

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA**

<b>BEFORE HIS LORDSHIP:</b>	<b>JUSTICE SALISU GARBA</b>
<b>COURT CLERKS:</b>	<b>FIDELIS T. AAYONGO &amp; OTHERS</b>
<b>COURT NUMBER:</b>	<b>HIGH COURT TWO (2)</b>
<b>CASE NUMBER:</b>	<b>FCT/HC/CV/1505/2017</b>
<b>DATE:</b>	<b>24<sup>TH</sup> MAY, 2019</b>

**BETWEEN:**

**MR. BENSON UBONG** - **APPLICANT**

**AND**

<b>1. BASHIRU LAWAL</b>	}	<b>RESPONDENTS</b>
<b>2. DIRECTOR GENERAL OF STATE SECURITY SERVICE</b>		
<b>3. THE STATE SECURITY SERVICE</b>		

Parties absent.

C.M. Nwankwo for the Applicant.

S. Arigi for the 1<sup>st</sup> Respondent.

Applicant's Counsel – The matter is adjourned today for ruling and we are ready to take the ruling if it is ready.

## **J U D G M E N T**

This is an Originating Motion on Notice dated 24/4/2017 brought pursuant to Section 46 of Constitution of Federal Republic of Nigeria 1999 (as amended), Order 11 Rules 1, 2, 3 Fundamental Rights (Enforcement Procedure) Rules 2009.

In the said motion, the Applicant prays the court for an order for the enforcement of his Fundamental Rights to Life, Dignity of his Human Person (freedom from torture, inhuman or degrading

treatment), Personal Liberty, Privacy of Home and Family and Right to Property guaranteed him under Section 33, 34, 35, 37 and 44 of the Constitution of Federal Republic of Nigeria (as amended) and Articles 4, 5, 6, 14 and 18 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.

Applicant filed statement in support of application in compliance with Order 11 Rule 2 & 3 FREP Rules 2009.

The grounds upon which this application is brought are as follows:

1. Applicant is a Nigerian Citizen. 1<sup>st</sup> Respondent is also a Nigerian whose office is at Zagetto Construction Company, Beside, Benue Plaza, Ahmadu Bello Way, Wuse 2, Abuja, 2<sup>nd</sup> Respondent is the Director-General of the 3<sup>rd</sup> Respondent and its administrator thereof. 3<sup>rd</sup> Respondent is a State Security Agency established under the National Security Agencies Act, LFN 2004 and charged with: (a) the prevention and detection within Nigeria of any crime against the internal security of Nigeria; (b) the protection and preservation of all non-military classified matters concerning the internal security of Nigeria; and (c) such other responsibilities affecting internal security within Nigeria as the National Assembly or the President, as the case may be, may deem necessary, 3<sup>rd</sup> Respondent is neither an arm of the Nigeria Police, nor has it any mandate to avail itself for hire by persons and individuals for the settlement of scores arising

from civil – tortuous or contractual – dispute among Nigerians.

2. The Applicant, being a Nigerian citizen, is guaranteed fundamental human rights to life, dignity of human person (freedom from torture, inhuman or degrading treatment), Personal Liberty, privacy of the home and family life and right to property under Section 33, 34, 35, 37 and 44 respectively of the Constitution FRN 1999 (as amended) and Articles 4, 5, 6, 14 and 18 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2004.
3. Save or except as otherwise allowed by law or by order of court of competent jurisdiction, no person or authority, including the Respondents, their Agents or officers have the right to infringe on the fundamental human rights of the Applicant as enshrined in the Constitution FRN 1999 and African Charter Act, as aforesaid.
4. On Saturday, the 18<sup>th</sup> Day of April, 2017, at about 1023 am, while Applicant was driving out of the Mechanic Workshop in the company of two members of his staff and the driver to a vehicle he was going to repair, the 1<sup>st</sup> Respondent and 3 officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents ambuscaded and swooped down on the Applicant, in a *vi et armis* and Gestapo fashion – without lawful authority, detained and whisked Applicant away, brutally assaulted, agonized and tortured Applicant to stupor with butts of heavy rifles, drove him to his home and invaded it, dispossessing him of his

vehicle and other movable properties and subsequently dumped him by the road side, amidst further threats to his life and that of his wife, which action or series of actions constitute a flagrant breach or threatened breach of Applicant's fundamental rights to life, dignity of human person (freedom from torture, inhuman or degrading treatment), personal liberty, privacy of home and family life and right to property guaranteed him under Section 33, 34, 35, 37 and 44 of the Constitution FRN 1999 (as amended) and Articles 4, 5, 6, 7, 14 and 18 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2004.

