

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

ON THE 5<sup>TH</sup> DAY OF OCTOBER 2021.

BEFORE HIS LORDSHIP:  
HONOURABLE JUSTICE JUDE O. ONWUEGBUZIE – JUDGE  
SUIT NO. FCT/HC/M/12364/2020

BETWEEN:

ONYINYECHI ENEOGWE .....APPLICANT

AND

1. THE INSPECTOR-GENERAL OF POLICE
2. THE NIGERIAN POLICE
3. COMMISSIONER OF POLICE, FCT, ABUJA
4. AREA COMMANDER, MAITAMA AREA COMMAND ABUJA
5. MRS. SIMISOLA ADEYEMO



RESPONDENTS

**JUDGMENT**

Before this Honourable Court is an Amended Notice of an Application for Enforcement of Fundamental Rights dated 22<sup>nd</sup> day of March, 2021 and filed on the same date through an originating motion. The application is brought pursuant to Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009; Section 46 (1), 34(1) and 35 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) and Under the Inherent Jurisdiction of this Honourable Court.

The Applicant seeks the following Reliefs:

- a. **A Declaration** that the arrest and detention of the Applicant by the Respondents for a period of 7 hours, from 10:30 am to 5:30 pm on the 25<sup>th</sup> day of November, 2020 without any reasonable or probable cause or justification, constitutes a violation of her Fundamental Rights to personal liberty and the dignity of the human person as guaranteed by Section 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Articles 5 and 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9, LFN, 2004.
- b. **A Declaration** that the statement written by the Applicant at Area Command, Maitama on the 25<sup>th</sup> November, 2020 is null and void and of no legal effect, same having been made under duress.
- c. **An Order of Perpetual Injunction** restraining the Respondents by themselves, their agents, servants or privies from further intimidating, harassing, arresting, re-arresting or detaining the Applicant, except by leave of this honorable court dully obtained.
- d. The Sum of **#100,000,000.00 (one hundred million naira only)** being general damages against the Respondents for unlawful arrest and detention, psychological torture and trauma, and for a violation of the Applicant's fundamental rights to personal liberty and the dignity of the human person, guaranteed by section 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 ( as amended) and Articles 5 and 6 of the African Charter on Human and Peoples' Rights ( Rectification and Enforcement) Act, Cap. A9, LFN, 2004.
- e. The sum of **#50,000,000.00 (fifty million naira only)** being punitive and/or exemplary damages against the Respondent for unlawful arrest and detention, abuse of power and careless disregard for the rule of law.

- f. An unreserved public apology from the Respondents to the Applicant herein, duly publicized in at least two National dailies.
- g. And for such further Order or other Orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the reliefs are sought are:

- a. The Applicant was arrested and detained by the Respondents for a period of 7 hours, from 10:30 am to 5:30 pm on the 25<sup>th</sup> November, 2020 without any reasonable or probable cause or legal justification, which act is illegal and unconstitutional.
- b. As provided for in section 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) an arrest can be said to be lawful and justifiable if and only if it is effected on a ground of reasonable suspicion of commission of an offence.
- c. The Applicant herein was arrested and detained without any grounds for suspecting that she has committed any offence whatsoever, except that the Respondent wanted to intimidate and coerce her to refund the sum of One million, eight hundred thousand naira(#1,887,000 only) to the 5<sup>th</sup> Respondent. There was no element of criminality in the transaction between the Applicant and the 5<sup>th</sup> Respondent at whose behest the Applicant was arrested and detained by the police. The transaction between them was purely contractual and patently civil in nature and does not constitute any offence known to Nigerian law.
- d. Even where there are reasonable grounds for suspecting that a person has committed an offence, he is still entitled to the dignity of human person as gurranteed by section 34 of the Constitution of the Federal Republic of

Nigeria, 1999, (as amended). He is not to be handcuffed upon his arrest unless he turns violent.

- e. The Applicant herein was unlawfully arrested, publicly handcuffed even though she did not resist the arrest and detained in police cell from morning till evening like a common criminal. She was also compelled to sign a statement to refund One million eight hundred and eighty seven thousand naira (#1,887,000) only to the 5<sup>th</sup> Respondent. The Police are not a debt-collecting agency.
- f. The mere fact of unlawful arrest and detention without reasonable and probable cause is enough proof of torture, inhuman or degrading treatment.
- g. The 1999 Constitution presumes the Applicant innocent until proven guilty in a competent Court of law, but the Respondents treated her as though already found guilty of an offence known only to the Respondents.
- h. The unlawful arrest and detention of the Applicant by the Respondent amounts to a violation of the Applicant's fundamental right to personal liberty and the dignity of the human person as guaranteed section 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended).
- i. The Respondents are not above the law of the land and as such they have a duty to obey the laws of the land.
- j. Damages are natural Consequences and penalty imposed by the Constitution for a breach of fundamental right. See section 35 (6) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended).
- k. The Applicant herein was not only arrested and detained but also subjected to inhuman and degrading treatment.
- l. The Respondents are not above the law of the land and as such they have a duty to obey the laws of the land.

