IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA

THIS THURSDAY, THE 26TH DAY OF NOVEMBER, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/035/2020

BETWEEN:

1. AMB. DICKSON AMEH OJONYE AKOH …….. APPLICANT

AND

1. UNIVERSITY OF ABUJA
2. THE VICE CHANCELLOR, UNIVERSITY OF ABUJA } **.....RESPONDENTS**

JUDGMENT

This is an application brought pursuant to the Fundamental Rights Enforcement Procedure Rules 2009. The application is dated 7th May, 2020 and filed same date in the Court's Registry.

The Reliefs sought as contained in the statement accompanying the application are as follows:

1. **A Declaration that the refusal of both the Respondents' Faculty Examination Misconduct Committee and Central Examination Misconduct Committee (CEMC) to allow the Applicant to be present when witnesses testified against him or tendered documents during the sittings of the**

panels constituted denial of fair hearing and therefore, unconstitutional, null and void.

2. **A Declaration that the refusal of both the Respondents' Faculty Examination Misconduct Committee and Central Examination Misconduct Committee (CEMC) to reveal to the Applicant the identity of the person that impersonated him on the said exam day constituted a denial of fair hearing and therefore unconstitutional, null and void.**

3. **A Declaration that the refusal of both the Respondents' Faculty Examination Misconduct Committee and Central Examination Misconduct Committee (CEMC) to allow the Applicant to tender documents and give evidence which would exonerate him of the allegation of exam malpractice constituted denial of fair hearing and therefore unconstitutional, null and void.**

4. **A Declaration that the refusal by the Respondents' Central Examination Misconduct Committee (CEMC) to allow the Applicant to make clarifications germane to a just determination of the allegation of exam malpractices against him constituted denial of fair hearing and therefore unconstitutional, null and void.**

5. **A Declaration that the efforts and antics of the Respondents' Central Examination Misconduct Committee (CEMC) to teleguide the Faculty Examination Misconduct Committee to return a verdict of guilty at all cost against the Applicant constituted denial of fair hearing and therefore unconstitutional, null and void.**

6. **A Declaration that the meetings, sittings, proceedings and the decisions of the Respondents' Disciplinary Committees i.e. Faculty Examination Misconduct Committee and Central Examination Misconduct Committee (CEMC) aforesaid were rendered a nullity in that the Applicant was not giving a fair hearing.**

7. **A Declaration that the memo dated 27th February, 2020 with Ref UA/R/MGT/CEMC/EXT/1 from the Secretary of Central Examination Misconduct Committee (CEMC) directing the Dean Faculty of Social Science to redraft the charge against the Applicant to change the original report by the invigilator reflects victimization, witch-hunting, malice and therefore unconstitutional, null and void.**

8. **An Order of this Honourable Court setting aside all the sittings of the Respondent's Faculty Examination Misconduct Committee and Central Examination Misconduct Committee (CEMC) from 2017 till date for being conducted in bad faith, with malice and in breach of the Applicant's constitutional right of fair hearing and therefore unconstitutional, null and void.**

9. **An Order of this Honourable Court stopping forthwith the Respondents' Faculty Examination Misconduct Committee and Central Examination Misconduct Committee (CEMC) from publishing any finding/report against the applicant.**

10. **An Order of this Honourable Court mandating the Respondents, their agents, assigns, servants, privies or any person(s) whosoever connected with the running of the 1st Respondent to forthwith release the Applicant's result in Statistics and Computer Application (SOC 804) and allow the Applicant defend his Thesis/project of his Master's Program.**

11. **An Order of perpetual Injunction restraining the Respondents, their agents, assigns, servants, privies or any person(s) whosoever connected with the running of the 1st Respondent from taking any step(s) prejudicial to the smooth pursuit of the Applicant's academic career in the 1st Respondent through suspension or other disciplinary means save and except the guilt of the applicant has been conclusively established through the appropriate judicial forum.**

12. **An Order of this Honourable Court compelling the respondents to jointly and severally pay the Applicant the sum of N2, 000, 000, 000. 00 (Two**

Billion Naira) only being general damages for the psychological trauma, economic hardship, social embarrassment, physical stress and waste of time foisted on the Applicant by the actions of the Respondents for over three years now.

13. The cost of this suit.

The facts giving rise to the application spanning fifty seven (57) paragraphs was then identified. The Grounds upon which the Reliefs are sought was equally identified as follows:

i. **By virtue of Section 36 (1) of the 1999 Constitution, the purport is that in the determination of his civil rights and obligations, a person is entitled to fair hearing within a reasonable time by a court or other tribunal established by law.**

ii. **The entire proceedings of the Respondents' Disciplinary Committee are liable to be set aside for having been done in flagrant regard to rule of law and equity and fair justice.**

iii. **By virtue of Section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Applicant bring this application if any of his fundamental rights is being breached, about to be breached or has been breached.**

iv. **Fair hearing lies in the procedure followed in the determination of the case, not in the correctness of the decision.**

In support of the application is a sixty four (64) paragraphs affidavit with twelve (12) annexures marked as **Exhibit DA1 – DA12**. A written address was filed in compliance with the FREP Rules in which one issue was raised as arising for determination as follows:

"Whether the Applicant has furnished this court with sufficient facts and materials as to be entitled to the Reliefs in this application?"

The address of Applicant which forms part of the Records of court is substantially to the effect that the actions of the Respondent as streamlined in the affidavits of

Applicant and in particular the setting up a committee to try Applicant in respect of examination malpractices without hearing from him or affording him fair hearing constituted a violation of his Fundamental Human Rights as enshrined in the 1999 Constitution which accordingly entitled him to the Reliefs sought.

