

IN THE COURT OF APPEAL
HOLDEN AT ENUGU

ON THE 7TH DAY OF DECEMBER, 2017
BEFORE THEIR LORDSHIPS:

HELEN MORONKEJI OGUNWUMIJU
IGNATIUS IGWE AGUBE
RITA NOSAKHARE PEMU

JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL

CA/E/556/2017

BETWEEN

HON. JUSTICE I. A. UMEZULIKE (RTD)

- APPELLANT

AND

**CHAIRMAN, ECONOMIC AND FINANCIAL
CRIMES COMMISSION**

- RESPONDENT

JUDGMENT

DELIVERED BY HELEN MORONKEJI OGUNWUMIJU, JCA

This is an appeal against the ruling of the Federal High Court sitting at Enugu presided over by His Lordship, Hon. Justice A. M. Liman in Suit No. FHC/EN/CS/25/2017 which was delivered on 2/6/2017. The ruling arose from an application on notice dated 10/3/2017 seeking for the lower court's Order to set aside, vacate or quash the ex parte order of that court made on 23/2/2017, wherein the Appellant's account with Zenith Bank Plc. was temporarily frozen, seized and forfeited to the Federal Government of Nigeria pending conclusion of investigation relating to abuse of office and receiving of gratification for a period of 60 days when same shall be charged.

The lower court on 23/2/2017 had given the following order on page 14 of the record:

"1. That an order is granted that the Bank account of the persons referred to as the account holder and/or on the bank account set

out in the schedule herein be temporarily frozen, seized and forfeited in the interim to the Federal Government of Nigeria pending the conclusion of the investigation and prosecution of the said person in connection with his involvement in abuse of office and receiving gratification.

2. That an Order of Court is granted directing The Managers, Agents, Privies of Zenith Bank Plc, to provide every necessary information on Account Names: Innocent Umezulike.

3. That the accounts are hereby frozen for the period of 60 days pending which the matter shall be charged to Court, and except the order is renewed by the Court, it shall automatically lapse.”

Thereafter the Appellant approached the lower court to set aside/quash the said order. The lower court refused to do so. The following grounds of appeal shorn of its particulars were filed in this court via a Notice of Appeal on 13/6/17:

Ground One

The learned trial judge erred in law when he dismissed the instant suit in his ruling delivered on the 2nd June 2017, without considering or evaluating the APPLICANT'S/APPELLANT'S further affidavit in support of his application, vis-à-vis the respondent's reply which was absolutely or essentially determinative or dispositive of the application.

Ground Two

The learned trial judge failed and/or neglected to evaluate the facts and/or evidence placed before him as it relates to the allegation by the Respondent, to the effect, that the amounts of money in the account of the Applicant/Appellant represents the

proceeds of illegal activities, namely bribery, and gratification from litigant, and which said allegation was not supported by any proof other than that they were the proceeds of the book launch which was authorised by the Chief Justice of Nigeria.

Record of Appeal was transmitted on 12/9/17 and deemed properly transmitted on 4/10/17. The Appellant's Brief was filed on 28/9/17. The Respondent's brief was filed on 6/11/17 and deemed filed on 16/11/17.

In the Appellant's Brief settled by Prof. Agu G. Agu, G. Oforma Agbo Esq, S.O Obasi Esq, the Appellant identified two issues for determination as follows:

1. Whether or not the trial court/judge erred in law when he dismissed the suit in his ruling delivered on the 2nd June, 2017 without considering or evaluating the APPLICANT'S/APPELLANT'S further affidavit in support of his application, vis-à-vis the Respondent's reply which was absolutely or essentially determinative or dispositive of the application.

2. Whether or not the trial judge failed and/or neglected to evaluate the facts and/or evidence placed before him as it relates to the allegation by the Respondent to the effect that the amounts of money in the account of the Appellant represents the proceeds of illegal activities namely bribery and gratification from litigant(s) and which said allegation was not supported by any proof other than that they were the proceeds of the book launch which was authorised by the Chief Justice of Nigeria.

