

**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 9TH DAY OF DECEMBER 2020**

SUIT NO: FCT/HC/CV/1395/2020

BETWEEN:

1. CHRISTOPHER CHINWEZE..... APPLICANT

AND

1. MR. XIE XIAO

2. RABIU BUKAR

3. A.C.P ADAMU ABDULLAHI EL'LIMAN...RESPONDENTS

HEAD, IGP MONITORING UNIT ABUJA

**4. INSPECTOR GENERAL OF POLICE,
FOR HEAD QUARTERS, ABUJA**

**THE APPLICANT IS REPRESENTED BY EUSEBUIS ANYANWU ESQ WITH
N.E. NWONYE ESQ**

THE 1ST AND 2ND RESPONDENT IS REPRESENTED BY SADIQ AUDU ESQ

THE 3RD AND 4THRESPONDENT IS REPRESENTED BY DAVID IDRIS ESQ

JUDGMENT

By way of an Originating Motion on Notice dated and filed on the 11th of March 2020, brought Pursuant to **Sections 6 (6)(A); 34, 35 and 46 (1) of The 1999 Constitution of The Federal Republic of Nigeria (As Amended); Order II, Rules 1, 2, 3, 4 and 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and; Articles 4, 6 And 7(1)(B) of the African Charter On Human and People's Right (Ratification and Enforcement Act).**

The Applicant is praying the Court for the following Reliefs: -

1. A Declaration that the Arrest and continuous Detention of the Applicant by the Respondents in their detention (sic) at the Asokoro Police Station since the **28th of February, 2020** in Abuja without being charged to a Court of competent jurisdiction violates the **Applicant's Right to Personal Liberty and Dignity of the Human Person** guaranteed by Section 34 and 35 of Constitution of the Federal Republic of Nigeria, 1990 (as amended) and Articles 5 and 6 of African Charter on Human and People's Rights.
2. A Declaration that the incarceration of the Applicant by the Respondents in their Detention Facility since **the 28th of February, 2020 till date** based on the complaint and instigation of the 1st and 2nd Respondent, and **without ANY Medical Attention to the Applicant violates the Applicant's Right to Personal Liberty and Dignity of the Human Person** guaranteed by Section 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and Articles 5 and 6 of African Charter on Human and People's Rights.
3. An Order restraining the 3rd and 4th Respondents, their Officer and Agents from **further Arrest, Detention, Threats of Arrest and Detention of the Applicant** based on the unfounded complaint and instigation of the 1st and 2nd Respondent or upon allegations bordering or relating to facts and circumstances of this matter, which is already a subject of Litigation
4. An Order restraining the 3rd Respondent, A.C.P. Abdullahi Adamu El'liman, his personal agents, privies, or servants from further acting under his orders and in his personal capacity **and under the instigation of the 1st and 2nd Respondent to arrest and detain indiscriminately** or any form of interference of the Applicant's Fundamental Right.
5. An Order admitting the Applicant to **unconditional bail pending the institution and trial of a charge** if any against him in a court of competent jurisdiction.
6. The sum of One Hundred Million Naira (100, 000, 000.00) damages, jointly and severally against the 1st and 2nd Respondents.
7. The sum of Ten Million Naira (10, 000, 000.00) damages against the 4th Respondent.

8. The sum of Twenty Million Naira (20, 000, 000.00) damages against the 3rd Respondent.
9. And for such further Order or other Orders as this Honourable Court may deem fit to make in the circumstances of this Case.

The Applicant filed a Twenty-Four (24) Paragraph Affidavit dated the 11th of March 2020, deposed to by himself, a Verifying Affidavit, Documentary Exhibits, and Written Address in support.

In response, the 1st and 2nd Respondents also filed a Twenty-Four (24) Counter Affidavit dated the 19th of March 2020, deposed to by the 2nd Respondent, Documentary Exhibits and a Written Address in support.

In turn, the 3rd and 4th Respondents filed a Twelve (12) Paragraph Counter Affidavit in opposition, deposed to by one Inspector Joshua Yohanna, a Police Officer attached to the FCID Legal Section, Documentary Exhibits and a Written Address, via a Motion on Notice dated the 11th of June 2020.

