant. On these grounds, the court was respectfully urged to grant the application for amendment in the interest of justice.

In opposition to the claimant's application for amendment, a 17-paragraph counter-affidavit was filed by the First Defendant, deposed to by one **Lucky Bassey**- Legal Officer at the Transcorp Hilton Branch of the 1st Defendant/Respondent, and a written address in support, dated and filed 17th April, 2025. In the said written address, a sole issue for determination was formulated thus:

> ***"Whether in light of the circumstances of this case, it would be in the interest of justice to grant the claimant's application for the amendment of her statement of claim?"***

In arguing the issue, counsel began by stating that the law is trite that the Rules of this Honourable Court vests the Court with the power to allow a party to amend processes up to twice before judgment. Reference was made to **Order 24 Rule 1** of the rules of this Honourable Court. However, counsel emphasized that the power to amend lies within the discretion of the court, and that for such discretion to be exercised in the applicant's favour, he must not only make the application timeously, but it must

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furnish the court with persuasive, and convincing reasons as to why the court should do so.

Counsel further submitted that where a court is called upon to exercise its power of discretion, the court must do so judicially and judiciously. Reliance was placed on the case of **PANTAZIS V. PANTAZIS (2018) 17 NWLR (PT. 1649) 499 AT 510**; **ANPP V. RESIDENT ELECTORAL COMMISSION AKWA IBOM STATE (2008) LPLR-8322 (CA)** AND **MALAMI V. OHIKHUARE (2018) 4 NWLR (PT. 1610) 431 AT 451.**

Consequently, counsel stated that for a court to exercise its discretionary powers judicially and judiciously, the court has to do same in accordance with; The laid down principles of law; Interest of justice and fairness, and the materials placed before the court.

Counsel to the claimant in a further submission, stated that The claimant's application failed to bring their application within the confines of the established principles of law and thus this application overreaches the 1st defendant. Counsel argued that the affidavit in support was deposed to by one Kemi Esene, the practice manager of the claimant's counsel, who neither works with the claimant, nor stated how she got the approval to depose to the said affidavit. Counsel stated that the affidavit amounted to hearsay, and that no weight or probative value should be attached to it.

Reliance was placed on the decision in **MAIRAMI & ANOR V. GONIDINARI (2025) LPELR-80093 (CA)**, where it was held that affidavits deposed to by litigation secretaries or practice managers amount to hearsay and should carry no evidential weight.

Counsel further argued that **paragraphs 4(e)–(f)** of the said affidavit that was previously omitted inadvertently in the statement of claim and that it was an afterthought designed to overreach the 1st Defendant, and also pointed out that the application was only filed after the 1st Defendant's final written address had been received. He then urged the court to so hold.

Attention was drawn to **Order 24 Rule 6** of the Rules of Court, which requires that every amended process must be marked in a specific form which counsel reproduced in paragraph 4.14 of their written address in

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support of their counter affidavit. Counsel submitted that the claimant's proposed amended statement of claim and the actual amended statement of claim, failed to comply with this mandatory requirement, and thus were incompetent and not properly before the court.

Counsel further submitted that, due to the alleged incompetence of the affidavit and amended processes, there was nothing placed before this Honourable court in favour of which it could validly exercise its discretion to grant the amendment. The court was respectfully urged to so hold.

In another submission, counsel stated that assuming but not conceding that the claimant's application is competent, the grant of same be prejudicial to the 1st defendant/respondent. Counsel stated that the application for amendment was only brought after the claimant/applicant had been served with the final written address of the 1st defendant, suggesting that the intention behind the amendment was to cure defects in the claimant's case which Counsel said is not allowed. Counsel emphasized that the claimant-applicant had ample opportunity during the course of trial to present her case, and that there must be finality in pleadings and litigation. The amendment was characterized as an attempt to introduce new evidence as an afterthought, which conduct the courts have always frowned upon.

It was contended that the amendment would warrant the calling of evidence by the claimant-applicant, thereby working injustice against the 1st defendant/respondent. It was submitted that the effect of the proposed amendment would be overreaching and prejudicial, a circumstance under which courts have been enjoined not to grant leave to amend. In support of this proposition, reliance was placed on the authority of ***CCG (NIGERIA) LIMITED & ANOR V. IDORENYIN (2015) LPELR-24685 (SC)***.

Counsel therefore submitted, in line with the above dictum, that the proposed amendment is one brought in bad faith, aimed at overreaching the 1st defendant/respondent being that the amendment was only sought after the receipt of the final address of the 1st defendant/respondent. Furthermore, counsel submitted that the amendment, being one that introduces a declaration regarding an alleged breach of duty of care—was said to require the re-opening of issues, recall of witnesses, and further

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cross-examination. Counsel argued that the consequence would not only be a delay in the proceedings, but also additional costs incurred by the 1st defendant/respondent in responding to the claimant's new case.

Accordingly, counsel urged this Honourable court to hold that the grant of the application would not serve the interest of justice and would not amount to a judicial and judicious exercise of the court's discretion having failed to meet the requirements for such an exercise of discretion as articulated in paragraphs 4.7 and 4.8 of the address.

Counsel then urged this Honourable court to resolve the issue in favour of the 1st defendant/respondent by holding that it would not be in the interest of justice to grant the application and urged this Honourable court to dismiss same.

In response to the issues raised by the 1st Defendant in the Counter Affidavit and Written Address in support, Counsel to the claimant filed a reply on points law dated 30th April, 2025 and filed the same day. For the purpose of brevity and succinctness, counsel to the claimant structured the said reply under specific subheadings addressing the legal objections raised by the 1st defendant to wit:

1. ***"Paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the 1st defendant's counter-affidavit contravene sections 115(1) & (2) of the Evidence Act 2011 (as amended).***
2. ***Section 115(3) of the Evidence Act 2011 (as amended) creates an exception to the rule against hearsay***
3. ***The claimant has not contravened Order 24 Rule 6 of the High Court of the FCT Civil Procedure Rules 2025***
4. ***The 1st Defendant would not be prejudiced by the grant of this application."***

Claimant counsel in arguing the 1st sub-head submitted that **Sections 115(1) and (2) of the Evidence Act 2011 (as amended)** clearly stipulate the contents permissible in an affidavit and the said sections were reproduced for emphasis. Further reference was made to the case of ***GEN. & AVIATION SERV. LTD. V. THAHAL (2004) 10 NWLR (PT. 880) 50 AT 73, PARAS D–H.***

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Consequently, counsel submitted that "conclusion" does not refer only to legal conclusions, but includes any conclusions based on facts or law whether of fact or law, reached through reasoning to draw and inference or make a deduction.

Further reliance was placed on ***Nigeria LNG v. ADIC Ltd. (1995) 8 NWLR (Pt. 416) 677 at 699–700***, where the court rejected affidavit content that drew inferences instead of stating facts.

In another submission, counsel stated that an examination of paragraphs 7 through 16 of the 1st Defendant's Counter-Affidavit, reveals that the said paragraphs contained extraneous matters, consisting of legal arguments and conclusions. He stated that with regards to paragraph 7 of the 1st defendant counter-affidavit on the issue of whether the claimant's affidavit amounted to hearsay and which had no evidential value was a legal conclusion, which is for this Honourable court to determine. Accordingly, it was urged that those paragraphs be disregarded for non-compliance with the Evidence Act.

With respect to paragraph 8 of the 1st defendant's counter affidavit, counsel stated that the assertion that the claimant's motion was incompetent, was said to be a **legal conclusion**, a matter for this Honourable Court to determine. Similarly, counsel stated that Paragraph 9 which contained the assertion that the claimant's application was an afterthought aimed at overreaching the 1st Defendant, amounted to a factual conclusion, and that instead of making such an assertion, the 1st Defendant ought to have presented facts from which the Honourable Court might draw such a conclusion.

In response to paragraph 10 of the 1st defendant's counter-affidavit, counsel submitted that the claim that the amendment was unnecessary to aid the just determination of the case constituted a legal conclusion, thereby rendering the paragraph inadmissible under the governing provisions of the Evidence Act.

Similarly, counsel stated that paragraph 11 of the said counter affidavit, contained the assertion that the amendment failed to reflect the real question in controversy, and the further suggestion that the application to

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amend was an attempt to mislead the court, were mixed legal and factual conclusions, and that the 1st Defendant ought to have laid out facts for the court to reach such conclusions.

Also Counsel to the Claimant responded on Paragraphs 12, 13, 14, 15 and 16 of the said counter affidavit of the 1st defendant, pointing out that they contained legal conclusions which were matters to be determined by the Honourable Court.

The Honourable Court was therefore urged to so hold and to grant the application as prayed.

In response to the 1st Defendant's contention, counsel submitted that paragraphs 4.12 and 4.13 of the written address in support—that stated that the claimant's affidavit is incompetent on the basis that its contents amount to hearsay, was misguided. Reliance was placed on the Court of Appeal's decision in ***MAIRAMI & ANOR V. GONI DINARI (SUPRA)*** *and* **Sections 115(1), (3), and (4)** of the Evidence Act.

Counsel emphasized that the Act does not require that all facts deposed to in an affidavit must be from the personal knowledge of the deponent. Rather, counsel stated, that **Section 115(3)** expressly provides that a deponent may validly depose to facts obtained from a third party, provided that he satisfies the provisions of those sections. Reliance was placed on the case of ***APPH V. OTURIE (2019) 6 NWLR (PT. 1667) 111 AT 124, PARAS E–F***.

Counsel stated that as long as the procedural requirements stipulated by the Act had been fulfilled, such depositions were to be admitted and accorded the requisite weight.

It was further submitted that the deponent of the claimant's affidavit had met all the conditions contained in Section 115 by stating the time and place the information was decided, as well as the circumstances of the information and affirming that she believes it to be true.

Additionally, counsel argued that contrary to the 1st Defendants submissions, there exists **no provision** under the Evidence Act which mandates that the deponent must be a party to the suit, or that the source

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of information must be a party to the suit and that no statutory basis was cited by the 1st Defendant to support its argument. Reference was made to the case of ***PAM V. INCORPORATED TRUSTEES, ASSEMBLIES OF GOD, NIGERIA (2020) 14 NWLR (PT. 1745) 393 AT 416, PARA B.***

Consequently, counsel stated that the mere fact that the deponent of the claimant's affidavit is not the claimant and that the informant as well is not the claimant, does not vitiate the affidavit as the said affidavit does not contravene any provision of the evidence Act, 2011. Counsel further argued that the facts in the affidavit are facts within the personal knowledge of the informant and not the claimant. He stated that the informant is a counsel in the law firm representing the claimant and that it is the claimant's lawyers that prepared the claimant's processes and inadvertently excluded the prayer sought to be included, thus the facts regarding the exclusion of the said prayer were completely given to the deponent by the informant.

Accordingly, the court was urged to discountenance the 1st Defendant's arguments.

Arguing the 3rd sub head, counsel relied on Order 24 Rule 6 of the Rules of this Honourable court and submitted that where the **words of a statute or rule are clear and unambiguous**, they are to be interpreted **in their plain, ordinary, grammatical meaning** without qualifications. He stated that courts are under a duty to discover the intention of the law maker as deducible from the language of the provision construed. Reference was made to the cases of ***ACTION CONGRESS V. INEC (2007) ALL FWLR (PT. 378) 1012 AT 1016 D–F; UWAZURIKE V. A.G. FEDERATION (2007) 8 NWLR (PT. 1035) 1 AT 15–16 H–A; AMADI V. NNPC (2010) NWLR (PT. 674) 76 AT 107 E–F.***

Counsel submitted that from the clear wording of Order 24 Rule 6, an amendment made pursuant to a judge's order is a precondition to marking an amended pleading as prescribed therein. Counsel contended that it is **until** an order for amendment has been made by the Court that the claimant can mark its pleadings in the format prescribed under Order 24 Rule 6. He therefore argued that a party can only raise the issue of non-

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compliance with the said order after an order granting leave to a party to amend has been made by a Judge.

In another submission, counsel argued that assuming without conceding that a contravention of Order 24 Rule 6 had occurred, such a contravention could be treated as an **irregularity** by virtue of **Order 7 Rule 2** and that it does not affect the competence of the statement of claim. **Order 7 Rule 2** was then reproduced for emphasis.

Consequently, counsel urged this Honourable court to dismiss the 1st defendant's submissions as the courts now prioritize substantial justice over technicalities.

In arguing the fourth and final subhead, counsel submitted that the First Defendant's claim of likely prejudice arising from the grant of the Claimant's application—on the ground that evidence would need to be called—was far from the truth. Counsel informed this Honourable Court that the amendment sought by the Claimant involved merely the addition of an additional prayer, which was already fully supported by the existing evidence before the Court.

It was further submitted that the amendment did not introduce a new cause of action, nor did it alter the factual matrix of the case already litigated. Rather, counsel stated, that the amendment simply crystallizes the legal consequences of facts already in evidence and uncontroverted. Reference was made to **paragraph 3.8 of the Claimant's written address** in support of the application, as well as **paragraph 20(n)** of the Statement of Claim.

