

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 7TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N.OGBONNAYA
JUDGE

SUIT NO.:FCT/HC/CV/122/19

BETWEEN

OFEM EKAPONG OFEM

}

APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE
2. NIGERIA POLICE FORCE
3. COMMISSIONER OF POLICE FEDERAL
CAPITAL TERRITORY
4. ECONOMIC AND FINANCIAL
CRIMES COMMISSION
5. CHAIMAN EFCC
6. UZOMA GABRIEL UDEMBA
7. COMMUNICATION TREND LTD
8. SCHWARTZ KRISTOFFEL ENGINEERING
SERVICES LIMITED

}

RESPONDENTS

JUDGEMENT

Mr. Ofem Ekapong Ofem a Business Development Consultant instituted this action against; the Inspector General of Police, Nigeria Police Force,

Commissioner of Police Federal Capital Territory, Economic and Financial Crime Commission, Chairman Economic and Financial Crime Commission, Uzoma Gabriel Udemba, Communication Trend Limited and Schwartz Kristoffel Engineering Services Limited. In the action the Claimant/Applicant is challenging the action of the Respondents and claiming the following reliefs:

- (1) A Declaration that the threats of arrest and detention of the Applicants by the 4th and 5th Respondents – EFCC & its Chairman as being instigated by a petition written by 6th – 8th Respondents, same petition which was submitted to and is currently a subject of investigation by 1st – 3rd Respondents (IGP, NPF and COP) and for which the Applicant is currently being detained by 1st – 3rd Respondents, infringes and likely to infringe on the Right of the Applicant to personal liberty as captured in S.35 of the 1999 Constitution as amended and Article 6 African Charter on Human and Peoples’ Right and therefore is unconstitutional, wrongful, illegal, null and void.**
- (2) An Order of Perpetual Injunction restraining the 4th – 8th Respondents by themselves, their servants, officers, agents and cohorts under**

any guise from instigating or harassing, threatening and arresting or detaining the Applicant or further violating his Fundamental Rights to personal liberty cognizable and guaranteed by S.35 of the said Constitution and Article 6 of the African Charter on Human and Peoples' Right.

(3) General/Exemplary Damage against the 4th – 8th Respondents jointly on severally in the sum of Ten Million Naira (N10, 000,000.00) only for flagrant infraction and likely infraction of his right.

He based the application on the following grounds:

That as a business development consultant he worked for several years as a freelance business development consultant with the 6th to 8th Respondents.

That on or about January 2019 he wrote to the 6th Respondent – Uzoma Gabriel Udemba withdrawing his services.

That this apparently embittered the 6th Respondent who wrote a petition and submitted same to several Security Agencies and mobilized them to arrest him.

That on the 13th day of May 2019, he honored the invitation by men of Nigeria Police in Lagos – (1st – 3rd Respondents). He was shown a petition which stated that he has converted the official

vehicle given to him by 6th Respondent and has tampered with the website of the 6th – 8th Respondent business.

That he explained to the officers of 1st – 3rd Respondents that he had written to the 6th Respondents that the said car was at the mechanic workshop for repairs before he will return it to them. That he also took the 1st – 3rd Respondents officers to the mechanic workshop where they saw the car and then towed the car to their station in Lagos.

He also explained to 1st – 3rd Respondents that he did not tamper with the website as wrongly alleged. But that during the process of transferring the website to the 6th Respondent, the website crashed and that he as fixed same and it is in good and working condition.

Also that he was detained on the 13th day of May, 2019 in the said Police Station and on the 14th day of May, 2019 he was brought to Abuja and is still being held at the FCIID, Area 10 Garki Abuja where he has volunteered a statement and answered some questions to aid the 1st – 3rd Respondents investigation.

That on the 15th day of May, 2019 at noon men of EFCC – 4th Respondent came to the FCIID demanding that he be handed over to them but the 1st – 3rd Respondents refused and that caused exchange of words between 1st – 3rd Respondents and 4th Respondent.

That the men of 4th Respondent left the FCIID vowing to arrest and detain him immediately 1st – 3rd Respondents grants him

admin Bail. That this threat of arrest and detention has made the Applicant afraid, harassed and intimidated.

