

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

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 14
CASE NUMBER : SUIT NO: CV/822/2024
DATE: : THURSDAY 11TH JULY, 2024

BETWEEN:

1. CROWNPRINCE PROPERTIES & DEVELOPMENT LTD.
2. SUNNYTEX NIG. LTD.
3. ENGR. SHITTU ARIYO
4. MR. SUNNY DAVID ALAYAGA
5. SURV. MICHAEL OTUEKONG UMOKORO
6. FATIMA NIGERIA LIMITED

APPLICANTS

AND

1. INSPECTOR GENERAL OF POLICE
2. AIG, FORCE INVESTIGATION BUREAU
3. ASP MICHAEL
4. MR. OLUWALE OLOYEDE EZEKIEL
5. GREENPASTURE DYNAMIC LAND & HOMES LTD.

RESPONDENTS

RULING

The Applicants vide Originating Motion dated the 4th day of January, 2024 approached this Honourable Court for the following:-

- a. A Declaration that the Applicants have right to enjoy freedom of movement anywhere in Nigeria.
- b. A Declaration that the Applicants have right to enjoy their liberty anywhere in Nigeria.
- c. A Declaration that the Applicants have right to their private and family life.
- d. A Declaration that the Applicants have right to the dignity of human person.
- e. A Declaration that the act of arresting, constantly harassing and intimidating the 4th and 5th Applicants is illegal, unlawful, unconstitutional, null and void.
- f. A Declaration that the act of subjecting the Applicants to make admission to offences they did not commit, forcefully recover money from them and hand same to the 4th and 5th Respondents is wrong and unconstitutional.

- g. A Declaration of the Honorable Court that the continued harassment, arrest, threat of arrest, detention, constant besiegement of the Applicants' office and residence and threat of further detention and intimidation of the Applicants by the 3rd Respondent and other officers in the 1st and 2nd Respondents' office upon the instigation of the 4th and 5th Respondents constitutes flagrant infringement of the Applicants' constitutional rights to personal liberty, fair hearing, freedom of movement, right to private and family life and equal protection of the law as guaranteed and preserved under sections 35, 36, 37 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 2, 3, 4, 5, 6, 7 & 12 of African Charter on Human and People's Rights, CAP A9LFN 2004 and to that extent is unconstitutional, illegal, null and void, and of no legal effect whatsoever.
- h. A declaration of the Honorable Court that the arrest, detention and threat of further arrest and detention of the 4th and 5th Applicants based on the facts and circumstances enumerated in the affidavit is illegal, unlawful unconstitutional and constitutes an infringement of applicant's fundamental rights to personal liberty, freedom

of movement, equal protection of the law as guaranteed under sections 35, 36, 37 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 2, 3, 4, 5, 6, 7 and 12 of African Charter on Human & Peoples Rights CAP A9 LFN 2004 and to that extent is null, void, illegal and of no legal effect whatsoever.

- i. An Order of injunction restraining the respondents whether by themselves, agents, servants howsoever described from further demanding, requesting, asking and/or compelling the applicant to confess to crimes they did not commit and refund money to the 4th and 5th Respondents through the office of the 2nd Respondent.
- j. An Order of injunction restraining in particular the 1st and 3rd Respondents by themselves or through their agents, servants howsoever described from further arresting, harassing, torturing, detaining and compelling the applicant to refund money to the 4th and 5th Respondents in connection with the subject of this suit which is purely civil in nature.
- k. The award of **N100,000,000.00 (One Hundred Million Naira)** only damages against the Respondents jointly and

severally for unlawful arrest, detention, threat of further arrest and detention on matter whose ingredient is purely contractual and civil in nature.

Grounds upon which the reliefs are sought

1. The Applicants are entitled to the enjoyment of the Fundamental Right to personal liberty, freedom of movement, equal protection of the law, right to private and family life and dignity of human person as provided for in the relevant sections of the 1999 Constitution (as amended) and articles of the African Charter of Human and Peoples' Rights.
2. The applicants have been subjected to arrest, harassment, public embarrassment, threat of further arrest and detention without any Justification by the 3rd Respondent upon the active instigation of the 4th and 5th Respondents in connection with a matter that is purely civil in nature.
3. The reason the applicants were arrested, detained and even currently being threatened with further arrest and detention is to procure admissions to a crime they are innocent of and also to compel them to refund the sum of N50,000,000.00

(Fifty Million Naira) to the 4th and 5th Respondents through the 1st and 3rd Respondents.

4. The arrest, detention and constant siege on the Applicants' house constitutes a breach of their Fundamental Right to freedom of movement, liberty and right to private and family life as ensconced in sections 35, 37 and 41 of the constitution of the Federal Capital Republic of Nigeria 1999 (as amended) and Articles 2, 3, 6, 7 & 12 of African Charter on Human and People's Rights, CAP A9 LEN 2004.
5. The Applicants are entitled to redress in the court of Justice upon the violation his foretasted rights.
6. The arrest, detention and threat of further arrest and detention of the applicants have occasioned great physical pain and psychological trauma to the applicants and their family which deserves monetary compensation.

