IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 2ND DAY OF NOVEMBER, 2019
BEFORE HIS LORDSHIP: HON. JUSTICE K.N. OGBONNAYA
JUDGE

SUIT NO:FCT/HC/PET/407/19

BETWEEN:

MRS. FIDELIA EYIUCHE CHUKWUNEKE ---------- } **PETITIONER**

AND

MR.JOHNSON CHUKWUDI CHUKWUNEKE ---------- } **RESPONDENT**

JUDGMENT

On the 8/10/19, the Petitioner Fidelia Eyiuche Chukwuneke filed this petition for the dissolution of the marriage between her and Johnson Chukwudi Chukwuneke. The marriage was conducted on the 26/11/05 at All Saints Church Cathedral Onitsha, Anambra State.

According to the Petitioner, the marriage between her and the Respondent has broken down irretrievably to such extent that she finds it difficult to continue living with the Respondent. The fact in support for this divorce is that Respondent had being in desertion for over 3 years and 4 months and have no intention to return. That all effort to locate him has proved abortive.

She had stated that after the marriage lived at plot 20 Road C Bazango Extension off Arab Road Kubwa, Abuja. That it is from that place that the Respondent left or abandoned her.

There are no children in the marriage. She had also stated that the Respondent has behaved in such a way that she finds it difficult to continue with the marriage or expected to live with the Respondent. She had in the same petition stated that she had not connived, condoned or colluded in presenting this petition.

The Order sought is for dissolution of the marriage and any other Order which the Court may in the circumstance grant.

She had testified before this Court. The Counsel for the Respondent had no question for her during cross examination and there was no re-examination.

The petition was served on the Respondent who was present in Court and had told the Court that he does not intend to challenge the petition and will not also waste the time of the Court to file anything that;

> **"I have read all that she said in the case, I have nothing to say because me, I equally want the divorce. I have been in desertion for more than three and half ($3^{1/2}$) years. I do not want the marriage".**

His lawyer Ojo Olukayode had presented him as the DW1 and he stated that he does not object to the dissolution of the marriage and as such, he is not challenging the case. He confirmed that he had been in desertion for more than the required statutory period and facts not challenged are deemed admitted.

Section 15 of the Matrimonial Causes Act [MCA] provides the grounds upon which a marriage can be dissolved which is;

"**That the marriage had broken down irretrievably and the Petitioner is not expected to live with the Respondent. Section 15 (1)."**

The section 15 (2) (a) – (h) is on Ground/the fact which a Petitioner can base the petition on.

In this case, the fact upon which the Petitioner based her petition is that the Respondent has been in desertion for over 3 years and 4 months since July 2016. This fact was confirmed by the Respondent in his own brief testimony before this Court.

The parties who both have counsel, had through them told Court that they have abridged the right to file and adopt final address. Hence this Court had decided to go into judgment of this case.

The provision of section 15 (2) (a) of MCA provides that;

> **"The Court hearing a petition for decree of dissolution of marriage, shall hold that a marriage has broken down irretrievably if but only if the petitioner satisfied the Court of one or more of the following facts."**
>
> (a) That the Respondent had deserted the Petitioner for a continuous period of at least one (1) year immediately preceding the provision of the petition.

In this case, this petition was filed on 8/10/19. Before then, the Respondent has been in desertion since July 2016. It is glaringly obvious that the Respondent had been in desertion for over one year to be exact, over 3 years before this petition was filed.

That fact alone is showing enough reason for the marriage to be dissolved.

Again section 15 (2) (e) of MCA provides that;

> **"Parties to a marriage had lived apart for a continuous period of at least 2 years undoubtedly before presenting the petition and that the Respondent does not object to the petition."**

In this case given the statement of the Respondent which was earlier quoted and his testimony where he had stated on oath that he does not object to the dissolution, he made it obvious that he had been in desertion for over 3 years and 4months before now.

On this fact alone, this Court has no reason not to grant the petition and **it hereby grants same**.

Again, going by section 15 (2) (f) of MCA;

> **"The parties to the marriage have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition."**

The above facts are equally present in this case, in that, the parties have lived apart since July 2016. That means that they have lived apart for over 3 years and 5 months.

There is no judgment of the Court that had ever forced a party to a marriage to continue in that marriage against the party's will. This Court cannot set that bad precedent in this case.

Since the parties particularly the Petitioner filed this action stating to be **"set free"** from the marriage where her husband had openly and gladly admitted of being in desertion for over three (3) years, this Court has no reason not to listen to her: more so, when there is no children in the marriage.

From the unchallenged testimony of the PW1 who is the Petitioner in this suit, it is obvious that this marriage has broken down irretrievably.

Again, going by the facts as contained in S. 15 (2) d, e, f; the parties have lived apart for over 3 years before this petition was filed and the Respondent had been in desertion, for, as he puts it, over 3 years and 4 months.

This Court has no reason not to dissolve this marriage which has glaringly broken down irretrievably.

This Court hereby Order Nisi

That the marriage between Fidelia Eyiuche Chukwuneke and Johnson Chukwudi Chukwuneke solemnized at All Saints Cathedral Church Onitsha, Anambra State, on the 26th day of November, 2005 is hereby DISSOLVED.