That he has suffered or/about to suffer infringement of his right to personal liberty as guaranteed under S.35 of the 1999 Constitution as amended and Article 6 African Charter on Human & Peoples' Rights.

And that he had suffered damages, trauma, indignation, discomfort, distress, hardship and embarrassment as a result of the massive invasion of his Fundamental Right by the said Respondents.

He supported the application with Affidavit of 4 paragraphs which was deposed by F. Baba Isa.

In the 6 pages Written Address based on **Order 1 Rule 5 FREP 2009** where he raised 2 (two) Issues for determination which are:

- (1) “Whether the threat and the detention of the Applicant by 4th & 5th Respondents as being instigation by petition written by 6th – 8th Respondents, same petition was also submitted to and is currently a subject of investigation by 1st – 3rd Respondents and of which he is currently being detained by the 1st – 3rd Respondents, infringes or is likely to infringe on his right to personal liberty as captured in S.35 of the 1999 Constitution as**

amended and Article 6 African Charter on Human and Peoples' Right?"

- (2) **"If Issue No 1 thereof is resolved in favour of the Applicant, whether the Applicant is entitled to award of General/Exemplary damages, Declaration, Order and/or Injunction(s)?"**

On Issue No 1, referring to the case of **Saidu V. State (1982) 4 SC 69** the Counsel for the Plaintiff submitted that it does not give the Court joy to see offenders escape the penalty they richly deserve but until are proven guilty under the appropriate law in our Courts. They are entitled to walk about our streets and tread the Nigerian soil and breathe the Nigerian air as free as innocent men and women. That S.35 of the 1999 Constitution as amended gives every citizen right to personal liberty which is jealously guarded by the citizens. That based on the Court decision a person cannot therefore be deprived of such right to personal liberty except in a manner prescribed by that Section of the law and in accordance with the procedure permitted by law. He referred to the case of:

**Federal Ministry of Internal Affairs V. Shugaba
Abdurahman Darman
(1982) 1 FNLR 200**

**Agbakoba V. Director SSS & A-G Federation
(1994) 6 NWLR (PT. 351 @ 475)**

That any man who procures police to do some illicit duties for him should be ready to face legal consequences of that illegality. He relied on the case of:

**Udeagha V. Nwogwugwu
(2013) LPELR CAK/44/05**

Agbakoba V. Director SSS Supra.

He urged the Court to adopt the decision of the Court in the above cases and resolve the Issue No 1 in the Applicant's favour against the Respondents.

On Issue No 2, he submitted that the Applicant is entitled to General/Exemplary Damages that is commensurate with the gross violation of his fundamental right as guaranteed by the said provision of the Constitution and African Charter on Human and Peoples' Right.

That it is well settled that general damages which are consequence of a wrong done to an Applicant by Respondents can be awarded in an action for enforcement of Fundamental Right as guaranteed under CAP iv 1999 Constitution as amended and African Charter on Human and Peoples' Right.

That Exemplary Damages are usually awarded when Defendant's conduct is unconscionable and unjustifiable and has resulted in great suffering for the Applicant as in the present case.

That the constance harassment and the threat of arrest in the circumstance of this case by the Respondents is unjustifiable, reckless and without respect for the Applicant's Fundamental Rights.

That Court is enjoined to award damages where that is the case to serve as deterrent against naked, arrogant, arbitrary and oppressive abuse of power. He referred to the case of:

Federal Ministry of Internal Affairs V. Shugaba Abdurahman Darman Supra.

He further submitted that it is settled law that General Damages which is consequence of wrong done to an Applicant by Respondent can be awarded in an action for enforcement of such infringed rights. He urged the Court to resolve Issue No 2 in the Applicant's favour and grant all the reliefs sought.

All the Respondents were served with all the Processes filed by the Applicant.

1st – 3rd Respondent did not enter appearance or file any Counter Affidavit.

