

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 30th JUNE, 2020
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E ANENIH
(PRESIDING JUDGE)

SUIT NO: FCT/HC/CV/571/18.

BETWEEN

MR. LINUS OKORO

MR. VALENTINE CHUKWUAPPLICANTS

AND

1. DR. ADIJESSE ASHUNATE

2. COMMISSIONER OF POLICE FCT COMMAND

3. DIVISIONAL POLICE OFFICER (DPO) MABUSHI POLICE STATION

} **RESPONDENTS**

JUDGEMENT

Before the court is an originating Motion filed on the 13th of December, 2018 and brought pursuant to Order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Sections 34 and 35 of the 1999 constitution of the Federal Republic of Nigeria (as amended), Article 14 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and under the Jurisdiction of the Court as preserved by section 6(6) (A) - (C) of the of the constitution of the Federal Republic of Nigeria 1999 (as amended)

The application is accompanied with a statement and a supporting affidavit of 38 paragraphs deposed to by Mr. Valentine Chukwu the 2nd applicant himself, with four attached Exhibits and another supporting affidavit deposed to by Mr. Linus Okoro the 1st Applicant with an accompanying written address.

In opposition to the application before the court, the 1st Respondent filed on the 18th of April, 2019 a 16 paragraph counter affidavit deposed to by Dr. Adi Jesse Ashunate with attached Exhibits and an accompanying written address.

The Applicants in response, filed on 11th June 2019 a 10 paragraph further and better affidavit deposed to by Mr. Valentine Chukwu with attached Exhibits and further and better affidavit deposed to by Linus Okoro all in response to the counter affidavit of the 1st Respondent.

The 2nd and 3rd Respondents did not file any counter affidavit in opposition to the application.

The reliefs sought by the Applicants in their supporting statement are as follows:

1. A declaration that the arrest, detention, harassment, intimidation and victimisation of the 1st and 2nd Applicants from the 15th December, 2017 at about 12:30am to the 18th December, 2017 by the men and officers of 2nd and 3rd Respondents at the clear prompting and behest of the 1st Respondent without any reasonable and justifiable cause is unlawful, unconstitutional, illegal, unwarranted, oppressive and violation of the 1st and 2nd Applicants' fundamental right to personal liberty as enshrined under section 33, 34 and 35 of the 1999 constitution of the Federal Republic of Nigeria (as amended) and Articles 4, 5, 6 and 7 of the African Charter on Human and People's Right.
2. A Declaration that the forceful carting away of the 300 bags of cement and 439 bags of cement belonging to the 1st and 2nd Respondents respectively by the men and Officers of 2nd and 3rd Respondents at the prompting and behest of the 1st Respondent and whilst in the detention of 3rd Respondent on the 15th December 2017 was a breach of their constitutionally guaranteed rights of freedom of movement, right to engage in lawful business and personal liberty and as such is unlawful, unconstitutional, illegal, unwarranted, oppressive and a violation of the Applicants' fundamental right to right to freedom of movement, right to engage on lawful business and personal liberty as enshrined under section 33, 34, 35 and 41 of the 1999 constitution of the Federal Republic of Nigeria (as amended) and Articles 4, 5, 6, 7 and 20 of the African Charter on Human and People's Right.

3. An Order of this Honourable Court awarding the sum of N100,000,000.00 (One Hundred Million Naira only), jointly and severally as exemplary damages against the 1st, 2nd and 3rd respondents for unlawful arrest and detention, breach of right to personal liberty and right to freedom of movement.
4. An Order of this Honourable Court awarding the sum of N200,000,000.00 (Two Hundred Million Naira only) against the 1st, 2nd and 3rd Respondents as general damages.
5. An Order of this Honourable Court awarding the sum of N200,000,000.00 (Two Hundred Million Naira only) against 1st, 2nd and 3rd Respondents as special damages.
6. An Order of perpetual injunction restraining the 1st, 2nd and 3rd Respondents, whether by themselves, agents, officers, servants, privies or howsoever so-called (acting for them and /or on their behalf) from further arresting, detaining, intimidating, molesting and harassing the applicants or seizing any of his personal effects in respect of the facts in issue or any fact related to the facts in issue in this matter.
7. An Order of this Honourable Court awarding the sum of N2,000,000.00 (Two Million Naira only) against the 1st to the 3rd Respondents as the cost of this suit.
8. And for such order(s) as this Honourable court may deem fit to make in the circumstances of the circumstances.

