

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT NYANYA- ABUJA**

**THIS TUESDAY THE 3<sup>RD</sup> DAY OF DECEMBER, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI**

**SUIT NO: FCT/HC/GWD/CV/25/2024**

**BETWEEN:**

**MR. ACHUENYI CHRISTOPHER CHINONSO.....PLAINTIFF  
AND**

- |   |   |                        |
|---|---|------------------------|
| <b>1. NIGERIAN POLICE FORCE</b>             | } | <b>.....DEFENDANTS</b> |
| <b>2. INSPECTOR GENERAL OF POLICE (IGP)</b> |   |                        |
| <b>3. MR. OJIMGBA CHRISTIAN OLISA EMEKA</b> |   |                        |

**JUDGMENT**

This judgment is on originating motion for the enforcement of fundamental rights dated 05/02/2024 and brought pursuant to order 11 rules 1 – 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Section 33 (1) 34 and 35 of the CFN 1990 (as amended) Articles 4, 5 and 6 of the African Charter on Human and Peoples Rights and under the inherent jurisdiction of the court as presented by Section 6 (6) of the 1999 CFN (as amended) praying the court for the following reliefs:

- a. An order for the enforcement of the fundamental right of Mr. Achuenyi Christopher Chinonso the applicant herein to wit. Right to life, personal liberty and respect for the dignity of his person in the terms of the reliefs sought in the statement accompanying this application.*

- b. And take note of this notice that the hearing of this application the Applicant will rely on the accompanying affidavit in support of this application.*

Accompany the originating motion are:

Statement of fact in support of the application for the enforcement of the fundamental right of Mr. Achuenyi Christopher Chinonso containing the reliefs sought by the applicant;

- 1. A DECLARATION that failure to have respect for the dignity of his person, arrest and threat to life of the Applicant by the 1st Respondent propelled by the 3rd Respondent who reported the Applicant to the 1st Respondent by compelling and instigating the 1st Respondent wherein the Applicant was arrested, threatened,*
- 2. failed to observe respect for the dignity of his person and detained in Mabushi police station on the 31st day of January 2024 amount to an infringement or violation of the Applicant's fundamental Rights to Personal Liberty, Right to dignity of his person and Right to life as enshrined under section 33,34 and 35 of the constitution of the Federal Republic of Nigeria 1999 (as amended), and under article 6 of the African charter on Human and People's rights as preserved under the African charter on Human and people's Rights (Ratification and Enforcement) Act (cap A9) laws of the Federation of Nigeria, 2004.*
- 3. 2. An Order of injunction restraining the Respondents, their Agents, servants, officers, privies or whomsoever, whether working directly and/or indirectly with or for the Respondents from further arresting, inviting, intimidating, harassing and/or infringing on the Fundamental Rights of the Applicant as guaranteed under Chapter IV of the constitution of the Federal Republic of Nigeria 1999 (As amended).*
- 4. A claim of the sum of Three Hundred Million Naira (N300m) jointly and severally against the Respondents being general and aggravated damages for the unlawful violation of the Applicant's Fundamental Rights as entrenched and guaranteed under Chapter IV of the constitution of the Federal Republic of Nigeria (1999) as amended.*

***5. An order releasing the vehicle and the phone seized by the 1 Respondent from the Applicant forth with.***

And the grounds on which reliefs are sought are as follows:

- a) That the plans, efforts and actions of the Respondents to arrest and detain the Applicant without due legal process on account of the civil contract transacted by the Applicant and the 3<sup>re</sup> Respondent. And the simple contract of currency exchange have been criminalized and turned into the 1<sup>st</sup>***
- b) Respondent arresting and detaining the Applicant, his vehicle and phone which was been propelled and persuaded by the 3<sup>rd</sup> Respondent.***
- c) The detaining of the Applicant in the cell of the 1<sup>st</sup> Respondent in Mabushi for over one week infringed on his Right to Personal Liberty, Freedom of Movement and Right to Dignity of Human person as well as taking the laws into their hands.***
- d) The threat to life and hand cuffing of the Applicant by the 1<sup>st</sup> Respondent infringed upon the Applicant's Right to Life and Respect for the dignity of his person.***

Affidavit in support of originating motion of 19 paragraphs deposed to by Mr. Achuenyi Christopher Chinonso of behind yard College 2<sup>nd</sup> gate Fulge Niger State and a written address of the applicant in support of the originating summons.

The processes were duly served on all the defendants proof of service dated 15/02/2024 acknowledged same by the legal prosecution section criminal investigation and intelligence department FCT Command Abuja for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent while on the 3<sup>rd</sup> and 4<sup>th</sup> Respondents it was acknowledged by Commissioner of Police Prosecution Section FCID Abuja dated the 15/02/2024 and the matter adjourned to 18/04/2024 for hearing.