5. Applicant suffered special damages and incurred pecuniary losses as a result of the breach of his fundamental right and particularly, his right to property (moveable) guaranteed him under Section 44 of the Constitution FRN 1999 (as amended); to wit:

(a) The moveable properties of the Applicant taken away, together with his car by the 1<sup>st</sup> Respondent and officer of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the course of the operation are as follows:

- (i) Applicant's Blue Peugeot 406 saloon car, 2005 model with registration number Abuja: RSH26CL valued at N1,600,000, with other items in the car which include:
- (ii) An HP Peugeot Diagnostic Machine valued at N380,000.

- (iii) One Lunch Diagnostic Machine valued at N496,000.
- (iv) Business name (Benworth Automobile Enterprises) original certificate of registration, which cost of registration is N100,000.
- (v) Applicant's Access Bank Cheque booklet – N2,500.
- (vi) Diamond Bank Debit Card valued – N3,000
- (vii) UBN Debit Card valued – N3,000.
- (viii) Cash taken from Applicant by 1<sup>st</sup> Respondent and officers of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents – N54,000.

(b) Cost of this litigation at N1,000,000.00.

6. Nevertheless, 1<sup>st</sup> Respondent and the officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, in the course of the operation continued to threaten Applicant with the death of both himself and his wife should Applicant fail to meet their demand (repair of 1<sup>st</sup> Respondent's vehicle) in one week; which threats constitute a likely breach of Applicant's fundamental right to life, dignity of human person (freedom from torture, inhuman or degrading treatment), Personal Liberty and right to property protected by Sections 33, 34, 35 and 44 of the Constitution FRN 1999 (as amended) and Articles 4, 5, 6 and 14 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2004.

7. Applicant and his wife have been living in fear and have evaded their home in wander for safety and refuge. Applicant has therefore, been greatly damnified by the actions and breach of the 1<sup>st</sup> Respondent and officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as aforesaid and are therefore entitled to award of compensation in damages – special, general and exemplary damages. More so, in view of the fact that the officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, have in recent times and at different places, shown incessant and unrepentant impunity, sheer disregard to rule of law and high, recurring violation of human rights of persons in Nigeria, as though they have a mandate to ebb away and cascade into extinction, the immutable principles of Human right.
8. This court is imbued with inherent power and duty to restore this nation from a progressive erosion of sanity occasioned by persons and bodies otherwise mandated by law to save it.

The Applicants reliefs are as follows:

1. A Declaration that the Applicant, being a Nigerian citizen, is entitled to the enjoyment of his fundamental right to life, Dignity of his human Person (freedom from torture, inhuman or degrading treatment), Personal Liberty, Privacy of his home and family and right to property guaranteed him under Sections 33, 34, 35, 37 and 44 respectively of the Constitution FRN 1999 (as amended) and Articles 4, 5, 6, 14 and 18 of the African Charter on Human and Peoples' Rights

(Ratification and Enforcement Act, Cap A9 Laws of the Federation of Nigeria 2004.

2. A Declaration that the 1<sup>st</sup> Respondent and officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have no right to, in a *vi et armis* and Gestapo fashion – without lawful authority, ambushade and swoop down on the Applicant, detain, whisk away, brutally assault, agonize and torture him to stupor with butts of heavy rifles; invade his home, dispossess him of his vehicle and other movable properties and subsequently dump him by the road side.
3. A Declaration that the act of the 1<sup>st</sup> Respondent and officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, in ambuscading and swooping down on the Applicant, in a *vi et armis* and Gestapo fashion – without lawful authority, detaining him, whisking him away, brutally assaulting, agonizing and torturing him to stupor with butts of heavy rifles, invading his home, dispossessing him of his vehicle and other movable properties and subsequently dumping him by the road side, constitutes a flagrant breach of Applicant's fundamental rights to dignity of human persons (freedom from torture, inhuman or degrading treatment), personal liberty, privacy of his home and family and right to property guaranteed him under Section 33, 35, 37 and 44 of the Constitution FRN 1999 (as amended) and Articles 5, 6, 14 and 18 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2004.

