

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

<b>COURT CLERKS:</b>	<b>JAMILA OMEKE &amp; ORS</b>
<b>COURT NUMBER:</b>	<b>HIGH COURT NO. 33</b>
<b>CASE NUMBER:</b>	<b>SUIT NO. FCT/HC/CV/1118/19</b>
<b>DATE:</b>	<b>23<sup>RD</sup> JUNE, 2020</b>

**BETWEEN:**

**MRS. FRANCA UZOMA .....APPLICANT**

**AND**

- |   |   |                   |
|---|---|-------------------|
| <ul style="list-style-type: none"> <li><b>1) THE INSPECTOR GENERAL OF POLICE</b></li> <li><b>2) THE COMMISSIONER OF POLICE, FCT</b></li> <li><b>3) THE DEPUTY COMMISSIONER OF POLICE<br/>(CID) (CRIMINAL INVESTIGATION DEPARTMENT.</b></li> <li><b>4) DEPUTY COMMISSIONER OF POLICE L. YARI<br/>(HEAD OF CRIMINAL INVESTIGATION DEPARTMENT (CID)</b></li> </ul> | } | <b>RESPONDETS</b> |
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**APPEARANCE**

Akenuwa .W. O Esq for the Plaintiff/Applicant.

D. F. Abah Esq for the Respondents.

**JUDGMENT**

By a motion on Notice dated 12<sup>th</sup> day of February, 2020 and filed on 18<sup>th</sup> day of February, 2020 brought pursuant to Sections 33, 34, 35 and 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) order 11 Rule10 (2) & (3) of the Fundamental Rights Enforcement Procedure Rules 2009

and under the inherent Jurisdiction of this Honourable Court. The Applicant herein prayed the court for the following order:-

- 1) A declaration that the impounding of the car of the Plaintiff/Applicant with Registration No: ABC 901 FK on the 3<sup>rd</sup> day of December, 2019 without any court order is unlawful, null and void.
- 2) A declaration that the continued detention of the Plaintiff/Applicant's Jeep with Registration Number ABC 901 FK since December, 2019 without any criminal charge is a violation of the right of the Plaintiff/Applicant as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- 3) A declaration that the use of fire arms to arrest the car of the Plaintiff/Applicant is a violation of her right to human dignity.
- 4) A declaration that the invasion of the Plaintiff/Applicant's home on the 3<sup>rd</sup> day of December, 2019 is a breach of the Applicant's right to private and family life.
- 5) A declaration that the continued detention Plaintiff/Applicant's Car is in human and degrading treatment in breach of her dignity.
- 6) An order of this Honourable Court that the Defendants/Respondents pay the Plaintiff/Applicant the sum of ₦100,000,000.00 (One Hundred Million Naira Only) as damages for the infraction of her Fundamental Right.
- 7) An order for the release of the Jeep with Registration No. ABC 901 FK to the plaintiff/Applicant with immediate effect.
- 8) An order of perpetual injunction restraining the Defendants/Applicants, their servants, agents, privies from harassing, arresting, detaining or any further violation of the Plaintiff/Applicant's Fundamental Rights particularly stated above.
- 9) And for such other order(s) as this Honourable Court may deem fit and proper to make in the circumstance.

The application is supported by an Affidavit of 20 paragraphs deposed by Mrs. Franca Uzoma, the Applicant herein, a statement in support of the application, Reliefs Sought by the Applicant and grounds upon which the Application is based. The said grounds are as follows:-

- A. Section 33 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) guaranteed the applicant right to life.
- B. Section 34 of the said Constitution guarantees the Applicant right of dignity to their person.
- C. Section 35 guaranteed right to personal liberty.
- D. Section 37 guaranteed right to private and family life.
- E. That the unlawful seizure and continued detention of the Applicant's car by the Respondent is abusive, degrading, inhuman, insensitive to human feeling and is breach of Section 33 and 34 of the Constitution.
- F. That the invasion of the Applicant by men of the Nigeria police force on the 3<sup>rd</sup> of December, 2019 to forcefully impound the vehicle of the Applicant is an invasion of the private family life of the Applicant.
- G. That the continued detention of the applicant's car by the Nigeria police is an abuse of power and injurious to the health and well being of the Applicant.
- H. That the respondents are in breach of the applicant's Fundamental Human Rights.

Still in support of the application is a written address dated 12<sup>th</sup> day of February, as well as Exhibits marked as Exhibits A, B and C respectively.

In opposition to this application, the Respondents have filed a Joint Counter-Affidavit of 24 paragraphs deposed by one inspector Philip Tunba, a police officer attached to the legal Section, Criminal investigation Department, F.C.T police command Headquarters, Garki Abuja Exhibits marked Exhibits NPF1, NPF2 and NPF3 respectively and a written address in support of the Joint Counter Affidavit of the Respondents dated 18<sup>th</sup> day of march, 2020.