The Applicant filed a further and better affidavit in response to the counter-affidavit of Respondents together with a Reply address on points of law which sought to accentuate the positions already canvassed.

In opposition, the Respondents filed the following processes:

1. 1st and 2nd Respondents Counter-affidavit to the originating motion dated 17th September, 2020.

2. Notice of Preliminary objection challenging the jurisdiction of the court to entertain the action also dated 17th September, 2020.

The above Counter-affidavit contains six (6) paragraphs and is supported with a written address in which one issue was raised as arising for determination to wit:

"Whether the Applicant has furnished this court with sufficient facts and materials so as to be entitled to the reliefs sought in this application."

Submissions were equally made in support of the above issue which forms part of the Records of Court. The substance of the submissions which also forms the plank of the submissions on the preliminary objection is that for an action of this nature to succeed, the infringement of a Right of the Applicant must be the main claim of the application which is not the situation in this case. That the substantive reliefs sought in this case center principally on **Reliefs 10 and 11** on the release of the result of Applicant on a particular course (SOC804) and his inability to defend his thesis. That all the other reliefs are subsumed under these two Reliefs and are not matters cognisable under the Fundamental Right Enforcement Procedure.

It was then contended that the action also constitutes an abuse of process of court and that there are no cogent facts disclosed to enable the court grant the application or hold that there was a proved violation of the fundamental rights of Applicant.

In the preliminary objection, the following grounds were identified as follows:

1. The application is incompetent; inchoate and preposterous.

2. The suit constitutes an abuse of court process.

The objection is supported by an eight (8) paragraphs affidavit and a written address was filed in support. In the address, one issue was raised as arising for determination:

"Whether the Application is competent to confer jurisdiction on this suit."

Submissions were equally made on the above issue which equally forms part of the Records of court and in substance it follows the same character or pattern as the submissions made in opposition to the substantive action.

The point made essentially is that the principal reliefs of claimant is not that of enforcement of a fundamental right and that the jurisdiction of court cannot be properly invoked in such circumstances. It was also contended that this suit is premature in that there was non-compliance by Applicant with the provisions of **Section 19 (7) of the University of Abuja Act** which provides that no student shall resort to a law court, without proof of having exhausted the internal avenues for settling of disputes or grievances.

In opposition to the preliminary objection, the Applicant filed a five (5) paragraphs counter-affidavit and a written address in which no issue was raised as arising for determination but submissions were made which forms part of the Records of court in response to the arguments canvassed by Respondents in their address. The point reiterated again is simply that the substance of the reliefs Applicants claim are all related to the enforcement of his Fundamental Rights which can be determined by this court.

It was also contended that the provisions of **Section 19(7) of the University of Abuja Act** cannot prevail over the special provisions of the Constitution vide Section 42 and that the said Section 19 (7) has no application in this case.

Guided as I am by the clear provision of **Order VIII, Rule 4 of the FREP Rules**, which prescribed that the preliminary objection shall be heard with the substantive application clearly to save precious judicial time, the court directed that the objection and the substantive application be taken together.

Counsel on either side then moved and adopted the process filed as identified above and each side equally responded. The Applicant urged the court to dismiss the Preliminary objection and grant the reliefs sought. On the other side of the

divide, the court was urged to sustain the preliminary objection, but where it is not availing, that the court should dismiss the substantive action as wholly lacking in merit.

I have given an insightful consideration to all the processes filed by parties together with the oral amplification by respective learned counsel and it seems to me that notwithstanding the volume of the processes filed, the issue to be resolved from the materials before the court falls within a very narrow legal compass and that is whether on the facts and materials before court, the Applicant has proved that his fundamental human rights were violated by Respondents to entitle him to the reliefs sought.

The Respondents have from the preliminary objection raised questions on the competency of the entire action which must be dealt with as threshold issues. Firstly, is the contention that the present action constitutes an abuse of court process; secondly that it is premature on the basis of the provision of **Section 19 (7) of the University of Abuja Act** and finally that the principal claims of the Applicant are matters outside the scope of matters that can be entertained under the fundamental rights enforcement matters. This last point was similarly argued in the substantive application.

Let me quickly address the issue of abuse of process and the application of **Section 19 (7) of University of Abuja, Act**. The Respondents contend that the present action constitutes an Abuse of process while the Applicant contends otherwise. I must confess immediately that I have read the submissions of learned counsel to the Respondents vis-a-vis the facts of this case and it is difficult to situate the basis of the complaint that the extant action constitutes an abuse of process.

Now as with most legal concepts, abuse of process is a term which is not capable of precise definition and may be more easily recognised than defined. But it is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. It means the abuse of legal procedure or the improper use or misuse of the legal process (to vex or oppress the adverse party). See **Amaefule V. The State (1988)2 N.W.L.R (pt.75)156 at 177** (per Oputa, JSC); **Arubo V. Aiyeleru (1993)3 N.W.L.R (pt.280)126 at 142.** The court has the duty under its inherent jurisdiction to ensure that the machinery of justice is duly lubricated and that it is not abused. In **Saraki V. Kotoye (1992)9 N.W.L.R (pt.264)156 at 188 E-G** the Supreme Court (per Karibi-Whyte, JSC) opined that:

"The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. Its one common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice. It is recognized that the abuse of the process may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. See Okorodudu V. Okorodudu (1977)3 SC 21; Oyagbola V. Esso West African Inc (1966)1 AII NLR 170. Thus the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right, rather than the exercise of the right per se."

