IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT GWAGWALADA

THIS WEDNESDAY, THE 13TH DAY OF MAY 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: GWD/CV/61/18

BETWEEN:

ALIYU MAHMOOD JAFIYA.....APPLICANT

AND

1. **INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION**
2. **THE CHAIRMAN, INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION**
3. **MR. ODONSI ARUA**
4. **MS. OLUWA KEMI**
5. **HAJIYA HAPSAT HAMZA AL-MUSTAPHA**

.....RESPONDENTS

JUDGMENT

This is a matter filed under the Fundamental Rights Enforcement Procedure Rules 2009. The matter was before Hon. Justice M. Balami (now retired), and on his retirement, the matter was transferred to my court by the Hon. Chief Judge, F.C.T. The application is dated 31st May, 2018 and filed on 1st June 2018 in the Court's Registry.

The Reliefs sought as contained in the statement accompanying the application are as follows:

1. **A Declaration that the Applicant is entitled to his fundamental rights to personal liberty and freedom of movement eminently entrenched and guaranteed under Section 35 and 41 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended).**

2. **A Declaration that the arrest and detention of Applicant on 7th December, 2017 and subsequent the persistent intimidation, invitation, harassment and threats to arrest the Applicant by the Respondents over a complaint bordering on a purely civil and/or commercial transaction is utra(sic) vires the powers of the Respondents, unconstitutional and unlawful.**

3. **An Order of injunction restraining the Respondents by themselves, their officers, servants, agents or whosoever acting for them from perpetuating any act of intimidation, invitation, harassment and unlawful arrest and/or detention of Applicant or otherwise interfering with the personal liberty of Applicant in any guise.**

4. **N2,000,000.00(Two Million Naira) only as exemplary and aggravated damages against the Respondents jointly and severally for the wanton violation of the Applicant's fundamental rights aforesaid.**

5. **Such further orders as the Honourable Court may deem fit to make in the circumstances of this case.**

The Grounds upon which the Reliefs are sought are:

1. **Under and by virtue of the Constitution of the Federal Republic of Nigeria 1999, Applicant is entitled to his personal liberty and the security of his person and indeed, cannot be subjected to arbitrary arrest or any other physical coercion in any manner that does not admit of legal justification.**

2. **On 7th December, 2017, the 1st to 4th Respondents unwarrantedly arrested and detained Applicant at the behest of the 5th Respondent. The**

Respondents have capriciously and arbitrarily persisted in their threats to arrest the Applicant over a matter that is purely civil and commercial in nature. By reason of the aforesaid threats Applicant's fundamental rights has continued to be jeopardize and violated and as such prevented from prosecuting his ordinary and daily endeavours.

3. **This Honourable Court is a custodian of the citizens liberty. Ipso facto, under and by virtue of Section 46(1) CFRN 1999 as well as Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009, any person who alleges that any of the provisions of chapter 4 of the constitution has been, is being or is likely to be contravened in any state in relation to him/her may apply to the court for redress.**

4. **Save by the judicial intervention of this Honourable Court, the Respondents will persevere in their violation of Applicant's Fundamental Rights, much in the manner and procedure not permitted by law nor justified by any of the circumstances enunciated under the constitution.**

The application is supported with a thirty two (32) paragraphs affidavit. A written was filed in compliance with the FREP Rules in which one issue was raised as arising for determination as follows:

"Whether this application is meritorious and therefore deserving the gracious indulgence of court for the grant of the reliefs sought?"

The address of the Applicant was essentially anchored on the fact that the actions of the 3rd and 4th Respondents acting at the behest of 5th Respondent in arresting and detaining Applicant; the intimidation and threats of further arrest over a matter that is purely civil amongst other complaints constitutes a violation of his fundamental rights as enshrined in the constitution.

From the Records, the Respondents were all duly served with the originating court processes and hearing notice. The 5th Respondent did not file any response and never appeared in court.

