

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA  
BEFORE HIS LORDSHIP: HON. JUSTICE H. Mu'azu  
SUIT NO: FCT/HC/CV/7021/2023  
DELIVERED ON THE: 15/07/2024.**

**BETWEEN:**

**ESTHER LOLA NWEZE.....APPLICANT**

**AND**

- |                                                                                                                                                                                                                                                                                             |   |                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-------------------------|
| <ol style="list-style-type: none"> <li><b>1. THE NIGERIA POLICE FORCE</b></li> <li><b>2. INSPECTOR GENERAL OF POLICE</b></li> <li><b>3. THE DEPUTY INSPECTOR GENERAL<br/>FORCE CRIMINAL INVESTIGATION<br/>DEPARTMENT AREA 10, ABUJA</b></li> <li><b>4. OLUMIDE PAUL LAJUWOMI</b></li> </ol> | } | <b>.....RESPONDENTS</b> |
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**Appearances:**

*A. A. Adebisi, Esq, for the Applicant*

*Respondents are not represented*

**RULING/JUDGMENT**

By an Originating Motion on Notice dated 28<sup>th</sup> July, 2023, the Applicant, Esther Lola Nweze prays for Order for the enforcement of her Fundamental Right and sought the following reliefs.

A Declaration that the invitation of the Applicant by the 1<sup>st</sup> - 3<sup>rd</sup> Respondent at the behest of the 4<sup>th</sup> Respondent to Abuja over a

commercial transaction that arose and was consummated in Lagos is unlawful and a violation of his fundamental right to liberty and dignity of his person and a continuation of the harassment of the Applicant by the Respondents.

1. A Declaration that the 1<sup>st</sup> to 3<sup>rd</sup> Respondent by the enabling Act establishing it, lacks the statutory Power to function and mediate on behalf of the 4<sup>th</sup> Respondent or anybody in matters of commercial contract and transaction.
2. An order of Court restraining the 1<sup>st</sup> to 4<sup>th</sup> Respondents from disturbing or interfering with the right to liberty of the Applicant through threat of invitation arrest, detention, intimidation and unnecessary interrogation or in any other way or manner whatsoever.
3. The sum of **N50, 000, 000. 00** (Fifty Million Naira only) as a compensation and for exemplary and aggravated damages jointly and severally against the Respondents for unlawful violation of the Applicant's fundamental right.

4. The Applicant filed a statement and an affidavit of 36 paragraphs deposed to by the Applicant with 16 Exhibit attached marked **1 – 16**.

In the affidavit in support the Applicant averred inter alia that the 4<sup>th</sup> Respondent, her ex fiancé who leaves in the USA engage her in the supervision of his project site somewhere in Orinadu Ekko, Lekki, Lagos State because he was not satisfied with the manner his Brother in law was managing the site. That she reluctantly accepted the task. She averred further that in the cause of managing the property she had cause to facilitate the procurement of some building materials on credit and paid for workmanship from her pocket due to paucity of funds. The 4<sup>th</sup> Respondent she said cajoled her to augment the funds since it was going to be their matrimonial home. Upon completion of the project, the 4<sup>th</sup> Respondent instructed her to let out 6 Units of two bedroom flat and keep the money meanwhile they were still owing money for the building material they procured. That when a property next to the completed project was put up for sale, the 4<sup>th</sup> Respondent instructed her to negotiate price with the owner on his behalf and the neighbor agreed to sale for **N25 Million**. The 4<sup>th</sup> Respondent sent the sum of **N19 Million** but

the seller was not willing to accept installmental payment. That when she discovered that the 4<sup>th</sup> Respondent was manipulating her and no longer interested in the marriage she demanded payment for the suppliers and discussion about her professional fees. The 4<sup>th</sup> Respondent was angry and asked the Applicant to return his money and that her services were no longer required at the building site. She then took part of the money and paid his outstanding indebtedness to the suppliers and also deducted her out of pocket expenses incurred in the project and settled labourers and suppliers.

There was still a shortfall of over **N6Million**. Copies of the invoices and transaction receipts were attached and marked **Exhibits 1 – 16**. The 4<sup>th</sup> Respondent later writes a petition to Nigeria Drug Law Enforcement Agency (NDLEA) accusing her of being a drug dealer. The petition was discovered to be frivolous and she was released.