There are 11 grounds upon which the reliefs are sought and they are:

- a. The continuous hunting and threat to arrest, molest and detain the Applicants' goods by the men and officers 2nd and 3rd Respondents at the behest of the 1st Respondents on the 15th December, 2017 and eventually arrested them and without reasonable and probable cause is illegal, unlawful and a violation of the Applicant's rights to dignity of human person, personal liberty, freedom of movement as guaranteed under section 34, 35 and 41 of the 1999 constitution of the Federal

Republic of Nigeria (as amended) and Articles 4, 5 and 6, 7 and 20 of the African Charter on Human and Peoples Right.

- b. The Applicants are Nigeria citizen and are therefore entitled to the Dignity of human person, right to move freely, right to life and right to personal liberty as preserved under sections 34, 35 and 41 of the constitution of the Federal Republic of Nigeria (as amended) and under Articles 4, 5 and 6 of the African Charter on human and people's Right (Ratification and Enforcement) Act Cap A9 Cap A9 LFN 2004 and should not be denied such rights except in accordance with provisions of the said constitution and African Charter on Human and People's Right CAP A9 LFN 2004.
- c. Unless the 2nd and 3rd respondents are restrained by an Order of this Honourable Court, the Applicant is presently being harassed around town in plan of arresting and detaining him without an Order of Court or charging him to Court.
- d. The Applicant has a legal right to be protected by this Honourable Court.
- e. The balance of convenience is on the part of the Applicants who are unlawfully and constitutionally arrested and detained by the men and officers 2nd and 3rd Respondents.
- f. The Applicants undertakes to compensate the 1st, 2nd 3rd respondents if it turned out that this application ought not to have been granted.
- g. The applicants are entitled to the remedy of injunction to restrain the 1st and 3rd respondents jointly/severally, their armed officers, agents, servants and thugs from continuing the unlawful violation of the applicant's constitutional and legal rights to move and live freely and attain his personal and family business.
- h. It will be in the interest of justice and fair hearing for the Honourable Court to grant this application.

- i. The grant of this application will enable the applicants to enforce and enjoy his fundamental rights as guaranteed by the relevant provisions of Chapter IV of the 1999 constitution (as amended) and other enabling laws in that behalf thereby saving the applicant from the dehumanising and degrading his hard earned reputation without charge or trial.
- j. The applicant is entitled to a public apology to be published on National newspapers for the violation of the applicants' fundamental rights.
- k. The applicant is entitled to compensation in terms of damages for the breach of his fundamental rights.

The Applicants adopted their written addresses on the 24th of February, 2020

Counsel to the Applicants in his written address distilled two issues for determination:

- a. *Whether the fundamental rights to personal liberty, right to freedom of movement and dignity of the applicant as enshrined and guaranteed under section 34, 35 and 41 of the constitution of the Federal Republic of Nigeria 1999 as amended and Article 4, 5, 6 7 and 20 of the African Charter on Human and People's Right has been violated by the 2nd and 3rd respondents and their agents on the instigation, prompting and behest of the 1st respondent*
- b. *Whether the applicant is entitled to compensation and public apology.*

The 1st Respondent by his counsel adopted his written address on the 24th February 2020 and the issues formulated by the Applicants in their written address. Both addresses are before the Court, have been considered and will be referred to where necessary.

I have considered the application before the court, the supporting affidavit, the counter affidavit of the 1st respondent, the further and better affidavits, all the attached documents and the accompanying written addresses of the Applicants and the 1st Respondent and the oral submission of Counsel. And I am of the view that the issues for determination are:

1. *Whether from the totality of the affidavit evidence before the court the applicant has succeeded in proving a breach of his Fundamental rights by the respondents herein.*
2. *Whether the applicant is entitled to the reliefs sought in the accompanying statement.*

It is settled law that in an application for the enforcement of fundamental rights, its determination is premised on the affidavit evidence produced and placed before the Court to reach a just determination of the application. See

UKAOBASI V. EZIMORA & ORS (2016) LPELR-40174(CA)(P. 31, Paras. B-E)

BASSEY NKANTA MBANG V. W/PC JANET & ORS. (2015) ALL FWLR (pt.767) 766 AT 784

It is trite that any person who alleges that any of her Fundamental Rights as enshrined in the Constitution has been, is being or likely to be contravened may apply to a court for redress. For ease of reference, Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) is reproduced below:

“ Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High court in that state for redress.”

