

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 4, MAITAMA

ON THE 22<sup>ND</sup> DAY OF MAY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/2692/2021

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

MR. GIDEON CHIKA DAVID ..... ... APPLICANT

AND

1. THE NIGERIA ARMY	}	.....	RESPONDENTS
2. MAJOR PE AYAH			
3. 2 <sup>ND</sup> LT. M. SULEIMAN			

**J U D G M E N T**

The Applicant's Originating Motion against the Respondents is dated the 14<sup>th</sup> day of October 2021 but filed on the 15<sup>th</sup>.

It is brought pursuant to Section 34 (1) (a), 44 (1), 46 (1) & (2) of the 1999 Constitution (as amended), Articles V & XVII (2) of the Universal Declaration of Human Rights, Articles V & XIV of the African Charter on Human & Peoples Rights, etc.

It prays the Court for the reliefs contained on the face of the Motion paper amongst others:

(a) An Order directing the Respondents to pay the Applicant ₦100 Million as general and aggravated

damages for breach of Applicant's right to dignity of human person.

(b) ~~N~~100 Million for breach of Applicant's right to personal liberty.

(c) ~~N~~100 Million for breaching the Applicant's right to own property.

The Respondents were served with the processes. They reacted by filing Counter Affidavit to the Originating Application.

The 1<sup>st</sup> Respondent further filed a Notice of Preliminary Objection challenging the jurisdiction of this Court to hear and determine the suit.

It urges the Court for the following Orders:

- (1) An Order of Court dismissing/striking out the name of the 1<sup>st</sup> Respondent for being wrongly joined.
- (2) Cost.

The grounds for the application are:

- (1) The 1<sup>st</sup> Respondent is not a proper party and ought not to have been joined.

(2) That the suit discloses no reasonable cause of action against the 1<sup>st</sup> Respondent.

(3) There is no relief against the Applicant.

Learned Counsel to the 1<sup>st</sup> Respondent adopted his Written Address filed in support of the Objection.

He canvassed that 1<sup>st</sup> Respondent is not properly joined.

That from the Affidavit of the Applicant/Respondent, it is apparent that the 1<sup>st</sup> Respondent is not a proper party.

That where the Respondent is a complete alien to an action before the Court, there is no saving grace for the suit but to strike it out.

He further contends that the Application does not disclose a reasonable cause of action. There is no averment in the Affidavit associating the 1<sup>st</sup> Respondent with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

That there is no cause of action against the 1<sup>st</sup> Respondent. He urges the Court to hold that the 1<sup>st</sup> Respondent is wrongly joined.

The Applicant's Counsel filed an Affidavit of Facts in opposition to the Preliminary Objection. Learned Counsel to the Applicant relies on same and exhibits.

The Notice of Objection is without Affidavit filed in support.

The Applicant cannot therefore file a Counter Affidavit or what he called Affidavit of Facts.

The Affidavit filed in opposition is contrary to the Rules of Court. It is accordingly discountenanced.

I have read the Applicant's Written Address in opposition to the Objection. The 1<sup>st</sup> Respondent/Applicant's contention is that the 1<sup>st</sup> Respondent is wrongly joined.

That the suit disclosed no reasonable cause of action.

Learned Counsel brought this Objection under Order VII of the Fundamental Rights (Enforcement Procedure) Rules,

2009. I have checked the said Rules. They are not relevant to this application.

However, generally, for a person to be joined as a party in an action, it must be shown that the person is entitled to some share/interest in the subject matter, or lays claim to such share/interest or is likely to be affected by the result of the action or is a necessary party and it is just and convenient to join him.

See YAKUBU vs. GOV. KOGI STATE (1995) 8 NWLR (PT. 414) 386

UMAR vs. ONIKATA (1999) 3 NWLR (PT. 596) 558.



The purpose of joinder of parties in an action is to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the cause or matter.

The overriding considerations are whether the issues that call for determination cannot be effectually and completely settled unless the party sought to be joined is made a party and that his interest will be irreparably prejudiced if he is not made a party.

On the other hand, a cause of action is the factual situation which the Applicant relies upon to support his claim recognised by law as giving rise to a substantive right

capable of being claimed or enforced against the Respondents.

The factual situation must constitute the essential ingredients of an enforceable right.

In order to determine whether or not a suit discloses a cause of action, the Courts are required to examine the averments in the Claim to see whether they raise some issues of law or fact calling for determination by the Court.

See *IDACHABA vs. ILONA* (2007) 6 NWLR (PT. 1030) 277.

