IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT GWAGWALADA

THIS THURSDAY, THE 10TH DAY OF DECEMBER 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: HC/M/374/19

BETWEEN:

MR IBRAHIM MOHAMMED ..... APPLICANT

AND

1. NIGERIAN POLICE FORCE
2. INSPECTOR GENERAL OF POLICE
3. COMMISSIONER OF POLICE FCT
4. ATTORNEY GENERAL OF THE FEDERATION } **..DEFENDANTS**

JUDGMENT

This is a matter filed under the Fundamental Rights Enforcement Procedure Rules 2009. The application is dated 19th November, 2019 and filed same date in the Court's Registry. The Reliefs sought as contained in the statement accompanying the application are as follows:

i. **A Declaration that the arrest of the Applicant on 17th September, 2013 and his detention at Gwagwalada Police Station and later at the Federal Special Anti-Robbery Squad ("Federal SARS") facility at Guzape Hills along Apo**

Road from 17th September 2013 to 10th March 2014, (a period well outside the purview of the Constitutionally allowed period for which the Applicant could be detained) by officers/agents of the 1st – 3rd Respondents led by one Simon Obagwu, under the non-challant supervision of the 4th Respondent when the said officer/agents of the 1st – 3rd Respondents were yet to conduct and conclude investigations, and without arraignment in court of competent jurisdiction within the constitutionally allowed period is unlawful, ultravires constitute an infringement of the Applicant's Fundamental Rights to personal liberty as well as freedom of movement both guaranteed and protected under Section 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended); and also in violation of Articles 6 and 12 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004.

ii. **A Declaration that the torture exerted on the Applicant upon his arrest and during his detention and interrogation at Gwagwalada Police Station by the officers/agents of the 1st – 3rd Respondents led by Simon Obagwu, under the non-challant supervision of the 4th Respondent wherein he was beaten mercilessly, slapped severally, his at his penis (sic) and heated with fire just to have the Applicant admit and confess to a crime he knew nothing about constitutes, arbitrary and capricious exercise of executive powers and a violation of the Applicant's fundamental rights to respect and dignity of his human person, as well as freedom from torture, inhuman and degrading treatment as guaranteed under Section 34 (1) Constitution of the Federal Republic of Nigeria 1999 (As Amended), as well as in violation of Articles 5 and 16 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004.**

iii. **A Declaration that the arrest, detention, arraignment and prosecution of the Applicant by the Respondents for a grievous allegation of conspiracy and armed robbery when the Respondents in fact knew or had reasons to know that the Applicant is innocent yet they forced him by torture to make false confessional statements incriminating himself on the said offences and upon which they detained, arraigned him and tried for over five years**

while he was in detention in addition to violation of his rights also amounts to malicious prosecution of the Applicant by the Respondents.

iv. An Order directing the Respondents jointly and severally to tender to the Applicant unreserved public apology, which should be published in Daily Trust News Paper and one other national daily newspaper widely circulated within the Federal Republic of Nigeria.

v. An Order directing the Respondents jointly and severally to pay to the Applicant general, punitive/aggravated and exemplary damages in the sum of N200, 000, 000.00 (Two Hundred Million Naira only) for their arbitrary and capricious exercise of executive powers leading to the violation of the Applicants fundamental rights liberty, freedom of movement and right to respect of the dignity of his person, freedom from torture, inhuman and degrading treatments suffered by the Applicant as a result of the actions of the officers/agents of the Respondents under the non-challant supervision of the 4th Respondent.

vi. An Order directing the Respondents jointly and severally to pay to the Applicant special damages in the sum of N35, 780.00 (Thirty-Five Thousand, Seven Hundred and Eighty Naira Only) being parts of the cost expended by the Applicant in treating himself at University of Abuja Teaching Hospital Gwagwalada from the injuries inflicted on him as a result of the torture, inhuman and degrading treatment meted on him by the officer/agents of the 1st – 3rd Respondents under the non-challant supervision of the 4th Respondent.

vii. An Order directing the Respondents jointly and severally to pay to the Applicant general, punitive/aggravated and exemplary damages in the sum of N50, 000, 000. 00 (Fifty Million Naira Only) for the malicious prosecution of the Applicant by the Respondents.

viii. An Order directing the Respondents jointly and severally to pay to the Applicant interests on the judgment sum at the rate of 10% per annum

from the date of delivery of judgment until same is fully and finally satisfied.

