

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE GWAGWALADA JUDICIAL DIVISION

HOLDEN AT NYANYA- ABUJA

DATED THIS THURSDAY THE 10TH DAY OF OCTOBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/2537/2024

BETWEEN:

HIGH CHIEF IKECHI EMENIKE..... CLAIMANT

AND

ECONOMIC AND FINANCIAL CRIME COMMISSIONDEFENDANT

JUDGEMENT

The applicant by way of motion of originating notice with suit No. FCT/HC/CV/2537/2024 dated 21st May, 2024, filed on the 25-May, 2024 brought pursuant to sections 35(1), 37(1) of the CFN 1999 (as amended) and order 11 rules (1)(2)(3)(4) & (5) of the fundamental Rights Enforcement Procedures) Rules 2009 and under the inherent Jurisdiction of this Honorable court, counsel on behalf of the applicant praying this Honorable court for the following order(s)

- 1. A declaration that the forceful and unwarranted breaking in and invasion of the Applicant residence of No. 6 Aso Drive, District Asokoro Abuja on Friday December, 7th 2023 in defiance of a clear injunctive order of court from A. H. MUSA J., by the officials of the Respondent is unconstitutional illegal and a breach of the Applicant fundamental human right to privacy as guaranteed by the constitution of the Federal Republic of Nig. 1999 (as amended).**

- 2. A declaration that the arrest and detention of the Applicant in company of his wife at about 6:30am after breaking into his living room without any legally justifiable reason is unconstitutional, illegal, ultra vires and a breach of the Applicant fundamental right to personal liberty guaranteed by section 35 of the CFN 1999 (as amended)**
- 3. An order directing the Respondent to tender an reserved apology to the Applicant and his family which shall be published in 2(two) National Newspaper circulating throughout Nigeria with online presence.**
- 4. The sum of N2,000.000.000.00 (Two Billion Naira)only against the Respondent as aggravated and exemplary damages for breach of the fundamental human rights to personal liberty and right to privacy.**

The grounds upon which these reliefs are sought are as follows:

- 1. The applicant is the sitting tenant of the 5 bedroom duplex and boys quarters known and described as house No. 6 Aso Drive District Abuja where he lives with his family and other domestic staff.**
- 2. The applicant had filed an action pending before Hon. Justice A. H. Musa of the Honourable court seeking a determination of a certain provision of the EFCC Act and the proceeds of crime Act to wit:
Whether the Respondent can appropriate the property for public use and deny the Applicant of the 1st Refusal**
- 3. That the Respondent was duly served with the originating processes and the Respondent was duly represented in court on the 1st of November, 2023 when the matter came up for the very 1st time before the court.**
- 4. In December, 2023, the court Honourable A.H. Musa sitting at Apo made an order of interlocutory injunction restraining the respondent from entering and/or invading the residence of the Applicant pending the determination of the suit.**
- 5. That in fragrant disobedience of the order of the court the Respondent on the 7th December, 2023 at about 5.30am invaded the residence of the Applicant and detained him at the office of the Respondent atit's headquarters.**
- 6. That the Applicant and his wife were detained at the office of the Respondent without any legally justifiable reasons.**

- 7. That the arrest and detention was unlawful as he was not informed of any offence that has been committed by him**
- 8. That the breaking in and invasion of the Applicant's residence in defiance of an order of injunction is a breach of the Applicant's right to privacy**
- 9. That the interest of justice will be best served if the application of the applicant is granted with exemplary damages awarded against the Respondent**
- 10. Attached to the motion is an affidavit of 33 paragraphs deposed to by High Chief Ikechi Emenike of No. 6 Aso Drive and annexed to the affidavit are exhibits marked as**
 - a. Emenike 1 suit. FCT/HC/CV/6890/2023 between Ikechi Emenike V EFCC**
 - b. Emenike 2 copy of the order by A. H. Musa J.**
 - c. Emenike 3, copy of the photocopy showing the damage doors.**
 - d. Emenike 4, copy of the contempt proceedings and in a written address in support of motion on notice of 8 pages.**

The Applicant filed an amended statement in support of the application for enforcement of fundamental rights dated the 6th day of June, 2024 attached to the amended statement is a further affidavit in support of the motion on notice of 3 pages with an annexure marked as follows

- 1. Emenike 6, CTC of the order in suit No. CV/6890/2023 dated December, 6th 2023 by Hon. Justice A. H. Musa J made an order that status quo be maintained by the respondent throughout the pendency of the suit.**
- 11. Emenike 7, copy of the notice to quit issued by the Respondent and an amended written address of 13 pages where three issues were distilled for determination to wit:**
 - 1. Whether the Respondent is not in breach of the Applicant's fundamental rights to privacy and personal liberty as guaranteed under the 1999 CFRN (as amended) and the fundamental rights (enforcement procedure rules 2009) so as to be entitled to the reliefs sought in this application.**

- 2. Whether the applicant is not entitled to the grant of exemplary and aggravated damages for the Malicious breach of his right to privacy and right to personal liberty.**
- 3. Whether the notice to quit 6 (exhibit 7) is not invalid and liable to be set aside having being issued in violation of a pending order of honorable Justice A. H. Musa J. Delivered on December 6 2023.**

Before filing the amended statement, the applicant filed a motion on notice dated the 5th day of June, 2024 seeking the leave of the honorable court to grant leave to the Applicant to amend the statement in support of the motion on notice for enforcement of fundamental rights filed on May, 21st 2024 in terms of the proposed amended statement annexed to this application is exhibit JA, a further affidavit and a deeming order. This application was moved dated the 9/7/2024 and the order sought was granted.

The respondent on receipt of the Applicant's motion on notice i. e. originating process, filed the Respondent's counter affidavit to motion on notice dated 21st May, 2024 of 35 paragraph deposed to by Ufuoma Ebira of Plot 301/302 institution and research District Jabi Airport Road, Abuja and annexed to the affidavit are exhibits marked.

