

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT IKOYI

SUIT NO:

BETWEEN

1. STERLING BANK PLC.
2. MR. ABUBAKAR SULEIMAN

}

PLAINTIFFS/APPLICANTS

AND

1. KOGI STATE HOUSE OF ASSEMBLY
2. SPEAKER OF THE KOGI STATE HOUSE OF ASSEMBLY
3. CLERK OF THE KOGI STATE HOUSE OF ASSEMBLY
4. COMMISSIONER OF POLICE, LAGOS STATE

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DEFENDANTS/RESPONDENTS

AFFIDAVIT IN SUPPORT

I, **Mr. Muqtadir Jaiyeola** Male, Adult, Muslim, Nigeria citizen of Sterling Towers, 20 Marina, Lagos Island, Lagos State do hereby make oath and state as follows:

1. I am the Chief Compliance Officer in the employment of the 1st Applicant herein and I have the consent and authority of the Applicants to depose to this affidavit.
2. Except as otherwise stated, all facts herein deposed are facts within my knowledge by virtue of my position as contained in paragraph 1 above.
3. The 1st Applicant is a commercial bank registered under the relevant laws of the Federal Republic of Nigeria with its head office at Sterling Towers, 20 Marina, Lagos Island, Lagos.
4. The 2nd Applicant is the Managing Director of the 1st Applicant.
5. The 1st Respondent is the House of Assembly of Kogi State, the body vested with the powers to make laws for Kogi State subject to the provisions of the Constitution.
6. The 2nd Respondent is the speaker of the House of Assembly of Kogi State.
7. The 3rd Respondent is the Clerk of the House of Assembly of Kogi State.
8. The 4th Respondent is a police officer charged with the responsibilities of overseeing the activities of police officers in Lagos State.

Introduction

9. The 1st Applicant was contracted by the Kogi State Government to access the Salary bail out facility introduced by the Central Bank of Nigeria to enable it pay its outstanding workers' salaries and an offer in principle was made in April 2019 to set out the indicative terms of the Bail Out Facility. The Indicative term sheet dated April 1, 2019 is herewith attached and marked Exhibit SB1.
10. The Kogi State Government through a letter dated June 24, 2019 notified the CBN of the appointment of Sterling Bank and United Bank for Africa as its Bankers for the Salary Bail Out

Fund for the State and Local Government Areas respectively. The letter set out the Facility amount (NGN20,000,000,000.00 (Twenty Billion Naira) only) and the account into which the Bail Out funds for salaries for its workers should be credited –a copy of the letter dated June 24, 2019 is herewith attached and marked **Exhibit SB2**.

11. Thereafter an Offer letter was executed with the State Government for NGN 20,000,000,000.00 (Twenty Billion Naira) only Bail Out Facility. A copy of the Facility Letter signed on the 26th June 2019 is herewith attached and marked **Exhibit SB3**. Consequent upon this, a facility was granted to the 1st Applicant for purposes of on-lending to Kogi State Government.

Receipt and Disbursement of Funds

12. At the direction of the Kogi State Government, payments were made from **Kogi State Government Salary Account** to several beneficiaries between the 23rd July 2019 and 25th July 2019 and the entirety of the Kogi State Salary Bail out intervention fund in the sum of NGN20Billion was fully disbursed at the instance of the Kogi State Government.

Facility Repayments to the CBN by 1st Applicant

13. The entirety of the facility is to be repaid by the Kogi State Government to the 1st Applicant on a monthly basis over a period of 20 years by a direct deduction from Kogi State FAAC allocation based on an ISPO duly signed by the Kogi State Government.
14. On a monthly basis effective month end 31st July 2019, the 1st Applicant commenced repayment of the principal amount and interest payable at 2% to CBN in line with the amortisation schedule received from CBN – The **Amortisation Schedule** is herewith attached and marked **Exhibit SB4**.
15. 8 (eight) instalments of principal amount and interest covering July 2019 to Feb 2020 have been paid to the CBN totalling NGN666,666,666.67 and NGN244,720,176.16 respectively leaving the outstanding liability balance due to CBN at NGN19,333,333,333.33. These payments are evidenced by the SWIFT advices. **The SWIFT advices for principal and Interest Payment to CBN on Kogi NGN 20,000,000,000.00 (Twenty Billion Naira) only Intervention Fund** are herewith attached and marked **Exhibit SB5A-H**.
16. On a monthly basis, the 1st Applicant received the monthly repayment of NGN179,980,466.78 through the Federal Account Allocation Committee (FAAC), which included interest of 9% and the principal payment for the month, while the 1st Applicant also paid the CBN interest of 2% and the principal payment for the same month.
17. In light of the COVID 19 pandemic and as part of the CBN's measures to curb the effect of the pandemic, the CBN in March 2020, reduced the interest rate on all the intervention facilities from 9% to 5% (4% to Sterling Bank and 1% to CBN) with a 12-month moratorium on principal and interest. CBN Circular to DMBs dated March 16, 2020, CBN Letter Dated March 23, 2020 on the same subject, and CBN Letter dated June 15th 2020 is herewith attached and marked **Exhibit SB6A-C**.
18. The moratorium which was to expire in February 2021 was in March 2021 extended by an additional 12 months by the CBN and repayment made to commence in **March 2022**. A copy of the CBN extension notice is herewith attached and marked **Exhibit SB7**.
19. In spite of the extension of the moratorium by the CBN the Kogi State Government at its volition commenced the repayment on 14th September 2021.

