

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA**

THIS MONDAY, THE 18TH DAY OF MAY, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/0797/18

BETWEEN:

MR STEP ECY OMU APPLICANT

AND

**1. STATE SECURITY SERVICE
2. MR YAKUBU YECHIE
3. MOHAMMED MUSA ZANGO }RESPONDENTS**

JUDGMENT

This is an application brought pursuant to the Fundamental Rights Enforcement Procedure (FREPE) Rules 2009. The application is dated 29th January, 2018 but filed on 1st February, 2018 in the Court’s registry.

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

- 1. A Declaration that the acquisition of land, or claim of ownership and/or title, and/or rival claim of ownership over land is purely civil in nature.**
- 2. A Declaration that disputes over ownership or title over land, whether civil or criminal, is entirely outside the purview of the statutory duties of the 1st Respondent and its agents, and therefore *ultra vires* its powers under the National Security Agencies Act, Cap N74, 2004.**

- 3. A Declaration that the acts of the Respondents in inviting and arresting, harassing and threatening to, and re-arresting and detaining the Applicant over a purely civil matter are *ultra vires* the 1st and 2nd Respondents' powers under the National Security Agencies Act, Cap N74, 2004, unlawful and illegal and therefore in breach of the Applicant's Fundamental Rights as guaranteed under the 1999 Constitution of the Federal Republic of Nigeria (as amended).**
- 4. A declaration that the acts of the 1st and 2nd Respondents in impounding and detaining the Applicant's Toyota Camry Car with Registration No: GWA-290-KH (Abuja) until the sum of N1,500,000.00 was paid by the Applicant, and the forceful collection of the said sum of N1,500,000.00 from the Applicant before releasing him and his said car from detention when they are not debt collectors, or a court of law, are *ultra vires* the 1st and 2nd Respondents' powers under the National Security Agencies Act, Cap N74, 2004, unlawful and illegal and therefore in breach of the Applicant's Fundamental Rights as guaranteed under the 1999 Constitution of the Federal Republic of Nigeria(as amended).**
- 5. A declaration that the acts of the 1st and 2nd Respondents in compelling the Applicant to "settle" the 3rd Respondent or "sell" the land in question to the 3rd Respondent for the sum of N4,500,000.00 and compelling him to pay the sum of N1,500,000.00, and compelling him to give undertaking to pay the balance on or before 22nd February, 2018, over a purely civil matter are *ultra vires* the 1st and 2nd Respondents' powers under the National Security Agencies Act, Cap N74, 2004, unlawful and illegal and therefore in breach of the Applicant's Fundamental Rights as guaranteed under the 1999 Constitution of the Federal Republic of Nigeria (as amended).**
- 6. An order of this Honourable Court restraining the Respondents, their agents, servants, privies, or howsoever called, from carrying out any further acts of intimidation, arrest, threats of further arrests and detention or causing any other form of embarrassment to the Applicant, over the**

purely civil matter complained of, or taking of any further steps in relation to the matter complained of in this suit.

7. An order of this Honourable Court compelling the Respondents to refund the said sum of N1,500,000.00 to the Applicant forthwith.
8. An order of this Honourable Court compelling the Respondents, jointly and/or severally, to pay the sum of N5,000,000.00(Five Million Naira) to the Applicant as exemplary and/or punitive damages for the unlawful arrest, intimidation and threats of further arrest and detention.

The grounds upon which the Application is sought are as follows:

1. By virtue of Sections 34, 35, 36(8) and (12) and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and Article 4-7 of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act Cap A9 LFN 2004 every human being shall be entitled to respect for his life and integrity of his person; and every individual shall have right to liberty and to the Security of his person. In particular, no one may be arbitrarily arrested or detained. Furthermore, no person shall be held guilty or convicted for anything which is not an offence known to law.
2. By virtue of Section 46 of the Constitution of the Federal Republic of Nigeria any person who alleges that any of the rights provided in the Constitution has been, is being or is likely to be contravened in relation to him may apply to a High Court for redress.
3. That the arrest, embarrassment, harassment, intimidation, compelling the Applicants to refund moneys spent in a purely civil transaction and the threat to arrest and detain the Applicants by the Respondents is a gross violation of their fundamental rights as guaranteed under the 1999 Constitution of the Federal Republic of Nigeria (as amended).