On behalf of the 1st -4th Respondents, a counter-affidavit of nine(9) paragraphs with two(2) annexures marked as **Exhibits ICPC1(a-b) and ICPC 2.** A written address was filed in compliance with the FREP Rules in which (2) two issues were raised as arising for determination:

1. **Whether the Applicants claim has any merit.**

2. **Whether the Applicant's Rights have been violated by the Respondents to accord any form of compensation.**

The address of the 1st to 4th Respondents is basically to the effect that the constitutionally guaranteed rights of the Applicant were not infringed or violated and that all the complaints of alleged violations were not creditably established by evidence.

In response the Applicant filed a further affidavit of fourteen(14) paragraphs with two(2) annexures marked as **Exhibits A and B.** A reply address was filed which accentuated the points earlier canvassed. All these processes form part of the Records of court.

At the hearing, Sir Okei J. Onyemah of counsel for the Applicant relied on the paragraphs of the supporting and further affidavits and the submissions in the written addresses in urging the court to hold that the actions of the 1st-4th Respondents were wholly unconstitutional which entitles him to the reliefs sought.

On the part of Respondents, Anabraba Kioba Kio of counsel equally relied on the paragraphs of the counter-affidavit and adopted the submissions in the written address in urging the court to dismiss the application.

I have given an insightful consideration to all the processes filed by parties together with the oral amplification and it seems to that notwithstanding how each party framed the issues as arising for determination, the material issue that really calls for the most circumspect of this courts consideration is simply **whether on the facts and materials before court, the applicant has proved that his**

fundamental rights were infringed by 1st to 4th Respondents to entitle him to the reliefs sought.

This umbrella issue raised by court conveniently accommodates all the issues raised by parties and has succinctly and with sufficient clarity brought out the pith of the contest subject of the present enquiry and it is on the basis of the said issue that I shall proceed to presently decide this matter.

Before I do so, let me quickly address the point relating to the failure of 5th Respondent to file a counter affidavit. Now it is correct as canvassed by Applicant that since the 5th Respondents did not file a counter affidavit, the facts in the Applicant's affidavit should be taken as true since it is unchallenged. That obviously is trite principle. See **Nwosu V Imo State Environmental Sanitation Authority (1990) 2 NWLR (pt.135) 688 at 721 and 735**. I am however quick to add that although this is the general rule, it is also true to say that the court is not in all circumstances bound to accept as true, evidence that is un-contradicted where such evidence is willfully or corruptly false, incredible, improbable or sharply falls below the standard expected in a particular case. See **Neka B.B.B. Manufacturing C. Ltd V ACB Ltd (2004) 2 NWLR (pt.858) 521 at 550, 551**.

The principle is therefore settled that notwithstanding that 5th Respondent may have not filed a counter affidavit that does not entitle the court to overlook the need to ascertain whether the facts or evidence adduced by Applicant established or proves his claims of infractions of his fundamental human rights. In that vain, the court is at no time relieved of the burden of ensuring that the evidence adduced in support of the complaints sustains it irrespective of the absence or presence of any Respondent(s). See **Fajemirokun V C.B Nig. Ltd (2009) 5 NWLR (pt.1135) 588 at 613 – 614 H-H; Nnamdi Azikiwe University V Nwafor (1999) 1 NWLR (pt.585) 116 at 140 – 141.**

The second point relates to the contention that the counter-affidavit of 1st to 4th Respondents was filed out of time. The Respondents however contend otherwise. The originating processes were served on 30th October, 2019 on 1st to 4th Respondents but they filed the counter-affidavit on 7th November, 2019 outside the 5 days provided for same under **Order 11 Rule 6 of the FREP Rules.** I don't think this is a matter we should dissipate much energy on.

Firstly, the Applicant who raised this complaint has filed a reply affidavit with annexures joining issues on the averments raised in the counter-affidavit which was equally filed way of time on 13th January, 2020 but which they seek the court's indulgence to use in determining the justice of their application. It appears to me a contradiction in terms and unfair to in one breath say that the counter-affidavit is incompetent and should be discountenanced and in an another breath, the court is urged to consider a reply affidavit filed in response to this alleged incompetent counter-affidavit.

