

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

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S.
IDRIS**

COURT: 28

DATE: 29TH JUNE, 2022

FCT/HC/CV/286/2022

BETWEEN

MR. CECIL OSAKWE-----

APPLICANT

AND

- 1. ASABE WAZIRI**
- 2. DEPARTMENT OF STATE SECURITY SERVICE (DSS)**
- 3. INSPECTOR GENERAL OF POLICE (IGP)**
- 4. COMMISSIONER OF POLICE, FCT, ABUJA**

RESPONDENTS

JUDGMENT

The Applicant filed an originating motion dated 1st February, 2022 the application for an order of enforcement of fundamental rights brought pursuant to section 34 and 44 of the 1999 constitution of the Federal Republic of Nigeria as amended and order 2 of the fundamental rights (Enforcement Procedure) Rules 2009 and the inherent jurisdiction of the Court. The Applicant prays for the following reliefs:-

1. A declaration that the acts of the 2nd Respondent who invited and arrested the Applicant and continued to harass, intimidate

and threaten to arrest and detain the Applicant at the prompting, behest and instigation of the 1st Respondent over purely civil matters is unlawful, illegal and an infringement of the Applicant's right to personal liberty and right to own property as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended)

2. An order of perpetual injunction of this Honourable Court restraining the 2nd, 3rd and 4th Respondents, their officers, servants and agents from further inviting and threatening to arrest and detain the Applicant and interfering with Applicant's right to freedom of movement and right to property, on purely civil matter as in this case.
3. An order of this Honourable Court directing the payment of the sum of N100,000,000.00 (One Hundred Million Naira) as damages against the 1st Respondent and N50,000,000.00 (Fifty Million Naira) against the 2nd -4th Respondent in favour of the Applicant for the breach of the Applicant's fundamental right to personal liberty and right to property.
4. And for such orders or further orders as this Honourable Court may deem fit to make in the circumstance of this case.

**STATEMENT PURSUANT TO ORDER 11 RULE 3 OF THE
FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE)
RULES 2009:-**

1. Name of the Applicant and description:-

The Applicant is a businessman and the Managing Director/
Chief Executive Officer of Abeh Signatures apartments
limited.

2. RELIEFS SOUGHT BY THE APPLICATION

1. A declaration that the acts of the 2nd Respondent who invited arrested and detained the Applicant and has continue to harass, intimidate and threaten to arrest and detain the

Applicant at the prompting, behest and instigate of the 1st Respondent over purely Civil matters is unlawful, illegal and an infringement of the Applicant's right to personal liberty and right to own property as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended)

2. An order of this Honourable Court restraining the 2nd -4th Respondents, their officers, servants and agents from further inviting and threatening to arrest and detain the Applicant and interfering with the Applicant's right to freedom of movement and right to property.
3. An order of this Honourable Court directing the payment of the sum of One Hundred Million Naira (₦100,000,000.00) as damages against the 2nd Respondent and Fifty Million Naira(₦50,000,000.00) against the 3rd -4th Respondents jointly and severally by Respondents in favour of the Applicant.
4. And for such orders or further order as this Honourable Court may deem fit to make in the circumstances of this case.

GROUND UPON WHICH THE RELIEFS ARE SOUGHT

1. The unlawful invitation of the Applicant by the 2nd Respondent, Continuous threats of arrest and detention of the Applicants by the 2nd Respondent at the instigation of the 1st Respondent is unconstitutional and amount to a breach of the Applicant's right to personal liberty and right to property.
2. The use of the 2nd respondent to settle civil disputes between the Applicant and the 1st Respondent.

In support of the application is 52 paragraph affidavit deposed to by Kola Adewale also attached is annexure A and B.

Also attached is a written address of the Applicant in support of the application dated 1st February, 2022 the application has formulated three issue for determination:-

- a. Whether from the facts and circumstances of this case the Applicant has established a case of violation of his fundamental right?
- b. Whether the 2nd Respondent acted within the scope of powers conferred on them by law.
- c. Whether from the facts and circumstances of this case, the Applicant is entitled to the award of damages?

ARGUMENT ON ISSUE ONE(1)

A. Whether from the facts and circumstances of this case the Applicant has established a case of violation of his fundamental right.

1.1 section 46 of the Constitution of the Federal republic of Nigeria 1999 (as amended) provides thus:-

any person who alleges that any of the provisions of this chapter (chapter IV) has been is been or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress.

Again, order 2 rule 1 of the fundamental human rights (Enforcement procedure) Rules 2009 explicitly provides thus:

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

We submit that the crux of this suit is that the Applicant's right to personal liberty as a person as well as right to property enshrined in sections 34 and 44, of the Constitution of the

Federal republic of Nigeria 1999(as amended) has been grossly eroded by the Respondents.

A perusal of the Applicant's affidavit reveals that the ceaseless harassment of the Applicant by threats occasioned serious trauma to the Applicant, his staff business which ipso facto violates the Applicant's fundamental right guaranteed under section 35 of the 1999 Constitution.

The Applicant has deposed to facts relating to the abuse of his rights in the paragraphs of the affidavit in support of this application.