Counsel argued that it is well settled that the court is empowered to permit amendments even at the tail of proceedings., including at judgment stage provided that no new facts are introduced, no additional evidence is required and that the opposing party suffers no prejudice which cannot be compensated by costs if at all. He emphasized that this averment had never been denied in the 1st Defendant's statement of defence. Consequently, counsel stated that by settled principles of pleadings, facts not specifically denied were **deemed admitted**. Reference was then made to the cases of ***ANTONIO OIL CO. LTD. V. AMCON (2024) 15 NWLR***

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(PT. 1961) 215 AT 239–240 B–G; MELROSE V. EFCC (2025) 1 NWLR (PT. 1972) 1 AT 175 E.

Accordingly, counsel argued that having not joined issues with the claimant on the said fact that the 1st defendant did not inform her that her account had been frozen, the 1st Defendant's claim of prejudice arising from the addition of a relief that sought a declaration of breach of duty of care based on that fact was bewildering.

Furthermore, counsel stated that the evidence necessary to sustain the additional prayer had already been adduced via the Claimant's witness statement on oath, and that the Defendant had been given full opportunity to cross-examine the Claimant. Counsel therefore submitted that the suggestion that the case would need to be reopened or that new evidence would need to be called was not only inaccurate but that it ignores the procedural history of the case. He stated that the amendment does not overreach the defendant in any way but that rather, it allows the court to do substantial justice by granting all the reliefs which the facts support.

Accordingly, counsel urged this Honourable court to discountenance the submissions of the 1st defendant, and that this application be granted.

Now, I have considered the application of the claimant, affidavit and the written address filed in support.

I have as well considered the counter affidavit and written address of the 1st defendant in opposition to this motion.

I have equally considered the claimant's reply on points of law to the 1st defendant's counter affidavit.

Without much ado, it is my humble view that the issue for determination is

"Whether the Claimant/Applicant is entitled to the grant of this application".

Order 24 of the rules of this Honourable Court 2025 have made express provisions with respect to amendment of court processes. Amendment of processes can be made not more than two times before judgment. I shall be reproducing Rules 1 and 8 of the said order for emphasis below.

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Order 24 rule 1 states thus;

> ***"1. Except with the special leave of Court, no party shall be permitted to amend his processes more than twice before judgment."***

Order 24 rule 8 states thus;

> ***"8. Subject to the provision of Rule 1 of this order, the Court may at any time and on such terms as to cost or otherwise as may be just, amend any defect or error in any proceedings."***

From the record of this Honourable Court, this application for amendment is the first to be made by the claimant in this matter, hence satisfying the first condition as stipulated by Order 24 rule 1 of the rules of this Honourable Court 2025. Furthermore, it is a trite principle of law that amendment of processes can be made at any time before judgment. In the Supreme Court case of ***BAKARAE V L.S.C.S.C (1992) 8 NWLR (PT. 262) 641 SC,*** the court held thus;

> ***"It is generally accepted that an amendment can be made at any stage of the proceedings. It can be made after the close of the case of the parties, as in this case, if it is made to accommodate evidence already led and if the other party will not be taken by surprise"***

Similarly, it was held in the case of ***BIODE PHARMACEUTICAL V ADSELL (1986) 5 NWLR (PT. 46) 1070 CA-*** where the Court held thus;

> ***"Amendment of pleadings can be done at any stage provided that no injustice is done to the other side"***

The proposed additional prayer sought to be inserted in the statement of claim of the claimant states thus:-

> ***"A DECLARATION that the 1st Defendant's failure to timely inform the claimant that her account had been frozen constitutes a breach of the duty of care the 1st Defendant owes to the claimant."***

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A cursory look at the proposed amendment and the existing facts and evidence already before this Honourable court clearly suggests that there will be no need to call additional evidence in its respect. The prayer contains facts already elicited in various parts of the claimants processes and thus in my opinion, does not divulge any new status quo that will require the provision of further proof and in the same vein, would not in my opinion cause any injustice to the defendants as this fact as asserted by the claimant is already known to them. To further buttress this point, I shall be reproducing various paragraphs from the various processes of the claimant.

Paragraph 20 of the Statement of claim of the claimant states thus;

> ***"By freezing the claimant's account, the 1st defendant breached its fiduciary duty towards the claimant"***

Paragraph 21 of the Claimant's witness statement on oath states thus:-

> ***"By freezing my firm's account, the 1st defendant breached its fiduciary duty towards me."***

Furthermore, during cross examination of CW1, the following ensued;

> ***"Q: When did you discover that you could no longer carry out transaction on the account in respect of the court order?***
>
> ***A: My lord, it was sometimes in December 2023 when I issued cheques and they were returned. I did try to operate but I couldn't, because of my busy schedule, I did not find out until sometimes in January 2024, a credit alert happened in my account but I did not get the value for it. So, I remember calling my account officer Obi Okafor to ascertain why the money in my account did not refelect, and he said to me that there was nothing wrong with my account. As I was out of the country, I let it slide. So, when I came back sometimes 11th or 12th of March 2024, I met Obi Okafor my account officer. He was going back and forth in the bank to find out what was happening. So after about 30- 40 minutes***

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he now said that he called Lagos and said Oh there's a PND on my account"

Similarly, during the cross examination of DW1, the following took place:-

> ***Q: Could you read paragraph 5.1 and 5.15. Please confirm that Zenith Bank received the court order on 5th of December, 2023?***
>
> ***A: Yes***
>
> ***Q: And it wasn't until the claimant made a complaint on 12th March 2024 that she was informed that her account had been frozen?***
>
> ***A: Yes."***

From the foregoing, it can be seen that the proposed additional prayer does not bring to view any new issues that would require the calling of additional evidence. Therefore, I do not find this application to be prejudicial, nor will it overreach the rights of the defendants in this matter. I so hold.

Moreso, if the applicant would be overreaching at the stage of this proceedings when it was brought, the defendant would not have consented that the court hears the application and determine same along with its Judgment. I refer to the record of proceedings for 8th May, 2025.

On the issue of the propriety or otherwise of the deponent to the affidavit in support of the claimant's application deposing to the said affidavit, the 1st defendant counsel argued at exactly paragraph 4.11 of the written address in support of its Counter Affidavit thus:-

> ***"In the instant application, the affidavit in support of the application is deposed to by one Kemi Esene, the practice manager of counsel to the claimant/Applicant, who is not the claimant/Applicant, neither does she work in the office of the claimant/Applicant. Also, the said Kemi Esene has not established in her affidavit evidence as to how she got the***

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approval of the claimant/Applicant to depose to the said affidavit. She has only claimed before this Honourable court to have received her instructions from one Kenneth Ebange Cyril Ita Esq. of counsel to the claimant/Applicant who did not state how and when he received instruction from the claimant/Applicant with regards to filing this application"

In response, claimant at exactly paragraph 2.19 of the claimant's reply on points of law stated thus:-

"We humbly submit, with utmost respect that the 1st defendant's submissions are misguided. For your lordship's convenience, sections 115(1), (3) and 115(4) of the Evidence Act are hereunder reproduced thus;

(1) Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.

(3) When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.

(4) When such belief is derived from information received from another person, the name of his informant shall be stated and reasonable particulars shall be given respecting the informant and the time, place, and circumstance of the information"

Upon a cursory look at the affidavit in support of the claimant's application, it can be seen that the deponent had provided the necessary information as to the source, the time, the venue of the information she was deposing to and the fact that she believed it to be true. This in my opinion satisfies the requirements as enunciated in Section 115 of the Evidence Act 2011 as amended with respect to deponents deposing to information they had obtained from another. The information was obtained from one of the counsel representing the claimant in this matter whose law firm has official

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records on the facts of this matter as gleaned from the said affidavit in question, and are the ones who prepared the processes sought to be amended. It is not the claimant who prepared the process sought to be amended, and facts deposed to in the said affidavit are facts concerning the various processes filed before this Honourable court. The additional prayer sought to be added to the statement of claim as well, were previously stated by the claimant herself in her witness statement on oath and during cross examination as I have earlier addressed. Hence the issue of the affidavit in support of this application being hearsay cannot stand. I so hold.

On the issue of the format an amended statement of claim should conform to, 1st defendant argued at exactly paragraph 4.14 of its written address in support of its counter affidavit thus;

> ***"Also my Lord, by the provisions of order 24 Rule 6 of the Rules of this Honourable Court which states that "whenever any endorsement of pleadings is amended, it shall be marked in the following manner,***
>
> ***'Amended..... day of ..... pursuant to Order of (name of Judge) dated the ..... day of .....", the proposed amended statement of claim and the actual amended statement of claim filed by the claimant/Applicant is incompetent."***

In response, Claimant stated at exactly paragraph 2.31 of her reply on points of law thus;

> ***"My Lord, we humbly submit that by the expressions "whenever any endorsement or pleadings is amended" and "Amended ...day of .....pursuant to order of (name of judge) dated the .....day of ....", it is clear that an amendment by an Order of a Judge is a pre-condition to marking an amended pleading in the manner prescribed under order 24 rule 6. It is only after this Honourable Court may have amended the claimant's pleading in the manner prescribed under Order 24 Rule 6. Therefore, a party can only raise the issue of non-***

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compliance with Order 24 Rule 6 after an Order granting leave to a party to amend his pleadings has been made by a Judge"

Order 24 Rule 6 of the rules of this Honourable court provides the format which an amended process must follow once amendment has been granted. I agree with the argument of the claimant counsel, that the said quotation to be inserted in a process for amendment, should be done once the application for amendment has been granted, not before. In the application for amendment brought by the claimant, a proposed amended statement of claim was attached without being marked as amended with the said quotation referred above. This in my opinion is correct as the amendment at that point has not yet been granted. However, the prayer as contained on the face of the claimant's motion paper seeks an order of this Honourable court deeming the already filed amended statement of claim as properly filed and served, and a separate amended statement of claim was filed alongside the motion for amendment. This said separate amended statement of claim, was not properly marked amended as required by Order 24 Rule 6. If the claimant seeks for the said amended statement of claim to be deemed properly filed and amended, it ought to as well have been properly marked. In the event where this Honourable court grants the application, if it were properly marked, then it would be appropriate for this Honourable court to deem it properly filed and amended, and if the court grants otherwise, the claimant would simply withdraw the said amended statement of claim.

Nevertheless, this defect does not go to vitiate the application of the applicant as it is a mere irregularity that can be amended. See Order 24 Rule 7 of the F.C.T High Court Civil Procedure Rules, 2025 which provides thus;

"The Court may at any time correct clerical mistakes in Judgments or orders, or errors arising from any accidental slip or omission upon an application, without an appeal being filed"

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The courts have moved from the era of technical justice to that of substantial justice. Thus, this is a procedural defect that would be overlooked. I so hold.

On paragraphs 7,8,9,10,11,12,13,14,15 and 16 of the Defendant's Counter Affidavit and Whether they offend the provisions of the Evidence Act 2011, for what they are worth, I have carefully looked at the said paragraphs and although paragraphs 15 and16 are not extraneous nor do they offend the provisions of Section 115 of the Evidence Act 2011, however, it is my humble view that paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 contain legal arguments and conclusions which are no doubt extraneous and clearly offend the provisions of Section 115 of the Evidence Act 2011. I so hold.

Consequently, all the paragraphs are hereby expunged.

Having addressed the various issues raised in this application, the issue for determination is hereby resolved in favour of the claimant/applicant.

Consequently and without further ado, this application is hereby granted as prayed.

✳Now to the substantive suit.

As earlier stated, the 1st defendant filed its final written address dated and filed 26th March, 2025, wherein three issues for determination were elicited thus;

> ***"1. Whether having regard to the evidence and materials before this Honourable Court, the claimant has proven her case?***
>
> ***2. Whether there was a breach of the banker- customer relationship between the claimant and the 1st defendant by the 1st defendant?***
>
> ***3. whether the claimant is entitled to the relief of damages sought?"***

Before arguing the issues, counsel to the 1st defendant began by giving a brief procedural history of the suit, a summary of the facts, and an analysis of both the Claimant's and Defendant's evidence were made.

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In evaluating the evidence led by the Claimant, it was submitted that under cross-examination, the Claimant's assertion that Exhibits A3 and B2 referred to a non-existent entity, "Paulyn Abhulimen & Co." rather than "Abhulimen & Co.", was disproved. Counsel stated that although the Claimant reiterated in Paragraph 10 of her Additional Witness Statement on Oath that both entities were separate and distinct, she confirmed during cross-examination that the account details referenced in the court order belonged to Abhulimen & Co. Counsel submitted that Exhibits A3 and B2 were in respect of an identifiable entity, and that the First Defendant acted properly by placing a post-no-debit (PND) restriction on the specified account. The account number was shown to be linked to Paulyn O. Abhulimen's Bank Verification Number (BVN) and that it is on this basis, the First Defendant was said to have conducted due diligence in linking the court order to the correct account.

