

**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 14<sup>th</sup> DAY OF DECEMBER 2020**

**SUIT NO: FCT/HC/CV/817/20**

**BETWEEN:**

- 1. ONI VICTORIA YETUNDE**
- 2. EBIFA SAMUEL E**
- 3. UCHEGBULAM U. IKEM**
- 4. KALU AUGUSTINE .....APPLICANTS**

**AND**

**INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED  
OFFENCES COMMISSION..... RESPONDENT**

**THE APPLICANTS ARE REPRESENTED BY EMEKA UCHEGBULAM  
WITH ABIODUN OLUSANYO.**

**THE RESPONDENT IS REPRESENTED BY O. A. IKUKPOLA.**

**JUDGMENT**

By way of an Originating Motion on Notice dated and filed on the 15th of January 2020, brought Pursuant to **SECTIONS 40, 43, 44 AND 46 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999; ORDER II, OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009 AND UNDER THE INHERENT JURISDICTION OF THE HONOURABLE COURT.**

The Applicants are praying the Court for the following Reliefs:-

- A) A DECLARATION that the action of the Respondent; demanding the

Return of Monies and Cars the Applicants legitimately received from the Federal Civil Service Staff with Disabilities Multi- purpose Cooperative Society Ltd is purely Malicious and is likely and or an Infringement of the Applicants Fundamental Right.

B) A DECLARATION That the Respondent by Themselves, Agents or Servants be restrained from further Threatening, demanding the Return of Monies and or Cars and/or Infringing on the Fundamental Rights of the Applicants as enshrined in **Sections 40,43,44** of the Constitutional of the Federal Republic of Nigeria 1999.

Filed in support is a Twenty Nine (29) Paragraph Affidavit deposed to by the 1<sup>st</sup> Applicant Oni Victoria Yetunde, attached also are annexures and a Written Address of Counsel.

Grounds upon which the Application is Premised are as follows:-

- a. The Action of the Respondent demanding from the Applicants for the return of Monies and Cars legitimately received from the Federal Civil Service Staff with Disabilities Multi-Purpose Cooperative Society Ltd. On the strength of the allegation of Crime against Alhaji Iliyasu Abdulrauf is an or likely infringement on the Fundamental Rights of the Applicants as Guaranteed under Sections 40, 43, and 44 of the 1999 constitution of the Federal Republic of Nigeria ( As Amended).
- b. The attempt and or demand to seize monies and cars the applicants received from the Federal Civil Service Staff with Disabilities Multi-Purpose Cooperative Society Ltd. Is Unconstitutional and Contrary to Section 44 of the Constitution of the Federal Republic of Nigeria 1999.
- c. Section 44(1) of the 1999 constitution as Amended provides that no moveable property or any interest in an immovable property shall be taken Possession of compulsory and Right over or Interest in any such Property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by Law.

Upon service of the Processes on the Respondent, the Respondent filed a Five (5) Paragraph Counter Affidavit dated and filed on the 9<sup>th</sup> of March 2020, deposed to by Iliya Markus, a Litigation Officer with the Respondent, annexures and a Written Address of Counsel.

Responding to the Counter Affidavit, on the 2<sup>5th</sup> of June 2020, the 1<sup>st</sup> Applicant filed a Forty (40) Paragraph Further Affidavit, annexures and a Written Address.

The Facts as presented by the 1<sup>st</sup> Applicant with the Consent and Authority of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants are that she and the other Applicants are Staff of Federal Civil Services and Member of the Federal Civil Services with Disabilities Multi- Purpose Cooperative Society Ltd, who are registered with the Registrar of Cooperative Societies, Federal Capital Territory Abuja.

The Applicants aside being members of the Cooperative society are also Executive Committee and Board Members of the Cooperative Society who carries out several functions and entitled to honorarium, allowances and refund of other expenses incurred during the performance of their duties as provided by the Cooperative Society's Constitution.

The Sources of Funds for the Cooperative Society among others are donations which includes Corporate Social Responsibility Funds as provided for in the Cooperative Society's Constitution.

According to her, she and other Executive Committee and or Board Members were respectively and legitimately paid their allowances (sitting and traveling), and refunds of other expenses incurred during the performance of their duties, which payments were approved at several Meetings.

Sometimes between December, 2017 and January, 2018 the Applicants among others were either gifted and or exchanged Cars with the Cooperative Society to aide their movements, which were donations from an Islamic Organization. The said transfer was purely contractual, enforceable and binding as evident in the receipts issued and the 3<sup>rd</sup> Applicant furnished a consideration by exchanging it with another Car.

According to her, sometime in the August, 2018 the Executive Committee Members, Board Members and entire Members of the Cooperative Society got wind of an allegations against Alhaji Iliasu Abdulrauf, the Chairman/CEO Rehabilitation Committee of the Federal Civil Services with Disabilities Multi-Purpose Cooperative Society Ltd. Upon such information, the officers of the

Cooperatives Society met and pass a Resolution, suspending Alhaji Iiyasu Abdulrauf from office.