A close look at the deposition by the Applicant who is a victim of the violation shows a violent and sustained abuse of the rights of the victims when he was unlawfully arrested and forcefully coerced into handing over the title documents of his property to the 1st Respondent with respect to an evidently failed civil transaction.

We also rely on section 35 (1) of the 1999 Constitution as amended which provides inter alia.

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.

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

We also rely on the case of ***EKANEM V. ASSISTANT INSPECTOR GENERAL OF POLICE (2008) ALL (pt 420)at***

In conclusion we wish to urge the Court to hold that the Applicant's fundamental right to liberty as a human being as well as his right to personal liberty have been violated.

ISSUE TWO

Whether the 2nd -4th Respondents acted within the scope of powers conferred on them by law?

The 2nd Respondent is enabled to perform its roles and functions chiefly by section 2 subsections (3) and (4) of the National Security Agencies (NSA) Act 1986 Cap 74 LEN 2004. The functions are as follows:-

- A. Prevention and detection of any crime against the internal security of Nigeria.
- B. Protection and perseverance of all non – military classified matters of Nigeria.
- C. Prevention, detection and investigation of threats of espionage, subversion, Sabotage, Terrorism, Separatist agitation, inter-group conflicts, economic crimes of National security dimension and threats to law and order.
- D. Provision of protective security for designated principle government functionaries, sensitive installations and visiting dignitaries.
- E. Provision of timely advice to government on all matters of National Security interest and;
- F. Such other functions as may, from time to time, be assigned to it.

Counsel submit that the wordings of the above cited statute are explicit that the 2nd Respondent is to exercise its powers strictly in accordance to the Constitution of the Federal republic of Nigeria which is the ground norm.

1. The Court of Appeal in the case of **ANOLIEFO V ANOLIEFO (2019) LPELR 47247** stated as follows:-

2. *"The duty of the state security service are clearly stated in section 2(3)of the National Security Agencies Act, Cap . N74, volume 11, Laws of the Federation of Nigeria as follows:-*

(3) "The state security service shall be charged with the responsibility for – (a) the prevention and detection within Nigeria of any crime against the internal security of Nigeria.

(b) The protection and preservation of all nonmilitary classified matters concerning the internal security of Nigeria; and

(c) Such other responsibilities affecting internal responsibilities,internal security within Nigeria as the National Assembly or the President, as the case may be, may deem necessary"

Counsel submit that the facts as stated in the affidavit in support of this application show clearly that the issues between the Applicant and the 1st Respondent are purely civil which do not require the attention of the 2nd respondent, and the Applicant had mentioned this to the agents of the 2nd and 3rd Respondents during their incessant calls, the Respondents at this point should have restrained themselves having observed that it was a civil transaction that had no criminal elements.

Counsel submit that the law does not confer the function of settlement of civil disputes on the 2nd Respondent and where this is done like in this case, it's a violation of law.

From the totality of the above, Counsel wish to pray this Honourable Court to hold that the 2nd -4th Respondents acted outside the powers conferred on them by the Police Act and such their action is null and void.

ISSUE THREE

Whether from the facts and circumstances of this case, the Applicant is entitled to the award of damages?

Counsel submit that this Honourable Court is empowered to secure the right of the Applicant. For this we rely on the of ***NAWA V. A.G CROSS RIVER STATE (2008) ALL FWLR (pt 401) at 807*** particularly at 840, paragraphs E-F. Where the Court held thus:

It is the duty of the Court to safeguard the rights and liberties of the individual and to protect him from any abuse or misuse of power.

Counsel further submit that when a right has been infringed, there is a duty on the Court to prescribe the appropriate remedy. For this we rely on ***NAWA V. A.G CROSS STATE (supra)*** particularly at 842 paragraphs B-E observed thus:-

If a right has been infringed whether it is fundamental or statutory right and the aggrieved party comes to the court for enforcement of the right, it will not be given complete relief if the Court merely declarations the existence of such right or the fact that the existing right has been infringed. It is the duty of the Court to order a proper remedy, Ubi jus ibiremedium.

On the authority of ***NAWA V A.G CROSS STATE (supra)*** we submit that the Applicant is entitled to monetary compensation of ₦50,000,000.00 (Fifty Million Naira only)

For this, Counsel placed reliance on the Supreme Court case of ***RANSOME KUTI V . A.G FEDERATION (2001) ALL FWLR (pt 80) at 1637 particularly at 1681, paragraph D*** where the Court observed thus:-

Monetary compensation could be claimed in a claim for violation of fundamental rights. Counsel urge this Honourable Court to so hold. Counsel humbly urge the Honourable Court by virtue of the foregoing to exercise its discretion in favour of the Applicant and grant this application.

In opposing the application filed by the Applicant the 1st Respondent filed a counter affidavit deposed to by the 1st Respondent same is dated 22nd February, 2022. The counter affidavit is 17th paragraph same also attach is a written address dated 22nd February, 2022.

