

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO-JUDGE
DATED.....DAY OF.....2020**

SUIT NO: FCT/HC/CV/2952/18

BETWEEN:

**ENGR SAMBO MOHAMMED TAHIR.APPLICANT
AND**

**1. THE INSPECTOR GENERAL OF POLICE
2. THE COMMISSIONER OF POLICE
3. ASP. JOHN AKOR (IPO)
4. MR. ANETOR MOMODU ANDREW** } **RESPONDENTS**

**THE APPLICANT IS REPRESENTED BY SAMUEL B. MONOKPO
THE 1ST RESPONDENT IS UNREPRESENTED
THE 2ND IS REPRESENTED BY H.O AFON
THE 3RD AND 4TH ARE REPRESENTED BY V.O. OLUGBAMI**

JUDGMENT

By way of an Originating Motion on Notice dated the 2nd of October 2018 and filed on the 8th of October 2018, brought Pursuant to **SECTIONS 33 (3); 34 (1), 35, 36, 41 (1) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999; ORDER II, RULES 1, 2 AND 3 OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009 AND UNDER THE INHERENT JURISDICTION OF THE HONOURABLE COURT**, the Applicant is praying the Court for the following Reliefs: -

1. A Declaration that the Arrest of the Applicant by the 1st Respondent, Agents, Servants, Officers or otherwise howsoever upon a Petition written by the 4th Respondent, sometimes in 2016 in FCT, Abuja, constituted a flagrant violation of the Applicants Fundamental Rights Guaranteed under **Section 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria 1999 and Articles 4, 5, 6, 9, 12 and 14 of the African Charter on Human and People right (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990** and therefore, Illegal, Unconstitutional, Null and Void.
2. A Declaration that the detention of the Applicant by the 1st Respondent, Agents, Servants, Officers or otherwise howsoever until granted Bail with Sureties Constitutes a flagrant violation of the Applicant's Fundamental Rights Guaranteed under **Sections 34, 35, 36 and 41 of the 1999 Constitution and Articles 4, 5, 6, 9, 12 and 14 of the African Charter on Human and People right (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990** and therefore, Illegal, Unconstitutional, Null and Void.
3. A Declaration that the 1st, 2nd and 3rd Respondents are not Money and Debt Collectors and the continuous Harassment, Embarrassment, Threat and Unlawful Enforcement on the Applicant by the Respondents and their Sureties to pay the Sum of Eighteen Million Naira (N 18, 000, 000, 00) only, to their coffers when no Court has found the Applicant guilty of any offence, is a threat to our Democracy, a serious usurpation of Power and a flagrant violation of the Applicant's Fundamental Rights Guaranteed under **Sections 34, 35, 36 and 41 of the 1999 Constitution** and it is therefore, Unconstitutional, Null and Void.
4. A Declaration that the Applicant, and their Sureties are entitled to move freely in any part of Nigeria and particularly in the FCT and its environs without let or hindrance from the Respondents, Agents, Assigned Officers, Servants, or otherwise howsoever, in exercise of

their Fundamental Rights as Guaranteed under **Sections 34, 35, 36, 40 and 41 of the 1999 Constitution and Articles 4, 5, 6, 9, 12 and 14 of the African Charter on Human and People Right (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990** and therefore continuous Harassment, Embarrassment, Threat and Unscheduled Entry into their Family Home demanding for the payment of Sum of Eighteen Million Naira (N 18, 000, 000, 00) only, where no Court has given such Judgment or Order by the Respondents, is Frivolous, Illegal, Unconstitutional, Null and Void.

5. An Order of Court that the Applicant be taken to Court or be arraigned before of competent Jurisdiction, if their investigation proves that he (the Applicant) has a Case to answer.
6. An Injunction restraining the Respondents, their Agents, Privies, Assigns, Servants, Officers and or Otherwise, howsoever, from further Violating the Fundamental Rights of the Applicant through unlawful Arrest, Harassment, Embarrassment, Disturbance, Threat and Detention except in a Manner permitted and Sanction by Law.
7. An Order for Damages for the Sum of N 10, 000, 000.00. (Ten Million Naira), against the Respondents jointly and severally.
8. For such further Order as this Honourable Court may deem fit to make in the Circumstances.

In Support of this Application is the Applicant's Statement Pursuant to **Order II Rule 3 of the Fundamental Rights (Enforcement Procedure) Rule 2009**, wherein he stated Nine (9) Grounds upon which the Application is brought, Relief Sought, a Twenty-Four (24) Paragraph Affidavit deposed to by the Applicant, which was dated the

2nd of October 2018. Also attached to this Application is an **Exhibit** and a Written Address of Counsel filed on the 8th of October 2018.

The 1st to 4th Respondents were served with the Court's Processes and a Hearing Notice signifying that the Case will be coming up for hearing.

The 1st Respondent did not respond to the Processes despite being duly served.