This Order Nisi is made on the 2nd day of December, 2019.

(2) At the expiration of this Order Nisi (after 90 days) of this Order shall be made Absolute in that any of the parties can apply to the Court for an Order Absolute.

This is the Judgment of this Court delivered today by me today, the 2nd day of November, 2019.

_____

JUSTICE K.N. OGBONNAYA

HON. JUDGE

14TH January, 2020

The Chief Registrar
High Court of the FCT
Maitama, Abuja.

REPLACEMENT OF POLICE ORDERLY.

I write to inform you that my Police Orderly **Sgt. Robert Ajembi** has been replaced by **Sgt. Solomon Markus** with Force No. 420013. Since September 2019.

All allowances and benefits from September 2019 should be paid to **Sgt. Solomon Markus** who operates Account No. 4253089011 with First City Monument Bank (FCMB).

Find the attached copy of the posting letter.

Thanks in anticipation.

JUSTICE K.N. OGBONNAYA
HON. JUDGE

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 6TH DAY OF DECEMBER, 2019
BEFORE HIS LORDSHIP: HON. JUSTICE K.N. OGBONNAYA
JUDGE

SUIT NO:FCT/HC/CV/2528/18

BETWEEN:

1. MR. MBAEZUE CYLIACUS CHIZOBA
2. MRS. MBAEZUE CHIBUOGWU PATIENCE ---------- **APPLICANTS**

AND

1. INSPECTOR GENERAL OF POLICE
2. OFFICER IN CHARGE OF POLICE TACTICAL SQUAD
3. ASSISTANT INSPECTOR GENERAL OF POLICE---------- RESPONDENTS
4. MR. IKENNA IHESUILOR
5. MR. ALPHONSUS UMEADI

JUDGMENT

The 1st and 2nd Applicant in this case are husband and wife. The 1st Applicant a businessman who agreed to supply Fish to his business friend Mr. Loveday Ehighibe who agreed to supply the Fish as alleged by the 1st Applicant. The said supply was for the thirteen million, five hundred and fifty eight thousand, six hundred and thirty six naira, two kobo (N13, 558,636.02) only, which according to the Applicant is THB 1, 247,000 – Thailand Balit. N13, 558,636.02.

The Applicant attached an invoice from J & M Teamwork International Limited. The said receipt/invoice shows that goods worth THB 1, 247,000.

The Applicant alleged that he did not supply the goods because he realized that the account **of as he put it**

> **of our previous transaction had not been properly balanced showing that there was an outstanding balance to be paid to me by Mr. Ehighibe for our previous transaction.**

He further alleged that Mr. Loveday Ehighibe started avoiding him. Though the same Loveday paid him in advance for the Fish which he never supplied a whopping sum of thirteen million, five hundred and fifty eight thousand, six hundred and thirty six naira, two kobo (N13, 558,636.02) – (THB 1, 247,000 Thailand Balit). He attached the receipt of payment as EXHIBIT A.

The Applicant also alleged that all effort to meet Mr. Loveday proved abortive. Instead, the same Loveday now sent the 4th Respondent – Mr. Ikenna Ihesiulor who Loveday claim was the real buyer/owner of the Fish and not Mr. Loveday. Meanwhile, Loveday is not a party in this suit.

The Applicant also alleged that he refused to meet with the 4th Respondent and even when the 5th Respondent volunteered to meet medate, he refused. The Applicant further alleged that the 4 & 5 Respondents tried to arrest him at Enugu when he refused to meet with them, but Enugu police declined the arrest because according to them the issue in dispute is purely commercial and not criminal.

He further alleged that he was later arrested by strange men who drove him around and eventually took him to CID at Owerri and subsequently at Umuahia. While at Umuahia, Abia State, they were about to take him to Abuja FCID but were told that his case has been treated at Umuahia. He alleged that he was tortured, his pregnant wife slapped and kicked at by the strange men. That when his unnamed

neighbour wanted to inquire where the strange men were taking him to, the men pointed the cocked gun at him and threaten to kill him. The men took with them the Car Black Honda Pilot Jeep No. YAB 57 BE. But the men told him that they are from Imo State CID Owerri. They showed him the petition written by the 4th Respondent who the Applicant claimed he never meet and had never had any business with.

He also alleged that they was forced to do an undertaken to pay the money or supply the goods. That the police threatened to kill him if he failed to pay or supply the goods.

He attached the agreement as EXHIBIT B. Meanwhile, he had pay the 4th Respondent the sum of five million naira (N5, 000,000.00) – three million, three hundred thousand naira (N3, 300,000.00) cash and two million naira (N2, 000,000.00) through money transfer to the 5th Respondent.

He eventual wrote a petition against the strange men, not in Owerri but in Umuahia, Abia State CID.

Based o the treatment meted to him, he instituted his action against the 1 – 5 Respondents for violation of his Fundamental Rights.

He claim the following:

(1) An Order of Injunction restraining the Respondents by themselves, Agents, Officials and Privies, howsoever called from harassing or further harassment, threatening or further threatening, intimidating, unlawfully arresting and or unlawfully detaining, depriving the Applicants in any manner, whatsoever from their right to personal liberty and freedom of movement.