In the Respondent's Brief settled by Wahab Shittu Esq, Wole Okenile Esq, Ali Adah Esq, Kafayat Hussein Esq and Damilola Otubu Esq, four issues were identified for determination as follows:

1. Whether having regard to the clear provisions of section 24, 26, 27, 28, 29, 30 and 34(1) of the Economic and Financial Crimes Commission Act 2004, the lower court acted wrongly and breached the Appellant's right to fair hearing in refusing to set aside its earlier order of interim attachment granted on 23rd of February, 2017 and dismissing the Appellant's motion on notice dated 10th March, 2017 and filed on 13th March, 2017.

2. Whether the trial court having made the freezing order against the Appellant has the power to review same when a trial has been instituted in another court on the same subject matter against the Appellant.

3. Whether in the circumstances of this case, it is not the court in which criminal proceedings is instituted against the Appellant that has the jurisdiction in appropriate cases to review the terms of the freezing order.

4. Whether it is legally expedient to set aside the order of interim forfeiture against the Appellant when criminal proceedings on same subject matter is yet to be determined by the Enugu State High Court.

I have read the record of the lower court and I am convinced that the only relevant issue for determination is issue one as distilled and couched by the Respondent's counsel. It is again set out below:

Whether having regard to the clear provisions of section 24, 26, 27, 28, 29, 30 and 34(1) of the Economic and Financial Crimes Commission Act 2004, the lower court acted wrongly and breached the Appellant's right to fair hearing in refusing to set aside its earlier order of interim attachment granted on 23/2/2017 and dismissing the Appellant's motion on notice dated 10/3/2017 and filed on 13/3/2017.

Prof Agu in the Appellant's Brief argued that in respect of ground one, the particulars of error disclosed thereof are that the lower court failed and or neglected to consider in totality the submissions of the Appellant with respect to his application to discharge and or vary an Exparte order obtained against him by the EFCC, being the Respondent herein.

Counsel further opined that the dismissal of the suit without considering or evaluating the further affidavit of the Applicant vis-à-vis the Respondent on record is a denial of fair hearing especially as they were determinative of the application.

Learned Appellant's counsel further submitted that upon allegation of denial of fair hearing, the right lies in the procedure followed in the determination of a case and not in the correctness of the decision arrived at in a case. Counsel cited *FBN Plc. v. TSA Ind. Ltd (2010) 4-7 SC (Pt. 1) @ 242*, *Bamgbose v. University of Ilorin (1999) 6 SC (Pt. II) @ 72*.

Counsel insisted that a glance at the Appellant's further affidavit which the lower court found unnecessary to review disclosed that the Respondent conceded that there was a public book presentation by the Appellant in which a N10 Million cheque of Oranto Petroleum Ltd was issued for the purchase of the book in addition to other participants who purchased the same book at the public presentation approved by the former Chief Justice of Nigeria.

Counsel submitted that the Appellant by his further affidavit which His Lordship did not consider at the lower court had by the facts adduced proved the burden required of a party alleging breach of fair hearing by the court which refused to set aside the order. Counsel referred to *Maikyo v. Itodo & 4 Ors. (2007) 3 SC (Pt. II) @ 34*, *Idakwo v. Ejiga (2002) 7 SC (Pt. II) @ page 168*.

Appellant's counsel also submitted that the lower court's startling proposition that the court could not disturb the exercise of discretion in freezing the Appellant's Zenith Bank Account by the Respondent amounts to judicial invalidation of courts judicial powers under S. 6 of the Constitution of the Federal Republic of Nigeria.

In reply to the Appellant's arguments, learned counsel for the Respondent argued that section 28 of the EFCC Act provides that where a person is arrested for an offence under the Act, the Commission shall immediately trace and attach all the assets and properties of the person acquired as a result of such economic and financial crime and shall thereafter cause to be obtained, an interim attachment order from the court. In general, once the Police or any other agency has identified the assets of a person being investigated for an offence, they may seize or restrain dealings in the assets where they are subject to forfeiture.