ix. **An Order directing the Respondents jointly and severally to pay to the Applicant the sum of N50, 000. 00 (Fifty Thousand Naira) being the cost of prosecuting this suit.**

x. **And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.**

The Grounds upon which the Relief are sought are as follows:

i. **The Applicant was arrested, tortured and detained by the agents of the 1st – 3rd Respondents at SARS Office, Guzape Abuja under the non-challant supervision of the 4th Respondent since 17th September, 2013 until 10th March 2014.**

ii. **The arrest, detention and torture of the Applicant in the manner stated in this Motion by agents of the Respondents is contrary to the provisions of Sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) and the Relevant provisions of African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004.**

iii. **The Applicant was also maliciously prosecuted by the Respondents despite knowing that the Applicant was innocent.**

iv. **The 4th Respondent is the Chief Law Officer of the Federal Republic of Nigeria. He has supervisory powers over the 1st – 3rd Respondents and is duty bound to ensure that all agencies of government including the 1st – 3rd Respondents carry out their duties within the bounds of the laws of Nigeria, a duty he failed and or neglected to do, occasioning the violation of the rights of the Applicant by the 1st – 3rd Respondents.**

v. **It is a cardinal principle of law that where there is a right which has been violated, there must be a remedy in law (*ubi jus ubi remedium*).**

vi. **The Applicant is entitled to declaratory reliefs as well as damages for infringements on his constitutional, fundamental and legal rights.**

vii. **The Applicants is entitled in the circumstances to approach this Honourable Court in order to seek redress, in accordance with the law.**

The application is supported by a 25 paragraphs affidavit with 11 annexures marked as **Exhibits RLC1 – RLC 6B**. A written address was filed in which two (2) issues were raised as arising for determination as follows:

1. **Whether the Fundamental Rights of the Applicant provided for under Sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria as well as Articles 5, 6, 12 and 16 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004 have been violated by the Respondents herein.**

2. **Whether the Applicant has proved his claims in issues (sic) and is consequently entitled to the reliefs sought for in this application.**

The address of the applicant was essentially anchored on the fact that the actions of the agents of 1st to 3rd Respondents in arresting, detaining, torturing and maliciously prosecuting him through a failed criminal action filed against him constitutes a violation of his fundamental rights as enshrined in the constitution. The 4th Respondent is said to be the Chief Law Officer of the federation and that he "supervises" the activities of 1st to 3rd Respondent to ensure that they carry out their duties within the bounds of the law and on that basis is similarly jointly liable for the infractions complained of.

In opposition, the 1st to 3rd Respondents filed a 3 paragraphs counter-affidavit with three (3) annexures marked as **Exhibits A-C**. A written address was filed in which one issue was raised as rising for determination, thus:

"Whether by the aggregate of facts presented before this Honourable Court, the Applicant has disclosed a breach of his fundamental rights to enable him to a grant of the reliefs sought?"

The address of 1st – 3rd Respondents is basically to the effect that the constitutionally guaranteed rights of the Applicant were not infringed or violated and that all the complaints of alleged violations were not creditably established by evidence.

The applicant then filed a further and better affidavit of 7 paragraphs in reply to the counter-affidavit of 1st – 3rd Respondents. A reply address on points of law was filed in which a challenge was raised as to the competence of the counter-affidavit of 1st – 3rd Respondents on the grounds that it was deposed to by counsel who franked the processes of 1st – 3rd Respondents. That if the counter-affidavit is found to be incompetent, then the implication is that there is no valid counter-affidavit on behalf of 1st – 3rd Respondents in opposition. The reply address then reiterated or accentuated the positions earlier canvassed.

On the part of the 4th Respondent, a five (5) paragraphs counter-affidavit was filed in opposition. A written address was filed in which one issue was raised as arising for determination:

"Whether from the facts of this case and the evidence placed before this Honourable Court, the Applicant is entitled to the Reliefs sought against the 4th Respondent."

The address of the 4th Respondent is similarly to the effect that the Applicant has not creditably established by evidence the violation of his fundamental rights against the 4th Respondent as the 4th Respondent is not empowered to arrest or detain suspects and indeed has no role or say in the arrest and detention of Applicant. Further that the 4th Respondent has the power to prosecute accused person(s) which it properly exercised in this case.