On this date the applicant's counsel one J. M. Attah wit J. A UkwechOgbede were in court while no representation from the respondents and the matter was adjourned to 08/06/2024 for hearing and this date being 10/06/2024, same appearance from the applicant and no appearance from the respondents on this the applicant's counsel made an application to file a motion exparte for an order of

substituted service to serve the 3<sup>rd</sup> defendant with hearing notice, the matter was again adjourned to 08/07/2024 for the hearing of the motion.

On the 08/07/2024 the applicant's counsel S. M. AttahEsq moved his motion and the order sought therein were granted to the effect that the 3<sup>rd</sup> respondent be served hearing notice through his Whatsapp No. 08036663896 and the matter adjourned to 26/10/2024 for hearing.

On the 26<sup>th</sup> September, 2024 when the matter came up for hearing the respondent were not in court. The applicant's counsel then informed the court that the 3<sup>rd</sup> respondent have been served with all other responses and in the absence of any representation prayed the court to proceed to hear his application. The order sought was granted, the court have been satisfied that all the respondent were served with hearing notice and aware of the proceedings of that day.

The applicant's counsel in moving his originating motion adopted it's written address as their oral argument and relied on all the paragraphs of the affidavit especially paragraphs 3 – 19 in urging this court to grant the application in the interest of justice.

Furthermore, that the respondents were duly served but chose not to file any counter, on this submits that the averments of the claimant's applicant not being challenged urged the court to grant the reliefs sought in the interest of justice.

Before I proceed to embark on the journey in this matter I wish to put the record straight on the failure to file a counter affidavit in opposition to the injunction motion. It is trite law that, a party or counsel who fails to file a counter or a reply affidavit is bound by the state of facts as related in the affidavit. on this I refer to the case of Chairman EFCC V littlechild (2016) 3 NWLR (Pt 1498) 72, the Court of Appeal per Cosaji J CA lecterated the well known position that.

***“It is also the law that facts contained in the affidavit form part of the documentary evidence before the court. Thus, where an affidavit is filed deposing to certain facts and the other party does not file a counter affidavit or a reply affidavit, the facts deposed in the affidavit or counter affidavit would be deemed unchallenged and***

***undisputed, simply put paragraph of affidavit not denied or controverted are deemed admitted”***

In *Mabamije V Otto* (2016) 13 NWLR (Pt 1529) 171 at Page 192 paragraphs G – H, the Supreme Court of Nigeria speaking through Rhiodes Vivour JSC observed:

***“No counter affidavit was filed by the appellant. Where facts deposed to in an affidavit have not been controverted, such facts must be taken as true”***

Also in *Eze V IGP* (2017) 4 NWLR (Pt 1554) 44 at Page 75 Paragraph G, the Court of Appeal stated that the position in an affidavit in the absence of any counter affidavit challenging same are deemed as true and established. Also in the case of *O.S.S.I.E.C V N.C.P* (2013) 9 NWLR (Pt 1360) 451 at 468 Paragraphs F – G. the Supreme Court held that where a party choose not to file a counter affidavit, he is deemed to have admitted the facts averred in the affidavit of his adversary and held forth that failure to depose to a counter affidavit amounted to an admission of those facts.

In view of the foregoing decision of the Apex court, I am equally of the view that, the failure of the respondents to file a counter affidavit having been duly served with the originating motion, hearing notices (s) presuppose that, the respondents are deemed to have admitted the facts as contained in the applicant’s originating motion, same having not been controverted not disputed.

Based on the foregoing, I shall proceed to the facts as stated on the application and the written address presented by the applicant. The applicant’s counsel in it’s written address formulated three legal issues for the court’s determination to wit:

- a. Whether the applicant’s fundamental right as guaranteed under Charter IV of the CFN 1999 has been, is being and or is likely to be breached by the respondents?
- b. Whether the applicant is entitled to informative reliefs to forestall further violation of the fundamental right of the applicant by the respondents.
- c. Whether the applicant is entitled to damages for the violation of the fundamental rights.

On the first issue, it is the argument of the learned counsel to the applicant that upon a cursory look at the averments in paragraphs 1 – 19 of the affidavit in

support clearly shows that the Applicant's fundamental human rights guaranteed under Sections 33, 34 and 35 of the 1999 CFN (as amended) has been contravened. On this submits that the officers of the 1<sup>st</sup> Respondent were acting ultra vires their powers under the 1999 Constitution and as such submits that the 1<sup>st</sup> Respondent lacks the legal capacity to adjudicate on the debt recovery for the 3<sup>rd</sup> Respondent by criminalizing the exchange rate transaction. And that the question that must be asked is what then the constitutional responsibility of the court is? To buttress further, the learned applicant's counsel stated the facts in this suit that the issue bothered on failure to fulfil the contract of exchange of money agreement. That by part 2 Section 5 (2) of the ACJA, 2015, talking about arrest, bail and preventive justice States that:

***“A suspect shall not be arrested merely on a civil wrong or breach of contract”***

That by virtue of this provision of the ACJA, 2015 makes it clear that a suspect must not be subjected to any form of arrest based on a matter with regards to a civil wrong or a breach of contract as where with this case.