The Media Report and Correspondence with the Kogi State Government

20. On August 31, 2021 some media outlets reported that this Court had ordered the freezing of the Kogi State Salary bailout account domiciled in the 1st Applicant, in connection with a NGN20 billion loan obtained from the Bank, pending the conclusion of investigation or possible prosecution by the Economic and Financial Crimes Commission (EFCC).
21. The media report was to the effect that the NGN20 billion Bail Out Facility was not disbursed but retained in a fixed deposit and interest-yielding account with 1st Applicant on the instructions of the Kogi State Government.
22. Following the media report, the Kogi State Government through the Permanent Secretary in the Kogi State Accountant General's office on September 1, 2021, visited the Lokoja Branch of 1st Applicant and demanded for:
 - a. the Kogi State Government's mandate letter to open the alleged fixed deposit account and the statement of account for the fixed deposit
 - b. unused balances in any of the Kogi State Bail Out accounts as at August 31, 2021
 - c. certified true copies of the statement of the salary bail out account
 - d. details of other accounts maintained by the State with balances as at August 31, 2021 and
 - e. account opening mandate, loan documents and all withdrawal instructions on the Bail Out account.
23. In responding to the Kogi State Government, the 1st Applicant through a letter dated September 1, 2021 stated that:
 - a. that there was no mandate to open the alleged fixed deposit account;
 - b. the Kogi State Government did not operate a fixed deposit account;
 - c. the account referred to as a fixed deposit account is an internal account operated for the purpose of managing the bail out facility.
 - d. The balances on other accounts were provided excluding the internal account as well as other documents requested –
24. The 1st Applicant's response was in strict response to the enquiries of the Kogi State Government.

Order Freezing the Kogi State Bail Out Account

25. The Economic and Financial Crimes Commission (EFCC) as part of its investigative activities instituted an 'action in rem' against the Banks liability account to CBN tagged the Kogi State Bail Out Account and obtained an order from this Honourable Court, per Hon. Justice Tijani Ringim, to freeze the said Account which order was set aside vide an Order dated 15th October, 2021 per Hon Justice C.J. Aneke. A copy of the Order is herewith attached and marked **Exhibit SB8**.

Invitation of the 2nd Applicant and other Kogi State top Government officials

26. The 1st to 3rd Respondents, vide a letter dated 29th October, 2021 but received on the 1st November, 2021, invited the Lokoja Branch Manager of the 1st Applicant to appear before them on the 2nd of November, 2021 to on grounds that they were investigating the money returned to the Central Bank of Nigeria by the 1st Applicant. The Letter dated 29th October, 2021 is herewith attached and marked **Exhibit SB9**.
27. I am aware from Newspaper reports that the Kogi State Commissioner for Finance, Kogi State Accountant General and Auditor General appeared before the 1st Respondent to offer

clarification on the alleged N20 Billion bailout fund and testified that the Kogi State Government had no fixed deposit account with the 1st Applicant.

