

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON FRIDAY THE 11<sup>TH</sup> DAY OF DECEMBER, 2020**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N.  
OGBONNAYA**

**JUDGE**

**SUIT NO: FCT/HC/CV/173/19**

**BETWEEN**

1. JOSEPH ABRAHAM  
2. LAWRENCE ABRAHAM ----- } **PLAINTIFFS**

**AND**

1. INSPECTOR GENERAL OF POLICE  
2. COMMISSION OF POLICE FCT  
3. AREA COMMAND PHASE IV  
POLICE DIVISION ----- } **DEFENDANTS**  
4. SGT. OLANIYI  
5. ODO CHINEDU

**JUDGMENT**

On the 22<sup>nd</sup> of January, 2020 the Applicant Joseph Abraham and Lawrence Abraham instituted this action against the Respondents, Inspector General of Police, Commissioner of Police FCT, Area Command Phase IV Police Division, Sgt. Olaniyi and Odo Chinedu. The Suit is predicated on FREP. The Claims is as follows:

- (1) A Declaration that the harassment and intimidation by 1<sup>st</sup> – 5<sup>th</sup> Respondents on instigation of 6<sup>th</sup> Respondent on a complaint based on simple contract which is pending in Court, is unlawful, unconstitutional, illegal and gross violation of the Applicant on his personal liberty contrary to S. 35 1, 4, 5, S. 46 (1) & (2) S. 4 African Charter and Article iii & iv Universal Declaration of Human Right.**
- (2) An Order of Perpetual Injunction restraining the Respondents, their agents/officers from arresting and detaining the Applicant in respect of the matter without an Order of a competent Court.**
- (3) An Order for Respondent to pay jointly or severally Fifty Million Naira (₦50, 000,000.00) as compensation for damages for constant and continuance threat to arrest and detain the Applicant.**
- (4) Mandatory Order directing the Respondents to jointly tender unreserved apology to the Applicant for the violation of the Applicant Right in 3 National Dailies Newspaper.**
- (5) One Million Naira (₦1, 000,000.00) for cost of the Suit.**

**(6) Order of Perpetual Injunction restraining the Respondents, their agents, privies etc from further violating the Rights of the Applicant.**

**(7) Omnibus prayer.**

Both Applicants filed Affidavit of 11 paragraphs each and a Written Address. According to the Applicants the 6<sup>th</sup> Respondent Odo Chinedu bought two (2) parcels of land from the Applicants sometime in 2017 and made a part payment of One Million, Nine Hundred and Eighty Five Thousand Naira (₦1, 985,000.00) out of Six Million Naira (₦6, 000,000.00) which is the price agreed by both parties as the price for the two (2) parcels of land. Meanwhile the 6<sup>th</sup> Respondent is a staff of the DSS. When the 6<sup>th</sup> Respondent did not pay the balance of the money, the Applicant filed a Complaint at the Chief District Court in Bwari Division at Kubwa. They attached the copy of the Complaint as EXH.

The remaining outstanding unpaid balance is Four Million, Fifteen Thousand Naira (₦4, 015,000.00). That Complaint was filed on the 8<sup>th</sup> of February, 2019. Rather than pay the said balance or meet the Applicants in Court to defend the matter, the 6<sup>th</sup> Respondents used the 1<sup>st</sup> – 5<sup>th</sup> Respondents to intimidate, arrest and detain the Applicants boasting that rather than pay the Applicants he will use the instrumentality of the DSS and Nigeria Police to deal with the Applicants. The Applicants were arrested for 5 days after they filed the Complaint. The arrest and detention was at the pleasure and instigation of the

6<sup>th</sup> Respondent. The Applicants alleged that they have been traumatized, horrified and had psychologically been disoriented because of the constant intimidation and fear of further arrest and detention by the 1<sup>st</sup> – 5<sup>th</sup> Respondents, especially the men of Phase IV Police Division, Kubwa, who is the 3<sup>rd</sup> Respondent.

That the relationship between them and the 6<sup>th</sup> Respondent is purely commercial and contractual as they had not committed any crime or criminal offence. That they filed this action to protect and enforce their fundamental right which the Respondent had violated by their action seeking for protection from the action of the Respondents.