See also the cases of **Akinnole V. Vice Chancellor University of Ilorin (2004)35 WRN 79; Agwasim V. Ojichie (2004)10 N.W.L.R (pt.882)613 at 624-625; Kolawole V. A.G. of Oyo State (2006)3 N.W.L.R (pt.966)50 at 76; Usman V Baba (2004)48 WRN 47.**

In **Atuyeye V. Ashamu (2009)AII F.W.L.R (pt.455)1770 at 1779,** the Court of Appeal stated instructively as follows:

"An abuse of court process is constituted when more than one suit is instituted by a Plaintiff against a Defendant in respect of the same subject matter to the harassment, irritation and annoyance of the Defendant and in such a manner, as to interfere with the administration of justice. The proliferation of actions on the same subject matter in different courts constitutes a strain, an interference with the determination of the subject matter which has been fragmented into little portions. An abuse of court process does not cease to be so because the act has been categorized under the wrong head."

Whilst the categories of abuse of process are not closed and there is an infinite variety of circumstances that could give rise to abuse of process, the Apex Court in **R-Benkay Nig Ltd V. Cadbury Nig Ltd (2012) LPELR 7820** Per Adekeye J.S.C

have instructively and precisely situated or streamlined various ways that abuse of judicial process may occur; these include:

1. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue; or

2. Instituting a multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.

3. Instituting different actions between the same parties simultaneously in different courts even though on different grounds; or

4. Where two similar processes are used in respect of the exercise of the same right such as a cross-appeal and a respondents notice.

5. Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by the lower court.

6. Where there is no law supporting a court process or where it is premised on frivolity or recklessness.

7. Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.

8. It is an abuse of process for an appellant to file an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent in the Court of Appeal, when the appellant's application has the effect of overreaching the respondent's application.

9. Where two actions are commenced, the second asking for a relief which may have been obtained in the first, the second action is prima facie vexatious and an abuse of process. See also **Agwasim V. Ojichie (supra) at 622-623**

I have carefully evaluated all the processes filed by the Respondents and the submissions of learned counsel and clearly none of the above streamlined positions

to allow for a decision or holding that the present action is an abuse has been made out by Respondents. The complaint of abuse of process cannot be made in a vacuum or on bare submissions not rooted in any process filed in an action which must be precisely streamlined and defined. It is not a matter for speculation or guess work. The case of abuse of process has clearly not been creditably established. The contention is unavailing and must be discountenanced.

The second point is the contention that the action as presently constituted is incompetent for being premature in that the Applicant initiated the action without first exhausting internal remedies available to him. The Applicant in response contends that this section has no application to Fundamental Right Enforcement matters.

Section 19 (7) of the University of Abuja Act provides thus: **"no staff or student shall resort to a law court without proof of having exhausted the internal avenues for settling disputes or grievances or for seeking redress."**

The principle is settled and of general application flowing from interpretation of analogous provisions in the various Acts establishing Universities that the court will not interfere in matters falling within the Domestic affairs of University which can be resolved by either the Senate or Governing Council unless and until all internal dispute resolution mechanisms provided in the Act setting up the University has been exhausted. See **Miss O.A. Akintemi V. Prof. C.A. Onwumechili (1985) 1 ANLR (pt. 1) 144; University of Ilorin V Ayodeji (2004) LPELR – 23831 (CA)**.

I have above stated the principle situating the application of **Section 19 (3) of the University Act**. Now, without much ado, I am not enthused neither do I agree with the Respondents contention that **Section 19 (7) of the University of Abuja** has application with respect to matters of Fundamental Rights Enforcement which is a ***sui generis*** proceedings in a special constitutional class.

The provisions of **Chapter IV of the 1999 Constitution** deals with Fundamental Rights which according to the judicial authorities are fundamental because they have been guaranteed by the fundamental law of the country that is, by the constitution. See **Uzoukwu V Ezeonu II & ors (1991) 6 NWLR (pt.200) 708 at 761**. These laws are very important in every modern and progressive society as

they are inalienable and fundamental. They can only be derogated according to law.

The Supreme Court more than three declares ago in **Chief (Mrs.) Olufunmilayo Ransome-Kuti & ors V A.G. Fed (1985) 5 NWLR (pt. 10) at 211** made the position abundantly clear thus:

"...what has been done by our constitution since independence starting with the independence constitution that is, the Nigerian (Constitution) Order in Council 1960, up to the present constitution, that is, the Constitution of the Federal Republic of Nigeria, 1979 is to have these rights enshrined in the Constitution so that the rights could be 'immutable' to the extent of the 'non immutability' of the Constitution itself."

By **Section 1 (1) of the 1999 Constitution,** the constitution including the provisions of Chapter IV on Fundamental Rights are Supreme and by Section 1 (3), if any other law is inconsistent with the provisions of this constitutions, the constitution shall prevail and that other law shall to the extent of the inconsistency be void.

I am not donating the proposition that **Section 19 (7) of the University of Abuja Act** is void but in terms of the provisions of Chapter IV and its application, it must necessarily kow-tow to the supremacy of the constitution. Any mention of Section 19 (3) in relation to Chapter IV is a non-starter.

In matters of enforcement of Fundamental Rights, there will be absolutely no merit or value to argue that a Fundamental Right Enforcement action as presently constituted is incompetent for being premature or that it was initiated without first exhausting internal remedies relying on **Section 19 (7) of the University of Abuja Act**. This section of the University of Abuja Act cannot by any stretch of the imagination derogate from the provisions of the Constitution. Let me perhaps underscore the relevant provisions. **Section 46(1) of the Constitution** provides thus:

"46. (1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress."