- 1. EFCC1–Re-rent demand/reminder notice in respect of forfeited property at House No. 6.Aso Drive Abuja by EFCC**
- 2. Exhibit EFCC2, re-request/or use of forfeited property No. 6 Aso Drive, Asokoro as EFCC Chairman's official residence and the Respondent's written address in response to the Applicant's motion on notice dated the 21st of May, 2024 of 13 pages.**

The applicant on receipt of the Respondent's counter affidavit filed a further and better affidavit in support of the applicant's motion on notice and in Response to the Respondent's counter affidavit filed on July, 18th 2024 of 30 paragraph, same deposed to by High Chief Ikechi Emenike of No. 6 Aso Drive Abuja and alongside also filed a written reply on points of law of 4 pages, where in the further and better affidavit, the applicant counsel who chose to reply to the Respondent address on two heads.

- a. **Whether the instant suit is an abuse of court process.**
- b. **Whether the Applicant is entitled to the reliefs claimed.**

The applicant counsel in moving the motion on notice for the enforcement of fundamental rights, placed reliance on all the paragraphs of the affidavit, the further and better affidavit in support of the motion and adopted the written address filed on the 7-6-2024 and 19/7/2024 in urging the court to grant the prayers and the reliefs sought.

ADUMBRATION

That the fulcrum of the application before the court is an infringement on the fundamental human right to privacy and liberty on the 7th December, 2023 when the matter was pending before A. H. Musa (Justice) the officials of the EFCC came in a commando style and invaded the resident of the Applicant and whisked them away to their office. That immediately the act was done, it caused a new cause of action under sections 36 of the CFR. That the new cause of action was battered on December, 7 regard to the fact that contempt proceeding was in place against the claimant and the Director, and it was held that this matter is not in any way an abuse of court process.

Furthermore that the Respondent has tried to deny invading the residence of the Applicant/exhibit Emenike 5 being the record of proceedings particularly at page 8. That exhibit Emenike 5 was made by the Director of the Respondent. That the courts are bound by the CTC of the proceedings urging the court to hold that these are sufficient material before the court for the grant of the reliefs prayed by the Applicant. Reference to exhibit EFCC3, that the said document has been rendered nugatory of the hearing of Hon. Justice A.H. Musa. That they are in the court simply for fundamental right. That the matter before Hon. Justice A.H. Musa was on the Issue of Interpretation and not on Fundamental Human Rights and urged the court to grant the reliefs as prayed.

Respondent's counsel in response relied on all the paragraphs of their counter affidavit especially paragraph 6, 7, 8,9,10,12,13,14-33 and the two exhibits marked EFCC 1 and EFCC 2 being letters in respect of the rent in respect of the property and a letter from the state house Abuja and that further to the affidavit is that the

applicant is a tenant is the house being that the subject of this litigation has been forfeited.

The Respondent adopted its written address filed on the 18/7/24 where it formulated three issues for determination, adopted the said written address as their argument in respect of this case, and relied on all the authorities cited in urging the court in the interest of justice to dismiss this case.

ADUMBRATION: that the gravamen of this suit was on the basis that the Applicant is a tenant in respect of the property which tenancy dispute is before Hon. Justice A. H. Musa of FCT, High Court, one of their submissions was that the case before the court and the one for contempt proceedings, the facts in the matter are all the same, and submitted that the right of the Applicant was never breached upon despite the fact that the Applicant wants to remain in the property in perpetually.

Furthermore, that in their counter explicitly stated that the Judgment of A. H. Musa is documented that the Judgment the applicant is binding upon does not say that the EFCC cannot make use of it as a public use. That they want to cause evaluation of the property and that the applicants does not want them to have access to the property. We Submit that the entire application brought by the Applicant are all an abuse of court process. Further that the right of the Applicant was not breached at all.

Secondly, submit that the Respondent in their further and better affidavit raised issue of exhibit 2 not being a CTC, on this he drew the attention of this court to the case of Bako V Nongewa (2018) LPELR. In urging this court to discountenance with the Applicants counsel application in respect of same.

Finally urged the court in the interest of justice to dismiss this application with substantial cost.

I have read the addresses filed and reviewed the submission made, is the application meritorious?

The application before me seeks to enforce a fundamental right pursuant to sections 35(1), 37(1) and 46(1) of the CFR 1999 (as amended) and order 11

rules 91(2), (3) (4) and (5) of the fundamental Rights (Enforcement procedure rules 2009 and under the inherent jurisdiction of this Honourable court.

It is for this purpose that I find it pertinent to proffer the meaning of a fundamental right, what's fundamental right? In the case of Ransom-Kuti V Esu JSC (as he then was) described a fundamental rights thus:

“It is a right which stands above the ordinary laws of the land and which in fact is an antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our constitution, since independence is to have these rights enshrined in the constitution so that the right could be immutable to the extent of the non-Immutability of the constitution itself”

In the case of Odogu V AG Fed (2002) 2 HPLRA 82 at 102 Adio JSC (as he then was) defined a fundamental right as a right guaranteed in the Nigerian constitution and it is a right which every person is entitled to when he is not subject to the disabilities enumerated in the constitution, to enjoy by virtue of being a human being.

In other words, fundamental rights are those rights that are fundamental to the very existence of a particular country that they stand above all the ordinary human rights and laws of such a country, because of how fundamental these rights are, they are guaranteed under the constitution of the Federal Republic of Nigeria. However, this does not mean that fundamental rights are above the country and its constitution and people.

In *Badejo V Minister of Education* (1996) 9-10 SCNJ5 Kutigi JSC (as he then was held thus.

“A fundamental right is certainly, a right which stands above the ordinary laws of the land, but venture to say that no fundamental right should stand above the country, state or the people.