Counsel submitted that the Claimant, in Paragraph 13 of her Witness Statement on Oath, placed the responsibility of notifying her of the court order on the First Defendant. However, that under cross-examination, she revealed that it is the duty of the instituting party in a suit who bears the duty to notify affected parties. CW1's statements under cross-examination were cited in support of this argument.

Counsel further argued that the Claimant maintained in Paragraphs 21 of her witness statement on oath and paragraph 14 of her additional witness statement on oath that the 1st Defendant breached fiduciary duty by acting on the Magistrate court order and placing a PND on her account. Counsel argued that under cross-examination, the Claimant gave misleading evidence that the 1st defendant's fiduciary duty to her included disobeying a court order which she believed to be invalid, and an excerpt of her cross-examination was reproduced for reference.

In another submission, counsel stated that the Claimant's alleged financial loss was unsubstantiated. Counsel stated that under cross-examination, the claimant confirmed that she had taken no step to have the said order vacated even though she is presumed to know that an order made without jurisdiction can be vacated by the issuing court upon application.

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Counsel emphasized that the suit before this Honourable Court is neither an appeal of the Magistrate Court's order nor does it contain any relief seeking to set it aside. Counsel then stated that the trite legal position is that a party seeking the interference of a higher court on the decision of a lower court should file an appeal against such decision before the higher court. Furthermore, counsel submitted that during cross-examination, PW1 was evasive, defensive and reluctant to provide answers to some questions and stated that this suggests an attempt to obscure the truth, thereby casting serious doubt on her credibility as a witness. Counsel consequently urged this Honourable Court to reject PW1's testimony in its entirety and accord it no evidential weight or probative value.

With respect to the evidence of the 1st Defendant, counsel noted that under cross-examination, DW1's testimony that the 1st Defendant is bound by a duty and standard practice to obey all Court orders after conducting due diligence on same was established. Counsel stated that it was further established that the post-no-debit (PND) restriction was placed on the correct account, as referenced in the court order, contrary to the narrative sought to be advanced by the Claimant. Counsel stated that despite various attempts by the Claimant's counsel to discredit DW1's testimony, DW1 consistently affirmed that in standard banking operations, account numbers are used to identify accounts, given that names may be identical or vary slightly due to typographical or character differences. Consequently, it was submitted that "Paulyn Abhulimen & Co." and "Abhulimen & Co.", having the same account number, were rightly treated as one and the same by the First Defendant. Additionally, that it is the claimant who is the signatory to the account on the face of exhibit B2.

In another submission, counsel stated that the Claimant's counsel sought to rely on a version of the CBN Consumer Protection Regulation, but that objection was raised to the admissibility and reliability of the said document, on the ground that it was neither the gazetted original nor an authorized printed copy, and therefore could not be relied upon. Counsel then urged this Honourable Court to disregard any questions or conclusions drawn therefrom.

Counsel also pointed out that the Claimant during cross-examination, did not controvert DW1's evidence regarding Exhibits B1, B2, B3 and B4. Accordingly, counsel submitted that the authenticity and reliability of those exhibits stood unchallenged and ought to be relied upon by this Honourable Court in the determination of this suit.

Counsel submitted that the 1st defendant's evidence represented the most credible account of the facts leading to this suit and the Court was urged to so hold.

Submitting on the evidence of the 2nd Defendant, Counsel highlighted that the Second Defendant remained unrepresented throughout the proceedings. He stated that an order was made by the Court on the 11th of December 2023 directing that all hearing notices be served on the Second Defendant. Counsel further stated that the Second Defendant's failure to appear or defend the suit was an indication that they have admitted sole liability for the events leading to the restriction of the account of *Abhulimen & Co.* This default was submitted as further evidence exonerating the First Defendant, who was merely complying with a court order obtained at the behest of the Second Defendant. The Court was accordingly urged to so hold.

As earlier stated, The Defendant, in its final written address, formulated three issues for determination. In arguing Issue One

> ***"Whether the Claimant is entitled to the relief of damages sought."***

Counsel submitted that the standard of proof required by the claimant is that of the balance of probabilities and not proof beyond reasonable doubt. Accordingly, counsel stated, that a claimant is expected to show more convincing pieces of evidence that the claim before this Honourable court are true and should be granted in the interest of justice. Reliance was placed on the cases of ***OSSAI-UGBAH & ORS V. AGOLO*** **[2014] LPELR-22189 (CA);** ***MUSTAPHA V. ZARMA & ORS*** **[2018] LPELR-46326 (CA);** ***EYA & ORS V. OLOPADE & ANOR*** **[2011] LPELR-1184 (SC); AND** ***OKORIE V. UNAKALAMBA & ANOR*** **[2011] LPELR-22508 (CA).**

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Consequently, counsel submitted that the crux of the Claimant's claim was that the 1st Defendant breached its fiduciary duty of care by placing a post-no-debit (PND) restriction on her account pursuant to an order from the Magistrate Court. Reliance was placed on the cases of ***UBA PLC V. SIEGNER SABITHOS NIG. LTD [2018] LPELR-51586*** **(CA);** ***GTB PLC V. IMANANAGHA [2022] LPELR-56908 (CA)*** **AND** ***AROGUNDADE V. SKYE BANK [2020] LPELR-52304 (CA).***

Consequently, counsel submitted that the Claimant failed to discharge the burden placed upon her, and that her evidence was insufficient to tilt the scales of justice in her favour. The Court was respectfully urged to resolve this issue against the Claimant.

It was further submitted that for the Claimant to succeed in her allegation that the First Defendant breached its fiduciary duty, she must establish, by credible evidence, that the First Defendant acted without legal or lawful justification and this Honourable Court was urged to so hold.

Counsel then made reference to Exhibits A1 to A6 tendered by the claimant and submitted that none of these documents established any act of negligence or breach of duty on the part of the First Defendant.

Furthermore, counsel submitted that a court order is a legal instrument with the force of law that must be obeyed. Reference was made to the cases of ***STATE V. SOLOMON [2020] LPELR-55598 (SC) AND AKINYEMI V. SOYANWO & ANOR [2006] LPELR-363 (SC).***

Counsel noted that although the Claimant alleged that the court order was unlawful, no steps had been taken to appeal or set it aside, nor had such relief been sought in the originating processes before this Honourable Court. He submitted that since the 1st Defendant had acted in compliance with a subsisting court order, no breach of fiduciary duty could be said to have occurred. Reliance was placed on the case of ***AROGUNDADE V. SKYE BANK [2020] LPELR-52304 (CA).***

In another submission, counsel stated that the Claimant was said to have not placed any evidence before this Honourable court proving same. Counsel stated that assuming without conceding that hardship had been

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suffered, he stated that the Claimant took no logical step to mitigate the said suffering and that this was confirmed by the claimant during cross-examination. An excerpt of the cross examination of CW1 was reproduced to this effect.

Reference was then made to the cases of ***BENIN RUBBER PRODUCERS COOP. MKTG. UNION LTD V. OJO & ANOR [1997] LPELR-772 (SC).***

Consequently, counsel stated that the most logical and reasonable action the claimant ought to have taken was to apply to the Magistrate court who gave the order to vacate the said order. Further reliance was placed on ***A.D.H LTD [2007] 15 NWLR (PT. 1056) 119 (SC) AND ADENIYI & ANOR V. ADEWALE & ANOR [2018] LPELR-44236 (CA).***

Counsel in a further submission stated that the Claimant had made allegations in paragraph 21(n) of her witness statement on oath that the 1st defendant failed in its obligation to inform the claimant of the suit leading up to the issuance of the court order, but that under cross examination, the claimant confirmed that it is not the duty of the 1st defendant to inform her of the suit but that of the applicant. The cross examination of cw1 in this respect was further reproduced for emphasis.

Counsel then urged upon the Court that the Claimant had failed to establish a breach of fiduciary duty, and urged this Honourable Court to so hold.

It was further submitted that, in accordance with settled legal principle, all court orders are required to be obeyed, and that the First Defendant neither breached any duty nor incurred liability when it acted pursuant to **Exhibit B2**. The court was urged to so hold.

Counsel further argued that the totality of the evidence adduced by the 1st Defendant was stronger, more credible, and more cogent than that presented by the claimant, and that in the circumstances, the claimant had failed to discharge the onus placed upon her to prove her case on the preponderance of evidence. It was contended that the weight of evidence had tilted and ought to be found to have tilted in favour of the First Defendant.

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Counsel stated that it is trite law that where a claimant fails to prove their claim on the preponderance of evidence, the fails and the suit stands dismissed. Reliance was placed on the case of ***FAGUNWA & ANOR V. ADIBI & ORS (2004) LPELR-1229(SC).***

Learned counsel submitted further that the claimant had failed to establish, by the required weight of evidence, a breach of fiduciary duty by the 1st Defendant. It was the position of the First Defendant that its actions were taken in compliance with a lawful order of court and in accordance with its statutory obligations. Accordingly, it was argued that the First Defendant could not be held responsible for any loss allegedly suffered by the claimant.

The court was therefore urged not to grant the reliefs sought by the claimant, on the ground that they were unsubstantiated. In view of the claimant's failure to discharge the burden of proof and in light of the cogency of the 1st Defendant's evidence, the court was respectfully urged to dismiss the claimant's claims in their entirety. It was accordingly prayed that the issue be resolved in favour of the First Defendant on the basis that the claimant had failed to prove her case against the First Defendant on the preponderance of evidence and was not entitled to any of the reliefs sought before the court.

In arguing the second issue for determination, learned counsel for the 1st Defendant submitted that the term *breach of contract* connotes an unjustifiable failure to perform the terms of a contract, either through non-performance or interference with contractual obligations. Emphasis was placed on the element of *unjustifiability*, it being argued that the First Defendant's conduct in this matter was solely ministerial and executed in obedience to a valid and subsisting court order. It was further contended that no mala fides could be ascribed to the First Defendant, nor was there any intention on its part to deprive the claimant of her proprietary rights beyond the ambit of the order of the Magistrate Court made on 4th December 2023. The Defendant's conduct was described as lawful and justifiable, and reliance was placed on the decision in ***AROGUNDADE V. SKYE BANK (SUPRA).***

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It was submitted that the facts remained uncontroverted that, on 4th December 2023, the 1st Defendant received a letter dated same day with reference number AR:3000/FCT/X/D88/VOL.3/57 from the Squad Unit of the FCT Police Command, Abuja, requesting compliance with an attached court order for the provision of account information and the imposition of a post-no-debit restriction on the account in question, pursuant to Section 4 of the *Police Act, 2020*, and Section 17 of the *Advance Fee Fraud Act, 2006*. It was the First Defendant's case that it merely complied with the said directive by placing the restriction on the account.

Counsel reiterated that all court orders are presumed valid and binding until set aside, citing the decision of the Court of Appeal in ***EL BARAKAT GLOBAL RESOURCES LTD V. GOVERNOR, SOKOTO STATE & ORS (2020) LPELR-50916(CA),*** AND THE EARLIER SUPREME COURT DECISION IN ***BABATUNDE & ORS V. OLATUNJI & ANOR (2000) LPELR-697(SC)***, to reinforce this principle. On the basis of these authorities, it was submitted that where a party acts in compliance with a subsisting order of court, such a party cannot be held liable for a breach of fiduciary or contractual duty.

Counsel argued that the 1st Defendant's role in the transaction was purely ministerial and statutorily compliant. It was submitted that it would be contrary to law and reason to suggest that obedience to a court order could amount to a wrongful act. Counsel urged the court to find that no duty had been breached, and that the First Defendant merely acted within the bounds of its legal obligation. It was further submitted that obedience to a court order is not subject to the discretion of a party, and that parties are not permitted to pick and choose which court orders to comply with.

Further reliance was placed on ***EMENIKE V. ORJI & ORS (2008) LPELR-4103(CA)*** AND ***UDOFIA & ANOR V. INEC & ORS (2023) LPELR-61465(CA).***

Counsel further submitted that the 1st Defendant acted in good faith and in accordance with its legal obligations, and that it was neither its role nor within its power to question the jurisdiction of the Magistrate Court or declare the order null and void. Counsel argued that the proper course

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would have been for the claimant to apply to the court who gave the order to set it aside which she had failed to do, both in the processes filed and in her oral testimony under cross-examination.

Furthermore, counsel argued that no liability could accrue to the First Defendant as a result of its obedience to a court order and that no breach of the banker-customer relationship had been committed. Accordingly, the court was urged to resolve this issue in favour of the First Defendant by holding that there had been no breach of contractual or fiduciary duty owed by the First Defendant to the claimant.

In respect of the third issue for determination, learned counsel for the 1st Defendant submitted that where there is no breach, there can be no remedy. Reliance was placed on the decisions in ***RITE FOODS LTD & ANOR V. ADEDEJI & ORS (2019) LPELR-47698(CA), AND OSEVWERHA V. OWHOFASA (2020) LPELR-52668(CA).***

Counsel maintained that, as had already been argued extensively in paragraphs 9.0 to 9.13 of its written address, he stated that the claimant had failed to establish that there was an unjustified breach of the banker-customer relationship by the First Defendant. It was therefore submitted that, having failed to prove any breach, the claimant could not be entitled to any form of compensatory relief. My Lord was accordingly urged to so hold.