The 2nd Respondent on his own part, filed an Eight Paragraph Counter Affidavit, deposed to by Isaiah Igwanigie a Litigation Secretary in the Law Firm of the 2nd Respondent's Counsel. The Affidavit is dated and filed the 6th day of March 2019

The 3rd Respondent filed a Thirty-Six (36) Paragraph Counter Affidavit, deposed to by the 3rd Respondent and dated the 8th of February 2019, attached to the Application is an Annexure marked as **Exhibit A** and also a Written Address of Counsel.

The 4th Respondent upon service, filed a Sixty-Three (63) Paragraph Counter Affidavit, deposed to by the 4th Respondent dated the 19th of November 2018. Attached to the Application are Annexures marked as **Exhibit A1 -A11** and also a Written Address of Counsel.

The Applicant also filed a Reply on Point of Law to the 4th Respondent's Counter Affidavit dated the 4th of March 2019.

On the 6th of February 2020, the Applicant was not present in Court and neither was he represented in Court. The Court ordered Parties to adopt their Processes based on **Order 33 Rule 4 of the Rules of the FCT High Court 2018**, which states that where a Party is absent, he shall be deemed to have adopted his Written Address.

In essence the Applicant's contention is that sometime in June 2015, one Mr. Olugbami Victor, a Legal Practitioner, approached him notifying him that his Client, the 4th Respondent, was interested in buying a piece of Land.

The Applicant then contacted one Alhaji Garba Mohammed, who later brought documents in regard to Landed Property located at Jahi. The

Applicant instructed Mr. Olugbami Victor, the Lawyer, to conduct a Search in order to determine the authenticity of the Land. According to the Applicant, this was done and the Lawyer confirmed the documents to be Authentic.

After the confirmation of the authenticity of the Land, the Applicant contacted Alhaji Garba Mohammed for the Original Land Certificate of Occupancy to conduct the final Search, which was done in his absence.

Furthermore, after the Search, Mr. Olugbami Victor prepared a Power of Attorney and Deed of Assignment dated the 15th of August 2015, which according to the Applicant, he innocently witnessed. He

attached a Copy of the Title Documents as **Exhibit A**. He however was not present when the Value of the Land was paid up to the Assignee

According to the Applicant, he received only the Sum of Five Hundred Thousand Naira Only (N500, 000.00) as Agency Fee.

Sometime in 2016, the Respondents arrested the Applicant Engr. Sambo Mohammed Tahir for allegedly selling a piece of Land to Mr. Anetor Momodu Andrew, an individual he never met, until he saw Mr. Olugbami Victor in the STS Department, (an affiliate) of the 1st Respondent.

The Applicant made a Voluntary Statement that he did not sell the Plot of Land nor conduct any Search since he is not a Lawyer and did not receive the Sum of Eighteen Million Naira (N18, 000, 000.00) as alleged.

Though the Applicant was granted bail, the Respondents have continuously threatened him, his Family and Sureties, insisting that he refunds the Sum of Eighteen Million Naira (N18, 000, 000.00) a sum of money he did not collect.

The Applicant stated further that if he has committed any Offence or if any investigation shows that he has committed any Offence, then he should be charged to Court to face Trial.

Finally he averred that the continuous threats have caused a lot of embarrassment to his family members of which he has no explanation to give to them any longer.

The 1st Respondent even though served, did not file a Counter to the Applicant's Application.

The 2nd Respondent on his own part denied the averments stated in the Applicant's Affidavit in support of the Originating Process as being very strange, alien and very untrue as it relates to them.

They denied sending any Officer(s)/Agent(s) to embarrass, arrest and detain the Applicant and in fact, the 2nd Respondent has not in any way breached the Applicant's Rights to warrant the instant Suit.

Finally, the Exhibits attached to the Applicant's Processes, has nothing to do with them. He urged the Court to dismiss the Case of the Applicant as frivolous, unmeritorious and speculative.

The 3rd Respondent in his own part, stated that sometime in 2015 while still working in the Office of the Commissioner of Police in Charge of Anti Robbery Squad, Area 3, Abuja, their Team headed by DSP Ganiyu, received a Petition from the Law Firm of Juris Association on the Instruction of the 4th Respondent. The Petition hinged essentially on the fraudulent act of the Applicant and Alhaji Garba Mohammed in respect of the Sale of a Plot of Land at Jahi, which was purchased by the 4th Respondent.

The Sum of Seven Million Naira (N17, 000, 000, 00) was paid by the 4th Respondent as consideration to Alhaji Garba Mohammed through the Applicant as his authorized Agent.

Upon the receipt of the Petition, a Letter was written by his Team to Skye Bank to confirm the payment of the purchase price made by the

4th Respondent. Subsequently, a response including the Account Opening Package of Alhaji Garba Mohammed was sent back to his Team by Skye Bank. This response, confirmed that the 4th Respondent lodged the purchase price into Alhaji Garba Mohammed Account. He tendered a Copy of the Opening Form Account as **Exhibit A1**.