The Supreme Court in **C.C.B (Nig)Plc V. A.G. Anambra (1992)8 N.W.L.R (pt.261)528 at 554 C-G per** Karbi-Whtye J.S.C instructively stated that where a party alleges non-compliance with the rules of court, yet files a counter-affidavit, he is deemed to have taken fresh steps in the proceedings since knowing of the non-compliance complained of. That he is therefore prevented from raising non-compliance.

Although the Apex Court was dealing with rules of court, the principle enunciated also has legal traction and resonance in the extant situation. A court of law qua justice faced with a challenge as to the late filing of a process to which the adversary has responded to as in this case should not shut its eyes to such a process even if filed irregularly in the overall interest of justice.

It is trite law that it is the duty of the court to hear the case of parties on the merit before arriving at a decision in other to do substantial justice between the parties as each party has the right to have his dispute tried on the merits and the court should do everything it properly can do to favour the trial of the questions between the parties. See **Wakweh V. Ossai (2002)2 N.W.L.R (pt.752)548 at 582 F-G**

Secondly, **Order IX of the FREP Rules** on non-compliance states clearly that where at any stage in the course of or in connection with any proceedings, there has, by any reason of anything done or left undone, been failure to comply with the requirement as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify proceedings. The failure here is with regards to time and an irregularity which does not effect the competence of the counter-affidavit.

In addition, no prejudice at all will be occasioned to Applicant and none was identified or demonstrated by a consideration of the counter-affidavit to which the Applicant responded to by filing a reply affidavit and written address which was equally filed out of time and not in compliance with **Order 11 Rule 7 of the FREP Rules.**

Now to the merits.

ISSUE 1

Whether on the facts and materials before court, the Applicant has established that his Fundamental Human Rights were infringed by Respondents to entitle him to the reliefs sought.

Now it is settled principle of general application that an applicant who seeks for the enforcement of his fundamental rights under **Chapter IV of the Constitution** has the onus of showing that the reliefs he claims comes within the purview of the fundamental rights as contained in chapter IV and this is clearly borne out by the express provision of **Section 46 of the 1999 Constitution and Order 11 Rule 1 of the FREP Rules 2009. In Uzoukwu V. Ezeonu II (1991)6 N.W.L.R (pt.200)708 at 751, the Court of Appeal** in construing **Section 42 of the 1979 Constitution** which is in *pari materia* **with Section 46 of the 1999 Constitution** stated as follows:

"The Section requires that a person who wishes to petition that he is entitled to a fundamental right:

a. **Must allege that any provision of the fundamental rights under chapter IV has been contravened, or**
b. **Is likely to be contravened, and**
c. **The contravention is in relation to him''.**

The reliefs which therefore an applicant may seek under the FREP Rules are specifically limited to any of the fundamental rights prescribed and embodied in chapter IV of the Constitution. See **Dongtoe V. Civil Service Commission Plateau State (2001)19 WRN 125; Inah V. Okoi (2002)23 WRN 78; Achebe V. Nwosu (2002)19 WRN 412.**

I had at the beginning spelt out the reliefs of applicant in his statement accompanying the application and they clearly come within the purview of fundamental rights under **Chapter IV of the 1999 Constitution.** The burden therefore was on the Applicant alleging that his fundamental rights have been contravened or likely to be contravened to place before the court cogent and credible facts or evidence to enable the court grant the reliefs sought. See **Fajemirokun V. C.B.C.I (Nig) Ltd (1999)10 N.W.L.R (pt.774)95.**

In resolving this dispute, it may be necessary to give a brief background facts of the matter as distilled from the processes filed on both sides of the aisle for a proper appreciation of the issues to be resolved.

On the part of the Applicant, his case in summary is that sometime on 6th December, 2017, he received a letter from the 3rd Respondent inviting him to the 1st Respondent's office for an interview on alleged violation of the ICPC Act Sixteen years after he said he left the services of Federal Housing Authority (F.H.A). That he honoured the invitation where he was informed that the invitation was sequel to a complaint by 5th Respondent who alleged that he sold a housing unit to her in 2002 and that all papers issued were invalid. That he denied the allegation; he wrote his statement and that he was detained until 8pm when he was released on bail same day.

