

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 24TH DAY OF MARCH, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV//2022

BETWEEN:

KINGSLEY CHIBUIKE

APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE

2. CHINONSO OBI

}

RESPONDENTS

JUDGMENT

In this Suit predicated on FREP, the Applicant – Kingsley Chibuike sued the Inspector General of Police and Chinonso Obi claiming the following Reliefs:

- a. A Declaration that the arrest and detention of the Applicant from 17th February, 2022 to 19th February, 2022 by the 1st Respondent on the instigation of the 2nd Respondent on matter that borders on a civil contract, amount to gross violation of the Applicant's Fundamental Rights**

to Fair Hearing, Dignity of Human Person, Personal Liberty and Right to Freedom of Movement enshrined and guaranteed in Section 36, 34, 35 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) respectively.

- b. An Order of this Honourable Court restraining the Respondents, their agents, privies and howsoever called from harassing, intimidating, inviting, threatening to arrest or arresting, detaining or torturing the Applicant in respect of the civil contract that gave rise to this instant Suit.**
- c. Compensatory and General Damages in the sum of Five Million Naira (₦5, 000,000.00) against the Respondents jointly and severally in favour of the Applicant for the gross violation of his Fundamental Rights.**
- d. An Order of this Honourable Court directing the Respondents to tender unreserved public apology to the Applicant in two (2) National Dailies and any other forms of reparation that the Honourable Court may deem fit to grant.**

- e. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.**

The action is based on the following grounds:

- A. By virtue of Section 46(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Order 1 Rule 2(1) of the Fundamental Rights (Enforcement Procedure) Rules, any person who alleges that any of the provisions of Chapter 4 of the Constitution to which he is entitled to has been, is being or likely to be contravened in any State in relation to him may apply to the High Court in the State for redress.**
- B. The Applicant is a Nigerian citizen who is entitled to his Fundamental Rights to dignity of human person, fair hearing, personal liberty and freedom of movement guaranteed by Sections 34, 35, 36 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011.**
- C. The Applicant was arrested by 1st Respondent on the 17th day of February, 2022 at his shop in Gudu Market over a civil transaction upon the instigation of the 2nd Respondent.**

- D. The 1st Respondent has no statutory power to arrest and detain the Applicant over a civil contractual relationship.**
- E. The 1st Respondent will continue to invite, intimidate, harass and threaten to arrest the Applicant over the civil contract existing between the Applicant and the 2nd Respondent if not restrained.**
- F. The act of harassment, intimidation, invitation, threat of arrest meted on the Applicant by the 1st Respondent's men and officers amount to violation of the Fundamental Rights to personal liberty, fair hearing, dignity of human person and freedom of movement are consequentially illegal and unconstitutional.**
- G. The 1st Respondent has no power to enforce civil agreements and contracts among parties and the 2nd Respondent is liable for instigating the arrest and detention of the Applicant.**
- H. The investigating power of the 1st Respondent does not include the investigation and/or the settlement of civil or contractual disputes.**

He supported the application with an Affidavit of 20 paragraphs. He alleged that he was arrested by the men of the 1st Respondent on the 17th of February, 2022 and was taken to the SARS former office which is now Garki Police Detention Facility. That he was kept there until 19th February, 2022 when Admin Bail was granted to him. That at the office he was informed that there was a complaint made against him by the 2nd Respondent in that he bought goods at a cheaper rate from the manager of the 2nd Respondent, one Emeka. That he paid fully for the goods at the agreed price with the said Emeka. That he was not privy to any different price by the 2nd Respondent and the said Emeka. That the way and manner he was arrested and humiliated in the Garki Market when he was arrested by the men of the 1st Respondent at the instigation of the 2nd Respondent violated his Rights and that he was embarrassed and the dignity of his human person was grossly violated as he was whisked away like a common criminal. That the only reason and gravamen of the arrest was on a civil contractual relationship. That the 1st Respondent has no power under the law and Constitution to delve into civil/contractual relationship which borders on selling and buying of goods. That he was detained and embarrassed. That the 1st Respondent's men refused to grant him Bail when his sister came on the said 17th February, 2022 to stand for him as Surety. That the same 1st Respondent at the instigation of the 2nd Respondent has been harassing him even after Bail was granted to him on the 19th February, 2022. That they have continued to

threaten to arrest and detain him, intimidating him and invited him based on the said contractual/civil issue. That the actions of the Respondents violated and continue to violate his extant Rights under **CAP 4 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). That the 1st Respondent has no power to settle contractual dispute.