The application is supported by a 40 paragraphs affidavit and three (3) annexures marked as **Exhibits A-C**. A written address was filed in compliance with the FREP Rules in which one issue was raised as arising for determination as follows:

“Whether given all the facts and circumstances of this case, especially having regard to the depositions in the supporting affidavit, the fundamental rights of the Applicant have been breached and, if so, what are the remedies available to the Applicant in the circumstances.”

The address of the Applicant which forms part of the Records of Court was essentially anchored on the fact that the actions of the 1st and 2nd Respondents in arresting and detaining Applicant, threats of further arrest over a matter that is civil amongst other complaints constitutes a violation of his fundamental rights as enshrined in the constitution.

At the hearing, N.A. Essien, counsel to the Applicant relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to hold that the actions of the 1st and 2nd Respondents at the prompting of 3rd Respondent over a purely civil matter goes beyond their statutory mandate, is wholly unconstitutional which entitled him to the reliefs sought.

In opposition, the 1st and 2nd Respondents filed a counter-affidavit of 35 paragraphs with two (2) annexures marked as Exhibit SSS1 and SSS2. They equally filed a notice of preliminary objection challenging the jurisdiction of the court to entertain the action which was however subsequently withdrawn and struck out. The submissions made in the address on the jurisdictional issue shall accordingly be discountenanced.

In the written address filed in compliance with the FREP Rules, four (4) issues were raised as arising for determination as follows:

“(a) Whether the Applicant has made out a case under the Fundamental Rights Enforcement Procedure Rules that will entitle him to the reliefs sought by his application?

(b) Whether or not this Honourable Court has jurisdiction to entertain a suit filed against an agency of the Federal Government in civil causes and matters?

(c) Whether the suit was instituted mala-fide and liable to be struck out in its entirety?

(d) Whether a cause of action has arisen to warrant the institution of this suit against the 1st and 2nd Respondents?”

The address of 1st and 2nd Respondents on the germane issues of violations of fundamental human rights is basically to the effect that the constitutionally guaranteed rights of Applicant were not in any manner infringed or violated and that all the complaints of alleged violations were not creditably established by evidence. The address of 1st and 2nd Respondents equally forms part of the Records of Court.

At the hearing, **C.P Njoku** of counsel for the 1st and 2nd Respondents relied on the contents 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 court’s consideration is simply **whether on the facts and materials before court, the applicant has proved that his fundamental rights were infringed by 1st and 2nd 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 3rd Respondent to file a counter affidavit. Now it is correct as canvassed by Applicant that since the 3rd Respondent 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 the 3rd 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.**

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.**

Let us now try to understand or situate the facts of this case. The affidavit of Applicant comes in handy here. The relevant paragraphs are as follow:

- “ 6 That sometime in July, 2004, I acquired a plot of land, known and described as Plot No.262, Lugbe Extension II, Lugbe, Abuja, measuring approximately 650 square meters, from one Samuel Odofin for residential purposes. Copy of the power of attorney donated in my favour for that purpose is herewith attached and marked Exhibit A.**
- 8 That in exercise of my rights over the said land, I subsequently sold the land out to a third party, who later started erecting a building on it.**
- 9 That from the time I acquired the land as aforesaid, and up to the time I sold the land out and the said third party started development on the land, nobody has ever come up with any rival claim of ownership over the land.**
- 10 That to my greatest surprise, on 24th October, 2017, I was invited on phone by the 2nd Respondent to their office at the FCT Command of the 2st Respondent, at Asokoro, Abuja.**
- 12. That two weeks later at the 2nd Respondent’s office, I was introduced to Alhaji Nura Suleiman as the person who petitioned against me.**