4. A Declaration that the act of the 1<sup>st</sup> Respondent and officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, in ambuscading and swooping down on the Applicant, in a *vi et armis* and Gestapo fashion – without lawful authority, detaining him, whisking him away, brutally assaulting, agonizing and torturing him to stupor with butts of heavy rifles; invading his home, dispossessing him of his vehicle and other movable properties and subsequently dumping him by the road side, constitutes a threatened or likelihood of breach of Applicant's fundamental rights to life, guaranteed him under Section 33 of the Constitution FRN 1999 (as amended) and Articles 4 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004.
5. A Declaration that the intimidation, harassment and threat on the Applicant with further detention and death by the 1<sup>st</sup> Respondent and officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, constitutes in themselves a likely breach of Applicant's fundamental right to life, dignity of human persons (freedom from torture, inhuman or degrading treatment), Personal Liberty, privacy of his home and family and right to property protected by Sections 33, 34, 35, 37 and 44 of the Constitution FRN 1999 (as amended) and Articles 4, 5, 6, 14 and 18 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2004.



6. An Order of Perpetual Injunction restraining the Respondents, their agents, servants, privies, successors or any one acting through them, in trust for them or on their behalf from further contravening or threatening to contravene any of Applicant's fundamental rights guaranteed under Section 33, 34, 35, 37 and 44 of the Constitution FRN 1999 (as amended) and Articles 4, 5, 6, 7, 14 and 18 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2004.
7. An Order compelling the 1<sup>st</sup> Respondent on one part, and 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on the other part, to each tender to the Applicant unreserved apology in any National Daily in wide circulation for breach of Applicant's fundamental rights.
8. The sum of N200,000,000.00 (Two Hundred Million Naira) only jointly and severally against the Respondents, being general and exemplary damages or compensation for Respondents' breach of Applicant's fundamental rights to dignity of human person, personal liberty, privacy of home and family and right to property guaranteed him under Sections 34, 35, 37 and 44 of the Constitution FRN 1999 (as amended) and Articles 5, 6, 14 and 18 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2004.
9. The sum of N3,638,500.00 (Three Million, Six Hundred and Thirty-Eight Thousand, Five Hundred Naira only) jointly and

severally against the Respondents, being special damages and pecuniary loss incurred by Applicant as a result of the breach of his fundamental right and particularly, his right to property (movable) guaranteed him under Section 44 of the Constitution FRN 1999 (as amended); to wit:

- (i) Applicant's Blue Peugeot 406 saloon car, 2005 model with registration number Abuja: RSH26CL valued at N1,600,000, with other items in the car which include:
  - (ii) An HP Peugeot Diagnostic Machine valued at N380,000.
  - (iii) One Lunch Diagnostic Machine valued at N496,000.
  - (iv) Business name (Benworth Automobile Enterprises) original certificate of registration, which cost of registration is N100,000.
  - (v) Applicant's Access Bank Cheque booklet – N2,500.
  - (vi) Diamond Bank Debit Card valued – N3,000
  - (vii) UBN Debit Card valued – N3,000.
  - (viii) Cash taken from Applicant by 1<sup>st</sup> Respondent and officers of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents – N54,000.
- (b) Cost of this litigation at N1,000,000.00.

**Grand total of Special damages – N3,638,500.00**

In support of the application are 4 affidavits. The 1<sup>st</sup> affidavit was sworn to by the Applicant is of 29-paragraph dated 24/4/17. The

2<sup>nd</sup> affidavit is deposed to by Anthony Dogo, it is of 7-paragraph and dated 24/4/17, the 3<sup>rd</sup> affidavit was deposed to by Friday Saba dated the same 24/4/17 and the last one was deposed to by Yusuf Ibrahim dated 24/4/19.

In support of the application is one exhibit referred to in the affidavit sworn to by the Applicant.

