IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA
SUIT N0: CV/2320/2019

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

MR. CHARLEY MORGAN UBAH ……………………....................................APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE
2. COMMISSIONER OF POLICE MAITAMA FCT
3. DSP ZAKARI
4. THE I.P.O. (NAME UNKNOWN)
5. MISS MATTAH AGBEBAKU

……….……..…RESPONDENTS

JUDGMENT

The applicant herein filed this originating motion with No. CV/2320/2019 pursuant to Order II Rule I of the Fundamental Rights (Enforcement Procedure) Rules 2009 and pray for the following:

a. A declaration that the arrest and detention of the applicant by the 1st – 4th respondents on the prompting of the 5th respondent at Lugbe and Maitama Police Station Command Maitama, Abuja on the 26th day of June, 2019 is a violation of his fundamental right to personal liberty under section 35 (1) of the 1999 constitution and Article 6 of the African Charter on Human and peoples Rights (Ratification and Enforcement) Act Cap. 10 LFN 1990.

b. N20,000,000= (Twenty Million Naira only) being exemplary damages against the respondents jointly and severally for the brazenly violation of the applicant's rights.

The grounds upon which the application is brought and the statement of fact are as follows:

a. The applicant, who is the Managing Director of his Company, employed Miss, Mattah Agbebaku as a consultant office staff.
b. In the course of her employment, she was owed one month salary due to the down turn in the economy and business of the company.
c. Instead of resorting to the courts, Miss. Mattah threatened to use her contacts at the police to deal with the applicant, should he not pay her salary promptly.
d. Miss. Mattah caused the police at Lugbe police station to arrest the applicant and he was transferred to Maitama Police Station (Area Command) where he was further harassed and detained and told to be regularly reporting at the police station to pay Miss. Mattah's salary.
e. Premised on the above, the applicant's blood pressure rose and he has been receiving medication to manage his high blood pressure and other related ailments;
f. As a result of the above paragraphs, the applicant's right has been brazenly violated by the respondents in the course of a civil transaction which the police ought not to have involved themselves in.

The application is supported by eight paragraphed affidavit deposed to by one Charley Morgan Ubah, the Managing Director and the applicant himself, and same was relied upon. It is also accompanied by a written address of counsel, which he adopts as his oral argument in support of the application, and urged the court to grant the reliefs sought.

The 1st – 4th respondents filed their counter affidavit in opposition to the application, and attached to the counter affidavit are the following documents:

1. EXH. "P1" which is a petition written by the solicitors of the 5th respondent to the Commissioner of Police, Nigeria dated the 26th June, 2019;
2. EXH. "P2" which is the statement of the applicant made at maitama Area Police Command, Abuja dated the 26th June, 2019;

3. Application for bail form filed by the surety to the applicant, one Mr. Boniface Ubah, for the release of the applicant on bail dated the 26th day of June, 2019, and
4. EXH. "P4" which is the interim police investigation report made by Area Crime Officer to the Deputy Commissioner of Police dated the 21st June, 2020.

The counter affidavit is accompanied by a written address of counsel which he adopts as his argument in opposition to the application.

The 5th respondent also filed her counter affidavit in opposition to the application, and this is in addition to a written address of her counsel, and attached to the counter affidavit is one document marked as EXH. 003.

It is in the affidavit of the applicant that sometime in the past he employed the 5th respondent as one of his staff and unfortunately owed her one month salary in the course of her employment, and that the 5th respondent got angry as she was owed her salary and threatened to use her contacts as a woman at the police station to deal with him, if he does not pay her salary promptly. That the 5th respondent made good her promise when she carried the police from Lugbe to arrest him from where he was transferred to Maitama Area Command and was detained against his will before he was eventually released on bail by his brother and was asked to be regularly reporting at the Police station to pay the said salary of Miss. Mattah. That his health deterioted as a result of the blood pressure increased and has been receiving treatment accordingly since then, and that he has suffered severe physical and mental torture as he was not allowed to take his drugs by the police in the course of the detention.

In his written address the counsel to the applicant raised two issues for determination to wit:

1. Whether by the tact of the humiliation, torture, arrest and detention of the applicant his rights to liberty and dignity of human person has been violated by the respondents?
2. Whether by the circumstances and facts of the case and by the facts of infractions, the applicant is entitled to both general and exemplary damages?