In response to the Respondents Joint Counter- Affidavit, the Applicant further filed a further Affidavit of 12 paragraphs deposed by Applicant herself.

In further opposition to this application for Enforcement of Fundamental Human Rights, the Respondents filed a Notice of preliminary objection pursuant to Order 8 Rule (1) of the Fundamental Rights (Enforcement Procedure) Rules 2009; Chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999 as

(amended) and under the inherent Jurisdiction of this Honourable Court; wherein the Respondents/Applicants prayed the court for the following:-

- 1) An order of this Honourable Court striking out or dismissing the above mentioned suit for being incompetent, as presently constituted before this Court.
- 2) An order of this Honourable Court striking out or dismissing the above mentioned suit for lack of jurisdiction.

The grounds upon which the preliminary objection is predicated are as follows:-

- 1) That suits for enforcement of Fundamental Rights are brought within the confines of chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
- 2) That judgment/ruling in Fundamental Rights suits are decided based on affidavit evidence.
- 3) That the community readings of the Applicant/Respondent's supporting affidavit does not reflect any breach of her Fundamental Rights under chapter 4 of the Constitution and order 2 Rules (1) and (2) as well as order 9 Rule (1) and (2) of the Fundamental Rights (Enforcement Procedure) Rules, 2009.
- 4) That the Applicant/Respondent's suit as presently constituted under the enforcement of fundamental Rights Application is incompetent and has deprived this Honourable Court of jurisdiction to entertain same.

In support of the Preliminary Objection is a written address dated 18<sup>th</sup> day of March, 2020.

In opposition to the Notice of Preliminary Objection, the Applicant/Respondent filed a written address dated 22<sup>nd</sup> day of May, 2020.

Now since the preliminary objection seeks to challenge the jurisdiction of this court, it is pertinent that it should be considered first.

In the written address in support of the preliminary objection, D. F Abah Esq, learned Applicants/Respondents counsel formulated a sole issue for determination thus:-

“Whether this suit as presently constituted before this Honourable Court is incompetent in view of chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria, (as amended).

In arguing the issue, learned counsel submitted amongst other things that this application falls short of the matters that can be commenced under the fundamental Rights Enforcement Procedure Rules 2009.

That an application to any court of law for the release of any chattel purportedly detained as clearly stated in the Applicant/Respondents relief as well as in her supporting Affidavit is not a relief known under section 46 (1) of the 1999 Constitution (as amended); thereby making this suit incompetent.

That the suit of the Applicant/Respondent at best under an action for detinue, an equitable or common law remedy and not under the Fundamental Rights Enforcement Procedure Rules 2009.

Reliance was placed on the cases of ABDULHAMID VS TABAL AKAR & ANOR (2006) 13 NWLR (PT. 996) 127; MUDUKULUM VS NKEMADILIM (1962) ALL N.L.R (PT. 2) 587 at 589 and order 9 Rule (1) (i) and (ii) of the Fundamental Rights (Enforcement Procedure Rules, 2009, ; UNIVERSITY OF ILORIN VS OLUWADARE (2006) 14 NWLR (PT.1000) 751; ABBA VS JAMB (2004) LPELR- 23380 (CA).

That it is not every wrong or injury that will give rise to an action n for Enforcement of Fundamental Rights. Reliance was placed on the case of JACK VS UNIVERSITY OF AGRICULTURE MAKURDI (2004) 5 NWLR (PT. 865); UZONDU VS U.B.N PLC (2009) 5 NWLR (PT.113) 1; MRS. PRCIOUS OMONYAHUY & ORS VS THE I.G.P & ORS (2015) LPELR 25581 (CA).

In conclusion, counsel urged the court to dismiss this suit or in the alternative strike it out for being incompetent and grossly lacking in merit and for the court to award cost of Five Hundred Thousand Naira (500,000.00) only against

the Applicant/Respondent's counsel for this suit to be paid into the Federal Government Account (TSA) to serve as a deterrent for this unwarranted suit.

Likewise, on the part of the Respondent/Applicant, a sole issue for determination is formulated by Akenwa W. O. Esq, Applicant's counsel in the written address which is:-

***“Whether from the affidavit evidence, the court has jurisdiction to adjudicate on the application for enforcement of Fundamental Rights of Mrs. Franca Uzoma.”***

In arguing the issue, learned counsel submitted that this application lacks merit and it is contrary to the affidavit evidence before the court. That the said Affidavit shows that the 1<sup>st</sup>-4<sup>th</sup> Applicants applied undue force in invading the premises of the Respondent- Mrs. Uzoma Franca without any lawful court order even when the case of breach of Trust is before a competent Magistrate Court. That same contravenes Section 44 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) as such learned counsel submitted that it is a prima facie breach of the Applicant's Fundamental Right as enshrined in chapter 4 of the Constitution which necessitates the enforcement proceedings.

