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

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: FCT/HC/CV/180/2021

BETWEEN:

PROFESSOR JOHN KESTER……APPLICANT

AND

1. **THE INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION**
2. **PROFESSOR BOLAJI OWASONOYE**
3. **HAKEEM LAWAL (D.O)**
4. **SHEHU DAUDA (S.D.D)**

…..RESPONDENTS

JUDGMENT

The applicant herein filed this motion on notice with no. CV/180/2021 brought pursuant to Order 2 Rules 1 and 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, section 36 (5) & (6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and under the inherent jurisdiction of this court and prays for the following:

1. A declaration that the arrest and detention of the applicant by the agents and officers of the respondents from 16th September, 2020 to 21st September, 2020 on the instigation and promptings of the 2nd respondent without arraigning the applicant before a court of law is a violation of his fundamental human rights to personal liberty and presumption of innocence as guaranteed under sections 35 and 36 (5) of the 1999 constitution as amended.
2. A declaration that the detention of the applicant from 21st September, 2020 to 5th October, 2020 on the order of the Chief Magistrate Court Zone 2, Wuse, Abuja for fourteen (14) days without there being any complaint or petition written against the applicant or any complainant or victim coming forward to justify his continuous detention in the cell of the 1st respondent

was a violation of the applicant's fundamental rights to his personal liberty provided for under section 35 of the 1999 constitution as amended.

3. A declaration that the procurement of an extension of the detention order of the applicant from the Chief Magistrate Court Zone 2, Wuse, Abuja for another seven (7) days from 5th October, to 12th October, 2020 was arbitrary, oppressive and unconstitutional in the absence of either a complaint, petition or nominal complainant or victim of the offences allegedly committed by the applicant.
4. A declaration that the continuous detention of the applicant from 12th October, 2020 to 27th October, 2020 (when he was eventually released on bail after spending 43 days in detention) without an order of court and without arraigning him before any court for any offence was a violation of his right to personal liberty, fair hearing and presumption of innocence guaranteed under sections 25, 36 (1) & (5) of the 1999 constitution as amended.
5. An order of perpetual injunction restraining the 1st respondent whether by itself, agents, privies, assigns, officers, detectives, team leaders, investigating officers or by whatever name called from further inviting, arresting or detaining the applicant on the whims of the 2nd respondent as the chairman of the 1st respondent in his personal capacity in relation to any or whatever offences he reasonably believes the applicant has committed against him or his cronies. The 2nd respondent's conduct is not justified in the arrest and detention of the applicant, having failed to act in good faith but maliciously.
6. A declaration that the freezing of all the applicant's bank accounts with Zenith Bank, Fidelity Bank, Ecobank and United Bank for Africa (UBA) using the applicant's BVN number without obtaining a court order is a violation of the applicant's fundamental rights.
7. A declaration that the seizing of the applicant's vehicles/properties consisting of his Mercedes Benz, Range Rover Jeep, Lexus, Land Cruiser, BMW Z3 and Hilux vehicles, cheque books, laptops, flash drives, phones, computers, files,

documents, blank cheques, CCTV camera, international passports etc without having obtained a court order is a violation of the applicant's fundamental rights.

8. An order of the Honourable Court unfreezing or directing the respondents to unfreeze all the applicant's bank accounts frozen by the respondents, the freezing having been done, arbitrarily, maliciously and ultra vires their duties
9. An order of the Honourable court releasing or directing the respondents to release all the properties seized by the respondents during the search of the applicant's house and office, the seizure being unlawful without having obtained an order of court.
10. The sum of N500,000,000.00 (Five Hundred Million Naira) only as exemplary damages against the respondents for the violation of the applicant's fundamental rights, the conduct of the respondents being oppressive and unconstitutional.
11. The sum of N50,000,000.00 (Fifty Million Naira only) against the respondents being the cost of this action.
12. And for such further or other orders as the Honourable Court may deem fit to make in the circumstances.

The motion is supported by forty-six paragraphed affidavit deposed to by the applicant, and attached to it are some documents marked as EXH. "A", "B", "C", "D", "E", "F", "G1", "G2", "G3", "G4", "H1" and "H2". It is also supported by a written address of counsel which is adopted as the argument in support of the application.

The court, by its own order and pursuant to the application for extension of time, granted an order for the respondents to file their counter affidavit and a written address in opposition to the applicant, and the respondents filed their counter affidavit of eight paragraphs dated 9th day of March, 2021 and attached to the counter affidavit are some documents marked as EXH. "ICPC 1", "ICPC 2", "ICPC 3", "ICPC 4", "ICPC 5", "ICPC 6", "ICPC 7", "ICPC 8", "ICPC 9", "ICPC 10", and this is in addition to a written address of counsel which is also adopted as argument in support of the counter affidavit and in opposition to the application.

The applicant filed a further and better affidavit and attached are some documents marked as EXH. "FBA A", "FBA B", "FBA C", "FBA C1", "FBA D", "FBA E", "FBA F", "FBA F1", "FBA F2", "FBA G", and "FBA H", and this is in addition to a reply on points of law in furtherance of the better and further affidavit.

The respondents filed a notice of preliminary objection with no. M/2371/2021 pursuant to Order VIII Rules 1 & 2, Order IX Rules 1 (i) & (ii) of the Fundamental Rights (Enforcement Procedure) Rules 2009, and under the inherent jurisdiction of this court and pray for the following orders:

1. An order of court striking out the name of the 2nd, 3rd and 4th respondents from this suit for being incompetent parties.
2. An order striking out the entire suit as this court cannot exercise jurisdiction on the suit as presently constituted.
3. And for such further or other orders as the Honourable Court may deem fit to make in the circumstances of this case.

The grounds upon which the notice of preliminary objection is filed are that the 2nd, 3rd and 4th respondents/applicants are protected from legal proceedings for any act or omission done in good faith in the discharge of their duties under the Corrupt Practices and Other Related Offences Commission Act, 2000, and that this suit is not initiated by due process of law.

The notice of the objection is supported by a written address of counsel.

The applicant in the substantive application, filed a written address in opposition to the respondents' notice of preliminary objection filed on the 9th day of March, 2021.

The respondents, in the main application, also filed a reply on points of law to the applicant's written address.

Thus, having the parties joined issues in both the main application and the notice of preliminary objection, it behoves upon this court to determine, first and as a priority, the issues raised in the preliminary objection before delving into the main application. I refer to the case of **BI-Courtney Ltd V. A.G., Federation (2020) All FWLR (pt 1054) p. 263 at 294 paras. D-H** where the Supreme Court held that a court is competent to exercise its jurisdiction on the following three principles:

(a) When the subject matter of the dispute is within the court's jurisdiction;
(b) When there is any feature in the case that prevents the court from exercising its jurisdiction; and
(c) Whether the case comes before the court initiated upon due process of law and upon fulfillment of any condition precedent for it to exercise its jurisdiction.

In the instant case, this court has the jurisdiction to determine the issues raised in the notice of preliminary objection. This is because an issue of competency of the respondents as parties to this suit has been raised, and this is a feature that can prevent the court from exercising its jurisdiction over the respondents, if the argument to that effect is upheld, and there is no doubt that this court has the jurisdiction to entertain this suit. See also the case of **Adeyemi V. V.O. Achimu/A.B. Ltd (2016) All FWLR (pt 814) p. 146 at 162 paras. F-G** where the Court of Appeal, Kaduna Division held that where a preliminary objection is raised to the hearing of appeal or any process, it is incumbent upon the court to determine such objection before proceeding further in the matter, and the obvious reason for there is that whether the jurisdiction of the court is challenged, the objection has the tendency to terminate the life of the suit or appeal. In the instant case and based upon the above premise that I have to deal with the issues raised in the preliminary objection.

In his written address, the counsel to the respondents/applicants raised the following issues for determination, to wit:

1. **Whether by the provisions of section 65 of the Corrupt Practices and Other Related Offences Act 2000, the 2nd, 3rd, and 4th respondents are competent parties for adjudication in this suit?**
2. **Whether the suit of the applicant was properly commenced vide a motion on notice?**

On the issue No. 1, the counsel submitted that every officer of the Independent Corrupt Practices and Other Related Offences Commission enjoins a qualified statutory immunity from Civil suits as provided under section 65 of the I.C.P.C. Act 2000, and unless allegation of bad faith is made, an officer in the carrying out his duties is protected from legal proceedings as provided under section

65 of the Act, and the counsel took his time to quote the provision of the Act, and to him, by the provisions of the Act the 2nd, 3rd and 4th respondents are immune from this suit because the applicant has failed to adduce evidence or facts to establish bad faith to show that the 2nd respondent is not entitled to the immunity. The counsel cited the case of **FUT Minna & Ors V. Okoli (2011) LPELR 9053 (CA)** to the effect that the law is that a plaintiff who alleges that a public officer acted in bad faith and abused his authority or office owes the burden of proving such allegations to show that the defendant had abused his position, that he acted with no semblance of legal justification, but not evidence to show that the officer may have been overzealous in carrying out his duties, or that he acted in error of judgment or in honest excess of his responsibility. In the above case, abuse of office is described as a use of power to achieve ends, to show undue favour to another or to wreck vengeance on an opponent.

It is further submitted that there is nowhere in the entire 46 paragraphed affidavit of the applicant where any action or in action of the 2nd, 3rd and 4th respondents amounting to bad faith towards the applicant was evidenced, and this the applicant has failed to establish any of these facts in relation to the activities of the 2nd, 3rd and 4th respondents, and therefore, the claims against them are grossly misconceived, speculative and lacking in merit and ought to be dismissed as averments not substantiated with evidence, and he cited the case of **Ogoejeofo V. Ogoejeofo (2006) 3 NWLR (pt 966) at 205,** and he then urged the court to strike out the names of the 2nd, 3rd and 4th respondents.

On the issue No. 2, the counsel to the respondents submitted that it is incontrovertible that fundamental rights actions are specie of remedies obtainable under the Fundamental Rights (Enforcement Procedure) Rules 2009, and that the applicant has to approach the court through the prescribed mode for obtaining such reliefs as clearly spelt out under the applicable rules. To him, Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 made it abundantly clear as to how an application for the enforcement of such rights should be made, and while Order 2 Rule 1 of the Rules of this court provides for acceptable originating process before this

court, and therefore, the combined reading of the above rules clearly reveal the methods by which a suit should be commenced, be it the enforcement of the rights or others. That the acceptable originating process under the Rules of this court are:

1. Writ
2. Originating summons
3. Petition
4. Any other method required by other rules of court governing particular subject matter.

The counsel submitted that Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 provides that application for enforcement of fundamental rights may be made by an originating process accepted by the court, that is this court, and to him, the acceptable process are the ones as written above.

The counsel quoted the provisions of Order IX Rule 1 (i) of the Fundamental Rights (Enforcement Procedure Rules) 2009 to the effect that failure to comply with the requirement as to time, place or manner or form shall be treated as an irregularity and may not nullify such proceedings except as they relate to the mode of commencement of the application, and further argued that if the non compliance has to do with the commencement of the application, it should nullify the proceedings, and therefore failure of the applicant to commence this instant suit by the prescribed mode is fatal, and an action wrongly commenced is incompetent and this will rob this court of its jurisdiction to hear and determine same, and he relied on the case of **Drexel Energy & Natural Resources Ltd & Ors V. Trans International Bank Ltd & Ors (2008) LPELR – 962 (SC).** The counsel argued that the rules of court are meant to be obeyed for the purpose of protecting the sanctity and dignity of the law and the courts, and he referred to the cases of **Okorocha V. PDP (2014) 26 WRN 1 SC, and Jack V. Unam (2004) 5 NWLR (pt 865) 208 at 231.**

The counsel submitted that this suit is incompetent and this court lacks the jurisdiction to entertain it. It is argued that where a statute prescribes for a particular mode of doing something, that method and no other must be adopted, and therefore motion on notice is not one of the methods of commencing an action, and he cited the cases of **Abbey V. State (2018) 1 NWLR (pt 1600) 1813 at 190** and

N.S.I.T.F.M.B. V. Klifco Nig. (2010) 13 NWLR (pt 1211) 307. He further submitted that the court is competent when all the conditions precedent for its having jurisdiction are fulfilled still subsists, and one of which is that the case comes before the court initiated by the due process of law, and upon fulfillment of any condition precedent to the exercise of the jurisdiction. To him, the applicant has failed to initiate this suit through the due process of law as prescribed in the rules of this court, thereby robbing it of the jurisdiction to adjudicate on it. The counsel referred this court to the following cases:

Actine V. Afribank Plc (2000), 15 NWLR (pt 687) 181; Mark V. Eke (2004) 5 NWLR (pt 865) 54; Weatern Steel Works Ltd V. Iron & Steel Workers Union (1986) 3 NWLR)pt 30) 617; Oloba V. Akereja (1988) 3 NWLR (pt 84) 508 and Odofin V. Agu (1992) 3 NWLR (pt 229) 350, and he then urged the court to strike out the names of the 2nd, 3rd and 4th respondents from this suit and to dismiss the entire application for being incompetent having commenced same vide an incompetent mode of commencement.

The applicant/respondent, in his written address in opposition to the respondents' notice of preliminary objection, raised these two issues for determination, to wit:

1. **Whether the 2nd, 3rd and 4th respondents can claim to enjoy immunity under section 65, of the ICPC Act 2000 when they had acted in bad faith and used their offices/positions on the pursuit of personal vendettas against the applicant?**
2. **Whether a motion on notice qualifies as an application under Order 2 (2) of the Fundamental Rights (Enforcement Procedure) Rules 2009 as to confer jurisdiction on the Honourable Court?**

The counsel to the applicant submitted that the applicant has made reference to the malicious conduct of the respondents with which the respondents has pursued their personal vendettas against him, and he referred to paragraph 6 of the affidavit in support of the main application for the enforcement of his fundamental rights, in which he made discovery of some financial misconduct and abuse of office against the 2nd respondent to include laundering the sum of N500,000,000.00 in three accounts, the pilfering of the sum of N15.B

grant from the Mac Arthur Foundation and the diversion and auction of cars given to the 1st respondent by the Nigerian Customs Service.

It is submitted that the arrest and detention of the applicant was not based on any petition or complaint against him and none was ever shown to him throughout his travails in the cell of the respondents, and no victim or complainant ever confronted the applicant either while he was being interviewed or in the cell of the respondents.

The counsel submitted that the applicant in paragraph 23-29 of the affidavit in support of the application for enforcement of his fundamental rights detailed how he got sureties to sign his bail for him b ut was refused by the respondents on the ground that they have a court order from the Chief Magistrate Court to detain him for 14 days.

