IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 12 BWARI, ABUJA.
BEFORE HIS LORDSHIP: **HON. JUSTICE O. A. MUSA.**

SUIT NO: FCT/HC/BW/CV/18/2018

BETWEEN:

1. TELEMIT INTERNATIONAL LTD
2. ALBERT KALKSCHMID
3. MARTIN HERREN ..... **APPLICANTS**

AND

1. BENJAMIN UKWUOMAH
2. BASHIR SSS (FCT COMMAND)
3. STATE SECURITY SERVICE
4. DIRECTOR STATE SECURITY SERVICE (FCT COMMAND) **… RESPONDENTS**

JUDGMENT
DELIVERED ON 4TH JULY, 2019

By a motion on notice dated the 5th day of December, 2018 and filed on the 7th day of December, 2018 in the Registry of this Honourable Court, the Applicants herein commenced this Fundamental Rights Enforcement proceeding against the Respondents under Order IV Rules 3 and 4 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 (henceforth in this ruling called FREP Rules) and Section 34, 35, 36(5) and 41 of the 1999 amended Constitution of the Federal Republic of Nigeria (henceforth herein called the Constitution) claiming the under-listed seven (7) reliefs:

1. **A DECLARATION OF THIS HONOURABLE COURT** that the invitation, arrest, detention, profiling, harassment, constant threat of further arrest of the Applicants and threat of blacklisting the 1st Applicant as fraudulent company by 2nd to 4th Respondent (sic) on the petition of the 1st Respondent is an infringement of the Fundamental Right to personal Liberty, dignity of person and freedom of movement of the persons of the Applicants.
2. **AN ORDER OF PERPETUAL INJUNCTION** restraining the Respondent(s), their officers, agents and privies from arresting,

detaining, harassing, threatening to harass (sic) to arrest, seizure of travel documents, restricting the free movement of the Applicants in any form whatsoever over the commercial transaction between the 1st Respondent and the Applicants'(sic) company without compliance with due process of law.

3. An order that the Applicant (sic) having not committed any offence or found guilty of any offence by a Court of competent jurisdiction is entitled to enjoy his Fundamental Rights to personal liberty and freedom of movement as enshrined in the constitution of the Federal Republic of Nigeria, 1999 (As Amended).
4. A Declaration of this Honourable Court that the act of purporting to investigate the transaction between the Applicants and the 1st Respondent is ultra vires the 2nd – 4th Respondents, and is illegal.
5. An order awarding the Applicants damages of N100, 000,000 (One Hundred Million Naira) only as exemplary damages against the Respondent jointly and severally.
6. An order that a public apology be tendered to the Applicants by the Respondents.
7. Any such further orders that the Honourable Court may make in the circumstance.

The Motion of Notice was supported by a whooping thirty-seven (37) paragraphed affidavit, three documentary Exhibits marked; Exhibit ALBERT 1, Exhibit ALBERT 2 and Exhibit ALBERT 3 found respectively at paragraphs 5, 9, and 10 of the supporting affidavit. The Applicants' affidavit evidence (deposed to by Albert Kalkschmid, the 2nd Applicant who is the Managing Director of the 1st Applicant) seems to tell a flowing story (even though from the Applicants' standpoint) of the factual background to the institution of this suit especially as it chronicle the underlying friendly and business relationship which the Applicants have all enjoyed with the 1st Respondent whom (interestingly) they still maintain is their "friend" even before this Court.

To this extent therefore, I shall take the pains to reproduce the relevant portion of the said affidavit. Paragraphs 5 to 35 are germane and I reproduce them as follows:-

5. That 1st Applicant on the 25th day of November, 2016 entered an agreement with the 1st Respondent, wherein the 1st Respondent

agreed to borrow the sum of N50,000,000.00k (Fifty Million Naira) only to the 1st Applicant and that same shall be repaid with interest of 12.5 percent within 30 days. The said agreement is hereby attached and marked Exhibit ALBERT 1.