This address is filed in response to the Applicants originating motion and affidavits dated the 1st day of February, 2022. In compliance with the Rules of this Honourable Court, Counsel have filed a counter affidavit of 17 paragraphs deposed to by the 1st Respondent herself. The 1st Respondent places firm reliance on all the paragraphs of the counter affidavit.

Counsel humbly urge this Honourable Court to take judicial notice of all processes forming part of the proceedings of this Court, which are already in the file of this Honourable Court, pursuant to section 122 (m) of the Evidence Act.

STATEMENT OF THE MATERIAL FACT

The Applicant whose claim is extensively geared toward the 2nd - 4th Respondents struggled in vain to establish facts or evidence to substantiate the alleged breach nor tie the 1st Respondent to the breach.

ISSUES FOR DETERMINATION

The issues that call for determination are as follows:-

- a. Whether from the process filed by the Applicant, the Applicant has made out a case against the 1st Respondent for violation of his fundamental rights to entitle him to the declaratory reliefs and orders sought.
- b. Whether a claim for damages can be granted where infringement or breach of fundamental human rights cannot be attributed to the 1st Respondent or where the claim is not proved.

ARGUMENT ON THE ISSUES

ISSUE ONE

Whether from the process filed by the Applicant, the Applicant has made out a case against the 1st Respondent for violation of his fundamental rights to entitle him to the declaratory reliefs and orders sought.

If is our position that the answer to the above issue is in the negative.

It is trite law that the burden of proving the infraction of fundamental human rights lies on the Applicant and not the Respondent.

See ***CHIEF DR. O. FAJEMIROKUN V COMMERCIAL BANK NIG LTD & ANOR (2009) 2-3 S.C (pt1)***

Thus, a party who is claiming any relief, particularly a declaratory relief must adduce credible and relevant evidence in proving his case.

See also the case of **OLANIYAN V ODEYEMI (1996) 7 NWLR (pt 459) 205 at p. 207 at 29.**

The law has also been clearly enshrined in section 135- 137 of the Evidence Act, which laid down the fundamentals of such proof that he who asserts must prove. The applicant alleged he was intimidated threatened and harassed with no lawful authority by officers of the 2nd -4th Respondents facilitated by the 1st Respondent but he did not produce any evidence to support his allegation nor did he adduce any evidence to link the 1st Respondent to the alleged act nor to show that the 2nd - 4th Respondents was facilitated by the 1st Respondent.

A perusal of the Applicant's supporting affidavit would show that the allegation of facts in paragraphs 22,24,25,29 and 30 of the Applicant support affidavit does not relate to facts which directly affected the Applicant personally, rather the deposed facts which were stated by one kola Adewale someone other than the Applicant alleging injuries to persons different from the Applicant, deponent are not before the Court.

The Court in the case of **AGBAKOBA V SSS (1994)6 NWLR (pt351) 45**, held inter that the Appellant's case will only succeed where there is evidence of arrest and detention which were done or instigated by the Respondent.

Similarly, in **AKINBADE & ANOR V. BABATUNDE & ORS (2017) LPELR 43463 (SC)** the Court held that:-

"When the burden of rebutting this presumption in law is taken together with other legal burdens placed on the Appellants, as the Plaintiff, their task is rather enormous. He who asserts must prove under the Evidence Act (respectively sections 134 and

131 of the 1990 and 2011 Acts) that provides that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those fact exist. Because of the nature of the instant dispute, involving property rights guaranteed by the constitution, the Appellants are obliged to prove their assertions by good and substantial evidence)”

The fundamental rights (enforcement procedure) Rule 2009 grants the Applicant, some latitude in the enforcement of his rights. Nonetheless, it neither removes the general burden of proof imposed by law nor sacrifices the need to do justice to all concerned. Where an Applicant, as in the instant case, fails to discharge the burden imposed on him by law, the application will be dismissed irrespective of the emotions evoked. Where the burden is placed on an Applicant to produce a relevant document in proof of his case, that burden, no matter how onerous it may be, must be discharged. See **FAJEMIROKUN VS COMMERCIAL BANK NIG. LTD. & ANOR (supra PP54-55)**

Counsel humbly submit that the Applicant having grossly failed to adduced any credible cogent and relevant evidence to prove that it is indeed the 1st Respondent that was responsible for the alleged ordeal of the persons mentioned in paragraphs 22,24,25,29 and 30 of his supporting affidavit or facilitated his order with the 2nd -4th Respondents captured in paragraphs 31-46 of the affidavit in support of the originating motion. It is equally instructive to note, that the picture attached of an unknown individual as deposed by the 1st Respondent, without any nexus details as to happenings concerning the picture, in the form of

date, location, etc, is merely a bit of waste paper, which is of no evidence value before this Court, and should be so treated. The Applicant has thus failed to establish his case with concrete and relevant evidence, hence, the 1st Respondent on her part has no burden to discharge. Counsel urge the Court to so hold.

1ISSUE TWO

Whether a claim for damages can be granted where infringement or beach of fundamental human rights cannot be attributed to the 1st Respondents or where the claim is not proved.

The above question is equally answered in the negative.

