

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 32

CASE NUMBER: SUIT NO. FCT/HC/M/10914/20

DATE: 18TH JANUARY, 2021

BETWEEN:

MARCUS ODIANOSE UGHULU.....APPLICANT

AND

- | | | |
|--|---|------------------|
| (1). ABIODUN MAKUNJUOLA
(DPO BWARI POLICE DIVISION) | } |RESPONDENTS |
| (2). MARGARET OLOHIREREH IDONIJE | | |
| (3). THE NIGERIA POLICE FORCE | | |
| (4). THE COMMISSIONER OF POLICE
FCT COMMAND | | |

APPEARANCES:

Adaeze Anah Esq for the 1st, 3rd and 4th Respondents.

Applicant in Court.

Eusebius Anyanwu

JUDGMENT

By a Motion on Notice dated 19th day of October 2020 and filed on 19th day of October 2020 brought pursuant to Sections 6(6)(A); 34(1A), 35

and 36(1) of the 1999 Constitution (as amended), Order 2 Rules 1, 2, 3, 4 and 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009; Articles 4, 6 and 7(1)(B) of the African Charter on Human and Peoples Rights (Ratification and Enforcement Act) and under the inherent jurisdiction of this Court; the Applicant herein prayed the Court for the following: -

- (1). A Declaration that the arrest and detention of the Applicant on the 18th of July, 2020 to the 21st July, 2020 by the Orders of the 2nd Respondent and under the instigation of the 3rd Respondent is unlawful, illegal and contravenes the Applicant's Rights to personal liberty and dignity of the human person, as enshrined in Sections 35 and 34 respectively of the 1999 Constitution of Nigeria (as amended).**
- (2). A Declaration that the act of unprovoked physical torture and assault by the 2nd Respondent on the Applicant which involves among others hitting the Applicant on his ear and use of uncouth and uncharitable words is an abuse of the Applicant's right and as such inhuman, degrading and illegal.**
- (3). A Declaration that the Applicant's act of signing off a company post dated cheque with booklet serial number 31390465 issued to the 3rd Respondent inside the office of the 2nd Respondent is an act done under duress and as such is illegal, void and contravenes the Applicant's right abinito.**
- (4). An Order restraining the 1st, 2nd and 4th Respondents, their officers and agents from further arresting and detention, threats of arrest, and detention of the Applicant based on the instigation of the 2nd Respondent or upon allegations bordering or relating to facts and circumstances of this matter.**
- (5). An Order restraining the 2nd Respondent by herself or through her agents, privies, or servants from presenting the post dated cheque to her bankers and to any other lawful authority forthwith.**

(6). The sum of Twenty Million Naira (20, 000, 000.00) damages, jointly and severally against the 1st, 3rd and 4th Respondents.

(7). The sum of Ten Million Naira (N10, 000, 000.00) damages against the 2nd Respondent.

And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances”.

The application is supported by a Statement pursuant to Order II Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, the Reliefs sought, an Affidavit of 21 paragraphs deposed to by Marcus Odianose Ughulu, the Applicant, some annexures, as well as a Written Address also dated 13th day of August, 2020.

Meanwhile, in opposition to the Motion on Notice, the 1st and 4th Respondents filed a Counter Affidavit of 20 paragraphs deposed to by Sergeant Idris Zekeri, a Police officer and the Investigative Police Officer attached to the Bwari Divisional Headquarters of the Nigerian Police Force in this case. Also in support of the said Counter Affidavit are annexures marked as Exhibits R1, R2, R3, R4, R5, R6, R7 and R8 respectively, as well as a Written Address dated 9th of November 2020.

Likewise, in opposition to the Motion on Notice, the 2nd Respondent filed a Counter Affidavit of 12 paragraphs deposed to by one Chika Edumosi, a litigation secretary with the firm of Victory Chambers, Counsel to the 2nd Respondent, some annexures marked as Exhibits A, B and C as well as a Written Address dated 3rd day of November 2020.

In response, the Applicant filed a reply on points of law on 6th day of November 2020, as well as a Further Affidavit pursuant to Order II Rule 7 and Order VI Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009. The Further Affidavit has 5 paragraphs deposed to by the Applicant Marcus Odianose Ughulu and it is supported by some unmarked annexures. Both the reply on points of law and the Further Affidavit were filed on the 6th of November, 2020.

Likewise in response to the 1st and 4th Respondents' Counter Affidavit to the Motion on Notice, the Applicant filed a Further Affidavit on 10th November 2020 comprising of 5 paragraphs also deposed to by the Applicant himself, ie Marcus Odianose Ughulu. Also in support is the Applicant's Reply on points of law brought pursuant to Order II Rule 7 of

the Fundamental Rights (Enforcement Procedure) Rules 2009, dated 10th November 2020.

Also, in further response to the Motion on Notice of the Applicant, the 2nd Respondent filed a Notice of Preliminary Objection brought pursuant to Order VIII and VI Rules 2 & 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, wherein the 2nd Respondent seeks the following reliefs:-

- “(1). An Order of this Honourable Court striking out the name the 2nd Respondent or dismissing this matter for want of jurisdiction and abuse of Court process.**
- (2). An Order of this Honourable Court striking out and or dismissing this matter as no leave of Court was sought to amend and or introduce new facts as contained in the Applicant’s Further Affidavit.**
- (3). And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances of this matter. It is supported by grounds predicating the Preliminary Objection, an Affidavit of 8 paragraphs deposed to by Chika Edumobi, a litigation secretary with the law firm of Victory Chambers, Counsel to the 2nd Respondent as well as a Written Address dated 9th November 2020.”**

Meanwhile, in opposition to 2nd Respondent’s Preliminary Objection, the Applicant filed a reply on points of law dated 13^h November 2020, whereof, the 2nd Respondent filed a Further and Better Affidavit in response to the Applicant’s Further Affidavit in support of Motion on Notice of the Applicant.