6. That the agreement stipulated that where the borrowed sum is not repaid with the interest within 30 days, then 12.5 percent interest compounded with the last interest and the capital sum lent for all subsequent 30 days shall be payable.
7. That I and the 3rd Applicant signed the agreement on behalf of the 1st Applicant.
8. That the 1st Applicant has been unable to repay the borrowed sum as agreed, within 30 (sic) due to delays by business partners and various government s in Nigeria in honouring their financial obligations to the 1st Applicant.
9. That sometime in January, 2018 I received a letter from the Law Firm of Oba Maduabuchi & Co. Solictors to the 1st Respondent wherein the Solicitor demanded for payment of the borrowed sum, as well as payment of accrued interest. The solicitor in concluding his letter to 1st Applicant gave the 1st Applicant a 7 days ultimatum to make payments, failing which he (the Solicitor) will approach the Court to recover the debt. The said letter is here attached and marked Exhibit ALBERT 2.
10. That I replied the said letter explaining to the Solicitor that the 1st Respondent is our friend and we are grateful for this help. I also assured them that we are negotiating new projects and by April of 2018, 1st Applicant should be in the position to fulfill its obligations. The said letter is here attached and marked Exhibit Albert 3.
11. That I know that the 1st Respondent is a longtime friend of myself and the 3rd Applicant and in that position I and the 3rd Applicant have always disclosed to the 1st Respondent our financial situation in good faith, while assuring him that we will not fail his money with all accrued interests thereupon.
12. That surprisingly, on the 8th day of October, 2018, we were invited by the 3rd Respondent, through the 2nd Respondent, without the purpose of the invitation being stated.
13. That when we arrived at the offices of the 3rd Respondent , we were confronted with a petition written by Oba Maduabuchi & Co

on the instruction of the 1st Respondent alleging that I and the 3rd Respondent (or Applicant?) had threatened the life of the 1st Respondent. We were however not given a copy of the petition.

14. That contrary to the content of the petition, the invitation by the 2nd - 4th Respondents of myself and the 3rd Applicant was a ploy to arrest, detain, harass and intimidate me and the 3rd Applicant, with a view to forcefully recovering the borrowed sum from us.
15. That the 2nd - 4th Respondents never asked a single question relating to the issue of threat to life but simply asked why the 1st Applicant has not repaid the borrowed sum back to the 1st Respondent.
16. That I and the 3rd Applicant was (sic) expressly told by the 2nd Respondent that we were owing the 1st Respondent and in order to secure our release in writing, how we plan to repay the borrowed sum and interests.
17. That I specifically told the 2nd Respondent that what we had with the 1st Respondent is a commercial transaction, one which was legitimate and subsistent, which we intend to honour.
18. That in response to the averment in paragraph 17 above, the 2nd Respondent told me to do as he has said otherwise I and the 3rd Applicant would remain in detention indefinitely.
19. That I and the Applicant had to write an undertaking in order to ensure our release from the detention by the 2nd and 3rd Respondents.
20. That the undertaking I and the 3rd Applicant were compelled to write under threat and fear stipulated that we must make (sic) pay the sum of N30,000,000.00k (Thirty Million Naira) some payment on or before the 31st of December, 2018.
21. That the 2nd Respondent made it absolutely clear that I and the 2nd (or the 3rd Applicant?) Applicant will be rearrested and manhandled and the 1st Applicant will be blacklisted as a fraudulent company, thereby destroying the chances of the 1st Applicant to successfully bid for any Government Contract, without being charged or found guilty of fraud by a Court of competent jurisdiction, if we fail to repay the borrowed sum in accordance with the commitment forcefully extracted from us.

22. That the 2nd Respondent told I and the 3rd Applicant that he knows we are foreigners and that he can make life and business very difficult for us by seizing and holding on to our passports thereby restricting our movements whether for business, family or leisure.
23. That according to the commitment made at the 3rd Respondent's Offices, we are to make the first tranche of payment of the sum N30,000,000.00k (Thirty Million Naira) only on or before the 31st of December, 2018.
24. That upon signing the undertaking, we requested (sic) a copy of the undertaking but were denied same.
25. That there is no way such payment can be made at this time as all our expectations will only begin to yield in January, of 2019.
26. That absolutely nothing was said about the petition of threat to life and it was obvious that the allegation was merely a ruse created by the Respondents in order to harass the Applicants.
27. That it appears the 1st Respondent has a close relationship with the 2nd Respondent, which has caused the 2nd Respondent to pursue recovery of debt from 1st and 2nd (or 3rd) Applicant, using the resources of the 3rd Respondent, even when from all documentations presented it is clear that the issues between the Applicant and the 1st Respondent is purely commercial without any element of crime against national security or any crime whatsoever.
28. That I know that the 2nd – 4th Respondents would have commenced prosecution against my person and the other Applicants if they had established any actionable criminal liability against us.
29. That the 3rd Respondent rather than commence a civil action for recovery decided to procure the assistance of the 2nd Respondent to engage the instrumentality of state security to harass, intimidate and coerce I and the 3rd Applicants into making commitments that are not feasible.
30. That from Exhibit Albert 1 above, I know that the matter is civil and has no criminal element whatsoever to warrant being harassed and intimidated by the 2nd - 4th Respondents.
31. That I know that the action of the Respondents was ill – motivated because the 1st Respondent knows that I have been

resident in Nigeria for over two decades and that I have going concerns in Nigeria.