Counsel argued that the basis for freezing the Bank account of the Appellant is that the said account is prima facie tainted with laundered funds or dirty money and that the Bank account itself is exhibit in the pending criminal proceedings against the Appellant. Consequently, the Bank account of the Appellant which is the res or subject matter of the criminal proceedings ought to be preserved until the merits of the pending criminal proceedings is determined.

Learned Respondent's counsel insisted that the confiscation of property linked to serious criminal offences such as corruption, money laundering, drug offences and the likes, without prior existence of a criminal conviction is an accepted legal tool of crime fighting.

Counsel submitted further that the question of breach of the fair hearing principle in dismissing the Appellant's motion on notice to set aside the exparte order does not arise because there are sufficient materials to determine the merits of the application, independent of the further

affidavit and further counter affidavit of the Appellant and Respondent and that these materials raised prima facie evidence for proceeding against the Appellant and include, amongst others, the admission by the Appellant in the grounds for the application that the sum of N51,736,650.32 standing to the credit of the Appellant in the Zenith Bank Plc. Account No. 1001189952 were proceeds from the public presentation of the book, part of which came from donation from litigants, a subject of pending criminal proceedings against the Appellant.

Respondent's counsel argued that there is no breach of fair hearing when the lower court relied on statutory provisions in refusing to set aside the ex parte order. Counsel insisted that the lower court is entitled to rely on relevant facts in determining the merits of the application, particularly when a consideration of the further affidavit and further counter affidavit would amount to examining the merits of the criminal proceedings pending against the Appellant before the High Court of Enugu State. Counsel maintained that it is sufficient if as in this case, there are sufficient facts prima facie to proceed against the Appellant and showing that criminal proceedings on the same subject matter is pending against the Appellant and that the funds attached contain allegedly tainted funds obtained from alleged proceeds of crime, the subject matter of criminal proceedings against the Appellant.

Counsel argued that even though it was contended on behalf of the Appellant that the Court violated his right to fair hearing because the court did not take into consideration its further affidavit, however it must be noted that the power conferred on the court under section 29 and 34 of the EFCC Act is a special jurisdiction and interim order of forfeiture was not meant to be indefinite but only last for number of days till the Appellant is charged to court.

OPINION

I have decided for all intents and purposes to ignore the arguments advanced by the Appellant's counsel in issue 2 distilled by him and all the repetitive issues that go to the merit of the substantive criminal case still pending before the lower court. We have to remember that the exparte order of attachment of the Appellant's account was made before the Appellant was charged to court.

The Appellant was charged to the Enugu State High Court by information filed on 29/3/17 on the following counts as set out on pages 82-83 of the record:

Statement of Offence: Count 1

Use of office to confer corrupt or unfair advantage contrary to section 19 of the Independent Corrupt Practices and other related (Offence) Act Laws of the Federation 2000.

Particulars of Offence

Innocent Azubike Umezulike 'M' sometime February, 2014 at Enugu within the jurisdiction of this Honourable Court whilst being the Hon. Chief Judge, High Court of Justice, Enugu (a public officer) did use your position to confer unfair advantage upon yourself by inviting one Prince Arthur Eze, the Chief Executive Officer (CEO), Oranto Petroleum Ltd who was a litigant in pending and concluding civil matters to wit: Suit No. E/388/2010; Prince Arthur Eze versus Diamond Bank Plc. and E/147/2012, Prince Arthur Eze versus Major Concepts Ltd respectively presided over by you to the launch of a book titled 'ABC of Contemporary Land Law in Nigeria' authored by you where the said Prince Arthur Eze donated N10,00,000.00 (Ten million naira) only by a Fidelity Bank Plc. Cheque drawn in the account of Oranto Petroleum Ltd

which you accepted and paid the said sum of N10,000,000.00 (ten million naira) only into your Zenith Bank Plc. account number 1001189952 and thereby committed an offence.