That sometime in February, 2023 she was invited to the FIB located at Kam-Salem Obalande, Lagos in respect of another petition written by the 4<sup>th</sup> Respondent and was released again when it was discovered that the petition was unmeritorious. The 4<sup>th</sup> Respondent reported the Applicant to several Radio Stations

including the BON FM and FRESH F.M with request that the Applicant is labeled a Scammer.

That sometime on 14<sup>th</sup> of July, 2023 men of the 1<sup>st</sup> Respondent attached to 3<sup>rd</sup> Respondent arrested her 1<sup>st</sup> son and took him to Agiwa Police Station, Ajah and requested that she should come and follow them to Abuja for him to be released. She reported to the office of 3<sup>rd</sup> Respondent on the 17<sup>th</sup> day of July, 2023 and wrote a Statement on the 19<sup>th</sup> of July, 2023. That she pleaded that the investigation be done in Lagos due to her health and the difficulty of coming up to Abuja but the plea was refused/denied. That the Respondents are demanding her to write an undertaking to refund the money received for the 4<sup>th</sup> Respondent. The transaction between them is a commercial and civil transaction and not fraud, cheating and Criminal Breach of trust. It is not the work/duty of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents to resolve civil disputes. That, it is in the interest of justice to grant this Application.

In the written addressed filed in support of the application Learned Counsel for the Applicant formulated two issues for determination, to wit:

- 1. Whether the Applicant has established a case of breach of their (sic) fundamental right to liberty and dignity on (sic) her person by the Respondents justifying enforcement.*
- 2. Whether the Applicant was (sic) not entitled to damages or compensation from the Respondents for the unlawful and unconstitutional violation of their (sic) fundamental right to liberty and dignity in (sic) of her person”*

Learned Counsel argued the two issues and urged the Court to grant the application.

In response, the 1<sup>st</sup> – 3<sup>rd</sup> Respondents filed a joint Counter affidavit of 32 paragraphs deposed to by one ASP John Kefas of the FCID Area 10 Abuja.

It is the affidavit evidence of the 1<sup>st</sup> – 3<sup>rd</sup> Respondent that the 4<sup>th</sup> Respondent through his lawyer Oladineji Adams & Co petitioned the IGP vide a letter dated 29/01/2023 wherein he alleged case of fraud against the Applicant in the sum of **N20Million**. A copy of the petition was attached as **Exhibit Police 1**. The Police investigation of petition led to the entry of a case of criminal breach of trust, fraud and obtaining by false

pretence in the crime diary. A copy the extract from crime diary was attached and marked **Exhibit Police 2**. That there was an earlier petition investigated in Lagos following a petition by the 4<sup>th</sup> Respondent dated 9/01/2023. A copy of the petition was also attached as Exhibit Police 3. The summary of the two petitions is that 4<sup>th</sup> Respondent in 2020 instructed the Applicant to assist him in construction of a house on his land situate at No 2/4 Eleniye Close, Glory Land Estate, Abijan Bus-stop Ibeju-Lekki, Lagos. The 4<sup>th</sup> Respondent provided 3 Generators and Toyota RAV 4 2006 model to the Applicant to facilitate the work. That after construction, the Applicant leased out same at **N16 Million** per annum without the consent of the 4<sup>th</sup> Respondent. Then on the 13<sup>th</sup> day of October, 2022 made demand to 4<sup>th</sup> Respondent for a sum of **\$4900** to be used to buy another land. On the 18<sup>th</sup> October, 2022 another sum of \$4000 was demanded by the Applicant and received for a claim of additional payment she made to purchase the Land. On the 19<sup>th</sup> of October, 2022, another demand was made and **\$4000** received by the Applicant. When the 4<sup>th</sup> Respondent sensed that he was being defrauded by the Applicant, he petitioned to the Commissioner of Police FIB Area Lagos. The Applicant was investigated and her statement

taken and granted bail on self recognizance the same day. The right of the Applicant has not being breached. The suit is an attempt to stop the Police from performing their statutory functions. It will not be in the interest of justice to grant the application.

In the written address in support of the Counter affidavit of the 1<sup>st</sup> – 3<sup>rd</sup> Respondent, Learned Counsel for the Respondents, submitted a sole issue for determination, to wit:

***Whether any of the Fundamental Rights of the Applicant has been, is being or is likely to be breached by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to entitle her to any of the reliefs Sought?***

Learned Counsel argued the issue in urging the Court to refuse the application and dismiss same for being vexatious and award substantial cost against the Applicant.

On the part of the 4<sup>th</sup> Respondent, a Counter Affidavit dated 11/08/2023 deposed to by one Oladele Egbayelo of Glory Land Estate, Abijo, Bus – Stop, Lagos was filed.