The counsel submitted that the arrest of the applicant by the respondents on the 26th June, 2019 over a civil matter is not only just an act of lawlessness, police brutality and irresponsibility but a severe infraction in the rights of the applicant to personal liberty contrary to section 35 (1) of the 1999 Constitution and Article 6 of the African Charter on Human and peoples Right (Ratification and Enforcement) Act Cap. 10 LFN 1990. He further argued that by virtue of section 35 (1) of the 1999 Constitution every person shall be entitled to his personal liberty except in certain condition which may abrogate same, which is not the same in the instant case as the applicant did not and has never committed any offence to warrant the exception, taking into cognisance that he is a separate legal entity from Pik Nigeria Ltd, and submitted that in the absence of any such contrary reasons, the respondents have no powers under the extant laws, by virtue of section 214 (2) (c) of the 1999 Constitution to the effect that the police shall have such powers and duties as may be conferred upon them by law, and specifically the Police Act Cap. 359 LFN 1990 and he referred to sections 23 – 30 of the Police Act. He submitted that in all these laws even within the contemplation of section 149 of the Administration of Criminal Justice Act 2015, none has provided that the respondents have the powers to act outside this enabling enactment, hence, to him, the police have acted contrary to the powers conferred by law, and such improper and unlawful exercise of the powers and duties puts the police officers outside the protection of the law and makes them liable for misconduct, and he referred to the cases of **R. v. Quin (1944) 10 WACA 243, Charity v. Leachingky (1947) AC 573 and Ladan v. Zaria Native Authority (1962) NRNLR 53**.

The counsel submitted further that it is the duty of the respondents to show that the arrest and detention of the applicant was done according to law, and he referred to the cases of **Ekpu v. AATED (1998) HRLC Agbaikoba v. DSS (1994) 6 NWLR (pt 351) 475 at 495 para C**. and to him, in the absence of any of the justifications provided under the provisions of section 35 (1) of the 1999 Constitution, the respondents acted arbitrarily and in brazen abuse of the powers conferred on them by the law. It is argued further that the powers of the respondents do not include the right to breach the rights of citizens protected by the constitution and the length of time for the detention is immaterial to the facts of unlawful detention, and he referred

to the cases of **Ajaboh v. Boyles (1984) 4 NLLR 830, Chief Chinedu Eze & Anor v. A. P. & 4 Ors (2007) CHE & 43**.

On the issue No. 2, the counsel submitted that from the facts of this case and the affidavit in support of the application, the applicant has been able to make out a case of arbitrary and malicious breach of his constitutional and Human Rights especially by virtue of section 35 (6) of the 1999 constitution, the applicant is entitled to general damages where his right have been violated, and exemplary damages can be awarded in any of the following circumstances:

1. Where there is an express authorization by statutes.
2. In case of oppressive, arbitrary or unconstitutional action by the servants of government.
3. Where the defendant's counsel has been calculated to make a profit for himself, and he referred to the case of Onuguruwa v. IGP (1991) 5 NWLR (pt 193) p. 593, and to him, the applicant's case falls under the 3 categories, and he cited the cases of **Elochin N. G. Ltd v. Mbachwe (1986) 1 NWLR (pt 4) 47,** and **Williams v. Daily Times Nig. Ltd (1990) 1 NWLR (pt 124),** and submitted further that the arrest and detention of the applicant is most reprehensible, arbitrary, malicious, oppressive, high handed, insensitive, reckless to the extreme and shows gross disregard for the rule of law, which this court should award damages against.

The counsel submitted that the arrest and detention of the applicant was motivated by malice and wickedness of the 5th respondent, and he referred to the case of Afri Bank Nig Plc v. Onyema (2001) 2 NWLR (pt 858) 654.

The counsel then urged the court to restate the principle of a Ubi Jus, Ubi Remedium that where there is wrong there is remedy, and this was enunciated in the case of **Asby v. a White (1703) CD RATM** which was cited with approval in the case of **Federal Ministry of Internal Affairs v. Shugaba (1982) NCLR 915.**

On the part of the 1st – 4th respondents, they stated in their counter affidavit, that the 2nd respondent through the Area Command Office Maitama, FCT Abuja received a written petition captioned "petition

against Schiver Charli Selsa/Morgan Ubah Charli Selsa for cheating, Deceit, False Pretence and Threat to Life, and that consequent upon their conviction of the need to investigate the petition the case was referred to the office of the 3rd respondents who is in charge of the Crime Investigation Branch of the Area Command Headquarters Maitama Abuja, and the case was referred to the deponent and his ready for investigation.