The first issue for determination will be treated alongside the reliefs sought by the Applicants. It is imperative that for the determination of issue one, the applicants need to establish by facts placed before the court that their application has merit and that their rights were breached as contended in their declaratory reliefs. See

ANYANRU V. MANDILAS LTD (2007) 10 NWLR (pt. 1045) 462

The first relief of the applicant is for a declaration that the arrest, detention, harassment, intimidation and victimisation of the 1st and 2nd Applicants from the 15th December, 2017 to 18th December, 2017 by the men and officers of the 2nd and 3rd Respondents at the clear prompting and behest of the 1st Respondent without any justifiable cause is unlawful, unconstitutional and violates the rights of the 1st and 2nd Applicants' fundamental right to personal liberty as enshrined under Section 33, 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

It is necessary to start by taking a close examination of the provisions of Sections 33, 34, 35 and 41 of the 1999 constitution (as amended) under which the Applicants have come to court to seek redress. For purpose of clarity the said sections 33, 34, 35 and 41 of the 1999 constitution with relevant subsections are hereunder reproduced as follows:

Section 33(1) provides that:

Every person has a right to life, and no one shall be deprive intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

Section 34(1) provides that:

Every individual is entitled to respect for the dignity of his 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.

Section 35(1) provides that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty.

Section 41(1) provides that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no

citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit there from.

I have carefully gone through the reliefs sought in this application and the depositions contained in the affidavit in support of this application, particularly paragraphs 5, 6, 8, 9, 11 where the Applicants averred that they do not know the 1st respondent in this matter neither have they entered any cement transaction. And that on the 15th of December 2017, they saw the men and officers of the 2nd and 4th respondents who came with trucks, labourers and carted away bags of cement. That when they asked the police, they were told that they had a Court Order to pack all the cement and that the cement belongs to Mr. Ebube Ngobidi and Mr. Okwudili Ojinkonye who are owing the 1st respondent the sum of N900,000.00 and hid the cement in his shop. And that the 1st respondent was there instructing men and officers of the 2nd and 3rd respondents to clear off the whole cements.

The 1st respondent on the other hand averred in his counter affidavit particularly in paragraphs 3, 4, 5, 7, 8, 9 and 11 that he doesn't know the applicants and has never had any business transactions with them. That he had a business transaction with one Ebube Ngaobibi and one Okwudili Ojinkeonye whom he supplied 600 bags of cements in 2016 in which Ebube paid nothing and Okwudili paid for only 300 bags and failed to pay the outstanding. He further averred that he reported them to the police at Mabushi for breach of trust and the police took them to Area Court where the Court ordered that police should go to the cement stand to pack and dispose of it. That the cement was not taken at any other person's shop but theirs.

Having carefully examined the averments in the supporting affidavit, and the grounds reflected in the statement, the next thing will be to ascertain whether or not the rights of the applicants as enshrined in Sections 33, 34, 35 and 41 of the 1999 constitution (as amended) as already highlighted above have been violated.

For grant or refusal of an application of this nature, the Court is seized with the duty to determine whether or not the Applicant has made out a prima facie case from the materials placed before it. See

OLISA AGBAKOBA V. THE DIRECTOR (STATE SECURITY SERVICE & ANOR.) (1994) 6 NWLR(Pt.351) 475 at 482.

And

NWANGWU & ANOR. v. DURU & ANOR.(2001) LPELR-7001Pg. 16-17, paras. C-B

Thus it is only when a prima facie case has been made out that the respondents would be asked to justify the contravention or violation. See

W.A.E.C V. ADEYANJU (2008) 9 NWLR Part 1092 Pg 270 at 25 Paras G-B the court stated thus:

“A party seeking relief under section 46(1) of 1999 Constitution and Order 1 rules 2 & 3(1) of Fundamental Rights(Enforcement Procedure) rules must ensure that the main Relief and consequential reliefs point directly to a fundamental right under Chapter IV of the 1999 Constitution and a clear deprivation of the same by the other party being sued”

The 1st and 2nd reliefs are declaratory reliefs which this court has jurisdiction to adjudicate upon and which has to be proved on the merit. See

NIGERIAN NAVY V. GARRICK (2006) 4 NWLR (PT.969) 69

It is trite that the grant or refusal of declaratory reliefs is within the discretionary power of the Court which must be exercised judicially and judiciously. See

MOHAMMED V. MOHAMMED & ANOR (2011) LPELR-3729 (CA) (P.48, PARAS B-D) where His Lordship Justice Ogunwumiju resonated that:

There is no doubt that a declaratory relief is an equitable relief the grant of which requires the exercise of the courts discretion which must be done judicially and judiciously...

Recourse would need to be had in the circumstance, first and foremost to the provision of **SECTION 4 OF POLICE ACT; CAP 19 LAWS OF**

THE FEDERATION OF NIGERIA, 2004 which bestows upon the police certain duties with corresponding powers thus:

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order; the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required by them by, or under the authority of, this or any other Act.