32. That the Respondents are intent on arresting and detaining me and the 3rd Applicant in order to scare, frustrate, intimidate, harass, abuse and humiliate us, in an erroneous belief that such an action will aid recovery of his money.
33. That the Respondents have violated the Fundamental Rights of freedom of movement, personal liberty and dignity of myself and the 2nd (or 3rd) Applicant once before and are willing and capable of doing same again anytime soon since we are unable to send the amount we undertook to send to the 1st Respondent while under detention and harassment at the offices of the 3rd Respondent.
34. That I and the 3rd Applicant now live in perpetual fear that the 3rd Respondent can swoop in our residence to arrest us like criminals at any time as they have constantly reminded me that they are capable of doing so.
35. That unless this Honourable Court grants the relief (sic) sought in this application, I and the 3rd Applicant are at risk of losing our freedom of movement, personal liberty and suffering personal indignity in the hands of the 2nd - 4th Respondents, while the 1st Applicant will be blacklisted as fraudulent, effectively running it aground without any fair hearing or trial.

What then is the answer of the Respondents to the averments contained in the Applicants' affidavit? Let us go to the records. On the 23rd day of January, 2019, the 1st Respondent filed in the Registry of this Honourable Court a counter – affidavit of twenty nine (29) paragraph deposed to by himself. I have dutifully perused the said counter – affidavit and it appears to be speaking the same language with the story told by the affidavit supporting the Applicants' Motion on Notice albeit in some respect. However, the area of divergence would be highlighted for the purposes of accentuating the issues joined by the parties and the resolution of same. I will reproduce the salient portion of his counter – affidavit which I believe will serve the purposes I have earlier identified. They are paragraphs 13 – 28 and they are now set down below:-

13. That in January, 2018, I wrote to the Applicants to pay up the borrowed sum with interest as those I collected money from

were putting too much pressure on me. The letter is Exhibit Albert 1 to the Motion on Notice.

14. That the Applicants replied by E – mail promising to pay. The reply is Exhibit BAU1.

15. That I continued to pressure them for the money until we had an exchange of words in late August 2018.

16. That in early September, 2018 as I was leaving for work two men on motorcycle accosted me and asked me why I wanted to deport their "Oga" just because they borrowed a paltry N50,000,000.00 from me. They warned me to leave their Oga alone and that if I disturbed them again I will not be able to demand for the money again.

17. That I was shocked and before I could gather myself together to know what to do they sped off on their motorcycle.

18. That I was petrified and decided to report the incidence to the DSS for investigation which I did by letter which is Exhibit BAU11 hereto.

19. That I never asked the security agents to arrest anyone as I only asked them to investigate to know those behind the incidence.

20. That I was later invited by the DSS to their office and I went .

21. That the Applicants then requested to have the matter amicably settled and the security agents asked me if I was amenable to settlement and I said yes since I did not wish to die because I gave some people N50, 000,000.00.

22. That I and 2nd and 3rd Applicants then met and they pleaded with me to allow them pay the principal in two installments of N30,000,000.00 in December, 2018 and then N20,000,000.00 later before we renegotiate on the interest demand.

23. That I agreed as I did not want to continue to have hyper tension and we then put same into writing.

24. That rather than pay me as they promised they have brought this proceedings claiming N100,000,000.00 from me for bringing them out of EFCC custody.

25. That I am not a staff in the Department of the Security Services, they don't take others (sic) from me and I do not give them orders.

26. That I do not know how they operate and thus I cannot be responsible for their actions.

27. That to the best of my Knowledge nobody ever harassed, arrested or detained the Applicants as they were invited to respond to my petition which they did and they were allowed to go in less than three hours.

28. That this is a monumental abuse of Court process as it is designed to delay paying me money they borrowed from me.

On their part, the 2nd, 3rd and 4th Respondents (Called DSS Respondents henceforth in this Ruling) on the 16th day of January, 2019 filed a counter – affidavit of 26 paragraphs essentially debunking the averments of the Applicants as conveyed by the affidavit supporting their Motion on Notice. The Said counter – affidavit (deposed to by one Abimbola Bamisaye Said to be the principal Staff officer operations, SSS, FCT Command and deposed to with the consent of the 2nd to the 4th Respondents) with the consent of filed by the DSS Respondents is also supported by a written address. In a bid to capture the entire factual landscape of this case and the trajectory the reasoning of the Ruling would follow anon, I feel obligated to equally reproduce the essential portion of the said counter - affidavit of the DSS Respondents. This would open up this case to be viewed from the lenses of all the parties in hostility. This approach only satisfies the constitutional requirement under section 36(1) of our constitution that prescribes ambidextrous approach to justice administration to secure fair hearing Rights of litigating parties. In keeping with this ambidexterity dictates, I hereby reproduce paragraphs 5 to 25 of the said counter – affidavits below:

5. That all the averments in paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11 of the Applicant's Affidavit in support of the originating Motion are facts within the exclusive knowledge of the Applicant

and as the 2nd, 3rd and 4th Respondents are not in a position to either deny or admit the averments contained therein.