The 2nd Respondent’s Further and Better Affidavit is dated 18th November 2020 and it is supported by some unmarked annexures.

I will first of all consider the Notice of Preliminary Objection of the 2nd Respondent.

The grounds predicating same are as follows: -

- “(1). That the Honourable Court lacks jurisdiction to entertain this matter.**

- (2). ***That no leave of Court was sought and granted to amend the Motion on Notice or introduce new facts and exhibits as contained in the Applicant's Further Affidavit pursuant to Order VI Rules 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009.***
- (3). ***That new facts raised in Applicant's Further Affidavit are issues of law which require leave of Court to amend.***
- (4). ***That 2nd Respondent is entitled to Respond to the new facts and exhibits and contained in Applicant's Further Affidavit."***

In the Written Address in support of the Preliminary Objection, a lone issue for determination was formulated thus: -

"Whether this suit is proper before this Honourable Court".

While in the Applicant's reply address on points of law to the Preliminary Objection of the 2nd Respondent, a lone issue for determination is also formulated thus:-

"Whether the 2nd Respondent's application will succeed in view of the express provision of the Fundamental Rights Enforcement Procedure Rules 2009 as amended".

Now, I have carefully considered this Notice of Preliminary Objection, the Reliefs Sought, the grounds predicating same and the supporting Affidavit and Written Address.

In the same vein, I have also considered the Applicant's reply address on points of law.

Having carefully considered the submissions for and against this Preliminary Objection, I believe that the main ground of raising same is well captured in paragraph 5 of the supporting Affidavit, particularly paragraph 5 (a) thereof.

For instance sub paragraphs d, e and f provide as follows: -

“That the 2nd Respondent is entitled to Respond to the New facts and exhibit as contained in paragraphs 3, a, g, j of the Applicant’s Further Affidavit.”

That the 2nd Respondent will be prejudiced if this application is heard without giving him the privilege to respond to those new facts and exhibits raised in Applicant’s Further Affidavit in support of the motion.

That the 2nd Respondent won’t want to simply file another Further and Better Affidavit, as that would amount to endorsing the wrong procedure.”

Again in paragraph 6, it is deposed thus: -

“That this action is frivolous, vexatious, unmeritorious and amounts to a gross abuse of Court process.”

Meanwhile, in the Applicant’s reply on points of law, learned Counsel in his submission on the issue referred the Court particularly to Order II Rule 7 of the Fundamental Rights Enforcement Procedure Rules 2009. The said Rule provides thus: -

“The Applicant may on being served with the Respondent’s Written Address, file and serve an address on points of law within five days of being served, and may accompany it with a Further Affidavit”.

Now, I v’e noted the deposed paragraph in the 2nd Respondent’s Affidavit to this Preliminary Objection, particularly in paragraph 5, b, that no leave of Court was sought and granted to amend the Motion on Notice, or introduce new facts and exhibits as contained in the Applicant’s Further Affidavit filed on the 6th day of November 2020 pursuant to Order VI Rules 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009.

However, I’ ve taken judicial notice of the submissions of Counsel on both sides when the Preliminary Objection was moved on 17th November 2020.

The learned Counsel to the Applicant/Respondent Anyanwu Esq, responded by saying they were not adversed to the 2nd Respondent filing

a Further Affidavit in response to theirs, whereof this Court granted leave to 2nd Respondent to file a Further Affidavit.

Moreso, the said Further and Better Affidavit was duly filed on 18th November 2020 and has already been adopted.

In the circumstances thereof, it is my considered opinion, that the first leg of this Preliminary Objection has been overtaken by events. I so hold.

However, on the second leg of the 2nd Respondent's Preliminary Objection, learned Counsel argued in the Written Address that the allegation of instigation raised by the Applicant has to be established by credible evidence and that in the instant case the Court is urged to hold that there is no credible affidavit evidence supporting that allegation against the 2nd Respondent.

And that in the circumstances, 2nd Respondent cannot be held liable and submitted that the entire application lacks merit and urged the Court to strike out or dismiss the matter.

Reliance was placed on the case of ***GBAJOR V OGUNBUREGVI (1961) ALL NLR 853; FCMB V ETE (2008) 22 WRN 1.***

On this issue in the Applicant/Respondent's reply on points of law, learned Counsel urged the Court to take judicial notice of facts/law within its ambit with reference to Section 122 (2m) of the Evidence Act 2011, and also submitted that the Applicant/Respondent's response flows from the events in contention and the Counter Affidavit of the 1st Respondent adequately addressed the issues raised herein.

Learned Counsel also referred the Court to case of ***W.A.P.I CO. LTD V NIGERIA TOBACCO CO. LTD (1987) 2 NWLR (PT. 56) 299 at 306, Para D.***

Counsel finally urged the Court to refuse in its entirety the 2nd Respondent's applicant and dismiss same accordingly.

Therefore, having earlier found that the main ground predicated this application has been overtaken by events and also having carefully analyzed the substantive motion, the reliefs sought, the grounds predicated same, the statement in support, particularly paragraphs 6 – 19 thereof, and the exhibits annexed, it is my humble opinion that this

suit is one that is maintainable under the Fundamental Rights Enforcement procedure Rules.

