IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A. AKHIHIERO

ON THURSDAY

THE 25TH DAY OF JUNE, 2026.

BETWEEN: ***SUIT NO. B/406/2024***

JEF-DIAE GLOBAL RESOURCES LTD ----------CLAIMANT

AND

STERLING BANK PLC ----------DEFENDANT

JUDGMENT

In this suit, the Claimant's extant Statement of Claim is their Further Amended Statement of Claim dated the 25th day of February, 2025, filed on the 26th day of February 2025 wherein they claimed against the Defendant as follows:

{a} A DECLARATION that the continuous freezing, restriction and/or the placing of post-no-debit on the claimant's Account No. 0075201176 by the defendant without the claimant's mandate and/or valid and subsisting order of court from the 21st day of March, 2024 to 15/4/2024 is a breach of the contractual agreement between the claimant and the defendant.

{b} A DECLARATION that the acts of the defendant in continuous freezing, restriction and/or placing of post-no-debit on the claimant's Account No. 0075201176 without the claimant's mandate and/or valid and subsisting order of court from the 21st day of March, 2024 to 15/4/2024 by the defendant amounts to malice, cruelty and unmitigated deprivation of the

claimant's exclusive and absolute right to own, operate and draw money from the account bonafide as at when needed.

{c} ***A DECLARATION of this Honourable Court that the continuous freezing, restriction and/or placing of post-no-debit of the claimant's Account No. 0075201176 starting from 21st day of March, 2024 to 15/4/2024 is illegal.***

{d} ***A DECLARATION of this Honourable Court that the failure of the defendant to remove the post no debit on the account on the 21/3/2024 pursuant to the Order of Court made on 21/3/2024 amounts to negligence.***

{e} ***AN ORDER of this Honourable Court for the defendant to pay the claimant the sum of Two Hundred Million Naira {₦200,000,000:00} only for the malicious unauthorised freezing, restriction and/or placing of post-no-debit on the claimant's Account No. 0075201176 without the claimant's mandate and/or valid and subsisting order of court.***

{f} ***AN ORDER of this Honourable Court for the defendant to pay the claimant the sum of Two Hundred Million Naira {₦200,000,000:00} for breach of contract.***

{g} ***AN ORDER of this Honourable Court for the defendant to pay the claimant the sum of Two Hundred Million Naira {₦200,000,000:00} for negligence.***

{h} ***Interest of 20% per month of the sum of Two Hundred Million Naira {₦200,000,000:00} only from the 21st day of March, 2024 till judgement of this action.***

{i} ***Interest of 20% per month from the date of judgement till the satisfaction of the judgment debt.***

{j} ***PUNITIVE DAMAGES of Fifteen Million Naira {₦15,000,000:00}.***

{k} ***GENERAL DAMAGES of Twenty Five Million Naira {₦25,000,000:00}.***

{l} ***AN ORDER of this Honourable Court mandating the defendant to tender unreserved apology to the claimant in two National Dailies for this apparent/malicious and perfidious act against the claimant.***

Upon receipt of the Claimant's Originating processes, the Defendant filed its Statement of Defence on the 30th of December 2024, and in response to the Defendant's Statement of Defence, the Claimant filed a Reply to the said Statement of Defence on the 21st of February, 2025.

In proof of their case, the Claimant called one witness (CWI), tendered seven documents marked as Exhibits A, B, C, D, E, F and G respectively.

At the close of the Claimant's case, the Defendant called one witness (DW1), who was also cross examined by the counsel for the Claimant and closed their case.

From the evidence adduced at the hearing, the Claimant alleged that she is a corporate body with its registered office in Benin City, Edo State. At the hearing, she tendered a certified true copy of her Certificate of Incorporation and a Notice of Resolution of the Claimant dated 23/4/2024 approving the institution of this suit against the Defendant. The two documents were admitted as Exhibits "A" and "G" respectively.

The Claimant alleged that she is a customer of the Defendant Bank and is the owner of Account No. 0075201176 and that upon opening of the said account there was a contractual relationship between the Claimant and the Defendant.

According to the Claimant, the account now in dispute is a current account and the Defendant cannot restrict, freeze and/or place a post-no-debit on the account whether by omission or commission without the mandate of the Claimant and/or without a valid and subsisting order of court.

The Claimant maintained that by the nature of the account, the Defendant is always duty bound to honour the Claimant's demand without inhibition except there is a valid and subsisting order of court to the contrary.

The Claimant further alleged that the moment the account was opened, they lodged money in it and the Claimant became a creditor in respect of the money lodged in the account and the Defendant became a debtor to the Claimant to pay the Claimant on demand on the mandate of the Claimant without inhibition except by valid and subsisting order of court to the contrary.

The Claimant further alleged that the moment the Defendant freezes, suspends, restricts and/or place a post no debit on the Claimant's account which denies the Claimant's right of withdrawal without the mandate of the Claimant and/or a valid and subsisting order of court, the Defendant is in breach of the contract to pay the Claimant on demand as agreed by the parties and is liable to pay the Claimant damages and interest.

The Claimant alleged that by an order of court made on 18/7/2022 in **Suit No. M/157/2022** made available to the Claimant by the Defendant, the Claimant's account now in dispute was restricted, suspended and placed on post no debit from the 18/7/2022. A copy of the court order made available to the Claimant by the Defendant vide the Defendant's letter dated 11/1/2024 and the letter were tendered at the hearing and collectively admitted as Exhibit "C".