By virtue of order 1 rule 1 of the FREP rules, every victim of human rights violation is empowered to seek redress in a High Court located in any state of the Federation where their fundamental right has been, is being or is likely to be contravened.

Section 46 of the constitution has conferred special power on the court to have original jurisdiction to hear and determine any application pertaining to such violation. In *Isuama V Governor of Ebonyi State* (2007) 20 WRN 170. The court of Appeal held.

“Section 46 of the 1999 constitution is a special provision which deals with matters of fundamental rights. It confers jurisdiction on any High court in a state in matters of fundamental rights in respect of who is affected by an action founded on such rights.

Section 46 of the constitution.

In short, a person whose fundamental rights is breached being breached or about to be breached may apply to High Court or Federal High Court in the state for redress.

Jack V University of Agriculture Makurdi (2004) 5 NWLR (pt. 865) 208.

In *Fajemirokun V Commercial Bank* (2009) 21 nwlr1. It was held by the supreme court that the aim of section 46(1) of 1999 constitution is to provide simple and effective judicial process for the enforcement of fundamental rights in order to avoid the cumbersome procedure and technicalities for their enforcement under the rules of common law or other statutory provisions. Section 46(1) is intended to give access to any aggrieved where an alleged contravention of his fundamental rights has taken place or is about to take place. It is therefore, a section which should itself be regarded as special and fundamental.

Here in this case, the applicant is praying this court to declare that the forceful and unwarranted breaking in and invasion of the applicant residence arrest and detention of the applicant in company of his wife without any legally justifiable reason is unconstitutional, illegal, ultra vires and a breach of the Applicant's fundamental rights for personal liberty guaranteed by section 35 of the constitution of the Federal Republic of Nigeria 1999 (as amended) and an order directing the Respondent to tender an unreserved apology to the Applicant and his family which shall be published in 2 National Newspapers circulating throughout Nigeria and online presence.

Before I proceed to consider the issues formulated in the written address of both the Applicant and that of the Respondent I wish to highlight the provision of section 46(1) of the CFN 1999 (as amended) WHICH HAS THREE LIMBS on the enforcement of fundamental Human rights.

“Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that State to redress”

This provision is made up of three parts:

- 1. Covers situation where the right of the Applicant has been infringed.**
- 2. Is the situation where the persons right is being infringed.**
- 3. Where the persons fundamental rights is likely to be infringed that is , where it is probate or expected that it would be infringed.**

Order 11 rule 2(1) of the fundamental rights (enforcement procedure) rules 2009- (herein after referred to as FREP rules has the same three component parts. It similarly provides:

“any person who alleged that any of the fundamental Rights provided for constitution or African Chateron Human and People’s rights ratification and enforcement)Act to what he is entitled has been, is being or is likely to be infringed may apply to the High Court in the state where the infringement occurs or is likely to occur for redress.

In this case now under consideration, the Applicant built his case on the First Component part of the constitutional provision and the FREP Rules by his affidavit he contended that his right have been infringed which is one of the situations for the grant of an application of this nature in order to protect the fundamental right of a person. See *Igwe V Ezeanochie* (2010) 7 NWLR(PART1192), I say no more.

Now to the issues formulated by the Applicant counsel and that of the Respondents, the said issues which are brought forward for ease of reference.

The applicant counsel in his written address formulated three issues for determination, to wit:

- i. Whether the Respondent is not in breach of the Applicant fundamental Rights to privacy and personal liberty as guaranteed under the 1999 CFN (as amended) and the fundamental Right (Enforcement procedure rules 2009 so as to be entitled to the reliefs sought in this application.**
- ii. If issue one is answered in the affirmative, whether the applicant is not entitled to the grant of exemplary and aggravated damages for the malicious breach of his right to privacy and right to personal liberty.**
- iii. Whether the notice to quit, (Emenike 7) is not liable to be set aside having being issued in violation of appending order of Honourable Justice A. H. Musa delivered on December 6 2023.**

The respondent on it's own side formulated 4 (four) issues for determination to wit:

- 1. Whether the Applicant's case is not an abuse of court process being an action borne out of malice with intent to embarrass the respondent.**
- 2. Whether the Applicant has disclosed substantial facts sufficient enough to persuade the honorable court to grant him the reliefs sought in his motion on notice for the enforcement of fundamental rights**
- 3. Whether the facts disclosed by the Applicant in his affidavit in support are cogent enough to entitle the applicant the award of damages.**
- 4. Whether the case should not be struck out off for the ancillary reliefs sought together in a fundamental rights matter.**

Following the response from the Respondent in it'scounter affidavit and the filing of a better and further affidavit by the Applicant, formulated in reply two issues for the court determination to wit:

Respondent issue 1. Whether the instant suit is an abuse of court process.

Respondent's issue 2. On Applicant's entitlement to the reliefs claimed.

From the foregoing issues for determination issues (1) of that of the affidavit of the applicant will be discussed with issue No 2 of that of the respondent and Issues 2 of that of the applicant.

Issue 1 of that of the respondent will be discussed with issue 1 of the Applicant's issues as formulated in its further and better affidavit.

5. Whether the notice to quit, (Emenike 7) is not liable to be set aside having been issued in violation of the pending order of Hon. Justice A.H. Musa delivered on December, 6 2023.

6. Whether the case should not be struck off for the ancillary relief sought together in fundamental right matter?

On the first issue, it is the submission of the Applicant counsel that section 37(1) and 46(1) of the CFN 1999 (as amended) forbids any act of invasion of the private residence of any person without any lawful court order.