In the Written Address he raised an Issue for determination which is:

“Whether the Applicant is entitled to enforce his Fundamental Right where his Rights are contravened by the Respondents.”

He answered the question in the Affirmative and referred to the cases of:

Emeka V. Okafor
(2017) 11 NWLR (PT. 1577) 410 @ 423

Jim – Jaja V. COP
(2011) 2 NWLR (PT. 1231) 375 @ 382

That he has disclosed reasonable grounds and material facts that will aid Court in granting the Reliefs as sought by him. That **S. 35(1) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) guaranteed his personal liberty. That it protects such Right of being violated or threatened to be violated. He referred to the case of:

Uzoukwu & Ors V. Ezeonu II & Ors

(1991) 6 NWLR (PT. 200) 708

That his arrest and detention from 17th to 19th February, 2022 and threat to further arrest and detain him by the 1st Respondent at the instigation of the 2nd Respondent on a matter of civil in nature amounts to violation of his Fundamental Rights under **CAP 4 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). He referred to the case of:

Ekpu V. A-G Federation

(1998) 1 HRLRA (PT. 421) Para A

He further referred to the cases of:

Ondo Broadcasting Corporation V. Ondo House of Assembly

(1985) NCLR 333 @ 337

Iheanacho V. NPF

(2017) 12 NWLR (PT. 1580) 424 @ 429

That the 2nd Respondent has the right to access any Court of competent jurisdiction to present his claim against the Applicant rather than using the Police – 1st Respondent to witch-hunt him. He relied on the case of:

Benard Anogwie & Ors V. Ebere Odom & Ors

(2016) LPELR – 40214 (CA)

Where Court held that Police intervention in a matter that is purely civil in nature cannot be justified under any circumstance.

He further submitted that where an Applicant has established the violation of his Right under the law by the action and inaction of the Respondent, such an Applicant is entitled to damages in form of compensation for such wrong by the Respondent. He referred to the cases of:

**Jimoh V. A-G Federation
(1998) 1 HRLE 513 @ 523**

**Chinedueze & Anor V. IGP & 4 Ors
(2007) CHR 43**

**Dilly V. IGP & Ors
(2016) LPELR – 41452 (CA)**

That he had made out a case showing that his Fundamental Rights to dignity of his human person, personal liberty and freedom of movement had been and threatened to be violated by the 1st & 2nd Respondents. He urged Court to so hold and accordingly grant all his Reliefs as sought.

Upon receipt of the application the 1st Respondent filed a Counter Affidavit of 28 paragraphs. They attached several documents – Statement of the Applicant made to Police on the 17th February, 2022 as well as Amended Charge filed on 26th April, 2022 and Statement of the 2nd Respondent made to Police on the 31st January, 2022.

In the Counter Affidavit the 1st Respondent stated repeatedly that the arrest and detention of the Applicant was based on investigation of complaint made against the

Applicant and others. That the Applicant was informed why they arrested him, which was based on investigation of allegation of receiving stolen goods from Emeka the servant of the 2nd Respondent. That the Applicant received those stolen goods worth more than **Thirty Eight Million Naira (₦38, 000,000.00)**. That the Applicant and others has since 26th April, 2022 been charged to Court. Besides, they were detained for less than 48 hours as required by law/Constitution. That the allegation was on conspiracy and receiving stolen goods from the said servant of the 2nd Respondent based on the report of the 2nd Respondent made on 31st January, 2022. They attached a copy of the complaint as well as copy of the charge filed on 26th April, 2022 against the Applicant and others. That the Applicant was never tortured. That the men of the 1st Respondent went to the Applicant's shop in the company of the said Emeka who took them to the Applicant's shop where the stolen goods were kept. That it was in the cause of investigation that they were led to the Applicant's shop.