The Claimant alleged that on the 21/3/2024, the Order made on the 18/7/2022 was vacated and set aside by the Court.

The Claimant alleged that after the expiration, vacation and/or setting aside of the court order impeding the operation of the account, the Claimant visited the Defendant on the 8/4/2024 and filled the Local Funds Transfer Form for onward transfer of money to their counsel, Sylvester Ogbe Esq. who the Claimant owes some financial obligation to offset and the demand form was dishonoured by the Defendant on the ground that a post no debit (PND) was placed on the account.

The Claimant alleged that arising from the failure of the Defendant to honour the Claimant's mandate, the Claimant instructed their solicitor to write a letter dated 8/4/2024 demanding the sum of Two Hundred Million Naira {N200,000,000.00} as payment for the unlawful, continuous freezing, restriction and placement of post no debit on the said account. The letter and the attached copies which include the Court Order vacating the Order of 18/7/2022, Proof of Service of the Order and the dishonoured demand of the Claimant were collectively admitted as Exhibit "D" at the hearing.

The Claimant alleged that all the pleas to the Defendant that there was no existing valid and subsisting order of court on the account proved abortive. A copy of the dishonoured mandate vide Local Funds Transfer Form was tendered and admitted as Exhibit "E".

The Claimant maintained that the Defendant's act of dishonouring the Claimant's demand on the 8/4/2024 vide Domestic Funds Transfer Form dated 8/4/2024 is in breach of agreement of payment on demand owed to the Claimant by the Defendant.

They alleged that the Defendant was aware of the Court Order of 21/3/2024 vacating the Order made on the 18/7/2022 since the Defendant was a party to the suit in which the order was made. They further alleged that even though the Defendant was a party to the suit, the Claimant ensured that the Court Order was again served on the Defendant on the 3/4/2024 and the Defendant confirmed the receipt of the Court Order by a letter dated 12/4/2024. A copy of the letter dated 12/4/2024 was admitted in evidence as Exhibit "F".

The Claimant maintained that the Order of Court became effective from the date it was made and that service of the order was also effected on the Defendant on 3/4/2024.

They alleged that the action of the Defendant in suspending the account and placing a post no debit on the account now in dispute from the 21/3/2024 to 15/4/2024 without the mandate of the Claimant and/or a valid and subsisting order of court amounts to malice, wickedness, negligence and wilful deprivation of the Claimant's right to operate the account and that the same act is unjustifiable in law.

They alleged that the Defendant owed the Claimant the duty of care to always honour the Claimant's mandate without inhibition except by a valid and/or subsisting order of court and that the Defendant was in breach of that duty.

Furthermore, they alleged that the Defendant acted in malice since they were aware that the order of the Court placing hold on the account had been vacated on the 21/3/2024.

They maintain that the Claimant suffered damages arising from the breach and the malicious and negligent act of the Defendant.

In defence of this suit, the Defendant called one witness (DW1), who was also cross examined by the counsel for the Claimant and closed their case.

From the evidence adduced at the trial, the Defendant alleged that the Claimant's account is a current account which can be freezed, restricted, and/or placed on a post-no-debit upon a valid court order without the mandate of the Claimant under the circumstances that arose in this suit.

They alleged that there was a valid court order in Suit No: M/157/2022 which necessitated the Defendant to place a post-no-debit PND on the Claimant's account to avoid being in contempt of Court.

They explained that upon receipt of service of the Court order in Suit No. M/487/2024 vacating the previous order of 18/7/2022, the Defendant needed to verify/confirm the validity of same from its Solicitor as it was customary to so do before acting on the new order.

They alleged that the order vacating the previous order was received shortly before the close of business on the 3rd April 2024 and in line with banking practice, Service Legal Agreement – SLA, it takes four days to confirm the authenticity of a Court order hence the Claimant was told on the 8th of April 2024 that the said authenticity was being expected from its Solicitor on the same day.

They alleged that the Court order vacating the previous order was received at the Defendant's Sapele Road Branch on the same 8th of April 2024 and going by Service Legal Agreement - SLA, it would have taken four working days to lift the restriction/Post-no-debit - PND on the Claimant's account subject to confirmation from Defendant's Solicitor.

They said that the Defendant, however, worked with the date of service on Defendant's Abuja branch hence the receipt of confirmation from its Solicitor on the 8th of April 2024.

Under cross-examination, the D.W.1 stated that the restriction order was not lifted until 8/4/24 because they were waiting for the confirmation of the lifting of the order from Nasarawa State.

When the witness was asked to produce a copy of the Service Legal Agreement – SLA which stipulates four working days to confirm a revocation order, he informed the Court that the said document was not with him.

The witness alleged that the Claimant never made any formal demand for any money to be paid to the Claimant on the said 8/4/24 because he did not submit any cheque or withdrawal slip after he was told that confirmation of the order was still been expected.

They alleged that the Defendant received a Solicitor's letter on the same 8th day of April 2024 demanding for the payment of an outrageous sum of N200, 000, 000.00 (Two Hundred Million Naira) for failure to honour the demand for payment which was never made by the Defendant. They alleged that the confirmation of the authenticity of the said order was received on the same 8th day of April 2024.

They alleged that the restriction/post-no-debit PND on the Claimant's account has since been lifted on the 8th of April 2024 upon receipt of the confirmation that the order was valid and that same emanated from the court.