6. That the 2nd, 3rd and 4th Respondents through the Case Officer invited the Applicants, who in the company of their counsel, honoured the invitation and responded to questions fielded to them in relation to the petition against them. A copy of the said petition is hereby attached and marked Exhibit SSS1.

7. that the 2nd , 3rd and 4th Respondents through the case officer showed the Applicants and their counsel the petition against them bordering on 'threat to life' for which they were interviewed.

8. That the 2nd, 3rd and 4th Respondents aver that they did not arrest, detain, harass and intimidate the Applicants and their counsel neither was there and ploy Exhibited by the 2nd, 3rd and 4th Respondents to arrest, detain, harass and intimidate the Applicants and their counsel.

9. That the Applicants and their counsel walked into the Asokoro office of the 2nd, 3rd and 4th Respondents, signed in on the visitor's Booking Register at exactly 1:23 Pm and departed without let or hindrances at exactly 5;31 Pm after the interview session with the case officer. A copy of the 2nd, 3rd and 4th Respondents visitors' Booking Register is hereby annexed and marked Exhibit SSS2.

10. That the 2nd, 3rd and 4th Respondents are not debt recovery agents/ agency.

11. That the 2nd, 3rd and 4th Respondents did not by themselves or through any of its operatives, officers or agents delve into the issue of money lent or borrow between the Applicant and the 1st Respondent.

12. That the 2nd, 3rd and 4th Respondents by themselves or through their agents/privies did not on the 8th October, 2018 or any other date whatsoever compel the Applicants into making any undertaking to pay Thirty Million Naira (N30,000,000.00) or any sum whatsoever as option for repayment or face detention.

13. That the 2nd, 3rd and 4th Respondents did not threaten to rearrest, manhandle and /or blacklist the Applicants to an (sic) extent that the

1st Applicant will be barred from bidding for any Government contract.

14. That the 2nd, 3rd and 4th Respondents did not threaten the Applicants with their status as foreigners and / or threatened to seize / withhold their passports for t he purpose of restricting their movements or any other purpose whatsoever , neither any commitment for the payment of Thirty Million Naira (N30,000,000) as the first tranche to be paid on or before 31st December, 2018 at the Asokoro office of the 2nd, 3rd and 4th Respondents, since those issues do not fall within the purview of the case of threat to life under investigation.

15. That no undertaking was made at the FCT Command of the 2nd, 3rd and 4th Respondents in Asokoro but rather questions were put to the Applicants regarding the petitions against them.

16. That a prima facie case has been established against the Applicants.

17. That it is the prerogative of the 2nd, 3rd and 4th Respondents to determine the mode of investigation and as well as the time within which to commence criminal action against the Applicants.

18. That the 2nd, 3rd and 4th Respondents are independent statutory agency/agents of the Federal Government and do not act at the behest of any individual, including the 1st Respondent but exercises its investigative powers upon reports or reasonable suspicion that a crime is committed or about to be committed as in the instant case.

19. That the 2nd, 3rd, and 4th Respondents did not act with bad intent or with any ill-motivated intent in the cause of discharging their onerous duties of criminal investigations among other functions but acted upon reasonable suspicion that a crime was about to be committed.

20. That the 2nd, 3rd, and 4th Respondents did not arrest or detain the Applicants neither did they scare, frustrate, intimidate, harass, abuse and/ or humiliate the Applicants for the purpose of recovering fifty million Naira (N50,000,000.00) or any money whatsoever.

21. That the Rights of the Applicants were not violated by the 2nd, 3rd, and 4th Respondents neither was there any indicator pointing to

the facts that the Rights of the Applicants are likely to be violated by the 2nd, 3rd, and 4th Respondents.

22. That there is no material particulars Exhibited by the Applicant on the likelihood of the 2nd, 3rd, and 4th Respondents violating the Right of the Applicants' freedom of movement, personal liberty and dignity of human person and as such the allegations are masterfully crafted to mislead the Court.

23. That the Applicants' suit is a well – crafted ploy to either stop or frustrate the ongoing investigations on the weighty allegations of threat to assassinate among others against them which is still pending before the 2nd, 3rd, and 4th Respondents.

24. That the Applicant's suit is ill-motivated, premature and premised in (sic) bad faith.

25. That it is in the interest of justice to dismiss the Applicants' application and strike it out against the 2nd, 3rd, and 4th Respondents and / or the entire suit as it utterly vexatious, frivolous, baseless, mendacious and a carefully thought out plan by the Applicant (sic) to mislead this Honourable Court.