Several efforts had been made to contact the Applicant and Alhaji Garba Mohammed to record their response to the allegations but all to no avail.

According to the 3rd Respondent, the Applicant has been arrested severally and brought for interviews in connection with allegations of fraudulent Sale of Land with cloned Title Documents, but had never been arrested in respect of this Case, as he was only invited by his Team in respect of this Case.

In fact, he stated that one Inspector Sunny of the Force Criminal Investigation Department arrested the Applicant in respect of an allegation based on a Sale of Land to his Boss (Assistant Inspector General of Police), and Inspector Sunny promised releasing him upon the conclusion of his Team's Investigation. After the Applicant secured his bail regarding the above transaction, he failed to show up in their Office for Six (6) Months until the 3rd Respondent was transferred out of their Office.

The 3rd Respondent stated further that he contacted one Mr. Bello who had earlier pleaded for time to produce the Applicant anytime his presence was required, and a meeting was convened between himself, the Applicant and the 4th Respondent, which resulted in a final resolution that the matter be settled amicably.

According to the 3rd Respondent, the Applicant freely undertook to contact and produce Alhaji Garba Mohammed in order to recover the monies paid by the 4th Respondent or in the alternative provide him with a Suitable Plot of Land.

He later received another Petition in respect of the same allegation when he resumed to his new office, and he immediately informed the

Assistant Commissioner of Police in charge of the Squad. He also made efforts to contact the Applicant about the new Petition and the Applicant promised coming to his Office but he failed to show up. Thereafter, during a routine check at the detention cells, he saw the Applicant in one of the Cells, who narrated his ordeal to him.

The 3rd Respondent contacted Inspector Matthias, the Investigating Police Officer in charge of the Applicant's Case, who informed the 3rd Respondent that the Applicant was arrested in respect of a Fraudulent Land Transaction and serious efforts were made to track him until he was finally apprehended. Later on, the Applicant was granted Administrative Bail by Inspector Matthias but yet again the Applicant failed to show up in the 3rd Respondent's Office.

According to the 3rd Respondent, the Applicant brought another Title Document in respect of a Land at Katampe, Abuja at the instance of Alhaji Garba Mohammed. The 3rd Respondent and the 4th Respondent's wife proceeded to Abuja Geographic Information Systems (AGIS) to confirm its authenticity but they were reliably informed that the Title Document required Recertification.

They informed the Applicant about the findings, and he promised to apply for Recertification on the condition that the 4th Respondent advances a loan of the Sum of Two Hundred and Fifty Thousand Naira (N250, 000.00) out of the total of Five Hundred Thousand Naira (N500, 000.00) needed for Recertification.

Despite the 4th Respondent giving the Applicant the above Sum and a Formal Document executed between them, the Applicant failed to recertify or regularize the Title Document and has continue to be on the run. According to him, the Applicant has been arrested and detained on countless number of times on allegations hinging on Fraud, Forgery, Land Racketeering and Breach of Trust.

Finally, he urged the Court to refuse the Application of the Applicant as it is meant to cause a diversion by subordinating facts in order to escape just and transparent Justice.

The 4th Respondent on his own part, stated that he expressed intention to purchase a Plot of Land in Jahi District of Abuja and informed his Lawyer who in turn contacted some Land Agents for Encumbrance-Free Plot of Land and one of the Agents consulted One Mr. Adebisi Omotade who quickly published the interest on a Social Media Platform known as 'Abuja Properties Facilitators'.

One Engr. Ken and Yomi, who are Members of the WhatsApp Group saw the advert and contacted the Applicant. The Applicant and Alhaji Garba Mohammed came to Abuja Geographic Information Systems (AGIS) with the Title Document with the name Alhaji Bello Alkali as the Original Allottee to conduct a 'Window Search' and a formal Legal Search to verify the Authenticity of the Right of Occupancy.

Their first attempt at the Window Search revealed that though the title Document was genuine, the Original Allottee had not filed his Acceptance of the Allocation at the AGIS Registry, a development, which stalled further search and payment of the Purchase Price.

The Applicant promised reaching out to Alhaji Garba Mohammed, the purported Owner and Assignee of the Interest in the Land, who purchased the land from the Original Allottee.

According to him, he waited for Two (2) Months to ensure that the Acceptance Letter was uploaded. His Lawyer subsequently informed him that the Document of Acceptance had been properly uploaded and they confirmed it at AGIS. They further went with the Title Document to AGIS to confirm the authenticity and the outcome of their investigation was favourable to the extent that the Title is sound and all information as regards the Plot in question was properly uploaded.

Based on the above facts, the 4th Respondent demanded for all the Title Documents executed between the Original Allottee and Alhaji Garba Mohammed, which was given to him and he then proceeded to Guarantee Trust Bank with his Lawyer, the Applicant, Mr. Adebisi and other Agents and Colleagues of the Applicant and paid the Sum of

Seventeen Million Naira (N17, 000, 000.00) into Alhaji Garba Mohammed's Skye Bank Account. He attached the Bank Instrument reflecting the said payment as **Annexure A1**.