I have set out the charges because they impact on the reasons adduced by the Respondent for seeking and obtaining the exparte order in the first instance. Also, I have set them out because my reasons for not being drawn into the argument of whether or not the amount of money in the account of the Appellant represents the proceeds of illegal activities at this stage would be apparent. This court cannot consider these issues unless there is a finding by the trial court and they are then submitted to us for review on appeal. I will therefore limit myself to the issue of whether or not the lower court was right in refusing to quash, set aside or vacate the order temporarily freezing the account of the Appellant.

The prayer and grounds for the application at the lower court are stated as follows on page 16-18 of the Record:

- (a) AN ORDER setting aside or vacating or quashing the exparte order of this court made in this suit on 23rd day of February, 2017 wherein Applicant's account with Zenith Bank Plc was temporarily frozen, seized and forfeited to Federal Government of Nigeria pending conclusion of investigation and prosecution of involvement in abuse of office and receiving of gratification or for a period of 60 days when same shall be charged to court. (Underlining mine)
- (b) And for such further order(s) as the court may deem fit to make in the circumstance.

GROUND UPON WHICH THE APPLICATION IS MADE

- (i) The Applicant was a judicial officer for 23 years out of which he was Chief Judge for 12 years. Applicant is an author of about

10 law books from which sales the Applicant augments earnings as a judicial officer.

(ii) On 23rd February, 2017, this court per exparte order of interim forfeiture decreed that Applicant's account with Zenith Bank Plc. be frozen, seized and forfeited to the Federal Government. Copy of which order is herewith attached and marked exhibit "A"

(iii) The basis upon which the exparte order of interim forfeiture was made was that the sum represents the proceeds of illegal activities, namely: bribery, and gratification from litigants when there was no such proof other than proceeds of book-launch.

(iv) The sums aggregating to fifty-one million six hundred and fifty thousand and thirty-two kobo (sic) (N51, 736,650,32) standing to the credit of Applicant in Zenith Bank Plc account no. 1001189952, subject of the interim forfeiture order are proceeds of Applicant's lawful earnings as a judicial officer, Author and Professor of property law.

(v) The said sum which stood at fifty-one million six hundred and fifty thousand and thirty-two kobo (sic) (N51, 736,650,32) in aggregation were either donations or sales of Applicant's latest work, "ABC of Contemporary Land Law in Nigeria" realized at the public presentation of the book on 7th February, 2014, and thereafter the monies found their way into Applicant's said account from the eve of the public presentation, and on, and after the public presentation of the book.

(vi) Prior to the public presentation of the said book, Applicant had gotten approval for the public presentation from the then Chief Justice of Nigeria. Copy of the said approval is herewith attached and marked exhibit "B".

(vii) The details of the aggregation of the sum found in Applicant's Bank account are captured in Applicant's statement of account with Zenith Bank Plc. account no. 1001189952, from January, 2014 till date, and which statement of account is herein attached and marked exhibit "C".

(viii) Besides, the financial accruals to the Applicant from his said latest book, Applicant had published about ten (10) law books from which proceeds of sales inundate his said account.

(ix) That all the funds in the Applicant's said account with Zenith Bank Plc. account no. 1001189952 against which order of interim forfeiture was made has no bearing whatsoever to any bribery, gratification or corruption.

(x) That the application of the Respondent, in the circumstance of Applicant's just earning is wicked and came at the time Applicant needed to recruit legal practitioners to defend himself in Charge No. FHC/PH/40C/2017: F.R.N v. Innocent Umezulike brought by the Respondent.