- 14. That upon reaching the 1st and 2nd Respondents' office, I was informed that the land belonged to the 3rd Respondent and that by causing development to be carried out on the land, I was trespassing on the 3rd Respondent's land.**
- 15. That I was subsequently asked to bring my title documents over the land and I did so, and told them how I got title over the land and subsequently sold to a third party who is developing the land.**
- 16. That inspite of my submitting my documents to them, there was never a corresponding request for documents from the 3rd Respondents, and the 3rd Respondent never showed up in their office while I was there.**
- 17. That owing to the acts and threats of the Respondents, construction work on the land was put to an abrupt stop, and the materials on site have started to decay.**
- 19. That on 12th January, 2018, which is the last time I received invitation from the Respondents before the filing of this suit, I was invited again by the 2nd Respondent and asked to report at their office at the FCT Command of the 1st Respondent, Asokoro, Abuja, on 17th January, 2018.**
- 20. That to the best of my knowledge and belief, this invitation of the 2nd Respondent his to carry out their threat of arresting and detaining me over ownership of the land at the instance of the 3rd Respondent.**
- 21. That on 23rd January, 2018, to confirm my fears, I was again invited and when I went, I was arrested and detained by the 1st and 2nd Respondents in their office at the F.C.T Command of the 1st Respondent.**
- 22. That throughout my bitter ordeals with the Respondents, the 2nde Respondent acted as the investigating police officer (I.P.O), on the order and instruction of Mr, Musa Yankari, who is an Assistant Director of S.S.S. Who, in turn, is a very close friend of one Alhaji Nura Suleiman.**

- 23. That to the best of my knowledge and belief, the said Alhaji Nura Suleiman is also a friend to the 3rd Respondent, and has been fronting and acting as proxy for the said 3rd Respondent at the 1st and 2nd Respondent's office.**
- 24. That on the said 23rd January, 2018, the day I was arrested and detained by the Respondents, my car, Toyota Camry Saloon Car, with Chassis No. JTNBF 4K 003023344, with Registration No. GWA-290KF (Abuja), with which I went to the 1st and 2nd Respondents' office, was impounded from me and also detained by the Respondents. Copies of the said car's particulars are herewith attached and collectively marked Exhibit B.**
- 25. That the Respondents promised me that the car would not be released to me except I paid some money and "settled" with the 3rd Respondent, denouncing my ownership of the land in issue.**
- 26. That on 24th January, 2018, I was compelled to write an additional statement undertaking to settle the 3rd Respondent with the sum of N4,500,000.00 (Four Million, Five Hundred Thousand Naira) before I would be released from detention. That I requested for the presence of my lawyer, but they refused to allow my lawyer entry into the 2nd Respondent's office.**
- 27. That on 23rd January, 2018, when my lawyer accompanied me to the 2nd Respondent's office, they threatened to shoot him if he should visit the office again.**
- 28. That on 25th January, 2018, I was compelled to pay the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) in the Respondents' office, which payment was acknowledged by the 2nd Respondent in the presence of Engr. Samuel Fashanu, leaving a balance of N3,000,000.00 (Three Million Naira) to be paid on or before 22nd February, 2018.**

- 29. That the said sum of N1,500,000.00 was withdrawn twice from two different accounts. Copy of the sms alerts is herewith attached and marked Exhibit C.**
- 30. That I asked for a copy of the acknowledgement for the money I paid to them but they refused to give me a copy.**
- 31. That it was at the point of paying the said sum of N1,500,000.00 that the 3rd Respondent was invited to the 2nd Respondent's office, where I also met him for the first time.**
- 32. That the Respondent assured and promised me that if I do not pay the balance of N3,000,000.00 on or before 22nd February, 2018, I would again be arrested and detained.**
- 33. That the Respondents' threat to compel me to pay the sum of N4,500,000 to the 3rd Respondent or re-arrest and detain me if I do not pay is real.**
- 34. That all times material to the filing of this suit, the Respondents, apart from arresting and detaining my car, have compelled me to pay the sum of N1,500,000.00, allegedly for remittance to the 3rd Respondent.**
- 36. That threat of the Respondents is real and would be carried into effect anytime by them if there is no timely intervention by this Honourable Court."**

The 1st and 2nd Respondents denied all these accusations. Their case is simply that a complaint or petition of attempted kidnapping/threat to life vide **Exhibit SSS1** was made against one Alhaji S. Idris. The petitioner considered the threat real as the said Alhaji S. Idris mentioned his residential address and alluded to the fact that his son was schooling in A.B.U Zaria.