The application is accompanied with a Statement of Facts and a Supporting Affidavit of 23 paragraphs deposed to by Onyinyechi Eneogwe the Applicant herself, with attached Exhibit and an accompanying written address of the Applicant's Counsel in support of the Application.

By the records of the Court, the Motion on Notice along with hearing notices were served on the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondents on the 24<sup>th</sup> day of March, 2021.

In opposition to the application before the Court, the 1<sup>st</sup> – 4<sup>th</sup> Respondents filed on the 24<sup>th</sup> June, 2021 a 23 paragraphs Counter-Affidavit deposed to by Inspector Ati Jonah, with an Exhibit and a written address of the 1<sup>st</sup> – 4<sup>th</sup> Respondents' Counsel in opposition to the Application.

In the same vain the 5<sup>th</sup> Respondent filed a 19 paragraphs Counter-Affidavit deposed to by the 5<sup>th</sup> Respondent herself, dated 29<sup>th</sup> day of March, 2021 and filed same day with four (4) Exhibits and a Written Address of the 5<sup>th</sup> Respondents' Counsel in opposition to the Application.

The motion on Notice was heard on the 12<sup>th</sup> day of July, 2021. All counsel in the suit argued and adopted their respective written addresses in support of their case. The case was thereafter adjourned to this 5<sup>th</sup> day of October, 2021 for judgment.

The thrust of the Applicant's case is that sometimes in 2018 she bought goods valued #2,887,000 (Two Million, Eight Hundred and Eighty Seven Thousand Naira) only from the 5<sup>th</sup> Respondent out which she paid #1,000,000 (One Million Naira) only cash with the gentleman's agreement that the balance of #1,887,000 (One Million Eight Hundred and Eighty Seven Thousand Naira) would be paid subsequently.

That when things became rough, she issued a cheque which was to be due on the 30<sup>th</sup> day of November 2020, to the 5<sup>th</sup> Respondent but however, before the due date, the 5<sup>th</sup> Respondent came to the Applicant's house at No. 8, Atabara Street, Wuse 2 Abuja on the 8<sup>th</sup> day of November, 2020 with some thugs and insisted that instead of her to wait till 30<sup>th</sup> day of November, 2020 when the cheque would be due, she would rather carry the Applicant's Plasma Television valued Two Million, Four Hundred Thousand Naira (#2,400,000) only and fridge valued Four Hundred and fifty Thousand Naira (#450, 000) only in place of the debt or to repay debt of One Million, Eight Hundred and Eighty Seven Thousand Naira (#1,887,000) only being the outstanding balance in which case the postdated cheque would be due on 30<sup>th</sup> day of November, 2020 had been overtaken by event since the debt had been paid. A copy the letter of agreement duly signed by the applicant and the 5<sup>th</sup> Respondent and dated 8<sup>th</sup> day of November, 2020 is hereby attached and marked "Exhibit A". That upon the signing of the aforementioned agreement, the 5<sup>th</sup> Respondent went away with the applicant's Plasma Television and fridge and the Applicant consequently requested that her postdated Cheque earlier issued to the 5<sup>th</sup> Respondent that would have been due on the 30<sup>th</sup> day of November, 2020 be returned to her hence the outstanding loan had been paid, the 5<sup>th</sup> Respondent failed, refused and neglected to return the cheque and further vowed to deal with the Applicant for daring to request for the return of her cheque. The Applicant further averred that surprisingly on the 25<sup>th</sup> day of November 2020, the 5<sup>th</sup> Respondent came to her house situate at No. 8, Atabara Street Wuse 2 Abuja, with some armed police men and arrested her and subsequently took her to Area Command Office, Maitama where she was detained for 7 hours from 10:30am to 5:30 pm on the 25<sup>th</sup> day of November, 2020 before she was released on self-recognition and asked to report back at the Area Command's office on the 26<sup>th</sup> day of November, 2020 at 10:00 am prompt. That on the 25<sup>th</sup> day of

November, 2020, Applicant was not only arrested and detained, she was also publicly hand-cuffed and bundled into a waiting vehicle like a common criminal over a business transaction of sale of clothes or debt of One Million Eight Hundred and Eighty Seven Thousand Naira (1,887,000) only to the 5<sup>th</sup> Respondent which debt the Applicant had paid with her plasma television and fridge which agreement was reduced into writing and duly signed by both the Applicant and the 5<sup>th</sup> Respondent as if she had committed a heinous crime. That the Applicant was forced to write statement at Maitama Police Station and gave notice to produce the said Statement written by her at Maitama Police Station. That unless the Honourable Court intervenes the Respondents will carry out their threat of re-arresting and detaining her on the basis of the Statement and civil transaction thereby further violating her Fundamental right for no just cause. The Applicant further stated that she is an innocent law abiding citizen and have not committed any offence to have warranted her arrest and detained for 7 hours at the behest of the 5<sup>th</sup> Respondent and subjected to this form of intimidation, harassment, threat and inhuman and degrading treatment. That her arrest and detention in Police custody coupled with the inhuman and degrading treatment by the Respondents has left her traumatized. That it will be in the interest of justice for this Honourable Court to grant the reliefs sought in the Statement accompanying the application.