(2) An Order quashing the purported agreement signed by the 1st Applicant under duress through the use of force, intimidation and threat to life while in the custody of 1 – 3 Respondents.

(3) An Order mandating the Respondents to return the five million naira (N5, 000,000.00) which was forcefully collected from the 1 Applicant while he was in an unlawful detention for a period of about 5 days.

(4) An Order directing the immediate release of the 1st Applicant's car with Reg. No. YAB 57 BE Abuja.

(5) A Declaration that the seizure of the 1st Applicant's car is unlawful and a breach of his right to property as enshrined in the 1999 Constitution as Amended.

(6) A Declaration that the arrest and detention of the 1st Applicant by the officers of the Nigeria Police for 7 days in total was illegal, unlawful and a breach of his Fundamental Right (SIC).

(7) A Declaration that the continuous harassment of the Applicants and members of their family is a breach of their Fundamental Right as enshrined in the Constitution of the Federal Republic of Nigeria 1999 as Amended (SIC).

(8) The sum of hundred million naira (N100, 000,000.00) only, general damages jointly and severally against the Respondents for the unlawful threats and continuous harassment (SIC) which has greatly affected the Applicants and his family psychologically (SIC).

They based the application on the following grounds:

That the 1st Applicant is a businessman carrying out business in Thailand and Nigeria. The details of the ground in as already narrated above.

He alleged he was arrested sometime in March 2018 around the 9th or 10th of March.

He supported this application with an Affidavit of 42 para. He attached 4 documents marked as EXHIBIT A – D.

In the Written Address which their Counsel adopted in support of their case, they raised a sole issue which is:

"Whether the Applicants are entitled to apply for the enforcement and protection of their Fundamental Rights given the circumstances of this case."

Their Counsel on their behalf submitted that their freedom is sacrosanct going by provision of ***S. 35 (1) 1999 Constitution as Amended.***

That the issue in contention is purely civil in nature, on supply of goods between the 1st Applicant and Loveday Ehighibe. That the "4 & 5 Respondents who were not part of the contract are using the instrumentality of 1 – 3 Respondents to illegally enforce transaction they were not part of." That the frequent intimidation and harassment of the Applicants by Respondents is in contraction of his right under the Constitution and African Charter on Human and Peoples Right (Ratification and Enforcement) Act as well as ***Order 11 (1) FREP 2009.***

"That the transaction is purely commercial and also has to do with Meddlesome Interlopers."

That Mr. Loveday sent the 4 & 5 Respondents because he wanted to run from his financial obligations from previous transaction between him and 1st Applicant. That there is no provision in ***Police Act especially S. 4*** where police is empowered to function as Debt Recovery Agents. He referred to the case of:

Mclaren V. Jennings
(2003) 3 NWLR (PT808) 475 Para 4

That the right of every citizen should be girded and protected from oppression, intimidation and harassment.
That peaceful and family life must be protected as well as personal liberty and freedom of Association. He referred to:

Ubani V. Director SSS
(1999) 11 NWLR (PT 625) 137 Para 5

That police is not a Debt Recovery Agency and have no right to so act where the matter is civil in nature. He referred to the case of:

Afribank (PLC) V. Onyima
(2004) 2 NWLR (PT 858) 660 Para 9

That the Court has right to make Order and issue direction as it considers appropriate going by the provision of **Order & FREP.** That the FREP and African Charter both provide for citizen right to personal liberty, fair hearing, freedom of property (SIC), freedom of movement and association.

He referred to ***SS. 35 (1) and S. 41 1999 Constitution as well as Article 3 – 6 African Charter.***

That it amounts to violation of one's right of any citizen to be unlawfully deprived and unjustly deprived of his enjoyment of these rights. He referred to the case of:

Onyirioha V. IGP
(2009) 3 NWLR (PT 1128) 342 @ 362

He submitted "that the law requires the Applicants to establish that his personal liberty freedom of movement and protection as to fair hearing has been, is being and likely to be infringed upon by the Respondents." That the Respondent has the burden to prove that the said fundamental Rights of the Applicants are legally and justifiably tempered with. He referred to the case of:

Fajemirokun V. Commercial Bank Credit Lyonnais Nig. Ltd. & Anor
(2002) 10 NWLR (PT 774) 95 @ 112 – 113

Adedoumu V. Olowu
(2002) 4 NWLR (PT 652) 253 @ 364

He further submitted that the "numerous threats, harassment and intimidation from the Respondents which has further restrained the Applicants freedom to move about freely without fear as free citizen is a further breach of the Applicant's Right to Freedom to freedom of movement and personal liberty."**SIC**

That law enforcement Agents must refrain from being used to harass the citizens they are paid to protect. He cited the cases:

ASESA V. Ekwerem
(2001) FWLR (PT 51) 2034 – 2054 – 5

Jim – Jaja V. C.O.P
(2011) 2 NWLR (PT 1231) 375 @ 398

That **"**the Respondents acts against the Applicants is not been carried out in good faith and has occasioned the violation of Applicant's Fundamental Right and a threat to further violation **(SIC)."** He cited the case of:

Igali V. Lawson
(2005) All EWLR (PT 262) 580

That Applicants have been subjected to **"**Psychological Depression and Frustration by the continued harassment and threats being received from the Respondents. **SIC**

That violation of a person's right for however short a period must attract penalty. He referred to the case of:

Jimoh V. A – G Federation
(1999) 1 HRCRA 513

That Court should come to the aid of a party who is a victim of such unlawful conduct.
He urged the Court to hold the appropriate Orders and Declarations being sought to restrain the Respondents from violating the Fundamental Rights of the Applicants. He referred to the provision of:
Order 11 R1 FREP 2009

He urged the Court to hold that the Respondents have infringed upon the Fundamental Right of the Applicants and are likely to further infringe upon the Fundamental Rights of the Applicants if not restrained SIC. He cited the case of:
Nemi V. A – G Lagos (1996) 6 NWLR (PT 452) 42 @ 55 Para D – E.
He urged the Court to resolve the issue for determination in favour of the Applicants and graciously grant this application with aggravated damages against the Respondents.**" SIC**

That failure of the Court to grant the application will be inimical to the Fundamental Human Right of the Applicants.

In a stiff opposition the 1 – 5 Respondents filed a Counter Affidavit of 23 paragraphs deposed to by the 4th Respondent for and on behalf of all the Respondents.

According to them, the 4th Respondent is a businessman of Repute and customer of the 1st Applicant. That sometime in 2017, 4th Respondent entered into a contract agreement with the 1st Applicant for the purchase 953 cartons of dry fish at the cost of twenty four million naira (N24, 000,000.00) only paid to the 1st Applicant by the 4th Respondent as at the value of the said cartons of fish inclusive of the freighting and clearing cost.

The goods were to be delivered at the 4th Respondent's ware house at No.5 Chief Theo Nkire Street GRA, Aba. The delivery was to be doneby December 2017 according to the Agreement of the parties.

The 1st Applicant did not deliver the goods as scheduled and several attempts to have a meeting with him and several demand for refund of the money for the unsupplied goods was without success: That after evading the 4th Respondent, the 1st Applicant was arrested by the Nigeria Police Force sometime in March 2018 following the allegation of the fraud lodged against the 1st Applicant by 4 Respondent at the Imo State Police Command. That allegation was made in writing as a petition. Upon the 1st Applicant's arrest he voluntarily signed an undertaken and his Counsel witnessed for him. In the undertaking he admitted all the allegation made against him. He made part payment of five million naira (N5, 000,000.00) only and firmly promised to deliver the goods for the outstanding value or to pay the outstanding sum of nineteen million naira (N19, 000,000.00) only with a stipulated period otherwise the 4th Respondent is at liberty to seek redress in Court.

On that basis he was release within 24 hours by the Police in accordance with the provision of the 1999 Constitution as Amended.

The 1 – 5 Respondents attached a document to their Counter which is same as the copy of Agreement between the 4th Respondent & 1st Applicant where the 1st Applicant undertook to pay the money in issue for the supply of the fish or to face trial.

In the Written Address the Respondent adopted the same issue raised by the Applicant which is whether the Applicants are entitled to apply for the enforcement and protection of their Fundamental Rights given the circumstance of this case.

The 1 – 5 Respondents Counsel on their behalf argued that the right to personal liberty is not absolute as it is constitutionally limited.

He relied on the provision of ***S. 35 (1) (c) 1999 Constitution as Amended*** which provides the circumstances in which right to liberty of a person can be said to have been infringed.

That the apprehension of the 1st Applicant is in accordance with a procedure permitted by law. That it is the duty of Police to apprehend offenders as enshrined in ***S. 4 Police Act*** which the Applicant's Counsel referred to. That the Police has right to arrest as held by the Court of Appeal in the case of:

Jimoh V. Jimoh & ors
(2018) LPELR – 43793 (CA)

That it is the strength of the information at the disposal of the Police that should determine how they exercise their discretion to investigate or not to investigate and how or extent of investigation. He relied in the decision of the Court in the case of:

Olatinwo V. State
(2013) 8 NWLR (PT 1355) 126

That as far as Police has properly exercised its discretion, a complaint under the Fundamental Rights Enforcement Procedure Rules for breach of the right to personal liberty may not be sustained. That where crime has been reported it is within the discretional power of the Police under ***S. 4 Police Act*** to decide whether or not to investigate such crime and also to decide on the strategy and manner in which they will conduct the investigation. In that regard Police has the power constitutionally to arrest and detain persons reasonably suspected to having committed a crime so long as the detention does not exceed the period allowed by the Constitution ***S. 214 (2) (b) 1999 Constitution as Amended*** and also Police ***Act S. 4 Police Act.***

That the Police did not act as debt collector at any point in time in this case rather they acted within the ambit of the law by investigating a

crime (that was reported to it). That obtaining property of another by false pretence is criminal offence in Nigeria going by provision of S. 1 (1) – 3 Advance Fee Fraud and other Fraud Related Hemas Act 2006.