The alleged allegations and activities against the Alhaji Iiyasu Abdulrauf assuming but not conceding were true, the Cooperative Society nor its Members especially the Applicants were not involved neither did they participate in any of the alleged Allegations and Activities.

According to the 1<sup>st</sup> Applicant, , the Respondent after investigations filed a Charge against only Alhaji Iiyasu Abdulrauf, confirming the above Paragraph that the Cooperative Society and its Members were not participant of the alleged allegations and activities against Alhaji Iiyasu Abdulrauf.

She denied the fact that the Cooperative Society received any monies or alerts whatsoever from the Respondent against Alhaji Iiyasu Abdulrauf, therefore the Monies complained of cannot be linked and or traced to the Cooperative Society and or its Members

According to them, the Respondent invited, arrested and detained the Applicants, wherein they were made to write Statements and produce Sureties before they could be released. They later received Letters from the Respondent requesting the Refunds of Monies received for their Allowances, and other expenses incurred during the performance of their duties as Executive Committee and or Board Members.

Subsequently, the Applicants visited the Respondent again and that was when the Respondent requested the Applicants to produced receipt of the vehicle given and or transferred to them by the Cooperative Society, which they did.

According to them, there is no connection between the Donors of the Cars and the Petitionersto the Respondent and in fact, the Cars and or Monies are not the subject of the Trial and Investigation against the Alhaji Iiyasu Abdulrauf, hence there is no basis for ordering its return to the Respondent.

The Cooperative Society gifted and or exchanged Cars and paid several other Member their Allowances and refunds of the expenses incurred during the performance of their duties and as Executive Committee and or Board

Members, but it is only the Applicants that the Respondent is witch-hunting to return the said allowances.

The Respondent denied Paragraphs 7, 8, 9, 10, 11, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the assertions and stated that they received various Petitions against the Applicants and preliminary investigations revealed that the Monies belonging to the Cooperative Society, Allowances collected by the Applicants and Cars given to the Applicants were obtained/purchased by False Pretense from unsuspecting Contractors.

Further they stated that no Islamic Organization donated the Vehicles to the Cooperative as they were purchased by Alhaji Iliasu Abdulrauf from the Monies he obtained under False Pretense.

According to them, the Applicants actively aided Alhaji Iliasu Abdulrauf in perpetrating the Fraud and were beneficiaries of the Proceeds of Crime, and in fact, investigations are still on going to establish the extent of illegal benefits that have accrued from the Proceeds of Crime.

He also stated that the Applicants also gave Voluntary Statements which are attached to their Processes.

The Respondent stated further that Monies obtained under False Pretenses were paid to the Cooperative Polaris Bank Account, and the 3rd Applicant personally withdrew the Sum of Three Million Naira from the Cooperative Zenith Bank Account which contains Monies Obtained under False Pretense.

The 1<sup>st</sup> Applicant is a Signatory to the Cooperative Bank Account domiciled with Polaris Bank and the donations were paid into the said Accounts.

He finally averred that the Applicants are the end beneficiaries of the Monies obtained under False Pretense.

In Reply on Points of Law, the Applicants rehash their averments in their main Application and denied the assertions of Paragraph 3 (a-r) and 4 of the Respondent's Counter Affidavit as being false, malicious and an act to mislead the Court. Adding that the acclaimed Petitions against them and the

Cooperative does not exist, as if it did, the Respondent would have exhibited same.

They denied making any promise of Contracts to Contractors, never heard of the names of the said Victims nor participated in any meeting with anybody/Contractor. They maintained that the Monies received by the Applicants were legitimate and authorized Sum, which they were entitled to and not proceeds of Crime.

The Applicants raised a Sole Issue in their Written Address to the Main Application “***whether the Applicants Fundamental Rights have been and or likely to be breached by the Respondents***”.

The Respondent also formulated a Sole issue for determination “***whether having regard to the Applicants Affidavit in support of his Motion and the Counter Affidavit filed by the Respondent, the Applicants have made a Case to entitle them to the Reliefs sought***”.

Responding to the Respondent on Points of Law, ***the Applicants raised same Issue in their Main Application.***

After a Careful Consideration of Issues raised by Learned Counsel, the Sole issue for determination is “***Whether the Applicants Fundamental Rights have been or likely to be breached***”.

It is worthy to note that the Arguments and Submissions of Learned Counsel are on record.

Now, Fundamental Rights have been defined as basic moral guarantees that People in all Countries and Cultures allegedly have simply because they are people.

In **RANSOME-KUTI V. ATTORNEY-GENERAL OF THE FEDERATION (1985) 2 NWLR (PT. 6) 211 AT 230, ESO, JSC** stated that a Fundamental Right "is a Right which stands above the ordinary Laws of the Land and which are in fact antecedent to the Political Society itself" and "it is a Primary condition to civilized existence". Fundamental Rights are rights derived from Natural or Fundamental Law. See the Case of **IGWE V. EZEANOCHIE (2010) 7 NWLR (PT.**

**1192) 61.** In the words of Jacques Maritain: "The human person possesses rights because of the very fact that it is a person, a whole, master of itself and of his acts, and which consequently is not merely a means to an end but an end, an end which must be treated as such.