They maintain that the Defendant is not liable to the reliefs claimed by the Claimant in this suit.

Upon the close of evidence, the learned counsel for both parties filed their final written addresses which they adopted as their final arguments in support of their respective cases.

In his final written address, the learned counsel for the Defendant, ***O.I. Asenoguan Esq.*** formulated two issues for determination as follows:

1. ***Whether or not the actions of the Defendants constitute a breach of the duty of care and obligation owed to the Claimant; and***

2. ***Whether the Claimant is entitled to the damages claimed against the Defendant.***

Thereafter, the learned counsel argued the two issues seriatim.

<u>ISSUE 1</u>:

Whether or not the actions of the Defendants constitute a breach of the duty of care and obligation owed to the Claimant?

Arguing this first issue, learned counsel submitted that it is an elementary principle of law that he who asserts must prove the facts asserted and he relied on ***section 131(1) of the Evidence Act 2011***.

He submitted that all civil cases in Nigeria are decided on the preponderance of evidence or balance of probability and he relied on the cases of ***YAKUBU VS. JAUROYEL (2005) ALL FWLR (PT. 283) 184 AT 206*** and ***AGBABIAKA VS. SAIBU (1998) 10 NWLR (PT. 571) 534 SC.***

Arguing further, he posited that Banks are professional and commercial keepers of money who have represented that they would keep in safe custody any money or other valuables their customers may keep with them. He said that the law holds them to that promise and expects them to promptly comply with lawful instructions of their customers with regards to money kept in their custody. He cited the case of ***UBN PLC v. CHIMAEZE (2014) LPELR-22699(SC)***. However, he said that this arrangement is subject to some restrictions which may be placed upon reasonable suspicion of fraud or by an order of court and he relied on the case of ***AROGUNDADE v. SKYE BANK (2020) LPELR-52304(CA) Pp. 32-41, Paras. A-C; U.B.A. PLC VS. YAHUZA (2014) LPELR-23976****;* and ***WEMA BANK PLC VS OSILARU 2008) 10 NWLR (PT1094) 150.***

Learned counsel contended that in the instant case, unfreezing an account and authorising the withdrawal of the Claimant's money without the proper authentication/ confirmation of the order of court authorizing the Defendant to unfreeze the account puts the Defendant at risk and in contempt of court assuming the said order was falsified for the purpose of carrying out fraudulent/ unauthorized withdrawals.

Learned counsel referred the Court to the letter from the Claimant's solicitor which was admitted as Exhibit "B" wherein they demanded the immediate removal of the restrictions placed on the account and the Defendant's response vide Exhibit "C" informing the Claimant that the restriction was placed on the

account with a valid order of the Upper Area Court of Nasarawa State in Suit No M/157/2022.

He also referred to the Claimant's letter admitted as Exhibit "D", where they demanded for the payment of the sum of Two Hundred Million Naira only for the freezing, restriction and placement of no debit without a valid and subsisting order of court, to which the Defendant responded with Exhibit "F" further explaining to the Claimant that the said order was served on the bank on Thursday the 3rd of April 2024 at 2:05 pm shortly before the close of business as shown in the proof of service annexed to Exhibit "D".

Counsel submitted that an order of a Court is binding on the parties to the case so long as the order remains in force and enforceable until it is set aside and he relied on the following cases: ***ABDULLAHI AHMAN & ANOR V ABUBAKAR TANKO AYUBA MAJOR GENERAL & ORS (2008) LPELR 3659(CA);*** and ***AMAECHI V INEC, (2008)5 NWLR (pt. 1080) 227 AT 356.***

Again, he referred to the case of ***UBA PLC V SIEGNER SABITHOS (NIG) LTD (2018) LPELR-51586 (CA), PER TSAMMANI JSC (P.64, PARAS B-E)*** where the Court held *inter alia* thus:

"When a thing is to be done "within a reasonable time", it should be done within a period that is fair, proper or just considering the nature of the transaction and the entire circumstances."

He posited that the Defendant being a financial institution undergoes the rudiments of ensuring that its financial and contractual dealing with its customers is done within the ambits of the law. He said that upon receipt of the order from the court lifting the restriction on the account, which has been placed since 2022, they proceeded to instruct their solicitor to confirm and authenticate the said order before lifting the restriction on the said account.

He said that the Claimant instituted this action against the Defendant because it took the Defendant one working day to confirm and authenticate the order of court mandating the Defendant to unfreeze the Claimant's account which was earlier restricted by a valid order of a court.

He said that the said order was served on them on Thursday the 3rd of April 2024 at the close of business and it took the Defendant one day (Friday the 4th of April) to authenticate the said order as the restriction was lifted off the Claimant's account on Monday the 8th of April 2024 (as the Defendant's operations are closed for the weekend) even before the Defendant received a copy of the Claimant's solicitors letter.

He maintained that the restriction was lifted within a reasonable time and he relied on the case of ***Fumudoh v. Aboro (1991) 9 NWLR (pt.214) 210; STERLING BANK PLC v. SAMAK ASSOCIATES LTD & ORS (2021) LPELR-56409(CA)*** and ***AGBANELO V. UNION BANK OF NIGERIA LTD (2000) LPELR-234 (SC).***

Counsel referred to Exhibit "E", which is the transfer form of the Defendant which was allegedly filled by the Claimant in the Defendant's banking hall in a bid to transfer the sum of 12.5 million Naira to their solicitor for a financial obligation owed to him. He pointed out that the said Exhibit "E" has no stamp of the Defendant Bank on the face of it to show that the said transaction was even initiated by the Claimant or merely taken from the Defendant's premises as same is readily accessible to customers and even non customers of the bank or anything to show that same was even presented to the bank and dishonoured by the Defendant.