Counsel made particular reference to reliefs F, G, and H endorsed on the face of the claimant's writ, and submitted that these reliefs must fail as the oral and documentary evidence before this Honourable Court has not substantiated any breach on the part of the 1st defendant. Accordingly, the court was urged to refuse and dismiss the said reliefs.

In conclusion, it was submitted that the claimant instituted this action seeking declaratory reliefs and damages on the basis of an alleged breach of fiduciary duty by the First Defendant. However, it was the contention of counsel that no credible or sufficient evidence had been adduced by the claimant to support the reliefs sought. On the other hand, the First Defendant was said to have presented a credible and robust defence, both in law and in fact.

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The Court was therefore respectfully urged to find that the claimant had failed to discharge the burden of proof imposed by law and had failed to establish any basis for the grant of the reliefs sought. Consequently, the court was invited to dismiss the entirety of the claimant's suit as endorsed on the writ of summons, and to grant the reliefs sought in paragraph 34 of the First Defendant's statement of defence.

The claimant on the other hand filed her written address dated 8th April, 2025 in which a sole issue for determination was formulated thus;

"Whether the claimant has proved her case and is entitled to the reliefs sought?"

In addressing the sole issue for determination, counsel for the Claimant argued the issue under several subheads for clarity and emphasis and they are as follows:-

"- The chief Magistrate Court of Nasarawa state, sitting at Maraba Guruku, lacked the jurisdiction to make an order directing the 1st defendant o freeze the claimant's account.

- ***The 2nd defendant acted in bad faith***
- ***The 1st defendant owes the claimant a duty of care.***
- ***The 1st defendant breached its duty of care by freezing the claimant's account***
- ***The 1st defendant breached its duty of care by failing to inform the claimant that her account had been frozen***
- ***The Honourable court is entitled to set aside the order of the Magistrate Court***
- ***The Claimant is entitled to general damages***
- ***The claimant has made out a compelling case for an award of cost in her favor***
- ***This Honourable court can award post- judgment interest on the judgment sum.***

In arguing the first subhead, it was contended that the Chief Magistrate Court of Nasarawa State sitting at Mararaba, Guruku lacked the jurisdiction

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to make an order directing the First Defendant to freeze the Claimant's account.

Counsel submitted that it is trite law that the jurisdiction of a court is pivotal to the decision of any matter that comes before it. Reliance was placed on the case of ***NWOBIKE. V. FRN (2022) 6 NWLR (PT. 1826) 293 AT 354–355***.

Consequently, counsel argued that, pursuant to **Sections 251(1)(d)** and **272(1)** of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), exclusive jurisdiction over banking matters is vested in the Federal High Court and the State High Courts (including High Court of the Federal Capital Territory).

Further reference was made to the Supreme Court decision in ***NDIC V. OKEM ENT. LTD (2004) 10 NWLR (PT. 183).*** Counsel posed the rhetorical question of whether the Second Defendant's application before the Magistrate court to freeze the Claimant's account was one connected with banking or financial institutions, and submitted emphatically in the affirmative.

It was further submitted that the act of freezing a customer's bank account is one that directly implicates the banker-customer relationship and is governed by specialized banking statutes such as the **Banks and Other Financial Institutions Act (BOFIA) 2020**, the **EFCC Act**, and the **Advanced Fee Fraud and Other Related Offences Act, 2006**. Relevant statutory provisions, including **section 17 of the Advanced Fee Fraud Act, sections 34(1) and 46 of the EFCC Act**, and **section 97(1) of BOFIA**, were cited and reproduced to reinforce this position.

On the basis of the foregoing, it was submitted that such applications must be brought before the appropriate High Courts and that the Magistrate Court lacked the jurisdiction to entertain such an application.

Counsel stated that assuming without conceding that a Magistrate Court of a state could make an order to freeze an account, he stated that it is settled law that a court must not only have subject matter jurisdiction but also territorial jurisdiction.

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In support of this contention, reliance was placed on the decisions in ***BARNAX ENG. CO. NIG. LTD V. GOVT. RIVERS STATE (2024) 9 NWLR (PT. 1943) 301 AT 326, EFCC & ORS V. IDIGIE (2012) LPELR-15324(CA), AND MALIAN TARKI V. TONGO (2018) 6 NWLR (PT. 1614) 69 AT 86.***

Counsel stated that a perusal of the parties' pleadings was said to have revealed that the Claimant was based in Garki, Abuja, and that her account had been opened and operated at the First Defendant's Transcorp Hilton, Abuja Branch. It was further noted that the beneficiary of the court order, the Deputy Commissioner of Police, CID, FCT Police Command, Zaria Street, Garki 2, Abuja, was also based in Abuja. It was shown that following the issuance of the court order, same was served by the Second Defendant on the First Defendant's Transcorp Hilton Branch in Abuja. The case of ***DALHATU V. TURAKI* (2003) 15 NWLR (PT. 843) 310 AT 342 PARAS. H–B** was cited. No fact was disclosed indicating that any event leading to the Second Defendant's application occurred in Nasarawa State, nor was it shown that any of the parties involved in the said application was based in Nasarawa State. Consequently, it was submitted that the Chief Magistrate's Court of Nasarawa State, sitting at Maraba Gurku, lacked the territorial jurisdiction to issue the order directing the First Defendant to freeze the Claimant's account.

In arguing the second subhead, counsel submitted that the Second Defendant was alleged to have acted in bad faith, and that such conduct amounted to a breach of the Claimant's rights to fair hearing and property under Sections 36(5) and 44(1) of the 1999 Constitution (as amended). Reference made to the case of ***ODUTOLA V. MABOGUNJE (2013) 7 NWLR (PT. 1354) 522 AT 563 PARAS. B–D.***

Consequently, counsel stated that where a party fails to lead evidence or challenge that of the opposing party, the court is entitled to rely on the unchallenged evidence, and reliance was placed on the case of ***AMADI V. NWOSU (1992) 5 NWLR (PT. 241) 273 AT 284.*** Counsel further stated that the failure to traverse specific facts was submitted to amount to an admission. Reference was made to the case of ***MELROSE GENERAL***

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SERVICES LTD V. EFCC (2025) 1 NWLR (PT. 1972) 1 AT 175 PARA. E.

Consequently, counsel submitted that the Claimant was said to have established, through pleadings and oral evidence, that the Second Defendant acted in bad faith. He stated that the Second Defendant was noted not to have filed any defence or led evidence rebutting the said allegations, nor was any basis provided for a reasonable suspicion of criminal conduct. In view of the absence of defence or denial, the Claimant's allegations were deemed admitted, and the court was urged to so hold.

In arguing the third subhead, counsel submitted that a customer is someone who has an account with a bank. Reference was made to the cases of ***I.T.P.P. LTD V. UBN PLC (2006) 12 NWLR (PT. 995) 483 AT 516 PARAS. A–C; OKOBIEMEN V. UBN PLC (2019) 4 NWLR (PT. 166) 265 AT 280 PARA. H AND OMNI PRODUCTS NIG. LTD V. UBN PLC (2021) 10 NWLR (PT. 1783) 111.***

Consequently, counsel stated that the parties are ad idem that the First Defendant is a bank and the Claimant a customer with an operational account domiciled at the First Defendant's branch and that the existence of a fiduciary banker-customer relationship was thus established, from which flowed a duty of care owed by the First Defendant to act in the Claimant's best interest and safeguard her financial well-being.

In arguing the fourth subhead, it was contended by learned counsel for the claimant that a duty of care is defined as a requirement that a person act towards others and the public with the watchfulness, attention, caution, and prudence that a reasonable person in the circumstances would exercise, and that failure to meet this standard renders such acts negligent, with resulting damages being actionable in a claim for negligence. It was further submitted that the banker-customer relationship imposes a duty on the First Defendant to exercise reasonable care and skill in regard to the affairs of the claimant, and reliance was placed on the decisions in ***DIAMOND BANK LTD. V. PARTNERSHIP INVESTMENT COMPANY LTD. & ANOR. (2009) 18 NWLR (PT. 117) 67 AT 92***

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PARAS. F–G AND AGBANELO V. U.B.N. (2007) NWLR (PT. 666) 534 AT 551.

Counsel asserted that the First Defendant, being the banker of the claimant, was expected to exercise such reasonable care and skill upon being served with the court order of the Chief Magistrate Court of Nasarawa State directing the freezing of the account of "Paulyn Abhulimen And Co." On the facts of this case, which were said to be undisputed, it was submitted that a breach of the duty of care and skill owed to the claimant was occasioned by the First Defendant. Reference was made to paragraph 2 of the First Defendant's Statement of Defence, where it was admitted that the name of the claimant's account is "Abhulimen And Co." while the court order was directed at "Paulyn Abhulimen And Co."

Counsel contended that a reasonable and diligent bank would verify both the account name and the account number before acting, and that failure to verify the account name amounted to a lack of proper scrutiny. It was argued that the freezing of an account based solely on the account number, when the accompanying name did not correspond, demonstrated negligence, and that a reasonably careful bank ought to have sought clarification before acting.

In response to the First Defendant's position in its final written address that the claimant's Bank Verification Number (BVN) was linked to "Abhulimen And Co," counsel submitted that although evidence may be elicited under cross-examination, such evidence must be pleaded to be relevant. Reliance was placed on ***OKWEJIMINOR V. GBAKEJI (2008) ALL FWLR (PT. 409) 405 AT 438 PARA. G.***

Counsel stated that an examination of the First Defendant's Statement of Defence reveals that the fact that the claimant's BVN is linked to the account of Abhulien & co and that it was while carrying out its purported due diligence that the 1st defendant linked the name Paulyn Abhulimen & Co to the account of Abhulimen & Co. Accordingly, counsel urged this Honourable court to discountenance the First Defendant's submissions on the BVN linkage.

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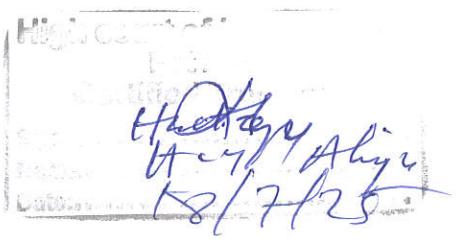
Counsel submitted that assuming that such unpleaded evidence may be relied upon, counsel asked the question as to what probative value could be placed on the said linkage, and it was contended that no argument was made to establish how such linkage could absolve the First Defendant of liability for breach of its duty of care. It was further submitted that the mere fact of multiple accounts being linked to the same BVN did not entitle the First Defendant to freeze an account not named in the court order. It was noted that the BVN was not referenced in the court order and, if linkage alone were sufficient, it was asked why the claimant's personal accounts were not also frozen. It was submitted that the First Defendant, rather than seeking clarification from the issuing authority, took it upon itself to establish a connection between the claimant and the account mentioned in the order via BVN, which action was said to be improper.

Learned counsel contended that although the First Defendant is under an obligation to obey all court orders, such obedience must be rendered strictly within the confines of the order's scope, and not in excess thereof. It was further submitted that where the name on a court order does not correspond with the name on a customer's account, or where the account number reflected on the said order does not align with the account name, the First Defendant cannot be said to be entitled to determine which of its customers' accounts the order was intended to affect.

Counsel argued that a duty lies on the First Defendant to seek clarification from the issuing authority prior to acting on the order. He submitted that failure to do so constitutes an overreach and amounts to a breach of the duty of reasonable care and skill expected of a bank. He asserted that despite the discrepancy between the account name and number on the face of the court order, and the claimant's actual account name, no clarification was sought by the First Defendant; rather, that it used its discretion to freeze the claimant's account.

Reference was placed on the decision of the Supreme Court of the United Kingdom in ***PHILIPP V. BARCLAYS BANK UK PLC (2023) UKSC 25 PARAGRAPH 63,*** where it was held that where a bank recieves a payment order that is unclear or leaves the bank with a choice as to the



mode of execution, a duty arises to exercise reasonable care and skill both in ascertaining and interpreting the instructions, and in executing them.

It was further submitted that, in circumstances where ambiguity on a court order arises due to a mismatch between the account name and the account number stated therein, the bank has a duty to seek clarification from the issuing authority. It was contended that, under cross-examination, DW1, in an attempt to justify the actions of the First Defendant, only succeeded in exposing a lack of diligence. Counsel stated that when DW1 was questioned as to whether the court order directed the freezing of all accounts bearing the name "Abhulimen," DW1 responded that verification was done using the account number stated on the order. That Upon further inquiry as to whether the defendant would still freeze an account where the account name and the number on the court order do not match, DW1 stated that the account linked to the number would nevertheless be frozen.