That 1st Applicant did not deny the allegation that he obtained money from 4th Respondent That he voluntarily wrote the undertaking which was made in his letter head paper, where he admitted all the facts presented by the Respondent and vowed to indemnify the 4th Respondent. In a part of performance the 1st Applicant paid five million naira (N5, 000,000.00) only and promised to pay the remaining nineteen million naira (N19, 000,000.00) only within the stipulated time in the undertaking.

That the action of the 1st Applicant points to the 1st Respondent's admission of the 1st Applicant's indebtedness to the 4th Respondent. That the said part payment is an admission of the 1st Applicant's indebtedness. He referred the Court to the case of

Informatics Co. & Telematic Ltd V. Nurudeen (2003) FWLR (PT 175) 477 @ 491

That it is the law that whoever asserts must prove that 1st Applicant has the onus to prove by credible Affidavit evidence that their Fundamental Rights were breached as alleged. That Applicants have not presented any material evidence before this Court to show that his Fundamental Right was breached and that his arrest was unlawful.

He referred to the case of

Jimoh V. Jimoh & ors Supra.

That Applicant should adduce credible evidence to show that he was arrested and detained That the arrest and detention was illegal and unlawful.

He referred to the case of

Shell Petro Dev. V. Daniel Pessu
(2014) LPELR – 23325 (CA)

Abiola V. FRN
(1995) 7 NWLR (PT 405) 1

Ejiofor V. Okeke
(2007) 7 NWLR (PT 665) 363

He finally submitted that the Applicants have not been able to establish a breach of the breach of their Fundamental Right by the Respondents and therefore they are not entitled to any Order of this Court as contained in his application.

He urged Court to dismiss his application with punitive cost and make an Order of strict compliance with the vows as contained in the undertaking written by the 1st Applicant.

COURT:

In every case where a party alleges that any of the right listed provided for in CAP 4 1999 Constitution as Amended is being, has been or likely to be infringed, such a person has a right to seek redress in a Court of competent jurisdiction, as provided under that chapter of the Constitution should be in a High Court.

S. 35 1999 and Order 11 R1 FREP 2009.

That it is the duty of a person who has so alleged that his right has been infringed to establish with cogent facts and credible evidence. That such party can do by presenting in clear and vivid details how such right was allegedly infringed. That onus rests squarely on such a party usually the Applicant until it is fully discharged. Failure to discharge so means the Applicant is stocked with and the Court will hold that such person has

not been able establish the infringement of the right alleged breached. And as such the application will fail. It is unlen and unful an Applicant discharged that burden can it shift to the Respondent who must also discharge same otherwise it stalks on it and he is held to have infringed on the Applicant's right. It is not merely stating and listing that a right has been breached or violated. It must be backed up by credible and cogent fact and evidence in Exhibit if available. The Applicant must show that the action of the Respondent is reprehensible.

The Applicant must also show that the Respondents act was wilful, malicious, violent, oppressive, fraudulent, wanton and grossly reckless. This is the decision of the SC in the recent case of

FBN PLC V. A – G Federation
(2018) 7 NWLR (PT. 1617) 121 @ 129 Para 6.

Mohammed V. IGP
(2019) 4 NWLR (PT. 1663) 492 @ 499 Para 8 – 10.

Rockonoh Property Co. Ltd. V. NITEL
(2001) 14 NWLR (PT. 733) 468 @ 510 – 517.

The popular provision of S. 4 Police Act gave the Nigeria Police wild power to arrest, detain, interrogate, investigate and where necessary prosecute offender and breakers of the laws of our land. But that popular provision of the Police Act does not empower the Police to act as Debt Recovery Agency. Oftentimes Nigerians tried to use the Police as Agency for Debt Recovery which they are not. Rather than go to Court to seek redress for any Fundamental wrong committed against them, These Nigerians resort to quick fix method to recover debt owed them by rushing to the Police for help. Most times same Policemen felt for that bait by "helping" these Nigerians and acting as their agency for debt Recovery. This action by Police is illegal and not what powers constitutionally and otherwise of the Police is all about.

Where it is established that the Police have so acted, in an action predicated on Fundamental Right the Court frowns at it and may award damages against the Police. The Nigerian Police has no power to enforce contract between parties that has been held in plethora of cases in our Courts. That is the decision of the Court in the case of

Mclaven V. Jeming
(2003) 3 NWLR (PT.808) 475 Para 4.

The whole essence of ------ action of procedure for the enforcement of the Fundamental Right is to protect those rights from abuse and violation by persons and authorities. Again the personal liberty of a citizen is of an inherently high value next in value to right to life. This is the decision of the Court in the recent case of

FBN PLC V. A – G Federation Supra.

In FREP matters where unlawful arrest and detention are alleged the Court considers the behaviour displayed by Respondents in arresting the Applicant.

FBN PLC V. A – G Federation @ Para 130 Para 8. See also the case of
Jim – Jaja V. COP Rivers State Supra.

In this case the main issue before the Court is whether or not the Fundamental Rights of the Applicant was infringed by the Respondents' action.

Whether the arrest and detention was lawful and whether the action of the Police was within the armpit of the law and within the boundaries lines of their powers and duties under the law and Constitution. Every other issue in this case is ancillary.