In support of the application is a 28 paragraphs affidavit deposed to by Sunny David Alayaga, the 4th Applicant in this suit.

It is the deposition of the Applicant, that the Applicants acquired the unexpired residue of proprietary rights and interest in the vast

expanse of land lying and situate within Apo Tarfi Layout without encumbrances.

That after carrying out her due diligence and being thoroughly convinced about the soundness and validity of the Applicants' title on the plots of land, the 5th Respondent through the 4th Respondent acquired plots ED 126 and ED159 within Apo Tarfi layout completely weaned of encumbrances, whether overt or latent.

That the plots which are now being isolated for investigation constitute the vast number of plots being integrated by the Federal Capital Development Authority.

That the two plots now being isolated for investigation by the 1st - 3rd Respondents are part of the vast expanse of land being litigated upon by the 1st and 2nd Applicants in suit currently pending before the High Court of FCT. A copy of the writ of summons is herewith attached and marked Exhibit "A1"

That despite the institution of the civil suit by the 1st and 2nd Applicants and other Claimants and while the matter is still pending before the High Court of FCT sitting in Jabi to the knowledge of the 4th Respondent, the 4th

Respondent still petitioned the office of the Assistant Inspector General of Police to investigate the plots.

That sometime in September, 2023, the 4th and 5th Respondents demand the refund of the money paid by them for the acquisition of plots ED 126 and ED 159.

That him and the 5th Applicants through their lawyers replied the letter seeking extension of time to make the refund. The letters are herewith attached and marked Exhibit "A2".

That the 4th and 5th Respondents petitioned the office of the Assistant Inspector General of Police with spurious claims that the title documents to plots ED126 and ED159 are fake, a development that smacks of an afterthought.

That based on the petition, the 5th Applicant and him were arrested by the 2nd and 3th Respondents while the 3rd Applicant was subjected to constant harassment and threat of arrest and detention upon the active instigation of the 4th Respondent.

That the 3rd Respondent reluctantly admitted him and the 5th Applicants to administrative bail on the condition that they make an undertaking to refund the sum of N50,000,000.00(Fifty Million

Naira) paid by the 4th and 5th Respondents company for plots EDI26 and ED159.

That on the 3rd day January, 2024 being the return date to the 2nd Respondent, the 3rd Respondent insisted that they pay the 4th and 5th Respondents the said sum of N50,000,000.00(Fifty Million Naira).

That the 3rd Respondent and other officers of the 2nd Respondent continued to besiege their office, harass, publicly embarrass and threaten to further detain him, the 3th and 5th Respondents should they fail to pay the sum of **N50,000,000.00 (Fifty Million Naira)** to the 4th and 5th Respondents in respect of a purely commercial transaction to the latter have evidently defaulted in their obligations.

That the 3rd Respondent and other officers of the 2nd Respondent are not debt recovery agents.

That the 1st Respondent's office is not established to interfere in the commercial transaction of private citizens but the 3rd Respondent and other members of his team will stop at nothing to make him admit to a criminal allegation and refund money to the 4th and 5th Respondents.

That unless restrained by the Honorable court, the 3rd Respondent and other officers of the 1st and 2nd Respondents will not relent in their desperate attempt and mischievous scheme to forcefully procure admissions to recover money from him, the 3rd and 5th Applicants and hand same to the 4th and 5th Respondents.

That as a result of the constant harassment, threat of further arrest, detention and besieging of his office and residence, he can no longer move freely in any part of Abuja because of fear of being hounded by the 3rd Respondent or any member of his team.

That he has suffered incalculable emotional, psychological trauma and economic loss as a result of the constant harassment, intimidation, threat of further arrest and detention over a pure commercial transaction.

That unless this Honorable Court intervenes timeously, his Fundamental Rights to freedom of movement, personal liberty and dignity of human person will continue to be grossly violated by the Respondents.

In line with law and procedure, a written address was filed wherein three (3) issues were formulated for determination to-wit;

1. **Whether in view of the facts and circumstances stated herein, the actions of the 1st Respondent vide his officers can stand the scrutiny and requirements of the combined provisions of Sections 34, 35, 36, 37 and 41 of the 1999 Constitution (as amended) as well as Articles 2, 3, 4, 5, 6,7 and 12 of African Charter on Human and Peoples' Rights CAP A9LFN 2004.**
2. **Whether the 1st and 2nd Respondents and their agents are empowered to meddle in commercial transactions or act as debt collection agency and/or agents.**
3. **Whether the Applicants are entitled to the reliefs sought.**

On Issue One, **Whether in view of the facts and circumstances stated herein, the actions of the 1st Respondent vide his officers can stand the scrutiny and requirements of the combined provisions of Sections 34, 35, 36, 37 and 41 of the 1999 Constitution (as amended) as well as Articles 2, 3, 4, 5, 6,7 and 12 of**

African Charter on Human and Peoples' Rights CAP A9LFN
2004.