Only the 4th & 5th Respondent that entered appearance and filed a Counter Affidavit challenging this application. The 6th – 8th Respondents who the Applicant alleged instigated the 1st – 5th Respondents to infringe on his right did not file any Counter Affidavit to challenge this application, though they fielded a Counsel to represent them and one officer from their office. Stood as Counsel Elis Ogiata for the 6th – 8th Respondents. While the 7th & 8th Respondents were represented by Onyewuforo Chima who described himself as Secretary to the 8th Respondent – Schwartz Kristoffel Engineering Services Limited.

Judith Ukomadu stood for the 7th Respondent – Communication Trend Limited. She is the branch Sales Manager of the 7th Respondent.

So this Judgment is based on the Originating Processes filed and duly served on all the Respondents, the Counter Affidavit filed by 4th – 5th Respondents.

It is imperative to state that this Court adopts its Ruling delivered on the 9th day of December, 2019 and its reasoning there to as part and parcel of this Judgment as if the said Ruling is here attached and read out at the stage in this Judgment.

The 4th – 5th Respondents in a Counter Affidavit of 20 paragraphs vehemently challenged this application by the Applicant.

They attached several documents which included series of printed E-mail messages, various Receipts Bank Deposit Slips/Transfer Forms Letter from Afoma E. Arika written to 5th Respondent – Chairman Economic and Financial Crime Commission (EFCC) dated 18/1/19, statement of Solomon Igun.

In a 10 pages Written Address the 4th – 5th Respondents, it is the story of the 4th – 5th Respondents that they are investigating the Applicant based on a petition on allegation of fraud/crime which the Applicant committed while in the service/employ of Udemba Group of Companies. That the allegation borders on cyber crimes and fraud. That the Applicant generated fake E-mails obtained various payments made to him which was traced to his domiciliary Account. They attached evidence of the said payments in the deposit slips belonging to the Applicant which were submitted for investigation.

That they are yet to investigate the Applicant though investigation has commenced in earnest in order to determine the culpability or otherwise of the Applicant. That they are surprise to see that the same

Applicant has instituted this action challenging the investigation being carried out and challenging breach of his right to personal liberty.

The 4th – 5th Respondents raised two Issues for determination which are:

- (1) “Whether the Applicant is entitled to the Reliefs sought.”**
- (2) “Whether the various constitutional provision alluded to by Applicant can avail him giving the circumstance of this case.”**

They submitted that whoever asserts must prove. That Applicant who alleged infringement of his right must prove that his rights were breached without any reasonable suspicion that he has committed a crime. They relied in the case of:

**Fajemirokun V. Commercial Bank
(2009) 2 MJSC (PT.11) 114 @ 140 paragraph C**

They also referred and cited in full the provision of **S. 131 – 133 EA 2011 as amended.**

That the onus is on the Applicant to establish infringement of the said right otherwise Judgment should be given against him and he will not earn the Reliefs sought in this application.

That by the averment in paragraph 3 D of Affidavit in support, the Applicant admitted there is a petition against him. But that the Applicant is economic with the truth when he stated that 6th Respondent mobilized the 5th Respondent to arrest him. That by

paragraph 9 (a), e, f and g of the Counter Affidavit by 4th – 5th Respondents revealed that Applicant is been investigated for allegation that he is reasonably being suspected to for having committed an offence/crime.

That as such all the allegation that his right has been violated should be discountenanced as such the Court should not believe him.

That the Applicant was never at any time unlawfully arrested, detained or threatened to be arrested and detained.

That Applicant has not been able to show that the 4th – 5th Respondents breached or is about to breach or infringe on his right as they have not even invited Applicant to their office for investigation.

That the 4th – 5th Respondents are not bound to put before the Court any set of fact to prove their innocence as the Applicant failed to discharge the onus placed on him by law. That the Court should refuse to grant the Reliefs since the Applicant failed to establish allegation of infringement.

They further submitted that it is incumbent on Applicant to present before the Court all material evidence to enable the Court determine all issues of controversy in this case. Since Applicant failed to place those credible materials evidence before the Court the application must fail. They referred to the case of:

**Oyewole Sunday V. Adamu Shehu
(1995) 8 NWLR (PT. 717) 132**

That he has failed to establish that his right was unreasonably breached or threatened by 4th – 5th Respondents.