Contrary to the Testimony of the Applicant, he paid the Sum of Eight Hundred Thousand Naira (N800, 000.00) to the Applicant being five percent of his Agency Fee. He attached the Bank Instrument reflecting the said payment as **Annexure A2**.

The 4th Respondent also paid the Sum of Sum of Eight Hundred and Fifty Thousand Naira (N850, 000.00) to his Agents with Account Name CEE ZED NIG LTD and annexed the evidence of payment, which is marked as **Annexure A3**.

His Lawyer then prepared the Irrevocable Power of Attorney and Deed of Assignment, which were annexed as Annexures **A4 and A5** respectively.

The 4th Respondent also engaged the services of a Land Surveyor to re-establish the beacons and he paid the Sum of Three Hundred Thousand Naira (N300, 000.00) as compensation to the indigenes for the Economic Crops on the Plot. A Copy of the Memorandum of Settlement is annexed as **Annexure A6**.

Having secured assurance on the soundness of the Title Documents, he assumed Physical Possession until a Rival Claimant encroached in the year 2017. The rival lodged a Complaint against him at the Life Camp Police Division, and the DPO intervened, requesting both of them to reconfirm their Title Documents at AGIS.

The 4th Respondent and his Lawyer went to AGIS to reconfirm the Document, but to his dismay, the Document was said to be cloned and the cloned Document was confiscated by a Staff of AGIS until they produced the Vendor or the Agent, which is the Applicant.

Several efforts were made to reach the Applicant but to no avail, and he instructed his Lawyer to write a Petition to the Inspector General of Police, Commissioner of Police, Economic and Financial Crimes

Commission to inform them about his suspicion. A Copy of the Petition was attached as **Annexure A7**.

The Inspector General of Police approved the Petition and investigations were carried out, which included writing a Letter to Skye Bank to confirm the Seller's Account, and a Copy of the Opening Form was attached as **Annexure A8**.

The Opening Form revealed that the 4th Respondent paid the Sum of Sixteen Million Five Hundred Thousand Naira into the Account on the 17th day of August 2015 and the whole Account was withdrawn by the Account Holder, Alhaji Garba Mohammed on the following Day. He stated that from the Account Opening Form, it could be seen that the Applicant is the Next of Kin to Alhaji Garba Mohammed as the phone number supplied corresponds with that of the Applicant thereby diffusing his denial of the Sale Transaction.

Sometime in 2016, his Lawyer visited the Office of the Commissioner of Police to find out the extent of Investigation, when he saw the Applicant with some Police Officers in connection with an allegation of fraudulent Sale of another Land to an Assistant Inspector General of Police with cloned Title Documents.

The 4th Respondent's Lawyer alerted the 3rd Respondent who in turn, informed the Head of his Team, and the IPO made efforts with the AIG's own Team to release the Applicant to him upon the conclusion of their Investigation but it all proved abortive.

The IPO handling the Matter was transferred and the 4th Respondent wrote another Petition to the Office requesting for the same IPO to continue investigation. Several phone calls and invitations were made to the Applicant to hear his side of the story, but he refused to pick or return the calls.

The 4th Respondent's IPO eventually saw the Applicant at his office Premises when he was arrested and detained by one Inspector Matthias, in connection with a Land Fraud where the Applicant defrauded the Victim to the tune of Forty Million Naira.

The Applicant was granted Bail by Inspector Matthias and has since then been at large.

The 4th Respondent's IPO contacted one Mr. Bello who had earlier stood as surety to produce the Applicant anytime his presence is required, and a meeting was convened between himself, the Applicant and the 3rd Respondent. This resulted in a final resolution that the matter be settled amicably. According to him, the Applicant freely undertook to contact and produce Alhaji Garba Mohammed in order to recover the monies paid by the 4th Respondent or in the alternative provide him with a suitable Plot of Land.

In frantic effort to provide the 4th Respondent with another Plot of Land, the Applicant brought another Title Document in respect of a Land at Katampe, Abuja. The said Plot of Land and Irrevocable Power of Attorney executed by one Abubakar Mohammad Kaoje in favour of the 4th Respondent, was attached as an Exhibit, marked as **Annexure A9**.

The Applicant brought the Title Document of Katampe District with the name Abubakar Mohammad Kaoje as the Original Allottee clearly written thereon. The Authority to register the Power of Attorney and an Application to Rectify the Katampe Plot purportedly signed by the Original Owner Abubakar Mohammad Kaoje and the Copy of the Offer of Terms in respect to the Plot in Katampe, the authority to register the Power of Attorney were attached as **Annexure A10**.