That the Respondent never gave her consent to the police to detain her car but that it was the DCP YARI who used his official Position to seize the Car since December, 2019 contrary to law. That since there's no allegation of crime against the Applicant and the car in question is a private property of the Respondent acquired legitimately, there's no justification for the seizure.

Learned counsel submitted that the Respondent has shown in paragraph 7 of her Affidavit that the police actually invaded her house and drove her car out of her premises without any court order. That this preliminary objection is wrongly grounded outside the real issue before the court and is merely a desire of Nigeria police to humiliate the Respondent/Applicant. That this application is properly constituted as it borders on chapter iv of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Reliance was placed on the case of FAITH OKAFOR VS LAGOS STATE GOVERNMENT (2017) 4 NWLR (PT. 1556) 404 (CA).

Counsel also urged the court to consider the Affidavit of the Respondent vis-à-vis the provisions of Chapter iv of the Constitution (Supra).

Finally, learned counsel urged the court to dismiss the preliminary objection and the prayers contained therein as lacking in merit, being without substance and an abuse of court process. And to dismiss same with substantial cost.

Now, I have carefully considered this preliminary objection, and he submissions for and against the said preliminary objection.

In my humble view the issue for determination is whether the Applicants/Respondents have made out a case for this preliminary objection to be sustained?

Therefore, for this Honourable Court to entertain the present suit, it has to consider whether the claims and/or Reliefs sought by the Respondent/Applicant are related or connected to the matters enforceable under chapter iv of the 1999 Constitution (as amended).

It is trite that the factors that can assist the court to discover the principal claim in a Fundamental Rights Application include the reliefs sought, the grounds for seeking the reliefs and the supporting affidavit. See the cases of OLAWOYIN VS OBAFEMI AWOLowo UNIVERSITY (2004)2 FHCLR 166; CHUKWUVOGAR VS CHUKWUOGER (2006) 49 WRN 183; ECONOMIC AND FINANCIAL CRIMES COMMISSION VS EKEOCHA (2008) 4 NWLR (PT. 1106) 161.

I've considered the reliefs sought in this Application, the grounds for seeking the reliefs, as well as the supporting Affidavit, and have observed that the Applicant clearly alleges breach of her Fundamental Rights under Sections 33, 34, 35, and 37 of the Constitution of The Federal Republic of Nigeria 1999 as amended ; and seeks the release of her impounded car (amongst other reliefs).

Indeed the prayers sought for in this application, includes the following:-

(Reliefs 1)

- a) A declaration that the impounding of the Car of the Plaintiff/Applicant with Registration No. ABC 901 FK on the 3<sup>rd</sup> day of December, 2019 without any court order is unlawful, null and void.
- b) (Relief No. 3): A declaration that the use of fire arms to arrest the car of the Plaintiff/Applicant is a violation of her Right to Human Dignity.
- c) (Relief No. 4 ) That the invasion of the Plaintiffs/Applicants home on the 3<sup>rd</sup> day of December, 2019 is a breach of the Applicant's Right to private and family life.
- d) (Relief No. 8) An order of perpetual injunction restraining the Defendants, their servants, agents, privies from harassing, arresting, detaining or any further violation of the Plaintiff/Applicant's Fundamental Human Rights particularly stated therein.

While in the Applicant's she avers particularly in paragraphs 2 and 6 that her Fundamental Rights have been breached by the Respondent the unlawful detention of her car without any charge against her or her car.

In paragraphs 12 and 15 she avers that DCP Mr. Yari has been deliberate in his action to humiliate her and her family for no just legal cause and was carried on as an officer that is above the law which action has caused her great pain, anxiety, grave shock and inconvenience.

Now, by the provisions of Section 46 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Applicant for Enforcement of Fundamental Rights is required to show that there is a breach of any of the provisions of Chapter iv of the Constitution, or likely or threatened breach of same. In other words the alleged breach must have occurred, is occurring or even likely to occur. Please see the case of FRN & ORS VS ABACHA & ORS (2014) LPELR-22355 (CA); DENTON WEST VS JACK & ORS (2013) LPELR-20714 (SC).

Therefore having thoroughly considered the Reliefs sought by the Applicant, the grounds for seeking of the reliefs, as well as the supporting Affidavit, I am



satisfied that this application is one that is maintainable as a Fundamental Human Rights Suit. I so hold.

Consequently therefore, the issue for determination in this notice of preliminary objection is hereby resolved against the Applicants/Respondents in favour of the Respondent/Applicant.

The preliminary objection is hereby overruled.