That a citizen's right is not absolute and can as such be tampered with so as to prevent him from committing an offence. He relied on the case of:

Emeka Ekwenugo V. FRN

(2001) 6 NWLR (PT. 708) 171 @ 185

Asari Dokubo V. FRN

(2007) 12 NWLR (PT. 1048) 320 paragraph A – 6

S. 35 (1) (c) 1999 Constitution as amended.

He submitted that the Applicant was never arrested or threatened to be arrested or unlawfully detained. That investigation of the allegation against the Applicant is still ongoing. That his response to the allegation and matters arising thereto will be required at the appropriate time. Therefore his claims of sufferings, damages etc as alleged is not only false but also misleading. He referred to the case of:

Amaechi V INEC & 2 ors

(2008) 5 NWLR (PT. 1080) 272 @ 307

That 4th Respondent has the power under the law to investigate and prosecute financial crimes and other related offences. It also has the power to investigate any report made to it. That where there is reasonable suspicion that an offence has been committed or about to be committed has a right to invite the person, interrogate by giving the person chance to be heard. They referred to **S.5, 6 & 7 EFCC ACT 2004.**

That this application requesting Court for a Perpetual Injunction to restrain 4th – 5th Respondents from carrying out their statutory duty will if granted, amount to meddling and interfering with the role and duties of the 4th – 5th Respondents as Law Enforcement Agency. That such action will not be in the interest of justice, democracy and separation of powers as envisaged under the Constitution. They referred to the case of:

Hassan V. EFCC

(2014) 1 NWLR (PT. 1389) 607 @ 613 Ratio 13

He further submitted that the Applicant has not made out a case to entitle the Court to interfere with the statutory powers of 4th – 5th Respondents. That it will be improper for the Court to grant the Reliefs sought. He urged the Court to so hold.

On Issue No 2, “whether the various constitutional provision alluded to by Applicant can avail him giving the circumstance of this case” the Counsel submitted that though constitutional Right to personal liberty is sacrosanct yet it is not absolute. That by virtue of the provision of S. 35 (1) (c) 1999 Constitution as amended as well as the deposition in the Counter Affidavit by the 4th – 5th Respondents, the Applicant has failed to prove his case. That it is trite law that a Court cannot make an Order to restrain the performance of statutory duty of investigation and prosecution of any person who is alleged or suspected to have committed an offence or crime. He referred to the cases of:

1) Fawchun V. IGP

(2002) 7 NWLR (PT. 767) 606 @ 686 – 687

**2) Bamidele V. Comm of Local Government
(1994) 2 NWLR (PT. 329) 568 @ 583**

**3) Peter V. Okoye & Anor
(2002) FWLR (PT. 110) 1864**

Again they submitted that it is trite law that any Order of Court purporting to restrain the performance of statutory duty of investigation and prosecution of crime is incompetent, null and void ab initio. He referred to the case of:

**A-G Anambra V. Chris Ubah
(2005) 33 WRN @ 191**

They urged the Court to hold that a body like the Economic and Financial Crime Commission (EFCC) cannot be restrained from performance of its statutory duty/function.

On asking for damages of Ten Million Naira (N10, 000,000.00) against the Respondents they submitted that it is frivolous gold-digging and face-saving as the rights of the Applicant were never breached or infringed by the 4th – 5th Respondents. That there must be proof of a wrong or economic loss before Applicant can be entitled to compensation which is not the case in this application. That 4th – 5th Respondents committed no wrong against the Applicant but only carrying out their statutory and constitutional duties. They referred to the case of:

**Borishade V. National Bank Nigeria Limited
(2007) 1 NWLR (PT. 1015) 241 @ 246 – 247**

S. 6 & 7 EFCC ACT 2004

They finally submitted that compensation is not award as a matter of course but at the discretion of the Court which must be exercised judicially and judiciously in accordance with the laid down guided principle where litigant has been able to establish his case.

That the present application is only to overreach the 4th – 5th Respondents in order to frustrate them from carrying out its statutory functions.

They urged Court to dismiss the application as being frivolous and an abuse of Court process as the Applicant is already being investigated in respect of the action and activities that lead to this application based on suspicion of committing or about to commit alleged crime. That this application is only as a shield used by the Applicant to circumvent the investigation. He urged the Court to dismiss same.

