

CASE DIGEST

BANKING: BANKER – CUSTOMER; CUSTOMER'S ACCOUNT; MUST BE ACQUIRED IN ACCORDANCE WITH PROVISIONS OF THE LAW

NPG FARMS NIGERIA LIMITED v. ZENITH BANK PLC

COURT OF APPEAL
(LAGOS DIVISION)

(BADA; UMAR; BAYERO, JJ. CA)

NPG Farms (Appellant) who maintains a current account with Zenith Bank Plc. (Respondent) attempted to perform transactions on its account during the months of April, May, and June 2016, but was informed that the management of the Respondent had placed a Post No Debit (PND) on the said account since February 2016. The Appellant further attempted to effect a transfer in August 2016, but was again informed that the account could not be processed. On this note, the Appellant instituted an action for the enforcement of its fundamental human rights at the trial Court, against the Respondent for freezing its account arbitrarily. At the conclusion of the hearing before the trial Court, a considered Judgment was delivered, in which the application of the Appellant was dismissed. The Appellant being dissatisfied with the Judgment of the trial Court appealed to the Court of Appeal. One of the issues for determination is: *Whether the Respondent breached the Appellant's Fundamental Right as provided for under the Law by placing a Post No Debit (PND) on the account of the Appellant without following the due process.*

Learned counsel for the Appellant argued that the act of arbitrarily taking over an individual's property was discouraged by the Court. He contended that the learned trial Court failed to take cognisance of the dictate of the section that specifically provides that the Chairman of the Economic and Financial Crimes Commission (EFCC) should apply ex parte to the Court for the power to issue an Order to freeze before addressing same to the manager of the bank. It was submitted on behalf of the Appellant that failure of the Respondent to ensure that EFCC obtains the approval of the appropriate Court before placing the said Post No Debit Order will amount to EFCC being a Judge in its own case. He further urged the Court to resolve the issue in the appeal in favour of the Appellant.

Respondent Learned Counsel in response, submitted on behalf of the Respondent that it adhered to the provision of Section 34 (3) of the EFCC Act by carrying out the necessary in-house background checks towards supplying the required and relevant information, books and documents to the Commission concerning a customer's account and that it is erroneous imposing an obligation on the Respondent to enquire into whether a Court Order was obtained by the Commission. He finally urged the Court to resolve the issue in favour of the Respondent and dismiss the appeal

In resolving the appeal, the Court of Appeal held that:

The account of the Appellant in the appeal being a movable property of the Appellant cannot be compulsorily taken over or its use being arbitrarily restricted without requisite compliance with the provisions of the law. Therefore, the trial Court failed to take cognisance of the position of the law which particularly stipulates that for such action as was carried out by the Respondent at the behest of the Economic and Financial Crimes Commission to be properly carried out and not done arbitrarily, a Court Order must be sought and obtained. See *GTB Plc v. Adedamola* (2019) 5 NWLR (Pt 1664) 30

Further to this, the Court of Appeal also held that:

Any Post No Debit (PND) longer than 72 hours without a Court Order authorizing same will amount to an ultra vires act and an infringement on the account holder/individual right and in this case the Appellant.

Issue resolved in favour of the Appellant

Mr. Romeo Ese Michael for the Appellant.

Mr. M. O. Oso & H. L. Sakariyah. for the Respondent.

This summary is fully reported at (2022) 4 CLRN

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