By the clear provisions of Section 4 of the Police Act, the Police have the duty and responsibility to prevent crime, to detect crime, apprehend, and detain anyone who is reasonably suspected to have committed a crime and to inter alia preserve law and order. These duties are carried out within the exclusive preserve of the Police upon reasonable suspicion of committing a crime, once invitation is extended to person(s) who they reasonably suspect or believe has committed an offence.

However, the power of the Police as contained in Sections 4 of the Police Act is not absolute. Thus, where not properly used or where abused, the Court can stop the arbitrary use of the power for that improper purpose, as that would no longer be covered by section 35(1) (c) of the Constitution. They are therefore enjoined to conduct their investigations in line with the principles of the rule of law. See:

IGBO & ORS V. DURUEKE & ORS (2014) LPELR-22816(CA)(Pp. 19-20, paras. D-A) Where His Lordship Justice Ekpe J.C.A resonated that;

"...suffice it to say that the Nigeria Police Force and its operatives whether at the Federal, State or Zonal Command are empowered by the Police Act, the Constitution and other relevant laws in that regard to investigate crimes or perceived danger which have been reported to them. The police however have absolute discretion as to who to, arrest, charge and prosecute and in so doing arrests may be made and invitations extended to persons who they reasonably believe have committed an offence. There is no gainsaying the fact that in the course of their duty they are enjoined to conduct their

investigations in line with the principles of the rule of law and that they must act judiciously and judicially." Per EKPE, J.C.A (Pp. 19-20, paras. D-A)

See also;

LUNA V. COMMISSIONER OF POLICE RIVERS STATE POLICE COMMAND & ORS(2010) LPELR-8642(CA)(Pp.13-15.Paras.F-C)

It is trite law that in a claim for the enforcement of fundamental rights, the Court is to examine the relief sought and the facts relied upon and where the facts relied upon disclose a breach of the fundamental rights of the applicant as the basis of the claim, then there ought to be a redress through the Fundamental Rights (Enforcement procedure) Rules, 2009. See

SEA TRUCKS (NIGERIA) LTD vs. PANYA ANIGBORO (2001) LPELR-3025 NWLR (SC) (PP,28-29, PARAS, G-C) Where His Lordship, Justice Karibi-Whyte J.S.C resonated that;

"The correct approach in a claim for the enforcement of fundamental rights is to examine the relief sought, the grounds for such relief, and the facts relied upon. Where the facts relied upon disclose a breach of the fundamental right of the applicant as the basis of the claim, here there is a redress through the enforcement of such rights through the Fundamental Rights (Enforcement Procedure) Rules, 1979. However, where the alleged breach of right is ancillary or incidental to the main grievance or complaint, it is incompetent to proceed under the rules. This is because the right, if any, violated, is not synonymous with the substantive claim which is the subject-matter of the action."

See also;

COP, ABIA STATE & ORS v. OKARA & ORS(2014) LPELR-23532(CA)(Pp.49, Paras. A-C).

For better understanding, I refer to Order II Rule 1 of the Fundamental Rights Enforcement (Procedure) Rules 2009 which provides thus:

“Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being or is likely to be infringed may apply to the Court in the State where the infringement occurs or is likely to occur, for redress:...”

The Applicants have come before this court to seek redress for infringement of their right to Personal liberty and Dignity of human Person as expressly provided for in Section 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

Having carefully gone through the supporting affidavit of the applicants, it is observed that the 1st and 2nd applicants averred in paragraph 9 that they were arrested and detained for four days at Mabushi police station from 15th to 18th December 2017.

With regard to the number of days persons ought to be detained after arrest, I refer to Section 35(4) of the Constitution which provides for reasonable time for detention before arraignment. Section 35(4) provides;

Section 35(4):

Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of-

a. two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

b. three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

The Constitution provides in Section 35 (5) which is hereunder reproduced;

Section 35(5):

In subsection (4) of this section, the expression 'a reasonable time' means;

- (a) *In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day and*
- (b) *In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.*

See also: Section 30 of Administration of Criminal Justice Act which provides;

Section 30 (1):

Where a suspect has been taken into police custody without a warrant for an offence, other than an offence punishable with death, an officer in charge of a police station shall inquire into case and release the suspect arrested on bail subject to sub section (2) of this section, and where it will not be practicable to bring the suspect before a court having jurisdiction with respect to the offence alleged, within 24 hours after the arrest.

The Court will also consider the above provision of the law and juxtapose same with the averments of the applicant to determine the propriety of arrest and detention of the applicant.