A Search was conducted, and it revealed that the Title Document required Recertification. Since he had the Documents, he wrote to AGIS to commence the recertification of the Plot in Katampe, and the Application is annexed and marked as **Annexure A11**.

All efforts to recertify the Plot proved abortive, which made the Applicant to volunteer to carry out the Recertification subject to the payment of Five Hundred Thousand Naira (N500, 000.00). A meeting was then convened where the 4th Respondent gave the Applicant the Sum of Two Hundred and Fifty Thousand Naira for the Recertification.

The Memorandum of Understanding executed between them is attached as **Annexure B1**.

However, the Applicant failed to utilize the Money for the intended purpose and all efforts to reach him as proved abortive. Further search of the Title Document revealed the Document was cloned. He averred to the fact that the Applicant has been arrested and detained on countless number of times on various allegations hinging on Fraud, Forgery, Breach of Trust and Land Racketeering.

He urged the Court to refuse the Application of the Applicant as it is meant to cause diversion by subordinating facts in order to escape just and transparent Justice.

In replying to the 4th Respondent's Counter Affidavit, the Applicant denied Paragraph 22 of the Counter Affidavit and stated that the Agency Fee was paid into the Account of Hassan Usman Mohammed. He also denied Paragraph 24 and rather stated that the Solicitors to the 4th Respondent had previously prepared the Power of Attorney and Deed of Assignments, which Parties signed before payments were made.

He denied **Paragraphs 28, 29 and 30** and stated that the Lawyer conducted a Search on the same documents in AGIS, and obtained a Search Report from AGIS before he recommended to his Clients to make payment.

He denied **Paragraph 36** and stated that he is not related to Alhaji Garba Mohammed nor have any business relationship apart from the Sale of this Land.

He denied **Paragraphs 38, 39, 40, 41, 44 and 45** stating that he was not arrested to FEDSARS; rather he was a witness in a Land Matter sold to an AIG.

He reported himself to ASP John Akor, the IPO handling this Matter, after they met at FEDSARS and he was immediately granted bail with two Sureties.

The Applicant stated that before the IPO granted him bail, he put a call to Alhaji Garba Mohammed and put the phone on speaker to the hearing of the IPO, that he had a Land for Sale in Abuja and wanted to know if Alhaji Garba Mohammed was interested since this was his usual practice. This was all a ploy to lure him to the Office of the IPO. Alhaji Garba Mohammed said he was interested but was in Lagos at that moment.

The Applicant stated further that he gave the Sum of Twenty Thousand Naira (N20, 000.00) to the Police to track Alhaji Garba Mohammed. He was later called by the IPO that his boss would like to see him, and on getting there, he was arrested and detained for three (3) days and told that the Bail he was earlier granted was revoked since Alhaji Garba Mohammed could not be arrested.

According to him, Mr. Bello is his Surety who tried to ensure that the matter was amicably settled.

The Applicant admitted **Paragraph 49** to the extent that he gave the IPO money to track down Alhaji Garba Mohammed until he stopped answering his calls.

He denied **Paragraph 54 -60** of the Counter Affidavit, stating that he made all effort to see if he could settle the 4th Respondent on the Sale of Land, despite the fact that he did not benefit from the Land.

He restated that he was not paid Eighteen Million Naira and neither did he have it and urged the Court to grant his Application.

All arguments of Learned Counsel in their Written Addresses are on Record.

The Applicant in his Written Address raised Two Issues for determinations, which are: -

- 1. Whether in the Circumstance of this Case, the Applicant is not entitled to be granted the reliefs sought, the Respondents having failed or neglected to prefer a charge against the Applicant if their investigation proved that he has a Case to Answer.***
- 2. Whether or not within the Purview of the Statutory Duties and Powers of the Police, Debt Collection or Loan Recovery is one of the Primary Duties of the Police.***

The 2nd Respondent also raised Two Issues for determination in their Written Address, which is: -

- 1. Whether the Applicant is entitled to the Reliefs sought having regards to the materials and evidence already placed before this Honourable Court giving the circumstances of same.***
- 2. Whether on the Materials before the Court, the Applicant has been able to prove that his Fundamental Human Right was violated or likely to be violated by the 2nd Respondents or any of their Men/Agents to entitle them to the reliefs sought.***

The 3rd and 4th Respondents in their Written Address raised the same and Sole Issue for determination, which is: -

Whether from the peculiar facts herein deposed and evidence adduced before this Honourable Court, the Applicant has made out a Case to justify the grant of the reliefs sought in this Application.

After a Careful Consideration of the Processes filed as well as the Written Submission of Learned Counsel, Two Issues come up for determination namely: -

- (1) Whether the Uncontroverted Affidavit of the 1st Respondents should be taken as established and***

(2) Whether in the Circumstances of this Case, the Applicant's Fundamental Right has been breached or is in danger of being breached such that he is entitled to the Reliefs Sought.