Arguing on the above, learned counsel humbly submitted that, by arresting, detaining, and threatening to arrest, and detain the 3rd, 4th and 5th Applicants by constantly laying siege on their offices and private residences even at odd hours by the 3rd Respondent and other officers in the 2nd Respondent's office in order to forcefully procure confessional statement and also collect from them the money paid by the 5th Respondent for a land transaction amounts to a patent contravention of the combined provisions of Sections 35, 37 and 41 of the 1999 Constitution (as amended) as well as Articles 2, 3, 4, 5, 6,7 and 12 of African Charter on Human and Peoples' Rights CAP ALFN 2004 in that the fundamental rights to liberty, right to private and family life, freedom of movement of the Applicants is being trampled upon and also been threatened by the Respondents.

Learned counsel submits that in the constitutional context, personal liberty connotes right to freedom from wrongful or false imprisonment, arrest, or any physical restraint whether in any common prison, or even in the open street without legal justification. He cited ***ODO VS C.O.P (2004) 27WRN 133.***

It is the contention of the learned counsel that, section 85 of the constitution has been consistently interpreted by the superior courts and indeed the apex court to mean that once an applicant has established that he was arrested and or, detained the onus is on the defending authority to justify its action. He cited ***ONOGORUWA VS. IGP (1991) 5NWLR (Pt. 195) 593.***

Learned counsel further submits that every citizen of this country including the Applicants are expected to enjoy the right to personal liberty and must not be deprived of same except under exceptional circumstance provided by the constitution which this case did not admit.

Learned counsel submits that the operatives of the 2nd Respondent who have supposedly received special trainings on human right and who are supposed to protect the Applicants have become the greatest threat to their existence, violating their constitutionally- fortified rights with impunity and callousness. Learned counsel urge this Honorable Court to hold -that the arrest and detention of the Applicants was unlawful, wrongful and illegal.

On issue two, **whether the 1st and 2nd Respondents and their officers are empowered to meddle in commercial transactions or act as debt collection institution.**

Learned counsel submit that the statutory duties of the Nigerian Police Force and that of its members are clearly stated in section 4 of the Police Act. A situation where police officers such as the 3rd Respondent in the 2nd Respondent's office compel parties to sign undertakings and bonds, threatening to arrest, detain and prosecute the debtor is less to be desired and a clear affront on their Fundamental Rights. Learned counsel cited ***FAJEMIROKUN VS. COMMERCIAL BANK (CREDIT LYONNAIS) NIG. LTD. (2009) 5 NWIR (Pt.1135) 588;***

On issue three, **Whether the Applicant is entitled to the reliefs sought**

Learned counsel submits that ordinary improper arrest and detention of a person is a violation of the person's right which unless it can otherwise be justified will attract liability against the person making the arrest. He cited ***IKONNE VS. C.O.P (1986)4 NWLR (Pt. 36) 47***

Learned counsel maintained that in the case at hand, the Applicants through the affidavit in support of the application have

copiously proved that their rights has been, is being and likely to be violated by the Respondents. They are thus entitled to redress and counsel respectfully urge the court to so hold.

In conclusion, learned counsel urge the court to hold that the Applicants are entitled to the reliefs sought.

Upon service, 1st, 2nd and 3rd Respondents filed a 27 Paragraphs affidavit duly deposed to by one ASP Michael, the Investigating Police Officer in this suit.

It is their deposition that on 4th October 2023, the 1st Respondent received a petition from O.R Adisa & Co. on behalf of 5th Respondent complaining of the offence of obtaining by false pretence forgery fraud and falsification of title documents against 1st Applicant and its managing director. A copy of the petition is herein attached and Marked as Exhibit "1"

That sequel to the above order and in line with the 1st, 2nd and 3rd Respondents constitutional obligation, an investigation was commenced into the matter.

That on 27th November 2023 the 1st, 2nd and 3rd Respondents invited the complainant through its director and took its statement.

That the 1st, 2nd and 3rd Respondents invited the 3rd Applicant, took his statement and asked him to go immediately, and informed him that he should be ready to come back anytime his attention is needed as the investigation is not concluded.

That in the course of investigation, a prima facie case of conspiracy criminal breach of trust forgery and cheating was established against the Applicants.

That contrary to paragraph 10 of the Applicants' affidavit in support of the application, the plots in issue are not integrated by Federal Capital Development Authority (FCDA).

That the Applicants are aware that the title of the Plots are defective and are not Minister of the Federal Capital Territory Administration's allocation.