The Applicant averred that as at 2002, he was a staff of FHA but that he never sold any house to 5th Respondent and that he met the 5th Respondent in 2003 for the first time when she made a similar compliant at the EFCC which declined to act on the complaint on the basis that it is a commercial transaction to be resolved by civil means.

The Applicant averred further that the property subject of her complaint was a property managed by F.H.A and originally allocated to one Major Nasir Muazu which he sold to 5th Respondent through her agent. That he never dealt with the 5th Respondent and did not collect any money from her or give her any title documents. That since 7th December, 2017, he has made several visits to the 1st to 4th Respondents and that they have threatened him to refund the money for the failed transaction with the said Major Nasir or in the alternative to produce him. He further averred that the said Major Muazu is neither his friend or relation. That

the 5th Respondent is using the services of the 1st to 4th Respondents to arrest and coerce him to pay for the purported failed transaction between the said Major Muaza and 5th Respondent. That the 1st to 4th Respondents have continuously threatened and harassed him with incessant invitations over a purely civil transaction. Finally that he was equally threatened with further arrest and detention if he does not produce Major Muazu or pay the consideration for the failed sale of the house.

On the part of the 1st to 4th Respondents their case also in summary is that they received a petition or complaint vide **Exhibit ICPC 1(a and b)** which revealed elements of corrupt practices against officials of FHA and therefore satisfied the requirements for investigation under **Section 6(a) of the Corrupt Practices and other Related Offence Act 2000.** They then commenced investigations to determine the veracity of the complaint. Applicant was invited, his statement was taken and he was granted bail same day. That when they completed their investigations, they duly filed a criminal charge against him at the Federal High Court vide **Exhibit ICPC 2.** That the filing of this action is simply to prevent and or compromise the completion of criminal investigation and the filing of the criminal charge.

I have above deliberately and at length sought to capture the essence of the narrative on both sides. The kernel or crux of this dispute is whether the actions of the Respondents within the context of the precise complaints of Applicant can legally and be constitutionally countenanced.

Now it is not in doubt that the provisions of **Sections 34 and 35 of the 1999 Constitution** provides for the right to dignity of the human person and the right to personal liberty.

The sections provides as follows:
"34(1) 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."**

"35(1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law-:

a. **In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty.**

b. **By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law.**

c. **For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.**

d. **In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare.**

e. **In the case of persons suffering from infectious or contagious disease, persons of unsound mine, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community. or;**

f. **For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.**

The above sections appear to me clear and unambiguous such that the task of interpretation can even hardly be said to arise. **Section 34(1)** emphasises treatment of the human person with respect and therefore any act which makes people lose their sence of self respect, value or worth would be degrading. **Section 35(1)** on the other hand places premium on the personal liberty of every person and any deprivation of same must be consistent with the procedure permitted by law. The court obviously serves as a necessary bulwark in the protection of these fundamental rights and any transgression or proved violation of these constitutional provisions are met with necessary legal consequences.

The task before me now is to apply the above clear provisions in relation to the alleged infractions and determine whether these infractions were proved.

I start with the complaint that the arrest of the Applicant infringed on the fundamental right of the applicant.

Now it is common ground that the 1st Respondent is a body statutorily created with precisely streamlined powers under the Corrupt Practices and other Related Offences Act, 2000.

Section 6(a) of the Act provides as follows:

"It shall be the duty of the Commission:

(a) Where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or commission of such offence and, in appropriate case, to prosecute the offenders."

It is clearly within the purview of the above provision that the commission received the petition vide **Exhibit ICPC 1** against the FHA and some of its staff over alleged corrupt and fraudulent activities cover the sale of property known as No.3(IH), 2 Road Lugbe Estate Abuja. The name of Applicant feautures in this petition and this clearly explains his invitation to the ICPC office.