The 1<sup>st</sup> to 4<sup>th</sup> Respondents in opposition denied all the Applicant's depositions contained there-in as same did not represent the true facts of this case and stated that most of the averments contained in the Applicant's Affidavit particularly as it relates to 1<sup>st</sup> to 4<sup>th</sup> Respondents were false and marred with blatant falsehood in its entirety, a ruse, fallacy and a calculated attempt to mislead this Honourable Court. The 1<sup>st</sup> to 4<sup>th</sup> Respondents averred that the Applicant was only invited to the Maitama Police Station on the 24<sup>th</sup> day of November, 2020 based on the report of

threat to life made against her by the 5<sup>th</sup> Respondent. That the 1<sup>st</sup> to the 4<sup>th</sup> Respondents invited the Applicant based on the above complain is in line with their duties to investigate any allegation or suspicion of crime, making sure that law and order are maintained and ensure peace in the society. That the Applicant did not honour their invitation until the next day, which was 25<sup>th</sup> day of November, 2020 when she came voluntarily in company of her friend at about 1:pm and after she had given her statement, the Applicant was allowed to go after a couple of hours. A Certified True Copy of the 5<sup>th</sup> Respondent's Statement is annexed hereto and marked as "Exhibit A". That it took the Applicant less than one hour to reduce her statement in writing and was subsequently allowed to take her leave. That the entire time spent by the Applicant at the Maitama Police Station was less than 3(three) hours as the Applicant came to the Police Station voluntarily in company of her friend and after the interrogation, she was allowed to go and was never kept beyond the required time provided under the Constitution of the Federal Republic of Nigeria.

The 1<sup>st</sup> to 4<sup>th</sup> Respondents further averred that they never arrested, detained, shackled or forced the Applicant to make her statement but merely invited her. That the Applicant was never humiliated or subjected to any threat, degrading or inhuman treatment neither was the Applicant handcuff neither was she ever arrested or detained at the Police Station beyond three hours nor assaulted in any manner however.

The 1<sup>st</sup> to 4<sup>th</sup> Respondents further stated that they have no intention nor desires to carry out any arrest, threat of re-arrest and detaining the Applicant over civil transaction as the 1<sup>st</sup> to 4<sup>th</sup> Respondents are not Debt Recovery Agents. The 1<sup>st</sup> to 4<sup>th</sup> Respondents states categorically that the case reported against the Applicant by the 5<sup>th</sup> Respondent was a case of threat to life only. That the 1<sup>st</sup> to 4<sup>th</sup> Respondents



are not liable to the Applicant in damages whether jointly or severally. That the Applicant is not entitled to damages in any coloration.

The 5<sup>th</sup> Respondent in response to the Application denied almost all the Applicant's depositions contained in the Applicant's Affidavit in support and aver as follows; that sometime in October, 2018, the Applicant bought goods worth #2,887,000 (Two Million Eight Hundred and Eighty Seven Thousand Naira) from her and promised to pay the entire sum by December, 2018. That by December the Applicant failed to pay the debt, despite repeated demands. That sometime in June, 2019, (seven months after the date the Applicant agreed to pay the initial total debt) and after an intervention by a mutual friend, the Applicant reluctantly paid her the sum of #1,000,000 from the aforementioned debt, leaving an outstanding debt of #1,887,000 (One million Eight Hundred and Eighty Seven Thousand Naira). That all efforts to collect the outstanding debt proved abortive subsequently severed communication with her. That the Applicant subsequently disappeared with no trace until around November, 2020 when she found out that the Applicant lives at Wuse2, Abuja. That on November, 8<sup>th</sup> 2020, at about 7:00am she went to the Applicant's house with her driver. While her driver remained inside the car, she went into the Applicant's compound and the security man in the compound informed me that the Applicant lives at the Boys quarters behind the main house. That upon getting to the Applicant's apartment, she saw the Applicant's door open and a boy sweeping her rug. That immediately the Applicant saw her, she started begging and promised that she will pay her the outstanding sum of #1,887,000 (One million Eight Hundred and Eighty Seven Thousand Naira), she however insisted on the immediate payment of the money, as same has been outstanding for two years. That as further sign of her commitment to repay the debt, the Applicant voluntarily offered to have her hold on her television and fridge as a lien, until