The prayer to release the frozen account was refused by the lower court because the affidavit in support of the application did not show that the account in contention is the only account the applicant operates in that Bank or there are no other accounts credited to him in other Banks. The court also stated that the affidavits in support did not indicate how the Appellant's livelihood and needs had been adversely affected by the order or that the Appellant's ability to meet legal obligations to his legal

representatives had been affected. The court held that the Appellant has not been able to say that there are no charges against him before the court relating to offences under the EFCC Act. The court held that the order of interim attachment of property was not improper and refused to set same aside.

From the onset, we need to get some issues straight. This is not an appeal against the interim order of attachment. If it were, the reasons why the order of attachment was made ab initio can be the subject of a review of whether it was properly made or not. However, I feel I ought to state certain immutable positions of law and fact in this matter.

Section 34 (1) of the EFCC Act provides as follows:

34 (1) Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorised by him may, if satisfied that the money in the account of a person is made through the commission of an offence under this Act and or any of the enactments specified under section 7 (2) (a)- (f) of this Act, apply to the Court ex-parte for power to issue an order as specified in Form B of the Schedule to this Act, addressed to the manager of the bank or any person in control of the financial institution or designated non-financial institution where the account is or believed by him to be or the head office of the bank, other financial institution or designated non-financial institution to freeze the account.

Section 29 of the EFCC Act provides as follows:

Where:

- (a) the assets or properties of any person arrested for an offence under this Act has been seized; or**
- (b) any assets or property has been seized by the Commission**

under this Act, the Commission shall cause an ex-parte application to be made to the Court for an interim order forfeiting the property concerned to the Federal Government and the Court shall, if satisfied that there is prima facie evidence that the property concerned is liable to forfeiture, make an interim order forfeiting the property to the Federal Government

The only requirement is that the court to which an application to attach may be brought must be satisfied that there is a prima facie case that the property concerned is liable to forfeiture before such an order was made. Nnamani JSC while defining the phrase 'prima facie' in *Duru v. Nwosu* (1989) 4 NWLR Pt. 113 Pg. 24 at 41 held as follows:

"It seems to me the simplest definition is that which says that 'there is ground for proceeding'. In other words, that something has been produced to make it worthwhile to continue with the proceedings. On the face of it suggests that the evidence produced so far indicates that there is something worth looking at"

Also, see *State v. Nwachineke* (2008) All FWLR Pt. 398 Pg. 204 at 231.

As I said earlier, the order sought by the Appellant at the lower court by motion on notice filed on 13/3/17 was to set aside, vacate or quash the ex-parte order. The specific prayers and grounds thereof have already been set out earlier in this judgment.

My own humble interpretation is that the order was to lapse after 60 days in any event unless it is renewed by the court. The order was made on 25/02/2017 and unless it was renewed consequent on an application to and an order of court, it no longer exists.

There is a world of difference, in my humble view, between a prayer to vary an order and a prayer to vacate, quash or set aside an order of court.

The grounds for the prayers were factual to the effect that the funds contained in the account were not proceeds of crime. This was supported by copious affidavit evidence to the effect that the funds were not proceeds of corruption but the proceeds of the intellectual labour of the Appellant. Be that as it may, a one count charge had been filed by the Respondent against the Appellant on 29/3/17 in respect of the funds in the Bank account in controversy. The issue here is what recourse did the Appellant have at that point. I agree with the learned judge of the lower court that the sole issue before the lower court was whether the order *ex parte* was properly made. If it was properly made, it cannot be quashed, vacated or set aside by any court of concurrent jurisdiction and it would only automatically be discharged at the end of 60 days according to the terms of the order. If it was improperly made, a court of concurrent jurisdiction can set it aside, quash or vacate it before the expiration of the term set out in the order. As I said earlier, a prayer to vary an order is quite different from a prayer to set aside, quash or vacate an order. A prayer to vary the terms of an order concedes that the order was properly made but for certain reasons, the terms should be varied. An application to set aside, quash or vacate an order is in effect attacking the validity of the order.

It is my humble view that in whatever circumstances, whether it is a matter involving criminal prosecution under the EFCC Act or not, an order of attachment of property can be set aside, quashed or vacated where there is proof that there has been suppression of material facts or misrepresentation of facts or where the court which made the order had no jurisdiction to make the order.