I shall now move to consider the main Application.

In the written address in support of this Application, three issues were formulated by the Applicant namely:-

***“(1) Whether the conduct of the Respondents in impounding the vehicle of the Applicant is not contrary to law and breach of the Fundamental Right of the Applicant”***

***“(2)Whether or not the action of the Nigeria police force in unilaterally forcing the Applicant to release her car is not an infringement of her Fundamental Human Right to privacy and family life.”***

***“(3) Whether the arrest and detention of the Applicant’s car No. ABC 9091 FK by the Respondents in contravention of the Applicant’s Right to personal liberty guaranteed by Section 35 of the Constitution Federal Republic of Nigeria 1999 (as amended).”***

In arguing issue one, learned Applicant’s counsel Akenuwa W. O Esq submitted that the Constitution of the Federal Republic of Nigeria guaranteed every citizen the right to own private property and such right cannot be interrupted without due process of the law. That in the instant case, reverse is the case and that, same violates the Applicant’s Constitutional Right to fair hearing pursuant to provisions of the Constitution counsel also relied on the provision of Section 34 of the Constitution 1999 (as amended). On the right to Dignity reliance was also placed on the cases of IGP VS IKPILA (2006)9 NWLR (PT. 1517) 236 (CA). BARIGHA-AMANZE VS ADUMEIN (2016) 13 NWLR (PT. 1530) 349.

Learned counsel submits that the Applicant has shown in her supporting Affidavit how she was molested without notice to release her car by armed police officers contrary to law. And has also shown that her car has remained with the Respondents without any charge before a competent court. That the action of the respondent in impounding the applicant's Car is an abuse of his person and dignity.

Submitted, that the conduct of the Respondents against the applicant amounts to torture, inhuman and degrading treatment contrary to the provisions of Section 34 (1) of the constitution(Supra)

The court is urged to so hold and to order the release of the Applicant's vehicle held in custody since 3<sup>rd</sup> December, 2019.

On issue two, counsel referred to Section 37 of the Constitution (supra) on the Right of privacy of citizens, their homes, property, correspondence, right to telephone conversation and telegraphic communication as being private, guaranteed and protected.

That the action of the Respondents in forcefully impounding the applicant's car is contrary to law as well as the invasion of her home on the 3<sup>rd</sup> day of December, 2019 is a breach of the Applicant's Right to privacy of family life guaranteed by Section 37 of the Constitution 1999 (as amended) and urged the court to so hold.

On issue three, counsel submitted that every person is entitled to his personal liberty and that no person shall be deprived of such liberty as provided under Section 35 of the 1999 Constitution (as amended)

Reliance was also placed on the cases of JIMO VS A.G FEDERATION (NO YEAR SUPPLIED) I HRLRA 513; OKAFOR VS LAGOS STATE GOVERNMENT (2017) 14 NWLR (PT. 1556) 404 at 437, paragraphs D-E.

Learned counsel submits that the arrest and detention of the Applicant's Car was at the whims and caprices of the DCP Yari without any legal justification

and urged the court to grant the reliefs of the Applicant and order the Respondents to pay damages accordingly.

Reliance was placed on the case of DURUAKU VS NWOKE (2015) 15 NWLR (PT. 1483) 417 at 474- 475, paragraphs G-A; EKPU VS A. G. FEDERATION (1998) 1 HRLRA; OKAFOR VS LAGOS STATE GOVERNAMENT (Supra).

Finally, learned counsel urged the court to grant the reliefs sought in the application.

On their part, the Respondents in their written address in support of their joint Counter-Affidavit in opposition to this Application, formulated two issues for determination namely:-

- 1) Whether the Respondents herein the performance of their statutory duties have the power to investigate and take into custody any incriminating item connected with commission of a Crime.
- 2) Whether the Applicant has proved a breach of Fundamental Rights to be entitled to the reliefs sought.

In arguing issue one, Respondent's counsel D. F. Abah Esq, submitted that the Respondents are officers and men of the Nigeria police force a statutory organization with constitutional powers to investigate, arrest, detain to offenders where necessary, protect lives and property and prosecute offenders.

Counsel referred the court to Section 214, 215 and 216 of the Constitution of the Federal Republic of Nigeria 1999 (as amended as well as the cases of FAWENMI VS I.G.P (2007) 7 NWLR (PT. 665) 481,at 504; GBAJOR VS OGUNBUREGUI (1961) 1 all NLR 853; page 536 paragraph A-C; ONA VS OKENWA (2010) 7 NWLR (PT. 1194) 512.

Learned counsel submitted that throughout the course of investigating this matter, the applicant's rights were duly observed and the Applicant has been listed as one of the prosecution witnesses in the on-going prosecution of the case against Mr. Uche Nnanna at Magistrate Court, Wuse Zone 2, Abuja.