At the hearing, counsel for the Applicant relied on the paragraphs of the supporting and further affidavits and adopted the submissions in the written addresses in urging the court to hold that the actions of Respondents were wholly unconstitutional and infringed on the rights of Applicant thus entitling him to the Reliefs sought.

On the part of Respondents, counsel to the 1st – 3rd Respondents and counsel to the 4th Respondent similarly each relied on the contents of their counter-affidavits

respectively and adopted the submissions in their written addresses in urging the court to dismiss the application as unproven and lacking in merit.

I have given an insightful consideration to all the processes filed by parties together with the oral amplification and it seems to that notwithstanding how each party framed the issues as arising for determination, the material issue that really calls for the most circumspect of this courts consideration is simply **whether on the facts and materials before court, the applicant has proved that his fundamental rights were infringed by 1st to 4th Respondents to entitle him to the reliefs sought**.

This umbrella issue raised by court conveniently accommodates all the issues raised by parties and has succinctly and with sufficient clarity brought out the pith of the contest subject of the present enquiry and it is on the basis of the said issue that I shall proceed to presently decide this matter.

Before I do so, let me quickly address the challenge raised by the Applicant on the competence of the counter-affidavit said to have been deposed to by counsel who is part of the law firm appearing for the 1st – 3rd Respondents.

Before directly addressing the point, let me make some prefatory remarks. I am not sure that this complaint has much traction in the context of the contested assertions relating to the alleged violations of Applicants Fundamental Human Rights.

Firstly, there is not just the counter-affidavit of 1st – 3rd Respondents filed in opposition to the affidavit of Applicant. The 4th Respondent has its own counter-affidavit independent of that of 1st – 3rd Respondents challenging the case of alleged infringement of fundamental rights made by Applicant.

Secondly, even if there was just one counter-affidavit, which is not the case or situation here and the court finds that it is even incompetent, that does not tantamount or aggregate to the fact that the allegations made by Applicant have been proven.

Let me make the point that generally, the failure of a defendant to react to contents of the affidavit of applicant meant that the applicant's affidavit should be taken as

true since it is unchallenged. See **Nwosu V Imo State Environmental Sanitation Authority (1990) 2 NWLR (pt.135) 6877 at 721 and 735**. I am however quick to add that although this is a general rule, it is also true to say that the court is not in all circumstances bound to accept as true, evidence that is un-contradicted where such evidence is willfully or corruptly false, incredible, improbable or sharply falls below the standard expected in a particular case. See **Neka B.B.B. Manufacturing Co. Ltd V. ACB Ltd (2004) 2 NWLR (pt.858) 521 at 550, 551**.

It equally follows that the fact that an affidavit is unchallenged does not in any way lessen the duty of the court to ensure that the reliefs sought are creditably established. The court has the bounden duty to look at the contents of the unchallenged affidavit to determine if it is sufficient or meets the required standard of cogency and creditably to determine the claim(s) made by the applicant. See **Martchem Ind. Nig. Ltd V M.F. Vent Inest. Arice Ltd (2005) 129 LRN 1896 at 1899.**

Thirdly, it is clear that the substance of the reliefs 1-4 sought by Applicant on which the other reliefs are predicated are declaratory in nature. That being so, it is critical to state that declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings or processes filed particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.**

The point to underscore is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of the adversary in the process he filed or his failure to call evidence of file any process or even defend the action. The court must be put in a commanding position by credible and convincing evidence at the hearing of the Applicants entitlement to the Reliefs sought as in this case.

Now on the issue of counsel deposing to an affidavit on behalf of his client, the Court of Appeal in a recent decision in **EFCC & ors V. Mr. Dubem Chukwurah (2018) LPELR – 43972 (CA)** donated the position that while the practice of counsel deposing to an affidavit on behalf of his client is frowned at, that act by itself does not make the affidavit incompetent, per Owoade JCA.

The learned respected jurist further added that the provisions of Order 9 Rule 1 of the FREP Rules 2009 subtitled effect of non-compliance is indeed a saving provision as to non compliance with requirements as to time, place or manner or form of anything done or left undone in the course or in connection with any proceedings. It is clear therefore that the fact that counsel deposed to extant counter-affidavit of 1st – 3rd Respondents is not necessarily fatal.

As a logical corollary, the duty of the court now is to examine the established facts in the context of principles situating proof of the breach of the infractions complained of.

The objection is accordingly discountenanced. Now to the merits.