Order II Rule 1 of the FREP Rules similarly provide as follows:

"Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the court in the State where the infringement occurs or is likely to occur, for redress..."

The above provisions are clear and in law in the interpretation of any statute where the language used is plain and unambiguous, the court must give effect to their literal meaning unless such construction would lead to some absurdity or would be repugnant to the intention to be collected from the parts of the statute. See **Adewunmi V. A.G. Fed. (2002) 2 NWLR (pt.751) 474 at 511-512; Buhari V Obasanjo (2005) FWLR (pt.273) 1 at 133-134.**

From the above provisions, there is absolutely no limitation, qualification or impediment on when a person may seek to enforce contravention of his rights under Chapter IV of the Constitution. There cannot be a valid interpolation or addition to the clear provisions above to suit a particular purpose. There is absolutely therefore no allowance to delimit the remit of Section 46 to include recourse to **"exhausting internal remedies"** before a case for enforcement of fundamental rights can be filed or enforced. The enforcement of the rights guaranteed under Chapter IV is without exception or qualification for all persons. Indeed, **Sections 36 (1) and 46 (1) and (2)** give access to the court for the enforcement of all rights guaranteed to all manner of people, without exceptions, who claim that their rights have been trampled upon. See the instructive decision of **Honourable Ahmad V Sokoto State House of Assembly (2002) 44 WRN 52 at 73; (2002) 15 NWLR (pt.791) 539 at 563.**

In **F.R.N V. Ifegwu (2003) 5 SC 252 at 303,** the Supreme Court streamlined the clear process of enforcement of violation of fundamental rights by any person under **Section 46(1)** of the Constitution in the following terms:

"As it is, the enforcement procedure is in three limbs. The first limb is that the fundamental right in Chapter 4 has been physically contravened or infringed. In other words, the act of contravention or infringement is completed and the plaintiff goes to court to seek for a redress.

The second limb is that the fundamental right is being contravened or infringed. Here, the act of contravention or contravened may or may not be

completed. But in the case of the latter, there is sufficient overt act on the part of the respondent that the process of contravention or infringement is physically in the hands of the respondent and that the act of contravention or infringement is in existence substantially. In the third limb, there is likelihood that the respondent will contravene or infringe the fundamental right or rights of the plaintiff. While the first and second limbs may ripen together in certain situations, the third limb of the subsection is different. By the third limb, a plaintiff or applicant need not wait for the completion or last act of contravention or infringement."

Once any of these precisely streamlined process is defined, nothing stops any person from applying to a competent court to enforce his Rights under Chapter IV of the Constitution.

I have read the persuasive Ruling of my learned brother Justice P.O. Affem in **Suit No. FCT/HC/CV/0647/2018: Ejumetowo Anthony Asuotu V University of Abuja** particularly the aspect of application of **Section 19 (7) of the University of Abuja Act** and as much as I have sought to be persuaded, I am not persuaded that the said case has any application to the facts of the extant case.

Firstly, the said case is not a **Fundamental Right Enforcement matter** brought under the FREP Rules which is a fundamental distinction or distinguishing factor or element. It was initiated by the General Writ of Summons and so the decision of my learned brother applying the provision of Section 19 (7) in the context of a case initiated by a writ of summons can certainly not be authority for a matter initiated by a special procedure for enforcement of Fundamental Rights guided by its own special Rules, the Fundamental Right Enforcement Procedure Rules 2009. Secondly and as already demonstrated above, Section 19 (7) of the University of Abuja Act cannot prevail over clear and fundamental constitutional provisions of Chapter IV. On the whole, the objection on the application of Section 19 (7) to this action must equally fail.

This then leads to the last contention or point of objection. Now it is a fundamental principle of law and of general application that the jurisdiction of the court is generally determined by the reliefs sought by the plaintiff or in this case, the Applicant. See **Abubakar V Akor (2006) All FWLR (pt.321) 1204**. In other words, it is the claim before the court that has to be carefully examined to ascertain whether or not the action or case filed comes within the jurisdictional sphere

conferred on that court. The Relief which may be sought by an Applicant under the FREP Rules are however specifically limited to any of the fundamental rights prescribed and embodied in chapter IV of the 1999 Constitution. See **Fajemirokun V C.B.C.N.L Ltd (2002) 10 NWLR (pt.774) 94**.

In law the breach of a fundamental right alleged by an applicant must be the main plank in the application for enforcement. On the authorities, where the violation of a fundamental right is merely incidental or ancillary to the principal claim or relief, it is improper to constitute the action as one for enforcement of a fundamental right. This law traces its pedigree to the *latin maxim*: "*Accessorium non-ducit, sed sequitur suum principale*" – meaning that which is incidental does not lead, but follows its principal. See **Raymond Dnogtoe V Civil Service Commission of Plateau State (2001) 19 WRN 125 at 147; Basil Egboona V Borno Radio Television Corporation (1993) 4 NWLR (pt.285) 13**.