COURT

The functions of Police and Economic and Financial Crime Commission (EFCC) are all well known as spelt out in both the S. 4 Police Act and S. 6 & 7 EFCC Act 2004 as well as in the sacred provision of the 1999 Constitution as amended.

The same Constitution spelt out in CAP 4 at S. 35 (1) (c) that a citizen's right to liberty is sacrosanct but not absolute. As such Right to personal liberty can be rightfully interfered with upon commission, suspicion of commission and in order to prevent the commission of crime. The powers of Police, EFCC and other similar government established

agencies to investigate, arrest, interrogate, detain and prosecute crime cannot be overemphasized. Because without such powers our country will be overrun by criminal and crime will become our culture and tradition and so anarchy will thrive and become the order of the day.

Hassan V. EFCC

(2014) 1 NWLR (PT. 1389) 607 @ 613

Again right to investigate, arrest, detain and prosecute is not equally absolute because the same Constitution said that for interference of right to personal liberty to be lawful, it must be in accordance with the procedure permitted by law.

To enjoy the absolute right to personal liberty, a citizen must ensure that he stays out of crime. So also to enjoy absolute right and power to investigate, arrest, detain and prosecute, Security Agencies must ensure that its activities in that regard is in accordance with the laid down procedure permitted under our laws. Any procedure outside that is an infringement on the sacred provision of S. 35 (1) (c) of the Constitution.

Dokubo V. FRN

(2007) 12 NWLR (PT. 1048) 320

Ekwenugo V. FRN

(2001) 6 NWLR (PT. 708) 171 – 185

Again it has been held in plethora of cases that no Court is authorized to interfere with or obstruct the Security Agencies from exercise of their statutory powers or performance of their statutory duties under the law.

Again Orders of Court should not be made to shield the culpable from facing the wrath of the law where it is established that such citizen has committed or suspected to be about to commit an offence. Because if it is so, it will amount to “aiding and abetting” the commission of crime and gross disobedience to the law of our land.

A-G Anambra V. Chris Ubah

(2005) 33 WRN 191

Kalu V. FRN

(2014) 1 NWLR (PT. 1389) 211

It has been held in plethora of cases that it is the duty of anyone who alleged violation or breach of his right under CAP 4, to establish that such right has actually been breached and how it was or is about to be breached. After all whoever asserts must prove. That is the decision of the Court in the case of:

Fajemi rokun V. Commerce Bank 2009 Supra @ P 137 – 140

In as much as any matter predicated on FREP does not follow strictly the Rule of evidence, it is incumbent on the Applicant in any FREP matter to establish his case and discharge that onus with fact as set out in the Affidavit in support of the application and other material evidence – documentary and otherwise where available/necessary to show the how, when and where his/the alleged breach or infringement of his right was done. It is unless and until the Applicant has done so that it can be said that the onus has been discharged, and the wrong is established. It is when or if the Respondents fails to challenge, debunk

such facts that the Applicant can carry the day and be entitled to the Reliefs sought and earn compensation in that regard. Where Applicant fails his application fails also. **S. 131 – 133 EA 2011 as amended.**

So grant of reliefs in a FREP application is based on merit and not on emotions or whims and caprices of an application who is not able to establish the infringement as alleged.

The Constitution provides for compensation but it is at the discretion of Court to grant same and award damages where proved. So where the Applicant has established infringement and had also shown through the facts in the Affidavit that he has suffered some losses bodily or economically even psychologically, the Court will naturally not hesitate to award compensation and damages. But it must be merited.

See **Borishade V. National Bank Ltd Supra**

The Court is not a Santa Clause that give gift free to people, even those who benefit from the gift of Santa Clause usually gets to where he is and these days shows interest that they are really zealous to see and benefit from the largesse of Santa Clause. This means that to enjoy and be entitled to the damages in any matter predicated on FREP Rule where there is allegation of infringement of Right, the Applicant must establish that those infringement actually occurred.