Counsel then submitted that there were a couple of problems with DW1's evidence. He stated that banks manage thousands, if not millions of accounts, reliance on a single identifier was said to present a high risk of error. It was contended that a proper verification process was required that both the account name and number be cross-checked to ensure that enforcement actions were properly directed.

Counsel further stated that without any evidence from the Second Defendant identifying the intended account to be frozen, and in the absence of any evidence from the First Defendant that clarification was sought from the issuing court, the decision of the First Defendant to proceed on the basis of its own verification and interpretation—despite the discrepancy—was submitted to suggested a lack of reasonable care and diligence.

In another submission, counsel stated that under cross-examination, DW1 confirmed that all court orders received by the First Defendant were processed by its legal department. Reference was made to paragraph [XXX] of the Statement of Claim, wherein the claimant averred that the First Defendant maintains a dedicated in-house legal department,

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supported by external solicitors and that this fact was admitted by the First Defendant in paragraph [XXX] of its Statement of Defence.

Counsel argued that this creates a reasonable expectation that court orders would be properly reviewed before execution. He stated that freezing the account despite the mismatch between the account name and account number indicated a failure of due diligence

Counsel further stated that although there was some ambiguity in the court order, that it was not the duty of the First Defendant to resolve such ambiguity based on self- verification and interpretation of the court order. He stated that having failed to seek this clarification, the defendant breached its duty of care towards the claimant.

Counsel in arguing the 5th subhead began by stating that a fiduciary and contractual duty to act with reasonable care and skill in the handling of the claimant's account was owed by the First Defendant. He stated that assuming, without conceding, that the First Defendant was obligated to freeze the claimant's account based on the prima facie irregular order of the Chief Magistrate Court of Nasarawa, without first seeking clarification on the ambiguity therein, it was submitted that an additional obligation to inform the claimant of such significant restriction was also imposed on the First Defendant.

That duty to inform was submitted to be both contractual and statutory, with the banker-customer relationship requiring reasonable conduct and regard for the customer's interest. Specific reliance was placed on the Central Bank of Nigeria Consumer Protection Regulations, 2019, particularly paragraphs 5.1.1 and 5.1.5. It was further submitted that, during cross-examination, DW1 admitted it statutory duty towards the claimant and that the 1st defendant had the duty to notify the claimant that it had frozen her firm's account.

It was further pointed out regarding the propriety of cross- examining DW1on the CBN regulations, that this Honourable Court allowed the claimant counsel to cross- examine DW1 on the CBN regulations and that the 1st defendants cannot reopen the issue at this stage. He stated that during the cross-examination, DW1 when asked, confirmed his familiarity

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with the CBN Regulations and that no contradictory version of the CBN Regulations was tendered by the First Defendant, nor was any evidence led to establish that the document presented during cross-examination had been doctored.

Furthermore, It was submitted that, being a subsidiary legislation made pursuant to Section 56 of the Banks and Other Financial Institutions Act (BOFIA), the CBN Regulations fell within the purview of judicial notice under Section 122(1) of the Evidence Act, 2011 (as amended). Section 122 was accordingly reproduced for the court's reference.

Counsel argued that by failing to notify the claimant after freezing her account on 4 December 2023 until the claimant's inquiry by letter dated 12 March 2024, it was submitted that a breach of the duty of care occurred and that the First Defendant violated both paragraphs 5.1.1 and 5.1.5 of the CBN Regulations. It was further submitted that this omission deprived the claimant of the opportunity to challenge the court order or make alternative arrangements.

Reliance was placed on the common law position illustrated in ***GREENWOOD V. MARTINS BANK LTD (1932) 1 KB 321***. He stated that by parity of reasoning, it was submitted that the First Defendant was under a duty to report the post-no-debit order placed on the claimant's account and the underlying reason, to enable her to inquire and act accordingly. This Honourable Court was urged to so hold.

It was submitted, in argument on the sixth subhead, that any decision made without jurisdiction is null and void ab initio, and that a party affected by such a decision is entitled *ex debito justitiae* to have same set aside. Reliance was placed on the decision in ***OKAFOR V. A.G. ANAMBRA STATE (1991) 6 NWLR (PT. 200) 659 AT 681, PARAS. A–C***.

It was contended that where a judgment, ruling or order is made by a court without jurisdiction, the party affected has a discretion to either apply to that court to set aside the order, or to approach another court with jurisdiction, or to appeal against the decision. It was further submitted, on the authority of ***REGISTERED TRUSTEES, MISSION HOUSE V.***

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A.S.T.B. PLC (2024) 10 NWLR (PT. 1947) 565 AT 595, PARA. B; ONAGORUWA V. I.G.P. (1991) 5 NWLR (PT. 193) 593 AT 638; AND KODEN V. SHIDON (1998) 10 NWLR (PT. 571) 662 AT 675, that the affected party has the discretion to choose which procedure to adopt and is not bound to apply to the court that acted without jurisdiction to set aside its decision.

It was further submitted that it had been established that the Chief Magistrate Court of Nasarawa State, sitting at Maraba Gurku, lacked both substantive and territorial jurisdiction to issue the order directing the First Defendant to freeze the claimant's account, and that the said order was made in breach of the claimant's right to fair hearing. It was therefore argued that the said order was void ab initio and ought to be set aside *ex debito justitiae*.

Citing ***ONAGORUWA V. I.G.P. (SUPRA) AND KODEN V. SHIDON (SUPRA),*** it was submitted that a court of coordinate jurisdiction is competent to set aside a null order of another court of like jurisdiction. On this basis, it was argued that this Honourable Court, being of superior jurisdiction to the Chief Magistrate's Court, is well within its powers to set aside the null order issued by that subordinate court. Further reliance was placed on the case of ***MRS EUNICE ODIRI (NEE ESISO) AND 4 ORS V ZENITH BANK & 6 ORS (UNREPORTED) SUIT NO. FHC/ABJ/1635/2019.***

In response to the First Defendant's submission that the claimant ought to have mitigated her loss by applying to the Magistrate's Court to set aside the order, counsel argued that this submission was misguided, as the claimant had multiple procedural options and cannot be punished for her choice and her choice adhered to the supreme court's advice in ***FBN-PLC V. BEN-SEGBA TECH SERV. LTD. (2024) 16 NWLR (PT. 1963) 1 AT 27, PARA. G.***

It was further submitted that while the Chief Magistrate's Court of Nasarawa state could only set aside its own void order, it lacked the jurisdiction to entertain or determine the substantive issues raised in this suit, while this Honourable Court was fully vested with jurisdiction to

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entertain and determine all the issues submitted for adjudication, therefore that it was more practical for the claimant to ventilate her grievances before this Honourable court.

Accordingly, counsel submitted that this Honourable Court has the jurisdiction to set aside the order of the Chief Magistrate Court of Nasarawa State directing the freezing of the claimant's account, and it further urged this Court do so.

In arguing the seventh subhead that states that the claimant is entitled to general damages, it was submitted that damages generally accrue from a wrongful act or conduct of a defendant, and are awarded as financial compensation for a wrong suffered by a claimant. Reliance was placed on ***ADENIRAN V. ALAO (1992) 2 NWLR (PT. 223) 350 AT 372 AND MAXIMUM INS. CO. LTD. V. OWONIYI (1994) 3 NWLR (PT. 331) 178 AT 195.***

It was argued that in the present case, the wrongful conduct of the Second Defendant in obtaining an order of the Chief Magistrate Court of Nasarawa State and inducing the First Defendant to freeze the claimant's account without prior notice had been established, and that no evidence had been placed before the court indicating that there was any basis for the order obtained against the claimant. Furthermore, the First Defendant was found to have breached its duty of care by failing to seek clarification on the ambiguity in the court order and by failing to notify the claimant that her account had been frozen. Counsel then submitted that the defendant's wrongful acts had been established and that the claimant was thereby entitled to an award of damages. It was further submitted that the measure of damages in actions founded in negligence is based on the principle of *restitutio in interim*, in which the claimant is entitled to be restored to the position she would have been in had the wrong not occurred. Reliance was placed on ***AGBANELO V. U.B.N (2007) NWLR (PT. 666) 534 AT 561–562.***

It was additionally argued that the general damages claimed by the claimant were such as the law itself implies to have accrued from the wrong complained of, and that contrary to the First Defendant's

submission, the quantum of general damages need not be pleaded or proved. It was submitted that the assessment and award of general damages lies within the discretion of the court, based on reasonableness and the circumstances of the case. Reliance was placed on ***U.B.N. PLC V. AJABULE (2011) 18 NWLR (PT. 1278) 152 AT 178, PARA. C, AND U.B.N. PLC V. AJABULE & ANOR (2011) LPELR-8239(SC) AT PP. 32–33, PARAS. C–D.***

It was further submitted that the freezing of the claimant's law firm's account since 4th December 2023 had significantly impeded her ability to conduct legal practice, and that such restriction constituted not merely a financial inconvenience, but a direct interference with her ability to operate effectively, maintain client relationships, and ensure the continuity of her law firm.

In view of the foregoing, Counsel urged that this Honourable Court grant the claimant's claim for general damages.

It was contended, in arguments under the eighth issue, that pursuant to Order 49 Rule 1 of the High Court of the Federal Capital Territory Civil Procedure Rules 2025, laid down what was described ***in GRIMES V. PUNCHESTOWN DEVELOPMENT CO. LTD. (2002) 4 IR 515 AT 522,*** that the normal rule is that costs follow the event, unless the court, for special reasons, directs otherwise. It was submitted that, accordingly, the successful party is entitled to an award of costs against the unsuccessful party, unless the court for a special cause directs otherwise. Furthermore, he stated that Order 49 rule 6 of the rules of this Court 2025 provides that the costs of any proceedings are at the discretion of the court. Reliance was placed on ***MEKWUNYE V. EMIRATES AIRLINES (2019) 9 NWLR (PT. 1677) 242 AT PARA. A, AND GABARI V. ILORI (2002) 14 NWLR (PT. 786) 78 AT 103.***

Counsel submitted that legal fees incurred by the claimant fall within the category of expenses which the court is empowered to consider when awarding costs. Reference was made to ***YAKUBU V. MIN. HOUSING AND ENVIRONMENT, BAUCHI STATE (2021) 12 NWLR (PT. 1791) 465 AT 485–486, PARAS. A–G; EZENNAKA V. COP (2022) 18 NWLR***

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(PT. 1862) 369 AT 417, PARA. F; AND JALBAIT VENTURES NIGERIA LTD. V. UNITY BANK PLC (2016) LPELR-41625(CA) AT PP. 40–41.

It was noted that in paragraphs 22 to 27 of the Statement of Claim, the claimant pleaded that the law firm of Kehinde & Partners LP was briefed and that the sum of ₦25,000,000.00 was billed as legal fees. It was submitted that based on the decision in ***LONE STAR DRILLING NIG. LTD. V. NEW GENESIS EXECUTIVE SECURITY LTD. (SUPRA)***, such a legal bill constitutes a species of cost akin to special damages. Reliance was placed on ***HARKA AIR SERVICES LTD. V. KEAZOR (2006) 1 NWLR (PT. 960) 1 AT 195, PARAS. G–H.***

To justify the claim for legal fees, the claimant was shown to have specifically pleaded facts relating to the pedigree of the law firm and its principal partner, a Senior Advocate of Nigeria. It was observed that the legal bill indicating the amount claimed was duly tendered in evidence.

In response, counsel noted that the First Defendant, in its Statement of Defence, did not deny the claimant's averments on costs. Rather, in paragraph 31 of the Statement of Defence, it was merely averred that no wrong had been done to the claimant, and that no liability for damages existed. It was submitted that the said paragraph 31 offends the provisions of Section 115(1) and (2) of the Evidence Act 2011 (as amended), on the basis that it is argumentative and conclusive. It was further submitted that the determination of whether a wrong had been done is a matter solely within the purview of the court, and not to be asserted as a matter of pleading.

It was argued that the mere averment of innocence does not amount to a valid traverse and that, in the absence of an express and unequivocal denial, the claimant's averments on costs must be deemed unchallenged. Reliance was placed on ***MERIDIEN TRADE CORP. LTD. V. METAL CONSTRUCTION W.A. LTD. (1998) LPELR-1862(SC) AT PP. 17–18, PARAS. F–A.***

It was also submitted that the First Defendant failed to cross-examine the claimant on the issue of legal fees, and reliance was placed on ***ONYIORA***

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V. ONYIORA (2019) 15 NWLR (PT. 1695) 227 AT 245, PARAS. G–H.

In view of the unchallenged and uncontroverted evidence led by the claimant in support of her claim for legal fees, it was humbly urged that the sum of ₦25,000,000.00 be awarded as the cost of this action. This Honourable Court was accordingly urged to so hold.