That the said vehicle shall be tendered as Exhibit and if admitted as evidence, the Respondents shall be calling on the Applicant and other witnesses to identify the vehicle and further lead evidence in that regard.

It is submitted further that taking the vehicle into custody does not in any way breach the Fundamental Rights of the Applicant as there is no intention or sign from the respondents to permanently deprive the applicant the use of the vehicle. That the Applicant was politely asked to hold on and exercise a bit of patience to enable the vehicle be tendered as Exhibit which she agreed but surprisingly his now filed this suit.

That the Applicant is trying to truncate the case of the prosecution by seeking the reliefs in this matter.

Reference was made to Exhibit NPF 3 attached to the Counter-Affidavit as well as Section 44 (2) (k) of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended).

Learned counsel submits further, that the mere taking in to custody of the said vehicle for serious Criminal offences without more, cannot by any stretch of imagination amount to infringement of the Applicant's Fundamental Rights and urged the court to so hold.

On issue two, learned counsel submitted that in the instant case, the Applicant has not put before this Honourable Court any material facts to show or prove that has Fundamental Rights have been unreasonably breached, threatened or about to be breached or is threatened by the Respondents. That the evidence/account is inconsistent and concocted in the most misplaced hope to mislead this court. As a result it is submitted therefore that the duty/onus of proving the alleged breaches is on the Applicant. Counsel referred the court to the case of *FAJEMROKUN VS COMMERCIAL BANK* (2009) 2 M JSC (PT. 11) 114 at 140, paragraph C; Sections 131 to 133 of the evidence Act, 2011.

That the Applicant in her Affidavit has failed to show that the Respondents actually breached or were about breach her Fundamental Rights. That since the

Applicant has failed to prove same, it is incumbent on this Honourable Court to dismiss this Application and the reliefs sought therein.

Reliance was again placed on the case of FAJEMROKUN VS COMMERCIAL BANK (Supra) at 141, paragraphs D-G; as well as the cases of OYEWOLE VS ADAMU SHEHU (1995) 8 NWLR (PT. 414 484; DANGOTE VS CSC PLATEU STATE (2001) 9 NWLR (PT. 717) 132.

Learned counsel submitted that the Applicant's prayer for damages against the Respondents in the Sum of Five Million Naira (₦5,000,000.00) is frivolous, gold-digging and face saving, since the Respondents merely carried out their statutory duties upon reasonable suspicion that the Applicant has committed the aforementioned alleged Criminal offence which she never denied.

Counsel relied on the case of BORISHADE VS NATIONAL BANK OF NIGERIA LTD (2007) 1 NWLR (PT. 1015) 241 at 246-247, paragraphs G-A.

That award of damages is not made as a matter of course but at the discretion of the Court which must be exercised both judicially and judiciously. That the discretion of the court is only exercised by guiding principles where a litigant succeeds in his suit unlike the instant one.

Finally, learned counsel urged the court to dismiss the Applicant's Application or in the alternative strike it out for lacking in merit, premature and being frivolous and urged the court to award exemplary cost of Five Hundred Thousand Naira (₦500,000.00) only against the Applicant in favour of the Respondents to serve as deterrence for this unwarranted suit.

I have carefully considered this application, the reliefs sought, the statement support of the application, the grounds predicating this application, the supporting affidavit, Exhibits annexed and marked Exhibits A, B and C as well as written address.

I have also given due consideration to the joint Counter Affidavit of the Respondents and the written address in support of same as well as the further Affidavit of the Applicant in response to same.

In my humble view, the issue for determination is whether the Applicant has made out a case for the grant of this application.

The brief facts of this case as distilled from the Applicant's supporting Affidavit, particularly in paragraphs 7-9 thereof, is that on the 3<sup>rd</sup> day of December, 2019, some armed Policemen went to the Applicants house and without any previous notice or court order but not orders to DCP Yari, Deputy Commissioner of police in charge of criminal investigation department (CID) arrest her Jeep/Car and detained same at the command Headquarters. That the Applicant enquired whether there was any court order to that effect, the officers refused to answer her and instead on taking the Car to their Command.

The applicant aver further that because she was apprehensive of the consequences of disobeying them even in the face of their illegality, she reluctantly allowed them to take the car.

In her supporting affidavit as well, the Applicant avers that her lawyer W. O. Akenuwa had visited the said D.C.P Yari and that the said D.C.P Yari told him that he had the powers to detain the car even if there was no crime.

In paragraph 2, the Applicant avers that she's seeking for enforcement of her Fundamental Rights the Respondents for the unlawful detention of the car without any charge against her or the car. And in paragraph 3 thereof it is averred by the Applicant seeking declaration of the Court that the use of firearms to arrest her car is a violation of her Right to Human Dignity.

