Dispute Resolution

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INVALIDITY OF A POST-NO-DEBIT ORDER FROM A COURT WITHOUT JURISDICTION AND SUNDRY ISSUES: A CRITIQUE OF THE COURT'S DECISION IN *EMMANUEL CHIDERA ONUEGBU V. MONIEPOINT MICROFINANCE BANK LIMITED*[1]

1. Introduction

On 26th September, 2024, the High Court of the Federal Capital Territory ("**FCT**") delivered judgment in the case of **Emmanuel Chidera Onuegbu v. Moniepoint Microfinance Bank Limited** ("**Onuegbu's Case**"),[2] and resolved that the Fundamental Human Rights of the Applicant to own movable and immovable properties in any part of Nigeria was eviscerated by the Post-No-Debit ("**PND**") restriction placed on the Applicant's Bank Accounts by the Respondent. The Court held that the PND Order made by the Upper Area Court, Taraba State was void because it emanated from a court that is bereft of jurisdiction to issue the said Order. The Court also noted that a bank must verify that a Court Order is valid and emanates from a court of competent jurisdiction before taking any step on a customer's account. Additionally, the Court held that the said PND Order, being a public document, was void for non-certification.

As commendable as the Judgment is, there are pressing legal issues that must be dissected and critiqued for the development of law in Nigeria. These issues include the declaration of the PND Order from the Upper Area Court, Taraba State as "*void*" and "*invalid*" for emanating from a court without jurisdiction; the declaration of the PND Order from the Upper Area Court as "*void*" on the ground of inadmissibility; the

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2 Unreported Judgment in Suit No. FCT/HC/CV/2167/2024 delivered by Honourable Justice Njideka K. Nwosu-Iheme, J. of the High Court of the Federal Capital Territory, Abuja on 26th September 2024 (hereinafter referred to as "*Onuegbu's Case*").

placement of a duty on the Bank to "*verify*" a PND Order before taking any step on the customer's account; and the inadmissibility of the PND Order (a public document) attached to the Counter Affidavit due to its "*non-certification*". This legal approach aligns with the wise counsel that "if there are issues with judgments, the right thing is to critique them in law journals, not through media attacks."[3] It is in obedience to the foregoing wise counsel that *Onuegbu's Case* is critiqued.

2. Case Summary of Onuegbu v. Moniepoint Microfinance Bank Limited

The Applicant (Mr. Onuegbu), via an Originating Motion on Notice, instituted a Fundamental Rights Enforcement suit against the Respondent (Moniepoint Microfinance Bank Limited) and prayed for a declaration that the Respondent's act of placing a Post-No-Debit restriction[4] on his Bank Accounts without any legal justification, thereby denying him access to his funds in the said Accounts amounted to a breach of his fundamental rights guaranteed under section 44 of the *Constitution of the Federal Republic of Nigeria*, 1999 (as amended) and article 14 of the *African Charter on Human and Peoples' Rights*, 1981. The Applicant sought several compensatory reliefs in the form of general and exemplary damages and also sought an order restraining the Respondent and its cronies from placing further PND restrictions on his Accounts.

A summary of the case of the Applicant, as disclosed in his Affidavit before the Court, is that on 8th April, 2024, while he was trying to carry out a transaction on the Respondent's online platform, he discovered that he could no longer access his Account. Having exhausted all known options to access his Bank Account, the Applicant contacted the Respondent via its online channel requesting to know why he was unable to access his Account. The Applicant further stated that the placement of the restrictions and reason(s) for doing so were never communicated to him by the Respondent.

Miffed by the position of the Applicant, the Respondent, in its Counter Affidavit, stated that it was served with an Order of Court dated 4th April, 2024 made pursuant to an application filed by First Bank Nigeria Limited directing it to place PND on bank

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3 See, Sobechi Obasi, '*Wole Olanipekun Urges Lawyers to Critically Examine Judgments Before Criticising Judiciary*' (The Metro Lawyer, 23 December 2024) <https://themetrolawyers.com/wole-olanipekun-urges-lawyers-to-critically-examine-judgments-before-criticizing-judiciary/> accessed 10 January 2025.

4 This is a directive that restricts a bank customer from withdrawing funds, making transfers or any other debits from his bank account. The funds in the bank account remain frozen and inaccessible during the lifespan of the restriction.

accounts listed in the Schedule attached to the Order as well as providing the "Know Your Customer (KYC)" documents of the account owners. The Respondent further stated that the Applicant's Bank Accounts were listed in the said Schedule and covered by the said Order of Court. Being a law-abiding corporate citizen, the Respondent complied with the court Order by placing the PND on the Applicant's account. It is the case of the Respondent that it informed the Applicant, via email, about the court's restriction of his Bank Accounts.

In resolving the knotty issues in this case, the High Court of the FCT held as follows:

> It is not uncommon these days that banks place lien on their customers' account, while acting on the instruction of prosecuting agencies saddled with investigation of financial crimes based on order of the court to investigate such account. This is not out of place, however **such orders from court must be valid and from a court of competent jurisdiction as provided in Section 251(1)(d) and (3) of the CFRN such civil and criminal aspect of all banking transactions are vested in the Federal High Court and or State High Courts**. **The bank must verify such orders before taking any step on the customers' account**.
> A careful evaluation of the facts deposed by the Respondent in its counter affidavit, **the Respondent admitted to have placed a lien on the Applicant's account when acting on Exhibit AR1 a court order purportedly made by LAWAN JIKA of the Upper Area Court of the Taraba State sitting at Jalingo**. **The court order is void coming from a court that has no jurisdiction to issue the said order. Furthermore, the said order being a public document is also void for non-certification in accordance with the provision of section 104 of the Evidence Act 2011. I agree entirely with the submissions of the learned counsel to the Applicant that the action of the Respondent based on an invalid court order is illegal.**
> I therefore found (sic) that it is a violation of the Applicant's right against compulsory acquisition of her right over or interest over movable and immovable property in any part of Nigeria without due process of law under Section 44(1) of the CFRN.[5] (Emphasis added)

3. Commentary

The Judge on the Bench is not imbued with infallibility.[6] This explains why the law has created pathways for impugning the decision of a judge.[7] Confirming the pathway

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5 *Op. cit*., pp. 13 – 14 of the unreported Judgment in *Onuegbu's Case* (n2).