Counsel submitted in argument under the final subhead, that interest may be awarded in two distinct circumstances: firstly, as of right; and secondly, where the court is conferred with statutory discretion to do so. Reliance was placed on ***CAPPA & D'ALBERTO NIGERIA PLC V. NDIC (2021) 9 NWLR (PT. 1780) 1 AT 14–15, PARAS. H–A,*** AND FURTHER ON THE CASES OF ***ADEBIYI & ORS V. NATIONAL INSTITUTE OF PUBLIC INFORMATION & ORS (2013) LPELR-22628(CA), PP. 27–27, PARAS. A–D, AND GTB PLC V. OBOSI MICROFINANCE BANK LTD (2022) 4 NWLR (PT. 1821) 455 AT 523–524, PARAS. H–B.***

Reference was also made to Order 42 Rule 3 of the High Court of the Federal Capital Territory Civil Procedure Rules 2025, which mirrors the provisions of the Federal High Court Civil Procedure Rules 2009. On this premise, it was submitted that the award of post-judgment interest lies within the discretion of the court. Counsel further urged that, in the present circumstances, the discretion of the court ought to be exercised in favour of the claimant, it being shown that the claimant's account was frozen by the defendants since 3 December 2023. The making of an order for post-judgment interest was urged as necessary to ensure that the claimant is fully compensated for the deprivation suffered.

It was also submitted that the imposition of post-judgment interest would discourage such actions and that this strengthens public confidence in the judiciary and promotes adherence to the rule of law. Accordingly, Counsel humbly urged that this Honourable Court be pleased to exercise its discretion by awarding post-judgment interest on the judgment sum at the rate of 10% per annum.

In conclusion, it was submitted that all the reliefs sought by the claimant ought to be granted for the following reasons:-

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1. That the second defendant acted in bad faith by obtaining an order from the Chief Magistrate Court of Nasarawa State to freeze an account domiciled in Abuja;
2. That the Chief Magistrate Court of Nasarawa State lacked the requisite jurisdiction to make an order directing the freezing of the claimant's account;
3. That the first defendant breached the duty of care owed to the claimant by failing to clarify the ambiguity in the court order before acting upon it;
4. That the first defendant further breached the duty of care by failing to inform the claimant that her account had been frozen;
5. That this Honourable Court is vested with the jurisdiction to set aside the order made by the Chief Magistrate Court of Nasarawa State;
6. That the claimant is entitled to general damages as a result of the wrongful acts of the defendants;
7. That the claimant's legal costs, being unchallenged and supported by pleadings and evidence, warrant the award of costs in her favour; and
8. That this Honourable Court is empowered under its rules to award post-judgment interest on the judgment sum.

This Honourable Court was therefore humbly urged to so hold.

Consequently, the 1st defendant filed a reply on points of law dated and filed 24th April, 2025 and the following arguments were canvassed.

Counsel in response to the Claimant's argument in paragraphs 4.2 to 4.18 of the Final Written Address that the Magistrate Court sitting at Mararaba, Gurku, lacked the requisite jurisdiction to issue the order which occasioned the restriction on the Claimant's account, stated that while it is conceded that the said court may or may not have possessed the necessary jurisdiction, it was equally submitted that the order, having been made, remained enforceable until formally set aside, and that the First Defendant was under a legal obligation to comply with same. In support of this

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position, reliance was placed on the decision in ***KULAK TRADES AND INDUSTRIES PLC V. TUG BOAT M.V. JAPUAL B & ANOR (2010) LPELR-8630(CA).***

In further response, it was contended that the Claimant's arguments in paragraphs 4.24 to 4.48 of the said address, particularly the submission that the First Defendant owed and breached a duty of care by complying with the said order, were erroneous. Counsel submitted that while the defendant owed a duty of care, such duty does not, and cannot extend to requiring disobedience to a court order. Counsel stated that the balance of measurement is that where there is a duty of care and a court order, a party is expected to obey the court order, and urged this Honourable court to so hold. This proposition was supported by reliance on the authorities of ***STRABAG CONSTRUCTION NIGERIA LTD & ANOR V. UGWU (2005) LPELR-7549(CA) AND THE EARLIER-CITED CASE OF KULAK TRADES AND INDUSTRIES PLC V. TUG BOAT M.V. JAPUAL B & ANOR (SUPRA).***

It was further that under Nigerian law, any party to whom a court order is directed is bound to obey same until it is lawfully set aside. It was contended that no individual is permitted to exercise discretion as to the validity or invalidity of such an order in determining whether or not to obey. Counsel also reiterated that all court orders—whether regular or irregular, valid or void, intra vires or ultra vires—must be obeyed until set aside, and the court was urged to so hold.

In response to the Claimant's assertion that ambiguity existed on the face of the said court order as to the identity of the account to be restricted, counsel submitted that such a position was arrived at in error and urged the Court to so hold. Counsel posited that the account number referenced in the court order was identical to the account number on which the post-no-debit restriction was placed. Furthermore, he emphasized that the Claimant, during the cross-examination of PW1, had admitted that the said account number on the face of the court order belonged to her. Counsel further contended that the difference in nomenclature between "Paulyn Abhulimen & Co." and "Abhulimen & Co." was material, was regarded as a mere technicality that went to no issue. The court was urged to so hold.

It was additionally noted that PW1 had confirmed under cross-examination that the referenced account number was linked to her Bank Verification Number (BVN), which in turn bore her full name, Paulyn Osobhase Abhulimen. The First Defendant, in carrying out its due diligence—as stated in paragraph 23 of its Statement of Defence—and in complying with the direction contained in the court order to furnish the BVN associated with the identified account, was said to have rightly concluded that the account to be restricted was that of Abhulimen & Co. It was therefore submitted that any ambiguity was fully clarified by the steps taken, and the court was once again urged to so hold.

The Claimant was stated to have erroneously argued that the issue of BVN is evidence gotten under cross examination. It was submitted that the said evidence was also supported by paragraph 23 of the First Defendant's Statement of Defence and by paragraph 3 of the court order tendered through DW1 and marked as Exhibit B2. Counsel then stated that the contention of the Claimant that the court should discountenance the evidence on BVN was misguided and goes to no issue.

It was further submitted that evidence elicited under cross-examination is most probable and of greater credibility than that given in examination-in-chief Reference was made to the case of **YONWUREN V MODERN SIGNS LTD NIG (2021) 14 NWLR PT 1795 PG 122-173 AND INNTRACO UNIVERSAL SERVICES LTD V UNION BANK OF NIG PLC (2020) 11 NWLR (PT 1734) PG 138- 176.**

Counsel stated that It was also confirmed under the cross-examination of DW1 by Claimant's counsel that the Claimant, Pauline Osobhase Abhulimen, was the sole signatory to the said account, thereby eliminating any ambiguity as to the identity of the account referred to in the court order. It was further submitted that Paulyn Osobhase Abhulimen trades under the name and style of Abhulimen and Co., and that the said business could only be represented by her in the present case.

In response to paragraphs 4.49 to 4.61 of the Claimant's Final Written Address, it was submitted that the duty of care owed by the First Defendant does not extend to disobeying court orders or interfering with

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police investigations. It was further submitted that no law permits such interference, and that what was expected of the First Defendant to inform the Claimant upon receipt of the court order, amounted to tipping off a subject of investigation. The court was urged to so hold.

Contrary to paragraph 4.51 of the Claimant's Final Written Address, it was submitted that DW1 did not at any point admit that the First Defendant had a duty to inform the Claimant without her inquiry. It was further submitted that the First Defendant did inform the Claimant of the existence of the court order as the basis for the account restriction.

Counsel further stated that assuming but not conceding that a duty of care existed to inform the Claimant immediately, it was submitted that no injury was shown to have resulted from the alleged failure. Counsel stated that the Claimant was said to have failed to establish any loss suffered, and thus was not entitled to an award of damages. The case of ***IGHRERINIOVO V. SCC NIGERIA LTD & ORS*** **(2013)N LPELR-20366 (SC)** was cited in support.

It was noted that, despite claiming she would have taken protective steps if informed earlier, the Claimant failed to take the most logical course of action—namely, applying to the magistrate court to vacate the said order. Instead, the Claimant was stated to have commenced the present suit seeking reliefs not including a prayer to set aside the said court order. The Claimant's argument in paragraphs 4.59 and 4.61 was accordingly described as unsupported by the evidence and as going to no issue.

Counsel to the First Defendant further responded to the Claimant's final written address by contending that the Claimant had forcefully argued that this Honourable Court possesses the power to set aside the order of the Magistrate Court sitting in Mararaba, Gurku. It was submitted, however, that while the jurisdiction of this Court to do so is not in contention, the real issue lies in the fact that the Claimant has not sought such relief on the face of her originating processes. He stated that rather, the Claimant prayed for an order directing the First Defendant who is not the maker of the order, to vacate the said court order.

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It was further submitted that this relief is misguided and incapable of being granted, as no party, including the First Defendant, has the authority to set aside or vacate an order made by a court of competent jurisdiction. The Court was urged to so hold.

It was further submitted that the duty of the court is limited to considering and granting reliefs sought by the claimant. Reliance was placed on the decision in ***STATE V. IBRAHIM & ORS (2014) LPELR-23468(CA)***. On the strength of this authority, it was submitted that the Claimant, having failed to specifically seek a declaration that this Honourable Court possesses the power to set aside the Magistrate Court's order, cannot now be heard to canvass such a declaration by implication. The Court was accordingly urged to so hold.

Further, it was contended that the Claimant had not prayed this Court to set aside the Magistrate Court's order on the face of the writ and thus should not be granted such relief and urged the court to so hold. It was submitted that had the Claimant genuinely wished to invoke the Court's jurisdiction in this regard, the proper legal procedure ought to have been followed as laid down in the case of ***REGISTERED TRUSTEES MISSION HOUSE V. A.S.T.B. PLC (2024) 10 NWLR (PT. 1947) 565 AT 595, PARA. B.***

Consequently, counsel stated that in line with the dictum of the court in the above cited case, it was submitted that the only proper course for the Claimant was to appeal to this Honourable Court to set aside the order of the Magistrate Court, not to seek the same relief indirectly by asking that the First Defendant vacate a court order. The First Defendant thus contended that the position of the law remains binding and cannot be displaced by the Claimant's reliance on an unreported authority cited in paragraph 4.69 of her Final Written Address. The Court was urged to so hold.

Counsel submitted that from the pleadings, evidence adduced, and the written addresses filed by the parties, it is clear that the First Defendant did not act unlawfully or breach any fiduciary or contractual duty owed to the Claimant. Consequently, it was argued that no liability can be said to

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arise against the First Defendant, and the Court was urged to disregard and discountenance the Claimant's submissions in paragraphs 4.73 to 4.93 of her Final Written Address and refuse to award any damages, costs, or interest against the First Defendant.

In conclusion, it was submitted that the Claimant had failed to establish her case on the balance of probabilities. On the basis of the pleadings, the evidence before the Court, and the final written arguments of both parties, Counsel urged the Court to dismiss the Claimant's suit in its entirety as being frivolous, vexatious, and malicious.

I have considered the statement of claim of the claimant, affidavits in support, statement in reply to the defendant's defence, written address and exhibits tendered in evidence by the claimant before this Honourable court.

I have equally considered the 1st defendants statement of defence, affidavit is support, final written address, exhibits tendered in evidence and reply on points of law filed before this Honourable court.

This Honorable Court has also taken note of the case ***of GUARANTY TRUST BANK V EBISI AUGUSTINE CHIJOKE; CA/A/CV/155/2023*** delivered on 20th December 2024, which the Claimant filed as additional authority to support her case.

Therefore, it is my humble opinion that the issue for determination is;

> ***"Whether the claimant is entitled to the grant of the reliefs sought"***

Let me begin by stating that it is the case of the claimant that early 2024, the claimant made several attempts to access the money in the above-stated account and realized that she could no longer access the account.

That upon inquiries and several visits to the 1st defendant's branch located at No. 63 Usuma Street, opposite Transcorp Hilton Hotel, Maitama, Abuja, the claimant was informed by her relationship officer that a PND had been placed on her account based on an order of a Magistrate Court sitting in Maraba Gurku, Nasarawa state. That the claimant wrote a letter to the 1st defendant requesting a copy of the court order and that in response, the

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1st defendant forwarded a copy of the said order to the claimant via its letter dated 13th March, 2024. That based on the said court order, the 2nd defendant purportedly applied to the Chief Magistrate Court of Nasarawa state for an order freezing the claimant's account and the Magistrate Court made an indefinite order directing the 1st defendant to freeze the claimant's account and identify and cause the arrest of the account operator and that the contact of the officer was provided therein. That the claimant was not served with the 2nd defendant's application, nor any other process relating to the case, nor that was she aware of any suit instituted against her before the said Chief Magistrate Court of Nasarawa state sitting at Maraba Gurku. That the claimant's account with the 1st defendant was opened at the 1st defendant's branch located at No.63 Usuma Street opposite Transcorp Hilton, Maitama, Abuja and that the claimant resides and carries on business in the Federal Capital Territory Abuja. That the claimant only found out about the court order when she could no longer access the account. That via her letter dated 13th March 2024, the claimant informed the 1st defendant that the purported order it relied upon was against a non-juristic person as there was no account name in its database bearing the name "Paulyn Abhulimen & Co" and that the order was wrongly obtained from an inferior court without the requisite jurisdiction to grant such an order.