ISSUE 1

Whether on the facts and materials before court, the Applicant has established that his Fundamental Human Rights were infringed by Respondents to entitle him to the reliefs sought.

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. A careful consideration of the reliefs would appear to show that the main plank of the application is not the breach of a fundamental right. The breaches here complained of appears to be accessory or incidental claims.

Let me quickly say that neither party raised this question of whether the extant action is cognisable under this procedure. The 4th Respondent had earlier raised a preliminary objection which was withdrawn. In the circumstances and because I consider the point important I will make some remarks on the issue and allow sleeping dogs lie, before dealing with the substance of the case.

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.I (Nig.) (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.

The duty of court now is 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 and there is no doubt that the reliefs are rooted essentially on the tort of **malicious prosecution**. The case of applicant is basically that he was arrested, detained, tortured, arraigned and prosecuted maliciously and on no reasonable grounds for the offences of conspiracy to commit Armed Robbery and Armed Robbery where he was tried for five years and then acquitted. Any alleged breach of Applicants fundamental right(s), from the processes filed appear to fundamentally be merely accessory to the fundamental complaint that he was maliciously prosecuted by the Respondents. The Declaratory Reliefs and the nature of the extensive reliefs sought including general, punitive, aggravated and exemplary damages in the sum of **N50, 000, 000 (Fifty Million Naira)** for malicious prosecution vis-à-vis the clear facts giving rise to the application show clearly that the clear remit of the extant principal complaint 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 or designation of the Reliefs in the guise of enforcement of fundamental rights proceedings is simply whether on the facts and materials, he was **maliciously prosecuted**. A claim rooted in the tort of malicious prosecution cannot constitute the principal relief under the Fundamental Human Rights Enforcement Procedure Rules. **The writ of summons and filings of pleadings** would have been better utilised to ventilate this type of grievance.

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).**

If the issue had been properly presented, the action would have been undermined having not been brought in accordance with the requirements of Section 46 (1) of the 1999 Constitution and the FREP Rules 2009. I leave it at that.

Now I had earlier set out the reliefs sought by the Applicant. On the authorities, the burden was on 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.

Let me summarise the essence of the case made out on both sides of the aisle. The case of Applicant on the affidavit is that sometime on 13th September, 2013, he was arrested by one Simon Obagwu and taken to Gwagwalada Police Station where he was terribly beaten and tortured and forced to write a confessional statement vide **Exhibit RLC 1**, that he was involved in a case of armed robbery.

The Applicant stated that he was then transferred from Gwagwalada to Federal Anti Robbery Squad Abuja where he was kept in police cell until he was arraigned in court on 10th March, 2014 after about seven (7) months of detention. That he was never at any time informed of the reason for his arrest or detention and that the police made false allegations of conspiracy and armed robbery against him and two others for which they stood trial and were found not guilty in 2019.

The Applicant stated that in the course of the trial, officer **Simon Obagwu** and Sgt. Dugbo gave false evidence that he confessed to the crime of armed robbery which the court at the trial found not to be true. He stated that the false accusation against him which the Respondents knew led to the criminal charge against him which lasted from March 2014 to May 2019 when he was discharged and that while at Kuje Prison his health condition deteriorated due to lack of proper health facilities at the prison and this occasioned additional medical cost of treatment.

On the part of 1st – 3rd Respondents, their case is that in July 2013, one **Clement Adeyeye** laid a complaint of Armed Robbery in his house at Kwali and in line with its statutory powers, they commenced investigation which led to the arrest of applicant and that he was informed that he was a suspect in a criminal complaint and that he volunteered a statement confessing to participating in the crime vide **Exhibit A** and that he was not subjected to any abuse or torture. The complainant vide **Exhibit B** similarly made his statement streamlining the attack on him and his family.

That owing to the serious nature of the complaint which carries a capital punishment and the need to carry out proper investigation, the applicant was not granted bail and upon completion of the investigation, they were charged to court. Further that in the course of investigations, the stolen car of the complainant was recovered and he wrote a letter of appreciation vide **Exhibit C**.

On the part of the 4th Respondent, their case is that the Applicant was charged to court on a two counts charge of conspiracy to commit Armed Robbery and Armed Robbery and that a prima facie case was made out before the 4th Respondent prosecuted the case as they are under law statutorily empowered to do.

The 4th Respondent averred that it diligently prosecuted the case but did not have any hand in the arrest and detention of Applicant and that it does not supervise the affairs of any law enforcement agency in Nigeria and so cannot be liable for the alleged violations committed by agents of 1st – 3rd Respondents.