The law is very clear and it is to the effect that damages or compensation for violation of fundamental rights flows from successful proof of the Applicant's case. Thus, if from the foregoing argument in issue 1 above, it is held that the Applicant's case lacks merit, no damages can be awarded.

Counsel, thus, respectfully urge this Honourable Court to dismiss this suit for lack of merit, with substantial cost.

In opposition to the Applicant's Application the 2nd Respondent filed a counter affidavit of 10 paragraph same is deposed to by Mohammed Abbas an employee of the State Security Service attached to the Legal Department National Headquarter, Abuja. The Counter affidavit was filed on 7th March, 2022. The second Respondent also filed a written address where same formulated issues for determination :-

1. Whether the Applicant can shield himself through the fundamental rights enforcement procedure from investigation by security and law enforcement agencies, of alleged infraction of law.

2. Whether Applicant's originating processes disclosed any cause of action.

ISSUE NUMBER ONE

It is our submission that this Court cannot make an order to stop security and law enforcement agencies from discharging their duties including investigating alleged infraction of any law in Nigeria, insofar as such investigating is done in accordance with the law. There is no doubt that every citizen of this country is entitled to fundamental human rights Chapter 4 of the Constitution of the Federal republic of Nigeria 1999(as amended) makes provision for the various rights of individuals including right to personal liberty, right to be presumed innocent as well as right to acquire and own immovable property anywhere in Nigeria. These rights are fundamental, universal and inalienable. To this end, it becomes really imperative for citizens, including the Applicant in this suit, to guard their rights jealously.

However the right to personal liberty as enshrined in the 1999 Constitution of the Federal Republic of Nigeria, is not absolute as there are various instances where such rights can be judicially curtailed. These instances have been provided in section 35(1) of the 1999 Constitution to the extent that the right can be deprived in accordance with a procedure permitted by law. Similarly, the constitution provides for derogation of some of those rights in certain circumstances.

One of those areas where such rights can be curtailed is when a person is believed on reasonable suspicion to have committed an offence. In that regards, such a person can be arrested and detained in accordance with the law. Section 3 of the Administration of Criminal Justice Act 2015 provides thus:-

"A suspect or a Defendant alleged or charged with committing an offence established by Act of the National Assembly shall be arrested, investigated inquired into, tried or dealt with according to the provisions of this Act, except otherwise provided under this Act.

By this provision Administration of Criminal Justice Act(ACJA) it is crystal clear and patently glaring that any person suspected of having committed or charged with an offence can be arrested.

What the Applicant is asking from this Court through this suit is that the provisions of the constitution as relating to the exceptions to right to personal liberty as well as the provisions of the Administration of Criminal Justice Act be put in abeyance. It is my conviction that this Court that is saddled with the responsibility of interpreting the laws of this country will not grant such prayers.

There are myriad of judicial authorities to the fact that one cannot approached the Court to shield him from investigation. In **SALIHU V GANA & ORS (2014) LPELR 23069(CA)** it was held as follows:-

"It has been held that the fundamental rights provisions cannot be used, and should not be used, by a person to shield himself from criminal investigation and prosecution".
Attorney GENERAL, ANAMBRA STATE VS UBA (2005) 15 NWLR (PT 947) 44" per Abiru J.C.A (p. 34) paragraphs A-B

The Court of Appeal answered the question of whether the Court cannot stop law enforcement agencies from investigation in **IGP & ORS V UBAH (2014) 23968)(CA)** as follows:-

*"The order of perpetual injunction restraining the Appellants is unconstitutional because it is an interference with the powers given by the constitution to police officers to investigate and prosecute crimes. See **ATTORNEY GENERAL ANAMBRA STATEVS CHIEF CHRIS UBA (2005) 15 NWLR (Pt 947) 44**; where Bulkachuwa JCA held:-*

"For a person, therefore to go to Court to be shielded against criminal investigation and prosecution is an interference with powers given by the Constitution to law officers on the Control of criminal investigation. The Plaintiff has no legally recognizable right to which the Court can come to his aid. His claim is not one the Court can take cognizance of for it has disclosed no cause of action. The Plaintiff cannot expect a judicial fiat preventing a law officer in the exercise of his constitutional power"

It is indeed trite that no Court has the power to stop the police from investigating a crime and whether to or how it is done is a matter within the discretion of the police. See **FAWEHINMI V I.G.P (2002)7 NWLR (pt 767) 606; AGBI VOGBE (2005)8 NWLR (pt926) 40; CHRISTLIEB PLC V MAJEKODUNMI (2008)16 NWLR (pt 1113) 324; ONAH V OKENWA (2010) 7 NWLR; HASSAN V E.F.C.C (2013) LPELR (CA) per IYIZOBA J.C.A (Pp. 27-28) paragraphs D-C.**

It is indeed pertinent to stress that what the Applicant seeks to achieve with this suit is to shield himself from investigation through the instrumentality of Fundamental Rights Enforcement Procedure. The Applicant has coined his prayers to reflect speculative breach of right to liberty, whereas in the real sense he is asking the Court to stop security and law enforcement agencies from investigating the petition brought against him. In **MAINSTREET BANK & ORS V AMOA & ANOR (2014) LPELR 23361 (CA)** the Court of Appeal held:-

“This Fundamental Rights (Enforcement Procedure) cannot be used as a shield to stall a criminal investigation even where the Court has found that indeed the fundamental rights of the Applicant has been breached. It should not debar further investigation and the conclusion of the alleged offence.”