From the facts reviewed above (as presented by the parties to this dispute), I have no doubt in my mind that the pith and substance of the dispute between the Applicants and at least the 1st Respondent is rooted in the sum of fifty million Naira (N50,000,000.00) which the 1st Respondent advanced to the Applicant on the 25th day of November, 2016 (as borne out by a "business agreement" executed by them now before me as Exhibit Albert1 at paragraph 5 the Applicants' affidavit). It appears that the 1st Respondent is not denying that the Applicants are his "longtime" friends as they have asserted before me in this proceedings. From the affidavit of the Applicants (particularly paragraph 10 thereof already reproduced elsewhere in this ruling), it eloquently evident that the Applicants assured the 1st Respondent that "by April of 2018, 1st Applicant should be in the position of fulfill its obligations." This undertaking from the Applicants to the 1st Respondent came (exactly on the 7th day of February, 2018) as a reaction to the 1st Respondent's letter of reminder dated the 19th day of January, 2018 urging them to discharge their obligations to him so he too in turn could be freed from

the pressures to which he has been subjected by those from whom he sourced the money he advanced to the Applicants.

In fact in their letter of 7th February, 2018 , the Applicants expressed gratitude to the 1st Respondent for his assistance. Let me say it the way it is contained in their letter. This is the way they said it in the second paragraph of Exhibit albert3: ***"We are fully aware of our obligations to our friend Benjamin Ukwuomah and we are very grateful for the assistance he gave us to find a way out of our known problem we had that time".*** The Applicants expressed deep remorse for their inability to discharge their financial obligation to the 1st Respondent . in their very own language: ***"we apologies for our present inability to fulfill our obligations. Kindly convey our feelings to our good friend Benjamin and assure him of our willingness to pay our outstanding very soon."*** At paragraphs of their Affidavit, the 2nd Applicant averred that "the 1st Respondent is a businessman and longtime friend of mine and the 3rd Applicant's. There is no doubt that raising the sum of Fifty Million Naira for a distressed third party's use in this country is not a stroll along the orchard. Rescuing a foreigner who has fallen by the wayside of life on an evil day must have taken a Good Samaritan, not just a friend, to do. That biblical good Samaritan is the 1st Respondent and the Applicants seem to sufficiently acknowledge this at every turn the opportunity presents itself . with the above factual finding in mind, the question that comes to mind is this: Where were the Applicants or what have they done in keeping to their own promise (given freely and not under duress as they now allege) between the April, of 2018 and august 2018 when the 1st Respondent alleged that they had verbal exchange? There is no evidence before this Court that after the month of April, 2018 (When the Applicants freely undertook to honour their obligation) the Applicants have written another letter to either inform the 1st Respondent of their readiness to refund him or to explain why that April, 2018 deadline would not be feasible for them and to seek for extension of time. One would have expected the Applicants to have carried the 1st Respondent (who they proclaim is their longtime friend) along by explaining to him

after April, 2018 why they have not been able to meet their obligation. But that was not the case. From April to October when the 2nd, 3rd, and 4th Respondents invited the Applicants is roughly five months. This is apart from the fact that this debt was supposed to be due for repayment within 30 days the 1st Respondent borrowed the money to the Applicants way back in November, 2016 and we are now in 2019. there is no evidence that even a fraction of the capital of the loan has been discharged, not going into the interests accumulated. So much for a 'longtime' friendship!.

Let me start by reminding myself that based upon the ex-parte application of the Applicants dated the 5th day of December, 2018 but filed on the 7th day of December, 2018, I was minded (after going through the affidavit of extreme urgency deposed to by the 2nd Applicant) to grant some restrictive orders against the Respondents as a stopgap measure in these terms:

> ***That the Respondents, by themselves or though their agents, are restrained from harassing, arresting, detaining and / or however, curtailing the freedom of movement, Right to personal liberty and personal dignity of the Applicants and that this order do serve as a stay of any further steps by the Respondents in this matter pending the determination of the substantive suit.***

So far, the Applicants have enjoyed the protective order of this as there was no allegation that the Respondents have by any means violated the terms of the order as beneficially granted the Applicants.