I have above deliberately and at length sought to capture the essence of the narrative on both sides. The kernel or crux of this dispute is whether the actions of

the Respondents within the context of the precise complaints of Applicant can legally and be constitutionally countenanced.

Now it is not in doubt that the provisions of **Sections 34 and 35 of the 1999 Constitution** provides for the right to dignity of the human person and the right to personal liberty.

The sections provides as follows:

"34(1) Every individual is entitled to respect for the dignity of his person, and accordingly:

a. **No person shall be subjected to torture or to inhuman or degrading treatment;**
b. **No person shall be held in slavery or servitude; and**
c. **No person shall be required to perform forced or compulsory labour."**

"35(1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law-:

a. **In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty.**

b. **By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law.**

c. **For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.**

d. **In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare.**

e. **In the case of persons suffering from infectious or contagious disease, persons of unsound mine, persons addicted to drugs or alcohol or vagrants,**

for the purpose of their care or treatment or the protection of the community. or;

f. For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto;…"

The above sections appear to me clear and unambiguous such that the task of interpretation can even hardly be said to arise. **Section 34(1)** emphasises treatment of the human person with respect and therefore any act which makes people lose their sence of self respect, value or worth would be degrading. **Section 35(1)** on the other hand places premium on the personal liberty of every person and any deprivation of same must be consistent with the procedure permitted by law. The court obviously serves as a necessary bulwark in the protection of these fundamental rights and any transgression or proved violation of these constitutional provisions are met with necessary legal consequences.

The point to underscore is that these rights guaranteed by the constitution are not **absolute rights**. Under the constitution for example under 35(1)(c) above, these rights may be curtailed in certain circumstances. Where any fundamental right has been deprived in accordance with the procedure permitted by law, a complaint of violation of fundamental right will not be availing. I shall return to this point later on in this judgment. The task before me as stated earlier is to apply these provisions in relation to the alleged infraction and determine whether these infractions were proved.

I start with the complaint that Applicants arrest and detention from 17th September, 2013 to 10th March, 2014 when he was arraigned in court is well outside the purview of the constitutionally allowed period for which he could be detained.

Let us situate some common grounds flowing from the processes. In this case there is no doubt on the materials that the Applicant was arrested in respect of alleged involvement in commission of the offence of Armed Robbery which is a sufficiently serious offence under our criminal jurisprudence with the ultimate sanction of death upon conviction.

On the materials, the police in line with their statutory duties commenced investigation upon the complaint laid by one Clement Adeyeye that he was a victim of an Armed Robbery attack at his home.

Section 4 of the Police Act, Cap 359, Laws of the Federation, 1990 states the duties the Police to include, amongst others, the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are charged.

Now once there is a criminal complaint as made here, the police has a constitutional and statutory duty to investigate the allegations which would certainly involve the examination of the facts of the situation. In carrying out this task, the police is empowered under the provisions of Section 24 of the Police Act to arrest without warrant any person charged with having committed a felony or misdemeanor, provided, as stated in section 27 of the Police Act, that a person so arrested without a warrant shall be taken before a magistrate within a reasonable time or granted bail with or without sureties at the Police Station.

In this case, it is difficult to situate any fault in the investigations undertaken by the police in respect of a serious allegation of armed robbery which led to the arrest and detention of the Applicant.

Indeed as stated earlier, under Section 35(1)(c) of the Constitution the personal liberty of any person may be curtailed for the "purpose of bringing before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence."

This provision of the constitution provides legal basis for the arrest and detention exercised by the police. Based on this provision, it will not be unlawful for a person to be put in police custody to prevent him from committing an offence or another criminal offence. This exception also justifies the arrest of a person on reasonable suspicion of his having committed an offence. The test of reasonableness is objective.

In this case and on the materials and as already demonstrated, nothing was creditably put forward showing that the arrest of Applicant was carried out in a manner inconsistent with the provisions of the constitution.

Now with respect to the complaint relating to the duration he was held before he was arraigned which is about a period of about 6 months going by his statements taken in September 2013 vide Exhibits RLC1 and Exhibit A; the charge filed on 7th March, 2014 as stated in the Judgment delivered in the criminal trial vide Exhibit RLC 3. There is no doubt that Section 35(4) of the constitution provides time lines within which an accused person arrested or detained in accordance with Subsection (1)(c) as in this case is to be brought to court or be released either unconditionally or upon such conditions as is reasonably necessary to ensure that he appears for trial at a later date.