Also filed is 6-paragraph Further Affidavit dated 18/5/17 and another Further Affidavit in response to 1<sup>st</sup> Respondent's counter affidavit; the said affidavit is dated 17/10/17. Also a Further and Better Affidavit of 6-paragraph dated 10/11/17 all the said affidavits is deposed by the Applicant. Reliance is placed on same.

The gist of the case is that sometime in February 2017, the 1<sup>st</sup> Respondent approached the Applicant to repair his Honda CRV 2008 Model, with automatic transmission system. The Applicant informed the 1<sup>st</sup> Respondent that he is not specialize in the repair of automatic gear transmission but that he was going to refer the 1<sup>st</sup> Respondent to Mr. Shehu who he believe is a specialist in the areas of automobile services.

The vehicle was taken to Mr. Shehu for repair. In the course of the repairs, Mr. Shehu claimed that unavailability of the spare parts in the market caused a delay in delivery of 1<sup>st</sup> Respondent's job, it was also discovered that the vehicle had a brain-box problem which made it fail to start.

Upon this development, the Applicant immediately called 1<sup>st</sup> Respondent on telephone to report the state of affairs to him, but in apparent anger 1<sup>st</sup> Respondent began to threaten the Applicant with death.

On Saturday, the 15/4/2017 at about 10:23 a.m., while the Applicant was driving out of his workshop in the company of two members of his staff and the driver to a vehicle which he was going to repair, a Toyota Sienna car intercepted them and stopped. Three mean looking men in mufti, heavily armed with the regular DSS type rifles, alighted and commanded the Applicant to get down immediately. He was asked to join the sienna they came with while they were driving him out he discovered that the 1<sup>st</sup> Respondent was the one driving the Sienna car.

While in the car he was beaten and brutalized and was blind-folded when they got to the 1<sup>st</sup> Respondent's work place, they untied the blindfold and thereafter he was taken to his house at Maraba, Nasarawa State. The men drove him back to Abuja, stopped at the A.Y.A. junction and threw him off the car and on the road after the long period torture and brutality culminating in about 4 hours.

The Applicant also stated that the 1<sup>st</sup> Respondent in company of the 3 men made away with his Peugeot 406 car and some valuable items and a cash sum of N54,000.00.

Learned counsel to the Applicant filed a written address dated 24/4/2017 wherein counsel formulated two (2) issues for determination:

1. Whether it does not amount to a gross infringement or violation of Applicant's fundamental rights to dignity of human persons, personal liberty, privacy of his home and family and right to property guaranteed him under Section 34, 35, 37 and 44 of the Constitution FRN 1999 (as amended) and Articles 5, 6, 14 and 18 of the African Charter on Human and People's Right (Ratification and Enforcement) Act Cap A9 LFN 2004, for the 1<sup>st</sup> Respondent and Officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to ambuscade and swoop down on the Applicant without lawful authority, detain him, whisk him away, brutally assault, agonize and torture him to stupor with butts and heavy rifles, invading his home, dispossessing him of his vehicle and other movable properties and subsequently dumping him by the road side.
2. Whether, it is not a threatened or likely infringement on Applicant's fundamental rights to life, dignity of human persons, personal liberty, privacy of homes and family and right to property guaranteed under Section 33, 34, 35, 37 and 44 of the Constitution FRN 1999 (as amended) and Article 4, 5, 6, 14 and 18 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 LFN 2004, for the 1<sup>st</sup> Respondent and officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to intimidate, harass and threaten the Applicant with further detention and death.

On these issues, it is the submission that by the provision of Chapter IV of the Constitution of FRN 1999 and Articles 5, 6, 14 and 18 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 LFN 2004, the citizens of Nigeria including the Applicant are guaranteed fundamental rights to dignity of human persons (freedom from torture, inhuman or degrading treatment) Personal liberty, privacy of homes and family and right to property.

It is submitted that the only reason the Respondents violated Applicant right is at best a contractual wrong for which 1<sup>st</sup> Respondent ought only to have used lawful means to pursuit of remedy for the alleged breach of his right. See AJAO v ASHIRA (1973) 11 SC 23 at 37 – 38.