The 2nd, 3rd, and 4th Respondents by a Motion on Notice filed on the 16th day of January, 2019 principally argued that the High Court of the Federal Capital Territory does not possess the requisite jurisdiction to try and determine the case brought against them by the Applicants since they are agents/agency of the federal government of Nigeria and only amenable to the jurisdiction of the federal high Court. I have dutifully read the submission of all the parties on this issues under contentions and carefully analysed the arguments both for and against. In their motion, the 2nd, 3rd, and 4th Respondents prayed this Court to

vacate the interim order or this Court which I have earlier reproduced and secondly to strike out the suit of the Applicants for want of jurisdiction on the part of this Court to entertain the claims of the Applicants. My answer to the first prayer is that the said interim order was made to remain in place until the determination of the substantive suit. I am now about disposing of the substantive suit by this ruling. this means that upon the delivery of this ruling the interim order automatically discharges itself. The discharging or vacating the said interim order of this Honourable Court granted on the 11th day of December, 2018 upon the ex – parte application of the Applicants, today has become otiose and academic as same will serve no utilitarian effect. I am to say on the second pray anchored on jurisdiction that the argument that the decision of the supreme Court in **Grace Jack v. University of Agriculture Makurdi** (2004) LPELR – 1587 (SC) **Jack V. Unam** (2004) 5 NWLR (pt. 865) 208; (2004) 1 S. C (pt. 11) 100; (2004) 17 NSCQR 90 is a mere orbiter is rather flawed. I am vindicated in this view by a close reading of the sole issue submitted for the determination of the supreme Court in that case which is:-

> *"Whether the trial Court is a high Court in Benue state as envisaged by section 42(1) of the 1979 (constitution) as to confer it jurisdiction over the appellant's application for breach of her Fundamental Right to fair hearing against her employers, university of Agriculture, an agency of the Federal Government."*

The issues was so piercingly articulated and well accentuated for the resolution of the supreme Court. There is no argument that the issue in the case of Grace Jack are on all fours with the issue which the Respondents' preliminary objection has raised in this proceedings. What was the answer proffered by the supreme Court in the case under reference? It is found in the leading judgment so brilliantly anchored and delivered by Katsina-alu, J.S.C (later CJN) wherein he reasoned thus:-

> *"By virtue and in the light of the above provisions, learned counsel for the appellant*

submitted that the application under these rules should be brought in a High Court in a state where the violation occurred or is likely to occur. For this submission learned counsel for the Respondent submitted that section 42 (1) reproduced above has been amended by (section 42) of the constitution (suspension and Modification) Decree No. 107 of 1993. It was further submitted that section 230 (1)(s) has also been amended and the combined effect of these amendments is to oust the jurisdiction of the state high Courts from entertaining matters coming before it including matters under section 42 of chapter iv of the constitution of the Federal Republic of Nigeria, 1979. Learned counsel, for this submission, cited the case of Ali v. CBN (19970 4 Nwlr (pt. 498) 192 at 203.

In the resolution of this issue, I would like to point out that section 42(1) of the Constitution of the Federal Republic of Nigeria which I have reproduced above has provided the Court for the Enforcement of the Fundamental Right is breached, being breached or about to be breached may therefore, apply to a high Court in that state for redress. Order 1 rule 2 of the Fundamental Rights (Enforcement procedure) rules, 1979 which came into force on 1st January, 1980 defines "Court" as meaning " the federal high Court or the high Court of a state". <u>What this means is this , both the federal high Court and the high Court of a state have concurrent jurisdiction . an application may therefore be</u>

made either to the judicial division of the federal high Court in the state or the high Court of the state in which the breach occurred , is occurring or about to occur. (italics and underlining supplied by me for emphasis).

I note that all the justices on that panel concurred in the leading judgment of Katsina – Alu, J.S.C (later CJN) . I do not know how the above decision on the sole issue before the supreme Court has now turned into an orbiter dictum. I do not know by what legal alchemy or interpretational jurisprudence the 2nd, 3rd, and 4th Respondents came about that! It is only the 2nd, 3rd, and 4th Respondents who can offer any plausible explanation for this legal heresy. On my part, I know that decision of the supreme Court in the case under reference has neither been departed from nor overruled. What is more, by the doctrine of stare decisis, this Court (just like every other subordinate Court) is bound by the reasoning in **Jack v. Unam** (2004) 5 NWLR (pt. 865) 208. It remains a good law. I am bound by it. since it reigns and currently holds the field in our jurisprudence, I have no other option than to bow before it. more importantly, before me in this Court, the 2nd, 3rd, and 4th Respondents are all bound by it and I have the important duty to also ensure that they bow before that authority. After all, the law is settled that the ratio decidendi of a case is the principle of law upon which the case was decided, **Abacha v. Fawehinmi** (2000) 6 NWLR (pt. 660) 228. It is this principle that is binding on the parties and capable of being the subject of an appeal. The ratio decidendi constitutes the authority on which the case stands , **N. A. B Ltd V. B. Eng. (Nig.) Ltd** (1995) 8 NWLR (pt. 413) 257 at 289. It is also trite that a ratio decidendi is not decided in vacuo but on the facts of the case presented before the Court to determine the basis on which it was decided, **Odugbo v. Ahu** (2001) 14 NWLR ((pt. 732) 45. the judgment of a Court, the legal principle formulated by that Court which is necessary in the determination of the issues raised in the case, **Afro – continental Nig. Ltd. V. Ayamtuyi** (1995) 9 NWLR (pt. 420) 411 that is to say, the binding part of the decision, is its ratio decidendi as against the remaining parts of the judgment which merely constitute obiter dicta, that is to say, what is not necessary for the decision, **7up bottling co. ltd. V. Abiola & Sons (Nig.) Ltd** (1995) 3 NWLR (pt. 383) 257.