I must also say that I cannot agree that the order made to freeze an account pursuant to S. 34 of the EFCC Act cannot be varied. As I said earlier, I would not submit to any interpretation of the law that would fetter the discretion and powers of the court to review, where necessary, its own orders to meet the justice of prevailing circumstances. By the provisions of sections 329-346

of the Administration of Criminal Justice Act 2015, a court trying any case including a corruption case has a wide discretion to deal with the property attached as alleged proceeds of crime and brought before it. An order to attach a defendant's property is an order not in rem but in personam being against the defendant personally and not against the whole world. Thus the mere making of the order does not divest the defendant of his legal title to the moveable or immoveable property or chose in action. The reason why the court retains the power to vary its orders is that although the money or property is frozen, the right of ownership still resides in the defendant who still enjoys the constitutionally guaranteed presumption of innocence pending judgment.

Where an application to vary the terms of an attachment or freezing order is made, the court must consider the whole circumstances in order to determine whether the terms of the order can be varied to allow the defendant some limited access to the funds in order to maintain his livelihood, pay legal fees, take care of his health etc.

I have read the judgment of this court in *Felimon Enterprise Ltd v. EFCC (2013) LPELR-20366* and I cannot align myself with the REASONS given for the dismissal of the appeal and the sweeping proposition that because the EFCC Act does not provide for the discharge of the freezing order, it cannot be done. That would be a forfeiture of the discretion of judicial officers. The application in this instance to freeze the Appellant's account was brought pursuant to S. 24, 29 and 34(1) of the EFCC Act. All that is required is that the Chairman of EFCC be satisfied that the account relates to an offence under the EFCC Act, Money Laundering Act and Advance Fee Fraud and Other Related Offences Act.

I must state categorically that I do not have any reason to quarrel with the rationale and the need to preserve the res where the proceeds of crime are sometimes the main stay of the evidence against an alleged offender. No

doubt, the court is justified and even entitled prior to conclusion of investigation and trial to restrain the defendant from dissipating the assets alleged to have been illegitimately acquired. I just cannot find myself agreeing to a blanket cover for all such orders whether properly sought or not. I also agree with the opinion of the lower court that the question whether the Respondent has failed to disclose or suppress material facts is not relevant for the consideration of the judge for the purpose of granting a freezing order under section 34(1) of the EFCC Act. It is however relevant for the purpose of an application to quash or set aside the order. While the issue of suppression of facts or misrepresentation is irrelevant to the consideration of the ex parte application by the judge granting the order who only needs to know that the Chairman of EFCC is satisfied that the order should be sought, thus depriving the court of any discretion to enquire into the Chairman's claims and reasons for seeking the order, at that stage of seeking the ex parte order, the claims by the applicant cannot be tested by the court. I feel strongly that in an application to quash or set aside, other considerations relating to the jurisdiction exercised in granting the order come into play. The court cannot be deprived of its inherent powers under S. 6(6) of the Constitution to set aside orders improperly sought and obtained.

In the circumstances of this case, I have read all the affidavit of both parties submitted for consideration before the lower court. I have to agree with the opinion of the lower court on the point that there is no affidavit evidence that there were facts misrepresented or suppressed before the court which granted the order that if now considered would convince the lower court to quash or set aside the order to freeze the account. Most of the arguments and facts proffered by the learned Appellant's counsel go to the merit of the substantive criminal matter already pending in Charge No. E/74C/2017. Any legal argument validly made to quash the order must be extrinsic to the facts of the criminal charge involving the account frozen. I find no facts or

legal arguments in aid of the proposition that the Respondent at the time the order was sought and obtained did not comply with both statutory and procedural requirements of S. 34 of the EFCC Act.