It is not all investigation to Security agencies that should be misconstrued as infringement or violation of a citizen's right. It should be remembered that the same Law Enforcement Agents have right to interrogate, investigate and prosecute after arrest and may be detention also. Right detention is not absolute either.

In this case the Applicant has alleged infringement of his right to personal liberty by the threat to arrest and detention by the 4th – 5th Respondents at the instance of 6th – 8th Respondents is wrong, unlawful and illegal, null and void.

He had told Court that he was detained at the facilities of the 1st – 3rd Respondents. From all indication he is not complaining about the detention by the 1st – 3rd who had invited him to their office first in Lagos and subsequently at Abuja FCIID when he was been detained when the 4th – 5th Respondents sought for him to be transferred to them

He had told Court that the 4th – 5th Respondents did not succeed to take him to their own detention centre.

It is imperative to reiterate that 4th – 5th Respondents as government security agency and agents has a right to communicate, liaise with similar government agencies in carrying out its duties where the need arise by following the laid down channel of communication.

From the facts in the Affidavit and the claims as set out in the application particularly claims No 1 & 2, the declaration and Order of Restraint sought is against the 4th – 5th Respondents and not against the 1st – 3rd Respondents who the Applicant claimed has detained him since the 13th day of May, 2019.

One wonders why the Applicant is more concerned about the alleged but unsubstantiated threat by the 4th – 5th Respondents to detain him if he is released on bail by the 1st – 3rd Respondents.

Only reasonable man would have expected that the main complainant on allegation of infringement would have been on long incarceration

than the yet to be effected allegation of arrest and detention by the 4th – 5th Respondents.

This Court finds it difficult to believe and also any reasonable man should also find it very difficult to believe that the 4th – 5th Respondents can bulldoze their way into the detention facility at the FCIID in order to arrest the Applicant without any formal notification at least verbally if not in writing.

This Court does not believe that 4th – 5th Respondents went to the FCIID Abuja as the Applicant want the Court to believe. Again even if they did which I strongly believe they did not they would not have come straight to where the Applicant was “placed” to seek to arrest him.

The impression the Applicant is trying to create can only exist in fairy tale and folklores.

One wonders how a man in detention is not warned about his present predicament but is traumatized about the alleged threat of arrest after he is granted bail by 1st – 3rd Respondents. Meanwhile the 1st – 3rd Respondents did not even enter appearance or challenge this application. The 1st – 3rd Respondents not filing any response in opposition must have been because they realized that there is no claim against them in this application going by the reliefs sought thereto.

I have searched the length and breadth of the Affidavit in support of this application I did not see where the Applicant stated that the 4th – 5th Respondents had invited or arrested him or detained him. He did not attach any document even the document shown to him by the 1st – 3rd Respondents on their reason behind his arrest and detention.

Going by EXH 1 there is no doubt there is an existing petition against the Applicant written by the Counsel to Udemba Group – Afoma E. Anika dated 18/1/19. It is strange that the Applicant could not even attach a copy of the letter he allegedly wrote to the 6th Respondent sometime in January 2019 for the Court to know his reason for disengagement. It is strange he could not specifically state the date of the letter or even the date he finally disengaged from the company.

As already stated the Economic and Financial Crime Commission (EFCC) under S. 6 & 7 of the EFCC Act 2004 has every right to investigate allegation of fraud and fraud related offences. A closer look at the document attached in support of the Counter Affidavit of 4th – 5th Respondents it shows clearly at the last paragraph that the Udemba Group had by the said EXH asked the 4th – 5th Respondents:

“... enjoined the (4th – 5th Respondents) to use your good offices to investigate these wholesome and dubious acts of Mr. Ofem Ekapong Ofem (Applicant) and to set the criminal machinery of state against him in order to arrest the activities complained about in this petition”.

Meanwhile the letter is titled:

“Complaint of Cybercrime Advance Fee Fraud and Fraudulent Acts perpetrated by Mr. Ofem Ekapong Ofem”.

The letter in paragraph 2 stated:

“Mr. Ofem ... had been perpetrating questionable act ... particularly ... he has been involved in acts which amounts to computer related forgery/fraud including identity theft and impersonation”.