The Applicant then filed a Reply on Points of Law dated the 23rd of March 2020, and a Further Affidavit, also deposed by himself, dated the 29th of June 2020 attaching further Exhibits and a Written Address.

On the 14th of July 2020, parties adopted their respective Written Addresses.

The Case in summary is as follows: -

The Applicant, who is in the business of wholesale trading of Textile Materials at the Onitsha Main Market, claimed that he has been transacting business with the 1st Respondent, a Chinese National since 1997.

According to him, in 2012, one of their business transactions incurred losses, and it became a subject of Petition before the EFCC. He was then invited to the EFCC, and as a result he shuttled between the FCT and Anambra State, a total of nine trips, over a period of Eight Months. The EFCC, after due investigations, dismissed the Petition and asked the Parties to file a Formal Civil Action for Breach of Contract, if any.

On the 20th of January 2020, the Applicant filed a Writ of Summons at the High Court of Anambra State, in **Suit No. 01/15/2020 between CHIEF CHRISTOPHER CHINWEZE VS MR. XIE XIAO AND RABIU BUKAR**, but the 1st and 2nd Respondents resisted service of the Process and threatened him for taking such steps.

On the 28th of February 2020, he was taken from his Shop in Onitsha to Abuja by Officers of the 3rd and 4th Respondents and detained under horrendous conditions. The Officers who arrested him, showed him what looked like a Warrant premised on a Petition written by the 1st and 2nd Respondents on the Allegation of Cheating and Misappropriation, which was similar to the Petition written to the EFCC. According to the Claimant, He was taken to Abuja by road against his wish and kept in Enugu for Two (2) Days before continuing the onward Journey to Abuja, where he was kept in detention until the filing of this Suit.

The Applicant accused the 1st and 2nd Respondents on the premise that they wentforum shopping for a Security Agency out of Malice and Persecution. They found a ready Partner in the 3rd Respondent, ACP Abdullahi Adamu El' Liman, who in a bid to arm-twist him into submission, subjected him to a physical and mental torture and trauma. He stated that he is 63 years old, diabetic and Hypertensive, and alleged that the 3rd Respondent detained him in his personal capacity as a result of his personal relationship with the 2nd Respondent, who is the 1st Respondent's Nigerian Partner. The Applicant refused to pay more than he knew about the transaction, and urged that parties should each bear the loss, adding further that the Subject Matter is purely civil and should not involve the Police.

According to him, the reason for his continued detention against the advice of the 3rd Respondent's Superiors, were because the 1st Respondent (who is a Chinese National) was not in the Country due to the Covid 19 pandemic, and until the 2nd Respondent comes to give his Statement, he was refused Bail. These Bail Conditions were spiced with malice.

On the 4th March 2020, the 3rd Respondent requested for a Legal Practitioner as Surety, and one Levi Nwonye Esq. submitted his Call to Bar Certificate and

other Documents as demanded, and even signed on the Bail Form, yet the 3rd Respondent refused the Applicant's release.

On the 7th of March 2020, at about 6:38am, the Applicant's Son, Ebuka Chinweze, wrote an Online Petition to the Head of the Police Compliant Unit, ACP Markus Ishaku, through their Social Media Handle (Twitter) and copied the Police Complaint Unit, wherein he narrated the Applicant's ordeal. On the same date, the Complaint Unit replied at 9:05am, and sent him a Tracking Number with Number #CRU393527, that they can be reached via Telephone Number, 08057000002. Later that morning, the Applicant's Lawyer called the stated Phone Number and the Lawyer was directed to the Asokoro Police Station, where the Applicant's Release had been ordered. Yet, the 3rd Respondent and his Officers refused to release to the Applicant.

The Applicant maintained that his continuous incarceration (where he slept on the floor and his health had been deteriorating daily) was jointly orchestrated by the 1st and 2nd Respondents, and his life and liberty is in grave danger of being lost, because he is an old man.