I had at the beginning of this judgment reproduced the claims or reliefs sought by the Applicant. As already alluded to, the court now has a duty to carefully examine the reliefs claimed to situate their justiciability within the frame work of enforcement of Fundamental Rights. The court is here not concerned with the manner in which the claim is couched or the categorization given by parties; the claim or reliefs must indeed speak of enforcement of these streamlined rights under Chapter IV of the Constitution. See **N.A.E.C V Akinkunmi (2008) 9 NWLR (pt.109) SC 151.**

I have here carefully examined the facts and the reliefs sought by Applicant and there is absolutely no doubt that the reliefs border or are rooted principally on Applicants alleged culpability or otherwise in relation to allegations of examination malpractices in University of Abuja which led to the withholding of Applicant's result in Statistics and Computer Application **(SOC804)** and the consequent inability of Applicant to defend his master thesis. Any alleged breach of Applicant's Fundamental Right to fair hearing appear fundamentally to be merely accessory to the above primary complaints.

A critical and or fundamental point underpinning these complaints is that there is absolutely nothing furnished by Applicant turning on any conclusive finding(s) made in the ongoing investigation by the University over the allegations against Applicant. Despite this missing dynamic, it is clear that by the Declaratory Reliefs 1-7 and the nature of the extensive reliefs sought vide Reliefs 8 – 12 vis-à-vis the

facts giving rise to the application show clearly that the remit of the extant and principal complaint(s) is certainly not enforcement or the securing of the fundamental rights of Applicant.

The crux therefore of the complaint of Applicant stripped of the colouration of the reliefs in the guise of enforcement of Fundamental Rights proceedings is as to whether the University acted within their enabling Laws and Regulations in withholding Applicant's result and preventing him from defending his Master Thesis due to alleged examination malpractices.

The point to underscore and judicial authorities are clear on the position of the law in relation to a claim for enforcement of Fundamental Right. It is to the effect that Enforcement of Fundamental Right or securing the enforcement thereof must form the basis of the Applicant's claim as presented to the court and not merely an accessory claim as the extant case. In other words where the main claim or principal claim is not enforcement or securing of Fundamental Rights, the jurisdiction of the court cannot be properly exercised because it will then be incompetent. See **Tukur V Govt. of Taraba State (1997) 6 NWLR (Pt.510) 549 at 574 – 575; UniIlorin & Anor V Oluwadare (2006) LPELR – 3417 (SC); WAEC V Akin Kunmi (2008) LPELR – 3408 (SC).**

As a logical corollary, since the present application was not brought in accordance with the requirements of **Section 46 (1) of the 1999 Constitution** and the **FREP Rules**, the action appears fundamentally compromised or undermined.

In the event I am even wrong in the decision that the principal claims of Applicant are outside of the matters that can be entertained under the Fundamental Right Enforcement matters, I will now consider the substantive action on the merit.

Now it is settled principle of general application that an applicant who seeks for the enforcement of his fundamental rights under **Chapter IV of the Constitution** has the onus of showing that the reliefs he claims comes within the purview of the fundamental rights as contained in chapter IV and this is clearly borne out by the express provision of Section **46 of the 1999 Constitution and Order 11 Rule 1 of the FREP Rules 2009. In Uzoukwu V. Ezeonu II (1991)6 N.W.L.R (pt.200)708 at 751, the Court of Appeal** in construing **Section 42 of the 1979 Constitution** which is in *pari materia* **with Section 46 of the 1999 Constitution** stated as follows:

"The Section requires that a person who wishes to petition that he is entitled to a fundamental right:

a. **Must allege that any provision of the fundamental rights under chapter IV has been contravened, or**
b. **Is likely to be contravened, and**
c. **The contravention is in relation to him''.**

The reliefs which therefore an applicant may seek under the FREP Rules are specifically limited to any of the fundamental rights prescribed and embodied in chapter IV of the Constitution. See **Dongtoe V. Civil Service Commission Plateau State (2001)19 WRN 125; Inah V. Okoi (2002)23 WRN 78; Achebe V. Nwosu (2002)19 WRN 412.**

I had earlier on at the beginning set out the reliefs of Applicant in his statement accompanying the application and found that they clearly don't come within the purview of Fundamental Rights under **Chapter IV of the 1999 Constitution**. I however indicated that out of abundance of caution I will still consider the application on the merit. In the circumstances, the burden was on the Applicant alleging that his fundamental rights has been contravened or likely to be contravened to place before the court cogent and credible facts or evidence to enable the court grant the reliefs sought. See **Fajemirokun V. C.B.C.I (Nig) Ltd (1999)10 N.W.L.R (pt.774)95.**

In resolving this dispute, it is central to interrogate and or scrutinize the facts precisely streamlined on the materials supplied and in doing so to determine whether the Applicant has put the court in a commanding height to grant the Reliefs sought. The Respondents as stated earlier challenged the depositions of Applicant so the contested assertions must then be creditably established on clear legal and factual threshold.

Now on the affidavit of Applicant, the basis or root of his complaint can be said to have arisen sometime in 2017 when as a student in 1st Respondent, he was not able to sit and write an examination in course **No. SOC804: Statistics and Computer Application** due to ill-health which he said he orally informed some staff of Respondent. On the materials, the Applicant disclosed that this major ailment which prevented him from writing his paper was in November 2017 and he attached his Medical Report as **Exhibit DA5**.

Now this Exhibit DA5 particularly the Medical Report from Premier Heart Hospital and Clinic was written in November 2018 and not in November 2017. This report alluded to the discomfort of Applicant and that he was seen at Cedacrest Hospital in May, 2017 and a private hospital in London in August 2017 where he was treated and he had some respite and told to return in December 2018. The attached copies of the letters by the Holly Private Hospital which forms part of Exhibit DA5 are dated 21st November 2018 and the second is an appointment letter for August 9, 2017. The point here is that there is no clear material to situate or support the case made out by Applicant that in November 2017, he was ill and therefore unable to attend to his examinations. The Applicants ailment may be protracted but the documents relied on all show that at the time in question in November 2017, Applicant was in relative good health. The state of the medical situation of Applicant is not therefore clear particularly on the question of whether the illness so incapacitated him and made him unable to sit for the exams. The narrative however continued and applicant then stated that while away on medical treatment, an unidentified course mate informed him of rumors going round that someone "impersonated" Applicant during the examination and he was surprised because he never instructed any one to sit for his exams.