It was averred in the Counter affidavit inter – alia that the Applicant was an old friend of the 4<sup>th</sup> Respondent who



reconnected with him on face book and never a fiancé's of hers. A copy of face book was attached as **Exhibit A**. The Applicant asked to be engaged in the supervision of the work on his property for a fee of N6million which was duly paid.

That 4<sup>th</sup> Respondent paid for all materials bought and all works carried out in the site. The 4<sup>th</sup> Respondent has never asked the Applicant to use the funds. The Applicant let out the 6 Units of 2 bedroom flat without the Consent of 4<sup>th</sup> Respondents for **N1.4Million** cash totaling **N8.4million** and only remitted **N300,000. 00**. When the 4<sup>th</sup> Respondent demanded for the rent, the Applicant came up with the idea that there was a land property for sale by a neighbor and asked the 4<sup>th</sup> Respondent to let her pay with the proceed from rent and send balance. That after much persuasion, the 4<sup>th</sup> Respondent sends a total of **N 12.900 Million** and **N4 Million**. The evidence of payment was attached as B1 – B7. That upon the 4<sup>th</sup> Respondent speaking with the Land owner Chief Obinna Okeke through a phone call, he realised that there was no such land available for sale in the 1<sup>st</sup> instance. When confronted the Applicant pleaded that she used the money personally for something and that she will pay him back. That when it became obvious that the action of the

Applicant was criminal in nature he reported the matter to Police and the Applicant rushed to this Court after she was released on bail. The Applicant is trying to frustrate the investigation. In support of the Counter affidavit of the 4<sup>th</sup> Respondent, a written address was filed wherein Counsel for the 4<sup>th</sup> Respondent formulated 3 issues for determination, to wit:

- 1. Whether the actions of the Applicant does not amount to Criminal Breach of trust, fraud and cheating.*
- 2. Whether the 1<sup>st</sup> – 3<sup>rd</sup> Respondents are entitled to carry out investigation of crime reported to them.*
- 3. Whether the Respondents have breached any of the Applicant right by it investigation.*

Learned Counsel argued the issue in urging the Court to discountenance the claims and dismissed the application in its entirety.

**COURT:** - I have gone through the reliefs sought supported by Statement, affidavit and written address in support of the Applicant's suit on the one hand and the counter affidavits and written addresses of the Respondents on the other hand. The issue *“whether in the circumstance of this application, Applicant's right to human dignity as enshrined and guaranteed by the Constitution of Federal Republic of Nigeria*

***1999 is not violated***” has been formulated by this court for determination.

The law on the determinant factor of action brought under Fundamental Human Rights (Enforcement Procedure) 2009 is well settled. Only actions founded on breach of any of the Fundamental Human Rights guaranteed under Chapter IV of 1999 Constitution as amended of Federal Republic of Nigeria can be enforced under the rules.

From the endorsement on the face of the originating motion on notice, Applicant seeks a declaration that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents are not empowered by law to invite the Applicant and mediate between the 4<sup>th</sup> Respondent and the Applicant over a commercial contract and transaction at the behest of the 4<sup>th</sup> Respondent.

Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides-

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

The provision is made up of three parts: the first part covers situations where the right of the Applicant has been infringed; the second is the situation where the person's right is being infringed; and the third is where the person's fundamental right

is likely to be infringed, that is, where it is probable or expected that it would be infringed.

Also, Order II Rule 2 (1) of the Fundamental Rights (Enforcement Procedure) Rules, 2009 (herein after referred to as FREP Rules) has the same three component parts. It similarly provides;

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

In the case now under consideration, the Applicant built her case on the third component part of the constitutional provision and the FREP Rules. By her affidavit, she contended that there is likely to be an infringement of her fundamental right. This is one of the situations for the grant of an application of this nature in order to protect the fundamental rights of a person. See *Igwe V Ezeanochie (2010) 7 NWLR (Pt. 1192) 61; Ifegwu V FRN (supra)*. However, the conditions for the applicability of this third limb was well explained in the case of *Uzoukwu V Ezeonu (1991) 6 NWLR (Pt. 200) 708, 784*. where the Court held that

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***"Before a plaintiff or applicant invokes the third limb, he must be sure that there are enough acts on the part of the respondent aimed essentially and unequivocally towards the contravention of his rights. A mere speculative conduct on the part of the respondent without more, cannot ground an action under the third limb."***

What this means is that the fundamental right(s) of a person must be in imminent peril or risk of being violated before an action may be founded on the third limb. Thus, a mere perceived/sensed future threat or a simple verbal or oral threat not backed with some overt act of an attempt to infringe the fundamental right of an applicant by a respondent, is not enough to sustain an action for a threatened breach of a fundamental right. In other words, a respondent must be shown to have been determined or been unequivocally poised and/or had reached a point of no return to have the Appellant's personal liberty curtailed; and the action is unwarranted and unjustifiable, before a suit under the third segment/limb of Section 46(1) of the Constitution (supra) and Order II Rule 2(1) of the FREP Rules can hold.