It is further submitted that the applicant in paragraphs 37, 43 and 44 of the supporting affidavit stated that the harassment, detention, searches and accusations were orchestrated to silence and discredit him before the whole world in order to prevent him from revealing his findings by taking away his honour and integrity and that the 2nd respondent had vowed to use his office to deal with him and to teach him a lesson of his life, and the unwarranted activities of the respondents had affected his rights adversely. He argued that applicant's affidavit in support of the originating application shows bad faith, malicious conduct and the flagrant abuse of office by the respondents usage of their office to pursue personal vendetta against the applicant, and to him, the paragraphs referred were not denied by the respondents as no affidavit was filed along with their notice of preliminary objection as it was raised purely on issues of law, and therefore, to him, the applicant's affidavit against the respondents are taken as unchallenged and uncontroverted, and he referred to the cases of **Oleave (Nig.) Ltd V. Dormath Trading Co. Ltd (2009) 47 WRN 56 at 76** to the effect that averments in an affidavit which are not countered are deemed to be true, and also the cases of **Okafor V. INEC (2009) 37 WRN 148 at 180** to the same effect.

The counsel cited the cases of **Nwakwere V. Adewunmi (1966) 1 All NLR 129;** and **Lagos City Council V. Ogunbiyi (1969) 1 All NLR at 249** all to the effect that the public officers protection Act will not apply if it is established that the defendant had abused his position

for purpose of acting maliciously, and submitted further that the applicant's right to proceed against the 2nd, 3rd and 4th respondents cannot be restricted and ousted by section 65 of the ICPC Act, 2000 as they have failed to show that they acted in good faith, and he referred to the case of **Offoboche V. Ogoja Local Government (2001) 7 SCNJ 468 at 483** to the effect that abuse of office and bad faith are factors that deprive a party who would otherwise have been entitled to the protection of section 2(a) of the Public Officers Protection Law, or such protection and the burden is on the plaintiff to establish that the defendant had abused his position or that he has acted with no semblance of legal justification.

The counsel cited the provisions of section 6 (6) (b) of the constitution of the Federal Republic of Nigeria 1999 (as amended), and the cases of **Governor of Kwara state V. DADA (2011) 4 WRN 1 at 18** and **Peerok International Ltd V. Hotel Presidential Ltd (1982) 12 SC 1 at 25** all to the effect that the applicant has right to access justice and to seek for redress for any wrong done to him by any individual or authority.

The counsel submitted further that the respondents having failed to depose to an affidavit containing facts of how they had acted in good faith, the issue of whether they had indeed acted in good faith cannot be resolved by way of speculation or conjecture and it is not a defence to file a preliminary objection on grounds of points of law, and he cited the case of **Federal University of Technology Akure V. Osemenam (2007) 15 WRN 193 at 202** to the effect and in essence that the issue of whether the respondents acted in good or bad faith, are issues which involve facts and those facts can only come in by way of affidavit evidence, and even in case of preliminary point of law based strictly on law the issue of compliance with the provision of a particular provision in which the preliminary point of law was based is a matter of fact to be resolved in affidavit evidence, and urged the court to resolve issue No. 1 in favour of the applicant.

On the issue No. 2 raised by the counsel to the applicant, it is submitted that the action was properly commenced by motion on notice, and he referred to the provisions of Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, and also Order 1

Rule 2 of the same Rule all to the effect that an application for the enforcement of fundamental human rights may be made by originating process accepted by the court, and that application is defined to mean an application brought pursuant to the Fundamental Rights (Enforcement Procedure) Rules by or on behalf of any person who seeks to enforce his rights. He also cited the provisions of Order 2 Rule 1 of the Rules of this court which also provides for the use of originating motion in commencing action for the enforcement of the fundamental rights, and can also be used in applying for judicial review and prerogative writs. He relied on the case of **Akunnia V. A.G. Anambra State (1977) 5 SC 61,** to the effect that where a statute provides that an application may be made but does not provide for any special procedure, it should be by originating motion, which to him, consist of an applicant and a respondent. The counsel cited the case of **Fawehinmi V. IGP (2002) 7 NWLR (pt 767) 608 at 678** and **A.G. Federation V. Abubakar (2007) 20 WRN 1,** and **Dapianlong V. Dariye (2007) WRN 1** all to the effect that in the interpretation of statutes, where there is nothing to modify, alter or qualify the language of statutes, it must be construed in the ordinary and natural meaning or the words and sentences.

It is also submitted that where statutes provides the procedure for doing of an act, it is only where there is non-compliance with the procedure that the act done therein can be said to be invalid, and he referred to the case of **Amaechi V. INEC (2008) 10 WRN 1,** and to him, Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules includes originating motion on notice. He argued further that the respondents have failed to show that they have been handicapped or prejudiced by the applicant usage of the originating motion, and they have also failed to show what they have lost or suffered as a result of the applicant using this mode to commence this action. To the counsel, motion on notice is the same thing as originating motion in the commencement of an action.

It is submitted that contrary to the argument to the respondents, Order IX Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules is applicable in the circumstance and the cases cited in paragraphs 5.6 – 5.9 of the address of the respondents have no relevance to the issue, having filed this action in a proper manner.

Specifically, to the counsel to the applicant; the case of **Jack V. University of Agriculture, Makurdi (supra)** is irrelevant since the main claim in the substantive application relates to enforcement of fundamental rights.

The counsel submitted that assuming and without conceding that the applicant had indeed wrongly commenced this action by using originating motion, it does not fetter the discretion of this court to ensure substantive justice, and to him, the respondents have relied on technicalities, and urged them to pursue their case and ensure that it is heard on its merit instead of recourse to technicalities and he cited the cases of **Consortium M.C. V. NEPA (1992) 6 NWLR (pt 346) p. 132 at 142,** and **Omoju V. F.R.N (2008) 7** and **NWLR (pt 1085) 38 at 57** all to the effect that the courts have moved away from the domain or terrain of doing technical justice to doing substantial justice. He then urged the court to proceed to hear the substantive suit on its merit.

The counsel to the respondents in his reply on points of law to the applicant's written address submitted that failure to file counter affidavit is not free pass to judgment and does not hold in all situations and that there will be no need for counter affidavit where averments in the affidavit in support of an application are useless, self contradictory, lacking in merit and not sufficient to sustain the applicant's prayer, and he cited the cases of **Mr. Agu & Ors V. Hon. Joseph Adu (2013) LPELR – 1992 (CA); Standard Chartered Bank Nig. Ltd. V. Ameh (2014) LPELR – 22765 (CA),** and **Ejefor V. Okeke (2000) 7 NWLR (pt 665) 363 at 385.** However to the counsel, the counter affidavit has been filed to the main suit and in compliance with the rules, denying all the paragraphs of the applicant's affidavit suggesting bad faith and putting the applicant to the strictest proof.

The counsel submitted that paragraphs 37 and 43 of the applicant's affidavit are conclusions and therefore offends the provisions of section 115(2) of the Evidence Act.

It is also submitted that having a cursory look at the applicant's originating process will show that he started by motion on notice which is not one of the acceptable modes of commencing, an action, and they contend that originating motion is not the same as Motion on Notice as the later is used for interlocutory applications.

Thus, having summarised the arguments of both counsel, it appears to me that they have concurred in the formation of the issues to be determined in this application, however, let me adopt the ones formulated by the counsel to the respondents/applicants as I have found them so suitable, that is to say:

1. **Whether by the provisions of section 65 of the Independent Corrupt Practices and Other Related Offences Act, 2000, the 2nd, 3rd and 4th respondents are competent parties for adjudication in this suit?**
2. **Whether the suit of the applicant was proper having commenced vide a motion on notice?**

On the issue No. 1, the respondents/applicants contend that every other officer of the Independent Corrupt Practices and Other Related Offences Commission enjoys a qualified statutory immunity from civil suits as provided under section 65 of the Corrupt Practices and other Related Offences Act, 2000, and without doubt that the 2nd, 3rd and 4th respondents/applicants are immune from this suit as the applicant/respondent has failed to adduce evidence or facts to establish bad faith to show that the 2nd respondent is not entitled to the immunity provided under the said section of the I.C.P.C. Act, 2000. It is also the contention of the 2nd, 3rd and 4th respondents/applicants that they were only discharging their constitutionally assigned duties as law enforcement officers when the applicant was invited as part of the investigations to allegations leveled against him. The counsel to the respondents/applicants buttressed his argument with some judicial authorities, and further relied on the provision of section 2 (a) to the Public Officers Protection Act, and that the 2nd, 3rd and 4th respondents/applicants have acted in good faith and devoid of semblance of any bad faith. While the applicant/respondent contends that the 2nd, 3rd and 4th respondents/applicants had pursued their personal vendettas against him upon his discovery of some financial misconduct and abuse of office against the 2nd respondent to include laundering of N500M in three accounts, the pilfering of the N15B grant from this Mac Arthur Foundation and diversion and auction of cars given to the 1st respondent by the Nigerian Customs Service.

Thus, section 65 of the I.C.P.C. Act, 2000 provides:

> **"No legal proceedings, civil or criminal, shall be instituted against any officer of the commission or any other person assisting such officer for any act which is done in good faith or for any omission in good faith by such officer or other person"**

By this, it can be inferred that the law has given a cover to the officers of the commission, including the 2nd, 3rd and 4th respondents/applicants, who acted in good faith as it does not apply to acts done in abuse of office with no semblance of legal justification. See the case of **Awolola, V. Governor, Ekiti State (2019) All FWLR (pt 971) p. 21 p. 39 paras. H-A.** In the instant case both counsel have agreed that with the law, however, the applicant/respondent contends that the 2nd, 3rd and 4th respondents/applicants have acted in pursuit of personal vendettas against him and therefore, they are not entitled to such a cover of the law. In a nutshell, the applicant alleges that the 2nd, 3rd and 4th respondents/applicants have acted with no semblance of legal justification for his arrest and detention, and therefore acted in bad faith.

It is the decision of the Supreme Court in the case of **Kwara State Pilgrims Welfare Board V. Alhaji Jimoh Baba (2018) All FWLR (pt 970)** that where a public officer acts outside the scope of his authority or without a semblance of legal justification, he cannot claim the protection of the law, and it is the duty of the plaintiff to adduce evidence or facts to prove that the officer acted outside the scope of his authority or without semblance of legal justification. In the instant case, it is the respondents/applicants that raised this issue that they have acted in good faith while exercising their duties and that they have acted within the law on the arrest and detention of the applicant/respondent, and therefore their names should be struck off the case, and even at that it behoves upon the respondents/applicants to show that they have acted in good faith and with the semblance of legal justification, and it also behoves upon the applicant to show that the 2nd, 3rd and 4th respondents/applicants have acted in bad faith and with no semblance of justification in his arrest and detention.

It is pertinent to note that the respondents/applicants filed this preliminary objection based upon law and not facts. Both counsel referred to the affidavit evidence of both parties, that is to say in the supporting affidavit, counter affidavit and reply affidavit of the parties. Therefore, if the above decision of the Supreme Court will be followed to the later, it can be inferred that the assertion that the respondents/applicants have acted in good faith and the allegation that they have acted in bad faith by the applicant/respondent have to be proved by evidence, that is to say the preliminary objection strays on facts and not law, and where the preliminary objection strays on facts, the appropriate thing the respondents/applicants should have done was for them to file the preliminary objection to be supported by affidavit evidence. In the circumstances of this application I therefore observe that this court will not limit itself to the determination of the issue No. 1 without going into the merits of the substantive matter, which is an application to enforce the fundamental rights of the applicant in which, both parties have a already joined issues. See the case of **Adebayo V. Oja-Iya Commodity Bank Nig. Ltd (2004) All FWLR (pt 231) p. 1363 at 1372 paras. F-G** where the Court held that where a court notices that it cannot successfully limit itself to the determination of the preliminary objection without going to the merits of the substantive matter, it should hear arguments on the merits of the substantive matter while the respondent's preliminary objection is taken along with his argument in opposition to the substantive matter. In that case, when the trial court comes to determine the matter, it will be better equipped to handle the matter effectively because if the preliminary objection is an answer to the action, the matter will end there, if not; the court proceeds to determine the matter on the merit. See also the case of **Universal Trust Bank of Nigeria V. Fidelia Ozoemena (2007) All FWLR (pt 358) p. 1019 at 1041 paras. D-F** where the Supreme Court held that preliminary objection by its very nature, deals strictly with a law and there is no need for a supporting affidavit. In a preliminary objection, the applicant deals with law and the ground is that the court process has not complied with the enabling law or rules of court and therefore, should be struck out… if the preliminary objection is successful, the court will not hear the merits of the matter

as it will be struck out. However, if a preliminary objection leaves the exclusive domain of law and flirts with the facts of the case then the burden rests on the applicant to justify the objection by adducing facts in an affidavit. The applicant in that circumstance, stands the risk of his objection being thrown out or rejected if he fails to satisfy the court of the facts he has relied upon. In the instant case, both parties agreed that whether the 2nd, 3rd and 4th respondents acted in good faith or whether they have acted in bad faith, these have to be proved by evidence. Both parties have made reference to the affidavits filed by them in the substantive matter. It is on this premise that I have to hold that the preliminary objection strays or flirts on facts and the appropriate thing to do by this court is to proceed to hearing the preliminary objection along with the substantive matter, and I therefore, so hold.

The question No. I of the preliminary objection will be determined in the course of hearing the substantive matter.

On the issue No. 2, the respondents/applicants contend that the applicant/respondent in this matter ignored the clear provisions of Order II Rule 2 and Order IX Rule 1(i) of the fundamental Rights (Enforcement Procedure) Rules 2009 and Order 2 Rule I of the Rules of this court when he filed this application through motion on notice instead of originating motion and therefore, the suit is incompetent and robs this court of the jurisdiction to entertain it. That failure of the applicant to commence this suit by the prescribed mode is fatal to his own case, and the counsel supported his argument with some judicial authorities.

The respondents/applicants argued that fundamental rights action is a specie of remedies obtainable under the Fundamental Rights (Enforcement Procedure) Rules 2009, and therefore, the applicant ought to approach this court through the prescribed mode, that is in accordance with what the rule provides and also with what the Rules of this court also provides. To him the fundamental Rights (Enforcement Procedure) Rules 2009 provides that the application may be made by an originating process accepted by the court, to him, Order 2 Rule I of the Rules of this court clearly provides the originating process acceptable to it.

More so, that failure to comply with the requirement as to time, place or manner or form shall be treated as an irregularity and would not nullify the proceedings, and that if the noncompliance has to do with the mode of commencement of the application; it should nullify the proceedings, and this he referred to Order IX Rule I (i) of the Fundamental Rights (Enforcement Procedure Rules) 2009.

It is argued that a court is generally competent to adjudicate over a matter only when all the condition precedent for its having jurisdiction are fulfilled, that is to say, when the case comes before it initiated by due process of law, and therefore urged the court to dismiss the matter.