November 30<sup>th</sup>, 2020, when the money the Applicant invested will be due. That however she rejected the television and the fridge, as it occurred to the 5<sup>th</sup> Respondent that their market value will not be enough to cover even half of the outstanding debt the Applicant is owing her, in the event the Applicant defaults in payment. That notwithstanding the above, the Applicant passionately pleaded with the 5<sup>th</sup> Respondent to hold on to the television and the fridge, until November 30<sup>th</sup>, 2020, when her investment will be due. That the Applicant also voluntarily offered to issue the 5<sup>th</sup> Respondent a cheque payable on November, 30<sup>th</sup> 2020. That after making these offers in the presence of the boy sweeping her rug, the 5<sup>th</sup> Respondent reluctantly accepted the offers on the condition that the Applicant will sign an agreement stating that she voluntarily placed her television and fridge in the 5<sup>th</sup> Respondent's possession until the cheque the Applicant issued is cleared. That the Applicant issued a First Bank Cheque (no. 33572045) in the sum of #1,887,000 (One million Eight Hundred and Eighty Seven Thousand Naira) payable on the November, 30<sup>th</sup>, 2020. That the cheque was issued from the Applicant's company's House of Gayston Ventures, First Bank Account to the 5<sup>th</sup> Respondent's Company, Mahani Costmetics. A copy of the cheque was attached and marked 'Exhibit A'. That immediately after the Applicant issued the cheque, the Applicant signed an undertaking that she has given the 5<sup>th</sup> Respondent her television and fridge in line with their aforementioned agreement.

The 5<sup>th</sup> Respondent further averred that the television and the fridge given to her by the Applicant were strictly a lien, until the cheque is cleared and not as payment of the debt. That she never went to the Applicant's house more than once with her driver only. That she politely reminded the Applicant that the television and the fridge were given to her as a lien not as payment for the debt. That upon receipt of her message the Applicant called her on the phone and threatened her life and

further threatened to deal with her, if she does not accept the television and the fridge as payment for the debt. That as a law abiding citizen she rushed to the Maitama Police Station Abuja where she made a complaint and wrote down statement against the Applicant, for threats the Applicant issued against her. The copy of 5<sup>th</sup> Respondent's Statement was attached as 'Exhibit E'

That her complaint at the Maitama Police Division Abuja was not in anyway related to the debt recovery. That upon receipt of her complaint against the Applicant for threats the Applicant issued against her, the Police invited the Applicant, but she informed the Police that she will only be available to come to the station the next day, being November, 25<sup>th</sup> 2020.

That the 5<sup>th</sup> Respondent further stated that on November, 25<sup>th</sup> 2020, she arrived at the Police Station at about 10:00 am. At about 1:00 pm the Applicant and her friend voluntarily drove into the Police Station where they met with the Divisional Police Officer. That after about an hour with the Divisional Police Officer, the Applicant and her friend came out, and she was directed by the investigating police officer (I.P.O) to write down her statement. That Applicant wrote her statement where she confirmed that she threatened her because of her television and fridge. That at the station, the Applicant, yet again, made a U-turn, and pleaded that she should return her television and fridge because her house is now empty. That in an attempt to resolve the matter amicably, as against charging the Applicant to Court, the I.P.O took the Applicant along with their statements to the Divisional Police Officer, who pleaded with her to return the Applicant's television and fridge and hold on to the cheque, as suggested by the Applicant during their interview with the I.P.O. The Divisional Police Officer specifically told the Applicant that she committed a criminal offence by threatening her. That the entire interview with the I.P.O and the Divisional Police officer was less than two hours thirty minutes and

the Applicant was never shackled. That she has returned the television and the fridge back to the Applicant. That the Applicant was never humiliated or subjected to threat, degrading or inhuman treatment, and that the Applicant was never arrested. That she is not liable to the Applicant's in damages.

The Applicant upon reading the Counter Affidavit from the 1<sup>st</sup> to 4<sup>th</sup> Respondents denied the depositions contained in the 1<sup>st</sup> to 4<sup>th</sup> Respondents Counter Affidavit and filed a 19 paragraph Further and Better Affidavit and Reply on points of Law. She averred that indeed the Applicant was invited by the 1<sup>st</sup> to 4<sup>th</sup> Respondents on the 24<sup>th</sup> day of November, 2020 and was eventually arrested on the 25<sup>th</sup> day of November, 2020 after which the Applicant was detained for good Seven (7) hours by the 1<sup>st</sup> to 4<sup>th</sup> Respondents before she was eventually released on bail to her friend, Ifeama Innocent who stood as surety. That the Applicant was arrested because of the debt and the issue of threat to life was not brought to the notice of the Applicant at the Police Station. That the Applicant did not threaten the 5<sup>th</sup> Respondent. That the only communication with the 5<sup>th</sup> Respondent was Exhibit B1 and B2.

Furthermore, the Applicant equally denied all the depositions contained in the 5<sup>th</sup> Respondent's Counter Affidavit and filled a 17 paragraph Further and Better Affidavit accompanied with a Reply on Points of Law. The Applicant averred that she and the 5<sup>th</sup> Respondent had a gentleman's agreement with her that the outstanding debt be paid with plasma television and fridge of the Applicant.

