

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE LAGOS JUDICIAL DIVISION**  
**HOLDEN AT LAGOS**  
**ON WEDNESDAY THE 15<sup>TH</sup> DAY OF MAY, 2024**  
**BEFORE HIS LORDSHIP HON. JUSTICE NNAMDI O. DIMGBA**  
**JUDGE**

**SUIT NO: FHC/L/CS/1281/23**

BETWEEN

CHRIS EKE

APPLICANT

AND


CENTRAL BANK OF NIGERIA

RESPONDENT

**JUDGMENT**

By an Originating Motion dated and filed on 05/07/2023, the Applicant sought the following reliefs:

- A. **A DECLARATION** that Section 6(a)(iv) of the Central Bank of Nigeria (Customer Due Diligence) Regulations, 2023, is undemocratic, unconstitutional, null and void to the extent of its inconsistency with Section 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
- B. **AN ORDER OF PERPETUAL INJUNCTION** restraining the Respondent from enforcing Section 6(a)(iv) of the Central Bank of Nigeria (Customer Due Diligence) Regulations, 2023, which requires financial institutions to

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*request customers social media handles as part of normal bank customer due diligence requirements.*


- C. **AND FOR SUCH FURTHER OR OTHER ORDERS** as this court may deem fit to make in the circumstances.

The grounds of this application are as follows:

- a. *Section 37 of the Nigerian Constitution, Article 17 of the International Covenant on Civil and Political Rights (the "ICPR") and Article 12 of the Universal Declaration of Human Rights (the "UNDHR") protects and guarantees the privacy rights of the Applicant.*
- b. *The Respondent's regulation directing banks to collect social media handles of their customers infringes on the Applicant's right to privacy as provided for by Section 37 of the Constitution.*

The application was supported by a 22-paragraph affidavit deposed to by the Applicant on 5/7/2023 alongside a written submission of counsel. In reply to the Respondent's counter-affidavit, the Applicant filed a 29-paragraph Further Affidavit deposed to by the Applicant on 15/09/2023 with additional written submissions by way of Reply on Points of law.

In response to the suit, the Respondent filed a 28-paragraph Counter Affidavit deposed to by one Gabriel Ukeje on 7/8/2023,

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to which was attached 4 annexures marked as Exhibits A to D consisting of: **Exhibit A**-(Copy of the CBN Regulation of 2022); **Exhibit B**-(Certified True Copy of the Regulations); **Exhibit C**-(The CBN's Consumer Protection Regulation 2019); and **Exhibit D**-(Certified True Copy of the BVN Operations and Watch-list for the Nigerian Banking Industry 2021). Also filed is a written submission of counsel dated and filed on 07/8/2023. The Respondent also filed a Notice of Preliminary Objection (NPO) dated and filed on 07/8/2023 together with written submissions in which the said NPO was argued. The Applicant filed a response too to this NPO.

On 08/05/2024 when the matter came up for hearing, **E.T Ogundeji Esq.** for the Applicant, and **Richard Obidegwu Esq.** for the Respondent, adopted their respective processes, adumbrated on same, and urged the Court to resolve the suit in favour of the respective parties that they represent.

### **BACKGROUND FACTS**

The facts of this case as can be gleaned from the affidavit evidence is that the Applicant alleges that the directive issued by the 1<sup>st</sup> Respondent titled "Central Bank of Nigeria (Customer Due Diligence) Regulations 2023 which requires financial institutions to demand and collect the social media handles of their customers as part of the standard Know-Your-Customer

procedure, is an invasion of his fundamental right to privacy, same constituting according to him, an unlawful interference with his private life. The Respondent, apart from challenging the competence of the suit, disagrees that the said directive constitutes any interference with the private life of the Applicant, as claimed.

Parties are thus before the Court to resolve the dispute.