On his part, the applicant/respondent contend that the action was properly commenced by motion on notice, and he too relied on Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Order Rule I of the Rules of this court to the effect that the Rules provides for the use of originating motion as one of the modes of commencement of an action, and he cited the case of **Akunna V. A.G., Anambra State (supra)** to the effect that where a statute provides that an application may be made but does not provide for any special procedure, it should be by originating motion, and to him, originating motion consists of an applicant and a respondent. With the aid of judicial authorities, the applicant/respondent urged the court to interpret Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 literally. The case of **Amaechi V. INEC (supra)** was also cited to the effect that if the law prescribes a method by which an act could be validly done, and such method is not followed, it means that, that act could not be accomplished.

The applicant/respondent argued that an application as used in Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 includes an originating motion on notice, and to him, the respondents have failed to show how an originating motion (as used in this case) is excluded as a mode of commencement of a fundamental right action, and that they have also failed to show how they have been prejudiced by the applicant's usage of the originating motion.

The applicant/respondent also argued that assuming without conceding that the applicant had indeed wrongly commenced this action by using originating motion, does that fetter the discretion of the court to ensure that substantial justice is done to the parties. To him, the respondents/applicants have relied on technicalities, and their resort to technicalities will not in any way meet the ends of justice, as courts have now moved away from the domain or terrain of doing technical justice to doing substantial justice, and therefore, urged the court to dismiss the application as it lacks merit.

Thus, both parties have concurred or agreed that mode of commencing this proceedings is by originating motion as both of them relied on Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, however, the applicant/respondent could not appreciate the argument of the respondents/applicants that originating motion is different from motion on notice under which the applicant filed this action, and the only argument on the part of the applicant is that an originating motion consists of an applicant and the respondent.

Thus, Order II Rule 2 of the Fundamental Rights/Enforcement Procedure) Rules, 2009 provides;

> **"An application for the enforcement of the Fundamental Right may be made by any originating process accepted by the court which shall, subject to the provisions of these Rules, lie without leave of court"**

By the above quoted rule, it can be inferred that the mode of commencing this action may be made by any of the originating process accepted by the court.

Order 2 Rule 2 of the Rules of this court, which both parties relied upon, is with respect to commencing an action by writ of summons and all that are required in that regard. And therefore, this rule is inapplicable in the context of the arguments of the parties.

Order 2 Rue 6 of the Rules of this Court is the most appropriate and which provides:

> **"Proceedings may be commenced by originating motion or petition where these Rules or any written law provide."**

By the above quoted rule, it could be inferred that proceedings may be commenced by originating motion or petition where these Rules or any written law provide, and in the circumstances, the provisions of Order 2 Rule 1 of the Rules of this court provide, that Civil proceedings may be begun by writ, originating summons, originating motion or petition. Therefore, the Rules of this court, no doubt, provides that this suit may be commenced by originating motion, and to this, I therefore so hold.

Now, Order IX Rule 1 (i) of the Fundamental Rights (Enforcement Procedure) Rules provides:

> **"Where at any stage in the course of or in connection with any proceedings there has, by any reason of anything done or left undone been failure to comply with the requirement as to time, place or manner or form, (the failure shall be treated as an irregularity and may not nullify such proceedings except as they relate to:**
> **(i) Mode of commencement of the application."**

By the above quoted rule, it could be inferred that whereby any reason of anything done or left undone been failure to comply with the requirement as to time, place or manner or form, that failure shall be treated as an irregularity except as to the mode of commencement of the action, that is to say, failure to file this suit by originating motion shall not be treated as an irregularity which can be cured. The combined effect of Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Order 2 Rules 1 & 6 of the Rules of this court it is settled that the acceptable mode of commencing this action is by originating motion, and to this, I therefore so hold.

Now the contention of the applicant/respondent is that there is no difference between motion on notice and originating motion. While it is the contention of the respondents/applicants that looking at the applicant's originating process will show that he started by Motion on Notice which is not one of the acceptable modes of commencement of action in this court, and to him, therefore, Motion On Notice is not the same as originating Motion, as Motion On Notice are used for interlocutory applications.

The question which this court has to find an answer is:

> **"whether motion on notice may mean any originating motion?**

In trying to find an answer to the above question, recourse has to be had to the provisions of the Fundamental Rights (Enforcement Procedure) Rules and the Rules of this court.

Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 provides that an application for the enforcement of the fundamental right may be made by any originating process accepted by the court, and by this the provisions of Order 2 Rule 1 of the Rules of this court to the effects that a suit of this nature may be commenced by originating motion. The Fundamental Rights (Enforcement Procedure) Rules 2009 goes further in Order II Rule 3 and provides:

> **"An application shall be supported by a statement setting out the name and description of applicant, the reliefs are sought, and supported by an affidavit setting out the facts upon which the application is made."**

By the above quoted rule of enforcement procedure of the fundamental rights, it can be inferred that what makes a motion to be an originating process is when the requirements under the Rule 3 of Order II are satisfied, that is to say, when an application is supported by a statement of fact setting out the name and description of the applicant, the reliefs sought and is also supported by an affidavit setting out the facts upon which the application is made. Once these requirements are met, the motion becomes an originating process within the meaning of Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009, and to this I therefore so hold.

On the other hand, motion becomes a motion on notice used for interlocutory orders when it satisfies the provisions of Order 43 Rule 1 of the Rules of this court which provides:

> **"whereby in this rules any application is authorised to be made to the court, it shall be made by motion which may be supported by affidavit and shall state**

the rule of court or enactment under which the application is brought."

Looking at the two different Rules of Order II Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Order 43 Rule I of the Rules of this court, there is a clear distinction between a motion on notice used for obtaining interlocutory orders and the one seeking to enforce the fundamental rights, that is to say in the format, the requirement is that the application shall be supported by an affidavit only, while on the later, the application shall be supported by a statement of facts setting out the name and description of the applicant, the reliefs sought and also to be supported by an affidavit.

Thus, it is at this juncture that I have to look at and examine the process filed by the applicant with a view to determine whether the applicant has satisfied the requirements of the Rules in commencing this proceedings. This, I will decide the above in two folds:

(a) by satisfying the requirement under the rules; and

(b) by satisfying the requirement as to form.

With respect to satisfying the requirements under the rule, the applicant couched his application **"MOTION ON NOTICE BROUGHT PURSUANT TO ORDER 2 RULE (1) & (2) OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009…"**

By this, the applicant filed this application by using Motion On Notice coming under Order II Rules 1 & 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009, but is accompanied by a statement of facts which set out the name and description of the applicant, the reliefs sought and is supported by an affidavit which set out the facts upon which the application is made. By these, it could be inferred that the applicant has satisfied the requirement of the Rule 3 of Order II of the Fundamental Rights (Enforcement Procedure) Rules 2009.

On the second fold, it can be seen that the applicant used motion on notice instead of originating motion, therefore, this goes to the form. The Rules of this court does not provide form of how originating motion is, however, the Fundamental Rights (Enforcement Procedure) Rules 2009 provides in FORM NO. I as to how originating

process may be. Looking at FORM NO. I and the way the applicant couched this application certainly there is what is omitted, that is to say, it might have been couched this way:

> **"In the matter of an application by……for an order for the enforcement of a Fundamental Right"**

As I said earlier that this goes to the form upon which it is used to file this application, and where it is such, then the provision of Order IX Rule I (i) & (ii) of the Fundamental Rights (Enforcement Procedure) Rules 2009 will certainly come to limelight which provides:

> **"where at any stage in the course of or in connection with any proceedings these has, by any reason of anything done or left undone, been failure to comply with the requirement as to time, place or manner or form, (the failure shall be treated as an irregularity and may not nullify such proceedings except as they relate to:**
>
> **(i) Mode of Commencement of the application;**
>
> **(ii) The subject matter is not within chapter IV of the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act."**

Thus, I reiterate that where it pertains to non-compliance as to the "Manner or Form", certainly it can be treated as an irregularity within the meaning of Order IX Rule I, however, where it pertains as to the commencement of the action not in accordance with Order II Rules 2 & 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, it cannot be treated as an irregularity rather it can be treated as a defect in the competence of such action. I said earlier on that the omission of the applicant to file this action not in the manner or form prescribed in FORM NO. I is an irregularity within the meaning of Order IX Rule I of the Fundamental Rights (Enforcement Procedure) Rules 2009, and therefore, does not render this proceedings a nullity by reason of such omission. See the case of **Idris V. Abubakar (2011) All FWLR (pt 557) p. 736 at 748 paras. B-D** where the Court of Appeal, Kaduna Division held that there is a clear difference between a defect in the competence of an action and a defect in procedure. Where there is a defect in the competence of an action, it spells

doom and absence of jurisdiction of the court to entertain same. Where however the non-compliance is held to be an irregularity in the process of adjudication, it may not be fatal to the action. The former robs on the jurisdiction of the court while the latter does not, where there is an omission or mistake in procedure or practice, this is regarded as an irregularity which the court can and should rectify so long as it can do that without prejudice. In the instant case, the non-compliance with the manner or form of couching originating motion, such omission does not nullify this proceedings and to this, I therefore so hold. See also the case of **Okezie V. C.B.N. (2020) All FWLR (pt 1050) p. 542 at 565 paras. D-F** where the Supreme Court held that it is the paramount duty of courts to do justice and not cling to technicalities that will defeat the ends of justice. It is immaterial that they are technicalities arising from statutory provisions or technicalities inherent in the rules of court. So long as the law or rule has been substantially complied with and the object of the provisions of the statute or rule is not defeated, and failure to comply fully has not occasioned a miscarriage of justice, the proceedings will not be nullified, in the instant case, non-compliance and omission to couch the application in accordance with FORM NO. I of the Fundamental Rights (Enforcement Procedure) Rules 2009, and for the fact that the applicant has satisfied the provisions of Order II Rule 3 of the same Rules, I hold the strong view that the applicant is in order in commencing this action notwithstanding the use of motion on notice instead of the use of FORM NO. I.

In the circumstances, the second segment of the preliminary objection of the respondents is hereby discountenanced accordingly.

Now, coming back to the substantive application vis-a-viz the first segment of the preliminary objection.

In the statement of facts accompanying the application the grounds upon which it is made are as follows:

(a) assuming that the offence for which the applicant is being detained falls within the purview of the ICPC's power to arrest, detain and investigate, it has no constitutional right to detain the applicant for more than 24 hours save and except by an order of court of law. The constitutionally

guaranteed liberty of the applicant has been unlawfully restrained due to his detention for five (5) days without an order of court from 16/9/2020 to 21/9/2020 before applying for an order to remand him for 14 days.

(b) The order to remand presupposes that there was a valid complaint against the applicant and not suspicion and personal vendetta to settle. Otherwise, till date and despite an extension of the order to remand for another 7 days, no charge has been filed against the applicant.

(c) The further detention from 12th October, 2020, a period of 15 days until he was released on 27th October, 2020 despite having sureties on Grade level 17 in the Federal Ministry to meet the bail conditions has a flagrant violation of his fundamental rights without trial or arraignment before a court of law.

(d) The refusal of the 1st respondent to arraign the applicant before a court of law as provided in section 35(5) of the 1999 constitution and to be threatening to detain him in the cell for as long as they like amounts to a violation of his fundamental rights.

(e) That the detention of the applicant by the respondents for 43 days is arbitrary, illegal, harsh, oppressive, unconstitutional and therefore void.

(f) There has not been any petition or complaint shown to the applicant or being told the offence(s) if any for which he is being detained. No complainant had come forward in those 43 days to accuse him of any offence. He was being held at the whims of the 2nd respondent against whom the applicant had unearthed some corrupt practices while working as a consultant with the disbanded Special Presidential Investigation Panel (SPIP) hitherto headed by Okoi Obno Obla. The insistence of the 1st & 2nd respondents and their agents for the applicant to remain in detention until he was "broken" as a condition for his bail in contrary to the requisite provisions of the ICPC Act as the Act did not make any provision for it to be used in the settlement of personal scores and vendettas.

(g) The freezing of the applicant's bank accounts and seizing of his vehicles and properties by the respondents on 16th and 17th September, 2020 without an order of court is illegal, unlawful and a violation of the applicant's fundamental rights. The 2nd respondent cannot whimsically seize the properties of a person (applicant) against whom he is the complainant behind the scene. He cannot be a judge in his own case. It is against the principle of natural justice and fair hearing.

Also accompanying the application is a forty-six paragraphed affidavit deposed by the applicant himself, and this is in addition to the address of his counsel.

Attached to the application are the following documents:

1. Detention Order dated the 16th day of September, 2020 marked as EXH. "A";
2. Condition precedent to the grant of bail, marked as EXH. "B";
3. A Letter written to the Attorney General of the Federation and Minister of Justice by the solicitors of the applicant dated the 24th September, 2020 marked as EXH. "C".
4. A Letter from the office of the Director Public Prosecution of the Federation written to the solicitors of the applicant dated the 23rd October, 2020 marked as EXH. "D";
5. Request for the release of all properties and Bank accounts written to the chairman by the applicant dated the 18th December, 2020 marked as EXH. "E";
6. Application for Certified True Copy of Detention/Remand Orders issued in favour of the ICPC dated the 13th January 2021 marked as EXH. "F";
7. A Copy of Motion Exparte accompanied by an affidavit filed against the applicant at the Magistrate Court dated the 21st September, 2020 marked as EXH. "G1"
8. Court Order of the Chief Magistrate Court for the remand of the applicant dated the 21st day of September, 2020, marked as EXH. "G2"
9. Another motion exparte and its accompanied affidavit filed at the Magistrate Court for extending the remand order of

the applicant dated the 2nd day of October, 2020 marked as EXH. "G3";

10. Another Court order made by the Chief Magistrate for the remand of the applicant for another 14 days dated the 5th day of October, 2020 marked as EXH. "G4";
11. Record of Proceeding dated the 21st September 2020 marked as EXH. "H1";
12. Another record of proceeding dated 13th day of October, 2020 striking out the case marked as EXH. "H2".

The respondents in opposition to the application filed an eight paragraphed counter affidavit dated the 9th day of March 2021, and attached to the counter affidavit are the following documents:

1. Search warrant dated the 16th September, 2020 signed by a Magistrate marked as EXH. ICPC I
2. Inventory of the items recovered in the residence of the applicant signed by the applicant and the officials of the 1st respondent marked as EXH. ICPC 2;
3. Condition precedent to the grant of bail dated 17th September, 2020 marked as EXH. ICPC 3;
4. Court Order made by a Chief Magistrate dated the 21st day of September, 2020 for the remand of the applicant marked as EXH. "ICPC 4";
5. Court Order made by the Chief Magistrate dated the 5th day of October, 2020 extending the period of remand of the applicant to 13th October, 2020 marked as "ICPC 5";
6. Conditions Precedent to the grant of bail marked as EXH. ICPC 6;
7. Another Conditions precedent to the grant of bail marked as EXH. "ICPC 7";
8. An undertaking made by the applicant dated the 27th October, 2020 promising not to interfere with the investigation marked as "ICPC 8";
9. Statement of one Okoi Ofem Obono-Obla marked as EXH. "ICPC 9";
10. Statement of one Michael Nwachukwu marked as EXH. "ICPC 10". This is in addition to a written of counsel to the respondents.