From the Affidavit filed in support of the application, the Applicant avers that he was given some military uniforms to sew by the 2<sup>nd</sup> Respondent.

He operates a fashion outlet at Lungi Barracks, Mammy Market Extension, Maitama, Abuja. That the 2<sup>nd</sup> Respondent threatened him with a pistol.

That 3<sup>rd</sup> Respondent harassed him over the same issue, humiliated him by making him sit down on the bare ground in the public for over three hours while people passed by and laughed at him on 15/03/2021.

That some soldiers came from Lungi Barracks on the order of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and seized two of his sewing machines and up till date, the machines have not been released.

That soldiers of the Nigerian Army have converted the machines to their own use and have refused to release same despite several demands.

He was manhandled, slapped and assaulted by soldiers on 18/03/2021. He was taken to a Military Check-Point, Kugbo and assaulted.

That a 25 litre of water was emptied on him. He was held hostage for 5 hours for no justifiable reason.

That his lawyer wrote to the 1<sup>st</sup> Respondent without a reply. That the Military Police Headquarters invited him and his lawyer, his Statement and that of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were taken. Nothing happened thereafter.

His machines have not been released to him. He has suffered emotional trauma.

The matter arose in the Barrack of the 1<sup>st</sup> Respondent. What is causing the brouhaha is the military uniform of the 1<sup>st</sup> Respondent given to the Applicant to sew.

The assault, intimidation and harassment took place in the Barracks and Army Check-Point. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are serving officers of the 1<sup>st</sup> Respondent.

In my humble view, the 1<sup>st</sup> Respondent is a necessary party. The Applicant/Respondent's sewing machines have been seized by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

The deposition is that soldiers are freely making use of the machines and have converted the machines to their own use.

The Applicant's interest will be irreparably prejudiced if the 1<sup>st</sup> Respondent is not made a party.

The 1<sup>st</sup> Respondent has sufficient interest in the matter. Without the 1<sup>st</sup> Respondent, the matter cannot be effectually and effectively determined.

It is also my view and I so hold that there is a reasonable cause of action disclosed by the Applicant's deposition in support of the Originating Motion. This Court is seised of jurisdiction to determine this matter.

The 1<sup>st</sup> Respondent's Notice of Objection fails for lack of merit and it is dismissed.

The Affidavit evidence of the Applicant sworn to by the Applicant himself on the 15/10/2021 is succinctly as follows:

That he was given some military uniforms to sew on the 16/02/2021 by the 2<sup>nd</sup> Respondent who is attached to the Army Recruitment Office, Garki, Area 11, Abuja. That some of the uniforms were brought back for adjustment which were done.

A disagreement broke out. That on the 15/03/2021, the 3<sup>rd</sup> Respondent started harassing him in his shop at Mammy Market. He was made to sit down on bare ground in the public for 3 hours while people passed by and laughed at him.

That some soldiers came from Lungi Barracks on the orders of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and seized two of his sewing machines and up till now the machines have not been released.

That he took a loan to purchase the said machines. The receipt of the machines are Exhibits A and B.



That officers of the Nigerian Army have converted the machines to their own use, and have refused to release them despite several demands.

That 2<sup>nd</sup> Respondent ordered 3<sup>rd</sup> Respondent to assault him. He was taken to Nyanya Military Check-Point, Kugbo, where he was manhandled, assaulted and humiliated in public like a common criminal.

That 25 litres of water was emptied on him. He was detained for 5 hours and released. He suffered emotional trauma, shame, public ridicule and embarrassment.

He has been incapacitated, has lost profit and customer base as a result of the seized machines.

The 1<sup>st</sup> Respondent's Counter Affidavit is deposed to by Sgt. Mohammed Jimoh. He states the 1<sup>st</sup> Respondent is not privy to the transaction between the Applicant and the 2<sup>nd</sup> Respondent.

The 1<sup>st</sup> Respondent did not send the 2<sup>nd</sup> Respondent or any of its staff whomsoever to enter into any form of tailoring contract with the Applicant and as such cannot be liable for the private business transaction.

That 2<sup>nd</sup> Respondent as a military personnel is authorised to bear arms but same is not for intimidation, harassment or threat to the life of civilians and did not do so in the cause of her official duties.

That 2<sup>nd</sup> Respondent lodged a complaint with the Military Police arm of the 1<sup>st</sup> Respondent responsible for enforcing civil obedience within the facilities of the 1<sup>st</sup> Respondent.

That in the course of investigation, the military invited the Applicant and 2<sup>nd</sup> Respondent for questioning.