In Response, the 1st Respondent, (the Chairman and Chief Executive Officer of Bestex International (HK) Limited, China, and Shares Global Concept Limited located at No. 56/60 Ashton Road, Kano State) and 2nd Respondent (the 1st Respondent's Agent and Nigerian Business Partner), claim that the facts as stated by the Applicant are misleading.

According to them, the facts stated by the Applicant are true only to the extent that the Applicant had Business Transactions with the 1st Respondent, but the Applicant is indebted to the 1st Respondent to the tune of Five Hundred and Forty Thousand, Six Hundred and Twenty-Four Dollar, Ninety-Eight Cents (\$540,624.98), which is the reason the Complaint was made to the Police.

They claim that there were no losses recorded in the Business Transaction between the 1st Respondent and the Applicant that led to the Suit, rather, the Applicant after selling the goods supplied to him by the 1st Respondent, failed to remit the Monies in its Dollar Equivalent as agreed. The Applicant

misappropriated and diverted the funds to his other businesses, and cheated the 1st Respondent.

They admitted that they petitioned the EFCC in regard to the Applicant, but the EFCC failed to take any action, so they were constrained to withdraw the Petition on the 23rd of December 2019, and submitted a fresh Complaint to the Police in February 2020. Meanwhile, the Applicant had filed a Case at the Onitsha High Court in January 2020, where a Senior Advocate of Nigeria is representing him, and the 1st and 2nd Respondents are yet to be served with the Processes. They only became aware of the Suit by the Processes filed in this Present Civil Suit via the Exhibits annexed to the Application.

Finally, the 1st and 2nd Respondent claimed they only laid a Complaint in compliance with the Law, and did not influence the Police in anyway or tries to direct the Police on how to carry out their duties.

In Response to the Application, the 3rd and 4th Respondents, claim that most of the facts stated by the Applicant are false and misleading.

They received on the 11th of February 2020, a Petition written by one Sadiq A. Audu Esq. on behalf of the 1st and 2nd Respondents, against the Applicants for Obtaining Property by False Pretence, Criminal Breach of Trust, Criminal Misappropriation and Cheating, and the Petition was referred to the 3rd Respondent for Discreet Investigation.

The 2nd Respondent was invited to adopt his Petition, which he did and volunteered his Statement. The Applicant was also invited, which he honoured and volunteered his Statement as well.

Based on the investigation it was revealed that the 1st Respondent met with the Applicant at a Trade Fair in China, and they both entered into Business Discussions for the 1st Respondent to supply the Applicant goods from China. The Agreement was for the Applicant to sell the goods and remit the payments in Dollars.

The 1st Respondent supplied Goods worth \$540, 624.98 to the Applicant, and rather than the Applicant remit the payments in Dollars, he diverted them to

his other Businesses, and all efforts made by the 1st Respondent and the 2nd Respondent (the 1st Respondent's Agent) for the Applicant to pay the money proved unsuccessful.

They admitted being aware of an earlier Petition to the EFCC in December 2018, but stated that the Commission failed to take any action, and thereafter, the Petition was withdrawn, which necessitated a further Petition before the 4th Respondent.

A Remand Order was obtained for the Applicant's detention, and at its expiration they approached a Magistrate Court for an Extension, which the Court obliged. The Applicant was then arraigned at the Zuba Upper Area Court, after an exhaustive, stringent and thorough Investigation, and subsequently remanded in the Suleja Prison. The Applicant's detention was never at their instance but was on the Order of Court, and after the Applicant perfected his Bail Conditions, he was released from the Suleja Prison.

It is their case that the 3rd and 4th Respondents are constitutionally empowered to investigate any act of criminality committed by any person, and this Action was only filed to escape the consequences of the Law. The reporting of Cases to the Police is also the civic responsibility of all Nigerians, and the Court will not be a shield to anyone, including the Applicant from Criminal Prosecution.

Finally, they urged the Court to dismiss the Application in the interest of Justice, Fair Hearing and the Rule of Law.