The position of the law is that once an allegation is made against a person, it is the duty of security and law enforcement agencies to investigate such allegations. In **ONAH V OKENWA & ORS (2010) LPELR 4781 (CA)** it was held thus:-

“Once criminal allegations are made against a citizen, it is a constitutional and statutory a duty of the police to investigate, as investigation and detection of crime is one of the primary duties assigned to the police under section 4 of the Police Act, ” PER ADAMU JAURO J.C.A (P. 25, paragraph B-C)

It is pertinent to state that investigation involves but is not limited to interviews, arrest, detention, searches, seizure where

necessary. However, any of these steps must be taken in accordance with the law.

Relying on the foregoing it is our humble submission that the Applicant has disclosed no cause of action in this suit as what he wants from this Court is what his Honourable Court cannot give. As held by the Court of Appeal in ***A-G ANAMBRA STATE V UBA (supra)*** that his claim is not the Court can take cognizance of for it has disclosed no cause of action.

It is our humble submission that the suit has disclosed no cause of action against the 2nd Respondent. A careful perusal of the originating motion and the affidavit in support reveals no cause of action against the 2nd Respondent. In the case of ***UBN V UMEODUAGU (2004) LPELR 3395 (SC)***, the Supreme Court stated " cause of action" to mean.

"..... a combination of facts and circumstances gives rise to the right to file a claim in Court for a remedy. It includes all things which are necessary to give a right of action and every material fact which has to be proved to entitled the Plaintiff to succeed" per KALGO, J.S.C (P.8 paragraphs C-E).

It is the cause of action that gives rise to a right of action. In ***FRED EGBE V THE HON. JUSTICE J.A ADEFARASIN (1987) LPELR 1032 (SC)*** stated thus:-

"A right of action is the right to enforce presently a cause of action. In otherwords a cause of action is the operative fact or facts

(the factual situation) which give rise to a right of action which itself is a remedial right.” Per Oputa, J.S.C (p32) paragraphs D-E.”

The existence of a cause of action is an indispensable prerequisite to the competence of any suit. **ONUOKWUSI & ORS V THE REGISTERED TRUSTEES OF THE CHRIST METHODIST ZION CHURCH (2011)LPELR 2702 (SC)** the Supreme Court held that:-

“For an action to be clothed with competence the following criteria must among others, be complied with. They are as follows:-

1. Existence or accrual of a cause of action
 - (a) There must be a cause of action before an intending litigant can seriously think of initiating proceedings in a Court. For the purpose of litigation, a cause of action has been comprehensively defined to entail the fact (s) or combination of fact(s) which gives rise to a right to sue and it consists of two elements, the wrongful act of the Defendant which gives the Plaintiff his cause of complaint and the consequent damage. It is thus constituted by the aggregate or bundle of facts which the law will recognize as giving the Plaintiff a substantive right to make claim for remedy or relief against the Defendant.
 - (b) Each of the factual elements making up the cause of action should have come into being before any proceedings are commenced otherwise the proceedings will be premature and consequently unsustainable... per Muhammad, J.S.C (Pp 18-21 , paragraph C-B.

It is our contention that the Applicant in this suit failed to set forth facts that may have given him the right of action against the 2nd respondent and that want of cause of action snuff off jurisdiction of the Court to adjudicate in this matter as it relates to the 2nd Respondent. The position of the law is that, where there is no cause of action against a Defendant, the trial Court, on proper application of the party, strike out such party. See the case of **VERALAM HOLDINGS LTD V GALBA LTD & ANOR (2014)LPELR 22671 (CA), PER EKO JCA (Pp 13, paragraphs C-D) see also DURU V NWAGWU (2006) ALL FWLR (pt 334) 1830.**

Since this is an application for the Enforcement of Fundamental Rights, the deposition in the affidavit should disclose the cause of action. Consequently, after careful perusal of the Applicant's affidavit, there was no iota of evidence found to show that the Applicant was threatened by the 2nd respondent as alleged. In plethora of cases, the Court has held that he who alleges has the duty to prove same. The burden of proof therefore, has not been discharged by the Applicant. See **ONAH V OKENWA (2010)7 NWLR (pt. 1194) 512 at 535 – 536 paragraphs H-A.**

There must be some evidence linking the 2nd respondent to the breach of the Applicant's rights for this action to be sustainable. The Supreme Court in **MILITARY ADMINISTRATION, EKITI V PRINCE BENJAMIN ADENIYI ALADEYALU (2007)14 NWLR (PT 1055) 619 at p.652 paragraphs E-F**" held that:-

"Cause of action" means a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person.