That this Honourable Court has the requisite jurisdiction to entertain same and that it does not constitute an abuse of Court process. I so hold.

In view of this, I find that the Preliminary Objection lacks merit, same is overruled and accordingly dismissed in its entirety.

I now move to consider the main application.

Now from the statement of facts in support of the application, which is also contained in the Applicant's supporting Affidavit, it is the case of the Applicant that the dispute leading to the incarceration of the Applicant is a product of an alleged failed contract wherein the 2nd Respondent alleged that she made series of instalment payments amounting to the sum of **Twelve Million, Two Hundred Thousand Naira (N12, 200, 000.00)** to the Applicant to buy a land and construct six blocks of one and two bedroom bungalows within Bwari Area Council. The 2nd Respondent upon seeing what was built informed the Police that what is on ground is not commensurate with the monies she sent o the Applicant.

That the 2nd Respondent on the 17th of July informed the Applicant that she intends to sell the house and that she will be coming with a buyer on the 18th of July to pay for the property; and as such requested for the presence of the Applicant.

That sequel to that, the 2nd Respondent invited the men and officers of the 1st, 3rd and 4th Respondents who disguised as the buyer and waited for the arrival of the Applicant. That shortly after the Applicant arrived, the officers and agents of the 1st Respondent informed him that he was under arrest and that the 2nd respondent requests his presence.

That the Applicant demanded to know why he was arrested but the officers told him that his offence is one of abuse of trust and criminal breach of trust. That on getting to the Station, while the Applicant protested his innocence, the 1st Respondent descended on him hard on the ear with his palm and ordered his detention until the Applicant succumbed four days later . After signing a company post dated cheque in exchange for his freedom.

That hitting of the Applicant on his ears caused him very severe pains which necessitated his visit to the ENT Doctor at the General hospital in Kubwa on the 27th day of July 2020 after his release. That from the preliminary examination on the ear, it was evident that the Applicant was suffering from excruciating pains which necessitated his excuse from work for five days and subsequently drugs were prescribed therefrom.

That the incarceration of the Applicant by the 1st Respondent and their officers on the instigation of the 2nd Respondent caused the Applicant severe psychological trauma as he was detained unlawfully at the expense of his wife and children who are toddlers and who were without prior arrangement for their welfare denied their parental care due to exuberance of the 2nd Respondent who in reaction to all the pleas made to her boasted, of being highly connected beyond the imagination of the Applicant.

That as a result of the incarceration, the Applicant was made to sleep on the floor during his detention, further suffered severe pains in his ears and a protracted/delayed healing process. And that unless by the intervention of this Court, the Respondents especially the 2nd Respondent would persist in the unlawful instigation of the 1st and 3rd Respondents to further instigate the 1st and 3rd Respondents to further detain the Applicant. All these facts were clearly deposed to by the Applicant as seen in his supporting affidavit to this Motion on Notice.

In the Written Address in support of this application, learned Applicant's Counsel Eusebuis Anyanwu Esq, formulated two issues for determination thus: -

- “(1). Whether the detention of the Applicant and his maltreatment in the Police cell is not unlawful and in breach of the Applicant's right to personal liberty and dignity of the human person as guaranteed by Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).***
- (2). Whether the issuance of the post-dated cheque within the office of the 1st Respondent is not unlawful and in breach of the right of the Applicant”.***

In arguing issue one, learned Applicant's Counsel submitted that by virtue of Section 46(1) of the Constitution (supra) any person who alleges that any provisions of Chapter IV of the Constitution, has been,

is being or is likely to be contravened in relation to him may apply to a High Court in that State for redress.

That it is now settled law that the provisions of Chapter IV of the Constitution (supra) stand above the ordinary laws of the land, as such Courts are enjoined not only to frown at, but vehemently resist any attempt by any person, group of persons or organization, government or private to trample on the fundamental rights of citizens. Reliance was placed on the case of **RANSOME KUTI V A.G. FED (2001) FWLR (Pt. 80) 1637 at 1677.**

Again, Counsel further submits that Section 34 of the Constitution provides that every individual is entitled to respect for the dignity of his or her person and shall not be subjected to inhuman or degrading treatment. That considering the facts of this case, the arrest and detention of the Applicant over malicious and fabricated facts is unlawful and unconstitutional and contravenes Section 35(1) and Section 34 of the Constitution (supra). Reliance was also placed on the case of **DANFULANI V E.F.C.C (2016) 1 N. W. L. R (Pt. 1493) 223**, and the provision of Section 35(5) of the 1999 Constitution of the Federal Republic of Nigeria as amended.

Learned Counsel then submitted that in the instant case considering that there are Courts within 10 kilometre radius in the F.C.T, there was non-compliance with the provision of Section 35(5) of the Constitution by the 1st and 3rd Respondents.

On the right to personal liberty, Counsel submitted that such a right of an individual as against the State must be protected. Reliance was placed on the cases of **MINISTER OF INTERNAL AFFAIRS V SHUGABA (1982) 3 N.C.L.R, 915 at 976; EKANEM V A.I.G.P (2003) 10 NWLR (Pt. 1079) 110, per OMAGE J.C.A.; OKORAFOR NKPA V JACOB NKUME (2005) 1 NHRLR 199 at 140.**

on issue two, learned Counsel submits that it is trite law that the Police is not a recovery agent, and referred the Court to the case of **ARAB CONTRACTORS (OAO) V UMANAH (2013) ALL FWLR (Pt. 683) 1837 at 1977 per Mbasia; as well as the cases of IBIYE & 1 ANOR V GOLD (2013) ALL FWLR (Pt. 659) 102 at 1075; ORAKA V ORAKA & ANOR (2019) LPELR 47675 (CA).**

Learned Counsel finally submitted that the Respondents are all jointly culpable in infringing on the right of the Applicant and as such this Court is graciously urged to grant all the prayers of the Applicant as prayed.