In my opinion the essence of the of the complaint or petition is to enable the 1st Respondent or law enforcement agency to evaluate same and exercise their power(s) on what further actions to take dependent on the strength and credibility of the complaint. See **Olatinwo V. State (2013)8 N.W.L.R (pt.1355)126.**

A logical and necessary corollary of the processing of the petition would necessarily require the basic step(s) of investigation which is the examination of the facts of the situation. There may or may not be the need to call in people for questioning in the process. The process may take a period of time and the invitation for questioning may also be repeated. There is no cast iron formular on how the process will pan out. These are issues largely dictated by the facts

uncovered in the process of investigation. The only point to add here is that the process must be conducted with civility and decorum.

In paragraphs 4, 5 and 7 of the affidavit in support, the Applicant stated clearly that he received a letter of invitation and he duly honoured the invitation on his own volition and reported at the ICPC office where he was informed of the complaints made by 5th Respondent and after he wrote his statement in response he was granted bail and released same day by 8pm.

There is really nothing creditably established on the evidence by Applicant that the above processes were carried out in a manner inconsistent with any provisions of the constitution and which violated his fundamental human rights. There is equally nothing on the evidence to demonstrate how the invitation extended to him which he freely honoured; the statement he made voluntarily and his release same date violated any provisions of the ICPC Act.

Now as stated earlier, the Applicant's name feautures in the petition written with respect to the corrupt and fraudulent activities of sale of the F.H.A property by its staff. The Applicant in the affidavit in support agreed that he was then a staff of FHA at the time of the transaction but that he never sold the house to 5th Respondent. In **paragraphs 11-14**, the Applicant however gave extensive details of the parties involved in the sale of the disputed property including the name of the agent to the 5th Respondent, the title documents exchanged and the fact that the consideration for the property was paid to the vendor, one Major Nasir Muazu. It is obvious even by these averments, that the Applicant knows a lot about this transaction. Indeed in paragraph 4 of the further affidavit, the Applicant averred as follows:

"4: I refer to Exhibit ICPC 1(a and b) attached to the 1st-4th Respondents counter-affidavit and accordingly state that, the transaction referred therein is a contract sale of landed property officially supervised and superintend over by Federal Housing Authority whereby i acted in an agency capacity for the donor." (Underlining supplied).

These averments show clearly that contrary to the earlier depositions that the Applicant has no concrete link with the sale complained of, he clearly even acted as an agent for the vendor. These lends credence to why the **ICPC** would require his presence to get his reaction to whether he was involved in the alleged corrupt and fraudulent practices of some staff of F.H.A or not relating to the failed sale of the property or house in question. **Section 28(1)(a) and 28(3)(a) of the ICPC Act 2000** provides further basis for the Applicant to come to the ICPC office to be examined and shall continue to attend from day to day where so directed until the examination is complete.

The bottom line is that when such a serious complaint of corrupt and fraudulent practices as in **Exhibit ICPC 1** is made against government officials and this then culminated in the filing of a criminal charge/ case, I cannot accept the contention that such a citizen is doing anything wrong in making the complaint. The decision whether to take further steps is logically a judgment call for the 1st Respondent to make. Indeed there is also nothing stopping them from abandoning the complaint altogether if it has no justifiable basis as earlier stated. In **Fajemirokun V C. B (Nig) Ltd (supra) 600,** the Supreme Court held thus:

"Generally, it is the duty of citizens of Nigeria to report cases of commission of crime to the police for their investigation. What happens after such report is entirely the responsibility of the police. In other words, citizens of Nigeria cannot be held culpable for doing their civil duty unless it is shown that it was done mala fide. In the instant case, acts that were criminal in nature, that is, issuance of dishonoured cheques to the Respondents were done. In the circumstance, the respondents, as citizens of Nigeria had the choice to exercise their legal right of placing their grievance before the police as they did. Whatever action the police took was not the responsibility of the Respondent."

The Apex Court may have above referred to the police in particular but the principle extends to all Law Enforcement Agencies like the Respondent. The complainant in **Exhibit ICPC 1** cannot be said to have done anything wrong in occasioning the petition to ICPC. Indeed, I even incline to the view that the right to report acts of being a victim of any act of criminality cannot be denied anybody on the supposed or anticipated fear of violation of human rights. Indeed an arrest in such circumstances comes squarely within the purview of **Section 35 (1) (c) of the 1999 Constitution**. The guiding principle is for all law enforcement agencies to exercise these powers with scrupulous fidelity to the rule of law at all times and

where they have so acted in the exercise of their undoubted powers, except it can be shown or established that they acted outside the purview of their statutory powers or acted mala fide, the 1st Respondent cannot be faulted.