I have considered the affidavits in support and against and the ensuing legal arguments by way of written submissions.

It is the law that matters filed under the Fundamental Human Right enforcement rules are fought and won vide affidavit evidence.

I shall highlight on paragraphs of affidavits in support and against the application for better and proper understanding of the kernel of the Applicant's application.

It is the affidavit evidence of the Applicant as clearly stated in paragraphs 11-14 that after she supervised the construction of the building project of the 4<sup>th</sup> Respondent (her ex fiancé), he instructed her to let the property out and keep the money even when they owed suppliers and her fee was yet to be paid. Later, the 4<sup>th</sup> Respondent sent to her the sum of **N19,000,000.00** for the purchase of a neighbour's property which the neighbour rejected as the sum of **N24M** was the agreed value. The Applicant used the sums in her possession to pay herself and settle debts owed suppliers. The matter she claims is a civil dispute and not a crime making the actions of the Respondents a violation of her fundamental Rights.

On their part, both the joint counter affidavit of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents and that of 4<sup>th</sup> Respondents as seen in the two petitions submitted on behalf of the 4<sup>th</sup> Respondent, the Applicant is a subject of investigation for the offences of criminal breach of trust, cheating and fraud. It was averred in both counter affidavits that she was not authorized to let out the property as she did, the neighbour's property was never put up for sale as she claimed and the 4<sup>th</sup> Respondent solely financed the construction of his property in full contrary to her claim.

From the affidavits of the Applicant, on the one hand, and that of the Respondent, on the other hand, the issue seems to have

been narrowed to whether the 1<sup>st</sup> – 3<sup>rd</sup> Respondents have the right to investigate the Applicant on the Petition of the 4<sup>th</sup> Respondent.

It is now firmly settled per-adventure that documentary evidence is the best evidence. It is the best proof of the contents of such document, and no oral evidence will be allowed to discredit or contradict the contents thereof, except where fraud is pleaded. See *AG BENDEL STATE VS UBA LTD (1986) 4 NWLR (Pt. 337) 547 at 563*. See also *TEJU INVESTMENT AND PROPERTY CO. LTD VS SUBAIR (2016) CA*.

I have seen Exhibits *Police “1” & “3”* (which are petitions to the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents respectively), Exhibits *“B1 – B7”* (which evidence of payments to Applicant by the 4<sup>th</sup> Respondent and Exhibits *“Police 2”* (which is extract of investigation activity with the statement of the Applicant obtained by the Police). In my view, the petitions of the 4<sup>th</sup> Respondent are not pertaining to a contractual dispute but pertain to dishonesty bothering on crime. The Applicant in her further affidavit denied entering into a contract with the 4<sup>th</sup> Respondent for the construction of the properties in issue. The Applicant also maintained that the 4<sup>th</sup> Defendant is her fiancé who told her they were investing in their matrimonial home. On the House of the neighbor, it is the affidavit evidence of the Applicant that the 4<sup>th</sup> Respondent and the owner spoke on it and the House was as at 15/08/2023. And the RAV 4 is her property. In proof of the above facts the Applicant annexed, picture of them at their marriage introduction and bride list as Exhibits 1 and 2

respectively. Picture of the Neighbours property still on sale is **Exhibit 3**. The vehicle particulars of the RAV 4 as **Exhibit 4** and a copy of a petition written by the 4<sup>th</sup> Respondent against her to the NDLEA as **Exhibit 5**.

The question that naturally follow, is, whether, from the affidavit in support of the application in view, it can be said that the Applicant has established the case of breach or threat breach of Fundamental Human Right against the Respondent?