*The Apex Court in AG **FEDERATION V ABUBAKAR (2007) 10 NWLR (pt 1041) at Pp 121 -122 paragraphs G-A** held that:-*

"There must be a controversy between parties that a Court is called upon to resolve in a suit otherwise the Court will lack jurisdiction to entertain the suit. In otherwords, there must exist a cause of action between the parties, which term may be described as a civil right or obligation for the determination by a Court of law or a dispute in respect of which a Court of law is entitled to invoke its judicial powers to determine.."

The Applicant has not placed any evidence before this Honourable Court to show that the Fundamental Rights of the Applicant has been violated by the 2nd respondent. The need for vital evidence before the Court was emphasized by the Court of law in **FAJEMIROKUN V. CB (CL) NIG. LTD 10 NWLR (pt 774) 95 at p.112 paragraphs E-F** where it was told that:-

"For an Applicant alleging infringement of his fundamental rights to succeed, he must place before the Court all vital evidence regarding the infringement or breach of such rights. It is only thereafter that the burden shifts to the respondent. Where that has not been done or where scanty evidence was put in by the Applicant, the trial Court strike out such application for being void of merits"

I humbly refer to the Supreme Court decision in **BAKARE V NRC (2007)17 NWLR (1064) P.606 at 637** where Chukwuma Ene JSC said:-

*"It is against the foregoing background that one has to examine the relationship of the parties and what is the cause of action. It is settled and I will cite all the same a number of cases in support that the only place to look for it, is the statement of claim, a cause of action is made up of two factors, that is the wrongful act of the Defendant and the consequential damages occasioned to the Plaintiff." See also **DANTALA V MOHAMMED (2000)7 NWLR (pt 664) and NISSAN NIG. LTD V YOGANATHAN (2010) 4 NWLR (1183) at 157 -159.***

Finally the Supreme Court held in **FRIN V GOLD (2007) 11 NWLR (1044) P.1 At 18 -19** that:-

"A party who submits himself to a Court for adjudication of a matter to which he is seeking redress, but without cause of action, cannot, clothe the Court with jurisdiction to hear and determine the matter, and even if by an oversight, the court vest itself with jurisdiction and decides the case, an appellant Court is bound to nullify the decision" per Mukhtar JSC."

In opposition to the application filed by the Applicant the 3rd and 4th Respondents filed their counter affidavit dated 18th March, 2022 same is deposed to by one ASP Eristo Asaph a police officer

attached to the Force Legal/prosecution, Force Criminal Intelligence and Investigation Department (FCIID) of the Nigeria Police Force Headquarter, Area 11, Abuja.

The counter affidavit contains 11 paragraph affidavit, also a written address was filed by the 3rd and 4th Respondents dated the 18th March, 2022.

The Applicant herein is alleging breach of his fundamental right to personal liberty and right to property by the 3rd and 4th Respondents and sought the following orders:-

1. An order of perpetual injunction of this Honourable Court restraining the 3rd and 4th Respondents their officers, servants and agents from further inviting and threatening to arrest and detain the Applicant and interfering with the Applicant's right to freedom of movement and right to property.
2. An order of this Honourable Court directing the payment of the sum of N50,000,000.00 (Fifty Million Naira) against the 2nd - 4th in favour of the Applicant for the breach of the Applicant's fundamental right to personal liberty and right to property.

ISSUES FOR DETERMINATION

Whether the Applicant's fundamental rights have been violated by the 3rd and 4th Respondents and whether the Applicant is entitled to the reliefs sought.

Counsel submits with respect that the Applicant is not entitled to the reliefs sought by this application.

That the Applicant was never threatened, arrested nor detained by the 3rd and 4th Respondent in whichever way he, the Applicant so described, as the Applicant has failed in his originating motion to mention or name any officer or officers of the 3rd and 4th Respondent who breached his fundamental right in whatsoever

way. The Applicant also failed to substantiate his allegations against the 3rd and 4th Respondent by way of statement, what command or unit the allegations against the 3rd and 4th Respondents by way of statement, what command or unit the alleged officers were from and what fundamental rights were breached. The Applicant was never harassed, intimidated threatened nor his fundamental rights violated at any point in time by the 3rd and 4th Respondent.

Counsel submit further that reliefs 1 and 2 sought by the Applicant are incompetent as it is failed to pass the test of grant of declaratory relief and failed to show that they are entitled to either the restraining order or the perpetual injunction they are seeking from the Court. In **SENATOR RASHIDI ADEWOLU LADOJA VS INEC 2007 LEGALPEDIA SC 4A4C**, the Supreme Court held:-

" The grant of declaratory, it must be noted, is discretionary, it will only be granted when the Court is of the opinion that the party seeking it is, when all facts are taken into consideration, fully entitled to the exercise of the Courts discretion in his favour' per Aderemi JSC."

On relief one Counsel submit that the Applicant is not entitled to the reliefs sought as there is nothing in Applicant's affidavit to show that the 3rd and 4th Respondents intimidated, harassed or unlawfully detained or threatened to unlawfully detain the Applicant. It therefore behooves on the Applicant to proof to the Court how he was unlawfully arrested or detained.

