

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE NYANYA JUDICIAL DIVISION**  
**HOLDEN AT COURT 8 NYANYA ON THE 28<sup>TH</sup> DAY OF OCTOBER 2020**  
**BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE**  
**SUIT NO: FCT/HC/CV/2081/16**

COURT CLERK: JOSEPH BALAMI ISHAKU

BETWEEN

- |                             |   |                |
|-----------------------------|---|----------------|
| 1. HON. SULEIMAN A. ISMAIL. | } | .....CLAIMANTS |
| 2. HON. COLLINS P. OKONGBO. |   |                |

AND

- |  |   |              |
|--|---|--------------|
| 1. ECONOMICS & FINANCIAL CRIMES COMMISSION | } | ..DEFENDANTS |
| 2. WEMA BANK PLC                           |   |              |

**JUDGMENT**

The Claimant's Originating Summons brought pursuant to Order 11 Rule 2 of the Fundamental Rights Enforcement Procedure Rules 2009 and under the inherent jurisdiction of this Court is dated and filed on 29<sup>th</sup> day of June, 2016.

The Claimants submitted the following questions for determination:

1. Whether the transaction between the Claimants' Cooperative Society and the 2<sup>nd</sup> Defendant is not a civil matter over which the 1<sup>st</sup> Defendant has no powers to act upon in law and therefore

cannot harass, intimidate, threaten, arrest, detain and or torture the Claimants.

2. Whether the harassment, intimidation threats of arrest, detention and torture of the Claimants by the 1<sup>st</sup> Defendant on account of the transaction between the Claimants' Cooperative Society and the 2<sup>nd</sup> Defendant is not wrongful, unlawful and therefore illegal and a violation of the Claimants' fundamental rights to fair hearing and personal liberty.

Upon the resolution of the above questions, the claimant claims as follows:

1. A declaration that the transaction between the Claimants' Cooperative Society and the 2<sup>nd</sup> Defendant is a civil matter over which the 1<sup>st</sup> Defendant has no power to act upon in law hence the 1<sup>st</sup> Defendant cannot harass, intimidate, threaten, arrest, detain and or torture the Claimants.

2. A declaration that the harassment, intimidation, threats of arrest, detention and torture of the Claimants by the 1<sup>st</sup> Defendant on account of the transaction between the Claimants Cooperative Society and the 2<sup>nd</sup> Defendant is wrongful, unlawful, illegal and a violation of the Claimants' Fundamental Right to fair hearing and personal liberty.
3. An Order of Perpetual Injunction restraining the 1<sup>st</sup> Defendant either by itself, its agents, servants, privies and or any person or persons acting for and or on its behalf from further harassing, intimidating, arresting, detaining and or threatening the Claimants on account of the said transaction with the 2<sup>nd</sup> Defendant.

The grounds upon which the reliefs are sought are:

- a. The subject matter of the complaint against the Claimants by the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant is a civil matter.
- b. The continued threats of arrest, harassment and intimidation of the Claimants by the 1<sup>st</sup>

Defendant is wrongful and unlawful hence a violation of their fundamental right to personal liberty and fair hearing.

Learned Counsel to the Claimant rely on the 20 paragraph Affidavit sworn in support of the Originating Summons.

The 1<sup>st</sup> Claimant deposes that he is a member and Chairman of the Customary Court Judges Staff Multipurpose Cooperative Society by virtue of which position he is a member of the registered trustees/executives of the Society.

The 2<sup>nd</sup> Claimant is the Secretary of the Cooperative Society.

That sometime in 2014, the 2<sup>nd</sup> Defendant granted a loan facility to the Society for its Estate Project.

That the loan transaction between the Society and the 2<sup>nd</sup> Defendant is governed by the terms of the facility as contained in 2<sup>nd</sup> Defendant's notification of Facility Offer to the Society dated the 7<sup>th</sup> day of January, 2014.

The offer letter is Exhibit A.

That the mode of repayment of the facility is contained in Clause Five of the said facility Offer.

The security arrangement for the facility is in paragraph 8(1) and 11 of Exhibit A.

That Clause 9 contained other terms of the facility by way of condition precedent to draw down.

The society made a standing irrevocable payment instruction for the collection and remittance of the monthly deductions of the beneficiaries repayment (Interest and principal inclusive) from their monthly salaries. The instruction is Exhibit B.

The Claimants' Cooperative Society by a letter dated the 8<sup>th</sup> of January 2014 authorized the Management, Customary Court of Appeal to domicile the monthly contribution of the Claimants' members with the 2<sup>nd</sup> Defendant.