It is further submitted that having regard to the averments of the Applicant, the Applicant has proved prima facie that his afore stated fundamental rights have been unjustifiably breached by the Respondents. The Applicant has therefore made out a case for this court to protect and enforce his fundamental rights.

It is no longer Applicant's duty to exclude all circumstances of justification; rather, the onus shifts to the persons alleged to have infringed or likely to infringe Applicant's right (the Respondent) to justify the infringement. See AGBAKOBA v DIRECTOR SSS (1994) 6 NWLR (Pt 351) 475 at 495 paragraph 6.

It is trite law that once the breach of a citizen's right is established, he is automatically entitled to monetary compensation by virtue

of the provision of Section 35 of the 1999 Constitution. See NIGERIAN NAVY & ORS v LIONEL OKONG GARRICK (2006) 4 NWLR (Pt 969) 69.

It is the submission that the Applicant is entitled to all the reliefs sought by him.

In response to the averments of the Applicant, the 1<sup>st</sup> Respondent filed a 46-paragraph counter affidavit dated 4/7/2017. Learned counsel to the 1<sup>st</sup> Respondent also filed a written address dated 4/7/17 wherein counsel formulated to (2) issues for determination:

1. Whether the Applicant has established any infringement or threatened infringement of the Applicant's Fundamental Rights to Personal liberty and Dignity by the 1<sup>st</sup> Respondent either individually or in conjunction with the other Respondents having regard to the materials placed before the Honourable Court by the parties.
2. Having regard to the facts and circumstances of this suit, whether the reliefs sought by the Applicant are grantable or ALTERNATIVELY

Whether the Applicant has a reasonable cause of action to entitle him to the reliefs sought before this Honourable court.

On these issues, it is the submission that the Applicant has not adduce any evidence to establish any infringement, threatened infringement of his fundamental human rights to dignity of human persons or rights to life to enable this Honourable Court grant the Applicant the reliefs sought.

There is equally no evidence before this Honourable Court that the Applicant was arrested, or detained at the instance of the 1<sup>st</sup> Respondent since the 1<sup>st</sup> Respondent did not at any time made a complaint against the Applicant before the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents or any other law enforcement agency.

It is clear that the case of the Applicant is frivolous, misconceived and based on falsehood and fabrication. See *MINI LODGE LTD v NGEI* (2009) 7 NWLR (Pt 1173) 254 at 277 Paras A; E – F.

It is submitted that the Applicant brought this suit to stop the ongoing investigation in alleged case of assault he reported to the Nigeria Police Wuye Division. Court is urged to dismiss this suit.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on their part filed an 18-paragraph counter affidavit dated 16/5/2017 deposed to by Tanko Musa, a personnel of the SSS attached to the Legal Department, National Headquarters, Abuja.

Also filed is a 6-page written address dated 15/5/2017 wherein counsel distilled two (2) issues for determination:

1. Whether fundamental Human Right is absolute and whether the Applicant can run to this Honourable Court to shield him from criminal investigation.
2. Whether the Applicant has placed sufficient facts before this Honourable Court to establish the violation of his fundamental human right by the Respondents.

On Issue 1, it is the submission that Fundamental Human Rights are not absolute and there are several instances or exceptions were



such Rights can be curtailed. Court is referred to Section 35(1) of the 1999 Constitution and the case of DOKUBO ASARI v FRN (2009) NSC QLR (Pt II VOL. 37) 1146 AT 1158.

It is submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are Agency of Government which is enacted by the National Security Agencies Act Cap N74 LFN 2004 and has powers to carry out certain duties including criminal investigation. See ATTORNEY GENERAL OF ANAMBRA STATE v CHIEF CHRIS UBA & ORS (2005) 15 NWLR (Pt 947) 50.

On Issue 2, it is the submission that the Applicant has not placed any evidence linking the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to his alleged/perceived violation of his rights. See NDUKA v OGBONNA (2011) 1 NWLR (Pt 1227) 153 at 169. Court is urged to dismiss this suit.