### **DETERMINATION OF THE RESPONDENT'S NOTICE OF PRELIMINARY OBJECTION**

It is fitting to first determine the Respondent's NPO as the success of same might terminate the suit without the need to go to the merits of the case. The grounds of the NPO are as follows:

- 1. By the provisions of the Central Bank Act of 2007 and the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Central Bank of Nigeria does not transact, deal with, or provide banking services to private individuals including the Applicant/Respondent herein.*
- 2. The Application does not disclose a challenge to or an infraction of any recognizable right of the Respondent under the provision of Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Article 17*

*of the International Covenant on Civil and Political Rights; and Article 12 of the United Nations Declaration of Human Rights and therefore cannot activate the jurisdiction of this Honourable Court under the Fundamental Rights (Enforcement Procedure) Rules, 2009.*

*3. The suit is frivolous, speculative, vague and hypothetical, with no evidence to warrant the exercise of the Honourable Court's jurisdiction in the Applicant/Respondent's Favour.*

*4. The CBN's Customer Due Diligence Regulations, 2023 was issued in good faith and in line with Section 52 of the Central Bank of Nigeria Act 2007 and Section 51 of the Banks and Other Financial Institutions Act, 2020, and the Applicant/Respondent has failed to disclose bad faith on the part of the Central Bank of Nigeria, thereby robbing the Court of Jurisdiction.*

*5. The CBN's Customer Due Diligence Regulations, 2023 was issued by the Respondent/Applicant to Financial Institutions of which the Applicant/Respondent is not one.*

From the grounds of the NPO, learned counsel formulated and argued the following issues:



1. *Whether the Respondent's Originating Application for enforcement of fundamental human right as presently constituted which does not disclose any infraction or likely infraction of the Respondent's Fundamental right under the Constitution of the Federal Republic of Nigeria 1999 (as amended) (The Constitution) or any other Charter on Human Rights is incompetent.*
2. *Whether the Respondent's suit is not incapable of activating the jurisdiction of this Honourable Court.*
3. *Whether the Respondent's failure to establish Bad faith on the part of the CBN in its issuance of the Customer Due Diligence Regulations, 2023 [which includes Section 6(a)(iv)] does not render this instant suit incompetent by virtue of Section 52 of the Central Bank of Nigeria Act, 2007 and Section 5- of the Banks and Other Financial Institutions Act 2020.*
4. *Whether the Respondent's suit seeking the determination of the constitutionality of Section 6(a)(iv) of the CBN's Customer Due Diligence Regulations, 2023 and not claiming an identified infringement of a recognizable fundamental right ought not be dismissed.*

On the first issue, it was argued that any action for the enforcement of a fundamental right must be tied to a breach or

threat of breach of any of the rights enumerated and guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, and therefore an action cannot be sustained by mere reference or citation or breach of right without providing corresponding facts of such breach. Reliance was placed on **Statmak v C.O.P. (2020) 9 NWLR (Pt. 1728) 176 CA.** It was argued that the allegation of breach does not fall under the scope of right to privacy as provided by the Constitution and in the instant case, as the requirement for collection of social media handle does not amount to a breach of right to privacy under Section 37. Counsel maintained that the social media handle is merely an additional address for identification of the customer of the bank and for communication where necessary.


On issue two, it was argued that the suit is speculative, hypothetical and lacks evidence which can only produce academic outcomes. Reliance was placed on **Bamaiyi v A.G. Federation & Ors (2001) LPELR-730 (SC).** It was argued that there is no real or imminent danger posed to the Applicant/Respondent by the referenced CBN Regulations and that a social media handle of a person cannot be regarded as a private information that may occasion any harm or risk to his liberty as it aligns with international best practices.

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On the third issue, it was argued that the Court has no jurisdiction to entertain the suit as presently constituted against the Respondent, based on the Applicant's failure to establish bad faith on the part of the Respondent by virtue of Section 52 of the Central Bank of Nigeria Act 2007 and Section 51 of the Banks and Other Financial Institutions Act, 2020. Counsel further stated that the directive in question being part of the CBN Regulations was issued by the Respondent in the discharge of its statutory duties and was not motivated by bad faith.

On the final issue, it was argued that the action of the Applicant is not one for the enforcement of his fundamental rights but on the statutory interpretation and determination of whether Section 6(a)(iv) of the CBN's Regulation is inconsistent with Section 37 of the Constitution. It was argued that this being the case, the proper mode was to bring an action on Originating Summons posing questions for determination, and not bringing a fundamental human rights enforcement suit. And for this defect in commencement, it was proposed that the Court lacks the jurisdiction to take the matter since due process was not followed. Reliance was placed on **Kente v Ishaku (2017) 15 NWLR (Pt.1587) 94 SC.**

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On their part, learned counsel to the Applicant argued that the scope of Section 37 of the Constitution of the Federal Republic of Nigeria is not limited to privacy within the context of home but also includes the right to be free from unjustified intrusion from personal matters, and further argued that none of the other grounds of the objection is valid and should be sustained. Reliance was placed on **Nwali v EBSIEC & Ors (2014) LPELR-23682 (CA)**. For good measure, particularly as relates to ground 3, it was contended that by the provision of Section 46 of the Constitution, no actual breach of the fundamental right of a person needs to have occurred for such a person to have the right to approach the court for redress. It was further submitted that the directive of the Respondent is in breach of the Nigeria Data Protection Act, 2023.