However, in the Respondent's joint Counter Affidavit deposed by inspector Philip Tumba, it is averred that paragraphs 1, 2, 7, 8, 9, 10,11, 12, 13 14, 15, 16, 17, 18, and 19 of the Applicant's supporting are complete falsehood put together to smear and injure the reputation of the 4<sup>th</sup> Respondent and to mislead this Honourable Court to find in the Applicants favour.

That the true facts of this matter is that sometime in March, 2019, the real owner of the subject matter/vehicle one Toyota Highlander Jeep, by Name Mrs. Nnna Okpwa entrusted it to one Mr. Kalu Uche Nnanna to sell at the rate of Two Million, Five Hundred Thousand Naira (2,500,000.00).

That after Mr. Uche received the vehicle, he started playing some tricks and became unreaable whereby after several months, she petitioned the F.C.T Police Commissioner against Mr. Uche, investigations commenced and the tracking device attached to the vehicle was tracked to the home of the Applicant. That in order to preserve or protect it from being damaged or removed to another destination being a subject matter or investigation, the vehicle was taken into safe custody with the consent of the Applicant.

That subsequently, upon his arrest on 22<sup>nd</sup> August, 2019, the said Mr.Uche confessed to the crime and gave useful information that led to the tracking and recovering of the car. That the Applicant was asked to hold on as the matter is pending before the Magistrate Court Wuse, Zone 2, Abuja, where the prosecution/Respondents intend to tender same as an Exhibit in the trial Court. Exhibits NPF1, NPF2 AND NPF3were referred.

The respondents in paragraphs 13, 14, 16, 17, 18 and 24 of their Counter Affidavit have averred that the vehicle is not unlawfully detained but kept in custody with the consent of the Applicant.

That the police officers who went to the applicant's house during their investigative mission, were not armed and were not ordered by DCP Yari to detain the Car. That they politely explained to the Applicant the circumstances of their act and she voluntarily released the car to them. That the Applicant was invited to the DC CID'S office, was pacified by letting her know that the police has no intention of depriving her of the right to own the car but rather to exercise a bit of patience to allow the judicial proceeding take course. That she agreed and went away.

That contrary to paragraph 19 of the Applicants Affidavit, it will not be in the interest of justice to grant the reliefs sought by the Applicant as none of her Fundamental Rights has been breached or about to be breached.

While in the Applicant's further Affidavit, she avers among other thing, that the Counter Affidavit of the Respondents is made of half truths, deliberate falsehood and distraction of facts to mislead the court.

That she never gave consent to the police to seize her Car. That there's no pending Criminal case against her as such the case of Criminal breach of trust between the C.O.P and Uche Kalu has no bearing with her bonafide ownership of the Car which was bought in the open market without notice.

Now by the provisions of Section 46 (1) of the 1999 Constitution (as amended), any person who alleges that any of the provisions of Chapter of the Constitution has been, is being or is likely to be contravened in relation to him, may apply to High Court in that state for redress.

A similar provision is Replicated in order 11 Rule 1 of the Fundamental Rights Enforcement Procedure Rules 2009.

Therefore, where an applicant for Enforcement of Fundamental Rights alleges that the Rights under Chapter iv of the Constitution (Supra) are breached, the burden is on that Applicant to prove same, which is usually by cogent and credible facts contained in the supporting Affidavit.

Please see the case of WILLIAM & ANOR VS USENI & ORS (2018) LPELR- 46163 (CA) Page 12, paragraphs E-F; IBANGA & ORS VS AKPAN & ORS (2018) LPELR-46167 (CA).

Similarly, the court held in the case of MEZUE & ANOR VS OKOLO & ORS (2019) LPELR-47666 (CA) as follows:-

***“In bringing a matter forte enforcement of Fundamental Rights where such right had been violated, such fact must be proved by relevant evidence. Section 135 of the evidence Act provides thus:- whoever desires any court to give judgment as to any legal right or liability dependant on the existence of the facts which he asserts must prove that those facts exist.....He who asserts must prove. The burden of proof lies on an Applicant who applied for the enforcement of their Fundamental Rights to establish by credible affidavit Evidence that their Fundamental Right was breached. It is the duty of an Applicant alleging breached of his Fundamental Rights to place sufficient evidence before the court.”***



The instant suit is brought pursuant to Sections 33, 34, 35 and 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

However, I have observed that the Reliefs sought by the Applicant as contained on the face of the motion paper i.e (a) –(i) do not include any proper for a declaratory relief or any relief in relation to section 33 and 35 of the 1999 Constitution as amended.