6 See, David Andy Essien, '*Role of Judges in the Due Administration of Justice in Nigeria*' (The Nigeria Lawyer, 20 October 2021) <https://thenigerialawyer.com/role-of-judges-in-the-due-administration-of-justice-in-nigeria/> accessed 10 January 2025.

7 This legal reality was amplified by the Learned Jurist, Honourable Justice Kayode Eso, JSC, in the case of *Architects Registration Council of Nigeria (No. 2) In Re: O. C. Majoroh v. Professor M. A. Fassassi* (1987) LPELR – 539 (SC) at p. 6, para. D, in the following words: "*The Maxim is De fide Et officio non recipitur quaestio, sed de scientiative error juris sive facti – The honesty and integrity of a Judge cannot be questioned, but his decision may be impugned for error, either of law or of fact.*"

created by way of "an appeal", the Supreme Court in the oft-cited case of **Adegoke Motors Limited v. Dr. Babatunde Adesanya**,[8] evangelized the view of the fallibility of judicial officers and the need to call for the overruling of a decision reached *per incuriam*, in the following words:

> **Justices of this Court are human-beings, capable of erring**. **It will certainly be short sighted arrogance not to accept this obvious truth**. It is also true that this Court can do inestimable good through its wise decisions. Similarly, **the Court can do incalculable harm through its mistakes**. **When therefore it appears to learned counsel that any decision … has been given *per incuriam*, such counsel should have the boldness and courage to ask that such a decision be over-ruled**.[9] (Emphasis added)

In the same vein, "legal scholarship" or "literary criticism" has been identified as another pathway for scrutinizing the decision of a judge. A learned commentator graphically captured this point in a commentary below:

> ... **judicial opinions and judgments can be scrutinised, criticised, and critiqued after delivery thereof. This is scholarship which opens up new jurisprudential vistas. Critiquing helps deepen and widen the democratic space because court decisions affect the entire society**. ....
> The greatest contribution of the judicial mind is usually deciphered, not from the final result of a case, but from the judicial opinion itself. **It is the duty of every lawyer, academic, and even member of society, to analyse, interrogate and critique judicial opinions embedded in judgments after they have been delivered**. Learned journals, columns in newspapers, Ph.D thesis and dissertations; the print and electronic media; and lately, social media, are employed in this. This is the very core of scholarship and legal education. **Such literary criticisms are aimed at pointing out the "defects" and the "beauties" of such judgments**.[10] (Emphasis added)

On this premise, it is deferentially argued by this author in the succeeding subsections of this paper that the decision of the High Court of the FCT in *Onuegbu's Case* was reached *per incuriam*.[11] In an attempt to x-ray this decision, the comments shall be divided into four broad sub-headings, namely:

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8 (1989) LPELR – 94 (SC).

9 *Ibid*., at p. 24, paras. C – E, per Honourable Justice Oputa, JSC.

10 Mike Ozekhome, '*Critiquing Judges and Judgments: The Dividing Line Introduction*' (LawPavilion Blog, 21 March 2023) <https://lawpavilion.com/blog/critiquing-judges-and-judgments-the-dividing-line-introduction/> accessed 10 January 2025.

11 A judicial decision which is *per incuriam* is a decision wrongly decided, usually because the Judge was ill-informed about the applicable law. A judgment *per incuriam* is one which has been rendered inadvertently such as where the Judge has forgotten to take account of a previous decision to which the doctrine of *stare decisis* applies. It is a judgment which has no authority because it is rendered in contradiction to a previous judgment that should have been considered binding. See the following cases: *Elabanjo v. Dawodu* (2006) 15 NWLR (Pt. 1001) 76 (SC) at pp. 154 – 155, paras. G – C;

(i) The declaration of the PND Order from the Upper Area Court, Taraba State as "*void*" and "*invalid*" for emanating from a court without jurisdiction;

(ii) The declaration of the PND Order from the Upper Area Court as "*void*" on the ground of inadmissibility;

(iii) The placement of a duty on the Bank to "*verify*" a PND Order before taking any step on the customer's account; and

(iv) The inadmissibility of the PND Order (a public document) attached to the Counter Affidavit due to its "*non-certification*".

3.1 The Declaration of the PND Order from the Upper Area Court, Taraba State as "*Void*" and "*Invalid*" for Emanating from a Court Without Jurisdiction

The phrase, "Court Order", denotes an authoritative and non-negotiable mandate, precept, command, direction, rule or regulation made or entered in writing by a court and not included in a Judgment.[12] The High Court of the FCT in *Onuegbu's Case* appraised the PND Order (Exhibit AR1) handed down by another Court (the Upper Area Court, Taraba State) and held that the said Court Order was "*void*" and "*invalid*" because it emanated from a court that had no jurisdiction to make the said Order. While it is not in doubt that the Upper Area Court in Taraba State is bereft of jurisdiction to make a PND Order,[13] the bold move by the High Court of the FCT in *Onuegbu's Case*

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and *Opara v. S. P. D. C. N. Limited* (2015) 14 NWLR (Pt. 1479) 307 (CA) at pp. 347 - 348, paras. F – A.