Their averment at paragraph 9 is hereby reproduced for clarity;

Paragraph 9:

That I clearly told them that it was my cement and that I do not have any business with the said Mr. Ebube Ngaobidi and Mr Okwudili Ojinkonye but they persisted with force and when I tried to stop them from packing the cement, they arrested me and took me to the Mabushi Police Station where I was detained for four days from 15th December, to 18th December, 2017 at Mabushi Police Station Abuja.

The above averment indicates that the applicants were arrested and detained between 15th December to 18th December 2017 without any evidence of being charged to Court nor justifiable cause for the detention.

It is important to note that although the Police are empowered by the Law to arrest and detain a suspect in the course of their investigation, this power is restricted to specific number of day(s) where he is not charged to Court or granted bail. And they are required within that stipulated period to bring the suspect before a court for the purpose of being charged or for an order for remand if necessary or grant of bail.

See

LUFADJU & ANOR. V. JOHNSON (2007) LPELR-1795 (SC) P.33-34, Paras. G-A. or (2007) 8 NWLR (Pt.1037) 535 at 566, paras. B.

It is also imperative to note that the averments of the applicants as contained in their attached affidavit were never challenged or countered by the 2nd and 3rd respondents who effected the arrest and detention..

The 1st respondent averred that he reported a case to the police against Ebube Ngaobidi and Okwudili Ojinkeonye for breach of trust and that the court ordered the police to go to the cement stand and collect the cement and dispose of them. Thus as reflected in Section 4 of the Police Act, ordinarily the summoning, arrest and detention cannot be faulted save that the detention period was beyond the stipulated directive in Section 35(4) and (5) of the Constitution, and more importantly the persons detained were not the persons complained about.

The second relief is for a Declaration that the forceful carting away of the 300 bags of cement and 439 bags of cement belonging to the 1st and 2nd Respondents respectively by the men and Officers of 2nd and 3rd Respondents at the prompting and behest of the 1st Respondent and whilst in the detention of 3rd Respondent on the 15th December 2017 was a breach of their constitutionally guaranteed rights of freedom of movement, right to engage in lawful business and personal liberty and as such is

unlawful, unconstitutional, illegal, unwarranted, oppressive and a violation of the Applicants' fundamental right to right to freedom of movement, right to engage on lawful business and personal liberty as enshrined under section 33, 34, 35 and 41 of the 1999 constitution of the Federal Republic of Nigeria (as amended) and Articles 4, 5, 6, 7 and 20 of the African Charter on Human and People's Right.

The applicants averred in paragraphs 11 and 12 of affidavit as follows:

Paragraph 11:

That the said 1st respondent was there at that time shouting and instructing the men and officers of the 2nd and 3rd respondents to clear off the whole cements in my pallets without further delay.

Paragraph 12:

That it was whilst I was in the police station to further explain to the DPO that I have no business with Mr. Ebube Ngaobidi and Mr Okwudili Ojinkonye in their matter that the men and officers of 2nd and 3rd respondents went from my back and made away with 439 bags of cements from my pallet at the Mabushi Cement depot.

The above averments were also not challenged or countered by the 2nd and 3rd Respondents. It is trite that this court has the duty to act on these uncontroverted evidence before it. See;

OGUNYADE V. OSHUNKEYE (2007) ALL FWLR,(389) 1175 AT 1192 - 1193, PARAS. G - A (SC) or LPELR-2355(SC) (Pp.15-16, Paras.G-B) Where his Lordship Justice Musdapher J.S.C. postulated that:

"The law in my view settled that where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the court seised of the proceedings to act on the unchallenged evidence before it. Odulaja v. Haddad (1973) 11 SC 357; Nigerian Maritime Services Ltd. v. Alhaji Bello Afolabi (1978) 2 SC 79. Unchallenged and uncontradicted

evidence ought to be accepted by the court as establishing the facts therein contained".

It is the duty of the Court (based on the provisions of Section 46 (1) of the Constitution) to protect and guard the Fundamental Rights of all citizens and to determine if there is a breach of same. See

SAMUEL v. THE CONTROLLER OF PRISONS, FEDERAL PRISONS, UYO, AKWA IBOM STATE & ORS (2013) LPELR-20707(CA) (P. 21, paras. A-E)

The claim of carting away bags of cement has not been proved by the plaintiff. This is because the affidavit didn't say the cement belonged to 1st and 2nd respondents as prayed in the second claim.

Consequently I am of the view that the applicants have discharged the onus of proof placed on them for the breach of their fundamental rights as enshrined in Sections 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), against the 2nd and 3rd Respondent as reflected in the first claim.

The 2nd relief is therefore also resolved in favour of the applicant. This settles the first issue in favour of the applicants.

The second issue is whether the applicants are entitled to the reliefs sought in the accompanying statement.