In reply on points of law to the submission by the 1<sup>st</sup> Respondent's counsel, the Applicant's counsel filed a 3-page reply dated 17/10/17 wherein counsel submitted that the written address of the 1<sup>st</sup> Respondent filed on 4/7/2017 has nothing to show it was signed by a legal practitioner known to law. There is no stamp and seal of a legal practitioner affixed thereon as required by law. Court is referred to Order 10(1), (2) & (3) of the Rules of Professional Conduct for Legal Practitioners, 2007 and the case of BELLO SARKIN YAKI v ATIKU ABUBAKAR BAGUDU & ORS (2015) LPELR – 2521 (SC). Court is urged to strike out the said written address for being incompetent. However, if the court is mindful of looking into it, it is submitted that the Applicant has laid before this court,

enough evidence to prove that the Respondents infringed on his fundamental rights as aforesaid. Court is referred to the 1<sup>st</sup> Respondent's statement to the police exhibited as Exhibit B to the Applicant's Further Further and Better Affidavit dated 21/11/2017.

It is further submitted that the said Police Statement of the 1<sup>st</sup> Respondent and all evidence before this court would equally reveal, contrary to argument of 1<sup>st</sup> Respondent, that the Applicant has discharged the burden of proof on him. Court is urge to hold that the Applicant is entitled to all the remedies sought.

Learned counsel to the Applicant further filed a 5-page written reply on points of law to the submission of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents; the said reply is dated 18/5/17 wherein counsel submitted that Issue one (1) formulated by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in their written address has no nexus with the facts of this case; that the said written address purportedly signed by S.M. Bello Esq. have nothing to show it was either drafted nor signed by a legal practitioner. There is no stamp and seal of a legal practitioner, affixed to the document as mandatorily required by Rule 10(1) (2) & (3) of the Rules of Professional Conduct for Legal Practitioner 2007. Court is urged to discountenance the said written address of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

It is the submission that by the act of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in this case, they cannot be heard to say that they are not aware of the incidents of this case. Court is referred to the Applicant's Further Affidavit and paragraph 5 of the affidavit of Yusuf Ibrahim

in support of the application. Court is urged to enter judgment in favour of the Applicant.

I have carefully considered the processes filed and submission of learned counsel on all sides, I am of the view that the sole issue that call for determination is whether the Applicant has established any infringement or threatened infringement of the Applicant's Fundamental Human Rights to Personal Liberty and Dignity by the Respondents, having regard to the materials placed before this court by parties to this suit.

By Section 133 of the Evidence Act 2011 as amended, the onus of proof is on he who asserts. In the case of FAJEMIROKUN v C.B. (C.L.) NIG LTD (2002) 10 NWLR (Pt 774) 95 at 112 Paras E – F the Court of Appeal held thus:

***“For an Applicant alleging infringement of his fundamental rights to succeed, he must place before the court all vital evidence regarding the infringement or breach of such rights. It is only thereafter that the burden shifts to the Respondent”***

In the instant case as amply stated in the respective supporting affidavits of the Applicant, the grievance of the Applicant is that on the 15/4/2017 at about 10:23am while the Applicant was driving out of his mechanic workshop in the company of two members of his staff and the driver to a vehicle he was going to repair, the 1<sup>st</sup> Respondent and 3 officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents intercepted the Applicant without lawful authority,

detained and whisked him away, brutally assaulted and tortured him drove him to his home and invaded it, dispossessing him of his vehicle and other movable properties and subsequently dumped him by the road side, amidst further threats to his life, thereby constituting a flagrant breach and/or further threatened breach of Applicant's fundamental rights to life, dignity of human persons, personal liberty, privacy of home and family life and right to property guaranteed him under Section 33, 34, 35, 37 and 44 of the Constitution of FRN 1999 (as amended) and Articles 4, 5, 6, 7, 14 and 18 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap A9 LFN. 2004.

It is clear from the averments in the Applicant's affidavit, it can be deduced that the only issue between the Applicant and 1<sup>st</sup> Respondent is at best a contractual wrong for which the 1<sup>st</sup> Respondent ought only to have used lawful means in pursuit of remedy for the alleged breach of contract.

The 1<sup>st</sup> Respondent in his counter affidavit denied ever going to the Applicant's workshop on 15/4/17 with any DSS operatives nor forcefully collected the Applicant's Peugeot 406.