Therefore, on the issue of lack of jurisdiction on the part of this Honourable Court to hear this case, the preliminary objection of the 2nd, 3rd, and 4th Respondents collapses and is hereby Dismissed by me for lack of merit. Affirmatively, I declare that this Honourable Court has the untrammeled jurisdiction to entertain all actions envisaged under the FREP Rules, 2009 without let or hindrance, the status of the parties involved regardless, **Jack V. Unam** (2004) 5 NWLR (pt. 865) 208; (2004) 1 S. C. (Pt. II) 100.

In their un-paginated written address, the Applicants identified three (3) issues for the resolution of this Court which I now in turn reproduce:-

1. Whether there was a breach of the Applicants' Fundamental Rights and a threat of further breach of the Applicants' Fundamental Rights.
2. Whether the 2nd, 3rd, and 4th Respondents have acted ultra vires by intervening in the dispute between the Applicants and the 1st Respondent.
3. Whether the Applicant is entitled to the reliefs claimed.

Having intimately read, meditated on and systematically analysed the undulating facts of this case (and to avoid prolixity), I have no hesitation in holding that there was no breach of the Applicants' Fundamental Rights and a threat of further breach of the Applicant's Fundamental Rights. Such were not made out in this case. No evidence was placed before this Court to warrant the return of a contrary verdict. In other words, the first issue submitted by the Applicants for the resolution of this Court is resolved against them and in favour of the Respondents.

Let me explain. First , the 1st Respondent recounted how sometime in early September, 2018 he was accosted by some persons who he could best be described as life – threatening circumstances , warned him to desist from disturbing their "Oga" for the refund of his "paltry" Fifty Million Naira or he would 'not be able to demand for the money again'. Out of fear for his own dear life , he reported the matter to the 2nd, 3rd, and 4th Respondents. His own account shows that he never took any other step after his report on how the 2nd, 3rd, and 4th Respondents handled the investigative activities that ensued. Unfortunately, in their fifteen (15) paragraphed further affidavit (which I have dutifully scanned), the Applicants could not puncture the fact of the assassination attempt on the life of the 1st Respondent as

contained in paragraph 16 of his counter affidavit . now , accepting the fact of the said assassination attempt on the life of the 1st Respondent to be true (same being unchallenged by the Applicants), what then is wrong in a citizen reporting either the commission or crime or suspicion of same to security agencies? I think it is the undoubted Right to report cases of commission of crime to the security agencies for their investigation and what happens after such report is entirely the responsibility of the security agency or agencies concerned. I am fortified in this view by existing authorities on the score **Fabiyi V. State** (2013) LPELR - 21180 (CA) . the enduring legal position is that no citizen ought to be damnified by the law for performing a civic responsibility of reporting the commission of a crime to the law Enforcement agencies for their independent investigation and action, **FCMB v. Ette** (2008) 22 WRN 1. The only recognized exception to this accepted principle is where out of bad faith (mala fide), a citizen sets the law in motion against another by brining undue pressure to bear on such Enforcement agent to oppress and harass another citizen even after making his report. One example (for the purpose of thoroughness) will suffice. In the case of **Chief (Dr.) O. Fajemirokun Vs. Commercial Bank Nig. Ltd & Anor** (2009) LPELR – 1231 (SC), the Respondent petitioned the police for the issuance of Dub Cheque by the appellant which is an offence under section 1 of the Dishonoured cheques (offences) Act Cap. D11 laws of the Federation of Nigeria 2004 and for which the Respondents were entitled to make a report to the police. The Applicant instituted a Fundamental Right Enforcement action against the Respondents alleging, among other things, that they (the Respondents) instigated the police to violate his Fundamental Rights (just as here) instigated his claim as being unfounded in law, their lordships of the Apex Court handed down this reasoning;

> *"Generally, it is the duty of citizens of this country to report cases of commission of crime to the police for their investigation and what happens after such report is entirely the responsibility of the Police. The citizens cannot*

be held culpable for doing their civic duty unless it is shown that it is done mala fide".

The apex Court upheld the imperishable Right of the Respondents to report crimes to the police by saliently observing as follows:

"In the first place issuance of dud cheques is a criminal office under section 1 of the Dishonoured Cheques (Offences) Act, Cap. D11, Laws of the Federation of Nigeria, 2004 and for which the Respondents were entitled to make a report to the police."