The second issue will be treated by examining the viability of applicant's ancillary reliefs.

The 3rd relief is An Order of this Honourable Court awarding the sum of N100,000,000.00 (One Hundred Million Naira only), jointly and severally as exemplary damages against the 1st, 2nd and 3rd respondents for unlawful arrest and detention, breach of right to personal liberty and right to freedom of movement.

It is well settled that in order to be entitled to award of exemplary damages, it is the duty of plaintiff to prove that the action of respondent is outrageously reprehensible. See;

FBN PLC V. AG. FEDERATION & OTHERS(2013) LPELR-20152 (CA) PG. 73 PARA F where Justice Akomolafe – Wilson J.C.A resonated that;

"For a party to be entitled to exemplary damages, it is his duty to prove that the action of respondent is outrageously reprehensible; which has not been so proved in this case. However, the Appellants are entitled to damages for their unlawful arrest and detention."

See also:

ENGR FEMI SONUGA & ANOR V. MINS FCT ABUJA & ANOR (2010) LPELR-19789 CA PG 26, PARAS C-D where Justice Bada resonated that;

"In a Claim for Exemplary damages the party to the suit must show or establish by evidence that the injury or loss he suffered was due to the malicious act of the party against whom he is claiming the exemplary damages. The conduct of the Defendant must be high handed, insolvent, vindictive or malicious showing contempt of the Plaintiff's right or disregard of every principle which actuated the conduct of a gentleman."

The primary object of an award of damages is to compensate the plaintiff for the harm done to him or is to punish the defendant for his conduct. See **ODIBA V. AZEGE (1998) 9 NWLR (PT.566) 370**

It suffices that before damages can be recovered by a claimant, there must be a wrong committed; in other words, damages by a applicants must be attributed to the breach of some duties by the respondents. However the quantum to be awarded as damages is at the discretion of the court. See

EFCC V. INUWA & ANOR. (2014) LPELR-23597 (CA) (P.18, PARAS C-G) Where His Lordship Justice Akeju postulated that;

"The award of general damages and the assessment of the quantum to be awarded is squarely at the bossom of the trial judge"

It is trite that the award of damages in a case of violation of a citizen's fundamental right must be such as would constitute a fair balanced estimate of the injuries suffered by the Applicant due to the Respondent's unlawful conduct. See

ARULOGUN V. C.O.P LAGOS & ORS (2016) LPELR-40190(CA) (P. 21, Paras. B-C); (Pp. 13-14, Paras. A-A)

The facts placed before the Court by parties are undisputed that the applicants are not the persons against whom execution of court order was to be carried out. It appears they were arrested and detained in error.

The 1st respondent who complained to the other two respondents has averred in paragraph 3 of his Counter affidavit that he doesn't know the two applicants before the Court, but that the persons owing him money were Ebube Ngaobidi and Okwudili Ojinkeonye whom he supplied bags of cement. He stated further that the bags of cement removed by the police belonged to the aforementioned debtors. That the cement was not taken from any other person.

It is also undisputed that the efforts of the applicants at the time of arrest to explain their non-involvement in the matter was rebuffed by the police. This action to my view reflects on the poor nature of investigation carried out by Police and the recklessness and high handedness in the arrest of the applicants. And their failure to respond to this instant application for no given reason underscores their admission of insolence and total disregard of the rights of the applicants who were not the persons mentioned in the complaint of 1st respondent. The question is whether this conduct calls for exemplary damages.

The persons arrested and detained by 2nd and 3rd respondents for about four days are clearly different from the names reflected in the complaint of the 1st respondent. The question here is whether this conduct calls for exemplary damages.

For grant of exemplary damages and what constitutes same, I refer to the case of:

ANTHONY ODIBA V. TULE AZEGE (1998) 9 NWLR (PT. 566) PG 370 OR (1998) LPELR – 2215 (SC) PER IGUH JSC @ PG. 25 PARA B-D

And

ODOGU V. A.G. FED (1996) 6 NWLR (PT.456) 508

The 1st respondent upon whose complaint the 2nd and 3rd respondents initiated investigation has informed this Court that he did not make any complaint against the 1st and 2nd applicants but two other completely different persons named in his complaint to them. But they apprehended the wrong persons, arrested them, detained them and kept them incarcerated for 4 days without releasing them, granting bail nor even charging them to court. That is not only high handed, but outside the scope of their statutory duties, rashly insolent and cruel. They have indeed acted without due consideration for the Fundamental Human Rights of the Applicants who up until the time of institution of this suit had received no apologies nor explanation from them.

In the light of the foregoing, that the facts presented before the court sufficiently justifies the grant of exemplary damages against the 2nd and 3rd respondents.