The specific orders sought herein to set aside or quash the ex parte order cannot be granted there being no legal basis to do so. Let me reiterate that we have not been asked to vary the order of the lower court attaching the account. The relief sought before this court was couched in the following terms as contained on page 129 of the Record:

"i. To uphold the appeal and set aside the decision of the lower court completely or;

ii. In the alternative order the transfer of the case/application to the High Court of Enugu State (Court One) where the criminal charge in Suit No. E/74C/2017 relating to the N10 Million Naira used by Arthur Eze to purchase the book at the public launch is pending."

As I said earlier, there is no legal basis to grant the main relief sought. In fact, the lower court had opined as follows on page 125 of the record:

"Secondly, where a freezing order is made by one court, and a trial is instituted in another court, it is my respectful view that the court which originally granted the freezing order may lose the power to review its earlier order, but the court trying the charge may be entitled in appropriate cases to review the terms of the freezing order."

However, I need to state that by the terms of the order, the order made on 23/2/17 should have automatically lapsed after 60 days on 23/4/17. As at the time the ruling at the lower c

ourt was given on 2/6/17, the order had abated and no longer existed. The records do not reveal that any other subsequent order was sought for nor

subsequent order was sought for nor obtained. In effect, there is no existing lawful order of court freezing the account of the appellant as at now.

As things stand now, the parties are at liberty to make appropriate applications before the court where the substantive criminal trial is pending. It would be an injudicial intrusion by this court into that trial to make an order that a prayer which I have found inappropriate by reason of being legally misconceived be transferred to that court for determination. That would be an abuse of the powers of the appellate court.

In the circumstances, the ruling of A. M. Liman J. delivered on 2/5/17 in Suit No. FHC/EN/CS/25/2017 is hereby affirmed. The appeal is devoid of merit and is hereby dismissed.

Appeal Dismissed.


HELEN MORONKEJI OGUNWUMI
JUSTICE, COURT OF APPEAL

COUNSEL REPRESENTATION

Prof Agu G. Agu with G. Oforma-Agbo for the Appellant.

Wahab Shittu for the Respondent.

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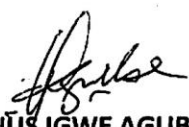
HON. JUSTICE IGWE AGUBE

I had the opportunity of reading the Judgment of my Learned brother H.M. Ogunwumiju (PJ) and am in complete agreement with his reasoning and conclusion that this Appeal is devoid of merit. It is my candid view that even though when the Appellant brought the Application to set aside the Ex-part Order of the lower Court, the Application was premature, as at the 2nd day of June, 2017 when Hon. Justice Liman of the Federal High Court delivered his Ruling now on Appeal, the Ex-parte Order had automatically lapsed if the matter was not charged to court or the order renewed.

Since the said order freezing the Appellant's Account had lapsed, the Appellant ought to be allowed to access his account except the Chairman of E.F.C.C. renewed the application for re-freezing of the Account or the Appellant had been charged to Court.

I abide by the opinion of my Lord on the need for parties to make the necessary applications before the Court where the substantive Criminal trial is pending.

I also refuse the Application for the transfer of the Case/Application to the High Court of Enugu State where a Charge is pending against the Appellant as this would tantamount to abuse of the powers of this Court.


IGNATIUS IGWE AGUBE
JUSTICE, COURT OF APPEAL

APPEAL NO. CA/E/556/2017
(RITA NOSAKHARE PEMU, JCA)

I had the privilege of reading in draft the lead judgment just delivered by my brother – **HELEN MORONKEJI OGUNWUMIJU, JCA.**

I agree entirely with his reasoning and conclusions.

I also find nothing in aid of the Appellant's counsel submission that the Respondent at the time the order was sought and obtained did not comply with the relevant regulatory law i.e. Section 34 of the EFCC Act.

I also agree that the order made to freeze the account cannot be varied.

I also hold that the appeal is devoid of merit and same is hereby dismissed by me.


HON. JUSTICE RITA NOSAKHARE PEMU
JUSTICE, COURT OF APPEAL