Meanwhile, in the Written Address filed in opposition to this Originating Motion, Adaeze Anah Esq, Counsel representing the 1st, 3rd and 4th Respondents herein, also formulated two issues for determination namely: -

- “(1). Whether the Applicant has made out a case under the Fundamental Human Rights Enforcement Rules to entitle him the reliefs sought in this application”.**
- (2). Whether the suit was instituted mala fide and should be dismissed with Orders as to damages?”.**

On issue one, learned Counsel submitted that the infringement of fundamental rights is a question of fact and not of law Counsel cited the case of **OKAFOR V LAGOS STATE GOV'T & ANOR (2016) LPELR 41066 (CA) P. 28**, in support of her submissions.

Counsel submitted that in the instant case, Applicant upon his arrest and detention, was afforded the opportunity to apply for bail and be granted same upon the fulfilment of lawful conditions given to him by the 1st Respondent but could not fulfil them until the 21st of July, 2020, he applied for bail and got same on that day.

Counsel submitted further that an examination of the affidavits of the Applicant and that of the Respondents before this Honourable Court show that the Applicant's fundamental rights have not been breached as it is trite law that fundamental human rights of a person are not absolute and there are several instances or exceptions where such rights can be curtailed. Reference was made to Section 35(1) of the Constitution (supra) as well as the case of **DOKUBO ASARI V FRN (2009) NSCQLR (Pt. 11) Vol.37, 1145 at 1158**.

it is submitted therefore, that the 1st, 3rd and 4th Respondents being an agency and agents of the Federal Government are empowered by the Police Act and have powers to carry out certain duties including criminal investigation, arrest and detention and by virtue of these powers may curtail the fundamental rights of persons.

That in the instance case, the Applicant was arrested by the 1st, 3rd and 4th Respondents, over his involvement in Criminal Breach of Trust, wrongful clam and wrongful loss. That during investigations, he issued a dud cheque, that in the instant case the Applicant has not been able to establish any violation of his Fundamental Human Rights but seeks to use this application to escape criminal liability and prosecution for his wrong acts and for issuance of a dud cheque to the 2nd Respondent.

It is further submitted by the learned Counsel that this application is a mischievous attempt to pervert the course of justice, evade liability for his actions, stop the 1st, 3rd and 4th Respondents from carrying out their lawful duties as provided for by the Constitution of the Federal Republic of Nigeria and the Police Act. That it is an attempt to disenable the 2nd Respondent from seeking and obtaining legal redress for the wrongs done to her and Counsel urged the Court to disallow this and dismiss the application. Reliance was placed on the case of **ATTORNEY GENERAL OF ANAMBRA STATE V CHIEF CHRIS UBA & ORS (2006) 15 NWLR (Pt. 947) 50.**

Likewise, learned Counsel argued that in the instant case the Applicant must place sufficient materials regarding such infraction of his fundamental rights upon which the Court may find the alleged breach. Counsel relied on the cases of **FAJEMI ROKUN V (BCCF) NIG. LTD (2002) 10 NWLR (Pt. 774) 95 at 110 paras F – G; HASSAN V E.F.C.C. (2014) NWLR (Pt. 1389) 630, para B.**

It is submitted that where a law enforcement officer acts in accordance with the powers conferred on him by law and he remands the Applicant for investigation purposes and with the sole aim of charging him to Court as in this case was transferred to the appropriate authorities, this cannot amount to a violation of the Applicant's fundamental rights. Reliance was placed in the cases of **MCLAREN V JENNINGS (2003) 3 NWLR (Pt. 808) P. 470; JIM JAJA V C.O.P (2011) 2 NWLR (Pt. 1231), p. 375 at Paras B-C; OKONU V IMO STATE C.O.P (2001) 1 CHR P. 407 at 411.**

On issue two, learned Counsel submitted that this suit was instituted in bad faith and ought to be struck out in its entirety and that the Applicant whose fundamental rights have not been breached is not entitled to damages from the 1st, 3rd and 4th Respondents.

Learned Counsel submitted further, that the medical report tendered by the Applicant was prepared in anticipation of litigation and does not

substantiate the falsehood in the assertion that the Applicant was battered in the Police Station. That the Applicant was not beat up or harassed at the Police Station as it is not the norm in the Bwari Divisional Headquarters as the 1st Respondent who is a legal practitioner and currently a Doctorate candidate in law ensured strict compliance with the Administration of Criminal Justice Act is maintained in the Station; that same is a feat that gained him the recognition of the ACJA Committee of the FCT.

That further to that, the Applicant was granted the opportunity to be released on bail on the 1st of July in tandem with the provisions of the Constitution, but only fulfilled the conditions on the 21st of July and was granted bail on the same day. Therefore, Counsel argued that the right of the Applicant herein was not breached. Reliance was placed on the case of **SULEIMAN V C.O.P (2008) 3 NCC 334, per Niki Tobi JSC.**

On the issue of damages, Counsel referred the Court to the case of **ANAMBRA STATE ENVIRONMENTAL SANITATION AUTHORITY V EKWENEM (2009) 45 WRN (Pt. 1) P.1 at 12.**

Learned Counsel consequently submitted that the Applicant is not entitled to the reliefs and damages sought in this application since the 1st, 3rd and 4th Respondents have not violated his fundamental rights.