The Applicant's Counsel Osaze Eugen Ebie Esq. in his Written Address in support of the Application formulated two issues for the determination of the Court:

- 1. Whether the arrest and detention of the Applicant by the Respondents for a period of 7 hours, from 10:30am to 5:30pm on**

**the 25<sup>th</sup> day of November, 2020 without any reasonable or probable cause does not constitute a breach of the Applicant's fundamental rights as guaranteed by section 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).**

- 2. Whether damages (including punitive and exemplary damages) cannot be awarded by the court for a breach of fundamental rights.**

On arguing on issue one (1) the Learned Counsel to the Applicant submitted that the procedure permitted by law as contemplated by **section 35(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** is that the liberty of a person is not to be restrained unless there are reasonable grounds for suspecting that he has committed a criminal offence or upon valid order of a competent court of law. That none of the above preconditions existed in the instant case. That the Applicant was just detained arbitrarily without any iota of legal justification. The reason for Applicant's arrest was simply to coerce and intimidate the Applicant to pay the debt of One Million, Eight Hundred and Eighty Seven Thousand Naira (#1887, 000) only to the 5<sup>th</sup> Respondent which debt the Applicant had paid with her plasma television and fridge which agreement was reduced into writing and duly signed by both the Applicant and the 5<sup>th</sup> Respondent. The Counsel referred the court to "Exhibit A". That the Applicant's arrest and detention is unlawful, illegal and unconstitutional and constitutes a breach of the Applicant's fundamental rights to personal liberty. The Learned Counsel cited the following cases **IYERE v. DURU (1986) (sic) Part 44, page 665 at page 680, paras A-B.**

The Counsel further submitted that the Respondents herein have not followed the procedure permitted by law in the instant case. They have not acted according to the letter and intent of the provisions of Section 35 of the 1999 Constitution. That

renders them liable for a breach of the fundamental right of the Applicant. Counsel to the Applicant also cited **UBN v. AJAGU (1990) 1 NWLR (Part 126) 328**.

On issue two (2) the Counsel submitted that **Section 35(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** gives unrestricted power to the Court to award compensatory damages to the Applicant, where the Court finds that the fundamental rights of the Applicant has been trampled upon or breached. And the Court is enjoined to invoke its powers and do justice in the case. This is the only way through which the judiciary can restore the hope and dignity of man as enshrined in the laws of the land. That any trespass to person however slight gives rise to a right of action. He cited **OKONKWO V. OGBOGU (1996) 5 NWLR, Part 449, page 422 at ratio 3**. He urged this court to uphold the argument of the Applicant's Counsel and grant the reliefs sought by the Applicant.

The 1<sup>st</sup> to 4<sup>th</sup> Respondents Counsel's Written Address in opposition formulated three issues for the determination:

1. **Whether the Applicant's fundamental human rights as guaranteed by the 1999 Constitution of Nigeria as amended and African Charter of Human and People's Right has been breached or threatened by the action of the 1<sup>st</sup> to 4<sup>th</sup> Respondents.**
2. **Whether taking into consideration all the facts of this case, the 1<sup>st</sup> to 4<sup>th</sup> Respondents acted within the purview of the law.**
3. **Whether the Applicant is entitled to the reliefs sought.**

In his argument the Counsel submitted that by virtue of **Section 35(1) (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** the 1<sup>st</sup> to 4<sup>th</sup> Respondents are empowered to invite, interrogate, arrest and detain any person for the purpose of bringing him/her before a court or in execution of the order of a court or upon reasonable suspicion of his/her having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a

criminal offence. That from the depositions in the Counter Affidavit especially paragraphs 6 to 15 and Exhibit A annexed thereto, there is no doubt that the reason upon which the Applicant was invited after a complaint was made for a threat to life was reasonable. The learned Counsel to the 1<sup>st</sup> to 4<sup>th</sup> Respondents submitted further that from the totality of the facts before this Honourable Court, there has not been established any infringement of the rights of the Applicant. The failure of the Applicant to establish any infringement of her rights, that this action must fail. The Counsel cited **FAJEMIROKEN v. CB NIG.LTD (2002) 10 NWLR (Part 774) pages 95 at 99**, where the Court held thus:

**For an application 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 can strike out such application for being devoid of merits. In the instant case the trial court was right in holding that the application was devoid of any merit as the appellant failed to provide sufficient facts in his supporting affidavit to establish that his fundamental rights was infringed.**

The 1<sup>st</sup> to 4<sup>th</sup> Respondents Counsel further submitted that by virtue of **Section 4 of the Police Act**, the Nigerian Police (i.e the 1<sup>st</sup> to 4<sup>th</sup> Respondents) are empowered to protect life and property, prevent and detect crime, apprehension of offenders amongst others and also cited **DR. ONAGORUWA v. IGP (1991) 5 NWLR (Part 575) pages 593 para.4**

That the duty of the Police to detect crime and also their duty to investigate complaints of commission of crime and where facts are shown that a crime has

been committed to prosecute same. He relied on the case of **FAWEHINMI v. IGP (2000) 7 NWLR (Part 655) page 481 at 503 and Section 23 of the Police Act.**

The Learned Counsel, Mrs Paulyn Abhulimen Esq., finally urged the Court to dismiss the case of the Applicant in its entirety with humongous cost as same is misconceived, provocative, totally unmeritorious, gold digging, frivolous and an abuse of court process.