In the Written Address they raised 3 Issues for determination which are:

- (1) Whether the Respondents are empowered to be arbiter in matter of civil contract.**
- (2) Whether their arrest and detention by Respondents for five (5) days sometime in 2019 is not a violation of their fundamental Rights.**
- (3) Whether the constant threat to arrest, detention, intimidation, harassment and threat is a violation of their Right to dignity of their human person and personal liberty.**

They submitted that the 1<sup>st</sup> – 5<sup>th</sup> Respondents are agents of State used by the 6<sup>th</sup> Respondent to infringe their

Rights. That 1<sup>st</sup> – 5<sup>th</sup> Respondents are agents of Nigeria Police Force employed for prevention and detection of crime, apprehension of offender and preservation of law and order. They referred to S. 4 Police Act. That the Police is to fight crime and not interfere in contractual relationship or dispute. That the dispute between them and the 6<sup>th</sup> Respondent is purely contractual – Sale of land. That the 6<sup>th</sup> Respondent used the 1<sup>st</sup> – 5<sup>th</sup> Respondents to intimidate them and arrest them for five (5) days after they filed the Complaint. That the 1<sup>st</sup> – 5<sup>th</sup> Respondents had continued to intimidate them. That the act of the 1<sup>st</sup> – 5<sup>th</sup> Respondents is beyond their statutory powers under the Constitution and the Law. They referred to the cases of:

**Abdullahi V. Bulami**  
**(2004) NWLR (PT. 902) 278**

**Afribank Nigeria PLC V. Onyima**  
**(2004) 2 NWLR (PT. 858) 654**

That the statutory function of the 1<sup>st</sup> – 5<sup>th</sup> Respondents does not include settlement of commercial dispute on land ownership or debt collection. They cited the cases of:

**Mclarence V. Jennings**  
**(2002) 3 NWLR (PT. 808) 470**

**Arab Contractor V. Umarah**  
**(2013) All FWLR (PT. 683) 1977**

They urged Court to grant their prayers.

**On Issue No. 2** whether their arrest and detention by Respondents is a violation of the Right to personal liberty and dignity of their human person.

Referring to **S. 35 of 1999 CFRN** as amended, they submitted that the 1<sup>st</sup> – 5<sup>th</sup> Respondents at the instigation of the 6<sup>th</sup> Respondent violated their Right to liberty by detaining them for 5 days in 2019 for an issue which is of civil and contractual nature – Sale of 2 parcels of land to the 6<sup>th</sup> Respondent. That the 6<sup>th</sup> Respondent is at liberty to file a Writ against them rather he resorted to using the 1<sup>st</sup> – 5<sup>th</sup> Respondents to harass and intimidate them hence using 1<sup>st</sup> – 5<sup>th</sup> Respondents as debt collectors.

Referring to **S. 35 (6) of 1999 CFRN** they submitted that they are entitled to compensation since they have established that their Rights to personal liberty, freedom of movement, were unduly violated by the 1<sup>st</sup> – 5<sup>th</sup> Respondents' action. That since their detention was unlawful, that they are entitled to monetary compensation and public apology. They referred to the cases of:

**John Druny & 1 Or V. Patrick Nwangwu  
(2011) 9 SC @ 255**

**Gabriel Jaja V. COP Rivers & 2 Ors  
(2013) All FWLR (PT. 665) 203**

Referring to the Latin Maxim **ibi jus ibi remedium** the Applicants submitted that FREP matter are placed in a higher pedestal than other civil matters in a claim of damages resulting from personal injury has to be made specifically and proved. That under FREP once a person

proves or establishes violation of his Right under CAP 4 of 1999 CFRN he is entitled to be paid compensation by Respondent as damages in form of compensation and that an apology follows. He cited the following cases:

**Ozide & Or V. Ewuzie & Or  
(2015) LPELR – 24482 CA**

**Gusau & Ors V. Umezurike  
(2012) LPELR – 3000 CA**

**Nemi V. Lagos State  
(1996) 6 NWLR (PT. 452)**

**On Issue No. 3** whether the constant threat of their arrest by 1<sup>st</sup> – 2<sup>nd</sup> Respondents when they have not committed any crime is not violation of their Right to freedom of movement. They submitted referring to **S. 46 of 1999 CFRN as amended**, that the section guarantees their freedom of movement and such Right can only be denied on commission or reasonable suspicious of committing or have committed a crime. That they have not committed any crime. That they have not been told the crime they committed as required by law. That it is therefore unlawful for the 1<sup>st</sup> – 5<sup>th</sup> Respondents to have restricted their movement at the instance of the 6<sup>th</sup> Respondent.