Again, that the Applicant volunteered Statement to the men of the 1st Respondent. That they took the Applicant to their office which used to belong to the defund SARS and not to any Abbatoir. That the 1st Respondent has power under the Constitution to investigate crime once reported as they did in this case. That it is within their powers under Police Act and Constitution to do so. That the Applicant has even been charged to Court long before filing this present Suit. That the 1st Respondent never refused

the Applicant's sister to visit or act as Surety. That it was one Mr. M.C. Uchendu that stood as Applicant's Surety. That after the grant of Admin Bail, that it was only sometime in April that the Applicant was called for the purpose of his arraignment to the High Court No. 51 sitting at Maitama. That the 1st Respondent never had not invited or threatened to re-arrest and detain the Applicant.

They urged Court to discountenance the facts of the Applicant in the Affidavit in support of the application and hold that the 1st Respondent did not violate the Right of the Applicant as alleged but that it acted within the ambits of the law and dismiss the application.

In their Written Address the 1st Respondent did not raise any Issue specifically for determination. They submitted that the acted within the law and Constitution. They referred to **S. 122 of the Evidence Act, S. 4 & 20 of the Police Act.** That they acted within the law as the Applicant was involved in criminal conspiracy and theft by receiving stolen goods from the servant of the 2nd Respondent. That the goods worth over **Thirty Eight Million Naira (N38,000,000.00)**. That the Applicant filed this Suit to avoid being prosecuted for the said alleged crime which he is already standing trial. That the Applicant tries to mislead the Court and deceive it too by this application and the Affidavit in support and Reply on Points of Law. That he has not disclosed any material cogent evidence and fact to prove the violation of his Right as the action of the 1st Respondent was justified legally and lawfully. They referred

to **S. 135 – 140 of the Evidence Act**. That the Applicant has not discharged that onus in this case. That the allegation against the Applicant is criminal in nature and not civil and as such Police has right to arrest, detain and prosecute him. That Police is empowered to arrest, investigate, detain, interrogate and get the society free from crime and criminality and arrest offenders and prosecute them too. That such act by the Police is not violation of the Applicant's Right in any way. That the Applicant has not shown that his arrest was illegal and unlawful. That all the documents attached by the 1st Respondent speak for themselves. That the 1st Respondent cannot abandon its responsibility under the law. They referred to the case of:

Atakpa V. Ebetor
(2015) 3 NWLR (PT. 1447) 549

That by virtue of **S. 35 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended), the Rights of citizens is not absolute. That the arrest and detention of the Applicant was less than 48 hours. That the Right can be tampered with following due procedure permitted by law. They cited **S. 35(1) (c) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). They relied on the case of:

Chris Uba V. A-G Federation
(2005) 33 WRN 191

That the Applicant is not entitled to any payment of Damages because his Right was not violated unlawfully or

illegally as the action of the 1st Respondent based on the report by the 2nd Respondent was lawful. The urged Court to refuse the application as granting same will be justifying the criminal conduct of the Applicant.

Upon receipt of the Counter Affidavit by the 1st Respondent the Applicant filed a Further Affidavit of 13 paragraphs deposed to by Juliana Chibuike. In the Further Affidavit the Applicant restated through his sister that the arrest was illegal and that there was further arrest from 30th March, 2022 to 11th April, 2022. That the Applicant was tortured and humiliated.

In the Reply on Points of Law the Applicant raised as Issue for determination which is:

“Whether he has proved his case against the Respondents?”

