



Can the Independent Corrupt Practices and Other Related Offences Commission (ICPC) Place Restrictions on the Bank Account of a Suspect without Obtaining a Court Order?

Introduction:

The right of persons – corporate and individual - to own properties and the concomitant protection of the property right of persons under our laws have never been in doubt. However, the right is not absolute. The Constitution of the Federal Republic of Nigeria 1999 (as amended) (Constitution) empowers the Court to make a determination with respect to any question as to the civil rights and obligations of persons; and such determination may extend to the placing of restriction on the bank account of a suspect. Similarly, both the Constitution and other criminal legislations empower the Court and the public prosecuting authorities like the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and Other Related Offences Commission (ICPC) to place restrictions on the bank account of a suspect. However, the extent to which the public prosecuting authorities can place the restriction without Court's Order has been a subject of controversy. This article, therefore, critically examines the power of the ICPC under the relevant statutes, and concludes that the ICPC, unlike other public prosecuting authorities, can place restrictions on the accounts of suspects without Court's Order. This article is divided into three parts. The first part which is the introduction is immediately followed by the Second part which reviews the relevant statutory and judicial authorities on this subject, while the last part is the conclusion.

A Review of the relevant Statutory and Judicial Authorities on this Subject Power of ICPC to Place Restrictions on the Bank Account of a Suspect

Section 43 of the Constitution recognises the right to own properties while section 44(1) on the other hand guarantees the properties from compulsory acquisition. In *Adeyemi-Bero v. Lagos State Development Property Corporation & Anor*,¹ the Supreme Court gave judicial credence to the provision of section 44(1) of the Constitution when it held as follows;

"Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) guards and prohibits a movable property from being taken possession of compulsorily without due recourse to the manner set out by law which is provided for in Section 44(1) of the 1999 Constitution (supra) which states as follows: - "No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in such property shall be acquired compulsorily in any part of Nigeria except in the manner prescribed by law."

While section 44(1) of the Constitution guarantees the property rights of Nigerians from compulsory acquisition, the provision is not absolute. It admits certain exceptions and one of such exceptions is as provided for under section 44 (2) (k) of the Constitution. It expressly stipulates that;

¹ (2012) LPELR-20615(SC). See also the case of *NPG Farms (Nig) Ltd v. Zenith Bank Plc* (2022) LPELR-57548(CA).



order. The Applicant challenged the freezing of its account vide a post-no-debit restriction placed on its account in Zenith Bank Plc. The Court held that the ICPC had statutory power to temporarily freeze an account upon a reasonable suspicion of crime, provided that the ICPC and indeed other anti-graft agencies should be expedient in their investigation. The Court also held that the essence of temporarily freezing an account was to avail an anti-graft agency the needed time to launch investigations and possibly file charges against an account owner, and that freezing one's account indefinitely was like "an act of killing a fly with a sledgehammer". Since the account was frozen for over 6 months, without any charge filed against the Applicant, the Court lifted the restriction, noting that a reasonable time in the circumstance should be within 6 months.

However, a recent decision of the same Federal High Court on this issue seems to point to the contrary. In *Efoba Construction and Engineering Services Ltd v ICPC & Anor*⁴; decided in January 2022 by the Federal High Court, Lagos. The Applicant challenged the placement of lien on its bank account without a valid court order. The Court held that the ICPC lacks the authority to place a Post No Debit (PND) on a bank account without a valid court order as same amounts to a violation of the Applicant's right to own and possess property guaranteed by the Constitution.

Similarly, the decision in *Mr Williams & Anor v ICPC & 2 Ors*,⁵ also delivered January 2022, by the Federal High Court, recognized the power for ICPC to place the restriction, while the abuse of the power was condemned with the award of damages against the ICPC. The Applicants challenged the PND order placed on their bank accounts since October 14, 2021 on the instruction of the ICPC. The Court declared that the PND order and the continued denial of access Applicants to operate their accounts since October 14, 2021 are unlawful, void and in gross violation of Applicants' fundamental right to own property and pursue development of their economic and social interests. The Court faulted the PND on the basis that the ICPC wrongly instructed the banks to freeze the accounts of the Applicants in disregard of the Applicants' appeal pending at the Court of Appeal which challenges their invitation by the commission for investigation. As a result, the Court ordered the removal of the PND and awarded damages against the ICPC. However, the Court declined to award any damages against the banks (2nd and 3rd Respondents) because section 45(2) of the ICPC Act gave the banks, their agents or employees immunity from any liability for complying with the anti-corruption agency's instruction to place a PND on a bank account.