It is also stated that on the 26th June, 2019, the applicant was invited to the Area Command Headquarters, Maitama Abuja where he was shown the petition made against him and which the applicant read and admitted that he understood the petition. That the applicant sought to make statement in response to the petition, and in which he was offered statement form and he wrote his statement through the handwriting of his lawyer, but the applicant signed same, that upon the completion of his voluntary statement, that date being the applicant was released being the 26th June, 2019 and to report back on the 27th June, 2019, and the applicant never reported back and did not give reasons for not reporting.

It is stated that the applicant was neither detained nor asked to be regularly reporting at the police station to pay any salary of the 5th respondent as that aspect is civil in nature. That the preliminary investigation of the case led to the report suggesting, that the allegation of threat to life or criminal intimidation be referred to the appropriate quarters of the police that has territorial Jurisdiction since most of the investigations occurred in Lagos State, and that there is no record of his detention their Police Cell in Area Command Metro Maitama Abuja.

In his written address, the counsel representing the 1st – 4th respondents raised three issues for determination to wit:

a. Whether taking into consideration, all fact of this case, the respondents acted within the law?

b. Whether the applicant's rights have been infringed upon by the 1st – 4th respondents?

c. Whether the applicants are entitled to the reliefs sought?

On the issue in paragraph (a), the counsel submitted that by virtue of section 4 of the Police Act, the 1st to 4th respondents are expected to protect lives and properties, prevent and detect crime, apprehension of

offenders, among others, and he referred to the case of **Dr. Onagoruwa v. IGP (1991) 5 NWLR (pt 103) pg. 593 para 4**, and further submitted that the importance of the duty of the police is to detect crime and is their duty to investigate offenders for the commission of the crime, and where facts shows that a prima-facie case has been established, the offenders can be prosecuted , and he referred to the case of **Fawchinmi v. IGP (2000) 7 NWLR (pt 655) p. 481 at 503.**

The counsel submitted that by virtue of section 35 (1) (c) of the 1999 Constitution as amended, the 1st – 4th respondents can arrest and detain on reasonable suspicion of having committed a criminal offence, and from the deposition in paragraphs 9 -11 of the joint counter affidavit of 1st – 4th respondents, there is no doubt that there was a serious allegation of commission of offences for which the applicant was arrested and released on bail almost immediately. To him, the 1st – 4th respondents have the responsibilities of inviting investigating or arresting anyone reasonably suspected to have committed a crime, and therefore, conclude that the action of the 1st – 4th respondents are within the law and preview of duties of the police and urged the court to so hold, and he referred to section 214 of the 1999 constitution and section 4 and 23 of the police Act.

On issue in paragraph (b) the counsel submitted that by virtue of the facts contained in their joint counter affidavit, and from the facts before this Honourable court, the applicant's right have not been infringed upon as the applicant was arrested and released on bail within the time provided in the constitution, and the applicant cannot say that his detention is unlawful, and he referred to the case of **Ezeadukwa v. Maduka (1997) 8 NWLR (pt 578) 635.**

It is argued that the applicant, in this case did not prove that his arrest was unlawful since there are facts establishing that the laid down procedure of arrest was not followed, and that he has not proved that the person that invited him is not a police officer and that he was not taken to police station. That the applicant did not also prove how he has suffered physical and mental torture or was even detained or how his invitation and subsequent interrogation amount to violation of his fundamental rights under section 35 (1) of the 1999 Constitution as amended, and he referred to the case of **Adenuga v. Okelola (2008) All FWLR (pt 398) p. 292 at 305**, and he urged the court to hold that the right of the applicant has not been

infringed as he was invited on a reasonable suspicions of him having committed offence of criminal conspiracy and threat to life, interrogated and immediately released on bail, and he cited the case of **Igbo & Ors v. Duruke & Ors (2014) LPELR – 22816 CA**, and to him, it is only when the laid down procedure is not followed by the person effecting the applicant's invitation that he can allege that his arrest is unlawful and illegal and he referred to the case of **Ezeadukwa v. Maduka (supra) and Fajemiroku v. C. B. (C. I.) Nig. Ltd (2002)** 10 NWLR (pt 774) 95 to the effect that the applicant should not be shielded from an investigation, for to allow that is an interference of powers of the police given by the constitution and the police Act, and he referred to the cases of **A-G Anambra State v. Chief Chris Uba (2005) 15 NWLR (pt 947) p. 44 at 67 and Salihu v. Gana & Ors (2014) LPELR – 23069 (CA),** and he urged the court to hold that the right of the applicant has not been infringed upon by the 1st – 4th respondents.