Section 37 of the constitution provides thus

“The privacy of citizens their Homes, correspondence telephone, conversations and telegraphic communication is hereby guaranteed and protected”

On this submitted that, the brazen and Gestapo manner in which the officers of the Respondent invaded the Applicant's residence at House No 6 Aso Drive against the clear order of justice A. H. Musa delivered on December, 6 2023 is a clear breach of the Applicant right to privacy. On this the applicant placed before the court the video recording exhibit Aso 7 which shows clearly the unlawful invasion of the private residence of the Applicant. Also exhibit Emenike 4 which is the photographs of the invasion shows clearly gun toting mobile policemen of the Respondent all of whom caused a serious stir in the entire community where the Applicant's residence is. Reference to the case of Nwali V Ebsiec (2014) LPELR-23682 CA, this case shows one of the privacy of citizens guaranteed by the constitution under section 37 is the privacy of the home which prevents any form of intrusion by unauthorized persons.

Furthermore, that this application is basically to enforce the fundamental rights of the applicant as enshrined by the constitution of the Federal Republic of Nigeria

1999 (as amended) that the act of invasion of the Applicant's residence was carried out against the clear injunctive order of a court which restrained them from invading the Applicant's residence. That the respondent was aware of the order of injunction having been represented in court on that day by one Hadiza Afegbua who even undertook that the Respondent will comply with the order of injunction. Furthermore submitted that, the act of invasion of the Applicant's residence and arrest amounts to a stealing match on the court and resort to self-help which our Courts have condemned times without number. In *Eyinnaya V State* (2014) LPELR- 22924 CA, that court of Appeal in condemning the acts of police invasion of the house of private citizen has this to say.

“The invasion of the house of the native doctor (Chibuike is unlawful as it violates his fundamental human rights to the privacy of his person and his home guaranteed him by sections 37 of the 1999 constitution of Nigeria. The only permitted derogation from this right is one provided for in a law in the interest of defence, public safety, public order, public morality or public health, or for the purposes of protecting the rights and freedom or other persons, as required by section 45 (1) of the CFN 1999. Privacy at its most fundamental level is the right to be left alone. This suggests that a zone surround every individual within which he or she should be protected from intrusion by others. It is the most valuable of all rights. The 1999 CFN

In section 37 absolutely guaranteed the privacy of the citizen, his homes, correspondence, telephone conversation and telegraph communication and section 45 (1) allows a law to derogate from it may it is reasonable justifiable on a democratic society in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other persons.

Learned counsel for the appellant has not referred to any law that enabled them to invade that house the way they did. For police crime prevention and control action in entering a building or the space of a person as in this case to be brought under

the protection of section 45(1) of the 1999 constitution it must be considered a search in accordance with an enabling law”

On this submitted that there is no legally justifiable reason which would have warranted the invasion of the Applicant’s residence for the 2nd time by the officials of the Respondent who laid a siege at the Applicant residence in flagrant disobedience of an order of court

Furthermore submitted that, the arrest and detention of the Applicant for close to five hours shown on December, 7 2023 without any legally justifiable reason is a brazen violation of the fundamental right to personal liberty guaranteed under section 35 of the CFN 1999 (as amended) that the arrest and detention of the Applicant was simply unlawful having not been said to have committed any offence.

Section 35 of the 1999 constitution is very clear and it provides thus:

“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty except in the following cases and in accordance with the procedure permitted by law”

On this the counsel submitted that the manner and mode of arrest of the Applicant was to say the least unlawful. The provision of section 4 of the police Act only gives the police the powers of arrest only when there is a reasonable suspicion of any crime committed by a private citizen. In the instant case, there is nothing to show that there was a reasonable suspicion of any defence by the Applicant to warrant his arrest and detention for 5 hours by the Respondent. On this urged the court to resolve issue one in favour of the Applicant and hold that the Applicant’s right to privacy and the right of personal liberty have been violated.

In response, counsel to the Respondent stated that, the Applicant’s affidavit in support of his motion on notice has not revealed in any material particular, any complaint or peculiar injury suffered by the Applicant different from the issues he raised in suit number FCT/HC/CV/6890/2023 to warrant him to bring this action again against the Respondent seeking the reliefs contained on the face of his motion on notice as the affidavit in support is full of misinformation and unverifiable allegation: that the applicant needs or must show in his affidavit

evidence true facts and action of the respondent which has breached his right to privacy and liberty sufficient enough to persuade the court to grant him his reliefs

Furthermore, that the Applicant's rights to declaratory reliefs, the claims must be something which would not be unlawful or unconstitutional or inequitable for the court to grant, also not be contrary to the accepted principles upon which the court exercises jurisdiction. See *Chukwumah V Shell Petroleum (Nig) Ltd* (1993) LPELR-864(SC) Per Karibi-Whyte JSC (Pg 64-65 paragraph G-B stated thus:

“Although the power to make a binding declaration of right is a declaratory power, the plaintiff must establish in relation to which the declaration can be made hence the court will not generally decide hypothetical questions, declarations will be granted even when the reliefs has been rendered unnecessary by the lapse of timefor the action to be trial if at the time the action was brought it raised substantial issues of laws. The claim to which the declaratory reliefs relates must be substantial. A declaration will only be granted where there is breach”

In *Laduja V INEC* (2002) LPELR-1738 (SC) Per Adermi JCA Pg. 60-61 paragraph B-F

The Supreme Court stated.

“The grant of a declaratory reliefs it must be noted is discretionary.

It will only be granted when the court is of the opinion that the party seeking it is when all facts are taken into consideration, fully entitled to the exercise of the courts discretion in his favour”

Also referred to the case of *Dumez Nig Ltd V Peter Nwakhoba& ors* (2009) ALL FWLR- (PT461) 842, Per Onyemenam

JCA stated thus:

“The law on the requirement of the plaintiff to plead and prove his claims for declaratory reliefs on the evidence called by him without relying on the evidence called by the defendant is indeed

well settled. The burden of proof on the plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy, in the sense that such, declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence”

On the above authorities, the counsel contended that the Applicant has not put facts before this Hon. Court and has failed to establish nor prove from his affidavit evidence and the attached exhibits any of those principle stated in the above authorities cited to warrant this court to grant his reliefs sought in the motion on notice.