On this further states that this case borders on failure to deliver the exchange naira given to the applicant to dollars to the 3<sup>rd</sup> Respondent and the applicant has agreed to refund the dollars if given time. That the 3<sup>rd</sup> Respondent should do so and report the matter to the 1<sup>st</sup> Respondent. That the 3<sup>rd</sup> Respondent urged and prevailed on the 1<sup>st</sup> Respondent to arrest and detain the applicant to make him pay the money instantly. On this submits that the arrest and detention of the applicant by the 1<sup>st</sup> Respondent at their Mabushi Police Station amounts to a breach of the fundamental rights of the applicant worthy of remedy or enforcement. See WAEC V Adeyanju (2008) 9 NWLR (Pt 1092) 270, where the Supreme court per Akintan JSC held thus:

***“....put the position of the law this way: the position of the law is that the procedure for instituting an action based on infringement of a fundamental right under the constitution as preserved under the fundamental right (Enforcement Procedure) rules 2009, only a breach of any of the fundamental right guaranteed in the constitution can be enforced under the procedure”***

On this submits that the Applicant's right to freedom of movement has been infringed upon by the 1<sup>st</sup> Respondent as was propelled by the 3<sup>rd</sup> Respondent and the respect for the dignity of his person was infringed upon.

Furthermore, submits that the Sections 34, 35, 41 and 46 of the 1999 CFN (as amended) made simple safeguards to ensure freedom of movement, personal liberty, torture in humans and for degrading treatment, same as in Article XII (1) of the African Charter on Human and People Rights. It

***“Every individual shall have the right to free of movement and residence within the borders of a state provided he abide by the law”***

Also the case of Anambra State Court Sanitation Authority V Ekwenem (2009) WRN 17 – 13 (29).

***“Every citizen of this country have a right to go about his or her lawful business unmolested and unharmed by anyone else be it government functionary, a private individual. The law of this country and particularly the court must provide for any manifestation of arbitrary power assumed by anyone”.***

The applicant's counsel went further to state that care must be taken not to take clear out civil cases to the commission as this may attract sanction from the courts. See FCT/HC/M/4949/06 Dr. Sylvester Odigie V EFCC (unreported) where the trial judge I. U Bello CJ (as he then was) of the High Court of the FCT Abuja made the following holdings:

***“It is regrettable to observe that it is now fashionable to dress a civil cause with criminal regalia in order to satisfy the yearning of some powerful beings. It is outrageous and indeed a demonstration of abuse of power. The powers of EFCC operations are circumscribed by law and does not in my view possess the power to enforce private Contracts entered into by private persons”.***

Also reference to the case of Oceanic Securities International Oils V Balogun (2012) Judy Electronic Law Reports 57726 (CA) the court of appeal held that the arrest of the applicant for instance of dishonored cheques was unlawful in the circumstance of the case. In the words of GerogeMbaba JCA:

***“Appellant could not before trial under the cover of reporting the 1<sup>st</sup> Respondent for issuance of dishonoured cheques to subject him to the ordeal of arrest and detention of his car (for two years) and escape the wrath of the law. He was pursuing the recovery of the alleged debt and resorted to the use of the police. What was the connection of the seizure of the 1<sup>st</sup> Respondent’s car and keeping it for 2 years with the alleged issuance of doll cheque, if the applicant’s interest was devoid of recovery of debt? And how does the debt of admitted liability company tied to its admirers as security suddenly become the personal debt of the 1<sup>st</sup> Respondent to warrant the ordeal meted out to him”***

See the case of *Ibiyeye and Ana V Gold and others*, the court of appeal per *Ita G. Mbaba JCA* without mimicking words held that.

***There to add that the report to the police by parties for a recovery of debt outstanding under a contract or relationship has been repeatedly represented by the court, the police have also been condemned and rebuked rebuked crimes for abandoning its primary duties of crime detention, prevention and control to dabbling in enforcement in settlement of debts and contracts between quarrelling parties and for using its coercive powers to breach citizens right and/or promote illegalities and oppressions unfortunately, despite all the disclosed cases on this issue, the problem persists and the unholy alliance between aggrieved contractor/creditors with the police remains at the root of many fundamental right breaches in our courts”***

On this submits that it is clear that the practice or attempting to criminalize debtors is fraught with danger. And like this case at hand, the 1<sup>st</sup> Respondent through the pressure on the 3<sup>rd</sup> Respondent propelled on the 1<sup>st</sup> Respondent to criminalize the exchange of money business between the parties into a criminal offence and the subsequent detention of the applicant in their Mabushi Police Station.