On the First Issue, it is important to note that the Affidavit of the Applicant remained uncontroverted and unchallenged by the 1st Respondent. The Court must be satisfied that the vital and essential requirement of Service was met and the 1st Respondent was fully aware of the action but chose not to respond either actively or otherwise to the issues raised in the Affidavit.

A Breach or a failure to serve the Motion Processes is a fundamental irregularity, which goes to the root of the jurisdiction of the Court to entertain the Motion. Reference is made to the Cases of **SKEN CONSULT NIG LTD VS UKEY (1981) 1 SC PAGE 6 @ 26; NATIONAL BANK OF NIG LTD VS GUTHRIE (1993) 4 SCNJ @ 1 AND MAERSK VS ADDIDE INVESTMENT LTD (2002) 11 NWLR PART 778 PAGE 317 @ 325.**

On the 21st of November 2018, the Court's Bailiff informed the Court that the 1st Respondent was served the Originating Processes and a Hearing Notice on the 1st day of November 2018 but they failed to respond to the Processes or file a Memorandum of Appearance in this Matter.

Therefore, where the content of an Affidavit is Unchallenged, the Court will accept same as true and correct and rely on them accordingly and the Court will deem same as true and safe in the circumstances to act upon, as long as the evidence contained therein are not incredible and unworthy of belief. Reliance is placed on the Cases of **GLOBE FISHING INDUSTRIES LTD & 4 ORS VS CHIEF FOLARIN COKER (1990) 11 SCNJ AT 56; COMPROLLER OF NIGERIA PRISONS VS, ADEKANYE (1999) 10 NWLR (PART 623) @ 400; MISS BADEJO VS FEDERAL MINISTRY OF EDUCATION (1996) 9-10 SCNJ AT 51 and**

**ECOCONSULT LTD VS PANCHO VILLA LTD (2000) 3 NWLR PT 647
AT PAGE 141.**

In regard to the Second issue, the Fundamental Rights guaranteed by the **1999 Constitution** (as Amended) are basic and fundamental. **ESO JSC** (as he then was) in **RANSOME KUTI VS ATTORNEY GENERAL OF THE FEDERATION (1989) 2 NWLR page 211** held that a Fundamental Right is a right which stands above the ordinary Laws of the Land, and which is antecedent to the political society. It is a precondition to a civilized existence. In **NEMI VS ATTORNEY GENERAL OF LAGOS STATE (1996) 6 NWLR PT 452 AT 42**, it was held that "if those Rights guaranteed under **Chapter IV** of the Constitution are to be meaningful, they must be thoroughly examined from every angle and determined in an action complaining of their breach. When breached, they are to be addressed in all circumstances as appropriate.

It is also a condition precedent to the exercise of the Court's Jurisdiction that the Enforcement of Fundamental Right or the securing of the Enforcement thereof should be the Main claim and not an Accessory claim. See the Case of **TUKUR VS. GOVERNMENT OF GONGOLA (1997) 6 NWLR (Pt.510) 549 at 574-575**, where it was held as follows: -

"When an Application is brought under the Fundamental Rights (Enforcement Procedure) Rules, 1979 a condition precedent to the exercise of the Court's jurisdiction is that the Enforcement of Fundamental Rights or the security of the Enforcement thereof should be the Main Claim and not an Accessory Claim.

The facts leading to this Suit are clearly stated above.

The 2nd Respondents, had argued that they did not send any Officer(s)/Agent(s) to embarrass, arrest and detain the Applicant and in fact, they did not breach the Applicant's Rights to warrant the instant Suit. They also contended that the Exhibit attached to the Applicant's Processes, had nothing to do with them.

The Applicant did not file a Further Affidavit to counter the assertions of the 2nd Respondent, and the Law is trite that uncontroverted Evidence is deemed as true. It was held in the Case of **OWURU & ANOR VS ADIGWU & ANOR 2017 LPELR 42763 SC**. The Apex Court held that where there are averments in a Counter Affidavit asserting a particular state of affairs, which are not challenged by a further affidavit, such averments will be deemed admitted.

The 3rd Respondent on his own side stated that a Complaint was received from the 4th Respondent regarding documents of some Plots of Land, which were given to him by the Applicant. After verification from AGIS, they were informed that the Documents were cloned, and they needed to get the Applicant's own side of the story to be able to investigate properly. Therefore, the Applicant was invited for questioning.

The Applicant confirmed this fact when he stated that he reported to the 3rd Respondent's Office for questioning, and maintained that he has always been available and did not go out of town or change his Phone.

Now, by Virtue of **Section 4 of the Police Act, Chapter 19, in Part 2**, the General Duties of the Police Force were spelt out which includes the Prevention and Detection of Crime, the Apprehension of Offenders, the Preservation of Law and Order, the Protection of Life and Property and the Due Enforcement of All Laws and Regulations with which they are directly charged.