The Applicant in Reply, insisted that he was not invited but arrested by Officers of the 4th Respondent, and against his wish and despite his Age and health, forced him to travel by road to Abuja from Onitsha, on the same allegation brought before the EFCC, which was dismissed as a civil cause. He confirmed that he met the 1st Respondent at a Trade Fair in China, but in the year of 1998, and had a Business Agreement for the Supply of Goods ever since. He has had business dealings with the 1st Respondent until 2012 when the 2nd Respondent came into the picture and all the calculations for goods are usually done in Naira and the payments are made in instalments, until final liquidation

of debt. According to him, his arrest, torture and prosecution was hinged on his alleged debt owed the 1st Respondent.

The Applicant maintained that the result of the Eight (8) Month's investigation at the EFCC was that the Petition was a breach of contract, with no iota of crime involved, and not that the 1st and 2nd Respondents withdrew the Petition. The Officers of the 4th Respondent did not investigate the Complaint but rather tried to prevail on him to settle the debt in exchange for his freedom.

Further, on the 24th of March 2020, the Prosecution misled the Upper Area Court in Zuba when he initially made an oral Submission that the Applicant had been on the run and evasive of answering his Calls, before repeating same in Paragraph 18 of their Counter Affidavit to his Bail Application. The Applicant referred the Court also the Exhibits and FIR, where it clearly inferred a debt owed.

The Applicant stated that his initial detention upon Arraignment was for Two Days, as the Court granted him Bail upon hearing his Application. The Remand Order obtained from Nasarawa State was an Illegal Piece of Document used to justify his illegal and unjust detention, and he insisted that his detention was instigated by the 1st and 2nd Respondents, and executed by the 3rd Respondent.

He admitted that the 3rd and 4th Respondents are constitutionally empowered, but that they should steer clear of civil matters and not act as debt collectors.

Finally, he stated that he filed this suit genuinely seeking the enforcement of his Fundamental Right, and not be shielded from Prosecution. He then urged the Court to grant his Prayers in the interest of justice and dismiss the Respondents Counter Affidavits with Damages.

In his Written Address filed in support of the Application, dated the 11th of March 2020 Learned Counsel to the Applicant, formulated a Sole Issue for determination, namely: -

1. Whether the Applicant is entitled to the reliefs sought.

In response, Learned Counsel to the 1st and 2nd Respondents formulated Four Issues for determination, namely: -

1. Whether the 1st and 2nd Respondent's Act of laying Complaint or Petition to the Police without more have breached the Fundamental Rights of the Applicant.
2. Whether the Applicant has discharged the Burden of Proof of the alleged infringement of his Right.
3. Whether there is any Agency Relationship between the Complainant and the Police.
4. Whether the Applicant is entitled to any Damages.

Also in Response, Learned Counsel to the 3rd and 4th Respondents, formulated Three Issues for determination, namely: -

1. Whether the Applicant has made out a Case under the Fundamental Rights Enforcement Procedure Rules that will entitle him to the Reliefs sought in his Application.
2. Whether the investigation of the Applicant for Obtaining Property by False Pretence, Criminal Breach of Trust, Criminal Misappropriation and Cheating constitute a violation of his Fundamental Right.
3. Whether this Honourable Court can restrain the 3rd and 4th Respondents from the performance of his statutory duties.

Learned Counsel to the Applicant in Reply on Points of Law, responded only to the Issues raised by the 1st and 2nd Respondents.

All Arguments of Counsel are duly noted on Record.

After a Careful Consideration, the Court finds Four Issues for Determination, namely: -

- 1. Whether the 1st and 2nd Respondents violated the Right of the Applicant by the Complaint/Petition made to the Police.***

2. ***Whether the 3rd and 4th Respondents in the manner they carried out their investigation violated the Rights of the Applicant to Personal Liberty.***
3. ***Whether the Continuous Detention of the Applicant in the 4th Respondent's Facility from the 28th of February 2020 until his Arraignment before the Zuba Upper Area Court on 24th of March 2020 violated the Applicants Right to Personal Liberty***
4. ***Whether the Applicant has proven his Case to be entitled to the Reliefs sought.***

On the First Issue, ***whether the 1st and 2nd Respondents violated the Right of the Applicant by the Complaint/Petition made to the Police.***

The Applicant claimed the 1st and 2nd Respondents went for shopping for a Security Agency out of Malice and Persecution, and found a willing partner in the 3rd Respondent, who in a bid to arm twist him into submission, subjected him to a physical and mental torture and trauma.