Counsel finally urged the Court to refuse the application and to dismiss the suit in its entirety.

Meanwhile, on the part of the 2nd Respondent, two issues for determination were formulated in the Written Address in opposition to this application by Ajare Noah Esq, 2nd Respondent's Counsel and they are as follows: -

- “(1). Whether the Applicant has established a case of violence to and violation of the Applicant's fundamental right to personal liberty against the 2nd Respondent or any of the Respondents.***
- (2). Whether in the circumstances of this case, the evidence led by the Applicant meets the required standard to sustain the claim for general, special and exemplary damages”.***

On issue one, learned Counsel submitted that in such cases, the burden is on the Applicant to establish a case of violation of his rights by way of proving the facts.

That in the instance case, the Applicant has not established any case against the 2nd Respondent or any of the Respondents to prove that he has indeed suffered any violation of his right to personal liberty by any act of the 2nd Respondent.

That the only act of the 2nd Respondent that seems to be constituted in the Applicant's claim as a violation of his fundamental rights is the Report/Petition made to the 1st Respondent's office alleging criminal fraud, deception against the Applicant's affidavit, as well as paragraphs 6, e, f, g, h of 2nd Respondent's Counter Affidavit.

It is argued by Counsel that every citizen of the Federal Republic of Nigeria has a right and a duty to bring to the notice of the Police either a report or a specific complaint against persons who are suspected or alleged to have committed an offence. Reliance was placed on the cases of **GBAJOR VOGUNBURUEGI (1961) 1 ANLR 853 at 853, per OVASHIE, CJ; F.C.M.B V ETTE (2008) 32 WRN 63 at 70 -71, per Owoade JCA.**

To this extent, learned Counsel submitted that the petition having been made within the ambits of the law, the petition of the 1st, 3rd and 4th Respondents against the Applicant on the allegation of criminal fraud, deception of the 2nd Respondent by the Applicant is not a violation of the Applicant's right to personal liberty.

That the invitation and subsequent interrogation of the Applicant at the FCT Police Command, Bwari Division at the instance of the petition of the 2nd Respondent was carried out as part of the procedures of the Police investigating crimes reported, and that same does not constitute violation of the fundamental right of the Applicant to personal liberty.

Reliance was made to the definition of "Arrest" on page 70 of Chambers 30th Century Dictionary as well as the meaning of "apprehension" on page 61 thereof; learned Counsel also cited the case of **UBN V OZIGI 1994(3 NWLR (Pt. 333) 385** in support of his argument on the issue.

That in the instance case, the Applicant was not arrested by rather invited to the Police Station. Counsel cited the case of **ATEZE V MOMO (1958) NRNLR 127**, in support of his submission.

However, learned Counsel submitted further that assuming but not conceding that the Applicant was arrested and detained by the 1st, 3rd and 4th Respondents, the 1st, 3rd and 4th Respondents acted with the legitimate exercise of their duty of investigating and detecting crime; and that the Applicant cannot sue for his fundamental rights. Reliance was placed on the cases of **OKANU V IMO STATE COMMISSIONER FOR POLICE (2001) 1 CHR 408 – 409; GBAJOR V OGUNBURUEGI (supra)**.

It is further submitted, that right to personal liberty under Section 35 of the Constitution of the Federal Republic of Nigeria, which the Applicant seeks to enforce is specifically subject to Section 35(1) in accordance with a procedure permitted by law.

Reference was also made to paragraphs 6a to r of the 2nd Respondent's Counter Affidavit.

It is submitted, however, that assuming without conceding that the 1st, 3rd and 4th Respondents acted beyond the borders of the law, the Applicant owes the duty of proving same by leading evidence in that respect. That in the same vein, the 2nd Respondent cannot be held responsible or be made to answer for any such conduct. Reliance was again placed on the case of **GBAJOR V OGUNBURUEGI (supra)**.

Counsel then urged the Court to hold that the Applicant has failed to establish any case of violation of his right to personal liberty and urged the Court to dismiss the said application in order to foster the ongoing investigation of the 1st, 3rd and 4th Respondents in respect of the allegations contained in the Report/Petition, in the interest of justice.

On issue two, which borders on the claim for award of damages, learned Counsel referred the Court to the definition of damages as held in the case of **MOBIL PROD. (NIG) LTD V UDO (2008) 36 WRN 53 at Pg 102, per Omokri JCA**.

Learned Counsel consequently argued while maintaining the submissions on issue one, that since the Applicant has failed to establish violation of his right by the Respondents he is not entitled to any damages. That it is trite that there must be a wrong committed before damages can be recovered in an action whether the wrong is a tort or a breach of contract. Reliance was placed on the case of

AJIGBOTOSHO V REYNOLDS CONSTRUCTION COMPANY LTD (2008) 39 WRN 73 at 82-83.

That assuming but not conceding that the Applicant had established a case of violation of the right to personal liberty, it is Counsel's contention that that award of damages is not contemplated by the provisions of 35(6) of the CFRN 1999 (as amended); since the said subsection provides for the award a successful aggrieved party is entitled to, only entities such a person to compensation and a public apology.