By the above Provision and that of **Section 35 (1)(c) of the 1999 Constitution**, the Respondents could upon Reasonable Suspicion of a Criminal Offence being committed, and in furtherance of their Powers under the Police Act to prevent the commission of a Criminal Offence, deprive the Applicant of their Personal Liberty pending Investigations. **See the Case of EKPU VS AG Federation (1998) HRLRA @ 391** where it was held that the Arresting Authority must show that the arrest was effected in accordance to the Law.

In the Case of **AKANBI & ORS VS C.O.P. KWARA STATE & ORS (2018) LPELR-44049 (CA)**, it was held inter alia that "...The truth is that the Fundamental Right of the Appellants to Freedom of Movement and Personal Liberty is neither unlimited nor is it a right to lawlessness and impunity. Indeed, once Criminal allegations are made against a Citizen, it is Constitutional and Statutory Duty of the Police to Investigate, as Investigation and Detection of Crime is one of the Primary Duties assigned to the Police under **Section 4 of the Police Act**. See **OMOTUNDE VSOMOTUNDE (2001) 9 NWLR (PT 718) 525; COSMOS DESMOND VS OKENWA (2010) LPELR - 4781 (CA); AGUDI VS. COMMISSIONER OF POLICE (2013) ALL FWLR (PT. 660) 1247 at 1295, 1296.**

In **LUNA VS COMMISSIONER OF POLICE RIVERS STATE COMMAND (2010) LPELR - 8642 (CA)** the Court of Appeal held that the Power of the Police under **Sections 214 and 216 of the Constitution and Sections 4 and 24 of the Police Act** should not be fettered by the Court unless there is a good reason". It further held thus: "It is trite that, the Power of the 1st and 2nd Respondents to arrest and detain, pending investigation in some Cases is Constitutional and is derived from **Sections 214 and 216 of the Constitution of the Federal Republic of Nigeria 1999**. The Court was of the considered view

that mere Power cannot by virtue of **Section 35(1) of the 1999 Constitution** amount to a breach of the Appellant's Fundamental Right, even if such exercise results in the curtailing of his freedom of Movement of Liberty. The Court hasten to say that if the contrary is the Case, all Persons arrested by the Police, may as well Claim breach of their Fundamental Rights. It is generally not the business of the Court to fetter this discretion. See the Case of: **FAWEHINMI VS I.G.P. (2002) FWLR (PT. 108) 1355 at 1376- 1377**. Also in the Case of **BISHOP NYONG DAVIS AYAKNDUE & ORS VS BISHOP E.E. EKPRIEREN & ORS (2012) LPELR - 20071 (CA)** the Court held inter alia that: "The Law is that the arrest properly made by the Police cannot constitute a Breach of Fundamental Rights. A Citizen who is arrested by the Police in the legitimate exercise of their duty on Grounds of reasonable suspicion of having committed an offence cannot sue the Police in Court for Breach of Fundamental Rights." **PER OWOADE, J.C.A. (PP. 21-24, PARAS. F-F)**.

The Applicant had argued that he reported himself to the 3rd Respondent and was immediately granted bail, then subsequently, he was invited again by the 3rd Respondent, on getting to the 3rd Respondent's Office, he was arrested and in fact detained for Three (3) Days. He was told that the bail earlier granted has been revoked since Alhaji Garba Mohammed could not be arrested. Reference is made to **Paragraphs 13 of his Reply to the Counter Affidavit**.

The 3rd Respondent denied this fact and stated that he had never arrested the Applicant in respect of this matter as he was only invited by his Team to give his own side of the story. Reference is made to **Paragraph 19 of the 3rd Respondent's Counter Affidavit**

Now as regards the length of detention, **Section 35 (4) of the 1999 Constitution of the Federal Republic of Nigeria** provides in accordance with **sub-section 1 (c)** for the production of the Offender before a Court within a reasonable time and if not tried within a period of two (2) months from the date of his arrest or detention, should be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for Trial at a later date. This Provision is without any prejudice to any Further Proceedings that may be brought against the Offender. **Sub-Section (5) (a) and (b)** defines Reasonable Time to be, in the case of an arrest or detention in any place where there is a Court of competent jurisdiction within a radius of 40 Kilometers, a period of one day, and in any other case, a period of two (2) days or such longer period as in the circumstances may be considered by the Court to be reasonable.

According to the Applicant, the Police upon the arrest eventually released him on Bail after Three Days.

The Applicant ought to have furnished the Court with (1) a Letter of Invitation from the Police, with a certain date on it; (2) the Date he was granted Administrative Bail; and (3) the Date he perfected the Bail Bond and was released. This is because, if the Applicant was granted Bail within 48hrs from his arrest, but failed to perfect his Bail Conditions on the same date, then liability cannot fall on the Police.

The Court cannot operate in a vacuum, to begin to conjecture the Date the Applicant was invited, or the Date the Applicant was granted Bail. There are no Bail Bonds before this Court. There is also no evidence whatsoever, whether by a deposition of the Surety to the effect that he was arrested and detained for a day, or for an hour, or even for a minute, or even any evidence showing that the Surety's detention

occurred, except for the Averments in the Supporting Affidavit. The Applicant needed to have furnished strong and credible evidence of his three days in detention in the face of a definite denial by the 3rd Respondent.