In the petition, the name of applicant appears as part of Alhaji S. Idris gang making the alleged serious threats. The 1st and 2nd Respondents then commenced investigations to determine the veracity of the complaint. By **Exhibit SSS2**, the register of visitors records, the Applicant was invited on 23rd January, 2018; he

came to their office by 11:08 am and was questioned and left same date by 5:55pm. That this action is simply an attempt to pre-empt whatever possible actions they may take and to frustrate same.

I have above deliberately and at length sought to capture the essence of the narrative of parties on both sides of the aisle to provide proper factual understanding of the case as made out.

Now let me start by saying that 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 mind, 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 sense 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.

The point as made out by our Superior Courts perhaps again needs to be reiterated even at the risk of prolixity. In **Fajemirokun V C.B.C.I Nig. Ltd (supra)**, the Court of Appeal held instructively as follows:

“For an Applicant alleging infringement of his fundamental rights to succeed, he must place before the Court all vital evidence regarding the infringement or breach of such rights. It is only thereafter that the burden shifts to the Respondent. Where that has not been done or where scanty evidence was put in by the Applicant, the trial court can strike out such Applicant for being devoid of merits. In the instance case, the trial court was right in holding that the application was devoid of any merit as the Appellant failed to provide

sufficient facts in his supporting affidavit to establish that his fundamental rights was infringed.”

Let us now evaluate the complaints of the alleged arrest, and detention of Applicant, the forced extortions of moneys, impounding of his car and the threats to further arrest and detain him. These allegations as stated repeatedly must be creditably proved. It is not a matter of guess work or speculations.

Now from the affidavit, the case made out by Applicant particularly the alleged infractions of his Fundamental Rights is based on his ownership of a certain parcel of land situate at Plot No. 262, Lugbe Extension, donated to him vide **Exhibit A**, a **Power of Attorney**. The Applicant however added that he has sold this parcel of land to a third party who has started erecting a building on it.

Now what is strange here is that there is nothing to show who this **third party** is and whether the said plot was indeed sold to him and for any consideration. There is nothing or a paper trail donating the sale or transfer of interest by Applicant to this third party. There is equally nothing before the court to show that this third party has started developing this land as asserted. It is Indeed surprising that such a critical voice in the case of Applicant was not made to file anything to add credibility to the case as made out. It is difficult to see how there can be a resolution of any dispute as asserted by Applicant in the absence of the owner, who he sold the land to.

Now in a clearly incredible twist, the Applicant vide paragraph 15 said he was asked by the 1st and 2nd Respondents to produce the **title documents** to the land and that he produced the title documents. The question here is how can he produce the title documents over a land he said he has sold in paragraph 8 and over which the party who bought from him had started developments on.

One would have logically expected if the narrative of Applicant was to have any credibility and traction that he would have at this point mentioned the name of the person he sold to but he never did. It is really difficult to even at this stage to accord much value to the narrative of Applicant that the alleged infractions he is complaining of relates to a land he has sold but which by his contradictory and inconsistent assertions, he somehow still owns.

The Applicant then asserted that he was arrested and detained over this parcel of land; his car was impounded and he was told that his car will not be released except he pays some money to the 3rd Respondent and **“denounces (his) ownership of the land in issue”** vide paragraph 25.

There is absolutely nothing before court to creditably establish these complaints beyond Applicants bare and denied assertions.

Again how is the court to give credibility to these complaints in the face of clear and conflicting assertions. If as clearly made out, Applicant has sold the land, how can he now claim that he has been forced to **“denounce”** ownership of the land he now no longer owns having sold to a third party.

Furthermore, if he was arrested and detained as alleged, where and when was he arrested? It is curious that there is no evidence of any kind streamlining the arrest and where it was effected. Was the arrest done at home, in his office or the market place for example? The court will not speculate. Again for how long was he detained and when was he released? Was he granted bail and who secured the bail? The Applicant chose to his detriment not to address these critical points and the court, again cannot speculate.