That the terms compensation is distinct from damages. Reliance was placed on the case of ***AJIGBOTOSHO V REYNOLDS CONSTRUCTION COMPANY LTD (supra) P. 82, Per Augie JCA (as he then was).***

Learned Counsel further argued that the Applicant herein is not entitled to any pecuniary sum nor is he entitled to sum of N10, 000, 000.00 (Ten Million Naira) as general, special and exemplary damages. That the Applicant also owes this Honourable Court the duty to lead evidence in his affidavit specifying that he suffered a loss of items, if any and since he also claims special damages, he must in his pleadings, specify items lost.

Reliance was placed on the cases of ***AKINKUGBE V EWULUM H (NIG) LTD (2008) 42 WRN 1 at 14 -15; AJIGBOTOSHO V REYNOLDS CONSTRUCTION COMPANY LTD (supra) at PP. 83 – 84; NEW (NIG) BANK PLC V VINCENT O. SONS LTD (2008) 47 WRN at 68.***

Learned Counsel further argued that in the instant case, the Applicant cannot put forth speculative reliefs, but rather must specifically plead the special damage alleged. Counsel again referred to the cases of ***NEW (NIG) BANK PLC V VINCENT O. SONS LTD (supra) at P. 55 at 68; OBINWA V C.O.P (2007) 42 WRN III, Per Owoade J.C.A.***

Counsel finally urged the Court to dismiss this application as same is misconceived, time wasting and an attempt by the Applicant to perpetuate a legal fraud by trying to prevent the 1st, 3rd and 4th Respondents from investigating the allegation of crime lodged against the Applicant and urged the Court treat same as an abuse of Court process and to dismiss the application with substantial costs to the 2nd Respondent.

Now, I have carefully considered this application for enforcement of fundamental rights of the Applicant, the statement in support of the application, facts necessitating the application, the Reliefs sought, the Affidavit in support, the Verifying Affidavit, the Exhibits annexed thereto as well as the Written Address filed in support of same.

In the same vein, I have thoroughly considered the Counter Affidavit of the 1st, 3rd and 4th Respondents, the Exhibits annexed and the Written Address filed in support as well as the Counter Affidavit of the 2nd Respondent, the Exhibit annexed thereto as well as the Written Address.

Likewise, I have given due consideration to the two Further and Better Affidavits of the Applicant in response to the Counter Affidavits of all the Respondents, as well as the Applicant's reply on points of law dated 6th November 2020, and the Further and Better Affidavit of the 2nd Respondent in Response to Applicant's Further and Better Affidavit (dated 6th November 2020). 2nd Respondent's Further Affidavit is dated 18th November 2020.

The Court appreciates all the issues formulated for the Court's determination by all the parties in this suit, and same in my view can be summed up and determined as one issue thus: -

“Whether the Applicant herein has made out a case to be entitled to the Reliefs sought?”

Now, the Applicant herein alleges breach of his right to personal liberty and dignity of his person, against the Respondents, in contravention of Sections 35 and Section 34 1(A) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

By the averments contained in the Supporting Affidavit of the Applicant, he was arrested by officers and men of the 3rd and 4th Respondents, on the 18th of July 2020, and detained in custody from the 18th to the 21st of July 2020 on the orders of the 1st Respondent, consequent upon a complaint made against him by the 2nd Respondent.

The Applicant also alleged that he was assaulted by the 1st Respondent during his incarceration at Kubwa Police Division which necessitated a visit to the ENT Doctor at the General Hospital Kubwa on the 27th day of July 2020.

That the said incarceration on the instigation of the 2nd Respondent caused him severe psychological trauma and left his family uncared for due to the exuberance of the 2nd Respondent who boasted of being highly connected beyond Applicant's imagination.

Section 46(1) of the CFRN 1999 as amended provides: -

“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”.

In the Counter Affidavit of the 1st and 4th Respondents, the 1st and 4th Respondents have denied the allegations made by the Applicant. In particular, it is averred in paragraph 8 thereof that the Applicant's arrest was lawful, within the ambits of the duties of the Nigeria Police Force and necessitated by the Applicant's dubious disposition in the business transaction between him and the 2nd Respondent.

In paragraph 12 thereof, it is further averred that the Applicant was not beaten or in any way harmed by any one at Bwari Divisional Headquarters as it is not the practice in the office and that of 1st Respondent has ensured that suspects and detainees at the Police Station are not physically beaten up but are given decent treatment at the Police Station.

Now, although it is admitted in paragraph 15 thereof that the Applicant was detained, it is averred that he was given the opportunity to gain bail upon fulfilment of the lawful conditions given to him but that he was not able to do so until the 21st day of July after which he was granted bail immediately. The 1st and 4th Respondents have attached exhibits R6 and R7 in support of these averments which are said to be criminal recognizance forms of Applicant's sureties.

From the averments contained in the Counter Affidavit of the 2nd Respondent particularly paragraph 6 thereof, it is clear that the basis for the arrest and detention of the Applicant by the 1st, 3rd and 4th Respondents is as a result of a report made by the 2nd Respondent against the Applicant on allegation of fraud, deception, scam and breach of trust arising from a business transaction between the 2nd Respondent and the Applicant.

As stated earlier, the 1st, 3rd and 4th Respondents did not deny detaining the Applicant although he was subsequently released on bail.

Now, this Court is not unmindful of the powers of the 1st, 3rd and 4th Respondents – under the law. However, in the exercise of such powers, rights of citizens must be protected as they are constitutionally guaranteed.

The question to ask here is whether the Applicant's right to personal liberty enshrined under Section 35 of the Constitution was breached by the 1st, 3rd and 4th Respondents?