### **RESOLUTION OF THE NPO**

I have considered all the contentions made in respect of the NPO. It is trite that jurisdiction is central to adjudication; for without it, the proceedings become a nullity no matter how well conducted. See **Madukolu v Nkemdilim (1962) 2 SCNLR 341**.

Given the nature of the objection, founded partly on the proposition that the Applicant did not pinpoint any of the rights guaranteed under Chapter IV of the Constitution that was

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breached, it will be most appropriate therefore for the Court to commence by looking at the originating process of the Applicant and what claims are made therein. Indeed, it is a fundamental principle of law and of general application that the jurisdiction of the court is generally determined by the reliefs sought by the Plaintiff party. See **Abubakar v Anor (2006) All FWLR (Pt.321) 1204**. Applying this principle to the case at hand, I have considered the 22 paragraph of the Applicant filed in support of the originating motion as well as the reliefs being sought. They show that what the Applicant is alleging is breach of his right to privacy, and which right is guaranteed by Section 37 of the Constitution, and which provision of the Constitution is clearly mentioned as that on which the suit is pitchforked. I believe therefore that this ground of the objection should fail. But it is important to add for the benefit of all counsel that a distinction needs to be made between when a litigant feels that he has a cause of action litigable before the courts, and the success of the cause when litigated. The fact that a cause when litigated should fail or is likely to fail, is not a reason to deny its existence. In this case, the Applicant has alleged that the action of the Respondent violated certain right of his that is guaranteed by the Constitution. He is entitled to say so. But whether this

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assertion would succeed when subjected to trial, as to fetch him the reliefs he is seeking, is a different question all together.

On the ground anchored on a lack of demonstration of prima facie bad faith on the part of the Respondent, **Section 6(a)(i-iv) of the CBN Regulations, 2023**, reads thus:

**6. FLS shall identify their customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements and obtain the following information.**

**a. For Individuals**

**i. Legal name and any other names used (such as maiden name)**

**ii. Permanent address (full physical address)**

**iii. Residential address (where the customer can be located)**

**iv. Telephone number, e-mail address and social media handle.**

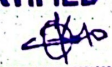
Now, Section 52 of the CBN Act, 2007 provides thus:

*"Neither the Federal Government nor the Bank nor any officer of that Government or Bank shall be subject to any action, claim or demand by liability to any person in*

*respect of anything done or omitted to be done in good faith in pursuance or in execution of, or in connection with the execution or intended execution of any power conferred upon that Government, the Bank, or such officer by this Act."*

The use of the word 'shall' connotes mandatoriness and by implication of this provision, unless there is clear allegation of bad faith by a complaining litigant on the part of the CBN (the Respondent) in carrying out its statutory duties, an action against it cannot be sustained. See the case of **NDIC V CBN (2002) 7 NWLR (Pt.766) P.272 @ P.297** where the Supreme Court held that:

*"In order that the Court may have jurisdiction to entertain the type of action now in question, the plaintiff/respondent has to show or allege bad faith in the way the revocation was done and indicate the elements that constitute bad faith. This must be done preferably at the threshold of the suit being placed the court because the Court is to presume that the act complained of was done in good faith which naturally will deprive it of jurisdiction unless bad faith is positively alleged by way of its elements"*

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pursuant to the above, I have carefully perused the 22 paragraph of the Applicant originating this suit. I have seen nowhere that it is alleged that the Respondent in instituting the Regulations that is the subject of this suit acted in bad faith, nor any deposition from which bad faith could be inferred. What is clear is that the said Regulations and the requirement to provide a social media handle on its face appear to serve an objective function, and which function is explained on the face of the Regulations itself. On this note, Part 1, Section 1 of the Regulations explains the objectives of the Regulations as to:

- (a) *Provide additional customer due diligence measures for financial institutions under the regulatory purview of the Central Bank of Nigeria to further their compliance with relevant provisions of the Money Laundering (Prevention and Prohibition) Act (TPPA), 2022, Central Bank of Nigeria (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation of Weapons of Mass Destruction in Financial Institutions) Regulations 2022 (CBN AML, CFT and CPF Regulations) and international best practices; and*
- (b) *Enable the CBN enforce compliance with customer due diligence measures in line with the CBN AML, CPT and CPT Regulations.*

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There is nowhere in the above stated aims of the Regulations that the Court could infer or impute bad faith to the Respondent, from which a right to maintain an action can spring in favour of the Applicant as required by Section 52 of the CBN Act.