However in the 1<sup>st</sup> Respondent statement to the Police dated 20/4/2017 exhibited as Exhibit B attached to the Applicant's Further, Further and Better Affidavit dated 21/11/2017, the 1<sup>st</sup> Respondent in lines 8 to 16 stated as follows:

***“...On Saturday 15<sup>th</sup> April 2017 at about 9:20am I went to Mr. Benson's workshop on my way to his workshop, I met him***

***driving out and I accosted him resulting in one taking his vehicle (Peugeot 406) after some scuffle then I took the car to my house Suleiman No. 7 Street Three Arm Zone Aguda House FCT, Abuja. I was in company of two of my friends Lawrence Joshua & Audu Magaji Idris...”***

From the above statement vis-à-vis 1<sup>st</sup> Respondent's counter affidavit would also show that the 1<sup>st</sup> Respondent is not a credible witness and as such his evidence should be viewed by this court with circumspect as same could only be taken with a pinch of salt; the said police statements of the 1<sup>st</sup> Respondent and all evidence before this court would equally reveal, contrary to argument of the Respondents, that the Applicant has discharged the burden of proof on him. It should be pointed out here that the burden in cases of this nature is on balance of probabilities without more. Instead it is the 1<sup>st</sup> Respondent who failed to bring as witness before this court, the 2 persons he admitted accompanied him to carry the act against the Applicant.

Again the crux of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents contention is that the Applicant has not placed any evidence linking 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to his alleged violation of his rights. Going by the Applicant further affidavit dated 18/5/2017, the Applicant, through his counsel, petitioned the 2<sup>nd</sup> Respondent narrating the action of his men and his grievances over the said actions. From evidence before this court, the said petition was never investigated by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. By the act of the 2<sup>nd</sup>

and 3<sup>rd</sup> Respondents in this case, they cannot be heard to say that they are not aware of the incident of this case.

In paragraph 5 of the affidavit of Yusuf Ibrahim dated 24/4/17, it was alleged that the officers of the 3<sup>rd</sup> Respondent who perpetrated the act subject matter of this case, on the day of the incident brought out their identity cards to show they are from the DSS. The Applicant also in paragraph 15 of his supporting affidavit stated that the officers of the 3<sup>rd</sup> Respondent on the said day were heavily armed with the regular DSS-type rifles and that they severally hit and brutalized him with the butts of the said rifles.

In conclusion I am of the considered view that the Applicant has made out a case against the Respondents having proffer credible and material evidence to warrant the judgment of this court in his favour.

Accordingly, I order as follows:

1. That the 1<sup>st</sup> Respondent and officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have no right to without lawful authority, ambuscade and swoop down on the Applicant, detain whisk away, brutally assault, agonize and torture him to stupor with butts of heavy rifles; invade his home, dispossess him of his vehicle and other movable properties and subsequently dump him by the road side.
2. That the act of the 1<sup>st</sup> Respondent and officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, in ambuscading and swooping down on the Applicant, without lawful authority, detaining him,

whisking him away, brutally assaulting and torturing him with butts of heavy rifles; invading his home, dispossessing him of his vehicle and other movable properties and subsequently dumping him by the road side, constitutes a flagrant breach of Applicant's fundamental rights to dignity of human persons, personal liberty, privacy of his home and family and right to property guaranteed him under Section 33, 34, 35, 37 and 44 of the Constitution of FRN 1999 (as amended) and Articles 5, 6, 14 and 18 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.

3. The Respondents, their agents, servants, privies, successors or any one acting through them are restrained from further contravening or threatening to contravene any of Applicants fundamental rights guaranteed under the 1999 Constitution (as amended) and Articles 4, 5, 6, 7, 14 and 18 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.
4. The sum of N1,000,000.00 (One Million Naira) is awarded jointly and severally against the Respondents being general damages or compensation for Respondents breach of Applicant's fundamental Rights to dignity of human persons, personal liberty, privacy of home and family and right to property guaranteed him under the laws of the land.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**24/05/2019**

Applicant's Counsel – We are most grateful.

1<sup>st</sup> Respondent's Counsel – We are also grateful for the judgment.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**24/05/2019**