That contrary to Paragraph 16 of the Affidavit in support of the application neither the 4th and 5th Respondents, nor any other person was arrested in connection to the investigation.

That further to the above preceding paragraph and contrary to paragraphs 17 and 18 of the affidavit in support of the application, the 4th and 5th Respondents were invited and they honoured the invitation and voluntarily made statements. A Copy

of the investigation letter is herein attached and marked as Exhibit "2".

That contrary to paragraphs 17, 18, 19 and 20 of the affidavit in support of the application, the 4th and 5th Applicants were never forced by the 1st, 2nd and 3rd Respondents to make any statement or make any undertaken. The 4th and 5th Applicants voluntarily elect to make statement when they came for the investigation.

That contrary to paragraph 20 of the affidavit in support of the application, the 1st, 2nd and 3rd Respondents has never besieged the Applicants office, nor harass, intimidate or threatens the Applicants.

That the Applicants are asking this court to restrain 2nd and 3rd Respondents and their officers from bringing them before the court for the purpose of arraignment.

That the reliefs sought by the Applicants are not grantable as the 1st, 2nd and 3rd Respondents have constitutional obligation to carry out investigation on alleged crimes to a logical conclusion and arraign and prosecute the suspect on establishment of prima facie case of the crime alleged.

That the reliefs sought by the Applicants are not grantable as the Applicants have not made out a case of breach of their Fundamental Right to entitle them to the relief sought.

In line with law and procedure, learned counsel for the 1st, 2nd and 3rd Respondents filed written addresses wherein a lone issue was formulated for determination to wit;

Whether having regard to the affidavit evidence before this Honourable Court, the Applicant has met the requirement for his application to be entertained under the Fundamental Right Enforcement Procedure Rules.

It is the submission of the learned counsel that the Law is settled and authorities legion that in the exercise of their powers under section 4 of the Police Act, an Act done by the police cannot be termed unconstitutional and will not amount to infringement of Fundamental Right of the suspect.

Learned counsel submits that, there is no evidence before this Honourable Court which supports the wild allegations that the Applicants were unlawfully arrested and detained by the 1st, 2nd and 3rd Respondents. It is therefore misconceived and an attempt to mislead this Honourable Court when Applicants submitted that

their Fundamental Rights were breached without supplying sufficient and credible evidence in proof of their allegations.

Learned counsel urge the court to hold so and dismiss the Applicants' suit.

In conclusion, learned counsel humbly urge this Honorable Court to dismiss the Applicants' Fundamental Enforcement application in the interest of justice.

On the part of the 4th and 5th Respondents, is a 20 paragraphs affidavits deposed to by one Muyiwa Benralph Olaiya, the 5th Respondent in this suit.

It is the deposition of the 5th Respondent, that paragraphs 5,6,7,9,10,11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the affidavit in support of the application are false and /or misleading.

That sometime in 2022, the 3rd Applicant acting on behalf of the 1st Applicant represented that he had valid title to a property Known as ED28 which was stated to be located at Kpeyegyí whose title Document had the name Ample Ventures and business name not capable of owning a property. A copy of the

Memorandum of Understanding dated the 27th day of July 2021 is attached and marked Exhibit "CA1."

That the 5th Respondent raised concerns about the title but was assured by the 4th Applicant that it was in the process of perfecting the title. A copy of the title document for the 1st and 5th Applicant is attached as Exhibit "CA2"

That the 1st Applicant even after being notified of an adverse Claim and demolition of structures occasioned by fundamental defects in title by a letter dated 15th August, 2023, demanded for further payment of the Sum of **N95,000,000.00(Ninety-Five Million Naira)**. A Copy of the said letter, the reply by the 5th Respondent dated 15th September, 2023 and the 1st Applicant's response also dated 15th September, 2023 are attached as Exhibits "CA3", "CA4" and "CA5" respectively.

That prior to these correspondences the 1st Applicant had collected the total sum of **N125,000,000.00 (One Hundred and Twenty-Five Million Naira)** based on the assurances of the 4th Applicant who is a highly respected Clergyman and Estate Developer.

That the 4th, 5th and 6th Applicants also collected more than **N50,000.000.00 (Fifty Million Naira)** from the 5th Respondent

under the false pretence of transferring valid title to parcels of land which they described as ED131 and ED159 respectively. Copy of their Solicitor's letter promising to refund the money is attached as Exhibit "CA6".

That when the 5th Respondent made attempt to confirm the authenticity of the documents of title, his Employees were informed that the title documents are not in the records of Abuja Municipal Area Council, the issuing Authority.

That the total sums obtained by the Applicants apart from the 2nd Applicant with which the 5th Respondent had no dealings is in excess of **N175,000,000.00 (One Hundred and Seventy-Five Million Naira).**

That the 5th Respondent exchanged several correspondences with the 1st Applicant both direct and through solicitors but could not confirm the authenticity of the title documents.