That they have established through facts and evidence that the Respondents had violated their personal liberty, dignity of their person and freedom of movement. They urge the Court to hold the Respondents liable and grant their prayers as sought.

The 1<sup>st</sup> – 5<sup>th</sup> Respondents were served with the Process but they did not respond to it. Upon receipt of the application the 6<sup>th</sup> Respondent filed Counter Affidavit of 5 paragraphs. He attached 4 documents marked as **EXH R1 – EXH R4**.

The 6<sup>th</sup> Respondent had claimed that the land document given to him by the Applicant were fake. That he reported the matter to Police and had asked the Plaintiffs to refund his money after the 2<sup>nd</sup> land documents turned out to be forged and fake. That when they failed to refund the money paid, he filed a direct criminal complaint against them. That the Court directed the Police to investigate the Applicant and that the Police made a report to the Court and later the Applicant filed a Plaint against him while the matter was been investigated. That the Police in the cause of investigation invited all the parties and questioned them on the allegation he raised against them. He attached all the documents – 4 documents in support.

That one of the claim of the Applicant in the case pending at the District Court in Kubwa is restraining the DSS & Police from investigating the Applicants. That Police invitation of the Applicants was in line with the Court Order. But instead the Applicants filed this Application. He urged Court to dismiss the application.

In his Written Address the 6<sup>th</sup> Respondent raised an Issue for determination which is:

**“Whether the Applicants Fundament Human Right was infringed to entitle them to Reliefs sought on the face of the Application.”**



He submitted that the rights of the Applicants Rights were not violated by him. That he only exercised his civic right by filing the complaint in Court.

That the Court referred the case to Police for investigation and necessary action. That as a citizen he made a report to the Court. That it is the duty of the citizens to do so and therefore he cannot be held culpable for doing such civic duty. That the fraudulent acts of the Applicants need Police investigation. That the complaint against the Applicants is not malafide. He referred to the case of:

**Onah V. Okenwa & Ors**  
**(2010) 7 NWLR (PT. 1194) 517**

That Police is statutorily powered to investigate crime going by the provision of **S. 4 Police Act.**

That the case is already before a Court of competent jurisdiction in Suit No.: **CR/82/2019 – EXH R1**. That Court gave an Order to investigate the case as shown in **EXH R2**. That the Police has concluded investigation as shown in **EXH R3**. That the Police is yet to carry out the Order in **EXH R4** which is for the presentation of the Applicants before the Court where a prima facie case has been established against them. That the delay in presenting the Applicants before the Court is because the Applicants refused to honour Police investigation since January. That whatever the Applicants are claiming in this application will be granted to them in the Suit **CV/207/19 and CR/82/2019**. That the Applicants should first attend to the case CR/82/2019 pending against them at the Grade 1 Area Court Kubwa before

they can seek justice in this Court. That the 6<sup>th</sup> Respondent only exercised his right by making a Complaint to the 1<sup>st</sup> – 5<sup>th</sup> Respondents.

That the 1<sup>st</sup> – 5<sup>th</sup> Respondents only executed their statutory duties in line with the Order of the Court. That Applicants have failed to establish that their Rights were infringed for the Court to grant their Reliefs. He urged Court to dismiss their claims with heavy cost.