Furthermore, he said that the Claimant also failed to show that the said money which he claims was to be sent to his solicitor in the sum was subsequently sent on a later date for the fulfilment of the said financial obligation after the restriction was lifted.

He maintained that the Defendant was only observing due diligence and care in accordance with its banking procedure before lifting the restriction off the Claimant's account, an act which he said should ordinarily be seen as protecting the Claimant's account with the bank.

He submitted that the Claimant has failed to show that that the Defendant was negligent, cruel, or that he suffered any unmitigated deprivation or the presence of any breach of any contractual agreement that existed between the Defendant and the Claimant as to entitle him to the reliefs which he seeks in this suit.

ISSUE 2:

Whether the Claimant is entitled to the damages claimed against the Defendant.

Arguing this second issue, learned counsel submitted that the Claimant is not entitled to damages.

He said that Damages have been defined as the pecuniary compensation which the law awards to a person for the injury he has sustained by reason of the act or default of another, whether that act or default is a breach of contract or a tort"; or put more shortly, "damages are the recompense given by process of law to a person for the wrong that another has done him." He referred to ***Halsbury Laws of England: 3rd Ed. Vol. II at 216)*** and the case of ***UMUDJE & ANOR VS. SPDC NIG. LTD. (1975) LPELR 3375 (SC).***

He posited that once a wrong is established; it results in the award of general damages but that in the instant case there was no wrong established by the Claimant.

He submitted that General damages are often presumed and awarded if the Claimant's reliefs are proved and he cited the case of ***GTB V. ABIODUN (2017) LPELR-42551(CA).***

He said that unlike general damages, special damages must be specifically pleaded and strictly proved, and he relied on the cases of ***SHELL B. P. V. COLE (1978) 3 SC 183***; and ***CONSOLIDATED BREWERIES PLC. V. AISOWIEREN (2001) 15 NWLR (PT. 736) 424.***

He submitted that the Claimant has failed to discharge the evidential burden required to prove the damages claimed with the requisite certainty demanded by law. He referred extensively to the evidence adduced by the Claimant and maintained that the Claimant is not entitled to any form of damages.

He urged the Court to resolve Issue 2 in favour of the Defendant.

In his written address, the learned counsel for the Claimant, ***Sylvester Ogbe Esq.*** formulated three issues for determination as follows:

1. ***Whether the actions of the Defendant constitute a breach of the duty of care and obligation owed to the Claimant;***
2. ***Whether the conduct of the Defendant with respect to the operation of the account of the Claimant in its custody amounts to malice; and***
3. ***Whether the Claimant is entitled to the reliefs claimed against the Defendant.***

Thereafter, the learned counsel argued the three issues seriatim

ISSUE ONE :

Whether the actions of the Defendant constitute a breach of the duty of care and obligation owed to the Claimant.

Opening his arguments on Issue One, learned counsel posited that the phrase 'Duty of care' was defined in the case of ***N.E.P.A v Auwal (2023) 6 NWLR (pt 1879) 1*** as follows:

"A legal obligation that is imposed on an individual or an organisation requiring adherence to a standard of reasonable care while preforming any act that could possibly harm others."

He posited that due to the relationship existing between them, the Claimant being the customer of the Defendant, the standard of care required to be exercised by the Defendant towards the Claimant' account is high. He referred to the case of ***Okobiemen v U.B. A Plc (2019) 4 NWLR (pt 1662) 265 at 280 paras G-H*** where the Court held thus:

"The relationship between the bank and its customer is fiduciary. It is sometimes called confidential relationship. When the customer chooses to operate an account with a bank, he does on the trust and confidence he reposed on that bank. The bank has a duty to exercise a high standard of care in managing the customer's account."

He also relied on the case of ***U.B.A Plc v Wasiu (2017) 4 NWLR (pt 1550) 318 at 337-338, paras H-B***.

He posited that a bank is under an obligation to pay on demand to the customer the money kept by the customer in its custody as failure to comply with the demand of the customer will amount to a breach of the contractual relationship between the bank and its customer and he relied on the case of ***Omni Products (Nig) Ltd v U.B.N Plc (2021) 10 NWLR (pt 1783) 92 at 11 paras D-G.***

He submitted that an appraisal of the pleadings and evidence led in this suit clearly shows that the conduct of the Defendant was at variance with the instructions of the Claimant as it relates to the operation of the Claimant's account domiciled with the Defendant.

He said that the Defendant refused to honour the Claimant's demand to draw money from its account as requested in Local Funds Transfer Form filled by the Claimant on the 8th of April 2024 during the Claimant's visit to the Defendant. He said that the Local Fund Transfer Form was admitted as Exhibit "E".

He referred to the Claimant's solicitor's letter to Defendant on the 8th of April 2024, admitted as Exhibit "D".

He submitted that that a bank is obligated to pay the customer the money kept in its custody by such customer on the request or demand and if the bank fails to do so, a cause of action arises and he relied on the case of ***Co-Op Dev. Bank Plc v Joe Golday Co. Ltd (2000) 14 NWLR (pt 688) 506 at 557 paras C-D***.