From the totality of what has played out as aptly stated in the affidavit and the further affidavit in support of the application for the enforcement of Fundamental Right and the counter affidavits filed by the Respondents in opposition, it is clear to me that there is a petition the 1<sup>st</sup> – 3<sup>rd</sup> respondents are investigating. The invitation of the Applicant was for reason of the investigation. The Applicant was released on administrative bail on bond and not self recognizance, admits the Applicant. It remains trite that facts deposed to in affidavit that are not challenged are deemed admitted and acted upon by the court. See *MADU VS THE STATE (2011) LPELR 3973*. I believe the fact that the Applicant was released on bail by the 1<sup>st</sup> – 3<sup>rd</sup> Respondents.

Question: - was there any foul play in investigating the Applicant?

Ans: - I don't think so.



For all intents and purposes, 1<sup>st</sup> – 3<sup>rd</sup> Respondents have functions as mandated to under section 4 of the police Act which provides thus:

***“The police shall be employed for the prevention and detention of crime, the apprehension of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required by them by, or under the authority of, this or any other Act.”***

The powers of the Police with respect to the investigation of criminal allegations are provided for in Section 214 Constitution as well as Section 4 of the Police Act ; and these powers have been interpreted and pronounced upon in numerous decisions of Courts, see *Ihua-Maduenyi V HM Eze Robinson (2019) LPELR-47252(CA) 20, per Lamido, JCA; AG Federation FRN V Kashamu (2018) LPELR-46594(CA) 66; Ezea V State (2014) LPELR-23565(CA) 16-20 Bolaji-Yussuf, JCA; Oguejiofor V Ibeabuchi (2017) LPELR-43590; AG Anambra State V Uba (2005) 33 WRN 191.*

In the recent case of ***MR. ARIAN K. MIRCHANDI v. INSPECTOR GENERAL OF POLICE & ORS (2021) LPELR-54016(CA)*** the court held thus:

***“It has been serially and consistently held that the mere invitation of a person by the Police, without more, is***

*within the powers of the Police. And except it can be shown that the Police misused their powers, no Court will interfere with Police action in the performance of their constitutional duties and responsibilities to investigate crime. Thus, the power of the Police to investigate crime and to invite persons to be interviewed/questioned simpliciter, cannot amount to the breach of the fundamental rights of such persons - Kalio V Dawari (2018) LPELR-44628; Akanbi V COP Kwara State(2018) LPELR-44049; Tsanyawa V EFCC (2018) LPELR-45099; Fawehinmi V IGP (2002) 7 NWLR (Pt. 767) 606. This is because the duties of the Police are both constitutional and statutory. By seeking protective reliefs from the Court, the Appellant is by implication trying to stop the Police from performing their lawful and constitutional duties. It cannot be right or even healthy for the Court to shield persons under investigation for crimes by the Police. Where such requests to interfere with the duties of the Police are acceded to without restraint, investigating crimes would be impossibility as every suspect would rush to Court to seek for protective orders, and this would only lead to anarchy, lawlessness and disorder in the society. Thus, Courts are quite hesitant in preventing the Police from performing their lawful and constitutional roles in this regard, unless for good and exceptional reason.”*

Thus, in the light of the authorities and statutes relied upon in the preceding part of this Judgment, I hold the firm view that the Applicant has failed to show how her fundamental rights to dignity of person, personal liberty and fair hearing guaranteed under Sections 34, 35(1) & 36 of the Constitution are likely to be breached by the mere invitation to be interviewed by the Police who are on a fact-finding mission in the course of their investigations into the allegations of a crime known to the Applicant.

It is indeed our collective responsibilities to ensure all hands are on deck for all agencies of government to work well and achieve the desired results.

However, that cannot be done in utter disregard for the constitutionally provided rights, which are well guaranteed.

It is my considered judgment that the Applicant, cannot rush to court to frustrate the 1<sup>st</sup> – 3<sup>rd</sup> Respondent from investigating her.

Applicant has failed to convince the court legally speaking. It is my judgment that 1<sup>st</sup> – 3<sup>rd</sup> Respondents be allowed to conclude its investigation.

There is no right of Applicant known to law that the breach of which is threatened here worthy of any judicial injunction by way of order.

Courts must refrain from clipping the wings of the police and other investigating agencies unnecessarily.

The primary reliefs sought are declaratory in nature. The affidavit evidence of the Respondents is more superior and legally convincing. I disagree with the Applicant.

I shall refuse this application because it is unmeritorious.

On the whole therefore, suit no. **CV/7021/2023** having failed to meet the requirement of the law is hereby dismissed.

**SIGNED**  
**Hon. JUDGE**  
**15/07/2024.**