⁴ Suit No: FHC L/CS/1796/2020 (Unreported) See report of THISDAYLIVE titled; "Judge: ICPC Lacks Power to Freeze Bank Accounts Without Court Order – THISDAYLIVE." Available at [https://www.bing.com/ck/a?!&&p=6433fe63ebb04937JmltdHM9MTY5MjQ0OTYwMCZpZ3VpZD0zOTHiNGUwZC0yNDA4LTZyZWUwMTEyMjZkMjAwODY1NGEmaW5zaWQ9NTE3Nw&ptn=3&hsh=3&fclid=398b4e0d-2408-639e-1120-](https://www.bing.com/ck/a?!&&p=6433fe63ebb04937JmltdHM9MTY5MjQ0OTYwMCZpZ3VpZD0zOTHiNGUwZC0yNDA4LTZyZWUwMTEyMjZkMjAwODY1NGEmaW5zaWQ9NTE3Nw&ptn=3&hsh=3&fclid=398b4e0d-2408-639e-1120-5f972008654a&psq=Judge%3a+ICPC+Lacks+Power+to+Freeze+Bank+Accounts+Without+Court+Order+%e2%80%93+THISDAYLIVE&u=a1aHR0cHM6Ly93d3cudGhpc2RheWxpdmUuY29tL2luZGV4LnBocC8yMDIyLzAxLzI3L2p1ZGdlLWljcGMtbGFja3MtcG93ZXItG8tZnJlZXplLWJhbmsyYWNjb3VudHMtd2I0aG91dC1jb3VyZC1vcmlcG&ntb=1)

[5f972008654a&psq=Judge%3a+ICPC+Lacks+Power+to+Freeze+Bank+Accounts+Without+Court+Order+%e2%80%93+THISDAYLIVE&u=a1aHR0cHM6Ly93d3cudGhpc2RheWxpdmUuY29tL2luZGV4LnBocC8yMDIyLzAxLzI3L2p1ZGdlLWljcGMtbGFja3MtcG93ZXItG8tZnJlZXplLWJhbmsyYWNjb3VudHMtd2I0aG91dC1jb3VyZC1vcmlcG&ntb=1](https://www.bing.com/ck/a?!&&p=6433fe63ebb04937JmltdHM9MTY5MjQ0OTYwMCZpZ3VpZD0zOTHiNGUwZC0yNDA4LTZyZWUwMTEyMjZkMjAwODY1NGEmaW5zaWQ9NTE3Nw&ptn=3&hsh=3&fclid=398b4e0d-2408-639e-1120-5f972008654a&psq=Judge%3a+ICPC+Lacks+Power+to+Freeze+Bank+Accounts+Without+Court+Order+%e2%80%93+THISDAYLIVE&u=a1aHR0cHM6Ly93d3cudGhpc2RheWxpdmUuY29tL2luZGV4LnBocC8yMDIyLzAxLzI3L2p1ZGdlLWljcGMtbGFja3MtcG93ZXItG8tZnJlZXplLWJhbmsyYWNjb3VudHMtd2I0aG91dC1jb3VyZC1vcmlcG&ntb=1). Accessed last on the 19th of August 2023.