That the 5th Respondent having reasonable grounds to believe that the Applicants were a land racketeering syndicate, instructed its Solicitors to submit a petition for investigation of forgery and obtaining under false pretenses which were purely Criminal offences.

That he was informed by his counsel O.R Adisa Esq. that there is no pending judgment concerning the land in dispute and the 4th, 5th and 6th Applicants are not parties to the suit referred to in the affidavit in support of this application and the said suit has no bearing on the crime alleged to be committed by the Applicants.

That the 5th Respondents simply submitted a petition and is not in control of how the 1st and 3rd Respondents carry out their investigation

That the 4th and 5th Respondents are not liable to pay any damages to the Applicants who unlawfully forged documents to fleece it of its hard earned resources.

That this suit is meant to stop the police from carrying out investigation into their alleged crimes.

That the 4th and 5th Respondents did not breach the Fundamental Rights of the Applicants.

In line with the law and procedure learned counsel for the 4th and 5th Respondents filed written address wherein sole issue was distilled for determination to wit:

Whether or not the actions of the 5th Respondent in reporting the alleged fraud & forgery to the Police

constituted a breach of the Applicant's Fundamental Rights so as to entitle the Applicants to the Reliefs Sought.

It is the submission of learned counsel that, the law is well settled, if not elementary, that anyone who desires the court to give judgment as to any legal right or liability must prove those facts by credible evidence, which is nothing but proof legally presented at the trial on the issues in controversy, he cited ***AKINTOLA VS. SOLANO (1986) 4 S.C. 141.***

Learned counsel submits that, in the present application the onus rests squarely on the shoulders of the Applicants to adduce credible evidence on the infringement of their rights. See Section 133 (1) of Evidence Act 2011. The Applicants in paragraphs 16, 17, 18 and 19 deposed to the fact that the 4th and 5th Applicants were granted administrative bail but there is no evidence of detention beyond the period allowed by law and no evidence of any infringement of their rights. On the other hand, the 1st and 3rd Applicants did not even honour the invitation by the Police while the 2nd Applicant had no business being an Applicant as the 4th and 5th Respondents did not have any dealings with the 2nd

Applicant and consequently did not submit any Petition to the Police concerning the said Applicant.

Counsel respectfully submit that, the arrest and threat of arrest or detention is not sufficient to sustain the allegation of a breach of Fundamental Human Rights, having regard to the fact that the 5th Respondent action in reporting a criminal case of fraud & forgery to the police for investigation does not in any way amount to a breach of the Applicants Fundamental Rights under the Constitution as their invitation was within the provisions of Section 35(1) (c) of the Constitution.

It is the submission of counsel that, both the Constitution and Police Act empowers the Police to investigate and make arrests for any reported alleged criminal offenses without infringing on individual rights. Learned counsel added that mere invitation for investigation in accordance with this power, does not constitute a breach of Fundamental Rights.

Learned counsel contended that, based on the fraudulent activities played out by the 1st, 3rd, 4th, 5th, and 6th Applicants, the 5th Respondent petitioned the 1st, 3rd, 4th, 5th and 6th Applicants to the Inspector General of Police, 1st Respondent, the title documents were not genuine and based on that, the need for a

criminal investigation to be carried out by the appropriate law enforcement agency The IGP and his officers carried out their constitutional duties based on the criminal report they got.

Learned counsel further submit that, it is the duty of the police to investigate criminal allegations. ***I.G.P VS. UBAH (2015) 11 NWLR (Pt. 1471) 405 at 413.***

It is further the submission of the learned counsel that, the Fundamental or Constitutional Rights are not absolute as they can be curtailed by the appropriate authorities where there are grounds for doing so.

Flowing from the foregoing cited Judicial authorities, counsel submit that police investigation cannot or does not amount to breach of a person's Fundamental Rights and the Court cannot stop the investigation of the police on a Criminal offence, also the Court cannot be used as a shield against any Criminal investigation, it is the Constitutional power of the Police to investigate any criminal offence.

Counsel also contends that, the third prayer of the Applicants in their motion ex-parte is misleading. The said prayer states thus:

Learned counsel submits that, there was never a judgment delivered before any court as related to the plots of land in dispute. Assuming but not conceding that there exist a judgment, Counsel to the Applicants ought to have attached the said judgment to the Writ of Summons to prove their assertion. Counsel therefore urge the court to hold the Applicants in contempt for misleading this Honorable Court.

Counsel submit that the Applicant's claims or reliefs sought, are not grantable as they have failed woefully to prove that their rights were breached and urge the court to discountenance their claims.

Learned Counsel humbly submits that, the 4th Respondent cannot be held liable or be sued in his personal capacity being an agent of a disclosed principal, that is the 5th Respondent.