As stated earlier, the same constitution recognises that these rights are not absolute and allows as rightly submitted by the 1st – 3rd Respondents for a detention of a person such as the applicant who is reasonably suspected of having committing a capital offence beyond the period covered by Section 35(4). Let me highlight some of these critical provisions Section 35 (7) of the 1999 Constitution provides as follows:

"Nothing in this section shall be construed –

(a) in relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence;…"

The above provision is clear. Validating the powers of arrest and detention under the Police Act, it may be pertinent to further refer to the following provisions in the constitution. **Section 41(1) and (2)(a)** states as follows:

"41(1). Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.

(2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society –

(a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria;…"

Section 45(1) (a) and (b) then provides as follows:

"45.(1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society –

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom of other persons."

The above provisions clearly denotes that in the face of reasonable suspicion by law enforcement agency of any person having committed a capital offence, the right to personal liberty in such circumstances may be validly circumscribed.

In this case, there is really nothing presented situating absence of reasonable suspicion with respect to the alleged commission of a capital offence by Applicant which led to his arrest, detention and the arraignment in court. At this risk of prolixity, there was a complaint of Armed Robbery. The statutory duty of the police on receipt of this serious complaint is to carry out investigation. This may be open or discreet. The investigations into an allegation of armed robbery it must be noted is a serious investigation by the police. There may be the need to invite or arrest in the process. The process may also take some time; there is no cast iron formular on how the process may pan out. These are largely issues dictated by the facts uncovered in the process of investigation.

In this case, the Applicant was arrested, a confessional statement, (even if it was later in the trial held to be inadmissible) was obtained from Applicant implicating himself in the armed robbery attack. In the course of investigations, the stolen car of the Applicant was recovered for which he wrote a letter of appreciation earlier referred to.

On the established facts, the police must have certainly acted within the constraints they operate to have done all that was expected providing basis for the office of the

4th Respondent and Chief Law Officer of the Federation to have prosecuted the charge. The prosecution of the charge in the absence of any counter-evidence will appear to have validated the investigations of the police because if no prima facie case was disclosed in the case file, the **office of the A.G certainly would not have prosecuted the charge**.

I therefore incline to the view that the police acted reasonably within the time it took to conclude investigations and arraign Applicant in view of the serious nature of the offence of armed robbery. As rightly submitted by the Respondents, the applicant was not granted bail to prevent the possibility of his escaping and committing other crimes and also jeopardizing the investigations and possibly tampering with the other members involved in the alleged armed robbery.

Under the circumstances, the limits placed on applicants right to personal liberty in a case involving a capital offence has validity within the confines of the provisions of **Section 35 (7) (a), 41 (1), (2) (a) and 45 of the Constitution** earlier cited. Reading the provisions of the Police Act along with the provisions of sections 35(1)(c), 41(2)(a) and 45 of the Constitution, it is clear that where it is shown that the police acted reasonably within its powers under the Police Act in the investigation of a criminal complaint and with reasonable grounds to believe that a person had committed a criminal offence or is likely to commit one, the necessary curtailment of the fundamental rights of such a person cannot amount to a breach of that person's fundamental rights. See **Agbi V Ogbeh (2005) 8 NWLR (pt.926) 40; Christlieb Plc V Majekodunmi (2008) 16 NWLR (pt.1113) 324; Ibikunle V State (2007) 2 NWLR (pt.1019); Onah V Okenwa (2010) 7 NWLR (pt.1194) 512; I.G.P. V Ubah (2015) 11 NWLR (pt.1471) p. 405**.

On this point, I also call in aid the following cases: In **Ekwenugo V. FRN (2001) 6 NWLR (708) 171 at 185**, the Court of Appeal, per Fabiyi J.C.A (as he then was) opined instructively on follows:

"If there is reasonable suspicion that a person has committed an offence, his liberty may be impaired temporarily. In the same vein, his liberty may be tampered with so as to prevent him from committing an offence. In short, it is clear that no citizen's freedom from liberty is absolute. The freedom and liberty of a citizen ends where that of the other man starts."