The 5<sup>th</sup> Respondent's Counsel Mr. Marvin Omorogbe, Esq., in his Written Address in opposition to the Application formulated one issue for determination:

**Whether the Applicant's fundamental human rights have been breached by the 5<sup>th</sup> Respondent, to justify her claim for damages.**

The Counsel submitted that Section 35 (4), which the Applicant deliberately failed to cite in his written address, states that any person who is arrested or detained in accordance with section 1(1) shall be brought before a court of law within a reasonable time. Section 35(5)(a) and (b) defines a reasonable time to mean 24 hours where there is a court of competent jurisdiction within a radius of forty kilometers, or 48 hours in any other case. The import of the foregoing, is that even in a situation where a person is arrested and detained on suspicion of committing a crime, such detention shall not be unlawful unless it exceeds 48 hours. That in the instant case, the Applicant was not even arrested at any time. That she was invited to the station, to respond to the threats she made against the 5<sup>th</sup> Respondent. After spending about two hours thirty minutes at the station, the Applicant voluntarily went home.

The learned Counsel further submitted that once a citizen, like the 5<sup>th</sup> Respondent in the instant case believes that a crime is about to be committed or has been committed, it is within her right to make a complaint to relevant security agencies. The 5<sup>th</sup> Respondent, cannot be penalized for making a lawful complaint to the



Police, who had the sole prerogative to invite the Applicant. He relied on the case of **OKAFOR v. ABUMOFUNANI (2016) LPELR – 40299 (SC)**, where the Supreme Court held that it is trite that where a person makes a genuine complaint against another to the police and the latter is arrested, detained and prosecuted by the Police, he cannot be said to have put the law in motion against him. The Learned Counsel also cited **RAPU v. IKUEGBOWO (2018) LPELR – 45253 (CA)**. The Counsel concluded by submitting that the Applicant's case against the 5<sup>th</sup> Respondent ought to and should be dismissed as the 5<sup>th</sup> Respondent only made a complaint to the Police and wrote a statement ( EXHIBIT E), owing to the threat made by the Applicant. That the Applicant has totally failed to prove her case and she is not entitled to damages.

The Applicant's Counsel Osaze EugeneEbie Esq. in his Reply on Points of Law to the 1<sup>st</sup> to 4<sup>th</sup> Respondent address that an Applicant does not necessarily need to be arrested before he or she can approach the court. Even a mere invitation without any justification is capable of breaching or infringing the right of a citizen of Nigeria and entitles him or her to apply for the enforcement of his or her fundamental rights guaranteed in the Constitution. He **relied on EFCC v. DIAMOND BANK PLC (2018) 8 NWLR (Part 1620) page 61** as stated by PER PETER ODILI, JSC.

He prayed the court to uphold the argument of the Applicant's Counsel and grant the reliefs sought by the Applicant.

Finally, the Applicant's Counsel while Replying on Points of Law to the 5<sup>th</sup> Respondent address submitted that an agreement willingly entered into by parties in the absence of fraud, duress and misrepresentation of fact is binding on the parties and no parties can rescind from the valid contract on the ground of insufficient consideration. He cited the case of **ENEMCHUKWU v. OKOYE AND ANOR.**

**(2016) LPELR- 40027 (CA)** where the Court of Appeal said that in the absence of fraud, duress, or plea of *non est factum*, the signature of a person on a document is evidence of the fact that he is either the author of the contents or the contents have been brought to his attention.

In conclusion the learned Counsel submitted that from the totality of evidence before the court, it is obvious that the 5<sup>th</sup> Respondent sets the law in motion by deliberately lying to the Police in order to convince the Police to illegally arrest, detain, intimidate and harass the Applicant over a purely civil transaction. This is so because the only evidence before the court is that there was a civil transaction of buying and selling of clothes and outstanding debt which was later paid and no evidence whatsoever was adduced to the fact that any of the parties was threatened one way or the other. He urged this court to uphold the argument of the Applicant's Counsel and grant the reliefs sought by the Applicant.

I have considered the application before the court, the Supporting Affidavit, the Counter Affidavit of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents, the attached documents and the oral and written addresses of the Applicant and the Respondents, and I am of the view that the issues for determination are:

- 1 Whether from the Affidavit evidence before the court the Applicant has succeeded in establishing a breach of her Fundamental rights by the Respondents as enshrined in Sections 34 and 35 of the 1999 constitution of the Federal Republic of Nigeria and Articles 5 and 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9, LFN, 2004.**
- 2 Whether the applicant is entitled to the reliefs sought in the accompanying statement.**

It is settled law that only actions founded on a breach of any of the fundamental rights guaranteed in the Constitution can be enforced under the Rules. The Fundamental Rights (Enforcement Procedure) Rules are special and peculiar rules restricted to the enforcement of citizens' rights under Chapter iv of the Constitution. See **ROMANUS IHEJIOBI & ORS v. MRS. GRACE CHINYERE IHEJIOBI & ANOR (2013) LPELR-21957(CA) (Pp. 21-22, paras. F-A).**

The first issue is whether from the Affidavit evidence before the court the Applicant has succeeded in establishing a breach of his Fundamental rights by the Respondents as enshrined in **section 34 and 35 of the 1999 Constitution.**

Before I proceed further, it is pertinent to look at the provisions of **Section 35(1) of the 1999 constitution (as amended)** as same forms the basis for the application of the Applicant for enforcement of his right.