Learned counsel further submit that, the 4th Respondent cannot be sued for anything since he was acting as an agent of a disclosed principal, in this case, the 5th Respondent, counsel therefore submit that his name be struck-out and urge the court to so hold and accordingly strike out his name from this application.

It is further the submission of counsel that, the 2nd Applicant is not a proper party in this suit as the 2nd Applicant was never petitioned by the 5th Respondent at the police station, neither did the 2nd Applicant surfaced at any stage of the transaction between the 1st, 3rd, 4th, 5th and 6th Applicants and the 5th Respondent.

Learned counsel humbly submits that the 2nd Applicant is not a necessary party in this suit and urge the court to so hold.

In conclusion, counsel submit that the Applicant's claims are baseless and the Respondents actions were justified and lawful.

The reliefs sought by the Applicants are not grantable as granting them would amount to restraining the police from carry out its lawful duties.

Learned counsel urge the Court to dismiss the Applicants application in entirety for lack of merit.

COURT

I have gone through the reliefs sought supported by grounds, affidavit and written address in support of the Applicant's application on one hand and the various counter affidavit and written addresses of Respondents on the other hand.

The issue, whether in the circumstance of this application, Applicants right to human dignity as enshrined and guaranteed by the Constitution of Federal Republic of Nigeria 1999 is not violated, has been formulated.

I shall pause here briefly, and speak on Fundamental Rights.

Fundamental Right have been said to be primordial; some say it is natural or God given rights. Text book writers like our own Prof. Ben Nwabueze (SAN) have opined that there are rights already possessed and enjoyed by individuals and that the Bills of Rights as we all know them today created no Rights de-novo but declared and preserved already existing rights, which they extended against the legislative.

It is instructive to note that magna carta 1215 otherwise called "Great charter" came to being as a result of the conflict between the king and the barons, and petition of rights 1628 which is said to embody sir Edward Coke's concept of "due process of law" was also a product of similar conflicts and dissensions between the king and parliament.. nor was the Bill of Rights 1689 handed down on a "platter of Gold".. That bill drawn by a young barrister John Somers in the form of declaration of right, and assented to

by king Williams, secured interalia for the English People, freedom of religion, and for judges, their independence.

England has no written constitution with or without entrenched human Rights provisions however, the three bills of rights alluded to earlier, formed the bed rock of the freedom and democratic values with which that country has to this day been associated..

On the part of French People, the French revolutionaries had to attack the Bastille, the Prison house in paris, to proclaim the declaration of rights of man and citizen in 1789.. the object of the revolution was to secure equality of rights to the citizen.. two years after, American people took the glorian path of effecting certain amendments.. they incorporated into their constitution, a Bill of rights which is said to be fashioned after the English Bill of Rights.

It is noteworthy that ever before the amendment of its constitution, the Americans had to fight a war of independence in 1776 and had proclaimed thus:-

"We hold these truths as self evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights that among these are life, liberty and pursuit of happiness."

It can therefore be gleaned from history that the pursuit of freedom, equality, justice and fairness is not peculiar to any race or group.. it is indeed a universal phenomenon, hence man has striven hard to attain this goal.

The universal declaration of human rights which was adopted by the United Nation General Assembly on the 10th December, 1948, three years after the end of the 2nd world war, was mainly geared towards ensuring a free world for all, regardless of status.

Nigeria did not have to fight war to gain independence from the British.. it was proclaimed that our independence was given to us on a “platter of gold.”

What the minority groups demanded was the right to self – determination which they believed could offer them an escape route from the “tyranny” of the majority ethnic groups in the regions.

The commission that investigate their fears went out of its way to recommend the entrenchment of Fundamental Human Right in the Constitution as a palliative, as a safeguard and as a check against alleged “oppressive conduct” by majority ethnic groups.

Note that a party who seeks redress under fundamental rights special provisions must have his claims, fall squarely within the four walls of the fundamental rights provision.

Where the claim is merely tangential to the main claim, usually court would not devalue the provision of Fundamental Human Right Enforcement Rules by extending its restricted boundaries to such matters which can adequately be addressed under the fair hearing principle.

Not all fair hearing matters necessarily fall under the Fundamental Human Right Rules.

Fundamental Human Rights Enforcement Rules constitute the Intensive Care Unit (ICU) of judicial proceedings.

Only urgent matters affecting life or liberty of citizens should be addressed there under. ***SEE EZEANYIKA & ORS VS THE GOVT. OF IMO STATE (2006) LPELR-11860.***

Be it known that it is the constitutional duty of court to develop the common law, and to so do that within the matrix of the objective and normative value suggested by the constitution and with due regard to the spirit, purport and object of the bill of rights.

It is equally the legal duty of police to protect citizen through law and structures designed to afford such protection. There is the need for the police to have regard to the constitutional provisions and abidingness of Bill of Rights on the state and its structures.