Upon receipt of the Counter Affidavit the Applicants filed a Further Affidavit of which they erroneously caption Reply to 6<sup>th</sup> Defendant Counter Affidavit. It is 14 paragraphs. They denied the facts in the Counter Affidavit and submitted that the amount owed to them by the 6<sup>th</sup> Respondent is Four Million, Fifteen Thousand Naira (N4, 015,000.00) and not the amount the 6<sup>th</sup> Respondent stated. That the Suit filed by the 6<sup>th</sup> Respondent was struck out as an abuse of Court Process. They attached a copy of the Order of Court striking the matter out on the 8<sup>th</sup> of December, 2019.

That the documents of title is still with the 6<sup>th</sup> Respondent who pleaded with them for time to pay the said balance. That Bwari Area Council did not state that the documents were fake or forged. That 6<sup>th</sup> Respondent begged them to settle the matter at the Police Station. That after the matter was struck out the 1<sup>st</sup> – 5<sup>th</sup> Respondents intensified the harassment of the Applicants. That contrary to what the 6<sup>th</sup> Respondent said their matter is still ongoing at the Court. He attached copy of the Court Order. That the Order barred Police from further harassing, arresting and detaining

the Applicant because of the issue concerning the land deal.

In what was captioned as Written Address the Applicant raised 2 Issues for determination which are:

**1. “Whether the Police can act on a non-existing Order of Court against subsisting Order of Court.**

**2. Whether the Applicants’ Fundamental Rights have been violated by Respondents.”**

**On Issue No. 1** they submitted that contrary to what the 6<sup>th</sup> Respondent stated in paragraph 4 of the Counter Affidavit that case was struck out on the 8<sup>th</sup> of November, 2019 and that the Court Order also barred the Police Force from arresting and detaining the Applicants in regard to this matter unless leave of Court Order was sought and obtained. That EXH R2 attached by 6<sup>th</sup> Respondent in the Counter Affidavit was prior to when the case was struck out on the 8<sup>th</sup> day of November, 2019 whilst EXH R3 & R4 dated 4<sup>th</sup> December, 2019 and 13<sup>th</sup> January, 2020 respectively filed after the case has been struck out and Respondent barred from arresting the Applicants. That the Order was given by Hon. I.M. Balarabe of Grade 1 Area Court, Kubwa while Application to Relist the Suit was made to his Successor Hon. Wakil who started the case denovo. He referred to the cases of:

**GMBH V. Alshark  
(2001) 22 WRN 22 @ 29**

**Omisore V. State  
(2005) 12 NWLR (PT. 940) 591**

That the 6<sup>th</sup> Respondent relisted the case with respect to the Order but did not comply with the 2<sup>nd</sup> Order which restricted the Respondents from arresting the Applicants without Order of Court sought and obtained. That Police cannot act on non-existing Order of Court or against existing Order until set aside.

**On Issue No. 2** they submitted that they have placed before Court sufficient materials in their Affidavit to establish that the 1<sup>st</sup> – 5<sup>th</sup> Respondent arrested and detained them at the instigation of the 6<sup>th</sup> Respondent and therefore infringed their Fundamental Right. They referred to the case of:

**Fajemirokun V. CB(CI) Nigeria Limited  
(2002) 10 NWLR (PT. 774) 90 Ratio 4**

That it is for the Respondent to justify their actions which the Applicant claimed were breached. They referred to the case of:

**Director DSS V. Agbakoba  
(1993) 3 NWLR (PT. 595) 314 @ 357**

That the Respondents have failed to discharge that onus through their Counter Affidavit.

That the 1<sup>st</sup> – 5<sup>th</sup> Respondents are not Debt Recovery Agency. That this case is very civil in nature. That the 1<sup>st</sup> – 5<sup>th</sup> Respondents have no right to interfere in dispute which is purely civil in nature. That 6<sup>th</sup> Respondent did not challenge the Applicants' averment of harassment, threat of arrest, intimidation and detention that therefore means that the averments are uncontroverted. He referred to the case of:

**Insurance Brokers of Nigeria V. ATMN  
(1996) 8 NWLR (PT. 446) 316 @ 327 Paragraph G**

**Kotoye V. Saraki  
(1993) 5 NWLR (PT. 296) 710**

They attached the Court Order as EXH T1. They urged the Court to grant their claims.

On the 15<sup>th</sup> July, 2020 the 6<sup>th</sup> Respondent filed what he titled Reply on Points of Law responding to the new issues raised in the Further Affidavit of the Applicants.