His Counsel on his behalf submitted that he has proven his case against the 1st Respondent by showing that he was arrested on 17th to 19th February, 2022 and further arrested on 30th March, 2022 to 11th April, 2022. That he was tortured. That the cumulative period of arrest and detention is far beyond 48 hours as provided by the Constitution. Besides, that the action of the 1st Respondent violated his Rights. He referred to the cases of:

Emeka V. Okafor
(2017) 11 NWLR (PT. 1577) 410

Isah V. Okoi & Anor

(2021) LPELR – 55713 (CA)

Duruaku V. Nwoke

(2015) 15 NWLR (PT. 1453) 417 @ 425

That mere filing of charge against a person does not give or operate to entail a person enforcement of a person Right against the Respondent. They referred to the case of:

Ohakosim V. COP Imo State

(2009) 15 NWLR (PT. 1164) 229 @ 256 Para B – C per Sanlaw JCA

That the detention was well above the statutory period required by Constitution before the Applicant was charged to Court. That though the Applicant was charged to for a crime, he is still innocent pending the final determination of the case and its outcome. That his Fundamental Right is also to be protected pending the outcome of the case. They referred to the case of:

Chrome Ins. Brokers Limited V. EFCC & Ors

(2018) LPELR – 44818

That the Applicant is entitled to award of Damages for breach of his Rights by the 1st Respondent. They referred to the cases of:

Eronini V. Eronini

(2013) 11 NWLR (PT. 1524) 387 @ 389 – 390

Uni. Of Agric Makurdi V. Sugh

(2021) LPELR – 54211 (CA)

They urged Court to discountenance the submission of the 1st Respondent as it lacks merit and resolve the Issue in Applicant's favour as it failed woefully to justify its action for violating the Right of the Applicant. They urged Court to grant all their Reliefs as prayed.

Upon receipt of the application the 2nd Respondent – Chinonso Obi filed a Counter Affidavit of 35 paragraphs. He attached his Statement of Complaint he made to the Police on the 31st January, 2022. He equally attached the Amended Charge filed on 26th April, 2022 against the Applicant and others as stated therein. He also attached Statement of the Applicant made on the 6th February, 2018.

In the Written Address the 2nd Respondent raised an Issue for determination which is:

“Whether in the light of the materials before the Court and all circumstances of this case, the 2nd Respondent ought to be included as a party in this case.”

He submitted that the Applicant has not disclosed any iota of reason why the 2nd Respondent should be made a party in this Suit as he failed to present any cogent and verifiable reason, facts and documents to prove his case against the 2nd Respondent. He referred to the cases of:

**Society BIC S.A & 2 Ors V. Charzin Ind. Limited
(2014) 2 SC (PT. 11)**

**A-G Lagos State V. Eko Hotels Limited
(2006) LPELR – 3161 (SC)**

**Azubuike V. Govt. Enugu State
(2013) LPELR – 20318 (CA)**

That the application is a ploy by the Applicant to use the Court to stop Police from prosecuting him for alleged crime he committed. That Court has no power to stop Police from investigation of alleged crimes. That since the Applicant has not disclosed any cause of action against the 2nd Respondent, that he has no locus to file this action against him. He relied on the case of:

**Uwazuruonye V. Gov. Imo State
(2012) LPELR – 20604 (SC)**

That the 2nd Respondent merely reported a crime to the 1st Respondent and nothing more. He only acted within his right by making the complaint to the 1st Respondent. That the 1st Respondent used their own discretion and power under the law in taking the step they took which they feel is appropriate. That he did not interfere with the arrest, detention, verification or investigation. That the report does not involve instigation in any way. That the 2nd Respondent cannot be held responsible for the action of the 1st Respondent. That making a report to the Police does not in any way violate the Right of the Applicant. He referred to the cases of:

Mbang V. Janet & Ors

(2014) LPELR – 22656 (CA)

Ezeadikwa V. Maduka

(1997) 8 NWLR (PT. 518) 635 @ 667

That the Police has statutory power and responsibility to investigate complaint of criminal nature and prosecute same. That no citizen including the Complainant/Applicant has the right to interfere and meddle into the duties of the Police. They referred to the case of:

Adama Beverages V. Akam & Ors

(2015) LPELR – 40417

That it is the duty of citizens to report commission of cases of criminal nature to the Police and that it is the exclusive duty of the Police to investigate such crime and prosecute same. The urged Court to dismiss the application against the 2nd Respondent for the Applicant's failure to disclose any reasonable action against the 2nd Respondent and failure to prove that it has violated the Applicant's Fundamental Rights.