Permit me to observe that detention, no matter how short, can amount to breach of Fundamental Human Right. But that can only be so if the detention is adjudged wrongful or unlawful in the first place.., that is if there is no legal foundation to base the arrest and or detention of the Applicant.

Where there is basis, the detention must be done in compliance with the provisions of law and in line with civilized standard known to modern society.

The law on the determinant factor of action to be 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.

It is also a condition precedent to the exercise of the court's jurisdiction that the enforcement of Fundamental Human Right or

the securing of the enforcement thereof should be the main claim and not an ancillary claim. ***WAEC VS AKINKUMI (2008) 4 SC.***

From the endorsement on the face of the Originating Motion, Applicants sought a declaration that they have right to fair hearing, dignity of human person, freedom of movement and other reliefs as captured on the preceding part of this judgment.

I have considered the affidavits in support and against filed, on the one hand, and the ensuring 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 enforcement of Fundamental Human Right filed by the Applicants, for better and proper understanding of the kernel of Applicants' application.

It is the affidavit evidence of the Applicants as clearly stated in paragraphs 7, 8, 9, 10, 11, 12 and 13 that Applicants acquired an unexpired residue of proprietary rights and interest in the vast

expanse of land lying and situate within Apo Tarfi layout Abuja without encumbrance.

Applicants stated that after carrying out due diligence and being thoroughly convinced about the soundness and validity of the Applicants plots of land, the 5th Respondent through the 4th Respondent acquired plots ED126 and ED159 within Apo Tarfi Abuja completely weaned of encumbrances whether overt or latent.

That the plots constitute the vast number of plots being integrated by the Federal Capital Development Authority were now being isolated for investigation by the 1st, 2nd and 3rd Respondents and are part of the land being litigated upon currently pending before the High Court of FCT.

Applicants stated that despite the institution of the civil suit by 1st and 2nd Applicants and other claimants and while the matter is still pending before the High Court of FCT sitting in Jabi to the knowledge of the 4th Respondent, the 4th Respondent still petitioned the office of the Assistant Inspector General of police to investigate the plots.

That on the strength of the petition, the 2nd and 3rd Respondents are compelling the 1st and 2nd Applicants to refund the purchase price to the 4th and 5th Respondents.

That base on the petition, the 4th and 5th Applicants were arrested by the 2nd and 3rd respondents, while the 3rd Applicant was subjected to constant harassment and threat of arrest and detention upon the active instigation of the 4th Respondent.

On their part, 1st, 2nd and 3rd Respondents filed counter copiously denying all the averments as contained in the affidavit in support of the application for Enforcement of Fundamental Human Right by stating that it is investigating a criminal case pursuant to petition written to them by the law firm of O. R. Adisa & Co. against the applicants. That the Applicants were only invited but were never detained, and were allowed to go on the condition that they will be available whenever the need arise for further investigation.

That the Applicants were never forced to by the 1st, 2nd, and 3rd Respondents to make any statement or make any undertaken, they voluntarily elect to make statement when they came for the investigation.

It is their evidence that in the course of investigation, a prima facie case of conspiracy, criminal breach of trust, forgery and cheating was established against the Applicants.

That the fundamental right of the Applicants was not violated.

4th and 5th Respondents further countered the affidavit evidence of the Applicants by stating that sometime in 2022, 3rd Applicant acting on behalf of 1st Applicant represented that he had valid title to a property known as ED28 which was stated to be located at Kpyegyí whose title documents had the name Ample ventures and that the 5th respondent raised concern by the 4th Applicant that it was in the process of perfecting the title.

That 1st Applicant even after being notified of an adverse claim and demolition of structures occasioned fundamental defects in title by a letter, demanded for further payment of N95,000,000 and prior to these correspondences, the 1st Applicant had collected the sum of N125,000,000 based on the assurances of the 4th Respondent who is highly respected clergy man and Estate Developer.

That 4th 5th and 6th Applicants also collected more than N50,000,000 from the 5th Respondent under the false pretense of transferring valid title to parcels of land which they described as

ED 131 and ED 159 respectively and there is no pending judgment concerning the land in dispute and 4th, 5th, and 6th Applicants are not parties to the suit referred to.

That 5th Respondent exchanged several correspondences with the 1st Applicant both direct and through solicitors but could not confirm the authenticity of the title documents.

That this suit is meant to stop the police from carrying out investigation into their alleged crime.

That the Respondents did not breach the Fundamental Rights of the Applicants.

From the affidavits of the Applicants, on the one hand, and those of the Respondents, on the other hand, the issue seems to have been narrowed to the purchase of property in Apo Tarfi Layout Abuja.

From the totality of what has played out as aptly stated in the affidavit in support of the application for the enforcement of Fundamental Human Right and the counter affidavit filed by the Respondents in opposition, it is crystal clear that the subject matter in issue has to do with transaction entered by the parties, which resulted in petition to 1st Respondent.