It is for the above reason that I consider that the NPO has merit and is accordingly sustained.

### **OPINION ON THE MERITS**

Notwithstanding that the Respondent's NPO succeeds, judicial prudence dictates that I express an opinion on the merits or otherwise of the substantive suit. In the event that the Applicant appeals against my ruling on the NPO and succeeds, the appellate Court can see and assess this present Court's position on the merits of the case and adopt or reject same, without the need to send the case back to the Court for adjudication on the merits. This would make for a complete and effectual determination of the dispute in line with judicial best practice.


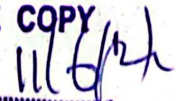
On the merits, even if I did not sustain the NPO, I still would have dismissed the case. First, the Applicant claims that the requirement in the CBN Regulations for financial institutions to request and collect the social media handle of their customers as part of KYC infringes on his right to privacy. This claim is

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very ambitious and amounts to a very far throw. The said Regulations are directed to and apply to financial institutions. They do not apply to private individuals such as the Applicant. Even if, as appears to be argued, that the Regulations would inevitably or potentially affect the Applicant, this claim is speculative for the simple reason that in nowhere in the supporting affidavit evidence was it stated that the Applicant operates an account with a financial institution and that the said institution had demanded for his social media handle. So the suggestion that he would be affected by this Regulation, albeit negatively, is very speculative and at large.

Secondly, there is also no deposition in the supporting affidavit to the effect that any financial institution had begun to implement this Regulations and that its implementation had begun to create disruptions and inconvenience against the general population, in which case one could infer that the suit should be legitimated as a public interest litigation.


Thirdly, assuming that the banks had begun to implement this Regulations, the Applicant, assuming he maintained any bank accounts or sought to open one, but is being hindered or irritated by the requirement of the Regulation to avail his social media handle as part of KYC, the Applicant still had a choice, which is to refuse to do business with any bank insisting on the

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information regarding his social media handle as part of the bank's KYC, but to seek other alternatives.

Fourthly, and for all it is worth, I do not see how asking a banking or potential banking customer to provide his social media handle can ever amount to a breach of privacy. I accept that Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that: "*The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected*". But my assessment is that the provision of a social media handle is of the same genre as the provision of email addresses, phone numbers and other means by which a potential customer of a bank can be contacted. Thus, it is clear from the face of the Regulations as set out above that email address, phone numbers and social media handle are all provided for under clause 6iv just to show that the aim was not to pry on anyone but rather to provide alternative means by which a customer of a bank can be contacted, and or due diligence conducted on the person to determine if the person is a fit and proper person to extend banking services to. I do not see how this infringes on the right to privacy.

I should even say that the essence of having a social media account was for one to be publicly visible communication wise.

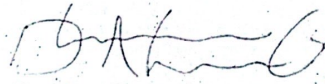
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



It therefore appears quite ironic, though wryly, and also counter-intuitive, that one can suggest that asking for information about a social media handle with which the individual exposes and immerses himself or herself in the public pool of social or other interactions, can amount to a violation of privacy right, which right itself contemplates or is all about isolation of a person from public glare. The apprehension of the Applicant of his social interactions being monitored is manifestly speculative and lacks credulity.

On the whole, if I did not sustain the NPO, I would have dismissed the suit for the reasons stated. But the NPO having been sustained, the suit is therefore hereby struck out.

I make no order as to costs.



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**JUDGE**


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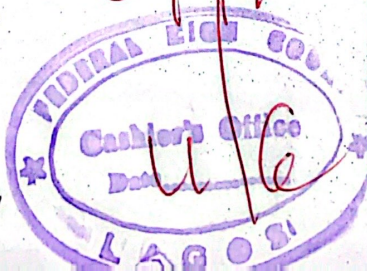
**PARTIES:**

Absent

**APPEARANCES:**

**E.T Ogundeji** For the Applicant  
**Richard Obidegwu, Wisdom Green** for the Respondent.

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*W. G. Green*