That after investigation, the Applicant accepted culpability and willingly deposited two of his sewing machines while backing same with an Undertaking. The Undertaking is Exhibit NA1.

That the machines remained in possession of the 1<sup>st</sup> Respondent for safekeeping only because the Applicant is

yet to pay her for which he deposited the machines. The 1<sup>st</sup> Respondent did not put the machines to any use.

That Applicant was not harassed or intimidated. The Statement of Applicant's friend, Lt. Col. Hassan Salim Yusuf is Exhibit NA3.

That 1<sup>st</sup> Respondent was not privy to the imaginary incident in Kugbo, Nyanya Military Check-Point.

That Exhibit NA5 and NA6 also show that Applicant was not harassed. That Applicant admitted to pay the 2<sup>nd</sup> Respondent the sum of ₦243,000 being the cost of damaged materials and to show commitment, the

Applicant willingly and voluntarily deposited his sewing machines.

That Applicant did not request for the return of the machines. That Applicant is indebted to the 2<sup>nd</sup> Respondent to the tune of ₦243,000.

That 1<sup>st</sup> Respondent did not infringe on Applicant's fundamental right. That it will be prejudicial to grant the application.

The 2<sup>nd</sup> Respondent's Counter Affidavit sworn to by 2<sup>nd</sup> Respondent on the same 27/01/2023 is succinctly as follows:

That she is authorised to bear arms. That the Affidavit is full of falsehood, half-truth and misrepresentation of facts.

That at the time she engaged his services for sewing of her military uniforms, they agreed on specific timeline, which is on or before 20<sup>th</sup> day of February, 2021 for completion and delivery of the clothes.

She paid him in full to ensure prompt delivery as a result of official functions Nigerian Army Training School Depot Zaria, Kaduna,

She handed over the clothing materials on 16/02/2021, Applicant took measurement with assurance that he will make good outfit for her.

The Applicant failed to keep the agreed timeline. That the clothes made by the Applicant were all embarrassingly undersize and none could fit her body properly, not because she added in size within 6 days of engaging the Applicant.

That Applicant took her measurement on four different occasions, 16/02/2021, 28/02/2021, 3/03/2021 and 15/03/2021 just to make one set of clothes.

She did not visit Applicant's shop with her service pistol or threaten to shoot him on 20<sup>th</sup>/21<sup>st</sup> February 2021 or any other date.

She denied sending 2<sup>nd</sup> Lt. M. Suleiman or any other Army Personnel to the shop of the Applicant to harass, dehumanise or humiliate him.

She did not order any soldier to make Applicant sit on the bare ground. He was not arrested or detained.

All attempts to make the Applicant fix the clothes properly failed despite several attempts resulting to a total damage of the materials.

She allowed Applicant to take her measurement on four different occasions just for peace to reign.



That his fellow uniform members begged her to give him one more opportunity and she acceded to their request. That despite the above he failed to keep his promise.

She reported to the Military Police with a specific request for ~~N~~243,000 being cost of the clothing materials damaged and fees paid for the sewing.

She gave Statement to the Military Police on 26/03/2021. It is MPA 6 while the Statements of Applicant's colleague are MPA7, MPA8 and MPA9.

That Applicant voluntarily undertook to pay her the sum of ~~N~~213,000 and deposited his two sewing machines with the Military Police as a guarantee for his promise. The said machines were not converted to personal use.

The Investigation Officer made a Statement. It is Exhibit MPA 11.

She denied ordering Applicant to Kugbo/Nyanya Check-Point to be assaulted and or humiliated.

That it was after the Applicant became aware of the outcome of the investigation that he quickly instituted this action.

She denied infringing on the fundamental rights of the Applicant. That it will be in the interest of justice to refuse the application.

In reaction to the above Counter Affidavit by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the Applicant relied on his Further and Better Affidavit deposed to on the 27/03/2023.

He said amongst others that he was compelled, forced, harassed and coerced into writing an Undertaking under duress on 19/03/2021, the same date his lawyer petitioned the military authorities.

That he did not voluntarily deposit his machines but the agents of the 1<sup>st</sup> Respondent came and took the machines from his shop and forced him to write the Undertaking.

That those who wrote Statements in the Mammy Market are not his friends. He is not indebted to the 2<sup>nd</sup> Respondent in any manner.

That the 2<sup>nd</sup> Respondent did not pay him in full for the services he rendered. That he did not damage her materials. That the adjustment was a result of the increase of her size.