The applicant filed an eight paragraphed affidavit and better affidavit dated the 17th day of March, 2021 and attached are the following documents:

1. Letter of Engagement as Special Forensic Investigator to special presidential investigation Panel for the recovery of Public property signed by Okoi Obono-Obla dated the 7th February, 2019 marked as EXH. "FBA A"
2. Means of identification of the applicant marked as EXH. "FBA B"
3. Request for an information update from forensic asset investigations & recovery services, LLC (fair) for the recovery of $9 Billion USD in stolen assets from Nigeria addressed to Chief Okoi Obono Obla and was copied to the applicant marked as EXH. "FBA C";
4. Re-engagement to recover funds in the United States and UAE in favour of Nigerian Goverment written by Special Investigation Panel to one Gary M. Riebschiager and was copied to the applicant dated the 18th June, 2019 marked as EXH. "FBA CI"
5. Letter from the office of H.H. Sheikh dated the 31st October, 2019 for the attention of the applicant marked as EXH. "FBA D"
6. Letter of invitation written by the Special Investigation Panel dated the 21st day of March 2019 addressed to Alh. Adamu Teku marked as EXH. "FBA E"
7. A letter from the Basic Registry and Information System in Nigeria, the presidency, addressed to the applicant dated the 22nd August, 2016 marked as EXH. "FBA F"
8. Means of identification of the applicant marked as EXH. "FBA F1"
9. A letter from the Basic Registry and Information System in Nigeria addressed to the Vice President dated the 11th day of October, 2016 marked as EXH. "FBA F2"
10. A letter from the office of National Security Adviser dated the 3rd February, 2021 inviting the applicant to appear before an investigative committee convened by the National Security Adviser marked as EXH. "FBA G"

11. To Whom It May Concern Appointment as consultants marked as EXH. "FBA H"

The further and better affidavit is accompanied by a written address of the counsel to the applicant.

It is in the affidavit of the applicant that he was a consultant to the special presidential investigation panel headed by Okono Okoi Obla which is now disbanded, and that he used his contacts to furnish the panel with reliable intelligence on over 2,000 houses bought by Nigerians in government in Dubai, their bank accounts abroad and monies hidden in accounts in Nigeria etc, and that attempts were made by the operatives of the 1st respondent to get information from him with a view to embarrass and charge Okono Okoi Obla to court, but he refused. That he discovered, before the disbandment of the panel, some financial misconduct and abuse of office by the 2nd respondent to wit laundering of N500 Million in three accounts traced to the 2nd respondent and the pilfering of part of the sum of N1.5 Billion grant given by Mac-Arthur Foundation, and the diversion of auction of cars given to the 1st respondent by the Nigerian Customs.

It is stated that the applicant was approached by one Mr. Musty to help and facilitate the release of the sum of N539 Million held in an account with GT Bank belonging to one Mrs. Roseline Uche Egbuha frozen by the 1st respondent in which he contacted one Yahaya Dauda, and the applicant was introduced to the 4th respondent. That the 3rd and 4th respondent subsequently came to the applicant's house to seek for his co-operation in sharing intelligence on corrupt persons serving in government in which he shared information regarding the 2nd respondent, and in which the 3rd and 4th respondent promised to relay that to the 2nd respondent.

It is deposed to the fact that the 2nd respondent sent operatives of the 1st respondent, with the 3rd and 4th respondents leading the team, with a search warrant and in which they took away the applicant's vehicles and other properties and also marked his house with a red paint that the house was under the 1st respondent's investigation, and on that day, being the 16th September, 2020, he was detained, and that no court order was shown to him for the seizure of the properties. That the applicant's office was searched

and some documents, files and computers, CCTV Camera, cheque books were seized.

It is stated that the applicant called his solicitor to come to the commission at about 4:30pm on the 17th September, 2020, and upon the arrival of the lawyer, the applicant was given a sheet of paper containing his bail conditions and in which he signed. That the applicant was not shown any petition written against him, and after the interview on the 18th September, 2020, his lawyer was asked to apply for variation of the bail conditions, and on the 21st September, 2020 his nephew got two directors, but the agents of the 1st respondent refused on the ground that the 1st respondent got a warrant from the court for his detention for two weeks, and that he was subsequently informed that the 1st respondent got another order for his detention for another seven (7) days in the custody of the 1st respondent, and on the 27th October, 2020 the applicant was released on bail. That the harassment, detention, searches and accusations by the 1st and 2nd respondents is intended to silence him, and that the 2nd respondent is on the personal vendetta against him.

It is stated that from EXH. G2, G4 and H2 it is obvious that the essence of the orders were just to have the applicant detained without any justifiable cause, and that the 2nd respondent has vowed to use his office to deal and to teach him a lesson of his life, and this has adversely affected his fundamental right to personal liberty, presumption of innocence and fair hearing, and it is in the interest of justice to grant the application as the respondents will not be prejudiced.

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

1. **Whether the applicant's fundamental rights to personal liberty and presumption of innocence had been breached by his detention by the respondents between 16/9/20 to 27/10/20 without telling him the offence for which he was being detained or confronting him with any petition or any of his accusers or arraigning him before a court of law?**
2. **Whether the seizing of the properties of the applicant and freezing his bank accounts by the respondents without**

having obtained any court order is justified in the circumstances of this case?

The counsel submitted that section 35(1) of the 1999 constitution provides for the right to personal liberty and guarantees the right to every individual, and for an individual to be deprived of his right, it must be in accordance with the six instances envisaged in section 35(1) (a) – (f) and the deprivation must be by procedure permitted by law, and therefore, any arrest and detention inconsistent with the above position of the law amounts to serious violation of the right to personal liberty of such individual, and he cited the cases of **Shugaba V. Minister for Internal Affairs (1981) 3 NCLR 427 and Mitee V. Attorney (2003) 2 CHR 463.** The counsel quoted the provisions of section 6 (1) of the Administration of Criminal Justice Act 2015 to the effect that except where the suspect is in actual course of the commission of an offence or is pursued immediately after the commission of an offence or has escaped from lawful custody, the police officer or other persons making the arrest shall inform the suspect immediately of the reason for the arrest. According to the counsel, contrary to the above provisions, the applicant was detained without being told the reason for which he was detained, and this arrest without being charged to court offends Article 6 of the African Charter on Human and Peoples' Rights, and he cited the case of **Abacha v. Fawehinmi (2000) 4 SCNJ 400.**

The counsel submitted that the applicant was detained for forty three (43) days before he was granted bail by the respondents, and this is without any legal justification, it is submitted that the applicant only said EXH-A, being the detention order that he was detained for suspected money laundry, extortion, fraud and other corrupt practices Act, and the charges were suddenly changed by the respondents in EXH-G1 and G3 to become an allegation of conjuring fake petitions and extorting money from unsuspecting politically exposed persons and that he is close to the presidency, but no nominal complainant or victim was produced to support the allegation against the applicant during the recorded interviewed sessions of 18/9/2020 and 7/10/2020.

The counsel submitted that it is trite that suspicion no matter how grave cannot crystallise into evidence and cannot ground a conviction, and he cited the cases of **Ugbaka v. State (1994) 8 NWLR (pt 364) 568 at 574; Ahmed v. State (2001) 18 NWLR (pt 746) 622 at 650; Onah v. State (1985) 3 NWLR (pt 12) 236 at 244.**

The counsel submitted that the 2nd respondent cannot be a Judge in his own case as this offends the principle of fair hearing as the arrest and detention were orchestrated by the 2nd respondent and he cannot be the directing the investigation when he is at best the complainant in the case against the applicant, and he cited the cases of **Maliki v. Micheal Imodu Institute for Labour Studies (2009) 21 WRN 35** to the effect that the hearing must be fair and in accordance with the twin pillars of justice. He also cited the cases of **Garba v. University of Maiduguri (1986) 1 NWLR (pt 18) 550; Salami v. U. B. N. Plc (2011) 8 WRN 130** to the effect that a party must not be condemned unheard.

The counsel also submitted that the detention of the applicant in custody for 43 days clearly violates the applicant's right to personal liberty as guaranteed in section 35 (1) of the constitution, and he cited the case of **Agbakoba v. The Director, SSS (1994) 6 NWLR (pt 351) 692,** and further submitted that the 1st respondent and its agents were wrong to be holding the applicant while looking for persons who would come forward to lay an allegation against him, and he cited the case of **Odo v. C. O. P. (2004) 27 WRN 133 at 146** to the effect that a suspect cannot be incarcerated indefinitely without a trial.

The counsel submitted further that the applicant has asked this court to restrain the respondent from whimsically and continually detaining him pending when the 1st respondent will be ready to arraign him in court, and this court has the inherent power to set aside which is in itself punitive, and he cited the case of **Igwe v. Ezeanochie (2010) 43 WRN 123.**

On the issue No. 2, the counsel to the applicant submitted that there exist no legal justification for the conduct of the respondent, in freezing all the accounts of the applicant and confiscating his properties without an order of court, and he cited the case of

Chidolue v. EFCC (2012) 2 NWLR (pt 1292) 160 at 180 to the effect that the respondent has no power to confiscate the property of a person suspected of committing a crime when such a person has not been found guilty by a court of competent jurisdiction.

The counsel cited section 37 (1) of the ICPC Act 2000 to the effect that the list of the property seized from a person from whom the property were seized should be served as soon as possible, and according to him, that where the property to be seized is in the possession of a bank, section 37 (1) –(3) of the ICPC Act shall not apply. That where the act of the 2nd respondent is in breach of section 36 (5), 43, and 44 of the 1999 constitution, and that section 35 (1) of the ICPC Act is void for being in consistent with section 43 and 44 of the 1999 constitution, and he cited the case of **P. D. P. v. C. P. C. (2012) 4 WRN I at 17,** that since the words used in section 37 of the ICPC Act, 2000 is clear and unambiguous, it should be given its literal interpretation, and he cited the cases of **Fawehimmi v. I.G.P. (2002) 7 NWLR (pt 767) 606 at 678** and **Dapianlong v. Dariye (2007) 27 WRN-Ibrahim v. JSC (1998) 14 NWLR (pt 584) 1** and **Osadebay v. A-G Bendel State (1991) 1 NWLR (pt 169 525** all to the effect that there is need for the EFCC and other agencies of government saddled with the investigation to obtain an order of court before freezing of an account with a bank, and he cited the case of **GTB Plc v. Adedamola (2019) 5 NWLR (pt 1664) 30 at 42.** According to the counsel, the respondents were wrong to have frozen the accounts of the applicant and seized his properties without an order of court.

The counsel cited Order X1 of the Fundamental Rights (Enforcement Procedure) Rules 2009 which empowered the court to give such orders as it may consider just for the purpose of enforcing the rights of an individual, and that section 35 (6) of the 1999 constitution provides for payment of compensation and a public apology to any person who has been unlawfully arrested and or detained, and he cited the cases of **Shugaba v. Minister of Internal Affairs (Supra) and Onagoruwa v. I.G.P. (1993) 5 NWLR (pt 193) 593 at 650 -651.**

The counsel submitted that the applicant has made out a case to entitle him to exemplary damages as the conduct of the

respondents was arbitrary, oppressive and unconstitutional, and he cited the case of **Allied Bank of Nigeria Plc v. Akubueze (1997) 6 NWLR (pt 509) 374**

The counsel urged the court to hold that the applicant has made out a case for the enforcement of his fundamental rights.

It is in the counter affidavit of the respondents that the respondents are not in a position to admit or deny paragraphs 1, 2, 7 and 8 of the affidavit in support, and further deny paragraphs 3, 4, 5, 6, 9, 10, 11, 12, 13, 17, 18, 19, 27, 29, 37, 38, 42, 43, 44 and 45 as they are not true.

It is deposed to the fact that the respondent received a petition with No. ICPC/P/NC/679/2019 against the applicant, and upon its review, it was discovered that the petition contains allegations of impersonation, extortion, threat and blackmail with an intention to obtain by false presence and therefore met with the requirement of investigation. That the respondents under section 27 (4) of the ICPC Act, 2000 are not at liberty to reveal the details of the petition.

It is stated that a search warrant was executed against the applicant by searching his residence and that incriminating items such as firearms and ammunitions were recovered.

It is stated that on the 17th September, 2020 the applicant was granted bail which he rejected and thereafter accepted but could not meet up the conditions, and based upon that failure, the respondents obtained an order of court on the 21st September, 2020 to remand him for 14 days pending the conclusion of the investigation. That the respondents further obtained another court order to keep the applicant for another 7 days, and upon the expiration of the order on the 13th October, 2020, the applicants was given other conditions for bail but he could not meet up, and based upon that he was given a reviewed bail conditions on the 23rd October, 2020, and was therefore released on the 27th October, 2020 upon fulfillment of the bail conditions.

It is stated that some other people who are of interest were invited to assist the respondents in the investigation, and in response to paragraphs 3 and 4 of the supporting affidavit, the investigation

revealed that the applicant was never engaged as a consultant to the defunct Special Presidential Investigation Panel and that the allegation against the applicant is that he used the office of the defunct Special Presidential Investigation Panel to threaten one Alhaji Adamu Teku by demanding the sum of N20,000,000= (Twenty Million Naira) only to avoid Alhaji Adamu Teku's house located at 131 Road, Gwarimpa from being seized by the panel, and that the applicant has been using his residence to create an impression in the minds of people that he is close to the Government and a consultant to the Federal Government, and further that he has been using this address to obtain money by false pretence, in collaboration with Bureau De charge operators, from unsuspecting public.

It is stated that this made one Michael Nwachukwu to transfer the sum of $125,000 dollars to an account provided by the applicant through one Umar Kaina, a Bureau de charge operator and that account is domiciled at Albania, and the applicant has since failed to pay the naira equivalent or return the dollars paid to his account. That all the moveable and immovable properties recovered and seized from the applicant and his bank account are subject of investigation.

It is stated, in response to paragraph 6 of the applicant's affidavit, that every Nigerian is free to forward any report of corrupt practices to the 1st respondent or any other Anti Corruption Agency in Nigeria no matter who is involved.

It is stated that if the investigation is concluded, the applicant will be charged to court, and that paragraphs 19, 37, 38 and 43 of the applicant's affidavit are conclusions and should be expunged for offending section 115 (2) of the Evidence Act.