[12] See the definition given by Honourable Justice Mohammed, JSC (later CJN), in the case of *Maderibe v. FRN* (2014) 5 NWLR (Pt. 1399) 68 (SC) at p. 91. See also, the case of *N. P. G. Properties & Construction Works Limited v. Zenith Bank PLC* (2023) LPELR – 60614 (CA) at p. 20, para. E, per Honourable Justice Ogbuinya, JCA (as he then was). On this note, a PND Order is a court order and it enjoys every privilege, dignity and sanctity accorded a court order.

[13] The power to make a Post-No-Debit (PND) Order is vested in the Federal High Court by virtue of section 251(1)(d) and (3) of the *Constitution of the Federal Republic of Nigeria*, 1999 (as amended) and section 7(8) and (9) of the *Money Laundering (Prevention and Prohibition) Act*, 2022. This position was confirmed by the Court of Appeal in the case of *First City Monument Bank v. Dr. Nelson Ogbemudia & Anor*. (2022) LPELR - 58859 (CA) at pp. 16 – 21, paras. D – A, where Honourable Justice Onyekachi Aja Otisi, JCA, held thus: "*A Post-No-Debit (PND) order on the account of a bank customer is a directive that restricts a bank customer from withdrawing funds from his bank account. Such an order is not one that a financial institution or even an investigatory body is empowered to grant itself.* ***It is usually made by a Court of competent jurisdiction, being the Federal High Court. See Section 44(2) and Section 251(1)(d) of the 1999 Constitution of the Federal Republic of Nigeria (as amended); and Section 34(1) of the EFCC Act***." (Emphasis added)
See also, the case of *First Bank of Nigeria PLC v. Onuoha* (2017) LPELR – 42135 (CA) where the Court of Appeal held *inter alia* that a Magistrate Court lacked jurisdiction to issue a Post-No-Debit (PND) Order on a customer's account, as banking matters fall within the exclusive jurisdiction of the Federal High Court.

to strike down the said PND Order as "*void*" for being made without jurisdiction is certainly novel and inconsistent with settled judicial precedents in Nigeria.

Firstly, there is a presumption of correctness in favour of a court's order or judgment.[14] Unless and until that presumption is rebutted and the order or judgment is set aside, it subsists, remains valid and binding; and must be obeyed.[15] The position therefore is that a party who is aware of a court order, whether null or void, regular or irregular, valid or invalid cannot be permitted to disobey it. His unqualified obligation is to obey it unless and until that order has been set aside.[16] It would be suicidal for the legal profession for parties or their lawyers to decide whether a court order is null or valid; regular or irregular; and void or proper.

To this end, the *dictum* in **U. A. C. v. Macfoy**[17] often quoted to the effect that there is no need to set aside an order which is void because it is a nullity, is not only an *obiter* but also *per incuriam*.[18] For as long as that order remains extant, it behooves a party to submit to it; just as a court is entitled to rely on it and enforce it. This position was better expressed by the Supreme Court in the case of **Victor J. Rossek v. African Continental Bank Limited**[19] and the reasoning is reproduced *in extenso*:

> ...**the oft quoted *dictum* of Lord Denning M.R. in *Macfoy* v. *U.A.C. Ltd.*** (1961) 3 All E.R. 1169, 1172; (1962) A.C. 152 to the effect that:
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> > 'If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado,

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14 See, section 168(1) of the *Evidence Act*, 2011 (as amended). See also, *Mobil Producing Nigeria Unlimited v. Suffolk Petroleum Services Limited* (2016) LPELR – 40054 (CA) at pp. 13 – 14, paras. C – A, per Honourable Justice Eko, JCA (as he then was).

15 See the case of *Oba Amos Babatunde & Ors. v. Mr. Simon Olatunji & Anor.* (2000) 2 NWLR (Pt. 646) 557 (SC) at pp. 568 – 569, paras. G – C; and *Oba Aladegbemi v. Oba Fasanmade* (1988) 3 NWLR (Pt. 81) 129 (SC).

16 See the following cases on this point: *Williams v. Sanusi* (1961) 2 SCNLR 129; *Ojiako v. Ogueze* (1962) 1 SCNLR 112; *Adebayo v. Johnson* (1969) 1 All NLR 176 at p. 194*; Ajao v. Alao* (1986) 5 NWLR (Pt. 45) 802 at p. 823; *Yonwuren v. Modern Signs* (1985) 1 NWLR (Pt. 2) 244; *Odiase v. Agho* (1972) 1 All NLR 170 at p. 176; *Melifonwu v. Egbuji* (1982) 9 S.C.145; *Oba Aladegbemi v. Oba Fasanmade* (*supra*); and *Oba Amos Babatunde & Ors. v. Mr. Simon Olatunji & Anor.* (*supra*) at p. 568, paras. A – G; and at p. 571, paras. F – G.

17 (1961) 3 All E. R. 1169 at p. 1172. Instructively, the Court of Appeal in Nigeria fell into the same error in the case of *First Bank of Nigeria PLC v. Onuoha* (2017) LPELR – 42135 (CA) when it held *interalia* that the Post-No-Debit (PND) Order was a nullity for lack of jurisdiction, and First Bank's compliance with it was unlawful because "*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.*"

18 See the views of Honourable Justice Akinbami, JCA, in the case of *Alhaji Ali Ashiru & Ors. v. Alhaji Jamilu Isah* (2022) LPELR – 58311 (CA) at pp. 35 – 36, paras. D – B. See also, the English case of *Isaacs v. Robertson* (1984) 3 All ER. 140, at p. 143, per Lord Diplock.