28. By a letter dated 1st November, 2021, the 1st Applicant wrote the Respondents acknowledging the invitation and also informing them of the inability of its Lokoja Branch Manager to appear before the House on the premise that he was currently away from the State. The Letter dated 1st November, 2021 is herewith attached and marked **Exhibit SB10**.
29. The Respondents re-issued another letter dated 2nd November, 2021 now inviting the 2nd Applicant and the Lokoja Branch Manager, to appear before them on the 9th November, 2021 to explain what money was refunded to the CBN by the 1st Applicant.
30. On the 9th November, 2021, the 1st Applicant's Regional Executive Mr. Enejo Ibrahim accompanied by Counsel honored the invitation but was refused audience, after informing the Respondents that the 2nd Applicant was out of the Country.
31. Consequently, the 1st Respondent at the direction of the 2nd Respondent resolved that another invitation be extended to 2nd Applicant to appear before the 1st Respondent on 16th of November, 2021 although the Respondents had been informed that the 2nd Applicant was out of the Country. The 2nd Respondent further threatened on the floor of the house that he will cause a warrant of arrest to be issued against the 2nd Applicant should he fail to appear before the House on the said date. This threat was reported in several National Dailies of 10th November, 2021. Copy of some of the National Dailies of 10th November, 2021 are hereby attached and marked **Exhibit SB11 A-D**.
32. Vide a letter dated 15th November, 2021, the 1st Applicant's Regional Executive, informed the 1st Respondent through the 3rd Respondent of the 2nd Applicant unavailability in the country and requested/proposed that the invitation be extended further to the 26th of November, 2021. A copy of the letter dated 15th November, 2021 is herewith attached and marked **Exhibit SB12**
33. Rather than accede to the proposal of the 1st Applicant Regional Manager, the 1st Respondent via a letter under the hand of the 3rd Respondent dated 16th November, 2021 informed the Applicants of its resolution that the 2nd Applicant/Applicant must appear before them on 8th of December, 2021 and threatened to invoke Section 129(d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) should 2nd Applicant/Applicant fail to appear before them. The letter dated 16th of November, 2021 is herewith attached and marked **Exhibit SB13**.
34. These invitations and threats issued by the Respondents was in spite of the statement of the 2nd Respondent made publicly that the 1st Respondent had investigated and come to a conclusion that the Kogi State government does not have any secret account with the 1st Applicant into which any deposit was made and that in fact the Kogi State government does not have any deposit account with the 1st Applicant with a credit sum of NGN20Billion but that the Respondents were interested in knowing which money the 1st Applicant refunded to the CBN.
35. I have been informed by our Lawyer Olukayode Enitan SAN in our office on Friday 26th November, 2020 and I verily believe him as follows:
 - a. That the Respondents have no Constitutional powers to invite, summon and/or compel the 2nd Applicant/Applicant to explain the relationship or dealings of the 1st Applicant with the CBN with regards to what monies it returned to the CBN.

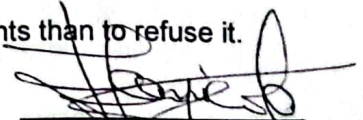
- b. That the powers donated to the 1st Respondent under section 128(1) of the Constitution of the Federal Republic of Nigeria does not extend to investigation of dealings or relationship between the 1st Applicant and the CBN.
- c. The 1st Respondent does not have any oversight nor legislative powers over the activities of the 1st Applicant and as such lacks the power to summon or invite 2nd Applicant/Applicant under the guise of conducting an investigation.
- d. The 1st Respondent's threat to issue a Bench Warrant against the 2nd Applicant if he failed to attend on 8th December, 2021 after being informed that 2nd Applicant is outside the Country is unconstitutional and ultra vires the power of the Respondents.
- e. That the powers of the 1st Respondent under Section 128 of the 1999 Constitution is only in respect of matters over which it made laws and I verily believe that the Respondents have not made any law in respect of the business of the 1st Applicant/Applicant or its relationship and transactions with the Central Bank of Nigeria.

36. I verily believe that the 1st and 2nd Respondents' incessant invitation to and threats of arrest of 2nd Applicant/Applicant in the erroneous belief that they are exercising powers under section 128 of the Constitution of the Federal Republic of Nigeria 1999, after concluding investigation and making a finding of no hidden, secret or deposit account existing with the 1st Applicant/Applicant in favour of Kogi State Government is aimed at harassing and intimidation of the Applicants.

37. I have been informed by the 2nd Applicant/Applicant and I verily believe him that the incessant invitation and threats of arrest by the Respondents/Respondents using the instrumentality of the 4th Respondent is affecting his ability to freely move around to do his work and that he is in imminent fear that his rights guaranteed under the Constitution of the Federal Republic of Nigeria is likely to be breached, contravened and infringed upon thereby necessitating an application for an interlocutory order for the protection of same.

38. Unless restrained, the Respondents either by themselves, their agents or privies or anybody acting through them or on their behalf may take steps towards performing acts which will infringe on 2nd Applicant's/Applicant's constitutionally guaranteed rights of free movement without let or hinderance.

39. It is in the interest of justice to grant the reliefs sought by the Applicants than to refuse it.


DEPONENT

Sworn to at the Federal High Court Registry, Ikoyi, Lagos.

This 1st day of Dec., 2021
BEFORE ME

COMMISSIONER FOR OATHS

Commissioner for Oaths
A. H. O. F. O. M. O. N. I. J. O. S. C. I. T. E. (M. S. C.)