PARAGRAPH 4

“Mr. Ofem Ekapong Ofem fraudulently alter genuine e-mail address ... and created dubious e-mail accounts ... to generate false bipartite communications ... involving himself, the foreign ICT firm and our client chairman CEO – the 6th Respondent.

The objective of this fraudulent channel and identity /impersonation was solely for purpose of obtaining money under false pretence ... for his pecuniary gain and economic benefit”.

PARAGRAPH 5

“... our client relied on the false information disseminated through these fraudulent e-mail communication to make series of payments to Ofem .. who led our client to believe the said fake messages including request for payments ... from our foreign partners ... which is a matter of cybercrime”.

PARAGRAPH 8

“Mr. Ofem ... has also altered the genuine website domain name of our client ... and has unauthorizedly created and registered new website domain name, E-mail account and password of some of our key businesses”.

PARAGRAPH 9

“... most recent money on the said fraudulent account was sent on the 7th day of January, 2019 wherein Mr. Ofem Made further demand on our clients under the pretext that the mail originated from our client’s International partners”.

PARAGRAPH 10

“... upon confrontation ... Our International partner confirmed he has nothing to do with the fake e-mail account as he has only used the known e-mail address – dreamer@appsapt.com and ralm13mbed.com”.

PARAGRAPH 11

“That Mr. Ofem ... is bent on continuing the perpetration of these dubious activities and therefore there is need to apprehend him urgently and his communication equipment confiscated in order to hinder him from further preying on the unsuspecting public”.

All the set paragraphs of the letter EXH A clearly shows that the allegation upon which the need to investigate and the call for investigation are all based on what the 4th – 5th Respondents are statutorily empowered to investigate.

So even if the 4th – 5th Respondents had called upon the 1st – 3rd Respondents to hand Applicant over to them for investigation in the cause of investigation, the action of 4th – 5th Respondents in that regard is **NOT AN INFRINGEMENT** of the Right to Personal Liberty of the Applicant as alleged. So also the action of the 1st – 3rd Respondents

which the Applicant surprisingly is not challenging, is equally not an infringement to the Right to Personal Liberty of the Applicant.

So this Court holds.

The E-mail extracts and except speaks for itself. So also the statement of Solomon Igun made to the 4th Respondent on the 13th day of February, 2019. So also the deposit slips for foreign currency deposit.

Without an iota of doubt the documents speak with human voice that the action yet to be taken and already been taken by the 4th – 5th Respondents in their investigation and call for investigation as sought in letter of the 7th day of January, 2019 EXH 1 are the right step in the right directions. They are all actions taken following due procedure prescribed by and in accordance with a procedure permitted by law.

So 4th – 5th Respondents carrying out investigation as sought by Udemba Group is not an infringement of the Applicant's Right to Personal Liberty as the Applicant misleadingly wants this Court to believe, but this Court cannot be deceived.

The Applicant knows he will not be able to establish the allegation of the infringement of the alleged Right that is why he decided not to appear before the Court on all the days that the matter was scheduled for hearing. So also his Counsel.

It is imperative to point out that even a situation where the Respondents did not enter appearance or file any Counter Affidavit, the Court can never swallow hook-line-and-sinker the fact presented to it by an Applicant alone.

The Court must analyze and consider every fact presented before it can come out with its decision.

Yes the 6th – 8th Respondents did not present any Counter to challenge this application, the Counter of the 4th – 5th Respondents had thrown more light on the truth behind the whole application. It is important to point out that this Court refused to allow application of the 6th – 8th Respondents but had recorded their representative stating that they adopt the submission of 4th – 5th Respondents. This Court accept that submission.

All in all the Applicant is not able to establish that the Respondents infringed on his Right to Liberty. The Court has not judged the guilt or otherwise of the Applicant as regard the petition, the Court only referred to the documents attached by 4th – 5th Respondents to show that the said 4th – 5th Respondents has a right under the law to investigate the case since the case is based on allegation of cybercrime, fraud and the related offence.

This application lacks merit and is therefore hereby **DISMISSED**.

This is the Judgment of this Court.

Delivered today the —— day of —— 2020.

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K.N. OGBONNAYA
HON. JUDGE