The question that arises is Has the Applicant been able to establish from the facts before this Court that his rights and that of his wife, who is the 2nd Applicant, have been infringed by the action of the Police at the prompting and instigation of the 4 & 5 Respondents. Has the Claimants' rights infringed by the Police and the 4 & 5 Respondents that they deserve to be compensated as provided under ***S. 35 (6) 1999 Constitution as Amended.***

Has the Claimants been able to discharge that onus placed on them under the Constitution. Or was the Police right in the way and manner they discharged their duty in the present case in that they acted within the power and in accordance with the powers bestowed on them under the Constitution and the Police Act.

Not answering the question seriatim, the Police notified the Claimant why they came to his house in the just place. From the Affidavit of the Claimant, in Para 21

> **"... they zoomed off in the 2 vehicles they brought ... one of them told me they are from the Force Criminal Intelligence and Investigations Department Office in Owerri."**

Also the Police in accordance with the law S. 35 (3) informed the 1st Applicant why he was arrested going by the fact in Para 22 of the Affidavit in support where the 1st Plaintiff stated:

> **"Upon going to the Force Criminal Intelligence and Investigations Department Office in Owerri ... I was shown a petition against me by 4th Respondent wherein he stated I defrauded him by refusing to deliver the goods he ordered."**

Again the Police allowed the 1st Applicant to have access with his Counsel as he stated in Para 23:

> **"... through the person magnamity of one of the officers I was able to get in touch with my wife ... so that she can inform my lawyer where I was."**

The above is in line with the provision of the Constitution. He did not state about any torture until he was allowed to call his lawyer. A look at the EXHIBIT attached – EXHIBIT A titled undertaking, it is the lawyer that acted/signed as his witness in the said undertaken. Moreover, the undertaken was made in his letter headed paper.

Does it then mean that the Police printed the letter head or that the 4 & 5 Respondents manufactured the said letter head since the Applicant claimed that the undertaken was involuntarily made under torture.

Again can his lawyer be their witness his client being tortured or having been tortured and then agree to witness for an undertaking by the same client who was tortured as alleged. Meanwhile this incidence took place in March 2018 but this action was filed in August 2018 five (5) months after the incident.

The 1st Applicant was also allowed to write his statement by the same Police. That action also is in line with the law and Constitution

> **"Before the arrival of my lawyer ... I put down my statements ..."**

The Applicant claimed he was humiliated and intimidated by the Police to do so and was also forced and intimidated into agreeing to pay the money or supply the goods to the 4th Respondent.
The allegation that at about ---- Police brought out an agreement which was already and forced him to sign is misleading. Hear the Applicant in Para 27:

> ***"That the men of the Police force brought out an agreement that was already prepared without my consent or knowledge and forced me to sign the agreement and."***

Meanwhile as already stated in this Judgment this undertaken EXHIBIT "A" was written in the letter head paper of the 1st Applicant was witnessed and the lawyer Applicant – Ikiruku Kennedy of No. 5 College Road, Ogui New Layout Enugu, a legal practitioner witnessed for and was present when the 1st Applicant signed this undertaken.

This Court finds it difficult to believe that the said undertaken was obtained by torture or that it was written by the Respondents or that the Applicant signed it for fear of his life. It is the humble view of this Court that the Respondent voluntarily signed the said undertaken knowing fully well that he was indebted to the 4th Respondent.

Again the statement that the 1st Applicant has never met the 4th Respondent is grossly misleading and has no element of truth in it. If actually he never met the 4th Respondent before the so called meeting, how come he undertook to pay and actually paid the 4th Respondent who he alleged never had any business with a total sum of five million naira (N5, 000,000.00) only? The simple answer is that he undertook to pay and actually paid the five million naira (N5, 000,000.00) only because he knows the 4th Respondent and knows that he is indebted to him.

The letters of the undertaken does not look as it emanated or was written by anyone who have no knowledge of the business.

If actually the Applicant does not know 4th Respondent but only knew Loveday Ehighibe why did he not join the Mr. Loveday as a party in this case. The simple answer is that ab – initio he knew that the 4th Respondent was in the picture of the supply of fish. There is no way the Police can torture a person to accept to be indebted to a person whom he has no business dealings with. There is no amount of the so called

alleged torture that will make a person to pay five million naira (N5, 000,000.00) to a total stranger just because the Police had asked him to pay.

It is obvious, and the 1st Applicant knows it, that the Police came to his house based on the petition after all effort to make him come to the station failed as he must have been dodging the 4th Respondent. The so call raid was in the legal and in exercise of the duty and function of the Police based on the petition written by the 4th Respondent. The so called arrest was to enable the Police interrogate him and to allow the Applicant state his own side of the story.
The arrest and detention was in order, legal, and constitutional and also lawful. That is a way to allow the Applicant exercise his right to fair hearing at that stage of the case.
After all according to the 1st Applicant in **Paragraph 20** of the Affidavit in support of his application he said **"they zoomed off.**

Para 20 **... one of them told me they were from Force Criminal Intelligence and Investigation Department (FCIID) office in Owerri Imo State."**

In **para 21** of the same Affidavit the 1st Applicant stated:

> **"... On getting to the Force Criminal Intelligence and Investigation Department office in Owerri he was shown a petition against him by 4th Respondent wherein it was stated that he defrauded the 4th Respondent by refusing to deliver the goods he ordered."**

The above simply is what brought the Police into this case. The Police was to investigate the allegation made by the 4th Respondent against the 1st Applicant's failure to deliver the goods which the 4th Respondent had paid fully for.