19 (1993) 8 NWLR (Pt. 312) 382 (SC).

though it is sometimes convenient to have the court declare it to be so.'

is no more than an *obiter* given *per incuriam* - see *Isaacs v. Robertson* (1984) 3 All ER. 140, 143 per Lord Diplock. While I agree with the noble Master of the Rolls in his exposition of the distinction between acts that are void and those that are voidable, it is my humble view that **his pronouncement (if it was meant to extend to a judgment or order of court) that there would be no need for an order of court to set aside a void judgment, cannot be correct; it is against the weight of judicial opinion**. With profound respect, I do not subscribe to such view. The law has been laid down as long ago as 1846 by Lord *Cottenham* LC in *Chuck* v. *Cremer,* Cooper temp. Cott. 338 at 342; 47 ER 884 at 885 .... This view was re-echoed by Romer LJ in *Hadkinson v. Hadkinson (supra) ...* and affirmed by the Privy Council in *Isaacs* v. *Robertson (supra).* Eso, J.S.C stated the same view in *Oba Aladegbemi v. Oba Fasanmade (supra)* where he observed:

'.... **In my respectful view it is not only desirable but necessary to have such decisions set aside first by another court before any act is built upon it despite the colourful dictum of the law Lord in *UA.C. v. Macfoy (supra)***.'

Isaacs v. Robertson has not decided anything new to Nigerian law on this point. **There is always a presumption of correctness in favour of a court's judgment. And until that presumption is rebutted and the judgment is set aside, it subsists and must be obeyed**.[20] (Emphasis added)

In this wise, and contrary to the position reached by the Court in *Onuegbu's Case*, the PND Order (Exhibit AR1) made by the Upper Area Court sitting in Jalingo, Taraba State, remains binding on both Mr. Onuegbu and Moniepoint Microfinance Bank Limited until it is vacated.

Secondly, the option open to a party against whom an *ex parte* order is made is to apply to the court that made the order to vacate it or appeal against the order so that it might be set aside.[21] This is because such an order remains valid and binding unless

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[20] *Ibid*., at pp. 434 – 435, paras. E – C, per Honourable Justice Ogundare, JSC. See also, *Oba Amos Babatunde & Ors. v. Mr. Simon Olatunji & Anor.* (2000) 2 NWLR (Pt. 646) 557 (SC) at pp. 570 – 571, paras. G – H, per Honourable Justice Ogwuegbu, JSC.

[21] See the following cases on this point: *Kamalu & Ors. v. Umunna & Ors.* (1997) LPELR – 1657 (SC); Amida v. Oshobajo 7 SC 68 at pp. 76 – 77; *Alims Nig. Limited v. UBA PLC* (2007) All FWLR (Pt. 348) 971 (CA) at p. 981, paras. B – D; *Fidelity Bank Plc v. The MT "Tabora"* (2018) 12 NWLR (Pt. 1638) 135 (SC) at pp. 148 – 149; *Noeker v. Executive Governor of Plateau State* (2018) 16 NWLR (Pt. 1646) 481 at p. 492; *FRN v. Duru* (2019) LPELR – 47 at pp. 46 – 47, paras. A – D; and *Mohammed & Ors. v. Estate of Late Chief Ibrahim Lumisi & Anor.* (2023) LPELR – 60623 (CA) at pp. 16 – 17, paras. E – A.

and until it is set aside by the lower court itself where it acted without jurisdiction[22] or by an appellate court.[23] It is thus not only desirable but also necessary to have such decisions set aside before any act is built upon it. In the case of **Victor J. Rossek v. African Continental Bank Limited**,[24] the Supreme Court appositely made the following observations:

> **It has never been the law of Nigeria as some of our Judges, like judicial robots, have been parroting the *dicta* of Lord Denning in *MacFoy* v. *U.A.C. (supra)* that there is no need for an order of a court which is void to be set aside by a court and thereby implies that all and sundry have the right to disobey the order**. It is not also the law of England: *Isaacs* v. *Robertson (supra).*
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> It has never been the law that a party may review a judgment, regard it a nullity and disobey it. A prisoner who thinks that his conviction was a nullity cannot with impunity walk out of prison. Similarly, a judgment debtor cannot lawfully resist execution because he considers the judgment against him was null and void. Thus, **a judgment of a court of law remains valid and effective unless it is set aside by an appeal court or by the lower court itself if it acted without jurisdiction** or in the absence of an aggrieved party...."[25] (Emphasis added)

In the case of **Egbuziem v. N. R. C.**,[26] the Court of Appeal was very stern in stating this position when the Court held:

> Where a court makes an order which is a nullity, any person affected by such an order is entitled *ex debito justitiae* to have the order set aside. **The court that made such order has the power to set it aside**. **In the instant case, the appellant should have gone back to the lower court to have the decision set aside, when he realised that the decision was made without jurisdiction and was a nullity**.[27] (Emphasis added)

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22 See the following cases on the inherent jurisdiction of every court of law to set aside an *ex parte* order made by it: *Secondi Bogban & 2 Ors. v. Motor Diwhre & 2 Ors.* (2005) All FWLR (Pt. 281) 1724 (CA) at p. 1739; *Aminu A. Umar v. Daniel Obi Onwudine & 3 Ors.* (2002) LPELR – 11092 (CA); and *Seven Up Bottling Company Limited v. Abiloa & Sons Limited* (1989) 4 NWLR (Pt. 114) 229.

23 See, *FRN v. Chief Mike Ozekhome (SAN)* (2021) LPELR – 54666 (CA) at pp. 26 – 27, paras. A – D.

24 (1993) 8 NWLR (Pt. 312) 382 (SC).