He submitted that the Defendant failed to exercise the high standard of care towards the management of the Claimant's account as stipulated in the case of ***Okobiemen v U. B. N. Plc (2019) Supra***.

He said that the pleadings and evidence on record shows that the Defendant placed a restriction on the Claimant's account vide an order of Court made on the

18th of July, 2022 in Suit No. M/157/2022 which was vacated and set aside in Suit No. M/487/2024.

He said that the Defendant, despite being a party and privy to the proceedings vacating the restriction order, refused and neglected to lift the restriction placed on the Claimant's account despite being aware of the order.

He submitted that the conduct of the Defendant towards the account of the Claimant amounted to negligence. He therefore urged the Court to resolve this issue in favour of the Claimant.

ISSUE TWO:

Whether the conduct of the Defendant with respect to the operation of the account of the Claimant in its custody amounts to malice.

Arguing this second issue, learned counsel referred to the case of ***Emeagwara v Star. Printing Pub. Co. Ltd (2000) 10 NWLR (Pt 676) 489*** where the term malice was defined as ***'the desire to harm.'***

He also referred to the case of ***Asiniola v Fatoda (2022) 2 NWLR (PT 1814) 345*** where malice was defined as: "***A desire to cause pain injury or distress to another or intent to commit an unlawful act or cause harm without Legal Justification or excuse."***

He also relied on the case of ***Newbreed Org. Ltd v Erhomosele (2000) 13 NWLR (Pt 784) 251*** and the case of ***Orji v Amara (2016) 14 NWLR (Pt 1531) 21*****,** where the Court exposited thus: ***"Malice is the intent without Justification or excuse to commit a wrongful or an illegal act. It is the reckless disregard of the Law or of a person's legal rights, ill-will or wickedness of heart. It also means in Law, a wrongful intention. It includes any intent which the Law deems wrongful, and which therefore serve as a ground of liability. Any act done with such an intention in the language of the Law is malicious."***

Counsel posited that a common factor in the definition of the term "Malice" as can be seen in the above cited cases is that the act which constitute malice is unlawful, wrongful, without any Legal Justification and made to cause harm to another person (who is the victim of the malicious act).

He said that in the instant case, the Defendant refused to comply with the order of Court lifting and vacating the restrictions placed on the Claimant's account, even though the Defendant was a party to the Suit and was privy to the order made on the 21st of March 2024.

He pointed out that the Claimant mobilised the bailiff of the Court to effect service of the order of Court lifting the restrictions placed on the Claimant's account on the Defendant and the service was effected on the 3rd of April 2024. Yet the Defendant still refused to lift the restriction placed on the account of the Claimant.

He pointed out that it is not the duty of the Claimant or the bailiff of court to effect service of court decision on the parties to the action and he relied on decision of the ***Court of Appeal Benin Division in the unreported case of Mrs Quinet Etim Enakele v Mr Jubril Philip Enakele delivered on the 22nd of May 2025***.

He said that on the 8th of April 2024, the Claimant visited the Defendant to draw money, and the Claimant's mandate was dishonoured on the premise that the Claimant's account was under restriction. He said that this fact was admitted by the Defendant's witness during cross-examination.

He said that it is trite law that evidence elicited from the opponent under cross – examination which are in support of the Claimant's pleaded facts constitute the Claimant's evidence provided the evidence are based on pleaded facts of the Claimant and he relied on the following the cases:

Andrew v INEC (2018) 9 NWLR (pt 1625) 507 at 584, paras D-F.

Akomolafe v Guardian Press Ltd (2010) 3 NWLR (pt 1181) 338

P.D.P v Muhammed (2023) 16 NWLR (pt 1910) 283 at 303 paras D-F.

Ademosun v Gov. Ekiti State (2012) 4 NWLR (pt 1291) 581.

Furthermore, he submitted that where a witness gives evidence that supports the opponent's case the evidence must be treated as an admission upon which the opponent is entitled to rely on in support of his own case and he cited the case of ***Eyiboh v Mujaddadi (2022) 7 NWLR (pt 1830) 381 at 419 paras, C-F;*** and ***Andrew v INEC (supra) at 584, paras D-F.***

Counsel contended that the act of the Defendant in disobeying the order of Court is wrongful in Law and was malicious since the Defendant was fully aware of the order of Court removing the restriction placed on the Claimant's account but elected to disregard same.

He therefore urged the Court to resolve this issue in favour of the Claimant.

ISSUE THREE:

Whether the Claimant is entitled to the reliefs claimed against the Defendant.

Counsel submitted that it is trite law that where there is a wrong there is a remedy and he referred to the following cases: ***Mekwunye v W.A.E.C. (2020) 6 NWLR (pt 1719) 1 at 22, Para. F; Ogbolosingha v B.S.I.E.C. (2015) 6 NWLR (pt 1455) 311 at 343, Para. A.***

He submitted that an aggrieved party for a breach of a Legal duty is entitled to damages. He said that the Claimant is entitled to damages for negligence and breach of contract. He said that the conduct of the Defendant in this case justifies the award of punitive and exemplary damages as claimed by the Claimant and he relied on the cases of ***Mega Wealth Ltd v SEC (2017) 13 NWLR (pt 1583) 345 at 380 – 381, Para E – F; 381 Paras A – D;Arogundade v Skye Bank Plc (2020) LCN/14893 (CA)*** and ***G.T.B. v Joshua (2021) LPELR – 53173 (CA)***.