For purpose of clarity the said **section 35(1) (c), (2) (3) and (4) of the 1999 Constitution** is hereunder reproduced as follows:

**Section 35(1) (c) (2) (3) and (4) provide thus -**

- (1) ‘every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law’ –**
- (C) ‘for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence’**
- (2) any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.**
- (3) any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.**
- (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 of his arrest or detention in the case of a person who has 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.**

The main grouse of the Applicant in this suit is that his right to liberty has been violated by the arrest, detention and alleged further harassment by the Respondents and as such, her fundamental rights to liberty as enshrined in **Section 35 (1) of the 1999 Constitution** has been violated.

The Law is settled that any person who alleges that any of his Fundamental Rights as enshrined in the Constitution has been, is being or likely to be contravened may apply to a court for redress. See; **Section 46 of the Constitution of the Federal Republic of Nigeria 1999** which provides as follows:

**”Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High court in that state for redress...”**

Under the circumstance, The Court has a duty to carefully examine the reliefs and the affidavit evidence before the court to ascertain whether or not the Applicant’s right to liberty has been violated.

I have carefully gone through the contents of the Affidavit in Support of this application, particularly paragraphs 16, 17 and 18 thereof. The Applicant in those paragraphs, narrated how she was arrested by men of the 1<sup>st</sup> – 4<sup>th</sup> Respondents and taken to their office on the instruction of the 5<sup>th</sup> Respondent. The Applicant averred in paragraph 16 that he was detained from 10:30am to 5:30pm before she was released on self-recognition and asked to report back at Area Command’s office on the 26<sup>th</sup> day of November, 2020 at 10:00am.

Now the pertinent question here is, whether what was alleged by the Applicant in the above paragraphs of the supporting affidavit has been proved to show *prima*

*facie* case that there has been a violation of her right to liberty as contained in **section 35(1)(c) of the 1999 Constitution**. It is only when a *prima facie* case has been made out that the Respondents would be asked to justify the contravention or violation of a fundamental right. See **OLISA AGBAKOBA v. THE DIRECTOR (STATE SECURITY SERVICE & ANOR.) (1994) 6 NWLR(Pt.351) 475 at 482.**

It is trite law that, an Applicant for the enforcement of her fundamental right, has the initial onus to show that her reliefs comes under the scope of the fundamental right and prove exactly how it was contravened.

In **NWANGWU & ANOR. v. DURU & ANOR.(2001) LPELR-7001Pg. 16-17, paras. C-B** his lordship CHUKWUMA-ENEH, J.C.A held that:

**It is well settled that an applicant for the enforcement of his fundamental right under Chapter IV of the Constitution has the initial onus of showing that the relief he claims comes within the purview of the fundamental rights as encompassed by sections 30-41 of the Constitution.**

The Applicant in paragraph 16, 17 and 18 of her Supporting Affidavit averred that she was arrested, and detained. In paragraph 19 she further averred that men of the 1<sup>st</sup> – 4<sup>th</sup> Respondents will carry out their threat of re-arresting and detaining her.

By the combined provisions of **Section 35(I) (C); 35(5) (A), (B) of the 1999 Constitution**, the police has the power to arrest and detain a person but certainly not beyond 24 and 48 hours as the case maybe before arraignment in court or when bail is granted. I have carefully gone through the supporting affidavit of the applicant, it is observed that none of the averments revealed that the applicant was detained beyond 24 hours.

The position of the law is clear, that in establishing a claim for violation of fundamental right, the burden of proof lies on the Applicant. The Applicant has not succeeded in discharging the said burden of proof here, as she failed to adduce evidence to substantiate her allegation of degradation and violation of his right to personal liberty. See **ALHAJI OTARU & SONS LTD. v. IDRIS (1999) 6 NWLR (PT.606 at 330) OR (1999) LPELR-419 (SC) P. 14, PARAS. B-**

**CAAndAFOLABI & ORS v. WESTERN STEEL WORKS LIMITED & ORS  
(2002) LPELR-12158(CA)(P.9, paras A-E)**

Having carefully gone through the depositions in the Supporting Affidavit of the Applicant and that of the 1<sup>st</sup> – 5<sup>th</sup> Respondents, my thinking is in *tandem* with the submission of the Respondents which is that the Applicant has not exhaustively proven the violation of her right to liberty.

From the foregoing, therefore the Applicant has not shown how her fundamental right as enshrined in **section 35(1) (c) of the 1999 Constitution** was violated.

I am of the view that the 1<sup>st</sup> Declaratory relief sought has not been established as the arrest and detention shown and purported harassment of the Applicant as alleged though not proven does not amount to the violation of her right to liberty as enshrined in **Section 35(1) of the 1999 Constitution (as amended)**.

Suffice to say that the Applicant has not successfully proven that the Respondents breached her fundamental rights as guaranteed by the **section 35(1) (a) of the 1999 Constitution (as amended)**.