By the provision of Section 35(1) of the CFRN 1999 (as amended) every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the cases stated therein this includes where a person is reasonably suspected of having committed a criminal offence (such as in this case). Therefore, in such a situation, that right to person liberty may be temporarily curtailed.

However, by the same provision, i.e Section 35 of the Constitution, two days is the time allowed for a suspect to be arrested and detained. Please see Section 35(5) of the CFRN (supra).

Therefore, where a suspect is arrested and detained for up to 48 hours, the law requires that he be brought before a Court of competent jurisdiction.

In the instant case as seen in the facts presented by the Applicant in his supporting affidavit, and even the admission of the 1st and 4th Respondents, the Applicant was in custody from the 18th to the 21st of July 2020. It is immaterial that he was offered bail and could not perfect the conditions for bail. What the law provides is that his detention should not exceed 48 hours where he should be released conditionally or upon such conditions as may be necessary. See the case of **JIM JAJA V C.O.P (2011) 2 NWLR (Pt. 123) 398.**

In this case, the detaining authority failed to comply with the constitutional provision and clearly violated the Applicant's right to his personal liberty as enshrined under Section 35 of the Constitution. I so hold.

On whether or not the 1st, 3rd and 4th Respondents have breached the Applicant's right to dignity of his person, the Applicant as stated earlier

alleges that he was assaulted by the 1st Respondent during his detention. A fact which was denied in the Counter Affidavit of the 1st and 4th Respondents.

I refer to paragraphs 10, 12, 13 and 14 of the Applicant's supporting Affidavit.

The Applicant has also tendered Exhibit A which is a medical report from ENT Unit of Kubwa General Hospital dated 11th August 2020. Wherein the report shows that he presented himself to the Unit on the 27th of July 2020 with complaints of severe left ear aches and was promptly examined and diagnosis of left otitis media was documented. The report is signed by one Dr. Otazi E. R.

The Applicant in addition, has also exhibited some hospital receipts as well as an excuse duty certificate dated 27th July 2020 all in support of his assertions.

Therefore, it is my humble view that the denial of the 1st and 4th Respondents on this issue does not hold water in the face of the overwhelming evidence presented by the Applicant.

Section 34 of the Constitution provides that every individual is entitled to respect for the dignity of his person and shall not be subjected to inhuman or degrading treatment.

Therefore, the act of slapping or hitting the Applicant by the 1st Respondent, is clearly an inhuman and degrading treatment in breach of Section 34 of the Constitution. I so hold. See the case of **NIGERIA CUSTOMS SERVICE BOARD V MOHAMMED (2015) LPELR – 25938 (CA)**.

With regard to the 2nd Respondent, the Applicant alleges that his arrest and detention was at the instigation of the 2nd Respondent. In paragraphs 6, 11, 17, 18 and 19 of the said Affidavit, the Applicant avers that: -

“That the dispute leading to my incarceration is a product of an alleged failed contract wherein the 3rd Respondent alleged that she made series of installed payments amounting to the sum of Twelve Million, Two Hundred Naira (N12, 200, 000.00) to me to buy a land for her and construct six blocks of one and two bedroom bungalow within Bwari Area Council. The

3rd Respondent upon seeing what was built informed the Police that what is on ground is not as commensurate with the monies she sent to me”.

That I remember that in the cause of investigation, the 1st Respondent ordered his men to take an estate valuer to the site to value the worth of the said property on ground upon which they came back and told me in clear terms that the monies spent wasn't commensurate with the monies I was given. It was at that point that the 2nd Respondent told me to have the buildings and refund her the money spent. As my health further deteriorated, I had to succumb four days after my incarceration, signed a company post-dated cheque in exchange for my freedom.

That as a result of the detention and unprovoked physical assault on me by the 1st Respondent and his threat on me to pay the 2nd Respondent or I will rot in his detention I quickly asked my wife to run home under the heavy down pour and get a company cheque that I wasn't authorized to sign alone.

That I needed to sign the post-dated cheque within the time suggested by the 1st and 2nd Respondents so I can regain my freedom as the pain and itches from my ears was becoming unbearable.

That at every given time prior to the threat by the 1st Respondent to permanently keep me in detention, I have always insisted on my innocence knowing quite well that the transaction in question is purely civil.”

I have considered the arguments made on behalf of the 2nd Respondent that the 2nd Respondent merely laid a complaint to the 1st, 3rd and 4th Respondents on the allegation of fraud, obtaining by false pretence and deception against the Applicant as well as to the Economic and Financial Crimes Commission (E.F.C.C.) attached and marked Exhibit C.

Consequently, it is well settled that every citizen of Nigeria has a duty and a right to report commission of a crime.

This position was re-instated in the case of ***ONAH V OKENWA (2010) 7 NWLR (Pt. 1194) P. 536, paragraphs E – H***, where the Court held thus:

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“....Every person in Nigeria who feels an offence has been committed has a right to report the Nigeria Police who are custodians of order in the society is exercised, the right shifts to the Police to exercise their statutory powers under section 4 of the Police Act”.

It was further held in ***ONAH G OKENWA (supra)*** at page 537, paras A – C thus: -

“The question whether a party instigated the Police against his adversary has to be established by evidence to claim instigation requires evidence as to the facts to support the allegation that the complaint was not made in good faith or that it is a fabricated story caused the Police to arrest and detain”.

In paragraph 3 f, g, h and I the Applicant further referred to facts necessitated the signing of a company post dated cheque and writing of an undertaking by his wife being dictated by one I. P. O Known as Sgt. Idris, and same having been done under duress.