He urged the Court to resolve this issue in favour of the Claimant

In conclusion, he urged the Court to grant the reliefs sought by the Claimant herein in this Suit.

Upon receipt of the Claimant's final written address, the Defendant's counsel filed a Reply on Points of Law.

In his Reply on Points of Law, the learned counsel referred the Court to the case of ***Standard Trust Bank Limited and Anor v. Anumnu (2008) 14 NWLR (pt. 1106) 125 at 154-155*** to emphasize that a bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its part of the contracts with its customers.

He also referred to the case of ***Leedo Presidential Motel Ltd v. Bank of the North ltd & Anor (1998) LPELR-1775(SC)*** where the apex Court held that

"The phrase 'reasonable diligence' … is such diligence, care or attention as might be expected from a man of ordinary prudence and activity."

He submitted that financial institutions are encouraged to carry out due diligence in matters patterning to their customers, the court and law in general. He referred to the case of ***Access Bank Plc V. Agbasiere (2022) LPELR-58489(CA) (Pp. 14-16 Paras. A),*** where the bank froze the account of the Respondent upon the receipt of a court order from the police and it was later discovered that the said order was fabricated. He said that damages were awarded in favour of the Respondent against the Appellant for having not carried out due diligence before acting upon a fabricated order.

He submitted that the Defendant acted rightly in its dealings with the Claimant whilst observing due diligence.

He urged the Court to award punitive costs against the Claimant in favour of the Defendant in this suit.

I have carefully considered all the processes filed in this suit, together with the evidence led in the course of the hearing and the address of the learned Counsel for the parties.

I am of the view that the sole issue for Determination in this suit is: ***whether the Claimant is entitled to the reliefs claimed in this suit.***

Essentially, the fulcrum of the Claimant's case is the legality of the freezing, of their Account No. 0075201176 with the Defendant bank by the placing of post-no-debit (PND) on the said account from 21st of March, 2024 to 15th of April 2024.

Like in all civil suits, the burden is on the Claimant to prove that the alleged freezing of the account for the given period was illegal.

It is settled law that the relationship existing between a bank and its customers is contractual. Therefore, both parties are bound by the terms of the contract. See the following cases: ***BANK OF THE NORTH LTD V. YAU (2001) LPELR 746(SC); MAINSTREET BANK LTD V JUUMANWIN NIGERIA LTD (2013) LPELR - 21855 (CA); ECOBANK V. ANCHORAGE LEISURES LTD & ORS (2018) LPELR - 45125 (SC);*** and ***ENTERPRISES BANK LTD V. ROLA OIL LTD & ORS (2019) LPELR-49427(CA) (PP. 41-42 PARAS. D).***

Furthermore, it is settled law that a bank is bound to honour a cheque or withdrawal slip issued by its customer if the customer has enough funds to satisfy the amount payable on the cheque or withdrawal slip in respect of the relevant account. Refusal to honour the cheque will amount to a breach of contract which would render the banker liable in damages. See the case of ***ALLIED BANK OF NIGERIA LTD V. AKUBUEZE (1997) LPELR-429(SC) (PP. 28 PARAS. B).***

A bank would be held liable for negligence if it failed to observe the standard expected of a reasonable banker in respect of such request for funds by the customer and the onus of proving that they were not negligent lies on the bank: See the cases of ***United Nigeria Insurance Co. v. Muslim Bank (West Africa) Ltd. (1972) NCLR 9*** and ***UBA V. UBN PLC (1994) LPELR-14388(CA) (PP. 14 PARAS. B).***

In the instant case, the Claimant led evidence to show that by an order of court made on 18/7/2022 in ***Suit No. M/157/2022***, the Claimant's account now in dispute was placed on a post no debit from the 18/7/2022. A copy of the court order was tendered at the hearing and admitted as part of Exhibit "C".

The Claimant also led evidence to show that on 21/3/2024, the post no debit order was vacated and set aside by the Court.

They led evidence to show that on the 8/4/2024 the Claimant attempted to transfer some funds from the said account through a Local Funds Transfer Form to their counsel, but the transfer was refused by the Defendant on the ground that the post no debit (PND) was still placed on the account despite the order of court which vacated the order. They tendered a copy of the Local Funds Transfer Form which they wanted to use to transfer the funds.

At the hearing, the Defendant admitted the fact that the post no debit order was vacated since 21/3/2024. They explained that after the order was vacated, they reached out to their Legal Department to confirm the validity of the vacating order.

The Claimant's case is that the refusal of the Defendant to allow the transfer of funds after the setting aside of the post no debit order amounts to a breach of contract and an act of negligence on the part of the Defendant.

The Defendant has maintained that they acted in good faith and in due diligence to confirm the validity of the order of Court setting aside the post no debit.

A post-no-debit order (herein referred to as "PND") is an order of court directing and compelling a financial institution, such as a bank or mobile money operator to restrict any debits – withdrawal – of funds from a customer's account. With the rise in the wave of financial and economic crimes, some law enforcement agencies such as the Nigerian Police Force (NPF), the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) are statutorily empowered to approach courts in the course of their investigations to obtain injunctive orders to restrict withdrawal of funds from accounts under investigation. The post no debit order on the Claimant's account with the Defendant was obtained by the Nigerian Police.

The crucial question to be determined in this suit is whether the Defendant was justified for their actions in respect of the Claimant's account after the post no debit order was set aside on the 21st of March, 2024.