The 1st and 2nd Respondent on their part claimed they only laid a Complaint in compliance with the Law, and did not influence the Police in anyway or try to direct the Police on how to carry out their duties

Section 24 under Chapter II, the Fundamental Objectives and Directive Principles of State Policy of the Constitution of the Federal Republic of Nigeria, 1999 provides thus: -

"It shall be the duty of every Citizen to: -(a) abide by the Constitution, respect its ideals and its institutions, the National Flag, the National Anthem, the National Pledge, and Legitimate Authorities; (b) help to enhance the Power, Prestige and Good Name of Nigeria, defend Nigeria and render such National Service as may be required; (c) respect the Dignity of other Citizens and the Rights and Legitimate Interests of other and live in Unity and Harmony and in the Spirit of Common Brotherhood; (d) make positive and useful contribution to the advancement, progress and well-being of the Community where he resides; (e) render assistance to appropriate and Lawful Agencies in the maintenance of Law

and Order; and (f) declare his Income honestly to appropriate and pay his Tax promptly.”

From the above Provision, particularly in **Sub-sections (c) and (e)**, it is very clear that it is the Duty of a Citizen of Nigeria to Respect the Dignity of other Citizens, and also to render assistance to Law Enforcement Agencies. In this instant Case the Law Enforcement Agency is the Nigeria Police Force.

Section 4 of the **Police Act 2004** provides as follows: -

“The Police shall be employed for the Prevention and Detection of Crime, the Apprehension of Offenders, the Preservation of Law and Order, the Protection of Life and Property and the due Enforcement of all Laws and Regulations with which they are directly charged, and shall perform such Military Duties within or outside Nigeria as may be required of them by, or under the Authority of this or any other Act”.

Flowing from the above Provisions as well as Paragraph 22 of the 1st and 2nd Respondent’s Counter Affidavit, it can be clearly seen that the Subject Matter of their Complaint/Petition against the Applicant was based on the Misappropriation and Diversion of Funds and Cheating. Even though the Applicant alleged malice in reporting the case to the 3rd and 4th Respondents, there was no evidence of Malice. He needed to do more, by tendering contract documents and leading evidence of any perceived compliance or even breach of the stated contractual relationship, to harness his point of the matter being purely a civil matter. This was absent.

The 1st and 2nd Respondents are entitled to make a Formal Report through a Petition to the 4th Respondent, irrespective of whether an earlier complaint had been made to the EFCC and also irrespective of whether the fact of the allegations brought against the Applicant were true or not.

It became the responsibility and duty of the 4th Respondent to either accept the earlier findings made by another investigative body, or whether to conduct their own investigation into the allegations presented before them. They were certainly within their rights to conduct their own independent enquiry. In any event, the Applicant had the onus to show that the facts in both Petitions were the same facts.

Therefore, at this juncture, without going into the facts regarding the allegations brought before the 4th Respondent, and also before the Upper Area Court Zuba, the Court holds that the 1st and 2nd Respondent have a Right and a Duty as a matter of fact to make a Complaint/Petition to the Police of any Criminal Intention or Crime committed.

On the Second Issue, ***Whether the 3rd and 4th Respondents violated the Rights of the Applicant to Personal Liberty, in the manner they carried out their investigation,***