The counsel representing the respondents in his written address formulated these issues for determination:

1. **Whether the applicant's right were violated by the respondents as alleged?**
2. **Whether the applicant is entitled to award of damages and cost of this action?**

The counsel submitted that the applicant's claims are diversionary, misconceived, lacking in merit and a direct challenge to the statutory, powers of the respondents. That paragraph 5 (a) and (b) of the counter affidavit have shown that the respondents are investigating a petition bordering an impersonation, threats, obtaining by false prefence and money laundering, and the respondents in the discharge of their duties under section 6 (a) of the ICPC Act, 2020 received a report against the applicants, and pursuant to section 28 (1) (a) –(c) of the Act invited the applicant to assist in the investigation.

The counsel submitted that the applicant was granted bail within 24 hours of his arrest on the 17th day of September, 2020, but could not meet up with the conditions, and due to the applicant's uncooperative attitude, the respondents obtained a court order for his remand for the first 14 days pending the conclusion of the investigation, and subsequently obtained another order of 7 days and he could not meet up with the condition and which led to the variation of the conditions and was later on the 27th October, 2020 released on bail. The counsel referred this court to paragraphs 23 and 24 of the applicant's affidavit in support of the application. He further submitted that the keeping of the applicant with the order of the court and till the perfection of his bail does not amount to the violation of the applicant's fundamental rights, and he referred to the case of **EFCC & Ors v. Chukwurah (2018) LPELR – 43972 (CA)** to the effect that failure to perfect bail terms granted administratively does not constitute a violation of the fundamental rights.

The counsel submitted that in an action for unlawful arrest and detention in breach of a person's constitutional right of freedom, the onus is on the arresting authority to establish that the arrest and detention was justifiable on reasonable grounds, and he cited the cases of **Skypower Airways Limited v. Olima (2005) 18 NWLR (pt 957) 224 at 232; Ejiofor v. Okeke (2000) 7 NWLR (pt 665) 365 at 379; Ihwe v. Ezeanochie (2010) 7 NWLR (pt 1192) 61 and Commissioner of Police, Ondo State & Anor v. Obolo (1998) 5 NWLR (pt 120) 130 at 131.**

The counsel also relies on section 35 (1) (c) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) to the effect that

every person shall be entitled to his personal liberty and no person shall be deprived of such liberty same in the following cases and in accordance with a procedure permitted by law :- for the purpose or bringing him before a court in execution of the order of the court or upon reasonable suspicion of him having committed a criminal offence, or to such extent as may be reasonably necessary to prevent him committing a criminal offence.

The counsel submitted that the outcome of the investigation will determine the true state of the allegations against the applicant's claim, the former chairman of the Special Presidential Investigation Panel stated in his statement that the applicant is a whistle blower and that he does not have much engagement with the panel. He further submitted that it is the duty of the applicant to disclose facts to show that his fundamental rights have been contravened or otherwise dealt with in a manner that is unconstitutional, and he cited the cases of **Oyewole Sunday v. Adamu Shehu (1995) 8 NWLR (pt 414) 484 and Dangote v. Civil Service Commission, Plateau State (2001) 9 NWLR (pt 717) 132.** According to the counsel, the applicant has failed to present fact disclosing that his fundamental right has been contravened by the respondents.

It is the argument of the counsel that no court can grant a relief which is capable of turning an applicant into outlaw in a democratic society, and he cited the case of **A.G., Anambra State v. Chief Chris UBA (2005) 15 NWLR (pt 947) 44 at 67** to the effect that no court will be a party to shielding a person against criminal investigation and prosecution as that will amount to interference with the powers given by the constitution to the law officers and he cited the case of **Ozah v. EFCC (2018) All FWLR (pt 953) p. 231 at 258**. The counsel cited the case of **Okanu v. Commissioner of Police (2011) 1 CHR 7** to buttress the above point, and urged the court to so hold that it cannot be used as an instrument of unlawful activities and to dismiss the claim.

The counsel submitted that the respondents have the process without any order of the court, upon reasonable suspicions as provided in section 44 (2) (k) of the 1999 constitution, section 37 and 45 (1) of the ICPC Act, 2000 to temporarily seize any movable or immovable property suspected to be proceeds of the crime

connected to under investigation, and therefore, the respondents have not violated the rights of the applicant by so doing considering the fact that they acted within the law. He submitted that the respondents have reasonable suspicions that the applicant committed a crime and this has made the moveable and immovable properties subject of investigation, and he referred to paragraphs g, r, s, t, u, v and w of the counter affidavit of the respondents, and further relied on the cases of the Federal High Court to buttress this point.

The counsel submitted that the 1st respondent is not subject to the direction or control of any other person or authority pursuant to section 3 (14) of the ICPC Act, 2000, and therefore, the allegation of the applicant that the respondents are acting on the instigation of the 2nd respondent because of the discoveries made concerning the 2nd respondent is a figment of the imagination of the applicant. He further submitted that the applicant has exposed himself as an agent of money laundering syndicate in paragraphs 7, 8 and 9 of his affidavit deposed to the facts that he was approached by suspect being investigated for money laundering for him to negotiate for the release of money frozen by the 1st respondent.

The counsel further submitted that paragraphs 19, 37, 38 and 43 of the applicant's affidavit are conclusion which are unproven as these offend section 115 (2) of the Evidence Act and urged the court to expunge the paragraphs.

On the issue No. 2, the counsel submitted that the respondents have not in any way violated the fundamental rights of the applicant to warrant the award of damages or cost as claimed by the applicant. To him, the applicant was granted administrative bail but the applicant refused to accept, and this led to obtaining of the remand order of the court. The counsel submitted that it is trite that where there is no cause, there will be no damages, and he referred to the case of **Obinwa v. C. O. P. (2007) 11 NWLR (pt 1045) 411 at 426,** and also the case of **Effiong v. Ataisi Supplies & Services Ltd & Anor (2010) LPELR – 4077** to the effect that an award of damages either special or general, is not given as a matter of course, but on sound and solid legal principles and not on speculation and sentiment. To

him, therefore, the applicant is not entitled to damages or cost against the respondents having failed to put before the court any legal evidence, and he cited the case of **Newbreed Organization Ltd v. J. E. Erhomosele (2006) 5 NWLR (pt 974)** to the effect that a party claiming a relief should put his cards on the table vide cogent evidence, and he cited the case of **Okolo v. Dakolo (2006) NSCQLR vol. 27 p. 264 and A. C. R. Ltd v. Apugo (2001) NSCQLR vol. 5 p. 567** to buttress his point, and urged the court to dismiss the applicant's claims.

The applicant, in his further and better affidavit, stated that in response to paragraph 5 (a) (b) and (c) of the counter affidavit, he was never shown any petition written by anybody against him by the respondents when he was in detention for 43 days, and he was not told of his offence, as the petition referred to as with No. ICPC/P/NC/679/2019 was the petition written against Okoi Ofen Obuno – Obla which was later charged to court, and that section 27 (4) of the ICPC Act, 2000 referred to in paragraph 5 (c) of the counter affidavit did not say that an accused person should not be told the reason of his arrest after he had been arrested.

In reply to paragraph 5 (d) – (k) of the counter affidavit, the applicant stated that he was given onerous bail conditions in order to keep him in detention, and that the respondent know that it would be difficult for him to meet the bail conditions.

In response to paragraph 5 (i) and (m) of the counter affidavit, the applicant stated that he did not clean anything on the walls of his house as he did not see anything written on the walls, and that in the recorded interview sessions of 18th September, 2020 and 7th October, 2020, he was never shown any petition and was also not shown to his lawyer.

It is stated that when the respondents could not find anything incriminating against him, they went to town together to look for anybody who had any grievance or issue with him to come forward with any allegation to be used against him. That he was engaged by the defunct Special Presidential Investigation Panel as a consultant and Special Forensic Investigator on the 7th February, 2019, and in the course of his engagement with the defunct Panel, he was

instrumental to the intelligence and forensic Investigation and effects of recovering $9 Billion US dollars stolen assets from Nigeria, and that his efforts led to the obtaining of the intelligence from the Government of Dubai of the cost of 1,500 Nigerians both serving and out of service as government officials with stupendous assets and bank accounts of monies stolen and stashed away in Dubai.

It is stated that Special Presidential Investigation Panel had evidence that Alhaji Adamu Teku had fraudulently documented several houses in Gwarimpa during the re-certification of FHA houses and there was a complaint from the Federal Housing Authority against Alhaji Adamu Teku, as which he was invited by the panel and he refused to honor invitation, and that he did not meet Alhaji Adamu Teku and he could not have demanded money from someone who was running from investigation, and he was never threatened by the applicant or any other person.

The applicant stated that he needs not to create any impression in the minds of people that he is close to the presidency and being a consultant to Federal Government because of his appointment in 2019 by the Special Panel, and he was also appointed as a consultant by the Basic Registry and information system in Nigeria under the presidency and he was given a letter of appointment and an identity card. That he has never used his house address and residence to obtain money by false pretence from the unsuspecting public while in collaboration with Bureau de Charge operators, and that he has lived in Aso Villa for years, and it is not an offence to live in the Villa.

The applicant, in response to paragraph 5 (r) of the counter affidavit stated that the allegation of Michael Nwachukwu are an afterthought as though, the statement of Michael Nwachukwu was written on the 30th September, 2020 after he had been in cell for over two weeks, the petition, if any, was never shown to him, and that from the EXH- ICPC 10, it is clear that he never met Michael Nwachukwu, and Michael Nwachukwu failed to show how and when he gave an account to transfer money to Albania and no evidence of having sent money to any account in Albania on his instructions, and that it is not in practice to arrest and detain a

suspect before starting to look for evidence to justify the arrest and detention.

The applicant, in response to paragraph 5 (w) of the counter affidavit, stated that the respondents cannot whimsically seize his movable, immovable properties and bank accounts without evidence showing that the properties and monies are proceeds of crime, and he is yet to be shown any court order which authorized the seizure and freezing of his accounts.

The applicant also in reply to paragraph 5 (x) of the counter affidavit stated that he is yet to be shown who are his accusers or complaint, and in reply to paragraph 6 (a) and (b) of the counter affidavit, the applicant stated that in the absence of any applicant or being confronted by his accusers, the respondents are not investigating anything against him.

It is stated further that when the respondent failed to secure any useful evidence against him, they reported him to the office of the National Security Adviser that he was a spy and engaged in espionage in which he was invited before an investigative committees convened by the National Security Adviser, and he appeared on the 4th February, 2021 and was interviewed and was cleared of the allegations by the NSA.

It is stated that the pistol found in his house by the respondents during their search, the office of the NSA on the 12th February, 2021 asked him to go and explain to the police as to how he got it, and he has since written a statement at the FIB, Force Headquarters, and that he got the gun in the course of working as a consultant to the West African Police (ECOWAS) in 2009 as approved by late President Umaru Yar'aduwa.

In reply to paragraph 6 (c) of the counter affidavit, the applicant stated that these paragraphs contain facts within his personal knowledge, and they are not conclusions and do not attend the Evidence Act 2011, and that there exist no legal justification for his humiliation arrest detention and seizure of his properties and bank accounts.

In the reply on point of law, the counsel to the applicant raised some issues of law which arose from the counter affidavit and written address of the respondents, and which he wants the court to consider:

1. That following from paragraph 4 of the counter affidavit, it presupposes that paragraphs 7, 8, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 28, 30, 32, 33, 34, 35, 36, 39, 40 and 41 having not been denied by the respondents are taken as admitted without need for proof of the averments, and he relied on section 122 of the Evidence Act 2011, and the case of Ibwa v. Unakalamba (1998) 8 NWLR (pt 565) 245 at 264 paragraph G to the effect that admission is the strongest proof, and it requires no further proof. He submitted that the applicant's arrest and detention becomes very glaring.
2. That the respondents admitted in paragraph 5 (f) (k) of the counter affidavit that they gave bail to the applicant on very onerous terms, and therefore submitted that the essence of bail is to ensure that the defendant comes back to stand his trial and not to be used as a punishment, and he cited the case of Anaekwe v. V. C. O. P. (1996) 3 NWLR (pt 436) 332, and further submitted that where bail is granted on onerous terms. It is as good as having denied the accused person bail, and he cited the case of **Udeh v. F. R. N. (2001) 5 NWLR (pt 706) 312.**
3. That the respondents failed to show in their counter affidavit that the complainant ever confronted the applicant while he was in custody, and this amounts to breach of the applicant's right to fair hearing, and he cited the case of Young v. Judicial Service Commission Cross River State (2009) 17 WRN 51 at 62. He further submitted that there were no petitioner/complainant beside themselves, and that the respondents mentioned Alhaji Adamu Teku and Michael Nwachukwu in paragraphs 5 (p) – 5 (v) of the counter

affidavit, and these are shadow petitioners who never met or confronted the applicant even though he was in custody from 16/9/2020 and Michael Nwachukwu wrote his statement on the 30/9/2020.

4. That no petition was ever shown to the applicant since the 16th September, 2020 till date and no petition or complaint was exhibited to the counter affidavit of the respondents before the court by relying on section 27 (4) of the ICPC Act, 2000. The counsel submitted that the petition no. ICPC/P/NC/679/2019 was the petition the Presidency/Secretary to the Government of the Federation wrote against the former Chairman of the Special Presidential Investigation Panel (SPIP) on the 17th September, 2019 asking the ICPC to prove the allegations against Mr. Obono Obla and prosecute him, and the later was charged to court along with Aliyu Ibrahim and Daniel Onughele Efe, and the matter is pending before the court, and therefore, submitted further that section 27 (4) of the ICPC Act 2000 is not superior to section 36 (6) (a) and 1 (1) of the 1999 constitution and section 27 (4) of the ICPC Act is void to the extent of its inconsistency with the 1999 constitution, and he referred to the case of **P.D.P. V. C.P.C. (2012) 4 WRN 1 at 17** to the effect that the supremacy of the constitution is not in doubt in view of the provision of section 1 (1) of the 1999 constitution.
5. That assuming without conceding that there exist a petition against the applicant and the respondents have refused to show to the applicant till date or annex it to their processes before the court, the counsel urged the court to raised the presumption of withholding evidence because the petition would have been unfavourable to the respondents had it been made available to the court, and he referred to the case of **State v. Azeez (2008) 3 WRN I.**

6. That the respondents failed to show to the court on whose **order** they seized the properties of the applicant, that the seizure of the property and the freezing of his accounts were done without a court order, and he relied on the cases of **Maliki v. Michael Imodu Institute for Labour Studies (2009) 21 WRN 35 at 71; Garba v. University of Maiduguri (1986) 1 NWLR (pt 18) 550 and Salami v. U. B. N. Plc (2011) 8 WRN 130** to the effect that a party must not be condemned unheard and a man must not be a judge in his own case.
7. That the respondent in paragraphs 5 (o) (q) and (r) drew inference that the applicant was never engaged as a consultant, he demanded for N20 Million from Alhaji Adamu Teku, he uses his house at the Villa to create impression in the minds of people that he was close to government and was using his house address to obtain money by false pretence in collaboration with Bureau De Charge operators from unsuspecting public, and the counsel submitted that these paragraphs are speculative as no evidence has been provided by the respondents as to the authenticity of their claims in these paragraphs and it is not the duty of the court to speculate on the facts and till in the hiatus as the respondents case, and he cited the case of Ivienagor v. Bazanye (1999) 6 SCNJ 235 at 243 – 244 to the effect that a court cannot act on issues based on speculation, no matter how close what it relies on may seem to be the facts.
8. The counsel to the applicant submitted that the counsel to the respondents in paragraph 2.15 that the applicant intends to use the court to settle investigation and to continue with his nefarious activities with the intent to obtain by false pretence, and also in paragraph 2.17 the counsel stated that the properties of the applicant were property suspected to be proceeds of crime, and in paragraph 2.23 the counsel stated that the applicant exposed himself as an agent of money laundering

syndicate, and the counsel to the applicant submitted that the counsel to the respondents hide under the guise of a written address to label the applicant for no instifiable cause as the address of counsel cannot take the place of evidence placed before the court, and he referred to the case of Neka BBS Manufacturing Co. Ltd v. African Continental Bank Ltd (2004) 15 WRN 1 at 19 to the effect that address of counsel cannot be a substitute to evidence.