Without further ado the Police acted within the ambits of their power under Police Act by arresting, detaining, interrogating and investigating the said allegation of fraud. The action of the Police is legal and should not be painted as infringement of the right of the Applicant the way it is being portrayed by the Applicants.

So this Court holds that the Police did not infringe on the rights of the Applicants.

This Court does not believe that the Police slapped and kicked the pregnant wife of the Applicant as alleged because they have no cause to do so after all the Police has the person they were looking for which is the 1st Applicant.
Again the 1st Applicant did not tell the Court that the petition was for the Police to help the 4th Respondent to collect the money owed to him by Applicant. It is only on allegation of defrauding by failure to supply and deliver the goods the 4th Respondent had ordered.

It is the humbly view of this Court that the undertaken was not done under any duress, torture, intimidation or harassment as the Applicant alleged. He voluntarily made the said undertaking in his own hand, signed same and witnessed by his lawyer. That action was done by the Applicant and 4th Respondent as business friend who knew each other and who have existing business relationship as spelt on face of the undertaking.

The Police has no hand in it. The payment was as agreed by the 1st Applicant and 4th Respondent. The payment was not to be done in the Police FCIID or in the presence of any Policeman. The part N2, 000,000.00 (Two Million Naira) of N5, 000,000.00 (Five Million Naira) was not paid to the 4th Respondent through the Police but was paid to the 4th Respondent through the 5th Respondent going by the averment in **Para 27:**

> **"... and a transfer of N2, 000,000.00 (Two Million Naira) was made to the 5th Respondent (Alphonsus Umeadi) (emphasis mine) Documents showing confirmation of the transfer of the N2, 000,000.00 (Two Million Naira) = is attached and marked EXHIBIT C."**

Also the averment in **Para 28** also shows that the cash of N3, 300,000.00 (Three Million, Three Hundred Thousand Naira) was equally handed over to the same 5th Respondent who the Applicant had told the Court was asked by Loveday Ehighibe to mediate between Ehighibe and 4th Respondent.

> **"... the cash of N3, 300,000.00 (Three Million, Three Hundred Thousand Naira) was handed over to the 5th Respondent."**

The above shows and further confirmed that the Police 1 – 3 Respondent have no hand in the collection of any money in this case. It further confirmed also that the role Police played was for investigation of the allegation of fraud and nothing more.
Again the averment in **Para 26** are just their ----- to weep up sentiment in order to nail the Respondents. Stating that Agreement was characterised with elements such as the Police avowing to kill the 1st Applicant if he did not pay back the money **Para 26 (f) N11, 000,000.00 (Eleven Million Naira)** spent in the arrest of the 1st Applicant **Para 26 (e).** Inflation of the money from **N13, 000,000.00 (Thirteen Million Naira) to N24, 000,000.00 (Twenty Four Million Naira) – Para 26 (d).**

All that statement/averment are false and disappointing, misleading and grossly untrue as no such things are not reflected in the said agreement which the same 1st Applicant attached as EXHIBIT A. So also the allegation that 5th Respondent told the Applicant that N300, 000.00 (Three Hundred Thousand Naira) out of the N5, 000,000.00 (Five Million

Naira) was for bail of the 1st Applicant. That is hearsay; just like the so alleged called phone calls from unknown numbers.

The Applicant was economical with truth as it pertains to the actual number of days he was spent in the Police station. Going by what he averred, the same day he was taken to Owerri, at about 1:00am he was tortured and that same day he was asked to sign the undertaking witnessed by lawyer and his brother brought the N3.3m cash and transfer was made.

The 1st Applicant should have been more specific with time and date for the Court to be sure that there was detention.

The Applicant was aware of the reason why the Police arrested him. He was informed about where he was been taking to and who arrested him, he was given chance to have his say by the statement he made voluntarily to the Police. When the Police was done they allowed him to go, having concluded their interrogation. The Police never ordered or forced him to write the undertaken, he did so voluntarily. It was made between him and the 4th Respondent only. He had before getting to the Police knew he will make the undertaken that is why he came with his letter head paper on which the undertaking was written.
There was no torture.
There was no infringement of the 1st Applicant's right neither by the 1st – 3rd Respondents nor the instigation of 4th & 5th Respondents. The right of the Applicant were never infringed or breach so. So this Court holds.

The allegation of conspiracy between the SCIID Owerri and Complainant – 4th Respondent is unsubstantiated. So also the averment in **Para 32** that after the Applicant made a report to SCIID Umuahia, Abia State:

> **"That I was invited to a meeting at the SCIID Umuahia, Abia State and on getting there the 5th**

Respondent was already there trying to transfer the case to FCIID Headquarters Abuja."