By virtue of Section 4 of the Police Act the General Duties of the Police are spelt out, and particularly, **Section 24 (1) of the Police Act 2004** provides: - *(1) In addition to the Powers of Arrest without Warrant conferred upon a Police Officer by **Section 10 of the Criminal Procedure Act**, it shall be lawful for any Police Officer and any Person whom he may call to his assistance, to arrest without Warrant in the following Cases: - (a) any Person whom he finds committing any Felony, Misdemeanor or Simple Offence, or whom he reasonably Suspects of having committed or of being about to commit any Felony, Misdemeanor or Breach of the Peace; (b) any Person whom any other Person charges with having committed a Felony or Misdemeanor; (c) any Person whom any other Person: - (i) Suspects of having committed a Felony or Misdemeanor; or (ii) Charges with having committed a Simple Offence, if such other Person is willing to accompany the Police Officer to the Police Station and to enter into a recognizance to prosecute such charge.*

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.**

From the facts before the Court, indeed what began as a Civil Transaction has progressed and encroached into the Territory of Criminal Activities, by reason of the Petition of Criminal Breach of Trust and Criminal Misappropriation, which gave Jurisdiction to the 4th Respondent to investigate the Matter, and by extension, its Officers.

In the Case of **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.**

Therefore, if there is a Criminal Complaint to be heard, then there is a Criminal Case to be investigated. If there is a Criminal Case to be investigated, then it is logical that the Applicant will be called in for questioning or arrested. It is also logical that after the arrest, the Applicant will be granted Bail. 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).**

To this extent, the Court holds that the Police have a Right to Investigate. The Police acted within their Powers and were not in breach when they arrested the Applicant. The Police have the Powers for the Prevention and Detection of Crime, the Apprehension of Offenders and the Preservation of Law and Order.

The Law is trite that no Court has the Power to prevent the Police or other Law Enforcement Agencies charged with Investigation and Prosecution of Offenders from performing their Constitutional and Statutory duties. No one who is suspected of having committed a Criminal Offence would be allowed to use the Judicial Process to shield himself from Investigation and eventual Prosecution. See **IGP AND ANOR VS UBA & ORS. (2014) LPELR - 23968 (7CA)** and **FAWEHINMI VS IGP AND ORS LPELR -1258 SC.**

On the Third and Fourth Issue, *whether the Continuous Detention of the Applicant in the 4th Respondent's Facility from the 28th of February 2020 until his Arraignment before the Zuba Upper Area Court on 24th of March 2020 violated the Applicants Right to Personal Liberty, and Whether the Applicant has proven his Case to be entitled to the Reliefs sought.*

In proof of his Claim, the Applicant annexed the following documents: -

1. EFCC Letter of Invitation dated the 5th of April 2019.
2. Social Media Chat between the Police Complaint Unit
3. Writ of Summons and Accompanying Processes, filed on the 20th of January 2020 at the High Court of Anambra State, Onitsha.

On the 1st Document, it is a Scanned Copy of the EFCC Letter of Invitation, dated the 5th of April 2019, and printed from the WhatsApp Website, which

was addressed to the Applicant. It directed the Applicant to report to the Commission on the 24th of April 2019 at the Jabi, Abuja.

This Document is Computer Generated and ought to comply with the Provisions of **Section 84 of the Evidence Act 2011**, which the Applicant failed to do. Although the Applicant filed a Certificate of Compliance in regard to another Computer Generated Document attached, which is the Chat between the Police Social Media Handle (Twitter), he failed to present a Certificate of Compliance for the EFCC Letter of Invitation.

The relevance of this document only goes to prove that the EFCC invited the Applicant to Abuja based on a Petition written by the 1st and 2nd Respondents. The Document on the face of it, did not state why he was invited or that the Invitation was as a result of the 1st and 2nd Respondents. On this basis the Document appears to be worthless and has failed to prove what it sought to prove.

On the part of the 1st and 2nd Respondents, they saved the Applicant's Case and validated the Applicant's Claims that they indeed brought a Petition before the EFCC, which they claimed to have withdrawn. The Applicant on his part vehemently disagreed with the fact that it was withdrawn; but that the EFCC recommended that the Suit was purely civil. The Applicant did not tender any Evidence to show that this conclusion was reached by the EFCC

The fact of whether the Petition was withdrawn or not, was not proved by either party, and this issue is immaterial to justify whether the Applicant was unlawfully detained or not.