Moreso, there's nothing contained in the supporting Affidavit of the Applicant to show that her life was threatened in any manner by the Respondents nor her liberty curtailed or likely to be curtailed in any manner whatsoever in violation of her Constitutional Rights to life and liberty pursuant to sections 33 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Therefore, since there's nothing to sustain any allegation or absence of same in this application, no finding will be made in relation to these two Sections i.e Sections 33 and 35 of the 1999 Constitution (as amended). I so hold.

These leaves we to consider the provisions of Sections 34 and 37 of the 1999 Constitution (as amended), which will be taken together.

Firstly, the applicant seeks reliefs which include the following:-

- 1) A declaration that the impounding of the car of the Plaintiff/Applicant with Registration No. ABC 901 FK on the 3<sup>rd</sup> day of December, 2019 without any court order is unlawful, null and void.
- 2) A declaration that the continued detention of the Plaintiff/Applicant's Jeep with Registration Number ABC 901 FK since December, 2019 without any Criminal charge is a violation of the Right of the Plaintiff/Applicant as enshrined in the constitution of the Federal of Nigeria 1999 (as amended).
- 3) A declaration that the use of firearms to arrest the car of the Plaintiff/Applicant is a violation of her Right to Human Dignity.
- 4) A declaration that the invasion of the plaintiff/Applicant's home one the 3<sup>rd</sup> day of December, 2019 is a breach of the Applicant's Right to private and family life.

5) A declaration that the continued detention of the Plaintiff/Applicant's Car is inhuman and degrading treatment in breach of her dignity.

It is alleged by the Applicant amongst other things that the action of the Respondents on the 3<sup>rd</sup> day of December, 2019, has breached her fundamental Rights to Dignity of human person and the right to private and family life since no court order was made to warrant their actions.

I refer to paragraphs 16, 17, and 18 of her supporting Affidavit in which she avers thus:-

***"That at the time of filing this Affidavit, no charge or cause has been established against me."***

***"That the continued detention of my Jeep/Car is a breach of my Fundamental Human Right."***

***"That DCP, L Yari has deliberately inflicted injury on my person, property and family".***

It is further alleged that on the date in question armed men of the Respondents took her car and detained same at the command headquarters without any court order.

Now, Section 37 of the 1999 Constitution (as amended)) states:-

***"The privacy of citizens, their homes correspondence, conversations and telephone and telegraphic communication, and telegraphic communication telephone conversations are guaranteed and protected".***

In the case of NWALI VS EBSIEC & ORS (2014) LPELR- 23682 (CA), per AGIM JCA at page 22-29, paragraph E, the court held as follows:-

***".....It is gearing that the phrase "Privacy of Citizens" is general and is not limited to any aspect of the person or life of a Citizen....."***

Therefore, in circumstances such as this where it is alleged that the Respondents are in breached of the Applicant's Fundamental Rights in violation of

Section 37 of the Constitution, such action must no doubt be shown to be justifiable.

On this issue, it is the contention of the Respondents particularly in paragraphs 5-16 thereof(amongst other things) that it was their investigations that led them to the Applicant's house due to a tracking device which was installed I the said vehicle subject of a Criminal complaint against one Mr.Uche Nnanna.

The respondents have also contented that in the said mission the Applicant gave her consent for the Car to be taken and that the men who carried the said mission were unarmed at the time in question.

The Applicant has refused the above assertion in her further Affidavit by saying that the men were indeed armed.

I have also critically studied the joint Counter Affidavit of the respondents to see whether the issue of not having any court order in carrying out the invasion of the Applicant's home is refuted.

I am afraid there's non. I'm not unmindful of the fact that the respondents were carrying out their lawful duties under Section 4 of the Police Act and the provision of Section 44 (2) (k) of the 1999 Constitution (as amended) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry.

In my humble view, the problem lies in the manner the Respondents carried out the mission.

The Applicant's home is a private home and she's protected by the clear provisions of Section 37 of the Constitution. See the case of NWALI VS EBSIEL (Supra).

Even if the subject matter in question had a tracking device, prudent dictates that the Respondents ought to have exercised caution in invading the home of the Applicant with arms and without any warrant or court order of court.

Again when one considers the provision of Section 34 of the Constitution which guarantees the Right to dignity of the human person, the actions of the respondents referred to earlier (even though for a legitimate reason) would no doubt have caused distress, anxiety and fear to the Applicant and invasion of her privacy and no doubt injury to her dignity and reputation in her community.

In the case of NIGERIA CUSTOMS SERVICE BOARD VS MOHAMMED (2015) LPELR- 25938 (CA) cited the definition of degrading treatment as ***“reviling, holding one up to public obloquy: lowering a person in the estimation of the public, exposing to disgrace, dishonor or contempt”***. “the court went on to say .....any action which inflicts intense pain to the body or mind of a person of any act of physical cruelty which endangers the life or health of a person or creates a well founded apprehension of such danger or an act done in such manner as to bring a person to public ridicule, disgrace, dishonor or contempt comes with the provision of Section 34 (a) of the Constitution .....”