On the materials, he was then invited at different times to different disciplinary committees but that he was not shown any examination script or any document written by the impersonator, neither was the identity of the impersonator disclosed. Furthermore, that he was not allowed to be present to hear anyone testify against him or be allowed to cross-examine them.

Now even at this early stage, it is difficult to precisely situate beyond bare and challenged oral narrative of Applicant, the nature of the complaint against the Applicant; the nature of the alleged disciplinary committees he faced and their terms of reference to situate their *Modus operandi* and what really transpired?

The Applicant stated for example in paragraphs 21 that he was invited on **"two occasions"** to the Faculty Disciplinary Committee but there is nothing before me denoting that any committee sat and what transpired at the sessions of this committee. If as alleged, Applicant was not shown any proof of examination malpractice or confronted with the alleged accuser or that he was not allowed to be present to hear anyone testify against him or be allowed to cross-examine them, how is the court to make or undertake any meaningfully investigation in the face of

complete dearth of critical situational evidence to support the complaints of violations of Fundamental Human Rights.

What makes this case particularly fluid is that the Respondents by the materials they filed did not give clarity or details on the complaint of alleged impersonation made out by Applicant. All that can be discerned from the counter-affidavit flow from the following paragraphs 5 (iv-xiv) as follows:

"5. Further to paragraph 4 supra, I know as a fact the following that: …

iv. The Applicant was given adequate time and opportunity to defend himself when found wanting in abiding by the Rules and Regulations of the 1st Respondent and in keeping to his Oaths as a student of the 1st Respondent.

v. The Applicant knew or ought to have known that the only permission admissible and acceptable for absence from any examination organized by the 1st Respondent must be obtained by writing to the Senate of the 1st Respondent on the recommendation of his Faculty Board.

vi. The Applicant knew or ought to have known that the only exception to the permission by the Senate is granted on medical ground provided that such ground is certified by any Medical Officer appointed by the 1st Respondent.

vii. At all material times to the institution of the present suit, the 1st Respondent has not concluded its investigation into case of the Applicant nor has any other need arose to warrant the Applicant to appear before any investigating Committee.

viii. The 1st Respondent has not at any time denied the Applicant an opportunity to defend himself.

ix. The Applicant knew or ought to know that the final determination of his case lies with the Council of the 1st Respondent.

x. **The Applicant knew or ought to know that assuming the Senate decision does not favour him, he has an unrestricted right of appeal to cause a review of his case within the internal mechanisms of the 1st Respondent.**

xi. **The Applicant knew and or ought to know that no staff or student of the 1st Respondent can institute a suit against her without first exhausting, with proof, the internal avenues for settling disputes or grievances or of seeking redress.**

xii. **The main grouse of the Applicant against the Respondents lies in the refusal to release his SOC 804 result and inability to defend his thesis/project with the 1st Respondent.**

xiii. **The present suit in speculative, inchoate, pre-mature, incompetent, and improper.**

xiv. **It will serve the best interest of justice to set aside this proceeding for being grossly incompetent."**

There is here too nothing situating the modalities of how Applicant was allowed to defend himself and the court cannot speculate. The point to underscore is that on the materials, there is absolutely nothing situating any precise complaint against Applicant and the conclusive finding(s), if any, on the said allegations. This then explains the curious assertion in paragraph 34 of Applicant's affidavit to the effect that **"after appearing before the committee, the outcome of their finding was not made known to me and no further action was taken."**

There is again here nothing before me supporting the contention that the investigation had concluded or that no further action was taken. This assertion of conclusion of the investigation is betrayed by the fact that Applicant said he was invited on three occasions to defend his project but he was not allowed which appears to lend credence to the case of Respondents that investigation into the breach by Applicant of what they termed **"their Rules and Regulations"** is ongoing and that they have not concluded their case.

To underscore this point, Applicant said that after he had made complaints on the lack of action by Respondents, he was again summoned to the Disciplinary

Committee of the Faculty in April 2019 and that in October 2019, he was invited via text message to face the Central Disciplinary Committee where he was asked certain questions which he answered as highlighted in paragraph 44 of his affidavit. Here too, there is no evidence before me of any text message been sent and this could have been obtained easily from the telecom service providers and then there is equally nothing attached or annexed to support the **questions and answers** stated in the said **paragraph 44**.

Again, the complaints equally made by Applicant with respect to how this Committee operated would have no resonance in the absence of evidence situating what really transpired in the sitting of the committee. The bottom line is that the Applicant may have not been allowed to defend his thesis and his result in Course SOC 805 not released as a result of allegation of examination malpractices but in the absence of critical evidence precisely showing the actions constituting the breach of a Fundamental Right of fair hearing, it will be difficult if not impossible to make a positive finding in such unclear and fluid circumstances.