Meanwhile, in the Further Affidavit of the 2nd Respondent in Response to the Applicant’s Further Affidavit to this Motion on Notice, the 2nd Respondent denies these assertions particularly in paragraph 10 of the said Affidavit.

And in paragraph 11 avers among other things that the Applicant’s petition to the Assistant Inspector General of Police through Exhibit C a letter dated 11th August 2020 is aimed at thwarting Police effort to investigate the petition of fraud, obtaining by false pretence reported against him.

Now, having thoroughly considered the Counter Affidavit of the 2nd Respondent, the Further Affidavit in response to the Applicant’s Further Affidavit, as well as the annexures attached to the further Affidavit of the 2nd Respondent, and other Exhibits annexed to 2nd Respondent’s Counter Affidavit, it is my considered opinion that the complain made by the 2nd Respondent with respect to her and the Applicant, was thus made in good faith, which would require investigation by the Police.

Therefore, having performed her civic duty in laying her complaint, how the Police conducts its investigation is no doubt beyond her control as an ordinary citizen. I so hold.

In the same vein, it is no doubt that it is the duty of the Police to decipher whether a matter is criminal or not.

Notwithstanding the fact that this matter emanated as a contract between the 2nd Respondent and the Applicant, the Police is still not precluded from conducting its investigation with regard to the said petition.

However, in doing so, it must be careful not to delve into issues that are purely civil in nature and well outside its statutory powers.

Therefore, inviting estate valuers to the site in question, asking Applicant's wife to write an undertaking and signing of a company post dated cheque under the glare of the detaining authority cannot by any stretch of the imagination be said to be voluntary. It was clearly made under duress.

In this respect, the 1st, 3rd and 4th Respondents had clearly acted outside the ambit of the law.

It has been held by the Courts time and again that the Police is not a collecting agency. On this premise, I refer to the case of **ARAB CONTRACTORS (O.A.O) NIGERIA LTD VS GILLIAN UMANAH (2012) 28 WRN (Pt. 189) Page 85, Ratio 8**, where the Court per SAULAWA J.C.A, held thus: -

“The Police...is not a collecting organization...and should not in any community of civilized people be used as debt or levy collectors, or in the resolution of disputes, amongst people...undoubtedly, the attitudinal disposition of the present appellant is to say the least despicable and rather reprehensive. The provisions of the Police Act, CAP P19, Laws of the Federation of Nigeria, 2004 (supra) are very much unequivocal as regard the duties and powers of the Police in maintaining peace, law and order in the society. Most certainly, debt collection or loan recovery is not within the purview of the statutory duties and powers of the Police”.

See also the case of **IBIYE & 1 OR V GOLD (2013) ALL FWLR (Pt. 659) 1024.**

Furthermore, let me state here that the 1st, 3rd and 4th Respondents have not only breached the provisions of Sections 34 and 35 of the CFRN 1999 (as amended) with regard to the Applicant's right, they've also clearly flouted the provisions of the Administration of Criminal Justice Act 2015.

Section 8(2) of the Act provides thus: -

“A suspect shall not be arrested merely on a civil wrong or breach of Contract”.

While Section 35(6) of the CFRN 1999 (as amended) provides as follows: -

“Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person and in this section, “the appropriate authority, or person means an authority specified by law”.

See also the case of ***AKUDO V GUNINNESS NIG PLC (2012) II WRN (Pt. 1 - 184) Pg. 129 at 132, Ratio 1.***

In conclusion therefore, I find that the Applicant herein has proved his case against the 1st, 3rd and 4th Respondents only to be entitled to the reliefs sought. The issue for determination is hereby resolved in favour of the Applicant against the 1st, 3rd and 4th Respondents and it is accordingly declared as follows: -

- (1). That the arrest and detention of the Applicant on 18th day of July, 2020 on the complaint of the 2nd Respondent on a purely civil matter is unlawful, illegal and contravenes the Applicant's rights to his personal liberty as enshrined in Section 35 of the CFRN 1999 (as amended).
- (2). The act of unprovoked physical assault by the 1st Respondent on the Applicant which involved hitting the Applicant on his ear is an abuse of the Applicant's right and is an inhuman, degrading and illegal treatment contrary to Section 34 of the CFRN 1999 (as amended).
- (3). The Applicant's signing off a company post-dated cheque with booklet serial number 31390465 issued to the 2nd Respondent

inside the office of the 1st Respondent is an act done under duress and as such is illegal, void and an infringement of the Applicant's right abinitio.

- (4). Relief no 4 seeks for a restraining order. However, the 1st, 3rd and 4th Respondents are statutorily empowered to investigate crimes and cannot be precluded from carrying on their duties if need be. Therefore, this relief fails and is accordingly dismissed.
- (5). The 2nd Respondent by herself or through her agents, privies, or servants are hereby restrained from presenting the post-dated cheque to her bankers and to any other lawful authority forthwith, having been illegally issued under duress.
- (6). The sum of **N1, 000, 00.00 (One Million Naira)** only is awarded jointly and severally against the 1st, 3rd and 4th Respondents.
- (7). The 1st, 3rd and 4th Respondents are to jointly issue a public apology to the Applicant for the breach of his fundamental rights to personal liberty and dignity of his person guaranteed under Sections 35 and 34 of the CFRN 1999 (as amended).

Signed:

Hon. Justice Samirah Umar Bature

ANYAWU ESQ:

We are sincerely grateful for this Judgment.

ANNA ADAEZE ESQ:

We are grateful.