He submitted that the Court Order striking out the case No.: CR/82/19 and the Restraining Order EXH T1 have no effect. That the Order is for CR/80/19 and not CR/80/19. He referred Court to the EXH R1, R2 & R3 attached to the Counter Affidavit. That Applicants never filed any Motion for striking out the Suit CR/82/19. That the EXH T1 was filed by Applicant but was never served on the 6<sup>th</sup> Respondent.

That Court cannot restrain a justifiable and completed act. That by the Order of Court in the case CR/82/19, the 1<sup>st</sup> – 5<sup>th</sup> Respondents were directed to investigate the case by EXH R2. That Police had concluded investigation and forwarded same to Court for further directives. He referred to EXH 3. That Court ordered for production of FIR against Respondents as prima facie case of criminal conspiracy, breach of trust and cheating against the Applicants. He referred to EXH R4. That the Order was made on the 13<sup>th</sup> of January, 2020 and this matter was served on the 22<sup>nd</sup> of January, 2020. That the Applicants should submit to the jurisdiction of the Court to prove or disprove the case against them. He urged the Court to

dismiss the case of the Applicants with punitive cost as their case is baseless, vexatious and without merit.

### COURT:

After the detailed summary of the stories of the parties in this Suit, can it be said that the Respondents especially 1<sup>st</sup> – 5<sup>th</sup> Respondents had violated the Rights of the Applicants at the instigation of the 6<sup>th</sup> Respondent in that the said Respondent should be held “civilly” liable to have violated the said Right and that the 1<sup>st</sup> – 5<sup>th</sup> Respondents acted outside their statutory powers?

Before I go into that, it is the law that Police has no statutory right to meddle into contractual agreement made by people. The provision of **S. 4 Police Act** does not give them that right. Issues of contractual, civil and commercial nature are treated by the Courts and not by the Police.

Again once a party reports allegation of violation or attempt to violate the Right of such person as contained in Cap 4 CFRN or the provision of the **FREP** Rules, the Court is only interested to know if the Applicant has been able to establish with clear vivid facts that such Rights have actually been violated. Every other issue that give right to such allegation is treated as ancillary issues. The simple question the Court asked is, has the Right been really violated as alleged or attempted to be violated as alleged? Once there is a sure sign based on the facts

in support of such allegation, the Court will hold that there is violation and the person, based on S. 46 of the CFRN will be entitled to compensation. The Court will make the necessary consequential Order as appropriate.

It is incumbent on the Applicant to establish that such Rights have been violated. Once that is done, the onus shifts to the Respondent who must justify their action clearly showing that they acted within the ambits of the law.

In this case there was a contractual agreement between the parties – Sell of Land in which the 6<sup>th</sup> Respondent made part payment as agreed by the parties. The 6<sup>th</sup> Respondent failed to pay up the balance and refused to release the title documents given to him by the Applicants. The Applicants went to Court to recover the balance of their money. The 6<sup>th</sup> Respondent rather than meet them in Court resorted to use of 1<sup>st</sup> – 5<sup>th</sup> Respondents to harass, intimidate, arrest and detain them. the 1<sup>st</sup> – 5<sup>th</sup> Respondents detained the Applicants for 5 days at Nigeria Police Station, Phase IV Division, Kubwa.

That 6<sup>th</sup> Respondent had alleged that upon presentation of the document of title for search, the Bwari Area Council told him that the documents were forged based on that he refused to pay and went to Police. But he did not attach any report of the search from the said Area Council to show that the land document is forged. He also failed to return

documents to the owners who had told him to do so, so that they can return his money paid for the land.

The Applicants had on the 8<sup>th</sup> February, 2019 filed a Complaint against the 6<sup>th</sup> Respondent as law abiding citizens instead of taking the law into their hand at the Chief Magistrate Court, Bwari Judicial Division – CV/207/19. In the Complaint they claimed the following:

6<sup>th</sup> Respondent to pay the balance of money for the land.

If he is no longer interested, he should return the documents of title so the Applicants can resell and refund him the money advanced for the land.