Further to the above, the learned Respondent counsel submitted that, the Applicant made heavy weather of the Respondent operation breaking into the premises of the applicant at 5:30am on the 7th day of December, 2023 where the applicant exhibited some photographs, showing the Respondent’s operatives, standing at a gate without description or anything relating to the property known as No.6 Aso Drive Asokoro the Applicant’s exhibit Emenike 3 is very instructive.

Reference also made to paragraph 15, 16, 17, & 18 on the Applicant affidavit in support where the Applicant boldly stated that 30 hooded gun trotting operative of the Respondent invaded his premises on the breaking into the premises the Respondent officers used a gas cylinder to break his kitchen door. On this contended that this allegations are false and are not believable on the grounds that if the Applicant could position himself to take the pictures of the police men, at the gate who from the picture are only five, he could as well have positioned himself to take the picture of the remaining 25 operatives of the respondent who invaded his house as well as the cylinder he alleged was used to break his kitchen door. The Counsel further submitted that from the pictorial evidence, we can see clearly that the five operatives alleged to come from the respondent were not hooded as alleged by the applicant. That from the same picture, a man can also be seen wearing the uniform of a mobile police officer, which explains that there could have been other law enforcement officers at the premises at the time of the alleged invasion. That the Applicant in his affidavit evidence did not explain how the pictures were taken and who took the pictures, since in paragraph 18 of his affidavit in support, he stated that he and his wife were in their pyjamas when the alleged

respondent's officers attempted to break into his room presupposing that he was inside the room when the pictures were taken by another person.

Furthermore contended that the Applicant's case hinges on paragraph 16, 17, & 18 of his affidavit in support and where the facts deposed there in are manifestly unreliable, the court should hold that, nothing is before it to grant the reliefs sought by the Applicant. Hence this case is borne out of malice.

I have carefully considered the submissions of both Applicant counsel, and that of the Respondent exhibit attached thereto in proof of the reliefs sought and cases cited in support. I wish to first of all refer to the Judgment delivered by Hon. Justice M. O. Olajuwon of the FHC dated the 24th day of Oct 2022, in that ruling the Respondent seeks for the forfeiture to the Federal Government of Nigeria the landed Property described as No 6, Aso Drive Maitama FCT worth about N380,000,000 which property is reasonably suspected to have been acquired with proceeds of unlawful activity. The court on the 24-10-2022 granted a final order, forfeiting to the Federal Government of Nigeria, all that property described as No 6 Aso drive, Maitama FCT said to be worth about N380, 000.000.00

Also exhibit, efcc1 being a letter from one Festus Azikagbon&Associates addressed to High Chief Ikechi Emenike House No. 6 Aso Drive Asokoro Abuja captioned: Re-rent demand/Reminder Notice in respect of forfeited property at House No. 6 Aso Drive Abuja by EFCC dated the 25th June, 2024. Exhibit EFCC2 is a letter from the state house Abuja dated May, 25, 2023 addressed to the Hon. Chairman EFCC captioned request for use of forfeited property No. 6 Aso Drive Asokoro as EFCC chairman official resident, the said letter was approved by the president for the use of the EFCC chairman house.

The fulcrum of the suit is in respect of the interpretation of the Judgment of Hon. Justice Abubakar Babashani in suit No. FCT/HC/CV/1079/2023 between chief Ikechi Emenike and & EFCC dated the 13th day of July, 2023 seeking for the same order as in case at hand, the said order or declaratory reliefs sought therein were granted by Hon. Justice Abubakar Babashani. Another order was also granted by Hon. Justice Abubakar Hussaini Musa in suit No. FCT/HC/M/762/2023 against Chief Ikechi Emenike and EFCC. Where the ruling was in favour of the Applicant. also exhibit Emenike 3 being pictures of armed police men at the gate of

house No. 6 Aso Drive Asokoro and showing how the keys of the main gate/door was broken into, despite the court order granted by Hon. Justice A. H. Musa based on the above the applicant filed exhibit Emenike 4, being notice of consequences of disobedience to order of court dated the 16th November, 2023.

On the date the contempt proceedings was to be granted, the 2nd Respondent counsel one Aliyu Yusuf Apologized for whatever transpired and promised that such will not repeat itself so long as he remains a staff of EFCC and assures the court that the EFCC will vacate the premises of the house in dispute and that there will be no officer of EFCC in that premises as at 25/1/2024, it was based on this statement that court discharged Mr. Aliyu Yusuf director proceeds of crime of the contempt, this was dated 7/2/2024 while the matter reserved for Judgment by Hon. Justice A. H. Musa.

Despite all this, the same staffs of EFCC, further invaded the residence of the Applicant in flagrant disobedience of the order of the court granted by Hon. Justice A.H. Musa arrested and detained them at the office of the Respondent at its headquarters without any legally justifiable reasons hence this instant suit, where the Applicant stated that the arrest and detention was unlawful as he was not informed of any offence that has been committed by him, and that the breaking in and invasion of the Applicant residence in flagrance disobedience of an order of injunction is a breach of the applicant right to privacy.

The respondent in its defence to the above which forms the basis of this suit was on the issue of forfeiture order of house No 6 Aso Drive Asokoro a property forfeited to the Federal Government of Nigeria, the said Property occupied by the Applicant as a tenant in the said property

The said property after the forfeiture was released to the EFCC by the President of the Federal Republic of Nigeria, for the use of the Chairman premises of EFCC vide letter No. Res/72//EFCC/100 marked as exhibit EFCC2. This issue as far as this court is concern is not part of the issues to be decided by this court, as the issue of the present suit are the violation of the applicant fundamental right to his privacy and personal liberty as guaranteed under sections 35 and 37 of the 1999 CFN (as amended)

Section 35 provides thus:

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

Section 37 provides

The privacy of citizens, their homes, correspondence telephones conversations and telegraphic, communication is hereby guaranteed and protected.