The contention that the 1st -4th Respondent are acting at the prompting and behest of 5th Respondent clearly is bare speculative posturing bereft of evidence and is discountenance without much ado. There is nothing before me showing that 5th Respondent either works with 1st Respondent or indeed what link if any she has with them and how she can exercise any measure of influence on how they exercise their statutory duties. I leave it at that

On the whole on this point, I cannot situate any fault in the complaint made to the Respondent neither can it be urged with any conviction that the 1st to 4th Respondents acted arbitrarily or wrongly in inviting the Applicant for questions relating to the complaint against him. In **Ekwenugo V. FRN (2001)6 N.W.L.R (pt.708)171 at 185,** the Court of Appeal, per Fabiyi J.C.A (as he then was) opined instructively on follows:

"If there is reasonable suspicion that a person has committed an offence, his liberty may be impaired temporarily. In the same vein, his liberty may be tampered with so as to prevent him from committing an offence. In short, it is clear that no citizen's freedom from liberty is absolute. The freedom and liberty of a citizen ends where that of the other man starts."

The fact that the matter has elements of a contractual or civil relationship cannot be used to disguise the serious corrupt allegations made so as to prevent the ICPC from exercising their lawful duties of investigating the allegations. The ICPC certainly do not determine questions relating to contractual obligations or liability. That is self-evident. That is however a different matter which is distinct from question(s) bordering on serious allegation(s) of fraud, breach of trust and related complaints raised against public officers which they have been called upon to investigate. The ICPC, it must be emphasised is a creation of law and despite the sometimes negative local perception, it is not such a dread or fright inducing institution that any law abiding citizen without any thing to hide should loathe going to upon being invited.

The right to personal liberty is therefore not infringed when such invitations are extended to private citizens. There is really nothing in evidence to support the allegation of arbitrariness in the invitation of Applicant. The bottom line really is that while the court seeks at all times to prevent abuse and any infraction of the

rights of citizens, it cannot however be seen to shield anybody from criminal investigation by stopping a body empowered by law and the constitution to carry out such investigation. See **A.G Anambra V. Chris Uba (2003)13 N.W.L.R (pt.947)67.** There is clearly on the materials no credible proof of any wrongdoing by the 1st to 4th Respondents in the circumstances.

With respect to the complaint that Applicant was detained for Eight(8) hours on the day of the invitation, there is nothing before me to situate that he was in the ICPC office for those number of hours. There is nothing before the court to establish or show when he went into and left the ICPC offices.

Now even if we assume that he stayed there for 8 hours as Applicant contended, what is clear is that the day he honoured the invitation was the same day he was granted bail. The question here is which of the constitutional provisions was violated? Absolutely none was identified by Applicant. All that happened in this case was done within the constitutionally allowed window or period and thus valid. See **Section 35(4) and (5) of the 1999 Constitution; see also Eda V. The C.O.P Bendel State (1982)3 N.W.L.R 219 at 226.** There is absolutely no arbitrariness in the conduct of 1st-4th Respondents.

Finally, I take the questions of the alleged continuous threats and harassment and the allegation that Applicant is being intimidated to either pay the contractual sum or produce the vendor Major Muazu. The applicant clearly has the burden of proving these allegations. It is trite law that he who asserts must prove. See **Section 131(1) of the Evidence Act 2011.** Unfortunately on the materials before court, no clear case was made with respect to these alleged harassment and threats to further arrest Applicant. If Applicant was coerced and or harassed to pay the consideration for the failed sale of the disputed property or produce the vendor, one Major Muazu, there is nothing in evidence showing or streamlining how this was done and by whom and the court cannot speculate.