Secondly, in **Alhaji Mujahid Dokubo-Asari V FRN (2001) LPELR – 958 (SC)**, the Supreme Court stated instructively with respect to the import of **Section 35(1)(c) and (7)** as follows:

> ***"The above provisions of section 35 of the Constitution leave no one in doubt that he section is not absolute. Personal liberty of an individual within the contemplation of section 35(1) of the Constitution is a qualified right in the context of this particular case and by virtue of subsection (1)(c) thereof which permits restriction on individual liberty in the course of judicial inquiry or where, rightly as in this case, the appellant was arrested and put under detention upon reasonable suspicion of having committed a felony. A person's liberty, as in this case, can also be curtailed in order to prevent him from committing further offence(s). It is my belief as well that if every person accused of a felony can hide under the canopy of section 35 of the Constitution to escape lawful detention, then an escape route to freedom is easily and richly made available to persons suspected to have committed serious crimes and that will not augur well for the peace, progress, prosperity and tranquility of the society. I find support in so saying from Irikefe JSC (as he then was) earlier pronouncement in the case of Echeazu V Commissioner of Police (1974) NMLR 308 at page 314."***

There is really nothing in evidence to support the allegation of arbitrariness in the arrest and detention of Applicant as I have demonstrated above. The bottom line really is that while the court seeks at all times to prevent abuse and any infraction of the rights of citizens, it cannot however be seen to shield anybody from criminal investigation by stopping a body empowered by law and the constitution to carry out such investigation. See **A.G Anambra V. Chris Uba (2003)13 N.W.L.R (pt.947)67.** There is clearly on the materials no credible proof of any wrongdoing by the 1st to 4th Respondents in the circumstances.

This now leads to the complaint of torture and dehumanizing treatment allegedly meted on Applicant while in the custody of the 1st – 3rd Respondents. The Applicant may have stated the horrendous treatment allegedly meted out on him but these were all denied so it became a matter proof by cogent, convincing and credible evidence. The Applicant clearly has the burden of proving these

allegations. It is trite law that he who asserts must prove. See **Section 131 (1) of the Evidence Act.**

Unfortunately on the materials before the court, no clear case was made or demonstrated showing or in proof of the allegations of torture and or beatings. It is difficult to situate or point out any averment or exhibit which goes to show that the Applicant was indeed tortured. The Applicant may have in the affidavit made allusion to an alleged confessional statement which he said he was forced to sign under duress and that this was confirmed during trial. I have carefully read the records of proceedings vide **Exhibits RLC2** and **RLC2A** and there is no where in those exhibits to situate any decision or Ruling of the **trial judge** on the alleged forced confessional statement which was held to be inadmissible on the basis of the beatings and torture meted out on Applicant by agents or officials of 1st – 3rd Respondents. In the absence of either the **Ruling** or **Record of Proceedings** streamlining precisely the findings of the trial court and the precise parameters of its Ruling on the admissibility of the alleged confessional statement of Applicant, the bare challenged averments of Applicant cannot be taken as proof of the contested assertions.

I have also similarly looked at the medical reports attached vide **Exhibit RLC 4A – RLC 6B** and it is again difficult to situate any demonstration of torture allegedly meted on Applicant by 1st – 3rd Respondents. The medical reports may have alluded to an ailment suffered by Applicant but there is nothing made out in the reports creating a nexus or link between the ailment and the alleged torture caused by 1st to 3rd Respondent. Put another way, there is nothing on the evidence showing that the ailment suffered by Applicant is a direct product of the beatings and torture he suffered at the hands of 1st – 3rd Respondents.

In the absence of credible evidence to support the allegation of torture, the contention must be taken as unproven. The only point to add is that the final judgment in the criminal trial vide **Exhibit RLC3** is not the Ruling on the admissibility of the alleged confessional statement. If the confessional statement was held to be inadmissible, it is obvious that it would not have had any value in the substantive judgment since the issue of its voluntariness and the attendant question of beatings and torture will not have much bearing at that point. As stated above, in the absence of the Ruling which would have shown clearly the findings

on the question of torture, bare challenged averments will not suffice, unfortunately.

This now then leads me to the allegation of malicious prosecution which is a tort and which would have been better ventilated via the conduit of pleadings and evidence. Having raised the allegation of malicious prosecution through the extant process, let us situate whether Applicant has made out a credible case to ground the complaint.

Let us take our bearing by situating its import and the essential elements. Malicious prosecution is a tort which enables a person who is subject of an unjustified court proceedings to seek a civil claim for damages against his prosecutur.