A copy of the letter is Exhibit C. That the Claimants and the 2<sup>nd</sup> Defendants are in Court in respect of the interpretation of the said loan agreement.

A copy of the Court processes is Exhibit D.

That the loan contract between the Claimants' Cooperative Society and 2<sup>nd</sup> Defendant is still subsisting.

That Claimants are also in Court with the Police over the same loan transaction. See Exhibit E. He deposed to the Affidavit in good faith.

The Defendants were served with the Originating processes.

The 1<sup>st</sup> Defendant did not file any process in opposition to the Originating Process.

The 2<sup>nd</sup> Defendant's Counsel adopted the Counter Affidavit filed by the 2<sup>nd</sup> Defendant.

It is sworn to by Habila A Akwanga, a Litigation Manager of Messrs Adekola Mustapha & Co. He deposes that

The 1<sup>st</sup> Defendant is empowered to investigate allegation of financial crimes by inviting anyone for questioning or interrogation in relation to any complaint over the matter. It has powers to investigate.

That the Cooperative Society is indebted to Wema Bank Plc to the tune of ₦128,348,207 as at 24/04/2018.

Copy of the Statement of Account is Exhibit WB1.

That the letter of Offer of facilities granted to the Cooperative Society over which the Claimant preside as Chairman and Secretary respectively and also as signatory to the Cooperative Bank Account attached as Exhibit A, the facility granted to the Cooperative in 2014 was N103,261,772.25 with a tenor of 3 years repayment.

That whereas the facility ought to have been fully repaid by January 2017, the Cooperative still have outstanding debit balance of N128,348,207.20.

That in the course of time, the 2<sup>nd</sup> Defendant received a letter dated 21/09/15 from the Chief Registrar of the Customary Court of Appeal alleging that the Claimants have misappropriated N75,000,000.00 out of the facility granted to the Cooperative Society over which they preside. Exhibit WB2 is the copy of the letter.

He does not know the allegation against them that informed the basis of the invitation by the 1<sup>st</sup> Defendant.

I have also read the Claimants Further and Better Affidavit deposed to on 30/08/16 and considered the Written Addresses of Counsel.

Exhibit A attached to the Originating Summons is the Offer letter of the loan agreement.

I have equally read Exhibits B, C and D. The 1<sup>st</sup> Defendant failed to respond to the Summons.

I have also read Exhibit WB1 and WB2 which are Statements of Account of the Customary Court Judges Multipurpose Cooperative Society and a letter from the Chief Registrar of the Customary Court of Appeal alleging that the Claimants have misappropriated N75 Million.

This application is for the enforcement of the Claimants fundamental right to fair hearing and personal liberty.



By Order 11 Rule 2, an application for the enforcement of the Fundamental Right may be made by an Originating Process accepted by the Court which shall subject to the provisions of these rules lie without leave of Court. The Claimants decided to initiate the proceeding via an Originating Summons.

In my humble view, the aforesaid Originating Summons is proper before the Court.

The 1<sup>st</sup> question for resolution is whether the transaction between the Claimants' Cooperative Society and the 2<sup>nd</sup> Defendant is not a civil matter over which the 1<sup>st</sup> Defendant could not harass, intimidate, threaten or torture the Claimants.

While the 2<sup>nd</sup> question is whether the harassment, intimation, threat of arrest, detention and torture of the Claimants on account of the said transaction is not illegal and wrongful.

I have read the Affidavit in support of the Originating Summons and Further and Better Affidavit. There are

no materials before me warranting the resolution of these questions.

There is nothing in the Affidavit evidence of the Claimant suggesting the breach of the Claimant's right to fair hearing and personal liberty.

Courts of law are not meant to dabble into academic and theoretical exercises which are in the domain of our law faculties and institutions.

In ***AMEDE VS. UBA (2008) 8 NWLR (PT. 1090) P.623***, the Court held that causes of action is the fact which establishes or give rise to a right of action. It is a factual situation which gives a person a right to a judicial relief.

There is no iota of evidence suggesting that the fundamental right of the Claimant to fair hearing and or liberty of his person were breached or about to be beached.

In their Further and Better Affidavit, the Claimant deposes that 1<sup>st</sup> Claimant was invited by the 1<sup>st</sup> Defendant.

A mere invitation by a law enforcement agency does not amount to a breach of fundamental right to fair hearing rather in my view, it enhances it. This suit is academic and speculative.

It does not disclose a cause of action.

In totality there are scanty and or no facts upon which the Claimants' reliefs can be granted.

The Suit therefore fails and it is dismissed.

.....

**HON. JUSTICE U.P. KEKEMEKE**  
**(HON. JUDGE)**  
**28/10/20**