Suffice to say that the Applicants are entitled to compensation for breach of their Fundamental Rights enshrined in Section 33, 34 and 35 of the 1999 Constitution (as amended).

The next relief is an Order of this Honourable Court awarding the sum of N200,000,000.00 (Two Hundred Million Naira only) against the 1st, 2nd and 3rd Respondents as general damages.

General damages flow naturally from the wrongful act of a defendant complained of. See **THE SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED V. CHIEF G.B.A. TIEBO VII (SUPRA) AT 466, PARA. C.**

See also

OWENA MASS TRANSPORTATION COMPANY LTD. V. IMAFIDON (2011) LPELR-4810(CA) (P. 21, PARAS. A-F)

The main requirement for the award of general damages is that such award shall not be manifestly too high, or manifestly too little, or erroneously assessed. See **M.W.T. (NIG.) LTD. V. P.T.F. (2007) 15 NWLR (PT. 1058) 451 AT 482 - 483, PARAS. H - A (CA)**

The applicants averred in paragraph 24 and 25 that monetary compensation will not be enough to curtail the said damages on his person as a genuine business man.

The court is mindful that the grant of general damages is intended to assuage the natural loss and painful mental feelings suffered by the claimant and caused by the Defendant. See **N.B.C. PLC V. ORESANYA (2009) 16 NWLR (Pt. 1168) 564 C.A.**

In as much as the Court has found that the fundamental rights of the applicants was breached, I am of the view that it would amount to double compensation to proceed further to award general damages after the award of exemplary damages. For support of this proposition, I rely on the case of:

UKPAI V. OMOREGIE & ORS (2019) LPELR-47206 (CA) Per Ogunwumiju J.C.A at 25-27 Para F-D where his Lordship described exemplary damages as an intermix of general and punitive damages.

See also

ELOCHIN (NIG) LTD & ORS V. MBADIWE (1986) LPELR-1119 (SC) Pg 27 Para E-F, Pg 28 Para B-E, and 33 Para A

The fourth relief is for An Order of this Honourable Court awarding the sum of ₦200,000,000.00 (Two Hundred Million Naira only) against 1st, 2nd and 3rd Respondents as special damages.

After a holistic glean of the entire application it suffices to observe that the applicants did not lead any further particulars or evidence or exhibit in

respect of special damages, or for health hazard allegedly caused by the actions of the respondents.

It is trite law that a claim for special damages has to be specially claimed and strictly proved. None of which has been done herein by applicant. Suffice to say that the applicants have failed to proved entitlement to special damages in the circumstance. See

IBRAHIM & ORS V OBAJE (2017) (SC) LPELR-43749(SC) PG 14-19 PARA C-A

TECHENGINEERING CO (NIG) LTD & ANOR V. SALISU (2018) LPELR-4665 (CA) PG 30-31

The 5th relief is for An Order of perpetual injunction restraining the 1st, 2nd and 3rd Respondents, whether by themselves, agents, officers, servants, privies or howsoever so-called (acting for them and /or on their behalf) from further arresting, detaining, intimidating, molesting and harassing the applicants or seizing any of his personal effects in respect of the facts in issue or any fact related to the facts in issue in this matter.

The 1st respondent averred in paragraph 5 of his counter affidavit that he reported to the Mabushi Police Station for breach of trust and the Police took them to Area Court Mpape to prosecute them.

Given the above circumstance, the police has powers to do the needful. Asking this court to restrain the 2nd and 3rd respondents from further arresting or detaining the applicants would amount to interference with the statutory responsibilities of the police to invite, investigate or arrest anyone reasonably suspected to have committed a crime.

Courts have been admonished in several decided cases to refrain from shielding any person from criminal investigation and prosecution. See

A.G ANAMBRA STATE V. CHIEF CHRIS UBA (2005) 15 NWLR (Pt. 947) Pg.44 at 67, Paras.F. where the Court of Appeal postulated as follows:

“For a person, therefore, to go to court to be shielded again criminal investigation and prosecution is an interference of

powers given by the constitution to law officers in control of criminal investigation”.

See also; **SALIHU V. GANA & ORS (2014) LPELR-23069(CA) (Pg. 34, PARAS. A-B)** where his lordship ABIRU, J.C.A. postulated that:

“It has been held that the Fundamental Rights provisions cannot be used, and should not be used, by a person to shield himself from criminal investigation and prosecution”.