9. That paragraphs 19, 37, 38 and 43 of the applicant's affidavit do not offend section 115 (2) of the Evidence Act as they are facts within the personal knowledge of the applicants.

10. That ICPC and the other respondents are not empowered under the ICPC Act, 2000 to act as debtor collectors and cannot recover debts on behalf of any one as that appears to be the whole essence of linking Michael Nwachukwu with the applicant who does not have any link or business with, and he cited the cases of Mclaren v. Jennings (2003) 3 NWLR (pt 608) 470 and Afribank (Nig. Plc) V. Onyema (2004) 2 NWLR (pt. 858) 654. The counsel to the applicant then urged the court to grant the application in the interest of justice.

Having summarized the affidavit of both parties and the submissions of both counsel, let me formulate the following issues for determination:

1. **Whether the applicant's fundamental right to personal liberty has been infringed by the respondents?**
2. **Whether the applicant is entitled to the reliefs sought?**
3. **Whether the 2nd, 3rd and 4th respondents are competent parties in this suit?**

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 provisions of this chapter has been, is being or

likely to be contravened in any state in relation to him may apply to High Court for redress, hence this application before this court.

On the issue no. 1, the applicant alleges that his right to personal liberty as is enshrined in section 35 (1) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) has been infringed when the respondents arrested and detained him from the 16th September, 2020 to 21st September, 2020.

It is also his complaint that his detention from the 21st September, 2020 to 5th October, 2020 on the order of the Chief Magistrate Court Zone 2, Wuse, Abuja for fourteen (14) days without there being any complaint or petition written against him or any complaint or victim coming forward to justify the continuous detention in the cell of the 1st respondent was a violation of his fundamental right to personal liberty. That the procurement of an extension of the detention order of the applicant from the Magistrate Court for another seven (7) days from 5th October, to 12th October, 2020 was oppressive arbitrary and unconstitutional in the absence of either a complaint, petition or nominal complainant or action of the offences allegedly committed by him. That his continuous detention from 12th October, 2020 to 27th October, 2020 without an order of court and without arraigning him before any court for any offence was a violation of his right to personal liberty, fair hearing and presumption of innocence.

The court has to consider the affidavits of both in determining whether the applicant's personal liberty has been eviscerated or not. See the case of **Assist. Inspector General of Police v. Ezeanya (2016) All FWLR (pt 830) p. 1361 at 1393 paras. A – C** where the Court of Appeal, Benin Division held that the question of the infringement of fundamental right is largely a question of fact and does not so much depend on the dexterous submission from the forensic arsenal of counsel on the law. So, the facts of the matter as disclosed by the affidavits filed are the determining factor on whether the fundamental rights of an individual has been eviscerated or otherwise dealt with, on a manner that is contrary to the constitutional and other provisions.

It is in the affidavit in support of the application that the 3rd and 4th respondents went to the house of the applicant on the 16th September, 2020 with a search warrant and after the search, they seized his vehicles and other properties and also marked his house with a red paint that it is under the 1st respondent's investigation, and thereafter he was invited to the office of 1st respondent, and he was detained. That the agents of the 1st respondent also proceeded to the office of the applicant and seized documents, files and computers, CCTV camera, Cheque books etc.

That on the 17th September, 2020 the applicant was served with a sheet of paper containing his bail conditions, and he refused to sign the bail condition until when his lawyer prevailed upon him to sign, and as at that time he was not told what offences and who made the complaint against him.

That after the interview on the 18th September, 2020, his lawyer was asked to apply for the variation of the conditions of the bail since it was difficult for him to fulfill. It is stated that on the 21st September, 2020, he got sureties of two serving directors to take him on bail but the agents of the 1st respondent refused and claimed that they have gone to court and obtained a warrant to continue to detain him in their cell for another two weeks. That the applicant was subsequently told that the 1st respondent got another order for his detention for another seven(7) days, and on the 27th October, 2020 he was released, and till date no petition has been shown or read to him to justify why he was invited to the 1st respondent's office. That he is not charged to any court since his release, and even though he wrote to the 2nd respondent for the release of his properties, they are yet to be released to him.

It is stated that the essence of EXH. "G2" "G4" and H2 were to have him detained without any justifiable cause, as the reasons given in EXH. "G1" and "G3" for procuring the remand orders of 21st September, 2020 and extension of 5th October 2020 is different from that advanced for detaining him in EXH. "A" made on 16th September, 2020. It is also stated that the activities of the respondents have adversely affected his fundamental rights to personal liberty, presumption of innocence and fair hearing.

The respondents in paragraph 4 of their counter affidavit denied paragraphs 12, 13, 27, 29, 38, 42, 44, that is to say, the respondents denied being at the residence of the applicant on the 16th September, 2020 with a search warrant, and also denied seizing the vehicles and other properties of the applicant, and also denied painting the house of the applicant, that is as per paragraph 12 of the supporting affidavit. It is also denied by the respondents that no court order was shown to the applicant during and after the seizure of his properties.

The respondents also denied the averment that the applicant was not shown any petition written against him or told what the alleged offences were or that the entire interview was based upon text messages pointed out from the two Phones of the applicant.

It was also denied by the respondents that the nephew of the applicant got two directors and they were denied taking him on bail. That they also denied that they have not taken him to court since when his release on bail, and that he is yet to be shown any petition against him. It is also denied that the 2nd respondent is in the personal vendetta against him.

It is also denied by the respondents that the essence of the applications and orders were to have the applicant detained without any justifiable cause, and the respondents denied that the 2nd respondent has vowed to use his office to deal with and teach the applicant the lesson of his life, and that the activities of the respondents have not adversely affected the fundamental right to personal liberty of the applicant. See paragraph 4 of the counter affidavit.

The respondents went ahead in paragraph 5 of their counter affidavit and averred that they received a petition with no. ICPC/P/NC/1679/2019 against the applicant, and upon the review of the petition, it was discovered that it contains allegations of impersonation, extortion, threats and blackmail with an intention to obtain by false pretence and therefore met with the requirement for investigation, it is also averred that they are not at liberty to reveal all the details of the petition to the applicant by virtue of section 27 (4) of the ICPC Act, 2000.

It is also averred by the respondents that on the 17th September, 2020, the applicant was granted bail which he rejected and thereafter accepted the bail conditions, and failure to meet up with the bail conditions made the respondents to obtain an order of court on the 21st September, 2020 to remand the applicant for 14 days, and the respondents went further to obtain another order to further remand the applicant for another seven (7) days on the 5th day of October, 2020, and upon the expiration of the seven days, the applicant was given another condition for bail but he could not meet up and he was given a reviewed bail conditions on the 23rd day October, 2020 and was released on 27th October, 2020 upon fulfillment of the bail conditions.

Thus, by the averments in the affidavit of both parties, it can be inferred that they have concured to the fact that the applicant was detained for 43 days, that was from the 16th of September, 2020 to 27th October, 2020. To these, the applicant contends that his fundamental right to personal liberty had been infringed by the detention by the respondents and without telling him the offences for which he was being detained, and he relied on the provisions of section 35 (1) of the 1999 constitution (as amended) and section 6 (1) of the Administration of Criminal Justice Act, 2015 and a number of Judicial authorities. While, it is the contention of the respondents that they have discharge their duties pursuant to section 6 (a) of the Independent Corrupt Practices and other Related Offences Act, 2000 and also section 28 (1) – (c) of the same Act by inviting the applicant to assist in the investigation, and that the applicant was granted bail within 24 hours of his arrest which is on the 17th September, 2020, but could not meet up with conditions, and further to the above, the respondents obtained a court order to detain him for fourteen days and obtained another order to continue to detain the applicant for another seven days, and at the expiration of the seven days, the applicant was granted another bail and he could not meet up with the conditions and the conditions were varied and he was subsequently released having satisfied the condition subsequently varied, it is also the contention of the respondents that the keeping of the applicant with the order of the court and until the perfection of his bail does not amount to violation of his fundamental

human rights, and they relied on the case of **EFCC & Ors v. Chukwurah (supra).** The respondents also relied on section 35 (c) of the 1999 constitution to the effect that the applicant was arrested upon reasonable suspicious of his having committed a criminal offence.

It was held by the Supreme Court in the case **of Diamond Bank Plc v. Opara (2019) All FWLR (pt 992) p. 321 at 346 paras. B – C** that by the provision of section 35 (1), 1999 constitution of the Federal Republic of Nigeria, every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in accordance with the procedure permitted by law. Section 35 (1) (c) of the 1999 constitution 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 court or upon reasonable suspicious of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.**

Morse so, section 6 (a) of the ICPC Act, 2000 provides:

> **"Whese reasonable grounds exist for suspecting that any person has conspired to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases, to prosecute the offenders."**

To add, the provisions of section 28 (1) (a) of the ICPC Act, 2000 provides:

> **"(1) An officer of the commission investigating an offence under this Act may:**

(a) Order any person to attend before him for the purpose of being examined in relation to any matter which may, in his opinion assist in the investigation of the offence"

By the community reading of the above provisions of section 35 (c) of the 1999 constitution and sections 6 (a) and 28 (1) (a) of the ICPC Act, 2000, it can be inferred that every person is entitled to his personal liberty and no one shall be deprived of such liberty unless he is reasonably suspected of having committed a criminal offence, and that the respondents have the power to receive and investigate any report of the commission of any criminal offence under the Act, and that they can invite any person to be examined in relation to any matter which may assist in the investigation of the offence. See the case of **Ozah v. EFCC (supra)** where the Court of Appeal, Benin Division based its decision on the case of **Onyekwere v. State (1973) 5 SC** where the Supreme Court held that if a complaint is made to the police that an offence has been committed, it is their duty to investigate the case not only against the person about whom the complaint has been made, but also against any other person who have taken part in the commission of the offence. The court of Appeal went further to hold in the above case of **Ozah v. EFCC (supra)** that an invitation by security agencies during preliminary investigation of criminal allegation does not amount to infringement of the fundamental right of a person. In the instant case, the invitation by the respondents extended to the applicant to assist in the investigation does not amount to the infringement of his fundamental right. However, if in the course of the investigation, the applicant feels that his right under the 1999 constitution (as amended) or any other statute has been infringed upon or likely to be infringed upon, then he will be free to knock on the doors of the court for intervention. In addition to the above, the right to personal liberty enshrined in section 35 of the constitution is not an absolute right that is to say, by paragraph (c) of subsection (1) of that section, a person can be deprived of his liberty upon reasonable suspicion of him having committed an offence. See the cases **Asst. Inspector General of Police v. Ezeanya (supra); and Obla v. EFCC (2019) All FWLR (pt 991) p. 44 at 57 paras. E – G** where the Court of Appeal

Lagos Division held that by the provisions of section 35 (1) (c) of the constitution of the Federal Republic of Nigeria 1999, the right to personal liberty is not an absolute right. So in the instant case, the right of the applicant may be curtailed where there is a reasonable suspicious of him having committed an offence.

As said earlier that where an applicant feels that his right under the constitution is infringed, he will be free to knock on the doors of the court, hence the complaint of the applicant herein that the respondent have unconstitutionally deprived him of his personal liberty by detaining him for forty- three days.

There is need for law enforcement agents to comply with the relevant laws in performing their duties. See the case of **Obla v. EFCC (supra) Per Ogakwu JCA at pp. 55-56 paras. G – B:**

> **"Law enforcement agents and agencies which interact with the ordinary citizens on a daily basis have the ineffable and sacrosanct duty to ensure the protection of the rights of the citizens as guaranteed by law."**

It is on the above premise that I have to further look at the affidavit evidence of both parties with a view to see whether the respondents have acted within the purview of the law in detaining the applicant for forty three days.

Thus, let me consider the provisions of section 35 (4) & (5) of the constitution of the Federal Republic of Nigeria 1999 (as amended) which provides:

> **"(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of:**
>
> **(a) Two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or**
>
> **(b) Three months from the date or his arrest or detention in the case of a person who have been released on bail, he shall (without prejudice to any further**

proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date. "See also

the case of **Asst. I. G. P. v. Ezeanya (supra)** where the court held that when a person is arrested or detained by the police in connection 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 a law court within one day or two days as the case may be, no matter under whatever section of the law he might have been charged, this brings to limelight the provisions of subsection (5) of section 35 of the constitution which provides:

"In subsection (4) of this section the expression" 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."

So, in the circumstances of this case the appropriate thing to have been done by the respondents was to have offered bail to the applicant within one day of his invitation or detention, or for him to be taken to court accordingly. In paragraph 5 (f) of the counter affidavit, it is deposed to the fact that on the 17th September, 2020 the applicant was granted bail but failed to meet up with the conditions. However, in paragraph 3 (d) of the further and better affidavit of the applicant it is stated that he was given onerous bail conditions in order to keep him in detention and it is as good as not being given bail. By the averments of the two parties in their affidavits, it could be inferred that the applicant was granted bail notwithstanding that the conditions were onerous, if that is the position, and for the fact that the applicant could not meet up with the conditions or terms, I am inclined to have recourse to the case of **EFCC & Ors v. Chukwurah (supra)** where the Court of Appeal, Abuja

Division held that the keeping of an applicant till the perfection of his bail terms before he was released on bail does not amount to violation of his fundamental human rights. I therefore, so hold that keeping applicant, in the instant case; until the fulfillment of the terms of bail does not amount to violation of his fundamental right to personal liberty, and for the fact that the applicant was invited to the respondents' office on the 16th September, 2020 and was given bail on the 17th September, 2020. The respondents were within the ambit of the law.