⁵ (Unreported). See the report of BarristerNG.com titled; "Court orders ICPC to unfreeze businessman's accounts, pay N5 million compensation". Available at [https://www.bing.com/ck/a?!&&p=be2ead4ec41a4f2fJmltdHM9MTY5MjQ0OTYwMCZpZ3VpZD0zOTHiNGUwZC0yNDA4LTZyZWUwMTEyMjZkMjAwODY1NGEmaW5zaWQ9NTE3Nw&ptn=3&hsh=3&fclid=398b4e0d-2408-639e-1120-5f972008654a&psq=Court+orders+ICPC+to+unfreeze+businessman%e2%80%99s+accounts+%2c+pay+N5+million+compensation+\(premiumtimesng.com&u=a1aHR0cHM6Ly91YXJyaXN0ZXUyY291cmQ0OTYwMCZpZ3VpZD0zOTHiNGUwZC0yNDA4LTZyZWUwMTEyMjZkMjAwODY1NGEmaW5zaWQ9NTE3Nw&ntb=1](https://www.bing.com/ck/a?!&&p=be2ead4ec41a4f2fJmltdHM9MTY5MjQ0OTYwMCZpZ3VpZD0zOTHiNGUwZC0yNDA4LTZyZWUwMTEyMjZkMjAwODY1NGEmaW5zaWQ9NTE3Nw&ptn=3&hsh=3&fclid=398b4e0d-2408-639e-1120-5f972008654a&psq=Court+orders+ICPC+to+unfreeze+businessman%e2%80%99s+accounts+%2c+pay+N5+million+compensation+(premiumtimesng.com&u=a1aHR0cHM6Ly91YXJyaXN0ZXUyY291cmQ0OTYwMCZpZ3VpZD0zOTHiNGUwZC0yNDA4LTZyZWUwMTEyMjZkMjAwODY1NGEmaW5zaWQ9NTE3Nw&ntb=1). Accessed last on the 18th august 2023.



Furthermore, in *Blaid Construction & Anor v. ICPC*⁶ delivered by the Federal High Court, Abuja in May 2019, the abuse of the power by the ICPC was condemned and quashed. The Plaintiffs had commenced action against the ICPC. Despite being aware of the action, the ICPC directed the banks operated by the plaintiffs to freeze their accounts and seized their assets on claims that it was investigating their businesses. The Court invalidated the actions and ordered the ICPC to immediately unfreeze bank accounts and released seized assets.

It is observed that the decisions highlighted above are all decisions of the High Court and the issue of whether the Chairman of the Commission can validly place a restriction on a customer's account pursuant to section 45 of the ICPC, without obtaining a Court Order is far from settled. Despite the comparative persuasiveness of the above decisions of the High Court, they are not binding on the other High Courts. This is so because the decision of Courts of co-ordinate jurisdiction at the High Court level does not bind each other. *See Nazaire v. F.R.N*⁷, where it was reiterated as follows;

"The Court below was accused of not following the decision of another learned Judge of the High Court of Lagos State but it was held by the Supreme Court in Uwazuruike and Ors. V. The Attorney-General of the Federation (2013) 10 NWLR (pt. 1361) 105 at 123 - 124 that the decision of Courts of co-ordinate jurisdiction at the High Court level does not bind each other."

Furthermore, it appears that the Appellate Courts have not had the opportunity to pronounce on this issue. However, the Court of Appeal had in plethora of cases and more recently affirmed the provision of the Money Laundering (Prevention and Prohibition) Act 2022 (MLA),⁸ which gave the EFCC the power to place a restriction on the account of a bank customer upon a reasonable suspicion of commission of a crime. In particular, section 7 (6) of the MLA stipulated stipulates as follows;

"Notwithstanding the provisions of subsection (5), the Unit or the Commission or the authorised representatives shall place a stop order not exceeding 72 hours, on any account or transaction if it is discovered that such account or transaction is suspected to be involved in any unlawful act." (Underlined for Emphasis).

In *UBA Plc v. A-G Benue State & Ors*,⁹ the power of the EFCC to place a temporal restriction on an account that is subject of a criminal suspicion and/or investigation within 72 hours and without court orders, pursuant to the provisions of the MLA and Section 44 (2) (k) of the Constitution was similarly affirmed.

In *NPG Farms (Nig) Ltd v. Zenith Bank Plc*,¹⁰ the Court of Appeal affirmed the relevant provision of the MLA, holding that;

⁶Suit No: FHC/ABJ/CS/132/2019 (Unreported). See the report by the Nigerian Tribune titled; "ICPC ordered to unfreeze firm's bank accounts, release seized assets. Available at <https://www.bing.com/ck/a?!&&p=43ce15fe24a97496jmltdHM9MTY5MjQ0TYwMCZpZ3VpZD0zOTIhNGUwZC0yNDA4LTZyZWU0MTIyMjQ0YjAwODY1NGEmaW5zaWQ9NTI4MA&pri=3&hsh=3&fclid=398b4e0d-2408-639e-1120-5f972008654a&psq=Blaid+Construction+%26+Anor+v.+ICPC&u=a1aHR0cHM6Ly90cmliW5lb25saW5lbnRlcuY29tL2JcGMtb3JkZXJlZC10by11bmZyZWV6ZS1maXJtcy1iYW5rLWFjY291bnRzLXJlbGVhc2Utc2VpemVklWFzc2V0cy8&ntb=1>. Accessed Last on the 18th of August 2023.