Upon receipt of the Counter Affidavit by the 2nd Respondent the Applicant's Counsel filed a Further Affidavit of 11 paragraphs and a Reply on Points of Law. The Applicant submitted that the 2nd Respondent was instrumental to the arrest and detention of the Applicant. That the Applicant did not connive in any way with the said Emeka to commit any crime and had no illicit business with the said Emeka. That filing the Charge does not operate as justification to

violate the Applicant's Right. That the Applicant did not recruit anyone or Uchenna Nwaigwe for purpose of selling any good below the real price. That the statement averment of the 2nd Respondent in paragraphs 27 – 30 shows that he instigated the 1st Respondent to arrest and detain the Applicant. That the Applicant is entitled to his Reliefs as sought.

In the Reply on Points of Law the Applicant raised an Issue for determination which is:

“Whether making the 2nd Respondent a party is proper in the circumstance of this case?”

He submitted that by **Order 1 Rule 2 of the FREP Rules and S. 46 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended), the Applicant has cause of action against the 2nd Respondent. Hence he is right to have made him a party as he is instrumental to his arrest. That it is the wrongful act of the 2nd Respondent that gave rise to his arrest and detention by the 1st Respondent. That it is the instigation of the 2nd Respondent that caused the Right of the Applicant to be infringed. That that act gave rise to the cause of action the Applicant complained of. He relied on the cases of:

**Okafor V. B.D.U Jos Branch
(2017) 5 NWLR (PT. 1559) 385 @ 390Egbue V. Araka**

**Egbue V. Araka
(1988) NWLR (PT. 84)**

Afribank V. Adigun

(2009) 11 NWLR (PT. 1152) 329 @ 333

Emeka V. Chuba Ikpeazu

(2017) 15 NWLR (PT. 1589) 345 @ 350

That by **Order 1 Rule 2(1) FREP 2009** and the above decisions of the Courts as well as Affidavit of the Applicant shows that he has cause of action against the 2nd Respondent – Chinonso Obi who is instrumental to his arrest and which the 2nd Respondent confirmed in his statement at IRT Station at the then SARS office. That the 2nd Respondent cannot escape from the act of gross violation of his Right. That his arrest and detention did not follow due procedure permitted by law. That it is not the case in this situation. He referred to the cases of:

Duruaku V. Nwoke

(2015) 15 NWLR (PT. 1483) 417 @ 423 – 425

Skye Bank V. Emerson Njoku

(2010) LPELR – 4047

That he was arrested first in February 2022 and detained for 3 days without been taken to any Court. That the submission of the 2nd Respondent and the judicial authority cited are not applicable. That the power of the 1st Respondent to checkmate crime must be within the ambit of the law which in this case is not the case. He referred to the cases of:

Anosike V. Reg. Gen. CAC

**Chrono Ins. Brokers Limited V. EFCC & Ors
(2018) LPELR – 48818 (CA)**

That having established that the act of the 2nd Respondent violated his Right that he is entitled to payment of Damages. He relied on the case of:

**Anozie V. IGP
(2016) 11 NWLR (PT. 1526) 387**

He urged Court to discountenance and dismiss the 2nd Respondent's Counter Affidavit for lacking in merit and for being incompetent. Besides, that the said Respondents failed to justify the legality of their action. He urged the Court to grant his Reliefs as sought.