The respondents, having obtained an order from the Magistrate for the detention of the applicant for a period of fourteen days pursuant to sections 293 and 296 of the Administration of Criminal Justice Act, 2015 is also in order and even the order for the detention of the applicant pursuant to section 296 (2) of the ACJA is also in order that is to say, the respondents acted within the ambit of the law. Section 293 (1) and (2) provides in essence that a suspect arrested for an offence which a Magistrate Court has no jurisdiction to try shall, within a reasonable time of arrest, be brought before a Magistrate Court for remand, and the application shall be made ex parte, Section 296 (1) & (2) of the ACJA also provides in essence that where an order of remand of the suspect is made pursuant to section 293 of the Act, the order shall be for a period not exceeding 14 days in the first instance, and the case shall be reasonable within the same period and where good cause is shown why there should be an extension of the remand period, the court may make an order for further remand of the suspect for not exceeding 14 days, the action taken by the respondents was in order, and to this, I therefore, so hold.

Now, the second remand order having expired on the 13th October, 2020, and for the fact that the applicant was further granted bail on the same 13th October , 2020 and the subsequent reviewed of the terms of the bail vide EXH. ICPC 6 and ICPC 7 it could be inferred that still the applicant was granted bail only that he could not be released due to non fulfillment of the terms of the bail, and if that is the position, I hold the view that the continued detention of the applicant until he has satisfied the bail conditions before his

release does not amount to infringement of his right to personal liberty. See the case of EFCC & Ors v. Chukwurah (supra).

On the issue of refusal by the respondents to furnish the copy of the petition/complaint made to them by any complainant, if any, and the refusal to even show or inform the applicant of the offence to which he is alleged to have committed, the respondents in paragraph 5 (a) and (c) of their counter affidavit deposed to the fact that they received a petition with no. ICPC/NC/679/2019 against the applicant and that they are not at liberty to reveal all the details of the petition, this, they rely on the provision of section 27 (4) of the ICPC Act, while the applicant reiterated in his further and better affidavit that he was never told when, by whom and what date the petition, if any, was received against him, and he was not told of the offence, and that petition referred to with no. ICPC/P/NC/679/2019 were the petitions written against Okoi Ofem Obono- Obla, and at the end of the investigation of the petition, the same man was charged to court in a charge with no. FCT/HC/922/2020 filed on the 8th day of July, 2020, and to him, Section 27 (4) of the ICPC Act, 2000 referred to in paragraph 5 (c) of the counter affidavit did not envisage that an accused person should not be told the reason of his arrest after he has been arrested.

Let me consider the provision of section 27 (4) of the ICPC Act, 2000 which provides:

> **"A report made under subsection (1) of this section shall not be disclosed by any person to any person other than officers of the commission or the Attorney General until the accused person has been arrested or charged to court for an offence under this Act or any other written law arising from such report.**

Where words in a statute are clear and free from ambiguity they should be given their ordinary meaning without embellishments. See the case of **Dick v. Our and Oil Co. Ltd (2019) All FWLR (pt 1021) p. 262 at 281 paras. B – C.** In the above quoted section of the ICPC Act, 2000, what is of concern to this court is the phrase" until after" which means up to the point in time following an event. See Catherine Soanes and Angas Stevenson, Concise Oxford English Dictionary,

Eleventh Edition, Oxford University Press Inc. New York pp. 587 and 23 where definition of the words" until" and "after" were provided. So, if the provisions of section 27 (4) of the ICPC Act, 2000 is to be given literal meaning, it is that when a report is made, it shall not be disclosed by any person to any person other than the officers of the commission or the Attorney General, however, when the accused person against whom the report is made is arrested or charged to court, then he is entitled to have the report disclosed to him, and not only the applicant, but any other person which by extension includes the applicant. The respondents misconstrued the provisions of the above quoted section, and to this, I therefore, so hold.

As to whether there is lack of fair hearing meted out by the respondents to the applicant for not giving him the copy of the petition relying in section 36 (5) and (6) (a) and (b) of the 1999 constitution, I am of the firm opinion that all the provisions of that section relates to what an accused person is entitled when he is being charged before a court, and not at the investigation stage, and to this, I also hold. In the circumstances, I have come to the conclusion that the applicant's fundamental right to personal liberty has not been infringed by the respondents, and question no. 1 is resolved in favour of the respondents.

On question no. 2 as to whether the applicant is entitled to the reliefs sought, and having resolved that the applicant's fundamental right to personal liberty has not been infringed, he is not entitled to reliefs no. 1, 2, 3 and 4.

Now, whether the applicant is entitled to relief no. 5 whereof he claims for the grant of perpetual injunction restraining the 1st respondent whether by itself, agent, privies, assigns, officers, detectives, teams leaders, investigating officers or by whatever named called from further inviting, arresting or detaining the applicant at the Chairman of the 1st respondent without written petition from the 2nd respondent in his personal capacity. The applicant, in paragraphs 37 and 43 deposed to the fact that the harassment, detention, searches and accusations by the 1st and 2nd respondents is intended to silence him from revealing his findings to the whole world and to discredit him, and that the 2nd respondent

has vowed to use his office to deal with and teach him the lesson of his life, hence his unwarranted arrest and detention. The respondents on the other hand and in paragraph 4 of their counter affidavit denied such assertain, and did not have any averment to controvert such assertions, rather they relied on section 3 (14) of the ICPC Act 2000 to the effect that the 1st respondent is independent and not subject to the direction and control of any other person or authority.

Now, having resolved that the respondents have acted in accordance with the law regarding the arrest and detention of the applicant, it will not be appropriate to grant such an injunction. See the case of **Muniyas (NIG) Ltd v. Ashafa (2012) All FWLR (pt 642) p. 1776 at 1789 paras A – B** where the Court of Appeal Lagos Division held that a perpetual injunction is an auxiliary relief granted to protect an established right in law or in equity. Where the substantive right has not been established, no injunction would be granted. In the instant case, the substantive right is to have the right to personal liberty of the applicant protected, and this, the court having resolved that the respondent have acted in accordance with the procedure permitted by the law, perpetual injunction, being an auxiliary relief will not be granted. See the case of **Govt. Kwara State v. I. B. M. Ltd (2015) All FWLR (pt 767) p. 744 at pp. 811 – 813 paras. G – B Per Onyema JCA:**

> **"I reiterate that no court can perpetually restrain a person or body from performing his or its duty."**

Following the above decision, it will not be appropriate to grant such an order to perpetually restrain the 1st and 2nd respondents from carrying out their statutory duties under section 6 (a) of the ICPC Act, and therefore, relief no. 5 is also refused.

On the reliefs nos. 6, 7, 8 and 9 and in paragraphs 12 and 16 of the affidavit in support of this application, applicant stated that the respondents having conducted a search in his residence and office they seize his vehicles, documents, files and computers CCTV camera, cheque books etc. The respondents in their counter affidavit, more particularly paragraph 5 (e), deposed to the fact that after the search, they have seized a firearm and certain documents suspected to be used for obtaining by false pretence and the likes.

That he has been using his address to obtain money by false pretence, in collaboration with Bureau De Change from unsuspecting public. That all the movable and immovable properties recovered and seized from the applicant's residence and his bank accounts are subject of investigation. That the applicant has been using his residence which is in Aso Villa, Abuja, to create an impression in the minds of people that he is close to the Government and a consultant to the Federal Government.

Thus, apart from the above averments, the respondents attached some documents marked as EXH. ICPC 9 and EXH. ICPC 10. EXH. ICPC 9 is a statement made by Okoi Ofem Obono Obla dated the 28th day July, 2020, and in it there is a sentence marked in yellow colour which reads" Professor Kester was an informant and whistle blower to the panel."

The applicant in his further and better affidavit in opposition to the counter affidavit, stated that in paragraph 3 (h) that without any equivocation and with equanimity, he was engaged by the defunct Special Presidential Investigation Panel (SPIP) as a consultant and a special forensic investigator on the 7th February, 2019, and he exhibited a documents, being a letter of engagement and identity card marked as EXH "FBA A" and "FBA B". By the portion of the content of a document being the statement of Okoi Ofen Obino Obla, dated the 28th of July, 2020, exhibited by the respondent, and coupled with averments made in paragraph 3 (h) of the further and better affidavit and the documents "EXH- FBA A" and "FBA B", it can be inferred that the applicant was duly engaged by the Panel. This has controverted the assertion of the respondents in paragraph 5 (o) (q) of the counter affidavit.

The respondents, in paragraph 5 (r), (s), (t), (u) and (v) of the counter affidavit, stated that the applicant has been using his address to obtain money by false pretence, in collaboration with Bureau De Charge operators, from unsuspecting public. That this made one Michael Nwachukwu to transfer the sum of $125,000= dollars to an account provided by the applicant, through one Umar Kaina, a bureau de change operator, and the said account provided by the applicant is domiciled in a bank at Albania. That the

applicant promised to give Mr. Nwachukwu the naira equivalent in Nigeria, and that the applicant has failed to either pay the naira equivalent or return the dollars paid to his account. The respondents attached the statement of Michael Nwachukwu made on the 30th September, 2020 marked as EXH- "I.C.P.C. 10".

The applicant, in his further and better affidavit, stated in paragraph 3 (m) that he never used his house address and residence to obtain money by false pretence from unsuspecting public while in collaboration with Bureau De Charge Operators, and he worked with the Presidency and lived in the Aso Villa for years, and to him, it is not an offence known to law to live in the Villa. In paragraph 3 (a) of the further and better affidavit, the applicant stated that the allegations of Michael Nwachukwu is an afterthought, as though the statement was written on the 30th September, 2020. That the 4th respondent went to town looking for any one with allegations of crime against him to justify the arrest and detention. That from EXH "I.C.P.C. 10" it is clear that he never met Michael Nwachukwu, as Michael Nwachukwu has failed to show how and when the applicant gave his account to transfer money to in Albania, and that he (Michael Nwachukwu) has no evidence of having sent money to any account in Albania on the instruction of the applicant.

Thus, the importance of a reply affidavit cannot be over emphasized, as where there is no reply to a counter affidavit, the facts therein are deemed admitted and conceded by the other party. See the case of **Asst. Insp. Gen. of Police V. Ezeanya (supra).** In the instant case, the applicant proffered an evidence in reply to the averments contained in the counter affidavit. See the case of **Isaac V. George (2013) All FWLR (pt. 676) p. 582 at 589, paras. E-F** where the Court of Appeal, Calabar Division held that until arguments in a matter, which is to be determined by affidavit evidence are taken and concluded, a party is at liberty to depose to further affidavits or counter affidavits that would bring all issues in controversy to the attention of the court, in order to ensure a first determination of the matter. In the instant case, the applicant filed a reply affidavit in an answer to the averments contained in the counter affidavit of the respondents. This satisfies the requirement of the Rules of this court

pursuant to Order 43 Rule I, and Order II Rule 7 of the Fundamental Right (Enforcement Procedure) Rules, 2009.

The only documents presented by the respondents in relation to the seizure of the movable and immovable properties of the applicant are EXH. "I.C.P.C. 9" and "I.C.P.C. 10", and no any other statement or complaint of the unsuspecting public that was attached to the counter affidavit. EXH. "ICPC 9" is the statement made by Okoi Ofem Obono Obla dated the 28th day of July, 2020 and in it, the only reference made is the sentence which was marked in yellow colour which reads: "Professor Kester was an informant and whistle blower to the panel". This is the area where the name of the applicant appeared in the statement which the respondents are heavingly relying. This assertion is controverted by the applicant in his reply affidavit, which he averred that he was engaged, by the defunct Special Presidential Investigation Panel (SPIP) as a consultant and he is a special forensic investigator, on the 7th February, 2019, and he exhibited documents, being a letter of engagement and identity card marked as EXH. "FBA A" and "FBA B". These exhibits have debunked the assertion of the respondents in paragraphs 5 (o) (p) and (q) of their counter affidavit. It will not be out of place if I examine EXH. 'FBA A" which is the letter of engagement, and which reads:

7TH February, 2019

SPIP/SFI-JIC/2019/VOL. 1/1
Prof. John Kester
184 Ademola Adetokunbo Crescent, Wuse II
FCT, Abuja.

Dear Sir,

LETTER OF ENGAGEMENT AS SPECIAL FORENSIC INVESTIGATOR (SFI) TO SPECIAL PRESIDENTIAL INVESTIGATION PANEL FOR THE RECOVERY OF PUBLIC PROPERTY (SPIP).

Reference is being made to your letter dated 21st January, 2019.

2. I am pleased to inform that your proposal has been considered for engagement as a Special Forensic Investigator (SFI) to SPIP.
3. The panel which was constituted on Hognut 2017 is made pursuant to the Recovery of Public Property (Special Provisions) Act, is expected to add impetus to the efforts of Federal Government of Nigeria in the fight against corruption.
4. Consequent upon this appointment, you are to trace and where necessary recover undeclared assets and proceeds of fraud for the Federal Government of Nigeria in line with the mandate of the SPIP.
5. This appointment is subject to terms and conditions as may be expressed in a duly executed Memorandum of Understanding (MOU)
6. Please accept our hearty congratulations.

Signed
Okoi Obono-Obla
Chairman

Thus, going through the letter marked as EXH. "FBA A", it can be inferred that the applicant was really engaged by the panel, and the averments in paragraph 5 (o) (p) and (q) of the counter affidavit have been controverted. See the case of **U.B.N. Plc V. Awmar Properties Ltd (2019) All FWLR (pt. 987) p. 907 at 926, para. G** where the Supreme Court held that depositions in an affidavit denying a fact should be robust. In the instant case, the assertion of the applicant that he was engaged by the Special Presidential Investigation Panel was so robust in debunking the assertion of the respondents in paragraph 5 (o), (p), and (q) of the counter affidavit. It is against this backdrop that I have to hold that the applicant was engaged.