That despite the claimant's letter to the 1st defendant, the 1st defendant has refused to lift the Post No Debit on the claimant's account. That the account is her business account which she uses for the daily operations of her law firm such as payment of salaries, provision of office supplies and maintenance of the office equipment, hence this suit.

As earlier stated, the issue for determination in this matter is ***"Whether the claimant is entitled to the grant of her reliefs sought"***

In the course of this suit, various issues were raised and argued by counsel on both sides. I shall be highlighting those issues below, and subsequently address each of them respectively.

1. The issue of the order of a PND on the Claimant's firm's bank account made exparte

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2. The issue of the name reflected on the order and the name on the account frozen by the 1st Defendant in obedience to the said court order of the Chief Magistrate Court of Nasarawa State, Maraba Gurku.

3. Whether the Chief Magistrate Court of Nasarawa State, Maraba Gurku has the jurisdiction to make an order to place a PND on the claimant's account

4. The duty of care owed the claimant by the 1st defendant in this matter and the extent of its applicability

5. The appropriate procedure to be adopted by the Claimant in the circumstances of this case

6. The absence of the 2nd defendant throughout the pendency of this suit and its implication

7. Whether the claimant has sufficiently established her case to be entitled to the grant of her reliefs sought.

The issues enunciated above shall be addressed serially.

On the issue of the order of a PND on the Claimant's firm's bank account made exparte, the claimant had the following among her reliefs sought;

> ***"b). A DECLARATION that an order to freeze a bank account cannot validly be granted ex-parte to last indefinitely"***
>
> ***"c). A DECLARATION that the chief Magistrate Court of Nasarawa State, sitting at Mararaba Gurku, lacked the jurisdiction to make an Order to freeze the claimant's Zenith Bank Plc's account (Account Number: 1012272348) based on an ex-parte application."***

It is a trite principle of law that exparte motions are made without putting the other party on notice and are granted temporarily. An exparte motion should not last throughout the pendency of a suit, and is typically granted for a very short period depending on the jurisdiction, and with the condition of the filing of a motion on Notice, subsequently putting the other party on notice for the sake of fair hearing. In the Court of Appeal case of

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PEREPIMODE V MIEKORO (1992) 2 NWLR (PT. 224) 483 CA, the court held thus;

> ***"An exparte injunction is usually made in cases of extreme urgency and without notice on the other side but usually granted for a very short period subject to a motion on notice being filed contemporaneously to the same effect"***

Similarly, it was held in the case of ***EGUAMWENSE V AMAGHIZEMWEN (1986) 5 NWLR (PT 41) 282 CA***

> ***"It is wrong in law to make an exparte order of interim injunction to last till the end of the substantive suit without hearing the other party"***

See also the case of ***KOTOYE V CENTRAL BANK OF NIGERIA (1989) 1 NWLR (PT. 98) 419***

In the instant case, Claimant deposed in her witness statement on oath, that she was never served the hearing notice or court order of the Chief Magistrate Court regarding the freezing of her account. She averred that she only discovered the PND placed on the bank account of her firm when the cheques she issued were returned and the value of a credit alert which she received at some point was not reflected in her account. I shall be reproducing the relevant paragraphs of the Claimant's witness statement on oath below for reference.

Paragraph 8 reads thus:-

> ***"Early this year (2024), I made several attempts to access the money in the above stated account and realized that I could no longer access the account"***

Paragraph 9 reads thus:-

> ***"Upon inquiries and several visits to the 1st defendant's branch located at No. 63 Usuma Street, opposite Transcorp Hilton Hotel, Maitama, Abuja, I was informed by my relationship officer, obi Okafor, that a post No Debit (PND)***

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had been placed on my firm's account based on an order of a Magistrate Court sitting in Mararaba Gurku, Nasarawa state"

Paragraph 10 reads thus:-

"I wrote a letter to the 1st defendant requesting a copy of the court order"

Paragraph 11 reads thus:-

"In response to my letter, the 1st defendant forwarded a copy of the Magistrate Court order to me via its letter dated 13th March, 2024"

Paragraph 12 reads thus:-

"Based on the court order that was forwarded to me by the 1st defendant, the 2nd defendant purportedly applied to the chief Magistrate Court of Nasarawa state for an order freezing my firm's account and the Magistrate Court made an indefinite order directing the 1st defendant to freeze my firm's account and 'identify and cause the arrest of the account operator, contact ASP Joseph Musa on 0703718559'
"

Paragraph 13 reads thus:-

"I was not served with 2nd defendant's application, nor any other process relating to case no.: CMC/MG/11301/23. Nor was I aware of any suit instituted against me or my firm before the chief Magistrate court of Nasarawa state, sitting at, Mararaba Gurku. Neither the 1st defendant nor the 2nd defendant notified me of a pending suit before the chief Magistrate Court of Nasarawa state."

The 1st defendant in response to this deposed at exactly paragraph 14 of its witness statement on oath thus;

"That in response to paragraph 12 of the statement of claim, the 1st defendant states that it did not institute the said action but was only served with a copy of the court order.

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The 1st defendant is under no duty or obligation to serve the claimant with court process that it did not institute".

It should be noted that the 2nd defendant throughout this suit was neither present nor represented. This Honourable Court had on several occasions during the pendency of this suit ordered that the 2nd defendants be served, but they failed to show up in court to defend the case. The implication of the 2nd defendant's absence throughout this proceedings shall be addressed in the latter part of this judgment.

On the other hand, I must agree with the 1st defendant, that not being a party to the proceedings instituted by the 2nd defendant before the Chief Magistrate Court of Nasarawa, it had no obligation to effect service of the processes of the said suit on the claimant as they obviously would not have been in possession of the processes in question. Furthermore, a cursory look at Exhibit B2 does not divulge the fact alleged by the claimant that the order was made exparte. Nevertheless, this does not change the fact that there is nothing before the court to show that the claimant was served any hearing notice or process of the court in the said suit wherein the Chief Magistrate court made an order to place a PND on the claimant's firm's bank account. Therefore, the claimant's right to fair hearing has been infringed upon as she ought to have been served the processes of the said proceedings.

In the absence of any defence to the contrary by the 2nd defendants in this matter, the fact is deemed admitted. I so hold.

On the issue of the name reflected on the order and the name on the account frozen in obedience of the said court order of the Chief Magistrate Court of Nasarawa state, Maraba Gurku, the claimant argued at paragraph 4.32.

"4.32. In paragraph 2 of the 1st defendant's statement of defence, the 1st defendant admitted that the name of the claimant's account with the 1st defendant is "Abhulimen & Co". However, the court order is directed at an account

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named "Paulyn Abhulimen & Co". The pertinent question at this stage is whether the 1st defendant failed to observe the standard expected of a reasonable bank in respect of the court order."

In response the 1st defendant in paragraph 2.8 of its reply on points of law stated thus:-

"It is clear from the evidence before this Honourable Court that the account number that was restricted is the same account number on the face of the court order. It is also clear from the evidence, especially as confirmed by the claimant under the cross examination of PW1, that the account number on the face of the court order belongs to Abhulimen & Co. Given this fact, it is mere technicality which goes to no issue for the claimant to be insisting that because the name on the face of the court order is Paulyn Abhulimen & Co., the order ought not to be obeyed and we urged my lord to so hold"

Furthermore, counsel contended in paragraph 2.9 of the same written address thus:-

"2.9. Moreover my lord, PW1 confirmed that the said account number on the face of the court order is linked to her BVN which carries the name Paulyn Osobhase Abhulimen. The 1st defendant's statement of defence, and in compliance with the court order which directed the 1st defendant to provide the BVN linked to the account on the face of the court order, rightly came to a conclusion which clarified all ambiguity, that the account to be restricted was that of Abhulimen & Co. We urge my lord to so hold"

Regarding the linking of the BVN of the claimant to the account number of the claimant's firm which was addressed on the court order, the claimant had earlier argued in paragraph 4.34 of her written address thus;

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"In the 1st defendant's final written address, the 1st defendant's counsel argued that the Bank Verification Number ("BVN") of the claimant is linked to the account of Abhulimen & Co. Therefore, the 1st defendant rightly froze the claimant's account. However, it is trite that although a party can rely on evidence procured from cross-examination, such evidence must have been pleaded because evidence on facts not pleaded go to no issue..."

Let me first address the issue raised by claimant on the admissibility of evidence obtained during cross examination.

Evidence tendered or obtained under cross examination are generally admissible in as much as they are relevant to the facts in issue. However, they must satisfy the condition of having been pleaded in the pleadings before the Court. In the case of ***EZENWA V K.S.H.S.M.B (2011) 9 NWLR (PT. 1251) 89,*** the court held thus;

"Where pleadings are filed, a defence or evidence obtained from a party by his adversary under cross examination cannot be used against that party if the material fact relating to the evidence or defence is not pleaded by the party seeking to use it"

See also the case of ***CHIGBU V TONIMAS (NIG) LTD (1999) 3 NWLR (PT 593) 115 CA***

In the instant case, the evidence of the BVN of the claimant being linked to the account number addressed in the said Court order of the Magistrate court was first obtained during cross- examination and had not been pleaded in the pleadings before this Honourable court. The failure to satisfy this condition therefore renders it inadmissible at law. I so hold.

Regarding the name of the account addressed in the said magistrate court order, the account number stated therein has the account name "Abhulimen & Co", while the name on the Court order is "Paulyn Abhulimen & Co". The Claimant's name is Paulyn. O. Abhulimen, and the claimant

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argued that the PND was placed on the wrong account because her firm name does not include "Paulyn" as referred on the face of the said Court order. Carefully looking at the circumstances of this case, it is my humble opinion that the error of name reflected on the said order is a case of a Misnomer. From all indications, it is clear that the Magistrate Court order did indeed refer to the claimant's firm's bank account, which was clearly evidenced by the account number stated therein. In the case of ***S.S.T.W TECH LTD V AYINOLUWA (2014) 5 NWLR (PT 1401) 549 CA*** , the court held thus;

> ***"A misnomer simply means the wrong use of name. It is a mistake as to the name and not a mistake as to the identity of the party to the litigation"***

Similarly, it was held in the case of ***PFIZER INCORPORATED V MOHAMMED (2013) 16 NWLR (PT. 1379) 155 CA*** thus;

> ***"A misnomer arises when the proper party is incorrectly named and not when there is mistake in a party's identity. Thus, one defendant cannot be substituted for another under the guise of misnomer. A misnomer can be corrected by amendment"***

In the instant case, the addition of "& Co" to the name of the account addressed in the said court order makes it clear that the order was addressing to the bank account of the claimant's law firm. The addition of the claimant's first name was a misnomer, but further goes on to buttress the fact that the order was made on the account of the claimant's law firm, and not the law firm of a different party. An account number is used to identify an account. There are cases where people share the same name and same surname, so in such events, the account number distinguishes the accounts of such customers in a bank. The account number serves as an identifier of individual bank accounts. The account number of the law firm of the claimant was correctly listed as it has been confirmed to exist with the 1st defendant, thus the issue is not a mistake of identity, but a misnomer. I so hold.

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On the issue of whether the Chief Magistrate Court of Nasarawa State, Maraba Gurku has the jurisdiction to make an order to place a PND on the claimant's account, let us first consider what jurisdiction is, what it entails, the effect of lack of jurisdiction of a court and on matters it decides upon.

In the case of ***DARIYE V FRN (2015) 10 NWLR (PT. 1467) 325 SC,*** the Supreme Court in defining jurisdiction held thus;

> ***"Jurisdiction is the power of the court to decide a case or issue a decree. It is the authority the court has to decide matters before it or to take cognizance of matters presented in a formal way for its decision."***

The Supreme Court further speaking on territorial jurisdiction in the same case stated thus;

> ***"Territorial jurisdiction implies a geographic area within which the authority of the court may be exercised and outside which the court has no power to act. Jurisdiction, territorial or otherwise, is statutory and is conferred on the court by the law creating it."***

See also the case of ***OKAFOR V UKADIKE (2009) 1 NWLR (PT. 1122) 259 CA*** where the court held;

> ***"Jurisdiction is an important issue which gives fetus to a suit. It is the live wire of the suit and if a suit is heard by a court in absence of jurisdiction, it amounts to embarking on a futile exercise no matter how well it is decided".***

On the effect of lack of jurisdiction of a court, the Court of appeal in the case of ***T.C.N, O.H.C.N V A.S.B.I.R (2021) 1 NWLR (PT. 1757) 207 CA*** held thus;

> ***"Every court is endowed with jurisdiction by statute or constitution and where a court exercises jurisdiction in a matter which it does not possess, the decision from such an exercise is a nullity. Therefore, every court must assure itself that it has the requisite jurisdiction before embarking on the***

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hearing of the matter to avoid a waste of precious judicial time."