What inevitably eventuates from the foregoing points irresistibly to the correct view of the law which is that any citizen / person (here the 1st Respondent) has the duty to call the attention of the law Enforcement agencies (like the SSS in the instance), **Ona vs. Okenwa** (2010) 7 NWLR (pt. 1194) 512 to the commission of any offence (like attempted assassination in the instance) for the protection of the society, **Gbajor V. Ogunburegui** (1961) 1 ALL NLR 853. Arguments have been canvassed by the Applicants suggesting that the 2nd, 3rd, and 4th Respondents exceeded the bounds of their powers as conferred on them by law by allegedly delving into a civil matter between the Applicants and the 1st Respondent. An intimate study of the version of facts presented by the 2nd, 3rd, and 4th Respondents would show that the basis of t heir invitation to the Applicants was the assassination attempt contained in the petition of the 1st Respondent whom the law insists has the Right have written such a petition to the 2nd, 3rd, and 4th Respondents. The allegations of human Rights breaches or possible human Rights breaches against the Applicants. Both in their affidavit supporting their motion on notice and further affidavit, the Applicant insisted that all the alleged breaches of their Rights were witnessed by their counsel. They could have engaged another counsel to file this suit if the said counsel who accompanied them to the SSS was the one that filed the instant suit. The evidence of that particular counsel in this matter would have been most helpful as he purportedly witnessed the said Fundamental Rights breaches meted to the Applicants by the 2nd, 3rd, and 4th Respondents.

Unfortunately, that otherwise vital evidence is not available to this Court. I am forbidden from speculating on that, ACB ltd v. Emostrade ltd (2002) 4 sc (pt. II) 1. This is because , the law is settled by a long line of decisions that a Court should not speculate on what is not before it. speculation is not a proper course of exercise of the judicial function of a Court, **Balogun v. Amubikannhan** (1985) 3 NWLR (pt. 11) 27. A trial Court should not speculate or make guesses of things that are not disclosed, or things that are kept in the dark during trial, **Ojagbamila & Ors V. Lejuwa & Ors** (2004) LPELR - 7338 (CA). There is nothing reprehensible in 2nd, 3rd, and 4th Respondents inviting any person against whom a petition is written to come for either interview or to present his own side of his story. It is part of a normal investigative process. The Applicants could not successfully challenges the veracity of the content of the 2nd, 3rd, and 4th Respondents visitors' booking Register (Exhibit SSS2) showing that the interaction the Applicants had at the office of the 2nd, 3rd, and 4th Respondents lasted for a few hours which by no stretch of imagination could ripen into an arrest, harassment or such other Fundamental Rights abuses as alleged by them. Courts have warned that security agents / agencies are not debt recovery agents/ agencies. It gladdens the heart of this Court that the 2nd, 3rd, and 4th Respondents in this case have imbibed that lesson and acknowledged that much before this Court. They must be commended for that. The fact suggesting that they delved into debt recovery in this case could not be supported by cogent evidence by the Applicants who want this Court to believe same and who shoulder the evidential burden of inducing that belief in the mind of this Court. In any event, I note in passing that this suit was filed by the Applicant on the 7th day of December, 2018 and there is no evidence that ever since then the Applicants have started honouring the undertaking which they freely gave to the 1st Respondent on the 7th February, 2018 to the effect that by April, 2018 the 1st Applicant would be in the position to honour its obligations. We are now in july, 2019 and we are still talking about a money borrowed (by an agreement) since November, 2016. And we have now counted seventeen (17) months. And the 1st Respondent is a "longtime friend" to the Applicants, according to the Applicants. Perhaps if the Applicant had honoured their undertaking to the 1st Respondent in April, perhaps the 1st Respondent would not have experienced an assassination attempt on his life and perhaps the

1st Respondent would not have initiated any petition (anchored on threat to life) to the 2nd, 3rd, and 4th Respondents against the Applicants. Just perhaps, 2nd, 3rd, and 4th Respondents would not have invited the Applicants and perhaps too, the Applicant would not have brought the instant suit. Just perhaps. This is a food for thought. I choose to say no more on that.

In my final judgment, I hold the firm view that the claims of multiple Fundamental Rights breaches levied by the Applicants against the Respondents were not made out on the state of the evidence presented. That being the case, I adjudge the claims of the Applicants against the Respondents grossly unmeritorious. The said sevenfold relief (earlier itemized in this Ruling) fail woefully and are hereby DISMSSED by the Court.

I make no order as to cost.

APPEARANCES:

Y. B. Usman Esq. for the Applicants

The Defendants not in Court.

Sign

Hon. Judge

04/07/2019