To further compound an already unclear situation, the Applicant vide paragraph 56 then said he stumbled on a memo from Respondent which he said now gave a "new twist" to the matter vide **Exhibit DA11**. There is no doubt that this document or memo is an official document of the University of Abuja and thus a public document within the purview of **Section 102 of the Evidence Act**. Being a public document, the court can in the circumstances accord value to the contents only if the original copy is attached and or where this is not available, a certified true copy of the document under **Section 90 (1) (c) of the Evidence Act**. In this case, what was attached is a photocopy which was not certified. In the circumstances, the said **Exhibit DA11** is not available to be considered as proof of the contested assertions in this case.

Again to avoid accusations of being unduly pedantic and in the event I am even wrong in deciding that the memo is not available to be considered in the circumstances, I will now consider the Exhibit. Let me start by reproducing the contents of the memo as follows:

"UNIVERSITY OF ABUJA

Central Examination Misconduct Committee (CEMC)

MEMORANDUM

FROM: Secretary, CEMC	**TO: Dean, Faculty of Social Science**
REF: UA/R/MGT/CEMC/EXT/1	**DATE: 27th February, 2020**

SUBJECT: RE: FORWARDING OF CASES OF EXAMINATION MISCONDUCT

Please refer to your letter reference number UA/FSS/DO/35 on the above subject matter dated 15th November, 2019 where you made submission of two cases of examination misconduct involving SULEIMAN Mohammed Rabiu (16293177) an undergraduate student of Political Science and AKOH Dickson (1649018) a postgraduate Student of Sociology.

I am directed to inform you that the Committee considered your submission extensively and observe that the statement of Invigilator on AKOH Dickson saying "someone was caught impersonating him" was considered inappropriate. The Committee therefore considered that "someone was caught writing examination for him" would have been more appropriate as the statement of Invigilator.

The Committee thereby resolved that the submissions should be returned to your Faculty for proper capturing of the observation noted above.

Consequently, I hereby return the submission as directed for your necessary action, please.

Signed

SOMIDE, Jerome A.

PAR, Academic Divisions (Secretary)"

The above letter is clear and self explanatory. The Applicant may have described it as introducing a "new twist" to the case, whatever that means, but the letter dated 27th February, 2020 appears to indicate that investigation into the allegation against Applicant was still ongoing.

Most importantly, this memo cannot be read in isolation with the other document forming part of Exhibit DD11. This other document is a copy of the Respondents findings by the **Faculty Examination Misconduct Committee (FEMC)** which appear to have dealt with the case of Applicant on alleged impersonation. The report showed Applicant made his representation to the committee, they then made their observations and their recommendation was "Expulsion."

The above quoted memo by the **Central Examination Misconduct Committee (CEMC)** which Applicant claims is an attempt to find him guilty would appear to do the opposite, if not, they would have simply ratified the recommendation of "Expulsion"; instead they have sent the findings back to the faculty committee to really have a second look.

There is nothing before me showing that after the **CEMC** directive, that the faculty has sat on the matter. What these exhibits suggests or shows is an ongoing process and it is a process guided by the internal Rules and Regulations of the 1st Respondent, a University and Citadel of Learning and Knowledge.

At the risk of sounding prolix, there is again nothing before me situating the parameters for these decisions in **Exhibits DD11** and there is equally nothing before me showing that the University Council, had accepted and acted on the FEMC Report at any time.

The Right and concept of fair hearing under **Section 36 (1) of the Constitution** is at the very foundation of the legal system and forms the basis of assessing the fairness of a trial or process and the general administration of justice. It does not only ensure and assure of the integrity of the process and the legal system in general but sustains and enhances the confidence in the system and processes.

The principle of natural justice as enshrined in the common law and the Constitution of Nigeria is not exclusively confined to the proceedings of courts or tribunal under **Section 6 (5) of the Constitution** but to every situation wherever a person or authority is concerned in the determination of rights of another, in such a manner that the version of the person against whom the determination is to be made is an essential requirement of the process of determination. See **Eze V Spring Bank Plc (2011) 18 NWLR (pt.1278) 113 at 130 A-C.**

Some of the key essential elements or components of fair hearing which guarantees that any person accused, whether is before regular courts or before tribunals, boards or panels of inquiry includes:

1. That he should know what is alleged against him.
2. That he should be present when any evidence against him is tendered and;
3. That he should be given a fair opportunity to correct or contradict such evidence including cross-examination of the witness presented by his accusers. See **Olutayo V FUT Minna (2007) 13 NWLR (pt.1051) 274; Obot V C.B.N (1993) 8 NWLR (pt.310) 140.**

The above principles on fair hearing are really not in dispute. The challenge in this case is to situate the complaints or infractions allegedly made by Applicant vis-à-vis these settled principles. This explains why I extensively analysed the facts presented above which shows absence of clarity with respect to even the allegation against Applicant. Perhaps I need again to refer to critical aspects of the case at the risk of prolixity but for purposes of clarity. Even the source of the allegation as earlier alluded cannot be predicated on a particular or concrete source. The Applicant said he was informed by an unknown course mate of the allegation of impersonation and one then wonders at how allegations of the nature are made.

Now even if it is taken that the allegation is that of impersonation, there is nothing beyond the bare assertions of Applicant showing or situating the disciplinary committees set up, their terms of reference and most importantly when and where they sat and what happened or transpired at those committee sittings. Indeed how many committees even looked into the case of Applicant? The case presented would appear to show that the issue is inconclusive or protracted and there is no clarity with respect to which committee the complaints of infractions is targeting. For example a document forming part of **Exhibit DD11** which I had earlier highlighted includes a report on findings of **Faculty Examinations Misconduct Committee (FEMC)** which appear to show that Applicant was heard; the Report included their observations and the recommendation of "Expulsion."