Also, in the case of ***N.N.P.C V KLIFCO (NIG) LTD (2011) 10 NWLR (PT. 1255) 209 SC*** the court held thus; ***"Jurisdiction is the heart and soul of a case. No matter how well a case is conducted and decided if the court had no jurisdiction to adjudicate, the whole exercise would amount to a nullity. Thus, once a court had no jurisdiction to entertain and determine a matter, whatever transpired in the process of the proceedings before that court is of no effect or purpose; and all the trouble of hearing and determination becomes an exercise in futility and becomes a nullity."***

SEE ALSO USMAN V STATE 92014) 12 NWLR 9PT. 1421) 207; L.S.W.C V SAKAMORI CONST. NIG. LTD. (2013) 12 NWLR (PT. 1262) 569 CA

It is a clear matter of practice that Magistrate courts operate within the state that appoints them. They are state-bound, confined in both subject-matter and territory by law. They may not adjudicate matters outside the state's boundaries and any proceedings outside these limits are void for want of territorial jurisdiction.

In the instant case, the 2nd defendant approached the Magistrate Court of Nasarawa sitting at Maraba Gurku, where an application for an order to freeze the claimant's firm's bank account on the basis of fraud was made and granted by the court. From the facts of this case, the claimant's firm is located in Abuja, so also is the claimant. The said account was opened at the 1st defendant's Transcorp Hilton branch here in Abuja and the 2nd defendant is also domiciled in Abuja. The rationale behind seeking the said order at a Magistrate Court under the Nasarawa state jurisdiction cannot be understood, and the 2nd defendant did not appear, to be able to give any explanation or reason as to why they decided to follow this line of action. The said Magistrate Court lacked the territorial jurisdiction to entertain the application. And regarding the substantive jurisdiction of the

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court to make the order, it is clear from the provisions of section 251 of the Constitution of the Federal Republic of Nigeria (1999 as amended), that matters relating to banks and banking transactions are within the exclusive jurisdiction of the Federal High Court, and matters relating to banker-customer disputes are jointly under the jurisdiction of the Federal High Court, State High Courts and High Court of the FCT. This was the position in the case of **UNITED BANK FOR AFRICA PLC V. MRS. GLORIA EYISI (2014) LPELR-22681(CA)** where the court held thus;

"A dispute arising from the relationship between a banker and its customer is one of simple contract and ordinarily within the jurisdiction of the State High Court."

I agree with counsel to the 1st defendant where it was argued in their final written address that court orders are meant to be obeyed. Indeed, Orders of court are to be obeyed. See the cases of ***NIGERIAN ARMY V MOWARIN 1992 4 NWLR PT 235 P. 345 CA; LOUIS B EZEKIEL HART V CHIEF GEORGE 1 EZEKIEL HART 1990 1 NWLR PT 126 AT 276.***

However, in a more recent case, the Court of Appeal while addressing a similar matter whereby a Magistrate Court had ordered a PND on the account of the appellant in the case of ***FIRST BANK OF NIGERIA PLC V ONUOHA (2017) LPELR-42135(CA)***, held thus;

> ***"...the Magistrate Court's order was a clear case of judicial overreach...The bank should not have complied with the order, as it was void ab initio".***

From the foregoing, it is clear that Magistrate Courts lack the jurisdiction to entertain an application for an order to freeze a bank account of a person, and should not have entertained the said application in its entirety. The legal department of the 1st defendant being lawyers, should have been aware of this position of the law and taken the appropriate action in this situation, as they ought not to have obeyed the court order in the first place. Thus, the 1st defendant was wrong to have placed a PND on the account of the claimant based on the order of a court lacking the requisite jurisdiction to do so. I so hold,

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On the issue of the duty of care owed the claimant by the 1st defendant in this matter and the extent of its applicability, we first need to understand the nature of banker-customer relationships. ***SKYMIT MOTORS LTD V UBA PLC (2021) 5 NWLR (PT. 1768) 123 SC***

> ***"A banker- customer relationship is one that is founded on contract, with particular reference to commercial transactions. Thus, where a bank presents itself as being professionally competent and skilled to execute certain obligations inherent in a commercial transaction, but eventually shirks that responsibility, it constitutes a primafacie act of negligence; having failed in the duty of care that it primarily owes to its customer"***

DIAMOND BANK LIMITED V. PARTNERSHIP INVESTMENT COMPANY LIMITED & ANOR (2009) LPELR-939(SC), wherein the apex court held that; ***"... a Bank has a duty to exercise reasonable care and skill in carrying out its customer's instructions. That this duty extends over the whole range of banking business within the contract with the customer."***

See also the case of ***N.I.M.V. LTD V F.B.N PLC (2009) 16 NWLR (PT. 1167) 411***

In the instant case, the existence of a banker-customer relationship is not in dispute. However, the extent of the exercise of the duty of care on the part of the 1st defendant towards the claimant is what seems to be in question. An order directing the 1st defendant to place a PND on the account of the claimant was duly received by the 1st defendant, and the order was obeyed. The 1st defendant placed a Post No Debit on the account of the claimant's firm, but same was not communicated to the claimant until she encountered difficulties in the use of the said account. It is the humble opinion of this Honourable Court that, the 1st defendant owed the claimant a duty of care of duly informing her that her account had been frozen. The bank has an existing established relationship with the claimant, and part of the implied terms of this relationship include the 1st

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defendant;s observance of due diligence with respect to the accounts of their customers. The failure of the 1st defendant to inform the claimant of the state of affairs on her account amounts to negligence on the part of the 1st defendant and hence, a breach of duty of care and due diligence owed to the claimant. I so hold.

On the issue of the appropriate procedure to be adopted by the Claimant in the circumstances of this case, it is quite a simple matter of practice that when a court without jurisdiction makes an order that is void ab initio, a party is not restricted to challenge it only in that same court or by way of appeal. Such party has the option of instituting a fresh action in a court with proper jurisdiction, seeking to have the void order set aside or declared null. A party needs not be told how to prosecute his case, and a party is at liberty to choose out of the sea of procedures available to him to air out his grievances, except a specific procedure has been statutorily provided for.

On the issue of the absence of the 2nd defendant throughout the pendency of this suit and its implication, it is worthy of note that hearing notices were served, but no correspondence was brought before this Honourable court explaining the reason for their absence, neither were they represented at any point during proceedings. The law is trite that where a party fails to appear despite being served hearing notices, such party has forfeited his right to fair hearing and has inadvertently admitted to the facts and evidence elicited in his absence as true. In the case of ***ADEYEMI V LANBAKER 9NIG) LTD (2000) 7 NWLR (PT. 663) 33 CA.***

> ***"When a matter set down for trial is called and the defendant fails to appear, unless the defendant excuses his absence, the court may proceed to hear the case and give judgment"***

See also the case of ***N.A.C.B LTD V ADEAGBO (2004) 14 NWLR (PT. 894) 551*** where the Court of Appeal held thus;

> ***"Where a defendant was served with court process but refused to appear in court, it would not amount to a denial of fair hearing. The conduct of such defendant would be***

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nothing short of gross unwillingness to prosecute his defence, if any."

Furthermore in the case of ***C.B.N V OKOJIE (2004) 10 NWLR (PT. 882) 488 CA,*** the court held thus;

> ***"Where a writ of summons and statement of claim are filed and served on a defendant and the defendant fails to put in appearance and file a statement of defence attacking or contradicting the averments raised in the statement of claim or oral evidence given at trial, the court ought to take the facts as uncontested"***

Therefore, the 2nd defendant's absence does not absolve them of liability in this matter. I so hold.

On whether the claimant has sufficiently established her case to be entitled to the grant of her reliefs sought, let us first consider what the burden of proof in civil matters is. Burden of proof in civil cases is on the balance of probabilities or the preponderance of evidence. See the case of ***OJO V ABT ASSOCIATES INCORPORATED (2017) 9 NWLR (PT 1570) 167, and SECTION 136 OF THE EVIDENCE ACT 2011.***

With respect to the first relief sought, A DECLARATION that there is a banker-customer relationship between the claimant and the defendant, the claimant and the 1st defendant have not disputed the fact of the existence of a banker- customer relationship as evidenced by the existence of the claimant's firm's account domiciled with the 1st defendant, of which the 1st defendant placed a PND on, and admitted to doing same pursuant to the Court order of the Magistrate court. This has been evidenced in various paragraphs of the Statement of claim and statement of defence, as well as other processes before this Honourable court.

With respect to the 2nd and 3rd reliefs seeking *"A DECLARATION that an Order to freeze a Bank account cannot validly be granted ex-parte to last indefinitely, and that the Chief Magistrate Court of Nasarawa lacks the jurisdiction to grant a PND order exparte",* it has been established at the

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earlier part of this judgment that an exparte application cannot be validly made to last indefinitely, as it is in its nature to typically last a very short period of time.

On the fourth relief for *"A DECLARATION that the act of freezing the Claimant's Zenith Bank Plc's account (Account Number: 1012272348) without a valid order of a Court of competent jurisdiction is a breach of the Banker- Customer relationship between the claimant and the Defendant"*, this has also been addressed at the earlier part of this judgment.

Furthermore, regarding the 7th relief for award of general damages, it happens to be the natural flow of events in civil proceedings that an aggrieved party be compensated for the wrong done to them and the losses they may have suffered. In the case ***OF ACCESS BANK PLC V MANN (2021) 13 NWLR (PT 1792) CA***, the court of appeal held thus;

> ***"General damages is such that the law presumes to be the direct and probable consequence of the act complained of"***

Similarly in the case of ***UBN PLC V IKEN (2000) 3 NWLR (PT. 648) 223***, the court of appeal held thus;

> ***"General damages may be awarded to assuage such a loss which flows naturally from the defendant's act. Therefore it need not be specifically pleaded. It arises from the inference of law and need not be proved by evidence. It suffices if it is generally averred. They are presumed to be indirect and probable consequence of the act complained of. Unlike special damages, it is generally incapable of substantially exact calculation".***

Furthermore, in the case of ***ENEH V OZOR (2016) 16 NWLR (PT. 1538) 219 SC,*** the Supreme Court held thus;

> ***"Unlike special damages which is special in nature and must be pleaded specially and proceed strictly, the quantum of general damages need not be pleaded or proved. The manner in which general damages is quantified is by relying on what a reasonable man's judgment would be in the circumstance."***

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Having earlier established that the defendant's had wronged the claimant in various respects, it is only expected that the claimant will be entitled to the award of damages. I so hold.

With respect to the 8th relief seeking an award of cost of litigation, it is a trite principle of law that cost follows the event. It is not awarded as a punishment but to compensate the party who instituted the suit. See the case of ***THEOBROS AUTO-LINK LTD V B.I.A.E. CO. LTD (2013) 2 NWLR (PT. 1338)337***. Furthermore, it should be noted that award of cost is at the discretion of the court to award. A party would be entitled to the award of cost if it is shown that the cost of the suit has been pleaded in the pleadings of the party seeking the award.

In the instant case, the cost of instituting this action was specifically pleaded in the statement of claim of the claimant and exhibit A6 was tendered in support. Therefore, it is my humble opinion that the claimant has satisfied the requirement to be awarded the cost of this suit. I so hold.

Consequently and without further ado, the issue for determination is resolved in favour of the claimant.

Having carefully considered the facts, circumstances, processes and evidence before this Honourable court, it is hereby ordered as follows:-

1. It is hereby declared that there exists a banker-customer relationship between the claimant and the defendant.
2. It is hereby declared that an Order to freeze a Bank account cannot validly be granted ex-parte to last indefinitely
3. It is hereby declared that the chief Magistrate Court of Nasarawa State, sitting at Mararaba Gurku, lacked the requisite jurisdiction to make an Order to freeze the Claimant's Zenith Bank Plc's account (Account Number: 1012272348) based on an ex-parte application.
4. It is hereby declared that the act of freezing the Claimant's Zenith Bank Plc's account (Account Number: 1012272348) without a valid order of a Court of competent jurisdiction is a breach of the Banker-Customer relationship between the claimant and the Defendant.
5. It is hereby declared that the 1st Defendant's failure to timely inform the claimant that her account had been frozen constitutes a breach of the duty of care the 1st Defendant owes to the claimant.

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6. The 1st Defendant is hereby ordered to vacate the Post No Debit (PND) order placed on the claimant's account with immediate effect.
7. The defendants are hereby ordered to tender an unreserved apology to the claimant in writing in two National newspapers and on their websites for the grave inconveniences suffered by the claimant in this matter.
8. The defendants are hereby ordered to jointly and severally pay the sum of **₦60,000,000.00 (Sixty Million Naira**) to the claimant as General Damages for the embarrassment, psychological trauma, financial distress, emotional stress and grave inconveniences suffered by the claimant due to the defendants' actions.
9. The defendants are hereby ordered to jointly and severally pay the sum of **₦25,000,000.00 (Twenty- Five Million Naira, only**) to the Claimant as cost of this action.

Signed:

Hon. Justice Samirah Umar Bature
16/7/2025.

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