25 *Ibid*., at pp. 471 – 472, paras. E – A, per Honourable Justice Bello, CJN. See also, the following cases: *Nigerian Deposit Insurance Corporation & Anor. v. Savannah Bank of Nigeria PLC* (2003) 1 NWLR (Pt. 801) 311 (CA) at p. 363, paras. C – D; and at pp. 363 – 364, paras. H – A, per Honourable Justice Musdapher, JCA (as he then was); and *Dr. M. F. Peters & Anor. v. Samson Ashamu & Anor.* (1995) 4 NWLR (Pt. 388) 206 (CA) at p. 218, paras. G – H; and at pp. 219 – 220, paras. D – A.

26 (1994) 3 NWLR (Pt. 330) 23 (CA).

27 *Ibid*., at p. 33, paras. G - H.

From this juridical survey, it can be deciphered that the Court in *Onuegbu's Case* was bereft of powers to void or invalidate the PND Order handed down by the Upper Area Court, Taraba State due to all or any of the following reasons:

(i) The court with both appellate and supervisory jurisdiction over the decision of the Upper Area Court, Taraba State is the High Court of Taraba State and not the High Court of the FCT. Consequently, the High Court of the FCT cannot *suo motu* expand its territorial jurisdiction and exercise appellate and/or supervisory jurisdiction to void a Court Order emanating from the Upper Area Court, Taraba State.

(ii) The case before the High Court of the FCT was a distinct suit (a Fundamental Rights Enforcement Matter) which does not concern the appellate or supervisory jurisdiction of the said Court.

(iii) Assuming but without conceding that the approach taken by the High Court of the FCT is even a permissible procedure in law, there was no specific prayer in the Fundamental Rights Enforcement Suit for the setting aside of the subsisting PND Order.[28]

(iv) The Upper Area Court, Taraba State and the High Court of the FCT are not courts of co-ordinate jurisdiction. Other than sitting as an appellate court or exercising supervisory jurisdiction, a court of law only has the inherent jurisdiction to set aside the null and void decision of a court of co-ordinate jurisdiction or its own null and void decision or order.[29] Consequently, Mr. Onuegbu who was affected by the *ex parte* PND Order ought to have applied to the Upper Area Court, Taraba State to have the said PND Order vacated before the return date or before the date named as the terminal date of the order.[30]

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[28] It is hornbook law that parties are bound by the prayers on their Motion Papers, and no court has jurisdiction to grant more than what has been claimed by parties before it. See the case of *Olatunji v. Owena Bank of (Nig.) PLC* (2002) 15 NWLR (Pt. 790) 272 (CA) at pp. 291 – 292, paras. H – A; and *Dapianlong v. Dariye* (2007) 8 NWLR (Pt. 1036) 239 (CA) at pp. 290 – 291, paras. D – A.

[29] See the following cases on this point: *Eyo v. Okpa* (2010) 6 NWLR (Pt. 1191) 611 (CA) at p. 635, paras. C – E; *L. S. D. P. C. v. Adeyemi-Bero* (2005) 8 NWLR (Pt. 927) 220 (CA) at p. 353; and *Federal Republic of Nigeria v. Chief Mike Ozekhome (SAN)* (2021) LPELR – 54666 (CA) at pp. 16 – 17, paras. A – D, Honourable Justice Uwa, JCA (as he then was).

[30] See the case of *Dr. Emmanuel Urhobo & Anor. v. Major General B. I. Oteri & Anor.* (1999) 2 NWLR (Pt. 589) 147 (CA) at p. 161, where Honourable Justice Mahmud Mohammed, JCA (as he then was), held: "*However, the defendant over whose head such order is left hanging reserves the right*

3.2 The Declaration of the PND Order from the Upper Area Court as "V*oid*" on the Ground of Inadmissibility

The Court in *Onuegbu's Case* declared Exhibit AR1 (the uncertified PND Order) as "*void*" for "*non-certification in accordance with the provision of section 104 of the Evidence Act 2011.*" This ineluctably means that the Court struck down the PND Order and tagged it as "void" in the course of deciding the admissibility or otherwise of the said document. It is the respectful view of this author that the High Court of the FCT, in reaching such a worrisome conclusion, muddled up two distinct principles of law: the first, being the rule on "void documents"; and the second, being the rule on "admissibility of documents".

Prefatorily, when a thing is void, it does not exist.[31] The word "void" means null, nugatory, invalid, ineffectual, having no legal force or binding effect and being unable, in law, to support the purpose for which it was intended.[32] In its strictest sense, it means that which has no force and effect and is incapable of being enforced by law or has no legal or binding force.[33] This legal exercise reveals that the validity of a document is not a matter of admissibility but one that touches on the forensic utility or probative value of such a document. It follows therefore, that for a court to possess the *vires* to declare a document void, such document must first be admitted and received in evidence by the court. Authenticating the foregoing position, the Court of Appeal in the case of **Alhaji S. Adeyemi Olowolaramo v. Mr. Julius Chinedu Umechukwu**,[34] beautifully summarized the position as follows:

> I must point out from the onset that **it is erroneous to submit that a void document is inadmissible** as done by the learned counsel for the respondent in the issue under consideration. It is my considered view that admissibility of document and the weight to be attached to the said document are two different things which call for consideration of different principles of law. That is why I hold the view that a void document is not necessarily inadmissible in law. It is my view that **for a document to be pronounced void by a court of law it must first and foremost be admitted in evidence to bring it legally before the court to be**

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and liberty to move the Court to discharge such ex-parte order or injunction even before the named date until which it was to last...."

Parenthetically, it is important to note that the Upper Area Court, Taraba State, like every other Court, retains the inherent jurisdiction to vary, set aside and/or discharge an *ex parte* PND Order that was made by it, especially where it was made without jurisdiction.