⁷ (2017) LPELR-50338(CA) at pp 31 - 31 paras B - D.

⁸ The EFCC is by virtue of sections 7 (2) (a) and Section 30 of the Money Laundering (Prevention and Prohibition) Act, 2022 empowered to enforce the Money Laundering Act.

⁹ (2022) LPELR-58695(CA)

¹⁰ (2022) LPELR-57548(CA)



"...any Post No Debit (PND) longer than 72 hours without a Court Order authorizing same will amount to an ultra vires act on the part of the Economic and Financial Crimes Commission and an infringement on the account holder/individual right and in this case the Appellant. The account of the Appellant was marked with Post No Debit for about six months by the Respondent without any lawful order. This period clearly exceeded the 72 hours provided for under the law, therefore it is a violation of the fundamental right of the Appellant and the Respondent is liable."

However, in *EFCC v. Global Formwork (Nig) Ltd & Ors (2020) LPELR-51697(CA)*, the Court of Appeal did not recognize the power of EFCC to place restriction on the accounts of suspects. The Court of Appeal declared that Exhibit B – wherein the Appellant requested the 2nd and 3rd Respondents/Banks to place caution on accounts of the 1st Respondent) amounts to placing restraint on the operation of the bank accounts of the 1st Respondent and/or tantamount to the freezing of the bank accounts of the 1st Respondent with the 2nd - 3rd respondents by the appellant without an ex parte order issued by a Court, contrary to Section 34(1) of the EFCC Act and was thus wrongful.

Similarly, in *Arogundade v. Skye Bank*,¹¹ the Court of Appeal held that there is no law that permits the Respondent (EFCC) to unilaterally place restriction on the account of the Appellant without a Court order on the premise that there is a criminal matter of fraud etc against the Appellant. The above decision of the Court of Appeal in *Global Formwork and Arogundade (supra)* are understandable because section 34(1) of the EFCC Act is to the effect that the Chairman of EFCC can only place a restriction on a customer's bank account upon an order of the Court. The said Section 34(1) of EFCC Act stipulates as follows;

"(1) Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorized 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 or any enactments specified under Section 7(2) (a)-(f) of this Act, apply to the Court ex-parte for power to issue or instruct a bank examiner or such other appropriate regulatory authority 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 where the account is or believed by him to be or the head office of the bank or other financial institution to freeze the account."(Underlined for Emphasis).

In what seems like an attempt to limit the powers of EFCC to place a restriction on the account of a bank customer upon a reasonable suspicion of commission of a crime under the Money Laundering Act, the Court of Appeal in *Savannah & Chemical Ind. v. EFCC & Anor*¹² affirmed its earlier decision in *GTB vs. Adedamola & Ors*,¹³ to the effect that the EFCC has no powers to give direct instructions to Bank to freeze the Account of a Customer, without an order of Court, and doing so constitutes a flagrant disregard and violation of the rights of a Customer. The Court distinguished the power to impose restriction under the MLA from the power under the EFCC Act, holding that the provisions of EFCC Act being a specific law overrides the provisions of MLA which is a general law. The Court also affirmed that Bank has no obligation to act on EFCC'S instructions or directives without an order of Court.

¹¹ (2020) LPELR-52304(CA)

¹² (2020) LPELR-51398(CA)

¹³ (2019) LPELR-47310 (CA)



Flowing from the above analysis, it is the view of the authors that where the ICPC exercises its power to place the restriction strictly under the ICPC, such action is tenable under the law. It is thus submitted that the decision in *Pinnacle Communications Ltd v ICPC & Anor* which affirmed the power of ICPC to temporarily freeze the account in order to expediate investigation and possibly file charges against account owner cannot be faulted. The position in the case of *Mr Williams & Anor v ICPC & 2 Ors* cannot equally be ignored in that it affirmed the immunity of the banks that acted upon the directives of the ICPC.