Be that as it may I do think an order of injunction restraining the 2nd and 3rd respondents from unlawful Acts would be proper and expedient under the circumstance. See

MRS BABY JUSTINA LUNA V COMMISSIONER OF POLICE RIVERS STATE POLICE COMMAND & ORS (2010) LPELR-8642 (CA) (PP.16-17, PARAS F-A) where his Lordship Justice Abdullahi JCA elucidated that:

“However, not withstanding the power of the police as spelt in sections 4 and 24 of the Police Act, where this power is improperly used, the court can stop the use of the power for that improper purpose, as that would no longer be covered by section 35(1) (C) of the Constitution. In other words, an order restraining the police from arresting on some particular improper occasion or for some particular improper purpose may be made by the Court.”

The relief for injunction against 2nd and 3rd respondents therefore succeeds in this wise, although not in perpetuity.

The 6th relief is for an Order of this Honourable Court awarding the sum of N2,000,000.00 (Two Million Naira only) against the 1st to the 3rd Respondents as the cost of this suit.

The applicants averred in paragraph 22 of their attached affidavit that they paid their counsel a total amount of N1,000,000.00 (one million naira) as the cost of this action. Also they attached a copy of the receipt dated 11th December 2018.

The award of cost is entirely at the discretion of the court, costs follow the event in Litigation. See **NNPC V. CLIFCO NIG. LTD. (2011) LPELR-2022(SC) (P. 26, PARAS. E-G)**

However, in making an award of costs the court must act judiciously and judicially. See **ANYAEGBUNAM V. OSAKA 1993 5 NWLR PT.294 P.449**

The 2nd and 3rd respondents have failed to oppose nor challenge the award for cost. Considering the undisputed affidavit evidence before the Court, the award for cost would be made albeit in an amount to be awarded as the court deems fit.

I have carefully gone through the supporting affidavit of the applicants, it is observed that the 1st and 2nd applicants averred in paragraphs 9 and 10 that they were arrested and detained for four days at Mabushi Police station from 15th to 18th December 2017 where he was forced to write a statement for resisting order of court and further wrote an apology to the police before he was granted bail.

The allegation against 1st respondent is that he instigated the arrest and consequent treatment of applicants by the police.

There is nothing before this Court to show that the 1st respondent instigated the arrest of the applicants and purported detention of the Applicants. There appears not to be any evidential link or nexus between the Applicants and the 1st Respondent reasonable enough for this Court to believe that the arrest and detention of the Applicants was at the promptings of the 1st respondent. This is more so when the applicants and the 1st respondent are all in adidem that they do not know themselves and have never done any business transaction together as can be gleaned from the evidence before the court.

The 1st respondent averred that he reported a case to the police against Ebube Ngaobidi and Okwudili Ojinkeonye for breach of trust and that the court ordered the police to go to the cement stand and pack the cement and dispose of it.

I have scrutinized the further and better affidavit of the applicants and there is no averment disputing the above deposition.

To be quite candid, I do not see anything wrong with the 1st respondent reporting to the police a case of breach of trust if it is criminal in nature for investigation. This is because as a citizen of this Country he has every right to bring to the notice of the police a report of specific complaint against anyone suspected of having committed an offence, while it is the duty of the police to decide whether or not to invite or arrest the person(s) against whom the report was made. See

MADUKA v. UBAH & ORS (2014) LPELR-23966(CA) (Pp. 35-36, paras. B-A)

As such therefore the 1st respondent is not liable for breach of applicants fundamental right by merely making a complaint to the police.

Accordingly therefore the entire claims against the 1st respondent are hereby dismissed.

Consequently, orders are hereby made as follows:

1. It is hereby declared that the arrest, detention, harassment, intimidation and victimisation of the 1st and 2nd Applicants from the 15th December, 2017 at about 12:30am to the 18th December, 2017 by the men and officers 2nd and 3rd Respondents is unconstitutional, illegal and flagrant violation of the Applicants Fundamental Human Rights as provided under Section 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)
2. The second claim fails and is dismissed.

Accordingly therefore:

3. Order is hereby made that the 2nd and 3rd respondents pay the 1st and 2nd applicant the sum of N500,000.00 (Five Hundred Thousand Naira only) each as exemplary damages for unlawful arrest and detention, breach of right to personal liberty and right to freedom of movement.

4. Order is hereby made restraining the 2nd and 3rd respondents from further unlawfully arresting the 1st and 2nd applicants or unlawfully detaining the 1st and 2nd applicant.
5. Order is hereby made that the 2nd and 3rd respondents pay the sum of N100,000.00 (One Hundred Thousand Naira only) as cost of this suit.

Signed

Hon. Justice M.E. Anenih

Appearances:

C.P. Ezedebe ESQ for Applicants

D.S. Labesa ESQ for the 1st Respondent

2nd and 3rd Respondents unrepresented.