COURT

Both under the Police Act and the Constitution the Police has right to arrest, detain, interrogate, investigate and prosecute (where the circumstance warrants) any crime committed or reported to have been committed by anyone from anyone. Such arrest, detention and investigation is legal once it is done following the due procedure permitted by law. The Police in arresting is entitled impliedly to use reasonable force to effect arrest where there is any form of resistance. They are also expected to inform a person who they want to arrest to keep silent and upon getting to the station, must tell the person the reason for the arrest. Anything outside this is outside the ambits of the law. The Police is not allowed to be or to act as an Agency for Debt

Recovery. Where they do, that action will be illegal, unlawful, null and void.

Both the Constitution and the Fundamental Rights (Enforcement Procedure) Rules (FREP) empower a person whose Right under CAP 4 has been, is being or would be or threatened to be violated to seek redress in a High Court. Once such person has been able to establish that the said Right has been violated by the action or inaction of the Police, he will be entitled to compensation in form of payment of damages. But it is incumbent on the Applicant to show through the facts in the Affidavit and the Exhibit if any that his Rights were violated as alleged. Where such person fails to do so the Court will hold that he has not shifted the onus and is therefore not entitled to any payment of damage. Therefore the Court will hold that the application is unmeritorious.

Once the claim before the Court is on FREP, the Court looks out for cogent facts in the Affidavit in order to ascertain if truly there was an infringement as alleged. The extant provision of the Constitution on the payment of compensation where Fundamental Rights are infringed should not be used as **“Get Rich Quick”** provision because that is not the intendment of the drafters of that National Sacred Book of Law. It should also not be taken as a **“get away from crime”** provision too because that is not what it is meant for.

In this case having summarized the for and against in this application, can it be said that the issue in dispute between the Applicant and the 2nd Respondent is based on contract? If not can the arrest and detention of the Applicant be said to be violation of the Applicant's Right and as such the Applicant is entitled to and is right to have instituted this action against the Respondents for contravening his Rights? Did the action of the 1st Respondent violate the Right of the Applicant bearing in mind that the Police has the extant powers to arrest, detain and prosecute and bearing in mind that the 2nd Respondent as a citizen has a right to report crime to Police and that the Police had after investigating the crime based on the report by the 2nd Respondent sued the matter to High Court No. 51 in Suit No. **CR/089/22 – EXH B** in the 1st Respondent's Counter Affidavit? Was the action of the Police arbitrary in this case? Is the 2nd Respondent a proper party in this Suit? Has the Applicant proved its case or established that the 1st Respondent violated his Right at the instigation of the 2nd Respondent and as such he is entitled to payment of compensation?

Not answering the question seriatim. It is the humble view of this Court that the Applicant has not established that his Right was violated by the 1st Respondent at the instigation of the 2nd Respondent. His Fundamental Right was not breached by either the 1st Respondent or the 2nd Respondent. The issue in dispute between the Applicant and the 2nd Respondent on which the complaint of the 2nd

Respondent was based on is not civil or contractual in nature. The complaint was based on criminal allegation of committing a crime, recovering stolen goods and based on theft, criminal transaction, criminal conspiracy of property of the 2nd Respondent totaling about **Thirty Eight Million, Nine Hundred and Six Thousand, Five Hundred Naira (₦38, 906,500.00)**. See the extant paragraph of the 1st Respondent's Counter Affidavit as well as **EXH A & B**. The 2nd Respondent making a report to Police – **EXH A** is the proper thing to do in the circumstance of the case as a law abiding citizen. He did not want to take the laws into his hand that is why he made the report to the Police on the 31st of January, 2022. In the length and breadth of the report he never asked the 1st Respondent to help him recover the money allegedly stolen. He made the report of the incident to the Police and nothing more.

The Police on their own and in exercise of its power and duty under the law **S. 4 & 20 of the Police Act** and **S. 251 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended), investigated the matter, arrested the Applicant who was named as the receiver of the stolen goods, took him to their station and interrogated him. The action of the Police in that regard is legal, lawful, legitimate and in line with their powers under the law and within the ambits of the law and Constitution. That action by the Police did not in any way violate the Right of the Applicant as alleged. Yes, the detention was from 17th – 19th February, 2022 but it is no secret that interrogation is not

a one-off thing. Most importantly, the Applicant was granted Bail and was subsequently charged to Court on the 26th April, 2022 going by the **EXH B** – the Charge at FCT High Court No. 51. This Court hold that the arrest and detention was proper and in accordance with the law. The Applicant is not right in instituting this action. It is only a ploy to escape and stall his prosecution at the FCT High Court No. 51 based on the said Charge **CR/084/22**. So this Court holds.