Counsel submit with respect that this application lacks merit and is wanting bona fide. We refer to seven UP **BOTTLING CO. LTD**

VS ABIOLA AND SONS BOTTLING CO. LTD (1996) 7 NWLR (pt 463) 714 and FAJEMIROKUN VS CB (CL) NIGERIA LTD (2000) 15 NWLR (Pt 774) at 97-98 where it was held that until Applicant is able to establish infringement of his right his application must fail.

The Applicant in all his processes failed to provide ample evidence to substantiate the alleged claims of the 3rd and 4th Respondent harassment, intimidation or threat. There is nothing in the affidavit of the Applicant suggesting the involvement of the 3rd and 4th Respondents with specific references as regards the exact police division, dated time or even the officer (s) the case was assigned to, let alone a breach of his fundamental rights. See ***ONA V OKENWA (2010)NWLR (Pt 1194) pg.512. See section 115 (3 and 4), of the Evidence Act, 2011 order 37, Rule 25 order 38 Rule 4 (1and 2) Federal High Court Civil Procedure Rules 2018.***

Further, the Applicant has failed to present compelling evidence in his affidavit in support of his originating motion and it is fictitious as there is no evidence to prove that the Applicant was harassed, intimidated nor threatened by the 3rd and 4th Respondent at the behest of the 1st Respondent, in the affidavit in support of the Applicant's application.

Furthermore, the Applicant made mention in his paragraph 47 of his affidavit in support, of several petitions to the office of the 3rd Respondent, but failed to substantiate such claims by attaching copies of the said petitions to the office of the 3rd Respondent.

It therefore presupposes that this entire suit is a mere conjecture of lies and a flimsy attempt at best to taint the image of the 3rd and 4th Respondent without reasonable cause. The application by the Applicant in its entirety is frivolous and in fact a conjecture of

unsubstantiated facts as such should fail for lack of merit. This was aptly decided in the case of **SHITTU V OLAEGBE (2010)ALL FWLR (Pt 549) 1000 at 1007, paragraphs F-G and EKEAGWU V NIGERIA ARMY (2010)6 SCNJ 22 pp 24 to 25.**

It is trite in law as provided in section 131 Evidence Act, 2011 that he who asserts must prove and where a case is not proven it must fail. In **OKANU V COP (2004) CHR 407**, it was stated unequivocally that the burden of proof is on the Applicant to substantiate his allegations.

The Applicant made assertions in its affidavit as to harassment, intimidation and threats in paragraphs 43,44,49 & 50. He however failed to lead evidence or specific details to this assertion.

The suit by the Applicant in its entirety is frivolous and in fact a conjecture of unsubstantiated facts as such should fail for lack of merit. This was aptly decided in the case of **SHITTU V OLAEGBE (2010)ALL FWLR (pt 549) 1000 at 1007, paragraphs F-G and EKEAGWU V NIGERIA ARMY (2010) 6 SCNJ 22 PP 24 to 25.**

Thus the failure of the Applicant to provide the material facts on which this Honourable Court can act is fatal to the application and all relevant evidence needed to be adduced to substantiate the claims are not supplied.

All the reliefs sought by the Applicant are doubtful and it is trite that the language use in couching the relief under fundamental right enforcement rule must be vivid and clear, so as to leave no one in doubt as to what is being prayed for by the Applicant. See **IBRAHIM V MINISTER OF DEFENCE & ORS (2015) LPELR – 25936 (CA).**

The Applicant sought for the sum of Fifty Million Naira (₦50,000,000.00) award against the 3rd and 4th Respondents and on that Counsel submit that the Applicant is not entitle to any monitory relief. The position of the law is that for such a claim to qualify as falling under fundamental enforcement or for securing the enforcement of a fundamental right and not from the nature of the claim, to redress grievance that is auxiliary to the principal relief which itself is not ipso facto a claim for the Enforcement of Fundamental right. See **FRN & ANOR V EFGWU(2003) 15 NWLR (pt842)113 at 180.**

The Applicant also filed a further and better affidavit in response to the counter affidavit filed by the 1st Respondent same is deposed to by Kola Adewale, the further and better affidavit contains 8 paragraph and is dated the 24th March, 2022 also with a rejoinder on point of law attach.

Similarly, the Applicant also filed a further and better affidavit in response to the counter affidavit of the 2nd Respondent same is deposed to by Kola Adewale and with the attach rejoinder on point of law dated 24th March, 2022. Also in response to the counter affidavit filed by the 3rd and 4th Respondent. The Applicant filed a further and better affidavit in response to the counter affidavit filed by the 3rd and 4th Respondents same is depose to by Kola Adewale and with the attached rejoinder on point of law dated 24th March, 2022.

Having reproduced substantially the position of all the Council in this matter for and against I also looked at the affidavit evidence on the counter affidavit filed by the Councils in this matter on further and better affidavit filed by the Applicant on the rejoinder on point of law. I am strongly of the view to be considered in this judgment is whether from for the relief sought by the Applicant and the affidavit evidence in support of the application falls within

the requirement of the Fundamental Right Enforcement Procedure Rule.