Again, if his car was impounded and monetary demands made as alleged, where is the evidence to show or even suggest that his car was indeed impounded and monetary demands made? There is nothing before me to support these complaints. There is equally nothing to show that the alleged withdrawals made vide **Exhibit C** has anything to do with Respondents and the court cannot as stated severally speculate or manufacture evidence to support these contested assertions.

If Applicant was made to write an **“additional statement/undertaking”** to settle 3rd Respondent with the sum of N4, 500, 000 before he will be released, where is this statement or indeed any statement showing that the Respondents forced him to give any such undertaking? Again, the Applicant has left profound gaps in his narrative and most importantly his case is not backed up by any scintilla of evidence which has served to undermine his complaints.

Similarly on the question of harassment and threat to further arrest Applicant, if certain payments was not made by him, the Applicant has not provided any material to establish 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 out with respect to these alleged harassment and threat to further arrest Applicant. If Applicant was coerced and or harassed to admitting any indebtedness, there is nothing in evidence showing or streamlining how this was done and by whom.

I cannot really situate where or how the Respondents further threatened or harassed the Applicant in the manner stated in his claim. I cannot equally situate the likelihood of further violation of Applicants right as alleged in the circumstances.

As stated earlier, the Applicants had the burden to place before court all the necessary and vital evidence regarding the alleged infraction of his fundamental rights. It is only thereafter that the burden shifts to the Respondent. See **Fajemirokun V C.B.C.L (supra)**. The Applicant has clearly not crossed this threshold neither has he provided clear and precisely streamlined factual basis to support his complaints.

The Applicants' case is further fatally compromised by the clear position as made out by 1st and 2nd Respondents. They stated that they received a complaint of attempted kidnapping and threat to life vide **Exhibit SSS1**. I have carefully read the petition and there is no complaint relating to ownership of any land as alluded to by Applicant. The complaint was also in substance against one Alhaji S. Idris and not Applicant calling on the 1st and 2nd Respondents to protect the petitioner from the threats to kill and kidnap the petitioner and members of his family. The Applicants name was only mentioned in the petition as part of those who made these threats.

The Applicant was then invited on 23rd January, 2018 and by Exhibit SSS2, the **records of visitors**, the Applicant arrived at Respondents office by 11:08 and he left their premises by 5.53pm same day after interacting with the officer looking into the matter. The Applicant has not in any manner challenged these depositions and I accept them as proved. I cannot really situate any infractions of the fundamental rights of Applicant as argued.

If a serious complaint of threat to kill and kidnap is made in these very difficult and challenging times we live in against a group of persons, particularly now where these offences have assumed alarming notoriety and impacting negatively

on the internal security of the country, I cannot situate any fault in the circumstances in the complaint made to the Respondents neither can it be urged with any conviction that the 1st and 2nd 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.”

On the unchallenged materials before me, the Applicant was invited over the petition and released same day. No more. The Respondents here clearly and scrupulously adhered to constitutional provisions on Fundamental Rights. 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 and 2nd Respondents in the circumstances.

The point to emphasise is that the fundamental human rights of every citizen will be protected and the courts of law and justice have always served as a veritable bulwark against the violation of these rights. However a court of law as earlier stated cannot be seen to be granting or acceding to the extant request or to grant an injunction restraining respondents in the manner couched in the claim of Applicant. This appears to me to be a blanket order of injunction against any future arrest or detention thereby creating unnecessary obstacles for the law enforcement agencies in properly carrying out their duties as and when necessary.

If the Applicant is again further harassed or wrongfully arrested and detained in the future, the doors of the courts are always open and justice will be dispensed without fear or favour, affection or ill-will.

This case of Applicant unfortunately appears compromised for want of proof or credible evidence. There is no room for speculations or guess work as stated earlier. 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 creditably 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 point therefore is 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 S.S.S. 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 S.S.S. 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 path, where the S.S.S. 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. 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 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 fails and is hereby accordingly dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. N. A. Essien, Esq., for the Applicant.**
- 2. C.P. Njoku, Esq., for the 1st and 2nd Respondents.**