On the 3rd Bundle of Documents filed, the Applicant also presented a Writ of Summons and Court Processes filed at the Anambra State High Court of Justice. The Suit is seeking Declaratory Reliefs against the 1st and 2nd Respondents bothering on their Contractual Relations.

From these Court Processes, it is apparent that the Issues surrounding whether or not there is a breach, or indebtedness are Issues already before a Court of Competent Jurisdiction, and this Court will not go into such Issues, which are subjudice and not before it.

Having addressed the Documents of the Applicant not relevant to the Issues before the Court, the only Document now left before the Court is the Social Media Handle Conversation between the Police Complaint Unit and the Son of the Applicant. A Certificate of Compliance with **Section 84 of the Evidence Act** was filed alongside.

On the Issue of the Applicant's 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.

The Applicant has presented the Court with an allegation that the 4th Respondent detained him unlawfully from the 28th of February 2020 until the filing of this Suit on the 11th of March 2020, a period of thirteen days. In proof he annexed a Printout of a Complaint to the Police on their Twitter Handle.

From the document it can be seen that the Applicant's Counsel laid the complaint in regard to his detention and the Complaint was allotted a Tracking Number. This document only goes to show that a complaint was lodged with the Police Complaint Unit and that the Applicant, a 63-year-old was detained at the Asokoro Police Station under horrible conditions. What was missing on the face of this document was the length of time of the detention and whether it was extended or not. This document is the only evidence the Applicant seeks to rely on, in proof of his detention or the fact that he lodged a Complaint in this regard.

On the part of the 3rd and 4th Respondents, in Paragraph 6 (p) of their Counter Affidavit stated that they received a Petition from the 1st and 2nd Respondent, for investigation and prosecution, and admitted that they indeed detained the Applicant at the Asokoro Police Station. They claimed to have obtained two Remand Orders from a Magistrate Court sitting at Mararaba Gurku, which were granted. Therefore, they did not detain the Applicant at their instance, in proof of this assertion, presented the Remand Orders of the Court in **Exhibits 6 and 7**.

From the Remand Orders, the Court can see that the first began from the 28th of February 2020 to the 12th of March 2020, whilst the Second Order began from the 12th of March 2020 to the 24th of March 2020.

According to the 3rd and 4th Respondents, the Applicant was subsequently **arraigned at the Zuba Upper Area Court, and subsequently remanded by the Court to Suleja Prison.**

The Applicant was confronted with these facts and failed to discredit them, and neither did he controvert the fact that the Detention was not on the Lawful Order of Court. All he stated was that the Order for remand was illegal. How it was illegal, he did not say, who made it illegal, he also failed to say. The Law is trite that uncontroverted Evidence is deemed as true. 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.

More importantly is the fact that the Applicant in his Affidavit in Support of the Motion, stated in **Paragraph 7** that he was taken away from his shop in Onitsha on the **28th day of February 2020** and **brought by road** to Abuja. According to him, the journey **took two days**, as they had to make a stopover at Enugu for Two Days. On his arrival at Abuja, he was detained at the Asokoro Police Station.

This Statement cannot possibly be true because if he was indeed arrested on the 28th of February 2020 and if indeed he travelled by road for **two days**, his

arrival in Abuja should have been on the 1st of March 2020. Not only that the initial Remand Order of the Magistrate's Court in Mararaba, Nasarawa State, as seen in **Exhibit 6**, should not have been dated the 28th of February 2020. This could only mean that his Order for detention was obtained before they set out from Onitsha. This clearly, on the bare face of the documents before the Court, cannot be the true position.

If the Applicant wants to prove an illegal detention or an illegal Order for detention, he needed to prove that the Remand Orders were fake or forged, and this, he had to discharge beyond reasonable doubt. The 3rd and 4th Respondent had stated in Paragraph 6 (d) of their Counter-Affidavit that the Applicant was invited and he honored the invitation, subsequently volunteering his statement. The surrounding circumstances about his arrest was missing from their averments and all they stated was their admission that the Applicant was detained at Asokoro Police Station on a Remand Order.

Now, on the face of the initial Remand Order, the date stated was the 28th of February 2020, the very date of his arrest.