The report by the 2nd Respondent to the 1st Respondent is proper, legal and lawful. The relationship between the 2nd Respondent and the Applicant or better still, the action upon which the report was based is criminal and not contractual or civil as the Applicant has deceptively submitted. The action of the 2nd Respondent in making the report to Police – 1st Respondent which culminated into the arrest and detention of the Applicant did not in any way infringe on the Applicant's Right. Again, joining the 2nd Respondent as a party in this case is equally proper just like the action of the 1st Respondent is equally proper and within the ambits of the law. As a citizen, the 2nd Respondent has a right to report any crime committed or about to be committed by anyone against him or even against other person.

In this case the 2nd Respondent's report to Police was based on allegation of theft of his goods which was reported to have been taken to the shop of the Applicant. The Applicant did not deny receiving those goods from the

servant of the 2nd Respondent. The goods so stealingly received belonged to the 2nd Respondent. Hence he is right in making the report. It is right that he is made a party because the alleged so called illegal arrest and detention was based on his legitimate report he made to the Police. The action of the Police is not arbitrary. The Police having informed the Applicant why he was arrested is equally proper and within the ambits of the Constitution which required the Police to inform a suspect why he was arrested. Filing the matter in Court after investigation is equally proper.

The Applicant had confirmed that the 1st Respondent informed him about the reason why he was detained. The 2nd detention was equally proper because, since the Applicant was granted Admin Bail and the matter was charged to Court, it is proper for him to have been invited to the office of the 1st Respondent so that from there he will be taken to Court since the matter was charged to Court. If the Police had informed the Applicant that the matter was in Court without ensuring that the Applicant was in Police office, there is every likelihood that the Applicant would have disappeared and not come to Court for arraignment. It is imperative to state that not all detention by the Police should be seen as a breach or violation of Applicant's Right. In this case the action of the Police did not violate the Right of the Applicant. So this Court holds.

Most importantly, the Applicant had not established that the 1st Respondent violated his Right based on and at the

instigation of the 2nd Respondent. So this Court holds. He is not entitled to any payment of damages by way of compensation or apology. So this Court holds.

To start with, he did not deny receiving the goods from the servant of the 2nd Respondent. He even acknowledged that he knows the said Emeka Kenneth, the servant of the 2nd Respondent. He confirmed that he bought goods from the shop of the 2nd Respondent and paid lesser amount for those goods. He did not clearly establish how he was tortured or harassed by the 1st Respondent. He only said that he was arrested in his shop and called a thief by the Police. He confirmed he was informed by the Police when he got to their station on why he was arrested. There is no how Police can go to his shop without attracting on-lookers' attention; moreso, where his arrest was done at the Gudu Market. It is no secret that the mere presence of the Police in the market attracts undue attention from people around who will want to know where and who Police is looking for. There is no how the Police can move stealthily to his shop to arrest him.

It is a common and legitimate fact that no suspect is expected to have the luxury of holding his phone when he is under arrest and detention. The Applicant cannot be exempted in that regard. In paragraph 7 & 8 of his Affidavit he confirmed that the Police asked him about Emeka at Gudu Market and told him what the allegation was. He confirmed buying the good at cheaper rate.

If actually the Police warned the Applicant to settle the issue they would not have charged him to Court so soon after the arrest and detention.

I do not believe that the 1st Respondent has power to delve into any case which is civil in nature. But the issue in dispute in this case is not civil but CRIMINAL in nature.

The 2nd Respondent is instrumental to the arrest and detention of the Applicant because of the complaint he made to the 1st Respondent on the 31st of January, 2022. The complaint is proper, legal, lawful and legitimate. So also the arrest by the Police.