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:-

The facts leading to this suit are clearly stated in the Affidavit deposed to in support of the Motion and there is no need to re-state them again.

After reviewing the Rules regulating the Fundamental Rights of the individual, it is necessary to examine the acts complained of against the Respondent in conjunction with the Law to determine whether these Provisions have been violated or complied with in accordance with the Rule of Law.

The Applicants have complained that their Fundamental Rights in **Sections 40, 43 and 44 of the 1999 Constitution** has been and is being infringed on.

For ease, these Sections will be reproduced.

"**Section 40 of the 1999 Constitution** states that Every Person shall be entitled to assemble freely and Associate with other Persons, and in particular he may form or belong to any Political Party, Trade Union or any other Association for the protection of his interests. Provided that the Provisions of this Section shall not derogate from the powers conferred by the Constitution

on the Independent National Electoral Commission(INEC) with respect to Political Parties to which the does not accord recognition.

**Section 43of the 1999 Constitution** states that Subject to the Provisions of this Constitution, every Citizen of Nigeria shall have the Right to acquire and own Immovable Property anywhere in Nigeria.

**Section 44(1) of the 1999 Constitution** provides as follows: "No movable property or any interest in an Immovable Property shall be taken Possession of compulsorily and no Right over or Interest in any such Property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that" among other things.

Now, the Applicants have argued that the Respondent's act demanding them, to return Monies and Cars legitimately received from the Federal Civil Service Staff with Disabilities Multi-Purpose Corporative Society Ltd is an infringement on their Rights. They averred that neither they nor the Corporative Society were involved in any of the alleged Allegations and Activities.

They further stated that these Monies and Cars were donations from an Islamic Organization and the Corporative Society legitimately got the Monies and Cars and they are not the Proceeds of Crime.

The Respondent on the other hand averred that Investigations revealed that the Monies belonging to the Cooperative Society were obtained by False Pretense from unsuspecting Contractors and the Allowances, Monies and Cars collected by the Applicants were sourced from the Monies Obtained under False Pretense.

The Respondent also stated that the Applicants actively aided Alhaji Iliasu Abdulraufthe Chairman of Federal Civil Service Staff with Disabilities Multi-Purpose Corporative Society Ltd, (which the Applicants are Executive Committee and Board Members) in perpetrating the Fraud and were beneficiaries of Proceeds of Crime.



Now, **Section 44 Sub (2) (k) of the 1999 Constitution** provides that **Section 44(1)** will be inapplicable where the temporary taking of Possession of Property was done for any Examination, Investigation or Enquiry.

**Section 6(a) of the ICPC Act 2000**, states that where reasonable grounds exist for suspecting that any Person has conspired to Commit or has attempted to commit or has committed an Offence under this Act or any other Law prohibiting Corruption, to receive and Investigate any report of the Conspiracy to commit, Attempt to commit or the Commission of such Offence and, in appropriate Cases, to Prosecute the Offenders and **Section 37(1) of the ICPC Act 2000**, provides that if in the course of an Investigation into an Offence under this Act any Officers of the Commission has reasonable grounds, to Suspect that any movable or Immovable Property is the subject matter of an Offence of evidence relating to the Offence he shall seize such Property.

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 (CA) and FAWEHINMI VS IGP AND ORS LPELR -1258 SC.**

The Respondent have the Powers to seize Moveable or Immovable Properties which are suspected to be Proceeds of Crime pending the determination of their Investigation.

The Applicants in their Motion have stated that Alhaji Iliasu Abdulrauf is the Chairman/CEO of the Corporative Society, there is also an Annexure headed as **“MINUTES OF THE JOINT MEETING OF THE TECHNICAL WELFARE AND THE REHABILITATION COMMITTEES OF THE FEDERAL CIVIL SERVICE STAFF WITH DISABILITIES MULTI- PURPOSE COOPERATIVE SOCIETY LIMITED HELD AT BOARDROOM OF THE SOCIETY ON THE 18<sup>TH</sup> JUNE**

**2019.** Where on the 3<sup>rd</sup> page, (D. Response) line One “*The Members, however, cautioned the CEO against using the Society’s Accounts to receive donations for other groups including IDPs and other vulnerable Groups not covered by the Society.*” From this extract, it presupposes that there is a likelihood of Monies being paid into the Corporative Society.

The Respondent have also stated that Investigations are still on going, reference is made to **Paragraph 3 (k) of their Counter Affidavit**. Based on the above Laws and Authorities, this Court will not interfere with the Duties of the Respondent and will not make an Order touching on their Investigation, which is an Act empowered by an Enactment of the National Assembly.

The question of Investigating Proceeds of Crime, is well within the Jurisdiction of the ICPC, and therefore, the Prayers sought by the Applicants at this Stage is found to be Premature and lacking in Merit.

Therefore, the Court holds that the Declarations prayed by the Applicant cannot be granted at this time.

However, the Court urges the Respondent to act within the scope of their Powers.

The Claims of the Applicants fails and is accordingly Struck Out.

**HON. JUSTICE A.A.I. BANJOKO**

**JUDGE**