The applicant in his further and better affidavit denied meeting one Alh. Adamu Teku, and as such, he could not have demanded money from him, and that he never at anytime threatened Alh. Adamu Teku or any other person. In this regard, the respondents did not attach any written complaint or statement being made by Alh. Adamu Teku, to the counter affidavit, let alone for the court to

see and to examine same, and the complaint of Adamu Teku should have been used by the court in determining its nature. See the case of **Titanlaye V. David (2013) All FWLR (pt 687) p. 818 at 823, para. A** where the Court of Appeal, Ilorin Division held that where a deposition in an affidavit make reference to a document or a situation that can only be proved by document, it is important to attach those documents as evidence of the existence of the documents. In the instant case, the complaint of Adamu Teku should have been attached to counter affidavit of the respondent to show that such complaint exist that the applicant had threatened him. It can be inferred that the averment of the respondents in their counter affidavit with respect to allegation of threat against Alh. Adamu Teku is an answer to paragraph 27 of the affidavit of the applicant in support of the application. Even if such is a denial of the averment by the respondent, such a denial is not precise which, to my mind, gave the room for conjecture. See the case of **Tilley Gyado & Co. (Nig.) Ltd V. Access Bank Plc (2019) All FWLR (pt 1016) p. 360 at 409; paras. D-E** where the Court of Appeal, Jos Division held that a denial in an affidavit must be precise, concise and exact and it must not give room for conjecture or speculation, otherwise it is in law and fact not a denial. Therefore, putting the averments of both the applicant and the respondents on the scale of justice, it can be seen that that of the applicant weighs heavier than that of the respondents, and to this, I so hold.

The respondents, in paragraph 5 (r), (s), (t), (u) and (v) of the counter affidavit, stated that the applicant has been using his address to obtain money by false pretence, in collaboration with Bureau De Charge operators, from unsuspecting public. That this made one Michael Nwachukwu to transfer the sum of $125,000= dollars to an account provided by the applicant, through one Umar Kaina, a bureau de change operator, and the said account provided by the applicant is domiciled in a bank at Albania. That the applicant promised to give Mr. Nwachukwu the naira equivalent in Nigeria, and that the applicant has failed to either pay the naira equivalent or return the dollars paid to his account. The respondents attached the statement of Michael Nwachukwu made on the 30th September, 2020 marked as EXH- "I.C.P.C. 10".

The applicant, in his further and better affidavit, stated in paragraph 3 (m) that he never used his house address and residence to obtain money by false pretence from unsuspecting public while in collaboration with Bureau De Charge Operators, and he worked with the Presidency and lived in the Aso Villa for years, and to him, it is not an offence known to law to live in the Villa. In paragraph 3 (a) of the further and better affidavit, the applicant stated that the allegations of Michael Nwachukwu are an afterthought, as though, the statement was written on the 30th September, 2020. That the 4th respondent went to town looking for any one with allegations of crime against him to justify the arrest and detention. That from EXH "I.C.P.C. 10" it is clear that he never met Michael Nwachukwu as Michael Nwachukwu has failed to show how and when he gave his account to transfer money to an account in Albania, and that Michael Nwachukwu has no evidence of having sent money to any account in Albania on the instruction of the applicant. It is also deposed that it is not the practice to arrest and detain a suspect before starting to look for evidence to justify the arrest and detention.

Thus, having summarised the affidavit evidence of both parties, it is pertinent to observe that, apart from the statement of Michael Nwachukwu, EXH. "I.C.P.C. 10", no evidence or statement is attached to the counter affidavit, of any unsuspecting public, and therefore, in my analises, I will only focus on the EXH. "I.C.P.C. 10", and more particularly, the sentence that is marked in yellow colour. The sentence marked as yellow colour reads:

> **Mr. Kaina informed me that his boss, by name Prof. John Kester needed foreign exchange as inflow or from abroad to be transferred on his behalf to Albania. He set up a conference call between myself and the Prof. John Kester where Professor Kester asked if I could help him with the request. A meeting was scheduled at the villa, where John Kester lives, but he kept saying he was too busy to meet me physically but that I should discuss with Umar Kaina who will handle everything.**

Looking at the entire statement and the marked in yellow portion of it, it can be observed and inferred that this statement was made on the 30th September, 2020 barely two weeks after the seizure

of the movable and immovable properties. The question now is: will that not be an afterthought as asserted by the applicant?

Let me consider the provision of section 27(i) of the I.C.P.C. Act, 2000 which reads:

> **"Every report relating, to the commission of an offence under this Act may be made orally or in writing to an officer of the commission, and it made orally shall be reduced into writing…"**

The respondents, in their counter affidavit, did not aver and state that Michael Nwachukwu first of all made an oral complaint to any of the officers of the Commission which later was reduced into writing. The applicant, in his further and better affidavit states that he was in cell for over two weeks, and Michael Nwachukwu did not confront him at the I.C.P.C. as the complainant, and the petition of Michael Nwachukwu was never shown to him.

The respondents relied on the provision of section 27(4) of the I.C.P.C. Act, 2000 for not showing any of the petitions written against the applicant, and in this judgment, I have faulted the respondents for not showing the applicant the copy of any petition made against him after his arrest, to the effect that the respondents have misconstrued such provision. In the circumstances, I have to hold that the statement of Michael Nwachukwu is an afterthought.

Assuming there was an oral complaint which was later reduced into writing on the 30th September, 2020, I have looked at the entire statement EXH. "I.C.P.C. 10" and I have the following observations:

(a) That Michael Nwachukwu never met the applicant in his house at Aso Villa;

(b) no evidence was shown or document attached to the counter affidavit of the respondents that the transfer of the sum of $125,000.00 was made or effected;

(c) no link is established in relation to the transfer of $125,000.00 dollars with any bank in Nigeria belong to the applicant;

(d) by paragraph 5 (u) and (v) of the counter affidavit of the respondent vis-à-vis the statement of Michael Nwachukwu, it can be inferred that what is between the former and the applicant is a debt, if any;

(e) no statement of Umar Kaina, if any, is attached or any evidence that he was invited by the respondents to give account or what transpired between the applicant and Michael Nwachukwu;
(f) no evidence of the conference calls was exhibited by the respondents in support of their counter affidavit;
(g) no evidence concerning the accounts frozen of the applicant regarding the transaction for the transfer of the sum of $125,000 = dollars;
(h) no evidence linking the seized properties of the applicant with the statement of Michael Nwachukwu, EXH. "I.C.P.C. 10".

Thus, by paragraphs 12 and 16 of the affidavit in support of the application, the applicant alleged that his movable and immovable properties were seized upon conducting a search at his resident and office, while in response, the respondents, in paragraph 5(a), (b), (d), (e) and (w) of the counter affidavit, stated that all the movable and immovable properties recovered and seized from the applicant's residence and his bank accounts are subject of investigation.

The applicant, in his further and better affidavit, avers particularly paragraph 3(a) and (b), stated that the petition referred to in paragraph 5 (a) of the counter affidavit with no. I.C.P.C/P/NC/679/2019 was the petition written against Okoi Ofem Obono-Obla, and at the end of the investigation of the petition, Okoi Ofem Obono-Obla was charged to court in charge No. FCT/HC/922/2020 filed on the 8th July, 2020, and is still pending in court, and throughout when he was in detention, he was never told when, by whom and what date the petition (if any) was received against him.

It is pertinent to note that the respondents refused to show the copy of the petition with No. ICPC/P/NC/679/2019 to the applicant, the action which I have faulted earlier on, and that the respondents also did not attach the copy of the petition to their counter affidavit, let alone for the court to rely on it. See the case of **Isa N. Saje (2012) All FWLR (pt 644) p. 130 at 137, paras. F-H** where the Court of Appeal, Jos Division held that a court must not rely or be guided by a document which is not before it and which does not contain the

case of the parties before it. If the court relies on such a document to arrive at a decision, such a decision would be fatally erroneous and a nullity if it goes to the root of the case. It would be a clear miscarriage of justice and the decision arrived thereat would not be allowed to stand. See also the case of **Federal Mortgage Finance Ltd V. Ekpu (2005) All FWLR (pt 248) p. 1672 at 1684, paras. A-C** where the Court of Appeal, Calabar Division held that where a party relying on a document in an action fails to produce its document and there is no proper explanation as to his inability to produce the said document, the court may upon his failure to produce it presume that the document if produced, would be unfavourable to that party by invoking section 149(d) [now section 167 (d)] of the Evidence Act.

Let me consider the provision of section 37(1) of the ICPC Act, 2000 which reads:

> **"If in the course of an investigation into an offence under this Act, any officer of the Commission has reasonable grounds to suspect that any movable or immovable property is the subject matter of an offence of evidence relating to the offence, he shall seize such property".**

By the above quoted provision, it can be inferred that the property of a person either movable or immovable linked to the commission of any offence shall be seized by the officer investigating the matter. See also section 45(1) of the ICPC Act, 2000 which provides:

> **"Where the Chairman of the Commission is satisfied on information given to him by an officer of the Commission that any movable property, including any monetary instrument or any accretion thereto which is the subject matter of any investigation under this Act or evidence in relation to the commission of such offence is in possession, custody or control of a bank or financial institution, he may notwithstanding any other written law or rule of law to the contrary by order direct the bank or financial institution not part with, deal in or otherwise dispose of such property or any part thereof until the order is revoked or denied".**

By the above quoted provisions, it can be inferred that the chairman upon receiving information from any officer of the

commission that any movable property including any monetary instrument or any accretion which is the subject matter of an investigation or evidence in relation to the commission of any offence under the Act may by order direct the bank or financial institution not to part with, or deal in or otherwise dispose of such property or any part thereof until the order is vacated. It is pertinent to note that the chairman may order, without necessarily resorting to court to obtain same, and this is distinct from the similar provision of E.F.C.C. Act, which in that Act, the chairman cannot act unless by an order of court. In the instant case, there is no evidence in the EXH. ICPC "9" and "10" which linked the movable and immovable properties seized from the applicant by the respondents. More so, the petition with No. ICPC/P/NC/679/2019 has not been exhibited and placed before this court let alone for this court to examine it. See the case of **Titanlaye V. David (supra) at p. 823 para. A.**

It is based upon the above analises that I have come to the conclusion that no evidence to show that the movable and immovable properties of the applicant are linked to or subject to any investigation, and to this, I therefore so hold, and in the circumstances the applicant is entitled to reliefs Nos. 6, 7, 8 and 9, as he is entitled to own any movable property that is not subject of investigation under section 44 of the 1999 constitution. More so, the applicant is entitled to own immovable property that is not subject of investigation. See the case of **Attorney General, Rivers State V. Ikalama (2016) All FWLR (pt 842) 1721.**

On the relief No. 10, as to the claim of N500,000,000 = (Five Hundred Million Naira) as exemplary damages against the respondents, I refer to the case of **FRN V. A.G. Federation (2019) All FWLR (pt 1015) p. 288 at 327, paras. B-C** where the Supreme Court held that exemplary damages are awarded when a defendant's willful act was malicious, violent, oppressive, fraudulent, wanton or grossly reckless. They are reward for the plaintiff for the horrible nature of what he went through. Although often requested, exemplary damages are seldom awarded. See also the case of **Okafor V. A. I. G. (2019) All FWLR (pt 983) p. 4 at 26 paras. E – F**. In the instant case, I have already resolved that the respondents have acted in

relation to the arrest and detention of the applicant in accordance with the law, and still I hold that he is not entitled to relief no. 10.

On the relief no. 11, which is a claim of N50,000,000= (Fifty Million Naira) as cost of this action, I refer to the case of **Divine Ideas Ltd v. Umaru (2007) All FWLR (pt 380) p. 1482 – 1509 paras. A –D** where the Court of Appeal, Abuja Division held that cost of actions or solicitor's fees are in the realm of special damages which must be specifically pleaded and strictly proved. In the instant case, I have gone through the affidavit and the documents attached in support of the application pleaded as to how he arrived at the sum of N50,000,000= and how it is proved. Having no evidence to substantiate such a claim, the applicant is not entitled to relief no. 11.

On the issue of issue no. 3, as to whether the 2nd, 3rd and 4th respondents are competent parties in this suit? it is the contention of the respondents that by the provisions of section 65 of the ICPC Act, 2000, they are not competent parties in this suit, that is to say, they enjoy a qualified statutory immunity from Civil suits, unless allegation of bad faith is made and established. While the applicant contends that the harassment, detention, searches and accusations were orchestrated to silence and discredit him before the whole world by taking away his honour and integrity, and that the respondents are on a personal vendetta against him and the detention was to break his resolve, and also that the 2nd respondent had vowed to use his office to deal with him and to teach him the lesson of his life by the undue and illegal detention. To him, the Act is designed to protect the officer who acts in good faith and does not apply to act done in abuse of office and with no semblance of legal justification.

Thus, earlier before, in this judgment, I have resolved that the invitation and detention of the applicant were done in accordance and within the ambit of the law, and therefore, to my mind, the 2nd, 3rd and 4th respondents acted with semblance of justification, and to this, I therefore, so hold.

The position of the law as to who to sue over the acts of the officers or agents of the 1st respondent is very clear, in that it is provided in section 3 (2) of the ICPC Act, 2000 which provides:

"The commission shall be body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name."

See also the case of **Iyere v. Bendel Feed and Flour Mill Ltd (2009) All FWLR (pt 453) p. 1220 at pp. 1235, paras. H – B** where the Supreme Court, relying on Halsbury's laws of England; Vol. 45 (2) Fourth Edition, paragraph 817, held that the relationship which arises when a person called agent acts on behalf of another called principal, whereby the latter undertakes to be answerable for the lawful acts, the former does within the scope of his authority is what amounts to agency. Liability falls on the principal where he gives his agent express authority to do a tortious act or that which results in a tort. He may also be liable for a tort committed by his agent while acting within the scope of his implied authority. But where the tort by the agent falls entirely outside the scope of his authority, the principal is not liable. In the instant case, the 2nd, 3rd and 4th respondents acted on behalf of the 1st respondent, and to my mind, they are not competent parties in this suit, and their names are hereby struck out accordingly.

It is hereby declared that the freezing of all the applicant's bank accounts with Zenith Bank, Fidelity Bank, First Bank, Eco Bank and United Bank for Africa (UBA) using the applicant's BVN number without linking those accounts with the commission of any crime is a violation of his fundamental right to own movable properties under section 44 of the constitution of the Federal Republic of Nigeria 1999 (as amended).

It is also declared that the seizing of the applicant's vehicles/properties consisting of his Mercedes Benz, Range Rover Jeep, Lexus; Land Cruiser, BMW Z3 and Hilux, cheque books, laptops, flash drives, phones, computers, files, documents, bank cheques, CCTV Cameras, International Passport etc without linking those items to be properties subject of investigation is a violation of the applicant's fundamental right to own movable property under section 44 of the constitution of the Federal Republic of Nigeria, 1999 (as amended).

An order is hereby given directing the 1st respondent or its agents to unfreeze all the applicant's bank accounts frozen by it or

by its agents, acting on its behalf, having the accounts not linked to the investigation.

An order is hereby given directing the 1st respondent or its agents, acting on its behalf, to release all the seized properties by it during the search of the house of the applicant having those properties not linked to be subject of the investigation.

Signed
Hon. Judge
24/9/2021