It is important to state that the Nigeria Police Force is one. Any action on the Inspector General of Police, Commissioner of Police etc is an action against the Police. The fact that the Nomenclature of the Inspector General of Police or the Acronym of the Inspector General of Police is in the fact of the Suit, does not mean that the Inspector General of Police is sued as a separate person. A Suit against the Inspector General of Police is a Suit against the Police generally. So there is no point making any fuss about the name of the Inspector General of Police as the 1st Respondent does not mean he is sued in person. So the submission of the 1st Respondent's Counsel in that regard is of no moment. The person sued is the Nigeria Police and the 2nd Respondent.

In paragraph 6 (f) of the Applicant's Reply to 1st Respondent's Counter Affidavit the Applicant confirmed

that he was aware that the matter had been charged to Court.

The Applicant in his own Affidavit never said that he was hand-cuffed but his sister in paragraph 6 (j) did. One wonders why he should forget such an incident and vital point.

If the 1st Respondent did not allow the Applicant access to his phone, how come someone to stand as Surety for the Applicant? The simple answer is that the Applicant had access to his phone as necessary in the circumstance.

The so called re-arrest on 31st March, 2022 was because they wanted the Applicant to be around before the arraignment. Besides, the Police has a right to detain any suspect who was already on Admin Bail for further interrogation and investigation. Since the matter was yet to be charged to Court, the 1st Respondent detained the Applicant as part of investigation which culminated in his arraignment. Going by paragraph 6 (q) of the Affidavit of the Applicant's sister, that second arrest of the Applicant by the 1st Respondent was done before the matter was charged to Court on 26th April, 2022. But it is very strange that the Respondent never made mention of that in his Affidavit in the main.

The allegation of crime, though yet to be established against the Applicant, will not affect the claim of FREP but if the action complained of which is claimed to have violated the Right of the Applicant was done legally in the cause of arrest and investigation of the alleged crime, it is

not a violation of the Right of the Applicant. So this Court holds. Since it was done within the ambits of law. After all, a person's Right under **CAP 4 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) is not absolute; it can be tampered with in the cause of investigating a crime or allegation of crime. So in this case, the tampering of the Right of the Applicant by the Police in the arrest and detention of the Applicant is legal, lawful and legitimate and NOT a violation of his Right under **CAP 4 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended).

Yes, the Applicant has a right to seek redress in Court as he did. But he also has the duty to establish vividly how his Right was violated. It is not a mere allegation of violation of his Right.

The Police has a right to detain any suspect anywhere since the Nigeria Police Force is one and not divided. As at the time of the arrest and detention of the Applicant even the so called dreaded SARS has been disbanded. Besides, the Applicant was arrested by the FID/IRT Police Unit. It is not for any suspect to pick and choose where he should or should not be detained.

The Statement of the Applicant made to the Police on 17th February, 2022 shows that he received goods from the said Emeka Kenneth. That he purchased those goods for far lesser amount of money than the actual price. He did not even receive or was issued with any receipt by the said

Emeka. Meanwhile, Emeka is the Agent of the known principal. His action is so recognized in this case. Police granted him Bail even within the 48 hours of his arrest.

All in all and from the above, it is glaringly clear that the Applicant's Right was not violated by the action and inaction of the 1st Respondent. Again, the 2nd Respondent's report to the 1st Respondent was not an instigation to the 1st Respondent to violate the Right of the Applicant. Besides, the Applicant was not able to establish that his Right was violated by the arrest and detention from 17th – 19th February, 2022 by the 1st Respondent.

The 1st & 2nd Respondents showed that the action – report of crime of theft, criminal conspiracy, arrest and detention, interrogation and pending prosecution are all act done legitimately by them.

This Court therefore holds that this application is unmeritorious. It is therefore DISMISSED.

This is the Judgment of this Court.

Delivered today the ____ day of _____ 2023 by me.

K.N. OGBONNAYA
HON. JUDGE