In view of the foregoing urged this court to hold that the detention of the applicant at the Mabushi Police Station for about one week amounts to the breach of his

fundamental right. Also the threat to tail the applicant if he fails to pay the debt amounts to the breach of his fundamental right and taking him around hand cuffed amounts to disrespect to the dignity of his person.

I have carefully gone through the affidavit deposed to by Mr. Achuenyi Christopher Chinonso especially paragraphs 5 – 16 reproduced below and the submission of the learned applicant counsel's cases cited and find there is no counter affidavit to the applicant deponent where this court will look at as to find a ground or either side of the coins there is nothing this court can do than to find for the applicant. Hence the 1<sup>st</sup> issue is hereby resolved in favour of the applicant against the Respondents. I so hold.

On the second issue as to whether the applicant is entitled to informative reliefs to forestall further violation of the applicant by the respondent?

On this it is the submission of the learned Applicant's counsel that if the respondents action are not declared unlawful and a restraining order granted against them, there will be further violation of the applicant's fundamental right more so as the 1<sup>st</sup> Respondent is still detaining the applicant, his car and the phone.

On this I will refer to the case of Oceanic Securities International Ltd V Balogun (Supra) to also resolve this issue in favour of the applicant.

On the last issue as to whether the applicant is entitled to damages for the violation of the fundamental right as well as public apology from the respondent.

On this it is the submission of the learned counsel to the applicant where he referred to the case of Shugaba Vs Minister of Internal Affairs (1992) 3 NCLR 915, referred to in Abiola Vs Abacha (Supra) at Page 454 holding 9 which stated clearly the position of the law that an applicant is entitled to declaratory and informative orders and also entitled to an award of damages and submit that, an infringement of fundamental rights of a Nigerian citizen must attract compensatory damages and in some cases ought to invite exemplary damages and the case of Than cars Vs Ikpila and Anor (2015) LPELR – 40630 (CA) and thus that the procedure for the enforcement of the fundamental human rights was specifically promulgated to protect the Nigerian's fundamental right from abuse and violation by authorities

and persons. When the breach of the right is proved, the person is entitled to compensation even if no amount is claimed.

On this submitted that, the law presumes that damages flow naturally from the injury sustained by the victims as a result of the infraction of his fundamental right. That in the instant case, the applicant in the reliefs 3 claim N300, 000,000.00 (Three hundred million naira) only for general and aggravated damages jointly and severally against the respondents.

Furthermore, referred the court to the case of Ajayi V A G Federation (1998) HRLRN 373 holding 6 at Page 388 – 389 Paragraph 4 – 6 held that in granting an amount as damages for infringement of fundamental rights the following are relevant to consider.

1. The frequency of the type of violation in recent time.
2. The continually depreciating value of the naira.
3. The status of the applicant.
4. The underserved embarrassment mated to the applicant including pecuniary loses and
5. The conduct of the parties generally and particularly.

On this it is the submission of the learned counsel to the applicant that reference were made to the facts and antecedents of this case as shown in the processes filed by the applicant particularly the reliefs sought as clearly stated in the requisite statement as well as the affidavit in support and also frequency of this act by the Nigerian Police.

I have carefully perused all the arguments in respect of the reliefs sought herein, the affidavit of the applicant especially paragraph 14 Reproduced below.

***“The 3<sup>rd</sup> Respondent then brought some police men to my house in Suleja Niger State and arrested me, the police collected the key to my Rav 4 Toyota Car with Registration Number: BW AR185TOL Samsung fold 5Cresent my house. The police then hand cuffed me from Suleja to Wuse Zone 4 and took me round our business place in Zone 4 Wuse, the entire people including my colleagues and customers were looking at me as a thief. Thereafter the police put***

*me in the cell for over one week and refused to grant me access to my lawyer. Also the police refused to charge the matter to court contending that they are still investigating”.*

Based on the foregoing paragraph of the affidavit hold that, the applicant is entitled to damages and public apology.

In the totality of the submission of the learned applicant’s counsel, cases cited I am of the view that the applicant has indeed justified His claims against the respondent.

In view of the foregoing, I hold that the applicant’s right to life, personal liberty and respect for the dignity of his person, in all forms of the reliefs sought in the statement/accompanying this application requires to be granted. Hence reliefs 1 and 2 is hereby granted and i award of the sum of N5, 000,000.00 (Five million naira) only as damages jointly against the respondents.

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**Hon Justice A.Y. Shafa**

Appearance:

- 1. S. M. Attah for the Applicant.**