Upon a careful appraisal of the evidence adduced at the trial, the following facts have been established:

I. By virtue of a post no debit order made on the 18th of July, 2022 in Suit No. M/157/2022 the Claimant's account was restricted by the Defendant;
II. On the 21st of March, 2024 the order made on the 18th of July, 2022 was vacated and set aside vide Suit No. M/487/2024 to the knowledge of the

Defendant who was also a party to the suit that removed the restrictions placed on the account of the Claimant;

III. Notwithstanding the fact that the Defendant was a party to the Suit that made the order lifting the restriction placed on the Claimant's account, the Claimant took steps to ensure that the order lifting the restriction was equally served on the Defendant on the 3rd of April 2024;

IV. On the 8th of April, 2024, the Claimant visited the Defendant's branch at Benin City and filled a Transfer of Funds Form in a bid to withdraw money from the account and transfer same to their Solicitor but the Claimant was informed that the account was still under restriction because they were trying to confirm the validity of the order setting aside the post no debit;

V. Incidentally on that same 8/4/24, the Defendant got the confirmation and lifted the order after the Claimant had left the branch;

VI. Dissatisfied with the conduct of the Defendant, the Claimant instituted this suit to seek redress.

In defence of this suit, the Defendant has maintained that that the restriction was lifted within a reasonable time.

Furthermore, they alleged that the transfer form of the Defendant which was allegedly filled by the Claimant in the Defendant's banking hall in a bid to transfer the sum of 12.5 Million Naira to their solicitor for a financial obligation owed to him was not stamped by the Defendant Bank on the face of it to show that the said transaction was even initiated by the Claimant. They maintained that the Form was not presented to the bank and dishonoured by the Defendant.

They maintained that the Defendant was only observing due diligence and care in accordance with its banking procedure before lifting the restriction off the Claimant's account.

At this stage, it is pertinent to note that although the Defendant appears to be disputing whether the Claimant made any demand for withdrawal of funds from the account on the 8th of April 2024, it is apparent that on that day, the Claimant came to the bank to try to withdraw some funds from the said account but they were denied access because of the alleged restriction order which had since been vacated. Under cross examination, the Defendant's sole witness (D.W.1) stated as follows: ***"The order was served on the Defendant at close of business on 3/4/24.***

The Claimant visited the Defendant on 8/4/24 and I informed the Claimant that the account was still frozen at that time.

When an account is frozen, transfer of funds to and from that account is not permitted. When an account is frozen, the customers demand will be dishonoured."

From the above account, the following facts are settled:

I. On the said 8/4/24, the Defendant wilfully prevented the Claimant from making any withdrawal or transfer from its account without any valid and subsisting court order;
II. The Defendant was a party to the proceedings where the restriction order was vacated and on 3/4/24, a copy of the vacating order was served on the Defendant;
III. The purported excuse or explanation that the Defendant was awaiting a confirmation from their solicitors before granting the Claimant access to their account was clearly unreasonable in the circumstances;
IV. Even if a confirmation from their Solicitors was required, in this age of electronic communication, the delay in communication from the date the order was lifted (21/3/24) to the date the Defendant purportedly opened the account (8/4/24) was quite inordinate;
V. From the circumstances, the action of the Defendant in respect of the Claimant's account was wrongful, reckless and malicious.

As earlier stated, a bank is bound to honour a request for funds by its customer if the customer has enough funds to satisfy the amount payable in respect of the relevant account. Refusal to honour the request will amount to a breach of contract which would render the banker liable in damages. See the case of ***ALLIED BANK OF NIGERIA LTD V. AKUBUEZE (1997) LPELR-429(SC) (PP. 28 PARAS. B).***

The principle guiding contract was clearly propounded in the case of ***Obajimi v. Adediji (2008) 3 NWLR pp 16-17 para–N B***. A breach of contract is committed when a party to the contract without lawful excuse fails, neglects or refuses to perform an obligation he undertook in the contract or either performs the obligation defectively or incapacitates himself from performing the contract. See the case of ***AFOLABI V. GOV OF OYO STATE & ORS (2016) LPELR-41945(CA) (PP. 16-17 PARAS. E)*** and ***PAN BISBILDER (NIG) LTD V. FBN LTD (2000) LPELR-2900(SC) (PP. 31-32 PARAS. G).***

Clearly, the Defendant was in breach of their contractual obligations to the Claimant when they denied the Claimant access to the funds in their account after the post no debit was lifted.

Furthermore, on the issue of negligence, as earlier stated in this judgment, a bank will be held negligent if it failed to observe the standard expected of a reasonable banker in respect of a cheque and the onus of proving that they were not negligent lies on the bank: See the case of ***United Nigeria Insurance Co. v. Muslim Bank (West Africa) Ltd. (1972) NCLR 9.*** A bank is also bound to honour a cheque

issued by its customer if the customer has enough funds to satisfy the amount payable on the cheque.

In the instant case, the Defendant owed the Claimant a duty of care to promptly and diligently lift the restriction order on the Claimant's account as soon as they became aware of the Court order. They are deemed to have become aware of the on the day the Court made it because they were parties to the suit, moreover the Claimant went out of their way to effect service of the order on the Defendant, but the Defendant still delayed opening the account until 8/4/24.

The Defendant's explanation that there is a Service Legal Agreement – SLA which stipulates four working days to confirm a revocation is not tenable. When the sole defence witness was asked to produce a copy of the Service Legal Agreement – SLA, he informed the Court that the said document was not with him.