31 See, *Nasiru v. Bindawa* (2006) 1 NWLR (Pt. 961) 355 (CA) at p. 373, para. B.

32 See the following cases on this point: *N. D. D. C. v. Precision Asso. Limited* (2006) 16 NWLR (Pt. 1006) 527 (CA) at p. 555, paras. G – H; and *Omoyinmi v. Olaniyan* (2000) 4 NWLR (Pt. 651) 38 (CA) at p. 58, para. B.

33 See, *Buraimoh v. Karimu* (1999) 9 NWLR (Pt. 618) 310 (CA) at pp. 323 – 324, paras. H – B.

34 (2002) LPELR – 7068 (CA).

> **properly dealt with. So if that document is otherwise admissible the fact that it is void in law is not relevant to its admissibility.** That apart, **when we say that a document is void we are talking of the legal effects of that document. In other words the probative effects of that document or the weight to be legally attached thereto. This is very different from the issue whether that document is admissible.**[35] (Emphasis added)

In the context in which the above historic lines were written, a court of law is not expected to dive into the issue of validity or to declare a document "void" while determining the admissibility or otherwise of such a document because such a judicial exercise will be akin to placing the 'cart before the horse'. This expressive rationale is predicated on the following jurisprudential foundations:

(i) The Test of Admissibility: For a court to consider the weight or probative value of a document, such a document must first be deemed relevant and admissible.[36] Without being admitted, it does not form part of the evidence before the court and remains outside the purview of judicial evaluation and reliance.[37]

(ii) The Test of *Vires*: Courts are bound by the materials presented by parties before them.[38] If a document is not admitted in evidence or is excluded as an exhibit by the Court, the court is bereft of *vires* to evaluate it; pronounce on its validity; and/or act on it[39] because the said document is irrelevant and goes to no issue.[40]

(iii) The Test of Fair Hearing: The act of declaring a document void at the preliminary stage of deciding admissibility and without a formal admission of such a document would undermine the procedural safeguards designed to ensure fairness and due process. This could infringe upon the principles of fair

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35 *Ibid*., at pp. 18 – 19, paras. C – B, per Honourable Justice Onnoghen, JCA (as he then was).

36 See, sections 1 and 2 of the *Evidence Act,* 2011 (as amended). See also, the case of *Anyaebosi v. R. T. Briscoe (Nig.) Limited* (1987) 3 NWLR (Pt. 59) 84 (SC) at p. 107, para. C, per Honourable Justice Karibi-Whyte, JSC.

37 See the following cases on this point: *Wassah v. Kara* (2015) 4 NWLR (Pt. 1449) 374 (SC) at p. 404, para. B; pp. 407 – 408, paras. H – A; and *Agbi v. Ogbeh* (2005) 8 NWLR (Pt. 926) 40 (CA) at p. 139, para. F; p. 140, para. C.

38 See, *Imo State Independent Electoral Commission v. Oshieze Vincent Akujobi Ehirim* (2013) 3 NWLR (Pt. 1340) 169 (SC) at p. 183, para. D.

39 See, *Ikpa v. State* (2018) 4 NWLR (Pt. 1609) 175 (SC) at p. 220, para. A.

40 See, *Nigerian Ports PLC v. B. P. P. Limited* (2006) 7 NWLR (Pt. 979) 323 (CA) at p. 379, paras. C – D.

hearing because the opposing may not have had an opportunity to contest or join issues on the validity of such a document.

3.3 The Placement of a Duty on the Bank to "*Verify*" a PND Order Before Taking Any Step on the Customer's Account

The High Court of the FCT in *Onuegbu's Case* also held that PND Orders from the court "*must be valid and from a court of competent jurisdiction as provided in Section 251(1)(d) and (3) of the CFRN*" and that "*the bank must verify such orders before taking any step on the customers' account*". With the greatest respect, this neoteric advocacy for the verification of Court Orders by banks is out of harmony with the extant position of the law in Nigeria and is, unfortunately, incorrect.

It is the view of this author that while a bank is duty-bound to exercise reasonable care and skill in carrying out its part concerning operations within its contracts with its customers,[41] this duty, does not extend to verifying, determining and/or ascertaining whether a PND Order is valid and emanates from a court of competent jurisdiction.[42] Such powers are conferred only on a court of law by the provisions of section 6(1) – (3) of *Constitution of the Federal Republic of Nigeria*, 1999 (as amended). This position was amplified by the Court of Appeal in the case of **Guaranty Trust Bank v. Ebisi Augustine Chijioke**[43] thus:

> **Contrary to the views expressed by the trial court, I do not think it is the duty of the Appellant upon being served with the order made by a court of law to determine whether or not the order was made by a court of competent jurisdiction**. **The 1999 constitution as amended has not conferred judicial powers on the appellant to**

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41 See the case of *Agbanelo v. UBN Limited* (2000) LPELR – 234 (SC) at pp. 17 – 18, per Honourable Justice Ayoola, JSC.