I cannot also justifiably situate where or how the Respondent further threatened or harassed the Applicant in the manner stated in the claim. I cannot equally situate the likelihood of further violation of Applicant's rights as alleged. As stated earlier on the materials, the Applicant has since been granted bail and by **Exhibit ICPC 2,** a formal criminal charge has been filed against Applicant at the Federal High Court with respect to the failed sale of the disputed property. That is the way it should be.

The case of Applicant unfortunately appears compromised for want of proof or credible evidence. There is no room for speculations or guess work. The guiding principle or rule is that a court must not grant a party what it has not asked for in clear terms and sufficiently proved. See **Joe Golday Co. Ltd V. Cooperative Dev. Bank Ltd (2003)35 SCM 39 at 105.**

The point again to underscore is that a court of law qua justice only acts or decides on the basis of what has been clearly demonstrated and creditability proved. I must also add that bare averments of infractions in an affidavit cannot suffice especially here where they are seriously controverted or challenged. I do not think that the assertions of applicant can stand or be accepted as correct without proof. The mere stating of a fact does not prove the correctness or credibility of that fact without cogent evidence to substantiate same. In as much as the assertion does not relate to any fact which the court can take judicial notice, it behoves applicant to substantiate same with proof.

The principle has always being that in a fundamental rights enforcement matter, which is a serious matter, the court will not declare an applicant's right(s) to be infringed simply because he says so and in the absence of credible evidence or proof. The materials also supplied by applicant in the circumstances must also not be such that is incredible, improbable or sharply falls below the standard expected in a particular case. It must establish that the rights claimed exist and has been infringed upon or is likely to be infringed. See **Neka B.B.B Manufacturing Co Ltd. V. ACB Ltd. (2004)2 N.W.L.R (pt.858) 521 at 550 – 551.**

The salutary point in matters of this nature is simply that the court in carrying out its invaluable judicial oversight functions must be circumspect in this very delicate balancing Act between protection of the fundamental rights of citizens from unnecessary attack on one hand and on the other hand providing sufficient space to the law Enforcement Agencies to carry out their statutory duties in what we must concede are challenging times or circumstances.

I only again need emphasise on the imperatives of the I.C.P.C and indeed all law enforcement agencies like all progressive institutions and notwithstanding the challenges they face, must keep strict fidelity to the rule of law in all their actions. There is therefore no room for highhandedness or arbitrariness in the discharge of their statutory duties and responsibilities. They similarly must not succumb to the unwieldy dictates or whims of any person no matter how wealthy or powerful. The I.C.P.C must ensure that their actions at all times serve only to enhance the quality of liberty and dignity of the person as enshrined in the 1999 constitution. The

investigative and prosecutorial paths, where the I.C.P.C play critical roles must as much as possible be kept pristine clear, transparently free, fair and unfettered. I leave it at that.

I have here carefully considered the materials before me and I cannot locate any violation of the relevant constitutional provisions or even the ICPC Act. There is absolutely no evidence of such quality and cogency beyond controverted speculative averments showing that the Applicants rights were violated and that he was arrested and detained beyond the period constitutionally allowed and the conclusion I reach is that the Applicant's narrative lacks credibility and value. I so hold.

It is a fundamental principle of our legal system in respect of facts averred that where they are weak, tenuous, insufficient or feeble, then it would amount to a case of failure of proof. A plaintiff whose affidavit does not prove the reliefs he seeks must fail. See **A.G. of Anambra State V. AG of Fed. (2005)AII F.W.L.R (pt.268)1557 at 1611; 1607 G-H.**

In the final analysis, the issue raised as arising for determination is substantially answered in the negative. For the avoidance of doubt, all the reliefs or claims of Applicant on the alleged violation of his fundamental rights are not availing. The monetary and other related claims predicated on the alleged violation of his fundamental rights must equally fail. You cannot put something on nothing and expect it to stand is a well known legal axiom. The entirety of the case of Applicant is hereby accordingly dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

1. **Sir O.J. Onyemah, Esq., with M.O Ogudibia, Esq., for the Applicant.**

2. **K.K. Anabraba (Miss) for the 1st -4th Respondents.**