To start with the 5th Respondent is not a Policeman and has no capacity or temerity to transfer the case file of the 1st Applicant to the FCIID at Abuja.

The said 5th Respondent must have been there to answer to the petition written by the 1st Applicant against him. Meanwhile, the Applicant wrote a petition to the Abia SCIID. He never stated he wrote a statement but only a petition. Then in **Para 33** he then averred that when he questioned why his file was been taken to Abuja he was now forced by the Police to rewrite his statement at the Umuahia Abia State CIID. He did not attach a copy of the rewritten statement or put the Police on notice to present same.

The Applicant did not also tell the Court the names or at least the number of the mobile phone used by the Investigating Police Officer who sent the SMS that the case file was back in Abuja.
It is no secret that every call from mobile phone in Nigeria can be tracked and traced, the caller and the location traced without easily. How come the unknown numbers that call the 1st Applicant cannot be tracked or traced? This Court does not believe that story because it is not true.

Again the 1st Applicant was not able to state the name of any of the officers of SARS, STS and IGP Monitoring Team who had told him to bring the money when coming to Abuja. He never also told this Court that he reported to Abuja or was detained at Abuja or Umuahia and how long the detention if any.

It is obvious that ne never was detained at these 2 places. So no violation of his freedom of movement or personal liberty, dignity of his human person or even his right to acquire immovable property. ***SS. 41, 34, 35(1) & 43 of the 1999 Constitution as Amended.***

It has been held in plethora of cases that the personal liberty of a citizen is not absolute.

In that it can be tempered with once the citizen is as been, is being or suspected to have committed a criminal offence under any laws of our land.
Once the tempering is in accordance with a procedure permitted by law, such tempering cannot be said to be illegal or an infringement of the right of the citizen as presented in **CAP 4 of the 1999 Constitution as Amended or Ord II FREP 2009. See also S. 35 (1).**

In this case the Police informed the Applicant their reason for arresting him, told him where they were from, shown him the petition written by the 4th Respondent against him which was based on allegation of defrauding the 4th Respondent and not on debt recovery, also allowed him to call his lawyer who met him at the Police Station at Owerri, interrogated him, allowed him to voluntarily write statement to the Police in his own hands and then released him to go, did not violate his right. Rather the Police followed due procedure permitted by law. There is no illegal arrest and detention.

That is the view which this Court cherishingly hold because that is the truth and nothing but the truth in this case.
Very arrest and detention by the Police does not tantamount to violation of one's right.

On the ancillary issues, parties are bound by the agreement the entered into when the going was good more so when such agreement or undertaking was penned down and parties signed and their signature witnessed by credible citizen. Such parties should not run to the Court when the fail to fulfil their obligations under such Agreement, anchoring on involuntariness of the agreement, intimidation, torture and harassment.

The Court is Court of Justice and Justice is open to all parties. Again all parties have their right under the law. The end of party A's right is but the beginning of party B's right.

To be entitled to damages in a FREP Action is not a matter of course; it must be merited.

Going by the most recent Supreme Court decision in:

> ***Muhammed V. IGP***
> ***(2019) 4 NWLR (PT. 1663) 499 Para 9***
>
> "By virtue of the **provision of S. 35 (6) of the 1999 Constitution as Amended, any person who is *unlawfully arrested and detained* is entitled to compensation and public apology from the appropriate authority or person specified by law. Thus a person who has proved that he was unlawfully arrested and detained is automatically entitled to award of compensation**" (emphasis mine).

In the above case, the Apex Court has made it very clear that to automatically be entitled to damages, the person must have proved with credible evidence that he was unlawfully arrested and unlawfully detained. Otherwise the person is no entitled to enjoy the damages and public apology.

Unfortunately, the Applicants in this Suit have not been able to prove that the arrest and detention of the 1st Applicant by 1st – 3rd Defendants at the instance of 4th & 5th Respondents were unlawful. So Applicants are not entitled to compensation and any public apology.

That being the same
This application lacks merit and it is therefore DISMISSED as it is only a ploy to forum-shop and gold digging.
This is the Judgment of this Court delivered today
the -------- day of ----------, 2019 by me.

_____

JUSTICE K.N. OGBONNAYA

HON. JUDGE

28/01/2020

The Chief Registrar
FCT High Court
Maitama, Abuja

Through
Estate Officer

REQUEST FOR THE TILING OF MY LORD JUSTICE K.N. OGBONNAYA'S OFFICE AND REPLACEMENT OF RUG/CARPET IN THE L.A. OFFICE.

I write in respect of the above stated. Reason being that work has been concluded but the above mentioned is yet to be replaced.

Thanks in anticipation.

Yours Faithfully,

I.A. SADIQ

FOR HON. JUSTICE K.N. OGBONNAYA

28/01/2020

The Transport Officer
FCT High Court
Maitama, Abuja.

REQUEST FOR REPLACEMENT OF 4 TYRES FOR MY FORD OFFICIAL CAR.

I wish to request for the above subject matter.

Reason being that the once in my official car is long due for replacement.

Thanks in anticipation.

Yours

K.N. OGBONNAYA
HON. JUDGE