On the issue in paragraph (c) the counsel to the 1st – 4th respondents submitted that granting the reliefs to the applicant will be against the spirit and interest of justice as the 1st and 4th respondents are empowered to detect crime, arrest criminal and detain same by the law, and the relief sought by the applicant is meant to discourage and prevent the 1st and 4th respondent from performing their lawful and constitutional duties, and he referred to the case of **Adewale Bello v. Ibwa (1991) 7 NWLR (pt 204).** It is argued that the courts have been enjoined never to allow issues of Fundamental right to hinder the investigation of crimes and he referred to the case of **A –G, Anambra State v. Chris Uba & Ors (supra),** and further submitted that since the applicant has failed to establish that his right has been infringed upon, he is not entitled to any compensation at all as the Honourable court is not a Father Christmas that will grant the relief that is suppositious as he has not established that his right has been infringed, and he cited the case of **Odogwu v. Attorney General of the Federation (1999) 6 NWLR (pt 456) 508 at 519**, and urged the court to dismiss the applicant's application.

The 5th respondent in her counter affidavit stated that she was an employee of the applicant based upon unwritten contract and that the applicant owes her six month salary which he could not pay inspite of repeated demands.

It is stated that the applicant requested that the 5th respondent should travel to Lagos to resume work at the Lagos branch of the company, and to her surprise the 5th respondent received an e-mail from the applicant on the 14th June, 2019 that her employment with the company has been terminated, and the applicant sent in e-mail requesting her to pack all her belongings out from where was hiring and it became more difficult for her to pack out as she could not raised fund to relocate to Abuja and the applicant continued to send threatening massages to her.

It is stated that on the 25th June, 2019 the applicant sent thugs to her in the apartment but luckily she was not at home, and the thugs changed the padlock on the door to the apartment and went away with the two generating sets, gas cylinder and other things they saw outside the apartment, and it was as a result of that she met her lawyer and a petition was written to the Commissioner of Police FCT Police Command, and it was upon the petition that the police invited the applicant for interrogations, and that the applicant was neither detained nor asked to regularly be reporting at the police station to pay salary to her because of the petition. In his address, the council to the respondent raised two issues for determination, thus:

i. Whether the applicant's right has been infringed upon by the respondents?

ii. Whether the applicant is entitled to the reliefs sought?

On the issue No. 1, the counsel answered the question in the negative, and submitted that from the facts deposed to by the 5th respondent in her counter affidavit, the applicant sent several life threatening messages to the 5th respondent and also sent thugs after her, and she became apprehensive that is why she decided to write a petition to the police to investigate the matter. To him, it is trite that arrest and detention of a person by law enforcement agencies within the confines of the law cannot be said to be infringement of the fundamental human right of such person, and he cited the cases of **Okonkwo v. Ogbogu (1996) 5 NWLR (pt 499) 142, and Gusan & Ors v. Umazurike & Anor (2012) LFELR 8000 (CA)** to the effect that the police has the duty to investigate the commission of a crime.

It is argued that for the allegation of unlawful arrest and detention to be established against the 1st and 4th respondents, the applicant need to

state the facts and the conditions of the unlawful arrest and detention which the applicant has failed to do in the instant case, and he cited the case of **Okonkwo v. Ezeonu & Ors (2017) LPELR -42785 (CD)** to the effect that the onus is on the person alleging a breach of his fundamental right to prove same by cogent and credible evidence. He further cited the case of **Ebo & Anor v. Okeke & Ors (2019) LPELR – 45090 (CA)** to the effect that if an applicant alleging infringement of his fundamental right to succeed, he must place before the court all vital evidence regarding the infringement or breach of such right, and submitted that failure by the applicant to support the allegation of infringement of his fundamental rights with cogent and credible evidence therefore has not discharged the burden, and therefore urged the court to strike out the applicant's application for it being unmeritorious with substantial lost.

On the issue No. ii, the counsel answered it in the negative, and submitted that the applicant having failed to establish that his right has been infringed by the respondents, he is not entitled to the reliefs sought, and he referred to the case of Odogwu v. A.G. Fed. (1999) 6 NWLR (pt 456) 508 and urged the court to dismiss the application.