May I reiterate the position of the law with respect to the duties of the police?

The police are empowered to detect, prevent and apprehend any person, no matter how highly who is suspected to have committed crime. See section 4 of the police Act.

I make bold to say that the arrest of any person shall not be viewed as infringement of such a person's rights as provided for under Chapter IV, aforementioned, once it is in execution of a sentences or Order of a Court or failure to comply with Court Order or for the purposes of bringing such a person before a Court in execution of Order of Court, amongst other reasons.

Enforcement of Fundamental Human Right matters is usually begun vide motion on notice with affidavit and written address.

Needless to mention that it is fought and won on the paragraphs of affidavit and written address.

It is however 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 in Nigeria. Order Chapter IV of the 1999 Constitution and other international of which Nigeria is signatory to.

The Nigerian constitution is founded on the Rule of law the primary meaning of which is that everything must be done according to law.

It means also that government should be conducted within the framework of recognized rules and principles which restrict discretionary power which Coke colorfully spoke of as 'golden and straight met wand of law as opposed to the uncertain and crooked cord of discretion.

The law should be even handed between the government and citizens.. **OBASEKI (JSC)** as he then was, re-echoed the essence of the Rule of law in the case of **GOVERNMENT OF LAGOS STATE VS OJOKWU (1986) ALL NLR 233.**

Indeed, the Rule of law knows no fear, it is never cowed down; it can only be silenced. But once it is not silenced by the only arm that can silence it, it must be accepted in full confidence to be able to justify its existence. See **GARBA VS FEDERAL CIVIL**

SERVICE COMMISSION & ANOR (1988) NWLR (Pt. 71) 449.

MOH'D BELLO (then CJN) at the 6th International Appellate Judges Conference in Abuja in 1992 , said:-

"Judges should excel by doing the essence of justice which is to give a person what is lawfully due to him, to compel him to do what the law obliges him to do and restrain him from doing what he enjoins him not to do".

Human Rights are moral Principles or norms that describe certain standards of human behavior, and are regularly protected as legal rights in Municipal and International Law. They are commonly understood as inalienable Fundamental Rights. These Rights are based on the belief that everyone is equal and should have the same right and opportunities. Embedded in these rights are the abilities to understand another person's feelings, experience and the rule of law.

These rights, it could be safely said, impose an obligation on all persons as human beings to respect the human rights of others. However, these rights can be taken away though as a result of due process based on certain circumstances.

The Applicants copiously deposed to the fact that they were arrested, detained and constant harassment by the 1st and 2nd Respondents.

These allegations I must say was made without substantiating same with verifiable evidence.

The procedure for the enforcement of Fundamental Human Right certainly is not an outlet for fraudsters to claim innocence and seek protection after committing a crime.

It is further the affidavit evidence of the applicants that the two plots now being isolated for investigation by the 1st 2nd and 3rd Respondents are part of the land being litigated upon by the 1st and 2nd Applicants currently before the High Court of the FCT.

Indeed, it is the words of the Applicants against that of Respondents. Now that 4th and 5th Respondents vehemently denied the allegation in their counter affidavit, why did the Applicants not file a further and better affidavit to put the record straight.

It is instructive to note that the afore stated facts contained in the counter affidavits of the Respondents were not contradicted or countered. The evidence, therefore remained unchallenged.

Unchallenged evidence is deemed admitted and Court is at liberty to make use of same. I find solace in the case of ***HYDRO TECH (NIGERIA LTD & 1 ANOR VS. LEADWAY ASSURANCE CO. LTD. & 1 OR (2016) LELR.***

It is not enough to merely rush to Court and seek to enforce a right that is breached or about to be breached and or threatened. Facts must condescend to such actions.

It is my considered judgment that the Applicants, being desirous of covering their tracks hurriedly rushed to court to frustrate the Respondents from investigating the true status of the plots in issue.

I make bold to say that though Applicants have made Frantic effort to convince the court to grant the reliefs sought against the Respondents, I am afraid this application cannot be granted, once same is placed side by side with the counter affidavits.

There is no right of Applicants known to law breached here worthy of any judicial injunction by way of order.

The argument of Applicants vide affidavit in support of the application for Enforcement of their Fundamental right has been properly knocked-off by Respondents.

Suit No. FCT/HC/CV/822/24 having failed to meet the basic requirements for Enforcement of Fundamental Human Rights is refused and dismissed.

***Justice Y. Halilu
Hon. Judge
11th July, 2024***

APPEARANCES

Mustapha Suleiman, Esq. – for the 2nd Respondent. I hold the brief of Usman Rabi, Esq. – for the 1st and 3rd Respondents.

Bukola Idowu, Esq. – for the 4th and 5th Respondents.

Applicants not in court and not represented.