There was no "expulsion" of Applicant but the next body or the **Central Examination Misconduct Committee (CEMC)** of the University which looked into the matter only expressed some dissatisfaction with certain aspect of the findings of the Faculty Examinations Misconduct Committee and returned the matter or issue back to the **faculty** for consideration vide the same Exhibit D11.

Applicant as stated earlier has characterized this memo as a clear attempt to find him guilty at all cost by the attempt to alter the original statement of the invigilator.

I am not sure this averment has any foundation or traction because going by the Report of the **Faculty Examinations Misconduct Committee**, they have already passed their Judgment and they had recommended that Applicant be **expelled**. These documents underscored the fluidity of Applicant's case. The case of Applicant is not on this apparent finding of "expulsion" but on an unclear process that is said to be ongoing. The bottom line is that without a clear **verifiable template** demonstrating these alleged infractions, how is the court to determine for example whether the alleged "impersonator" appeared at the committee sittings or whether Applicant was given an opportunity to hear any evidence against him and to cross-examine witnesses.

All these important issues cannot be a matter of guess work, conjecture or speculation in proof of infractions of Fundamental Human Rights as alleged. It is not a matter for sentiments and it is equally not a matter for address of counsel however well written or articulated. The entire trial process including the extant proceedings is entirely evidence driven. Cases fall or rise on the quality of evidence put forward to support a particular cause. It is therefore a matter of clear, cogent evidence proffered putting the court in a commanding height showing or proving that there were indeed infractions. The extensive nature of the **declarations and orders sought**, and the manner they were couched unfortunately cannot be granted in patently unclear circumstances as presented by this case.

At the risk of sounding prolix, all these challenged or controverted allegations or issues cannot be left hanging in the air for purposes of securing a decision on infraction of human rights. I only need to underscore the point that the business of court does not include that of speculating. A court of law qua justice only acts or decides on the basis of what has been clearly demonstrated and creditability proved. I must also add that bare averments of infractions in an affidavit as in this case cannot suffice especially where they are seriously controverted or challenged. I do not think that the assertions of applicant can stand or be accepted as correct without proof. The mere stating of a fact does not prove the correctness or credibility of that fact without cogent evidence to substantiate same. In as much as the assertion does not relate to any fact which the court can take judicial notice, it behoves applicant to substantiate same with proof.

The point therefore is that in a fundamental rights enforcement matter, which is a serious matter, the court will not declare an applicant's right(s) to be infringed simply because he says so and in the absence of credible evidence or proof. The materials also supplied by applicant in the circumstances must also not be such that is incredible, improbable or sharply falls below the standard expected in a particular case. It must establish that the rights claimed exist and has been infringed upon or is likely to be infringed. See **Neka B.B.B Manufacturing Co Ltd. V. ACB Ltd. (2004)2 N.W.L.R (pt.858) 521 at 550 – 551.**

I have here carefully considered the materials before me and I cannot locate any violation of the relevant constitutional provisions. There is absolutely no evidence of such quality and cogency beyond controverted speculative averments showing that the Applicant rights were violated as asserted by him and the conclusion I reach is that the Applicant's narrative lacks credibility and value. I so hold.

It is a fundamental principle of our legal system in respect of facts averred that where they are weak, tenuous, insufficient or feeble, then it would amount to a case of failure of proof. A plaintiff or an Applicant whose affidavit does not prove the reliefs he seeks must fail. See **A.G. of Anambra State V. AG of Fed. (2005)AII F.W.L.R (pt.268)1557 at 1611; 1607 G-H.**

As I round up, one important point I note from the processes filed on both sides of the aisle is that there appears to be a process, even if imprecise and with unclear modalities going on in relation to alleged examination malpractice leveled against Applicant. Even if the court is loathe to interfere with the administrative affairs of the Respondents, but it would appear that the process is rather slow and cumbersome.

It cannot be right or fair that a process towards determining his culpability or otherwise is taking this long and interminable. An important constituent element of fair hearing envisaged by Section 36 is that the process conducted by the Respondents Committees must be concluded within a reasonable time. The question of conducting a hearing within a reasonable time no doubt depends on the circumstances of each case but that is not a licence or a carte blanche for a process in determining whether a student is involved in examination malpractices or not is this long drawn out and protracted. It is therefore important for the Respondents as a law abiding institution of higher learning to keep strict fidelity to the rule of law by now acting post-haste to activate these committees and ensure that this issue or

matter is brought to an end one way of the other with the minimum of delay. I leave it at that.

In the final analysis, even on the merit, the case of Applicant would still have failed and the Reliefs would not be availing and the case would have been dismissed.

As stated earlier, I considered the action on the merit out of abundance of caution. Having already found that none of the principal claims which Applicants seeks to enforce can be brought within the provisions of Chapter IV, it meant that the procedure was not available or a proper conduit to ventilate the present grievance, and accordingly this court will have no vires to exercise jurisdiction.

On the authorities, the principle is settled that where a court finds that an action as constituted is incompetent for one reason or the other, the proper order to make is not one of dismissal but striking out. See **Adetunji V Adesokan (1994) 4 NWLR (pt. 346) 540; Okolo V UBN (2004) 13 WRN 62 at 76-77**.

Accordingly, I will and do hereby record an order striking out this suit/action. No order as to cost.

…….
Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. **Joseph E. Chukwuemeka Esq. with Michael Ogobuchi Esq. for the Applicant.**

2. **Tale Alabi, Esq. with Florence Aremu (Miss) for the Respondents.**