Now, having summerised the affidavit of both parties and submission of their counsel, I deem it appropriate to formulate the following issue for determination, to wit.

> **Whether, having regards to the facts and circumstances of this application the applicant's right to personal liberty has been infringed by the respondents to entitle him to payment of exemplary damages?**

Thus, by the provisions of section 46 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), any person who alleges that any of the provision of chapter iv of the 1999 constitution has been, is being or likely to be contravened in any state in relation to him, may apply to High Court in that state for redress, it is on this, the applicant approached this court to enforce his right to personal liberty as is enshrined in section 35 (1) of the same Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides:

> "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.

See the case of **Diamond Bank Plc v. Opara (2019)All FWLR (pt 992) p. 321 at 346 paras. B –C.** In the instant case the applicant alleged that his Fundamental Right to personal liberty has been brazenly violated by the respondents in the course of a civil transaction which the police ought not to have involved themselves. By this allegation, it behoves upon the applicant to prove that his right to personal liberty has been infringed or violated based upon the principle of he who assert must prove. The way to prove is largely a question of fact and does not so much depend on the arguments of counsel, this is because it is the fact of the matter as disclosed in the affidavit supporting the application that are to be examined, analysed and evaluated to see if the fundamental right of the applicant has been infringed or otherwise dealt with in a manner that is contrary to the constitution and other fundamental rights provisions regarding an individual. See the case of **Obla v. E. F. C. C. (2019) All FWLR (pt 991) p. 41 at p. 56 paras. F – H.**

It is the allegation of the applicant that one Miss. Mattah made good her promise when she caused the police from Lugbe to arrest him and from there he was transferred to Maitama Police Station (Area Command) and was detained against his will of and was eventually released on bail to his brother (Dr. Boniface Ubah) and was asked to be regularly reporting at the police station to pay the said salary of the 5th respondent, and as a result of that his health deteriorated and his blood pressure increased and has been receiving treatment accordingly since then. It is also his allegation that he has suffered severe physical and mental torture as he was not allowed to take his drugs by the police in the course of the detention. See paragraphs 5, 6 and 7 and 8 of the affidavit in support of the application.

It is the response of the 1st – 4th respondents in paragraph 9 (a) (b) (c) (d) (e) and (f) that the 2nd respondent received a written petition against the applicant for cheating and treat to life, and as there was need to investigate the petition, it was referred to the office of the 3rd respondent for investigation, and that the applicant was invited to the Area Commander's office at Maitama, Abuja and was shown the petition and he decided to write a statement which his lawyer wrote in a statement form and the applicant signed. That on the same day, the applicant was released on bail to report back on the 27th June, 2019 and the applicant never reported back.

The 1st -4th respondents in paragraph 10 of their counter affidavit denied detaining the applicant and also denied asking the applicant to be reporting at the police station regularly or to pay the salary of the petitioner, and in paragraph 12 it is deposed that there is no reason that the applicant was detained in the police cell in Area Command Office.

The 5th respondent in her counter affidavit stated that she wrote the petition through her solicitor to the office of the Commissioner of Police FCT, Abuja, and upon the receipt of the petition, the police invited the applicant for investigation, and her complaint was based upon the threat to her life and not with respect to her payment of her salary.

It is the contention of the counsel to the applicant that by virtue of the provisions of section 35 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) every person shall be entitled to his personal liberty except in certain conditions, and to him, the applicant did not and has never committed any offence to warrant falling into the exceptions, and therefore, in the absence of such contrary reasons, the respondents have no powers under the provisions of section 214 (2) (c) of the Constitution, sections 23 – 30 of the Police Act and section 149 of the Administration of Criminal Justice Act 2015 to act as they acted and they are liable for misconduct as the arrest and detention were done not in accordance with the law. While it is the contention of the counsel to the 1st and 4th respondents that they have acted within the law as they are empowered to protect the lives and properties and to prevent and defect the commission of a crime and to apprehend and prosecute offenders, and they relied on section 23 of the Police Act. It is also their contention that the constitution empowers them to arrest and detain persons on reasonable suspicious of having committed an offence, and therefore, to them, the action of 1st – 4th respondents are within the law, and they also relied upon sections 4 and 23 of the Police Act and section 35 (2) (c), 214 of the constitution.