The first issue is therefore resolved in favour of the Respondents.

The second is A Declaration that the statement written by the Applicant Area Command, Maitama on the 25<sup>th</sup> November, 2020 is null and void and of no effect, same having been made under duress.

The third relief is for an order of perpetual injunction restraining the Respondents by themselves, their agents, servants or privies, from intimidating, harassing, arresting, re-arresting or detaining the Applicant, except by leave of this Honourable Court duly obtained.

I have carefully examined the depositions by the Applicant, particularly paragraph 13, 14, and 15 where she averred that she entered into a civil transactions with the 5<sup>th</sup> Respondent and she was being arrested, detained and harassed as a result of an outstanding debt. On the other hand the 5<sup>th</sup> Respondent averred in her Counter Affidavit particularly in paragraphs 18 xxiv that as a law abiding citizen, she rushed down to the Maitama Police Division, Abuja where she made a complaint and wrote down a statement against the Applicant, for threats she issued against her. A certified true copy of the said statement was annexed as Exhibit E.

The document annexed as Exhibit E which is the complaint or statement dated 24<sup>th</sup> November, 2020 against the Applicant for the threats she issued against the 5<sup>th</sup> Respondent.

It thus appears that it was premised on the said Exhibit E that the Applicant was invited for investigation, or arrested by the police.

By the provisions of **SECTION 4 OF THE POLICE ACT**, the Police is empowered to carry out amongst other duties; the prevention and detection of crime, the arrest of offenders or any person reasonably suspected to have committed crime; and of course the due enforcement of all laws and regulations with which they are directly charged.

By virtue of **Section 4 of the Police Act**, it is obvious that the police has the powers to investigate and arrest an individual reasonably suspected to have committed a crime. And as such, asking this court to declare that the statement written by the Application at Area Command, Maitama on the 25<sup>th</sup> November, 2020 is null and void and of no effect, same having been made under duress and to restrain the Respondents from carrying out their lawful duty will amount to an interference of their statutory powers.

I have carefully gone through the Supporting Affidavit of the Applicant and particularly paragraphs 16 and 17. It is observed that none of the averments revealed that the Applicant was detained beyond 24 and 48 hours as the case may be nor is there any deposition showing that the 5<sup>th</sup> Respondent effected or masterminded the arrest of the Applicant.

It is on this note that the court cannot be seen to shield an individual who is allegedly suspected to have committed a crime, from prosecution as admonished in the case of; **A.G ANAMBRA STATE v. CHIEF CHRIS UBA (2005) 15 NWLR (Pt 947) Pg 44 at 67, Paras F.** where the court of appeal held as follows:

**For a person, therefore to go to court to be shielded against criminal investigation and prosecution is an interference of powers given by the constitution to law officers in control of criminal investigation.**

There is no iota of evidence before the court to establish that 5<sup>th</sup> Respondent used the 1<sup>st</sup> – 4<sup>th</sup> Respondents for continuous arrest, detention and harassment of the Applicant. There cannot therefore be a declaration of any right in favour of Applicant in this regard.

It is in the light of the foregoing that this court would not make an order Restraining the 5<sup>th</sup> Respondent from using the 1<sup>st</sup> – 4<sup>th</sup> Respondents to act on the statement or complaint (Exhibit E) written against the Applicant; Or a declaration that the statement written by the Applicant at Area Command, Maitama on the 25<sup>th</sup> November, 2020 is null and void and of no effect, same having been made under duress.

On the fourth relief sought, I have gone through the written address and statement of the Applicant particularly in paragraph C (d – f) where the Applicant prayed the court for an order directing the Respondents to pay the sum of #100, 000,000.00 (one hundred million naira) as general damages, the sum of #50,000,000.00 (fifty million naira) being punitive and /or exemplary damages against the Respondents and an unreserved public apology from the Respondents.

It suffices to say that, these consequential reliefs cannot be ordered in a vacuum where the main declaratory reliefs fail.

The Applicant's Supporting Affidavit to my mind is devoid of substance as there is nothing solid to support the claims contained in the statement attached to this application. Her failure to prove and establish facts which she had alleged to have violated her right to liberty will therefore lead to the inexorable conclusion that she has failed to prove entitlement to her claims under the circumstances.

I do not see how the invitation of the Applicant premised on complaint and suspicion of commission or allegation of a crime and same day release of Applicant amounts to a violation of the Applicant's right to liberty as envisaged by **section 35(1) (2) (3) & (4) of the 1999 Constitution of the Federal Republic of Nigeria.**

Consequently and in view of the foregoing, the reliefs sought in this suit fail in totality and are hereby accordingly dismissed.



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**Hon. Justice Jude O. Onwuegbuzie**

APPEARANCES :

1. Osaze E. Ebie Esq. for the Applicant
2. PauliynAbhulimen Esq., with AfrumchiOttah Esq. for the 1<sup>st</sup> to 4<sup>th</sup> Respondents.
3. Marvin Omorogbe Esq. with D.B. Ohemu Esq. and B. Rueben Esq., for the 5<sup>th</sup> Respondent.