From the submissions of the Applicant can it be said that, the applicant right his personal liberty and right to his privacy has been violated by the Respondent to entitled the Applicant to the claims?

On this I wish to state that in answering the above question it is pertinent to look at the submission of the Respondent in its written address which the Respondent denied all the allegation and state that the intention of the Applicant are only but to use this court to embarrass the Respondent and display vengeance for the failure and refusal to sell the premises known as No 6, Aso Drive Asokoro Abuja. Furthermore that from the facts of this case it is clear that the intention of the Applicant is merely to embarrass the respondent.

On this I will disagree with the submission of the Respondent by the simple reasons that Hon. Justice A. H. Musa in suit No. FHC/HC/CV/6890/2023 dealt with the issues of the Respondent officers breached his right to privacy and personal liberty resulting in sighting one Aliyu Yusuf for contempt which the same Aliyu Yusuf tendered an apology and the issue of the contempt was discharged. It was after that, the same officer of EFCC went to the same premise at No. 6, Aso Drive Asokoro invaded the house for the second time with the officer of EFCC which rights the Applicant is now seeking to enforce, as the Respondent action in invading the residence was a violation by the Applicant right to his privacy and personal liberty as guaranteed by the provision of section 35 and 37 of the 1999 CFN as (amended). The defence of the Respondent put forward was that the applicant exhibited photograph showing the Respondents operation standing at a gate without description or anything relating to the property known as No. 6 Aso Drive Asokoro. Also that the Applicant in paragraph 15, 16, & 17 & 18 boldly stated that 30 hooded gun trotting operative and cut the fence of the premises and

broke into his premises the Respondent officers used a gas cylinder to break his kitchen doors. This the Respondent denied and submit that if the applicant can position himself to take the picture of the police men at the gate who from the picture are five, he could as well have positioned himself to take the picture of the other remaining 25 operatives of the respondent who invaded his house as well as the cylinder he alleged was used to break his kitchen door.

Can by this submission being a denial that the Respondent operative were not at the premises of the Applicant nor did not actually invaded the premises known as house No 6 Aso Drive Asokoro? On this wish to state that there is no denial and even if the Respondent is denying the said paragraph 19, 16, 17 & 18 who are the officers that was stationed at House No 6 Aso Drive Asokoro? The Respondent cannot denied the fact that the offices at House No 6 Aso Drive Asokoro are not the officer of the EFCC including the Police that were attached to the EFCC.

In view of the above I have to disagree with the submission made by the Respondent and hold that the Applicant right to his privacy and personal liberty has been breached by the Respondent by invading House No. 6 Aso Drive Asokoro, where the Applicant and his wife were arrested and detained by the officers of the Respondent. Hold therefore that the invading of House No. 6 Aso Drive Asokoro by the Officer of the Respondent without a lawful court order is a breach at the Applicant fundamental right to his privacy and right to his personal liberty. Hence I shall resolve this issue in favour of the Applicant.

On the second issue as to whether the applicant's case is not an abuse of court process being an action borne out of malice with intent to embarrass the Respondent.

On this it is the submission of the Applicant that the instant suit is not in any way an abuse of the process of this court.

On this he submitted that suit number CV/6890/2023 in Ikechi Emenike V EFCC the Applicant sought the interpretation of the provisions of the EFCC Act and the Proceeds of crime Act. This he submitted that, the officials of the Respondent stormed the house of the Applicant during the pendency of the said matter and contempt proceedings was initiated against the Chairman of the Respondent as well as the Unit head of the proceeds of crime unit. It is based on the fact that a

contempt proceedings was initiated against the Respondent's officials that the Respondent has argued that the instant suit constitutes an abuse of court process.

On this submitted that the act of invasion of the Applicant's private residence on December 7th, 2023 birthed a new cause of action under the fundamental human rights. Further submitted that the fact that contempt proceedings was initiated against the Respondent's officer does not stop the Applicant from actualizing his constitutional right to seek redress under the fundamental rights enforcement proceedings.

On this I wish to state that, an abuse of court process means the improper use of the legal process. There is an abuse of process of court when a party improperly uses the judicial process to the invitation and annoyance of his opponent and the efficient and effectual administration of justice. It also means employing or invoking the judicial process or proceedings in bad faith for the purpose of gaining advantage against or to the detriment of an adversary. The common features of an abuse of court process are as follows:

- 1. Instituting a multiplicity of action on the same subject matter against the same opponent on the same issues or multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.**
- 2. Instituting different actions between the same parties simultaneously in different courts even though on different grounds where two similar processes are used in respect of the exercise of the same right.**
- 3. Where two actions are commenced, the second seeking for a relief which may have been obtained in the first.**
- 4. Vaswani Trading Co V Savalach & Co (1972)1. ALL NLR (par2) 483, Saraki V Kotoye (1992) 9 NWLR Part 264)156, and Adeniyi V FRN (2012) 1 NWLR part (281)284.**

On this it is the submission of the Applicant's counsel that, the cause of action in this matter is separate and distinct from the suit in CV/6890/2023 which bothered on the interpretation of the provisions of section of the EFCC act and the proceeds of crime Act.

The respondent in its written address stated that, the Applicant in its affidavit in support stated clearly that the facts upon which he has brought this application for the enforcement of his fundamental rights took place on the 7th December, 2023 this the respondent counsel asked whether this are not the same facts upon which the respondent's officers were sighted for contempt by his Lordship Hon. Justice A. H. Musa and that if the answer is in the affirmative, why then bring this case again on the same facts under the guise of enforcement of fundamental rights. If the case is not borne out of malice?

On this referred the court to the following cases.