42 The only exception to this position is where it is obvious on the face of the Order that it was not made by a court of law. A ready example can be seen in the case of *Access Bank v. Agbasiere* (2019) LPELR – 47310 (CA) at p. 15 where the Order was made by "*Supreme Magistrate Court of Federal Capital Territory Dutse*". In such a situation, the bank may carry out an "*investigation*" just to ascertain "*if such court exists*" before acting on the Order. See the detailed reasoning of Honourable Justice Okon Efreti Abang, JCA, at page 25 of the unreported Judgment in the case of *Guaranty Trust Bank v. Ebisi Augustine Chijioke*, Appeal No. CA/A/CV/155/2023 (hereinafter referred to as "*Chijioke's Case*"). The said decision was handed down by the Court of Appeal, Abuja Judicial Division on 20th December 2024.
This can be accessed via: Unini Chioma, '*Court of Appeal condemns GTBank For Inhuman Freezing of Customer's Account, Upholds ₦60M Damages, Adds ₦300K For Rights Violation*' (The Nigeria Lawyer, 2 January 2025) <https://thenigerialawyer.com/court-of-appeal-condemns-gtbank-for-inhuman-freezing-of-customers-account-upholds-%E2%82%A660m-damages-adds-%E2%82%A6300k-for-rights-violation/> accessed 10 January 2025.

43 *Ibid*., *Chijioke's Case*. *Coram*: Abba Bello Mohammed, JCA; Peter Chudi Obiorah, JCA; and Okon Efreti Abang, JCA.

> **determine whether or not the order served on it was made by a court of competent jurisdiction**. Such powers is conferred on a court of law by virtue of the provisions of section 6 sub sections 1 to 3 of 1999 constitution as amended except it is obvious on the face of the order that it was not made by court of law.
> …. Whether it is a court of competent jurisdiction or not is not for the Appellant to determine but by a Court of law under the provisions of section 6(1) – (3) of 1999 Constitution as amended. …. **At the time of service of the order and its compliance, it was not for the Appellant to determine whether the Magistrate Court had jurisdiction to make the order or whether it was made by court of competent jurisdiction or the Banker's Orders Act was still a subsisting law in Nigeria**. **The Appellant had no duty to consider the issues raised above**.[44] (Emphasis added)

The above well-reasoned decision by the Court of Appeal cremates the position of the High Court of the FCT in *Onuegbu's Case*; promotes the view that banks in Nigeria do not have judicial powers to "*verify*" Court Orders; and properly delimits the duty of a bank to exercise reasonable care and skill when served with a PND Order.

3.4 The Inadmissibility of the PND Order (a Public Document) Attached to the Counter Affidavit Due to its "*Non-certification*"

The High Court of the FCT in *Onuegbu's Case* also voided the said PND Order for being an uncertified public document in accordance with the provisions of section 104 of the *Evidence Act*, 2011 (as amended). On this point, it is necessary to state that the said holding of the Court, with the greatest respect, does not represent the position of the law in Nigeria.

Under Nigerian law, an uncertified public document attached to an affidavit is admissible.[45] This is because public documents exhibited as secondary copies in affidavit evidence cannot necessarily be certified true copies and a document exhibited

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[44] *Ibid*., at pp. 25 – 27 of the Unreported Judgment in *Chijioke's Case*, per Honourable Justice Okon Efreti Abang, JCA.

[45] See the following recent cases on this point: *Senator Anyanwu Samuel Nnaemeka & Anor. v. INEC* (2024) LPELR – 63034 (SC) at p. 76, paras. B – D; Barr. *Enyinna Onuegbu & Ors. v. Governor of Imo State & Ors.* (2024) LPELR – 62620 (SC) at pp. 15 – 17, paras. E – C; *Gusau v. Lawal & Ors.* (2023) LPELR – 60152 (SC) at pp. 21 – 22, paras. C – B; *Aondoakaa v. Obot & Anor.* (2021) LPELR – 56605 (SC) at pp. 35 – 37, paras. C – A; *Alhaji Suleiman Musa v. Jika Nigeria Limited & Anor.* (2024) LPELR – 62779 (CA) at pp. 37 – 39, paras. A – E; *Asabe Waziri v. Abeh Signature Limited* (2024) LPELR – 62283 (CA) at p. 27, paras. D – E; *Chinedu Odidika Nwankwo & Anor. v. Prof. Obi Obikeze & Anor.* (2024) LPELR – 62741 (CA) at pp. 7 – 10, paras. C – D; *Eng.* Udengmobofa Eradiri v. INEC & Ors. (2024) LPELR – 62795 (CA) at p. 67, paras. C – E; *Rogo Local Government Council & Ors. v. Hon. Nasiru Dalha Rogo* (2023) LPELR – 59598 (CA) at pp. 27 – 28, paras. A – A; *Hashim v. Aso Savings & Loans PLC* (2022) LPELR – 57061 (CA); *C. O. P. Ekiti State & Ors. v. Aregbesola & Ors.* (2020) LPELR – 50177 (CA); *DG DICN & Anor. v. Dinwabor & Ors.* (2016) LPELR – 41316 (CA); *Jukok Int. Ltd. v. Diamond Bank PLC* (2016) 6 NWLR (Pt. 1507) 55; and *Ilorin East Local Government v. Alasinrin & Anor.* (2012) LPELR – 8400 (CA).

in an affidavit is already an exhibit before the Court, being part of the affidavit evidence which a Court is entitled to look at and consider in administering justice. In the case of **Kogi State House of Assembly & Ors. v. Elder Simon Achuba & Ors.**,[46] the Court of Appeal cleared the air as follows:

> The question to be resolved here turns on whether public documents attached to Affidavits in matters fought by Affidavit evidence ought to be certified in law now, **the law is well settled that copies of public documents attached to an Affidavit as Exhibits or attachments need not be Certified True Copies because the documents already form part of the evidence adduced by the deponents before the Court to which the Court can rely on once it is satisfied. The rationale for this is not rocket science. An Affidavit is an oath and since the document is part of the Affidavit no other certification is needed**. See BAT (NIG) LTS VS INT'L TOBACCO CO PLC (2013) PAGE AT 496.[47] (Emphasis added)

The position of the Court of Appeal on this issue in the case of **Eke v. Osah**,[48] is quite apposite. The Court succinctly noted that:

> **Even though the law provides that the only secondary evidence that is admissible in proof of public document is a certified true copy of the document**, the issue of certification only goes to the realm of admissibility during trial. This normally occurs in actions commenced by way of Writ of Summons where documents intended to be relied upon are subjected to scrutiny to ensure that they pass the test of admissibility before they are admitted in evidence. **This rule does not however apply in applications/actions commenced by way of Notice of Motion, Preliminary Objection, Originating Summons and Originating Motions, et cetera, where proof is by way of affidavit evidence**. In such situations, every document annexed to an affidavit that is duly sworn to is deemed to be evidence properly before the Court and the Court is enjoined to consider such document in coming to its decision. **The trite position of the law is that documents attached to an affidavit as exhibits automatically form part of the affidavit and it is not possible for the opposing party or even the court to raise objection to their admissibility, even where they are uncertified, in the case of public documents**. This is so because, **by their annexation as exhibits to an affidavit, the formality for certification for admissibility had been dispensed with**. ….
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> Therefore, the lower Court was clearly in error of law in refusing to ascribe probative value to its own judgment annexed to the Appellant's Affidavit as Exhibit A for the sole reason that the said judgment was not certified. I so hold.[49] (Emphasis added)

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46 (2024) LPELR – 61938 (CA).

47 *Ibid*., at pp. 48 – 50, paras. F – C, per Honourable Justice Banjoko, JCA.

48 (2025) LPELR – 81028 (CA).

49 *Ibid*., at pp. 8 – 9, paras. B – F, per Honourable Justice Muhammad Ibrahim Sirajo, JCA. See also, *Attorney-General of the Federation v. Anuebunwa* (2022) LPELR – 57750 (SC); *Ezechukwu & Anor.*

In the light of the foregoing authorities, the High Court of the FCT in *Onuegbu's Case* should not have subjected Exhibit AR1 (the PND Order) attached to the Counter Affidavit of the Respondent to the test of admissibility. Instead, the Court should have subjected Exhibit AR1 (the PND Order) to the test of credibility and made its reasons known for either being satisfied or not, with the credibility of the attached PND Order.[50] This is because the law does not permit any objection to be raised to the admissibility of a document attached to an affidavit.[51]

4. Conclusion

Until they are set aside, the law commands all natural and juristic persons to obey court orders notwithstanding their reservations about the jurisdiction of the Court that made such orders. To this end, great care must be taken to ensure that banks and other financial institutions in Nigeria are not sent on a perilous verifying voyage to castrate and neutralize the efficacy of court orders and/or to desecrate the dignity, sanctity and majesty of courts. Courts of law, while trying to do justice between parties, must decide cases in accordance with settled principles of law.[52] In this wise, and contrary to the decision reached by the High Court of the FCT in *Onuegbu's Case*, the following legal conclusions remain unassailable:

(i) A PND Order from a court of law is binding until it is vacated, even if it appears that the Court may have acted without jurisdiction.

(ii) A document cannot be declared void on the ground of inadmissibility. The validity of a document has to do with the probative value and not the admissibility of a document.

(iii) There is no duty on a bank to verify, determine and/or ascertain whether a PND Order emanates from a court with jurisdiction, except, where on the face of the PND Order, there are doubts that it emanates from a court of law. Even in such

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v. Onwuka (2016) LPELR – 26055 (SC); and *Chairman EFCC v. Rosewood Investments Limited* (2022) LPELR – 57792 (CA).

50 See the well-considered views of Honourable Justice Mainoma, JCA, in the case of *Chinedu Odidika Nwankwo & Anor. v. Prof. Obi Obikeze & Anor*. (2024) LPELR – 62741 (CA) at p. 10, paras. C – D.

51 See the case of *Ezechukwu & Anor. v. I. O. C. Onwuka* (2016) LPELR – 26055 (SC); and *Mr. Benson Okeke Ezeofor & Ors. v. Pastor Fidelis Egware* (2024) LPELR – 62396 (CA) at p. 18, para. C.

52 See the evergreen views of Honourable Justice Nnamani, JSC, in the case of *Okafor v. Idigo* (1984) 1 SCNLR 481 at p. 513.

a situation, the bank is only expected to "*investigate*" to ascertain "*if such a court exists*" before acting on the court order.[53]

(iv) An uncertified PND Order (a public document) attached to an affidavit is admissible in law.

5. Recommendation

It is the view of this author that a bank or a financial institution that is served with a PND Order from a court without jurisdiction or pursuant to a non-existent law need not throw its hands in the air. Such a bank can promptly apply to the Court that made the seemingly irregular PND Order for same to be set aside, especially where the bank or financial institution was a party to a decided case that such legal issues were earlier resolved. This position finds ample support in the decision of the Court of Appeal in **Guaranty Trust Bank v. Ebisi Augustine Chijioke**,[54] where the following was said:

> **Though upon being served with the Banker's Orders unlawfully procured by the 2nd Respondent, the appellant had no judicial powers to determine if the Magistrate Court that made the Order was a court of competent jurisdiction but having been a party to the Judgments … that declared that a Magistrate Court has no power to issue a Banker's Orders** either by virtue of section 89 of the Evidence Act or by non-existent Banker's Orders Act 1847, **the appellant in this appeal ought to have taken urgent steps to have the Order vacated**.[55] (Emphasis added)

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[53] *Op. cit*., at p. 25 of the unreported Judgement in *Chijioke's Case* (n42), per Honourable Justice Okon Efreti Abang, JCA.

[54] *Ibid*.

[55] *Ibid*., at p. 29 of the unreported Judgment in *Chijioke's Case* (n42), per Honourable Justice Okon Efreti Abang, JCA.