IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 4TH MARCH, 2020.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/136/19

BETWEEN:

MR. FEMI GABRIEL:……...APPLICANT

AND

1. NIGERIA POLICE FORCE
2. INSPECTOR GENERAL OF POLICE
3. COMMISSIONER OF POLICE
4. AGGREY EDEWOR :..RESPONDENTS

DayoOyewunmi for the Applicant.
Respondents not represented.

JUDGMENT.

This is an application brought under the Fundamental Rights brought pursuant to Order 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria(as amended).

The Applicant prayed for the following reliefs;

1. A Declaration of this Honourable Court that the arrest and detention of the applicant since the 21st day of October, 2019 by the 1st-3rdRespondents in a contract related transaction without warrant is unlawful, illegal and is a violation of the applicant's rights to personal liberty, guaranteed and protected by section 35 of the Constitution of the Federal Republic of Nigeria 1999 as amended.

2. A Declaration that the 1st-3rd Respondents meddling with the civil case between the applicant and the 4th Respondent and demanding the applicant to pay purported moneys to them for the 4th respondents amounts to breach of the statutory duties of the1st-3rd Respondents and is an infringement on the applicant's fundamental right.
3. An Order directing the 1st-3rd Respondents to release the applicant from detention with immediate effect.
4. An Order of mandatory injunction restraining the Respondents from further arresting and detaining the applicant.
5. A Declaration of this Honourable Court that the Applicant is entitled to compensation and a written apology from the Respondents jointly and severally.
6. An Order of this Honourable Courtdirecting the Respondent jointly and severally to pay Applicant the sum of N50,000,000.00 (Fifty Million Naira) only as compensation for his illegal and or unlawful arrest and detention without warrant.
7. An Order of perpetual injunction restraining the Respondents, their agents, privies, cohorts, representatives whatsoever, howsoever called from further breach of the constitutionally guaranteed rights of the Applicant.

The application is supported by a statement and 17 paragraph affidavit deposed to by Gabriel Kayode. On the 11th December, 2019, the Applicant's counsel moved the motion to enforce the fundamental rights relying on the 17 paragraph affidavit in support of the application.Learned counsel also adopted his written address as his submission and urged the Court to grant the reliefs of the said application.

From the Court's records of the file, there is no evidence of service of the originating process on the respondent in compliance with Order V Rule I which requires service to be done by the **"Sheriff, Deputy Sheriff, Bailiff or other Officer of the Court".**

Their counsel who effected service merely filed the endorsement copy of the originating process without any affidavit of service accompanying it.

Secondly, it is also observed from the reasons that AmehinAbimobowei an officer of the Court served Applicant further affidavit and hearing notice on all the Defendants on 15th November, 2019.

The purported Applicant's further affidavit does not have the deponent's passport photo and the seal of the Court. Let me address the technicalities in this application which I consider fundamental.

Firstly, the Fundamental RightsEnforcement (Enforcement Procedure) Rules 2009, is under a special class of legislation whichis sui generis whereby, service of the originating process directly on the persons or respondents are mandatory through the Sheriff, Deputy Sheriff, Bailiff and other Court officials.

The Order V Rule I was not complied with. It is a technical blunder to serve on the Respondents further affidavit and hearing notice through the Court official when the originating process was not properly served on the parties by the Bailiff or Sheriff as required by the law.

The Supreme Court therefore held in **ZakiMamman&anor v. Mall. Dan Hajo (2016) LPELR 40653 SC,** that;

"The welllaid down principles of the law is that one cannot put something on nothing and expect it to stand, it will certainly collapse…"

All the purported service of the originating summons on the respondents in this matter were void. It all means that the act of serving further affidavit and hearing notice without the proper service of the originating summons were all a nullity, bad and incurably bad. Therefore, every proceedings founded on it is of course incurably bad and a nullity. The effect of such a void act is that you cannot put something on nothing and expect it to stand. Thus Order 2 Rule 1(4) of Fundamental Rights Enforcement Procedure, 2009 is elaborately interpreted in the authority of **Chief Sunday EyoOkonObong v. Patrick Leo Edet&anor (2008) LPELR 8454 (CA).**

"In my view, the lone issue revolves on a very narrow compass. It is simply put, whether by the provisions of Order 2 Rule 1(4) of the Fundamental Rights (Enforcement Procedure) Rules, 1979, the appellant is required to file and serve proof of service of the motion on notice on the respondents and whether failure to serve the already filed affidavit of service on the respondents will rob the Court of jurisdiction to entertain a case under the fundamental right procedure. To appreciate the issue involved in this appeal it is necessary to examine, at this juncture, the provisions of Order 2 Rule 1(4) aforesaid. It provides as follows: "An affidavit giving the names-and-addresses of, and the place and date of service on, all persons who have been served with the motion or summons must be filed before the motion or summons is listed for hearing, and if any person who ought to have been served under paragraph (3) has

not been served, the affidavit must state the fact and the reason why service has not been effected, and the said affidavit shall be before the Court or Judge on the hearing of the motion or summons...”