The Supreme Court in **Balogun V Amubikahun (1989) NWLR (pt.107) 18** streamlined the elements of malicious prosecution thus:

> ***"In an action for malicious prosecution, the plaintiff must plead and show by evidence that he was prosecuted by the defendant. In this regard, it must be shown clearly that the defendant set in motion against the plaintiff, the law leading to a criminal charge. Secondly, as a result of the prosecution aforementioned the plaintiff was discharged and acquitted, in short that the prosecution was determined in the plaintiffs favour. Thirdly, the plaintiff must plead and satisfy the court by evidence that the prosecution by the defendant was completely without reasonable and probable cause. Finally that the prosecution was as a result of malice by the defendant against the plaintiff. All the four elements above must be present for successful action for malicious prosecution, and the onus is always on the plaintiff to prove each and everyone of them."***

For an applicant to succeed in a case of malicious prosecution, he must plead and prove by credible evidence all the above elements. Now in this case and on the materials, the Applicant may have shown or proven that he was charged and acquitted but that alone does not suffice for purposes of proving malicious prosecution. A key element is that the Applicant must demonstrate clearly in evidence that his prosecution was without basis or actuated by malice. There must

be evidence of malice on the authorities. It is not a matter of guess work or speculation. Unfortunately on the entire trajectory of this case, there is no demonstration that the criminal charge which was prosecuted by the office of the 4th Respondent or the Attorney General was actuated by malice and how. There is nothing on the evidence showing that either the 1st to 3rd Respondents or the 4th Respondent knew the Applicant or have any particular reason to go after him. There is equally nothing in evidence disclosing any deliberate instigation or pressure from any person or quarters which propelled the filing of the criminal charge against Applicant and that it was done without reasonable or possible cause.

As stated by the 4th Respondent in their affidavit, a **prima facie case** was made out for conspiracy and armed robbery which was why the matter went into a full trial which they said they diligently prosecuted. There is no counter evidence impugning this assertion or narrative. The bottom line is that without a clear verifiable template situating these critical elements of malicious prosecution, the complaint or allegation stands undermined or compromised.

As a logical corollary, the contention by Applicant that the 4th Respondent, the A.G supervises the activities of 1st – 3rd Respondents and bears responsibility for the infractions of 1st – 3rd Respondent complained of must be discountenanced without much ado.

Firstly Section 150 of the 1999 Constitution creates the office of **A.G**. Secondly no authority, judicial or statutory was referred to streamlining the **"supervisory powers"** of the A.G. over the activities of the 1st – 3rd Respondent. The alleged supervisory powers cannot be exercised in a vacuum. Thirdly, the Applicant has not in his affidavit defined what role if any that the A.G's office had in his arrest, detention and the alleged torture meted out on him. If the A.G's office cannot be placed in any legal or operational architecture of 1st – 3rd Respondents, then any complaint of "non-challant supervision" would lack both factual and legal traction and would not fly.

Fourthly and finally, by the provision of Section 174 of the 1999 Constitution (As Amended), the Attorney-General of the Federation is conferred with unequivocal powers to institute and undertake criminal proceedings, in any court of law in Nigeria and to take over, continue or discontinue at any stage before judgment is

delivered, any such proceedings, that may have been instituted or undertaken by any person in a court of law. See **Akingbola V FRN (2012) 9 NWLR (pt.1306) p.511.**

The contention therefore that the 4th Defendant has supervisory powers over the activities of 1st – 3rd Respondents lacks validity completely and must be dismissed as lacking in substance.

All the allegations of Applicant which I have dealt with in ex-tenso above cannot be left to guesswork, 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.**

In the final analysis, the issue raised as arising for determination is answered in the negative. For the avoidance of doubt, all the reliefs or claims of Applicant on the alleged violation of his fundamental rights are not availing. The monetary and other related claims predicated on the alleged violation of his fundamental rights must equally fail. You cannot put something on nothing and expect it to stand is a well known legal axiom. The entirety of the case of Applicant is hereby accordingly dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

1. **Isioma Onanwuaza, Esq., for the Applicant holding brief of Faruk K. Khamagam, Esq.**

2. **Jamiu Agoro, Esq, with Mohammed Adediji, Esq. and Sarah Dafaan, Esq. for the 1st – 3rd Respondents.**

3. **Bashir M. Imam, Esq. for the 4th Respondent.**