The question that arose which needs an answer is that, whether the right to personal liberty is an absolute one? In giving an answer to this, I have to have recourse to paragraph (c) of subsection I of section 35 of the Constitution which provides:

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;**

    (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"

By the above quoted provisions, the area of concern is "upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent him from committing criminal offence". And by the above quoted portion of the paragraph (c) subsection (1) of section 35 of the Constitution, it can be inferred that a person can be deprived of his liberty upon reasonable suspicious of him having committed an offence, and therefore, the right to personal liberty is not absolute. See the cases of **Obla v. E. F. C. C. (2019) All FWLR (pt 991) p. 44 at p. 57 paras. E – G,** and **Aleshe v. F. R. N. (2018) All FWLR (pt 952) p. 52 at pp. 85 – 87 paras. G – B. and p. 88 paras. A – C**. In the instant case where there is reasonable suspicion of the applicant having committed an offence, certainly he can be deprived of his personal liberty.

Let me consider the provision of section 214 (2) (b) of the constitution as referred to by the counsel and which provides:

(2) Subject to the provisions of this constitution.

(b) the members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law. "

By the above quoted provisions, it could be inferred that the police shall have powers and duties as may be conferred upon them by law, and it is on this, I have to refer to section 4 and 31 of the Nigeria Police Act 2020 which provide:

" 4. The police Force shall:

a. Prevent and defect crimes, and protect the rights and freedom of every person in Nigeria as provided in the Constitution, the African Charter on Human and Peoples Right and any other law;

b. Maintain public safety, law and order;

c. Protect the lives and property of all persons in Nigeria

"31". Where an alleged offence is reported to the police, or a person is brought to the police station on the allegation of committing an offence, the Police shall investigate the allegation in accordance with due process………"

By the above quoted provisions of the Nigeria Police Act 2020, it can be inferred that the police are empowered to investigate into the allegation of commission of a crime by any person by following due process of law.

Now, it is in the affidavit of the applicant that the 5th respondent caused the police to arrest him, and while the 1st – 4h respondents stated that the applicant was invited to the office of the Area Commander at Maitama. The question that also arose and which needs an answer is whether the arrest/invitation amounts to infringement of fundamental right? Certainly the answer is in the negative, this is because of the provisions of section 35 (1) (c) of the constitution as the applicant is suspected of having committed an offence based upon the petition lodged against him by the 5th respondent and coupled with the fact that they are empowered to investigate the alleged commission of any crime. See the case of **Ozah v. E.F.C.C. (2018) All FWLR (pt 953) p. 225 at pp. 252 – 253 para. B-B, and pp. 253 – 254 paras. G – G Per Bada JCA.** In the instant case also, and by EXH P1 attached to the counter affidavit of the 1st – 4th respondent it can be seen that there is a complaint written against the respondent, and more particularly in paragraphs 21 and 22 of the petition made to the police by the 5th respondent in the petition, the 5th respondent alleged that the applicant has carried out threat to her life, and which is considered as a criminal offence, and therefore, the police has the right to invite the applicant in the course of investigating the allegation made by the 5th respondent. See the case of case of **Ozah v. E.F.C.C. (supra) Per Bada JCA**:

"By the provision of section 4 of the Police Act, the police have the duties to detect crime and implicit in that duty is the right to investigate all complaints received from any person. Furthermore, the security agencies have wide powers with respect to criminal investigations though within the ambit of the law. The above provision

was given judicial recognition by the Supreme Court in the case of Onyekwere v. State (1973) 5 SC I, where it was held among others thus:

If a complaint is made to the police that an offence has been committed, it is the duty to investigate the case not only against the person about whom the complaint has been made, but also against any other person who may have taken part in the commission of the offence".

Thus, it is in the affidavit of the applicant that he was eventually released on bail to his brother, however, he did not state the period upon which he was detained by the police, thus the applicant failed to prove, however, it is the affidavit of the 1st – 4th respondents that upon the completion of the applicant making his voluntary statement the same day, he was released on bail. The bail application was exhibited and attached to the counter affidavit and was labeled as EXH. P3. In it, the date was 26th June, 2019, and then is in tandem with the deposition of the applicant that he was released on bail by the police even though he did not mention the period upon which he was taken on bail on the 26th of June, 2019, the same day he was arrested or invited. In this circumstance, I have to refer to section 35 (4) of the Constitution of the Federal Republic of Nigeria which provides:

"(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before court of law within a reasonable time" By this, it can be inferred that where the liberty of a person is deprived, then he shall be brought before a court of law within a reasonable time. By the provisions of section 35 (5) a reasonable time means:

a. In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day and
b. In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