That the issue between him and the 2<sup>nd</sup> Respondent is purely contractual.

I have also considered the Written Addresses of Counsel.

The issue for determination is:

Whether the fundamental rights of the Applicant to personal dignity, liberty and right to own immovable property under the 1999 Constitution were breached by the Respondents.

Section 34 of the 1999 Constitution states that every individual is entitled to respect for the dignity of his person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment.

Section 35 (1):

*“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in accordance with a procedure permitted by law.”*

Section 44 (1) states:

*“No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that amongst other things*

*(a) requires the prompt payment of compensation*

*therefore, etc.”*

It is the duty of the person who alleges that his fundamental right has been breached to put before the Court sufficient and credible evidence to prove that the said rights were breached by the Respondents.

The allegation of the Applicant is that he was harassed, intimidated and embarrassed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who are in the employment of the 1<sup>st</sup> Respondent.

That he was threatened with the service pistol of the 2<sup>nd</sup> Respondent. That at a time he was slapped.

The 2<sup>nd</sup> Respondent ordered soldiers to take him to Kugbo/Nyanya Junction where he was publicly humiliated. That a 25 litre of water was poured upon him.

He was at Mammy Market where he was made to sit on bare floor and detained for 5 hours.

The Respondents denied the above allegations and attached Exhibit NA1 which is an Undertaking written by the Applicant and Statement of MWO Tanko marked NA2 and another Statement of Lt. Col. Hassan Salim Yusuf said to be the friend of the Applicant.

Also attached are Statement of Samuel Daniel Chimezie – NA4 and that of Olugbenga Johnson – NA5 who are alleged to be union members of the Mammy Market and friends of the Applicant.

They all denied that the Applicant was assaulted, intimidated and or harassed. They also debunked the assertion that Applicant was made to sit down on bare floor for 5 hours.



The Applicant's response is that he was forced, coerced and harassed to write the Undertaking, while the other witnesses wrote because they feared being ejected from the Mammy Market.

The Applicant's complaint of the activities of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to the 1<sup>st</sup> Respondent via his Legal Practitioners is dated 19/03/2021 and received the same date.

The alleged Undertaking was written on 29/03/2021 and endorsed by MWO G. Kifi on 19/11/2021.

The Exhibit NA2 – Statement of MWO Tanko is dated 29/03/2021 the same date the Undertaking was alleged to have been written. It is endorsed “RESTRICTED” on 19<sup>th</sup> November 2021.

NA3 is dated 12/04/2021 – the Statement of Lt. Col. Hassan Salim Yusuf.

NA4, NA5 and NA6 are dated 29/03/2021 respectively.

The Exhibits NA and MPA series were made after the Applicant’s letter to the 1<sup>st</sup> Respondent. They were in my view hurriedly made to serve as a buffer to Applicant’s complaint. The Respondents cannot be a Judge in their own cause.

I do not therefore take the evidence of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents contained in their Counter Affidavit as credible and or cogent.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents admitted that the Applicant 2 numbers of sewing machines are with the 1<sup>st</sup> Respondent, howbeit voluntarily deposited by the Applicant as a guarantee for the payment of ₦243,000 being cost of 2<sup>nd</sup> Respondent's clothes damaged and fees paid for sewing the said clothes. How the clothes amount to ₦243,000 in 2021 is a conjecture (3 pieces of uniform).

The Applicant's property/sewing machines were seized by the Respondents in a civil transaction or contract involving the Applicant and the 2<sup>nd</sup> Respondent.

I also believe the evidence of the Applicant that he was harassed and intimidated. His dignity was battered and he was humiliated.

Assault, humiliation, detention and seizure of sewing machines is not an antidote to the breach of a contractual obligation by the Applicant.

It is my view and I so hold that the Applicant's fundamental right to human dignity, personal liberty and right to own property have been breached.

The application succeeds.

1. The Respondents are ordered to pay to the Applicant the sum of ~~N~~1,000,000.00 (One Million Naira) for breach of the Applicant's right to dignity, personal liberty and his right to own property.
2. The Respondents are hereby restrained from further humiliating, harassing and or intimidating the Applicant in respect of this matter.
3. The Respondents are further ordered to release to the Applicant his two (2) sewing machines forthwith.

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HON. JUSTICE U. P. KEKEMEKE, ACI Arb (UK), FICMC  
(HON. JUDGE)

22/05/2024

Applicant present.

W. T. Onga, Esq. for the Applicant.

**COURT:** Judgment delivered.

(Signed)

**HON. JUDGE**

22/05/2024