The Defendant breached their duty of care to their customer, and the result was that on the day the Claimant attempted to transfer funds to settle their obligations to their solicitor, they could not access their funds.

From the foregoing, I hold that the bank was negligent in refusing to honour the Claimant's request for transfer of funds.

In this suit apart from declaratory reliefs in respect of the breach of contract and negligence, the Claimant is also claiming damages.

Coming to the claims for damages, the law with respect to the measure of damages for a breach of contract has not changed ever since the famous dictum of ***Alderson, B.*** in the case of ***Hadley v. Baxendale (1854) 9 Exch. 341*** where at page 354 he observed as follows:
"Now we think that the proper rule in such a case as the present is this: where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either as arising naturally in accordance to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach."
See also the cases of ***Shell BP v. Jammal Eng. Ltd. (1974) 4 SC S.C.33;*** and ***Ijebu-Ode Local Government v. Adedeji Balogun & Co. Ltd. (1991) 1 NWLR (Pt.166) 136.***

The reason for the award of damages for breach of contract is to try and compensate the claimant by putting him in a position where he ought to have been

if there was no breach. In the case of ***MRS ABOSEDE DAUDA V LAGOS BUILDING INVESTMENT CO. LTD & 3 ORS (2010) LPELR - 4024*** the Court of Appeal exposited thus: ***"The basic object of damages for breach of contract is to put the plaintiff, so far as money can do, in the same situation as if the contract had been performed"***.
This position was reiterated in the cases of ***ZENITH BANK PLC V EMIRATES CREDITCORE & INVETMENT LTD. (2016) LPELR - 41586*** and ***RSUST V. OKEZIE (2019) LPELR-46460(CA) (PP. 19-20 PARAS. E).***
In this suit apart from general damages, the Claimant is also claiming some humongous sums as punitive damages.

In the case of ***G. K. F. INVESTMENT (NIG) LTD v. NITEL PLC (2009) LPELR-1294(SC)*** exposited thus:
"Exemplary, Punitive, vindictive or Aggravated damages where claimed, are usually awarded, whenever the defendant or defendants' conduct, is sufficiently, outrageous to merit punishment as where for instance, it discloses malice, fraud, cruelty, insolence, or flagrant disregard of the law and the like."
Put more simply, punitive damages are extra-compensatory damages, the aim of which is to punish a Defendant for his wrongful conduct, and to deter him and others from similar conduct in the future.

In the instant suit, I am of the view that the Claimant is entitled to general damages to compensate them for the embarrassing situation they were subjected to because of the negligence and breach of contract by the Defendant.
Furthermore, from the available evidence, I am of the view that the conduct of the Defendant discloses some elements of malice, cruelty, insolence and flagrant disregard of the rights of the Claimant. The conduct of the Defendant deserves some punitive damages to deter them and other banks from such conduct in the future.

Furthermore, in this suit, the Claimant is seeking an order mandating the Defendant to tender an unreserved apology to the Claimant in two National Dailies for the alleged malicious and perfidious acts against the Claimant. I am of the view that the relief for an apology would be more appropriate if there was a claim for defamation. In the absence of such a claim, I think the relief for an apology would be quite unnecessary.
On the whole, I hold that the Claimant's claims substantially succeed, and the Claimant is granted the following reliefs:

1. ***A DECLARATION that the continuous freezing, restriction and/or the placing of a post-no-debit on the Claimant's Account No. 0075201176 by the Defendant without the Claimant's mandate and/or valid and subsisting order of court from the 21st day of March, 2024 to 15/4/2024***

is a breach of the contractual agreement between the Claimant and the Defendant;

2. ***A DECLARATION that the acts of the Defendant in continuous freezing, restriction and/or placing of post-no-debit on the Claimant's Account No. 0075201176 without the Claimant's mandate and/or valid and subsisting order of court from the 21st day of March, 2024 to 08/4/2024 by the Defendant amounts to malice, cruelty and unmitigated deprivation of the Claimant's exclusive and absolute right to own, operate and draw money from the account bonafide as at when needed;***
3. ***A DECLARATION of this Honourable Court that the continuous freezing, restriction and/or placing of post-no-debit of the Claimant's Account No. 0075201176 starting from 21st day of March, 2024 to 08/4/2024 is illegal;***
4. ***A DECLARATION of this Honourable Court that the failure of the Defendant to remove the post no debit on the account on the 21/3/2024 pursuant to the Order of Court made on 21/3/2024 amounts to negligence;***
5. ***AN ORDER of this Honourable Court for the Defendant to pay the Claimant the sum of Five Million Naira {N5,000,000:00} for breach of contract;***
6. ***AN ORDER of this Honourable Court for the Defendant to pay the Claimant the sum of Five Million Naira {N5,000,000:00} for negligence;***
7. ***Interest of 10% per annum from the date of judgement till the satisfaction of the judgment debt;***
8. ***PUNITIVE DAMAGES of Five Million Naira {N5,000,000:00};***
9. ***GENERAL DAMAGES of Five Million Naira {N5,000,000:00}.***

Costs of N200, 000.00 (Two Hundred Thousand Naira) is awarded to the Claimant.

P.A. AKHIHIERO
JUDGE
25 /06/2026

<u>COUNSEL:</u>

Sylvester Ogbe Esq----------Claimant.

O.I. Asenoguan Esq----------Defendant.