The position of the Law is however clear that 'he who asserts must prove'. When a Person comes before the Court to right a wrong done to him, he must first be able to satisfy the Court that he is legally entitled to the Claim and Reliefs sought. The Court cannot act on mere speculations. Reference is made to the Case of **ACHIBONG VS ITA (2004) 17 NSCQR 295**.

The 4th Respondent on his Part stated that he had a Land Business relationship with the Applicant and after paying Seventeen Million Naira to the Principal of the Applicant, he could not get the value for his money as he was informed by AGIS that the Land Documents given to him by the Applicant were cloned. In reply, the Applicant denied the truth of this fact, stating that to the best of his knowledge, the 4th Respondent's Lawyer conducted a Search in AGIS and got a Report before he recommended the land to his Client.

Now, it is the right of any Citizen to make a formal report to any Law Enforcement Agency in the first instance, for the purposes of investigating allegations laid against another person. Where a wrong is committed, then there must be avenues for redress, because there is a legal path to investigation that cannot be curtailed. His complaints can only be seen to be wrong, if, and only if, it is found to be unjustifiable. A Report to the Police simpliciter cannot be seen to be a wrongful act ab initio, as there must be evidence of mala fide. The Applicant has averred that all efforts were made to see if he could

settle the 4th Respondent on the sale of land, which he innocently partook without benefit. Reference is made to **Paragraph 17 of the Reply to the Counter Affidavit** of the 4th Respondent.

In light of the above stated facts, there were apparent breaches of some Terms of Agreement between the Applicant and the 4th Respondent and on the face of a civil claim only, the Applicant ought to have been sued in a Civil Court and there would not have been any need for a Formal Complaint to the Police. However, there was the question of Cloning, Fraud and Breach of Trust, which are clearly criminal allegations and within the purview of the Law Enforcement Agencies. Therefore, if the 4th Respondent felt aggrieved, he could legitimately make a Report to the Police Authorities.

It is noteworthy to state that the 4th Respondent is not liable for what goes on after the arrest of the Applicant, because he is not in control of the activities of the Police. It is only **if** the report was baseless and unfounded and made mala fide that he would be found liable for the Applicant's detention.

The Police are empowered to conduct investigations into the Matter and have a duty to invite the Applicant to attend such Meetings. The fact that the Applicant is termed as a serial land offender does not in any way indicate that he offended in this particular instance. All he needed to do was honour the invitation. Even though the 1st Respondent failed to respond, thereby leaving the evidence against them as untouched, the point is that the Applicant had the burden to furnish the Court with positive evidence of his detention for three days, but he failed to do so.

In conclusion, the Court is not satisfied that the Respondents breached the Applicant's Fundamental Human Rights and to this end, finds as follows: -

1. A Declaration of Court is NOT made that the Arrest of the Applicant by the 1st Respondent, Agents, Servants, Officers or otherwise howsoever upon a Petition written by the 4th Respondent, sometimes in 2016 in FCT, Abuja, constituted a flagrant violation of the Applicants Fundamental Rights Guaranteed under **Section 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria 1999 and Articles 4, 5, 6, 9, 12 and 14 of the African Charter on Human and People right (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990**
2. For the Applicant's Failure to adduce evidence, this Court declines to Declare that the detention of the Applicant by the 1st Respondent, Agents, Servants, Officers until he was granted Bail with Sureties, constitutes a flagrant violation of the Applicant's Fundamental Rights Guaranteed under **Sections 34, 35, 36 and 41 of the 1999 Constitution and Articles 4, 5, 6, 9, 12 and 14 of the African Charter on Human and People right (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990**
3. A Declaration is made that the 1st, 2nd and 3rd Respondents are not Money and Debt Collectors and cannot direct the Applicant to pay the Sum of Eighteen Million Naira (N 18, 000, 000, 00) only, to their coffers when no Court has found the Applicant guilty of any offence. To that end, the Applicant and Surety are entitled to move freely in any part of Nigeria. However, in this instant case, the indication is that the Police

were called upon to investigate a Criminal Offence, which is well within their competence and authority. Therefore the Court cannot declare any Invitation by them as Harassment or an Embarrassment.

4. An Order of Court is made that the Applicant be taken to Court or be arraigned before of competent Jurisdiction, if their investigation proves that he (the Applicant) has a Case to answer.
5. The Injunctive Reliefs sought is refused, as there was no evidence that there was a violation of the Applicant's Fundamental Human Rights.
6. The Claim for Damages against the Respondents jointly in the Sum of N 10, 000, 000.00. (Ten Million Naira), fails and is accordingly dismissed.

HON. JUSTICE A.A.I. BANJOKO
JUDGE