Furthermore, the PND by the ICPC in the *Mr Williams & Anor v ICPC & 2 Ors* was invalidated based on pending appeal between the parties on the issue connected to the investigation. In other words, the Court did not nullify the power of ICPC to place PND simpliciter. Similar conclusion can be reached from the decision in *Blaid Construction & Anor v. ICPC*. The various decisions did not nullify the power of the ICPC - under the ICPC Act - to give order to the banks to place restrictions on the accounts of the suspects, rather it is the abuses or unreasonable exercises of the power that condemned and quashed.

With respect to the power of the other law enforcement agencies like EFCC, judicial decisions from the appellate courts are more prevalent and relatively consistent, though not entirely settled. Firstly, some decisions do not recognize the power of EFCC to place restriction on accounts under any law, except with a valid Court order, while some recognize the power to place the restriction under the Money Laundering Act and for a period of not less than 72 hours.

Importantly, the authorities on the latter principles are more recent. Accordingly, in line with the incidence of the hierarchy of courts and judicial precedents, the more recent takes precedent. In *TETFUND & Anor v. ANAS*¹⁴, this position was affirmed in Court of Appeal as follow;

"The law is now trite that where there are two conflicting decisions of the apex Court, this Court is bound to follow the latter decision. See: 1.CYRIL O. OSAKUE V. FEDERAL COLLEGE OF EDUCATION (Technical) ASABA A ORS (2010) 5 SCM 185 at 203 B - F per OGBUAGU, JSC who said "It is now settled that where there are two conflicting judgments of this Court, the lower Court or Courts, is or are bound by the latter decision and must follow and apply it."

Flowing from the decisions of the Court of Appeal in *UBA Plc* and *NPG Farms (Nig) Ltd*, which affirmed the power of the EFCC to place a restriction order on an account of a customer without a Court order under the MLA, one would argue that the two authorities validates the power of the Chairman of ICPC to place a restriction order on a customer account without order of the Court pursuant to section 45(1) of the ICPC Act.

More significantly, provisions and effects of section 45 (1) (2) and (3) of the ICPC Act are distinguishable from those of the EFCC Act and the MLA Act. section 45 (1) (2) and (3) of the ICPC Act respectively empowers ICPC to place the restriction, grants the banks and its agents immunity from liability while acting on the order, and penalizes the non-compliance thereof. Unlike section 7 (6) of MLA which stipulates

¹⁴ (2022) LPELR-58704(CA)



72hours, no duration is stated under the ICPC Act and it is for the Court to determine if the duration of the order is reasonable, having regard to the circumstances of the case. Also, Section 34 of the EFCC Act provides for Court Order, unlike the ICPC Act. Finally, neither the MLA nor the EFCC Act contain an equivalent provision that confers immunity from liability to banks or their agents that acted in compliance with the directives of the EFCC, unlike the ICPC Act.

Altogether, this paper submits that the ICPC is adequately provided with the appropriate mechanisms for the efficient discharge of its investigatory duties, and the mechanism includes the placement of restriction on the bank account of suspects without Court's Order.

CONCLUSION

Having reviewed the powers of the ICPC and other relevant agencies, particularly the to impose restriction on the bank account of suspects without Court's Order, this paper opines that the literal interpretation of section 45 of ICPC Act discloses sufficient legislative intention to authorize the Chairman of ICPC to, without a prior Court order, place restriction on accounts of a customer upon a reasonable suspicion of crime as well as conferment of statutory defence or immunity on the Bank, the Agents and employees from any civil or criminal liability for complying with the instruction.

While there has not been any decision of the Appellate Courts on the interpretation of section 45 of ICPC Act and/or the exercise of power of ICPC to place restriction on the account of suspects, it is hoped that when the opportunity presents itself, the Appellant Court will be able to appropriately interpret and affirm the provisions of section 45 of ICPC Act. Such decision will bring to rest the currently existing and conflicting decisions of the High Courts on the subject.

CAVEAT

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances. For further inquiries kindly contact the firm.

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