And for 6<sup>th</sup> Respondent to retrace from using Police intimidation against the Applicants on a pure commercial matter.

The 6<sup>th</sup> Respondent had claimed that the land documents were forged but did not attach any document to support such claim. He claimed he instituted a criminal action against the Applicants but the said action CR/82/19 has no date on it which is strange. It is equally strange that the action was filed at an Area Court. Again the EXH R2 attached dated 5<sup>th</sup> March, 2019 was filed long after the Applicants have filed CV/207/19 – filed since 8/2/19 **EXH R2**. Again it is very strange that the Police 1<sup>st</sup> – 5<sup>th</sup> Respondents responded to the **EXH R1** on the 4/12/19 – 10 months and one day after the Area Court wrote to them. Meanwhile this case was filed on



the 22<sup>nd</sup> of January, 2020. The Plaint upon which the so-called investigation report was made was never dated. There is no evidence that it was filed or any filing fee paid for it. Meanwhile the Court at Kubwa had issued an Order of Restraint based on CV/207/19 against the Respondents in that the 1<sup>st</sup> – 5<sup>th</sup> Respondents were ordered thus:

**“... restrained from further act of arresting the Defendants (Applicants in this case) forthwith in regard to this matter till leave of Court is sought and obtained.”**

The action of the 6<sup>th</sup> Respondent in that case was struck out as an abuse of Court Process. That Order was made in 2019 – 8<sup>th</sup> November. The 6<sup>th</sup> Respondent did not deny the existence of this action.

It has been held that any detention which is more than 48 hours Rule as provided in the Constitution without referring matter to Court is an abuse of a person’s freedom as contained in the CFRN. The Applicants have shown and clearly established that they were detained for about 5 days and that the 1<sup>st</sup> – 5<sup>th</sup> Respondents at the instance and instigation of the 6<sup>th</sup> Respondent continued to threaten and harass them even after the said 5 days detention.

There is no evidence to show that the Respondents charged the Applicants to Court within the constitutionally required period. That act and the

further threat to arrest and detain the Applicants after that all amounts to violation of their Rights.

The 6<sup>th</sup> Respondent used the 1<sup>st</sup> – 5<sup>th</sup> Respondents to intimidate the Applicants solely for the 1<sup>st</sup> – 5<sup>th</sup> Respondents to help him get back his money. But the Applicants never denied that they owe him. They have gone to Court to make the 6<sup>th</sup> Respondent pay the balance of the money or return their document to them. But the 6<sup>th</sup> Respondent for reason best known to him refused to do so even when there was a subsisting Order of Court.

The Suit allegedly filed by the 6<sup>th</sup> Respondent is only an afterthought and a ploy to deceive himself and the Court.

From all indications the 1<sup>st</sup> – 5<sup>th</sup> Respondents violated the Right of the Applicants based on the erroneous instigation of the 6<sup>th</sup> Respondent who wanted to use them as Debt Recovery Agency. But the so-called case filed by the 6<sup>th</sup> Respondent is an afterthought if actually that document has any legitimacy and legal strength.

Having established that their Rights have been violated and further threatened to be violated, the Applicants are entitled to their claims. This Court therefore finds merit in this case in their favour and thereby orders as follows:

Prayers 1, 2 & 6 granted

The 1<sup>st</sup> – 6<sup>th</sup> Respondents should without delay tender an apology in writing to the Applicants for violating their Rights.

Also the 6<sup>th</sup> Respondent should pay the sum of Sixty Thousand Naira (N60, 000.00) to the Applicants for instigating the 1<sup>st</sup> – 5<sup>th</sup> Respondents to violate the Applicants' Rights.

The Respondents should desist from harassing the 1<sup>st</sup> & 2<sup>nd</sup> Applicants concerning the matter in dispute as it regard the issue of sale of the said land. They are prohibited to arrest and detain the Applicant based on the said land.

The 6<sup>th</sup> Respondent should release without delay the document of title issued to him by the Applicants in the cause of the sale of the said 2 parcels of land.

**This is the Judgment of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2020 by me.**

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**K.N. OGBONNAYA  
HON. JUDGE**