1. Lokdobiri V Ogola (2016) part 1499/328
2. Echaka Cattle Ranch Ltd V NACB Ltd (1998)4 NWLR (PT. 547)526.

Where the court held that abuse of court process generally means that a party in litigation takes a most irregular, unused and precipitate action in the judicial process for the sake of action qua litigation, merely to waste the valuable time, it is an action which is one or more too many, an action which could be avoided by the party without doing any harm to the matter in a dispute. The process of the court is used mainly to overreach the adversary to the annoyance of the court. The process is initiated or organized vendetta, aimed at frustrating either the quick disposal of the matter or the abatement of the matter for no good cause. A process of court could also be abused where there is no iota of law supporting it..."

Also in the case of PDPV ALI MODU SHARRIF & ors (2017) 15 NWLR (part 219) it was held that once an action is between the same parties, their allies on the same subject matter even if differently worded but with the same result, the suit filed later in time constitutes an abuse of process and same is liable to be struck out. On this urged this court to strike out this suit for being malicious and an abuse of court process.

I have considered the arguments by both counsel, cases cited on the abuse of process of court, I hold that case No FHC/HC/CV/2537/2024 and the present suit even though parties are the same but the subject matter before the two cases are different. In case No. FHC/HC/CV/6890/2023, it is on the issue of interpretation of the provision of section of the EFCC Act and the proceeds of crime Act. The said case before Hon. Justice A. H.. Musa, was not a matter brought under the

Fundamental Human Rights procedure rather it sought a relief to determine whether the Respondent could appropriate a forfeited property for Public use as against disposal/sale while case No FHC/HC/CV/2537/2024 being the instant suit deals mainly with the breach of the Applicant fundamental Human Right brought pursuant to section 35 & 37 of the 1999 CFN as amended) hence the two cases though same parties but the relief sought therein are different hence cannot amount to abuse of the process of the court as stated by the Respondent. Hence this issue is also resolved in favour of the Applicant. I so hold.

On the third issue of the applicant as to whether the notice to quit (Emenike 7) is not liable to be set aside having being issued in violation of a pending order of Hon. Justice A.H Musa delivered December, 6th 2023. On this I wish to state that this issue does not fall under the fundamental right enforcement procedure rules hence cannot be resolved by the use of the present head in this suit, hence the said issue is hereby struck out or rather falls on order 4, which I hold cannot be decided under the heads hence order 4 of the reliefs sought therein is hereby struck out. I so hold.

On the last issue as to whether the facts disclosed by the Applicant in his affidavit in support are cogent enough to entitle the applicant the award of damages?

On this it is the argument of the Respondent counsel that, claims iii & iv of the attaching statement of ground. Upon which this application is brought and some of the depositions in the affidavit in support, the applicant only insinuates that they have been harassed, intimidated, humiliated and put through emotional and physical discomfort and publicly embarrassed without more.

On this the learned counsel to the Respondent submitted that, the applicant is under a duty to prove that he indeed suffered these consequences for the mere presence of the respondent in his premises who were there only to value a property held by them in trust for the FGN is not sufficient. That the failure of the Applicant to give facts to buttress his privacy and liberty by the Respondent is not worthy of consideration and as such, the court should discountenance the Applicant's claims and rule in favour of the Respondent.

The applicant counsel in his written address submitted that the damages appropriate to be granted in the circumstance of this application is aggravated damages. That the affidavit in support of the motion on notice shows clearly that malice eluded by the Respondent officials in invading the applicant residence. That the invasion of the applicant of the applicant residence was the 2nd time by the Respondent which was condemned by this court.

Furthermore, the affidavit of the Applicant reveals that the Respondent carried out the invasion into the applicant's residence with malice which is a fundamental consideration in granting aggravated damages. On this referred the court to the following cases

1. **Western Publishing Comm. Ltd V Fayemi**
2. **EliochimNig Ltd V Mbadiwe (1986) 1 NWLR (Part 14) 47 at 67. And GKfInvestementNig Ltd V NitelPlc NSCOR vVol 39, 2009, where may Lord, Ogbuago JSC Posited thus:**

“Exemplary punitive vindictive or aggravated damages where claimed are usually awarded whenever the defendant and or defendants’ conduct is sufficiently outrageous to merit punishment as where for instance it discloses malice, fraud, cruelty, insolence or flagrant disregard of the law and the like”

Furthermore submitted that, this is the 2nd time the respondent will be invading the residence of the applicant without any order of court and that within the same year, the 2nd respondent again invaded the applicant's residence less than 24 hours after a court issued a restraining order. This is to show that the respondent has no modicum of regard for the rule of law and submitted that the applicant has satisfied the requirement for the grant of aggravated damages and exemplary damages in the sum of N5, 000.000.00 (Five Billion Naira) which should serve as a deterrent to all law enforcement and security agencies like the respondent.

I have carefully gone through the submissions of both counsel in their written address cases cited, as I have decided on issue (1) one, that the respondents are in breach of the Applicant's fundamental right to privacy and right to his personal

liberty such that the Respondent's acts in breaching those rights will entitle the applicant to damages

It is to be noted that, the object of an award is to compensate plaintiff/Applicant, as far as money can do so, for the damages, loss or injury he has suffered. The guiding principles is restitution integrum. See MTN (Nig) Comm. Ltd V Corporate Comm. Inve.Ltd (2019) 9 NWLR (PART 1678) 427.

For a party to be entitled to exemplary damages, it is his duty to prove that the action of the respondent is outrageously reprehensible. Such damages are awarded when the defendant's willful act was malicious, violent, oppressive fraudulent, wanton or grossly reckless. These damages are awarded both as a punishment and to set a public example.

On the award of damages for infringement of fundamental right, the following factors have to be considered

- 1. The frequency of the type of violation in recent times.**
- 2. The continually depreciating value of the Naira.**
- 3. The motivation for the violation.**
- 4. Status of the Applicant.**
- 5. The undeserved embarrassment meted out to the applicant including pecuniary loss.**
- 6. The conduct of the parties generally particularly the respondent.**

One of the factors in the award for damages for unlawful arrest and detention is the behavior displayed by the respondent in correcting the applicant see F.B.N. Plc. V A. G. Fed (2018) 6 NWLR (prt. 1350)225.