Order2 Rule 1(4) of the Rules is mandatory. A careful perusal of the provision reproduced above clearly indicate, that it is mandatory for the applicant under Order2 Rule (4) to file an affidavit giving the names and addresses of and all persons who have been served with the motion or summons and it must be filed before the motion referred to is listed for hearing. Secondly, if any person who ought to have been served, under Order 2(1) & (3) of the rules has not been served, the affidavit must state the fact and the reason why service has not been affected. Thirdly, the said affidavit shall be before the Court or Judge at the hearing of the motion. The foregoing are fundamental condition precedents to the hearing of an application under the Fundamental Rights (Enforcement Procedure) Rules. Failure to comply with the conditions precedent is fatal and it robs the Court of the jurisdiction to hear the application. Noncompliance with the conditions precedent is not a mere irregularity rather it goes to the competence of the trial Court to entertain the action.

However, assuming without conceding that the services of the originating summons are considered proper, the Applicantgrouse was a 7 paragraph reliefs as stated earlier and in proof of these reliefs, the Applicant relied on an 18 paragraph affidavit particularly paragraphs 7-14;

“7. That I know as a fact that on the 14th day of February, 2019, the 4th Respondent as Managing Director of Strong Roofing Limited appointed the applicant as their Funds Manager.

8. That I know as a fact thatbase on this appointment, the 4th Respondent gave the applicant the mandate to invest the company funds in short term projects, contracts and trade with high yielding interest.

9. That I know as a fact that base on the fact stated above, the Applicant invested the said funds into short term project with the knowledge of the 4th respondent.

10. That I know as a fact that the beneficiaries whom the Applicant allocated the funds failed, refused and neglected to refund the principal sum.

11. That I know as a fact that the Applicant reported this act of diversion and criminal breach of trust by the said beneficiaries to the Economic and Financial Crime Commission (EFCC) and also seek their intervention with the knowledge of the 4th Respondent.

12. That I know as a fact that on the 21st day of October, 2019, the Applicant was arrested by the 1st – 3rd Respondents on the compliant of the 4th respondent that he has refused to pay back.

13. That I know as a fact thatthe 4th Respondent became aggrieved when the Applicant decided to resign from his employment and the 4thRespondent was afraid that he may not get his money back, hence the deceptive complaint against the Applicant to the 1st to 3rd respondents.

14. That I know as a fact thatthe unlawful and unjustifiable actions of the respondents subjected the Applicant to ridicule, public odium, contempt,

psychological agony and trauma and that it has devastated the psychological balance of his wife and the four (4) of his under aged children (ages between 2-9).”

It is settled law in matters involving breach of Fundamental Rights, that the Applicant must prove his case to enable him enjoy his remedial reliefs.

Section 34 of the 1999 Constitution as amended states;

“(1) Every individual is entitled to respect for the dignity of person, and accordingly –

(a) No person shall be subjected to torture or to inhuman or degrading treatment.
(b) No person shall be held in slavery or servitude; and
(c) No person shall be required to perform forced or compulsory labour.”

The words used in Section 34 of the 1999 Constitution is not only clear but unambiguous and the Court is forbidden to import any foreign words but is bond to assign to the words their ordinary meanings. The intendment of the authors of Section 34 is that no person should be inflicted with severe pain or bodily injury or mind or inhuman treatment such as mental or physical cruelty or severe pain endangering the lifeof that person. Further that any action of any person inflicting or creating a foundedapprehension of such fear or danger in a manner bringing disgrace or dishonour and on PROOF of these actions would amount to violation of the rights of applicant.

I have meticulously read the affidavit evidence of the Applicant and have painstakingly reproduced the essential paragraphs and in the absence of any controversial counter affidavit, there

was no account surrounding the arrest, detention, torture or any inhuman treatment proved by the Applicant. I consider this application lacking in bonafide and not establishing any violation of the fundamental rights of the Applicant. Inferably, the affidavit evidence is bare, unclothed, naked, nude, providing no shelter for the Applicant, barren, desolate, lacking legal covering and is legally inadequate to cloth the Court with competence to entertain the suit.

It is my finding that this matter is initiated before this Court by undue process of the law and therefore is unenforceable. The application is therefore dismissed for its incompetence.

HON. JUSTICE A. O. OTALUKA
4/3/2020.