This procedure should be noted in sue generis. The issues for determination is:-

1. Whether from the process filed by the Applicant, the Applicant has made any case against the 1st Respondent for violation of his fundamental Rights to entitle him to the declaratory reliefs and order sought.

The question is whether looking at the reliefs as reproduce in this judgment together with the grounds on which he claimed it can be said that the breach of the fundamental right is the principal or main claim in the action before the Court? It is very clear to me that the main claim if any could be dealt with by filing a writ in the usual way of filing an action in a Court of law. It is imperative to note that the position of the law is that the procedure for instituting an action base on the infringement of fundamental right under the constitution is prescribed by the Fundamental Right Enforcement Procedure Rules 1979 only a breach of any of the Fundamental right guaranteed in the Constitution can be enforced under the procedure. This an action as contained in the processes filed by the Applicant cannot be brought under the Rules since it belongs to a different class of action. See **TUKAR VS GOVT OF GONGOLA STATE (1989) 4 NWLR (PT 117) 517 WACE VS ADEYAYU (2008)4 SCNJ 186.**

When therefore an application is brought under the rules a condition precedent to the exercise of the Courts jurisdiction is that enforcement thereof should be the main claim and not an accessory claim see **TUKUR VS GOVT OF GONGOLA STATE (supra)** from the entire affidavit evidence of the Applicant and the Annexure attached thereto the issues contained there is not

the main claim of enforcement but rather it is an accessory claim. The Applicant have not substantially provide the necessary tools that would *make* this Court to grant the application. It is settled law that in ascertaining the compliance of a suit the defaming factor is the Plaintiff claim.

On this question however it is not the manner in which the claim is clutched that matters nor is the categorization given to the claim by the Defendants that counts. The Court has a duty to carefully examine the reliefs claimed to ascertain what the claim is all about. From the 1st issue it is my humble view that same has not satisfied the requirements the same thing applied to the second issue raised by the Applicant in this case.

From the entire processes filed by the Applicant a careful examination of the reliefs and issues for determination shows clearly that as can be seen in the reliefs was a breach on the Applicant which can ordinarily be brought by a way of writ and which must be supported by evidence.

Thus the mere assertion of the violation of the applications constitutional right does not necessary make the action maintainable by recourse to the fundamental Right (Enforcement Procedure) rules the Court has to examine reliefs closely to ascertain what the Applicant claims. On a thorough scrutiny of the reliefs claimed it is my view that the principal claim if any has not been established therefore on the authority of ***TUKURS (supra)*** and other I have cited above this suit ought to have been initiated by a writ of summons where the parties could have filed and exchanged pleadings and evidence will be adduced and tested on the issues raised by the Applicant, the law on the point as well settled is that only actions found on a breach of any of the fundamental right guaranteed in the constitution can be enforced under the rules. Applying the law as analyzed above to the facts

to the present case it is clear that what the Applicants sought from the Court does not fulfill the requirements of the Fundamental Right Enforcement Procedure Rules 1979 as provided by the Constitution. It is a settled law that where a claim is not instituted by due processes of law, the claim is incompetent and where all the same the incompetent claim was heard by the Court the proceeding before the Court are a nullity. See **MADUKOLA VS NKENDIRILM(1967) 2 SCNLR 341**. It is also the law that where the main or principal claim in an action brought for the Enforcement of Fundamental right (enforcement procedure) Rules 1979. Is not the enforcement or procedure of a fundamental right the rules are not appropriate to initiate such action. See **SEA TRUCHS NIG. LTD VS ANGBRO AND GRACEJACK UNIVERSITY OF AGRICULTURE MARKUDI (2011)5 NWLR (pt 865) 208 A 226 -227**. In the respective counter affidavit as contained in the judgment the 2nd -4th Respondent has elaborately by way of counter affidavit narrated to the court the circumstance which led to discharge their various form of duty as presented by the respective laws that establish them with the explanation of the 1st Respondent who in his counter affidavit gave detail circumstance that led the 1st Respondent to have lodge his complaint to the 2nd ,3rd and 4th Respondent. It was therefore improper for the Applicant to treat the matter as one amounting to that of infringement of his fundamental right and which thereby qualified him to commence the action under the fundamental right (Enforcement procedure) see **ABACHI VS ALOR (2006) 5 NWLR 60**. Looking at the facts contained in the Application and the counter affidavit any reasonable person will perceive and be satisfied that none of the act complain of falls within the acts in the supra provision of the constitution. It is settled by a long line of decision of both count of appeal and Supreme Court that remedy other than those

touching upon fundamental Right (enforcement procedure rules) Supra the Court cannot properly exercised as it will be incompetent. As a result of the failure on the part of the Applicant to sustain his 1st relief based on the fundamental Right (Enforcement Procedure) rules all other reliefs contain there in has failed. Accordingly based on the judicial authorities cited above this application is

hereby struck out.

**HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)**

APPEARANCE

H.A Tanel:-For the Applicant

Eisto Asaph:-For the 3rd and 4th Respondent

Omaga Emmanuel:-For the 1st Respondent.