The combined effect of section 35 (5) of the Constitution and the paragraph 5 of the affidavit in support, it can be inferred that the applicant

was invited/arrested at Lugbe and was transferred to the office of the Area Commander at Maitama, and to this the provision of section 35 (5) paragraph (a) applies in the present circumstances, that is to say, there are courts of competent jurisdiction within the radius of forty kilometers. More so, the applicant was released on the same day as were arrested/invited to the station as per the bail application exhibited. I therefore, so hold that the applicant failed to state in his affidavit the period upon which he was at the Area Command Office, so he could not be able to prove that the arrest was unlawful. See the case of **Assistant Inspector General of Police v. Ezeanya (2016) All FWLR (pt 830) pp. 1371 paras. C – D Per Bada JCA**:

> **"It is the law that when a person is arrested or detained by police in connection with an allegation of reasonable suspicion of a crime, and they are actively pursuing investigation of the matter, the duty of the police in the appropriate case is to offer bail to the suspect and/or bring him before the court of law within one day or two days as the case may be, normally under whatsoever section of the law he might to have been charged".**

In the instance case, the applicant was granted administrative bail by the police on the same date, being the 26th of June, 2019, and he was released the same date. In the circumstances, I therefore so hold that the applicant has failed to substantiate his claim that the 1st – 4th respondents have infringed his fundamental right to personal liberty and also that the applicant has not proved that the police have acted not in accordance with the law.

The applicant alleged that the police involved themselves in a matter that is civil in nature, that is to say, they involved themselves in a debt recovery matter. The Nigeria Police Act 2020 in section 32 (2) provides in essence that no person shall be arrested merely in a civil wrong or breach of contract. See the case of **Obla v. E. F. C. C. (supra)** where the court held that the Economic and Financial Crimes Commission has the statutory power to investigate arrest, interrogate search and detain the suspect. The only qualification and a very competent one at that is that the power must not be misused or abused. See the case of **Diamond Bank Plc v. Opara (supra) Per Bage JSC at pp. 343 – 345 paras. F – G**. It is on the above premise, and in the instant case, I have to refer to the EXH. P1 attached to the counter affidavit of the 1st – 4th respondents, which is the petition made

by the 5th respondent, and more particularly in paragraphs 21 – 22 of the petition, where it is so glaring that substance of the petition is that of threat to life made by the applicant against the 5th respondent. I therefore, so hold that complaint made in the petition is that of threat to life and not in breach of contract, and therefore, the arrest/invitation extended to the applicant by the 1st – 4th respondents is in order.

Now, whether the 5th respondent is liable for breach of the applicant's fundamental right to personal liberty? The answer is in the negative. See the case of **Bassey v. Afa (2010) All FWLR (pt 531) p. 1481 at pp. 1500 -1501 paras. H –A** where the Court of Appeal, Calabar Division held that where a citizen reports a matter to the police or any law enforcement agency for the exercise of their discretion including the discretion to investigate, neither the police nor the citizen would be liable for the breach of a right of arrest if the report to the police discloses a prima facie case against the applicant. In the instant case it is never shown by evidence that the investigation has been concluded let alone for this court to find out whether the report or petition has disclosed a prima facie case, and to this, I therefore so hold.

On the whole and based upon the above considerations, I hold the respective view that the applicants right to personal liberty has not been infringed in favour of the respondents.

The next question is whether the applicant is entitled to payment of exemplary damages?

Thus, exemplary damages are awarded when a defendant's unlawful act was malicious, violent, oppressive, fraudulent, wanton or grossly reckless. They are awarded, both as a punishment and to set a public example. They reward the plaintiff for the horrible nature of what he went through. Although often requested, exemplary damages are seldom awarded. This is the position of the Supreme Court in the case of **First Bank Nig Plc & 4 Ors v. A-G of the Federation (2019) All FWLR (pt 1015) p. 288 at 327 paras. B – C.** In the instant case and as I said earlier that the applicant has not proved by evidence that the police have acted not in accordance with the law for inviting him to the office of the Area Commander at Maitama, and therefore, could not prove malice or high handedness on the part of the police, and to this, I therefore, so hold.

The claim of the sum of N20,000,000= as exemplary damages failed in the present circumstances.

Based upon the above considerations, I found that the respondents are not liable to the claim, and the reliefs are therefore refused, and the application is dismissed accordingly.

Signed
Hon. Judge
05/07/2021