Based on the above factors, the Applicant in it's further and better affidavit in support of motion on notice paragraph 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14 reproduce below:

Paragraph 5,

That it is important to grant the exemplary and aggravated damages in view of my societal status as well as my wife's professional status.

Paragraph 6,

That I am a former banker and tutor of one of the foremost publishers of intentional repute as I publish the reputable award winning annual meetings daily of the IMF/world Bank in Washington DC.

Paragraph 7, that I was the Editor of the award-winning Banking and finance Magazine known as the African Economy.

Paragraph 8, that I was a two time gubernatorial Candidate in my state of Abia where I contested.

Paragrap 9.

That I am the immediate past Pro-Chancellor and Chairman of the Governing Council of the University of Nigeria Nsukka where I spearheaded a new project in the Univerty.

Paragraph 10,

That my wife Dr. Mrs Uzoma Emenike is the Immediate past Nigerian Ambassador to the United States of America.

Paragraph 11,

That she had also been the Nigerians Ambassador to Ireland.

Paragraph 12,

That my wife has in her kitty University Degrees and a PHD in International relations from the University of Reading.

Paragraph 13, my wife is also an author of bestselling books such as Africa, the Centre Piece of Nigerian Foreign Policy.

Paragraph 14.

That my wife and I have contributed immensely to the development of this country and in our respective capacities and we do not deserve to be treated shabbily by the State.

By the further affidavit stated above, I have no doubt that the Applicant deserves to be awarded with exemplary damages for the breach of his fundamental right to his privacy and personal liberty.

I so hold.

Before I drop my pen, it is imperative I say or make some general comments with regard to the increasing hesitancy at different levels of society in complying with clear court orders. In this case the allegation was that despite the order by court granted by Hon. Justice A. H. Musa against the respondent, the Respondent still went ahead, invaded the Applicant's residence at No. 6 Aso Drive, Asokoro arrested and detained the Applicant without a valid court order.

This therefore, informs the basis of this general comment on what the rule of law entails and the role of the courts and law enforcement agencies within its confines.

The rule of law is not some abstract or abused phenomenon. In simple terms, it refers to a condition in which all members of a society accept the authority of the law and are subject to it. The rule of law in essence recognized propriety. It gives direction order, and purpose in any orderly society. Respect for the rule of law ensures and engenders confidence in the system and people know or acknowledge that at all times the society will be guided by the laws of the land and nobody will be subject to the unwieldy whims of any one individual whether in or out of power and at whatever level.

Within the context of the above narratives, and at its most basic level the law enforcement agencies serves as a necessary pillar in ensuring compliance with these laws and where there is a proven violation they investigate and submit the complaint to court for adjudication. The court on the other hand provides much needed critical judicial oversight in ensuring that all acts are done within the purview and as allowed by law.

There is therefore absolutely no need for any chasm between the courts and the law enforcement agencies once the roles of these veritable institutions are properly understood and appreciated. The failure by some personnel of these institutions or agencies to fully understand the strategic partnership of these institutions has led to the unfortunate perception that the courts create unnecessary obstacle on their

paths as they provide their responsibilities properly understood, the court as an institutions has never been a barrier to any agencies as they exercise their duties on these challenging times. They must recognize that their actions must necessarily be subject to not only civilian oversight but most importantly judicial oversight. The supreme law of the land, the Nigeria constitution deliberation and carefully made it so by virtue of section 6 of the 1999 constitution.

The judicial oversight that the courts exercise is critical to the sustenance of our emerging democracy and the rule of law.

The courts to the everlasting benefit, of all (whatever its imperfections or weakness) remain an eternal and veritable bulwark against any form of tranny that manifest in different forms and at different levels in our society. It is a solemn responsibility that courts must carry out in a dignified manner without fear or favor, ill-will-or affection. Once an order therefore emanates from the hollowed confines of a court of law, there is no discretion or choice in complying with it.

The idea that a party will deliberately elect to disregard a court order or seek to vary it or abide with it on his own terms or whenever on attack on the person if the Judge but that of a critical fabric that holds society together.

The best to be made of people who wield authority and refused to comply with orders of court or who treat it with levity like in this instant suit and distain is that they do so out of ignorance. We must have strong institution like the judiciary but the role of people is even more critical. The power of office holders at whatever level is ephemeral. For those spiritually inclined, these are responsibilities of trust one will be held accountable for if not now or sometime in the future then certainly and ultimately by the cover of life himself. The question I pose to people who choose to deliberately undermine what ordinarily should blind decent societies is how will they feel and where will they seek help if they are placed in the applicant's position when they no longer control the louvers of power and influence? This is food for thought. I say no more.

On the totality of the facts and circumstance as revealed in this judgment, it follows that the Applicant is entitled to the order sought the declaration sought in 1 & 2 & 3 and is entitled to damages in line with the provision of the constitution.

In summation, and for the avoidance of doubt, the applicant has made out a case with considerable merit and I thereby make the following orders.

- 1. The arrest and detention of the applicant in company of his wife at about 6.30am after breaking into his living room without any legally justifiable reasons is unconstitutional, illegal, ultra vires and breach of the application fundamental rights to person liberty and privacy guaranteed by section 35 & 37 of the 1999 CFN (as amended).**
- 2. The Respondent is hereby ordered to tender an unreserved apology to the applicant and his family which shall be published in 2 National Newspapers circulating throughout Nigeria within online presence.**
- 3. The sum of N5, 000.000.00 (Five Million Naira) is awarded against the Respondents as damages for breach of the Fundamental Human Rights to the applicant's personal liberty and right of privacy.**

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Hon. Justice A. Y. Shafa

Appearance:

1. F. O. Dibang with I. D. IloAkashiya for the Defendant
2. Peace Kenoye for the Claimant.