See also the cases of ALHAJI MAGAJI & ORS VS BOARD OF CUSTOMS AND EXCISE & ANOR (1982) 2 NCLR 522; UZUOKWU VS EZEONU 11 (1999) 6 NWLR (PT. 200) 778.

THEREFORE IN MY HUMBLE view looking at the facts of this, I think the respondents could have handled the situation differently. Even if there’s reasonable apprehension on their part as to the possibility of facing danger in the home of the Applicant in tracking the device that led them to the vehicle, they the option to conducting further discreet investigations to ascertain who the occupants of the property were by mounting a surveillance near or around the property or even good old detective work. It was not done in this case.

It is for these reasons therefore that I find that the applicant has proved that her fundamental Rights enshrined under Sections 34 and 37 of the Constitution have been breached by the Respondents. I so hold.

The remaining reliefs sought by the Applicant includes seeking an order of the Court for release of the Jeep with Registration No. ABC 901 FK to the

Plaintiff/Applicant with immediate effect, as well as an order of perpetual injunction against them.

Well I have considered this part of the application made by the Applicant vis-à-vis the Response of the Respondents in their Counter-Affidavit.

The Respondents have clearly stated in their Counter-Affidavit as well as their written address, that the vehicle impounded is connected to a criminal trial against one Mr. Uche who was charged to Magistrate Court Wuse zone 2 for Criminal breach of trust, cheating and forgery. And that the trial is ongoing and that the vehicle is to be tendered as Exhibit at the Criminal trial. A copy of the first information report is attached and marked Exhibit NPF3.

In paragraph 13 of their joint Counter-Affidavit it is averred thus:-

***“That contrary to paragraph 1, the said vehicle is not unlawfully detained but merely in safe custody with the consent of the Applicant for Criminal trial”.***

Furthermore, it is averred in paragraphs 18 and 22 of the said counter-Affidavit as follow:-

***“That contrary to paragraph 11 upon the receipt of the said letter, Applicant was invited to the DC CID’S office and was pacified by letting her know that the police has no intention of depriving her the Right to own the Car, but that she should exercised a bit of patience to allow the judicial proceeding take note of the Car-Exhibit. She agreed and went away”.***

***“Contrary to paragraph 17 the said Car is not in detention but in safe custody and it is not a breached of the Applicant’s Fundamental Rights”.***

It is also instructive to note that in paragraph 39 of the respondent’s written address reference was made to the provision of Section 44 (2) (c) of the Constitution (Supra) on their powers to take temporary possession of property for the purpose of nay examination, investigation or enquiry.

The Applicant has averred in supporting Affidavit that the continued detention of her Car is a breach of her Fundamental Right since there's no charge brought against her by the Respondents in relation to same.

Well I have considered this and the fact that the Applicant has no doubt suffered the loss of her car even if temporarily. However, since the said car is said to be in safe custody of the Respondents for the purposes of being tendered as an Exhibit in the Criminal trial referred to earlier, I do not see the actions of DCP, L Yari or that of his men in detaining the said vehicle as deliberately causing injury on the person of the Applicant, nor her property and family. I so hold.

In the circumstances therefore, having thoroughly considered this application, and due to the reasons given earlier in this Judgment, I resolve the sole issue for determination partly in favour of the Applicant against the Respondents and I hereby declare and order as follows:-

- 1) That the use of firearms to arrest the Car of the Plaintiff/Applicant by men of the Respondents on the 3<sup>rd</sup> day of December, 2019, at the home of the Plaintiff/Applicant by the Defendants/Respondents is a violation of her Constitutional Right to Human dignity as enshrined and guaranteed under Section 34 of the 1999 Constitution Federal Republic of Nigeria (as amended).
- 2) The invasion of the Plaintiff/Applicant's home on the 3<sup>rd</sup> day of December, 2019 without any court order/warrant is a breach of the Applicant's Right to private and family life as guaranteed under section 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)
- 3) The Respondents are hereby ordered to tender an unreserved apology to the plaintiff/Applicant for violating her Fundamental Rights referred to above.
- 4) Reliefs 5 and 7 are refused.
- 5) Relief no 8 is also refused being unnecessary since there is no charge or any criminal allegation ever made against the respondents or threat

of same by the Respondents to warrant an order of perpetual injunction against the Respondents

- 6) The Respondents are ordered to jointly pay the Applicant the sum of ₦250,000.00 only as general damages for the distress caused to her as a result of invading her privacy in contravention of Section 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Signed

***HON. JUSTICE SAMIRAH UMAR BATURE.***

23/06/2020.

Applicant's Counsel: we are grateful for the well delivered judgment.