This means that the 3rd and 4th Respondent never detained him even for a day.

It was expected that the Applicant in his Further Affidavit ought to have directly challenged the content and the Documentary Evidence presented by the 3rd and 4th Respondents. He also ought to have provided his own Evidence indicating that the Documents were forged. The Court must, as of necessity, take into cognizance the Presumption of Regularity of Official Documents as seen in Section 122 (2) (m) of the Evidence Act, 2011 on Facts, which the Court will take Judicial Notice of. His Oral Evidence was contradictory as seen in Paragraphs 7, 10 and 11 of his Affidavit in support of the Motion on Notice.

Further, merely stating in Paragraph 4 (x) of his Further Affidavit, that the Remand Order was an 'Illegal Piece of Document', without proving how it became illegal is tantamount to speaking to the air.

Therefore, without further ado this Court finds that the Detention of the Applicant by the 3rd and 4th Respondents, which was ordered by the Court, was Lawful.

In summary the Applicant has failed to prove a Case of unlawful detention by the 3rd and 4th Respondent or instigation by the 1st and 2nd Respondent by reason of their Petition. The Law is trite that He who alleges has the onus of proof. **DALHATU VS ATTORNEY GENERAL, KATSINA STATE (2008) ALL FWLR (PT. 405) 1651 AT 1677 - 1678, PARA. H - B (CA).**

This Court finds that the Respondents did not breach the Applicant's Fundamental Right to Personal Liberty and Dignity of Person as a result of the Petition, Complaint and subsequent Arrest, Detention and Investigations, which were all carried out lawfully.

On the Reliefs of Damages sought by the Applicant, it is clear that the primary object of award of damages is to compensate the Applicant for the harm done to him and a possible secondary object is to punish the Respondents for his conduct in inflicting the harm. See the Case of **ADIGUN VS AG, OYO STATE (1987) 1 NWLR PART 53, 678 @ 708 PARAGRAPHS E - F 721 PARAGRAPH G.**

The Applicant having failed to prove his Case of Breach and has also failed to justify his entitlement to the Damages sought in Reliefs 6, 7 and 8.

In Conclusion: -

1. A Declaration will not be made that the Arrest and continuous Detention of the Applicant by the Respondents in their detention (sic) at the Asokoro Police Station since the **28th of February, 2020** in Abuja without being charged to a Court of competent jurisdiction violates the **Applicant's Right to Personal Liberty and Dignity of the Human Person** guaranteed by Section 34 and 35 of Constitution of the Federal Republic of Nigeria, 1990 (as amended) and Articles 5 and 6 of African Charter on Human and People's Rights.
2. The Court will not make a declaration that the incarceration of the Applicant by the Respondents in their Detention Facility since **the 28th of**

February, 2020 till date based on the complaint and instigation of the 1st and 2nd Respondent, and **without ANY Medical Attention to the Applicant violates the Applicant's Right to Personal Liberty and Dignity of the Human Person** guaranteed by Section 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and Articles 5 and 6 of African Charter on Human and People's Rights.

3. An Order will not be made restraining the 3rd and 4th Respondents, their Officer and Agents from **further Arrest, Detention, Threats of Arrest and Detention of the Applicant.**
4. An Order will not be made restraining the 3rd Respondent, A.C.P. Abdullahi Adamu El'liman, his personal agents, privies, or servants from further acting under his orders and in his personal capacity **and under the instigation of the 1st and 2nd Respondent to arrest and detain indiscriminately** or any form of interference of the Applicant's Fundamental Right.
5. An Order admitting the Applicant to **unconditional bail pending the institution and trial of a charge** will not be made.
6. The Sum of One Hundred Million Naira (100, 000, 000.00) damages, jointly and severally against the 1st and 2nd Respondents will not be granted.
7. The Sum of Ten Million Naira (10, 000, 000.00) damages against the 4th Respondent will also not be made.
8. The Sum of Twenty Million Naira (20, 000, 000.00) damages against the 3rd Respondent will not be granted.

HON. JUSTICE A.A.I. BANJOKO

JUDGE