

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT NYANYA- ABUJA

THIS TUESDAY THE 14TH DAY OF NOVEMBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/2379/2023

BETWEEN:

MR. CHINEDU NWEKE.....PLAINTIFF

AND

- 1. THE COMMISSIONER OF POLICE FCT COMMAND**
- 2. FIDELIS HANGEIOR (I.P.O)**
- 3. MR. JOHN ADEIZA SERIKI**

JUDGMENT

This judgment is on a motion on notice brought pursuant to order 2 rules 1, 2, 3 and 5, order 11 of the fundamental rights (Enforcement procedures) rules 2009, Sections 35, 40, 38 and 34 of the CFN 1990 (as amended), the African Charter on People and Human Right and the Inherent Jurisdiction of this Honourable court.

The motion on notice with suit no. CV/2379/2023 dated 14th day of February, 2023 and filed dated 15/02/2023. The applicant claims the following orders:

- 1. A declaration that it is the constitutional right of all citizens the applicant inclusive to freedom and liberty inclusive of the right to ownership of properties and contractual engagement in economics without let or hindrance except in accordance with law, rules of law, the extant constitution of the Fed Rep of Nigeria and the African Charter on Peoples an Human right.**
- 2. A declaration that the 1st and 2nd Respondents are not debt collectors or in any way a court of law to adjudicate on issues civil in nature**

and totally devoid of criminality concerning civil transactions between the applicant and the 3rd Respondent.

3. An order perpetual of injunction restraining/prohibiting the 1st and 2nd Respondents and alleged agents from further inviting, arresting, detaining, interfering or in any way however whatsoever restrict, limit or abridge the fundamental rights of the applicant with regard to all matters/issues bothering on civil transactions between the applicant and the 3rd respondent.
4. An order directing the 3rd Respondent to approach any competent civil court of law for ventilating his grievances and seek redress for all matters/issues or issues bothering on civil transaction between him and the applicant.
5. N10, 000,000.00 (Ten million naira) only as compensatory exemplary damages payable to the applicant by respondents jointly and severally for the breach of his fundamental human rights.
6. The sum of N500, 000.00 (Five hundred thousand naira) only as cost of this suit payable to the applicant by the 3rd respondent jointly and severally.

Attached to the motion on notice are statement in support of application for fundamental right, affidavit in support of motion on notice deposed to by one Mr. ChineduNweke of Plot 36 Jikwoyi, opposite Jukwoyi Phase 2 junction FCT, Abuja of 3 paragraphs and annexed to the affidavit are the following exhibits.

1. ECF 1 Proof of ownership to the land
2. ECF 2 Bank statement.

And the applicant's written address in support of motion on notice of 14 pages, wherein the written address the applicant's counsel formulated a sole issue for determination to wit.

“Whether the respondents can arrest/detain or threaten to arrest/detain, harass/intimidate and generally infringe, restrict limit, a bridge the applicant's fundamental right to liberty and human dignity in breach of their fundamental right/rights enshrined in the CFN and the African Charter on Human and peoples right on matter civil in nature as bothering on tile of land?”

Upon the receipt of the suit, the registrar of the court caused service on the respondents by serving all the processes on all the respondents. Upon service, the 3rd respondent filed the 3rd Respondent's counter affidavit in opposition to the originating motion on notice for the enforcement of fundamental rights dated 2nd day of February, 2023. The said counter was deposed to by one Mr. John Adeiza Sariki of No. 27 Kpadama 1, Asokoro Extension FCT Abuja of 25 paragraphs. Attached to the counter is a written address in support of the counter affidavit in opposition to the originating motion on notice of 6 pages wherein the counsel formulated a sole issue for determination to wit:

“Whether the 3rd respondent has right to report the conduct of the applicant to the police or reporting the conduct of the applicant to police constituted breach of fundamental rights of the applicant?”

Attached to the written address is an annexure marked as follows:

- I. **Exh A – land agreement from John Danladi to John Sarki A measuring 30 by 30.**
- II. **Exh B – Eco bank postdated cheque dated 29/07/2022 for the sum of Two million naira only (N2,000,000.00)**
- III. **Exh C – Eco bank second postdated cheque dated 31/08/2022 for the sum of Two million naira only.**
- IV. **Exh D – A land document purported to belong to the applicant but bear the name of Engr.J. O Ademola dated 31/10/2022 with plot no. 420 of about 500ssqm in Karu.**
- V. **Exh E – A custom document purported to be car documents of the Toyota Avensis dropped by the applicant.**
- VI. **Exh F – Petition Address of the C. O. P FCT Command dated 12/11/2022.**
- VII. **Exh G – The whatsapp chat between the applicant and the 3rd respondent.**
- VIII. **Exh H – The picture of the said property in dispute.**
- IX. **Exh I – Writ of summons in a suit no. CV/2347/2023 against the 3rd respondent dated 14/02/2023 and filed on the same date.**

The applicant's counsel filed a motion exparte for substituted service to be issued and served on the 2nd respondent together with the originating processes, hearing notice and other processes through the legal unit of the office of the

C.O.P FCT Command FCT the motion dated 25th day of May, 2023, moved on the 30/05/2023. The order sought therein was granted.

The applicant filed a motion on notice dated the 4th September, 2023 for an order of this Hon. Court extending time within which to file the applicant's reply to the 3rd respondent counter affidavit, the motion with motion no. M/13539/2023, accompanying the said motion is the applicant's reply to the 3rd Respondent's counter affidavit dated 30th April, 2023 deposed to by one Mr. ChineduNweke of 5 paragraph and the applicant written address on point of law in response to respondent written address dated 2nd April, 2023.

The court then fixed for hearing a date for the 9th day of July, 2023. On this date one Ugwu Sunday A. appeared for the 3rd respondent while S. AOnyagesha appeared for the applicant, no representation from the 1st and 2nd respondent despite hearing notice served on them.

The applicant's counsel who moved his motion on notice and originating motion on notice and adopted his written address and the applicant's written address on points of law and urged the court to grant their prayers.

The 3rd respondent adopted his written address and urged the court to discountenance all the averments made by the applicant in this matter and enter judgment in favour of the 3rd respondent.

Adumbration

That the applicant filed this application before this court on the 15/02/2023 and the crux of the matter was that the applicant issued a dole cheque to the 3rd respondent in respect of his property, completed house at Asokoro extension which he exhibited before this court and therefore urged this court to discountenance all the averments made therein in the application, in support of his motion and that the court should enter judgment in favour of the 3rd respondent.

I have carefully gone through all the processes filed in this suit, the affidavit of the applicant which I will reproduce paragraph 2 C – Z below.

c) That sometime within May 2022, I was approached by the 3rd Respondent who stated that he wanted to sell his Partly Completed Two Shop Structure located at Kpaduma 1, Beside Classic Estate, AsokoroExtention, F.C.T, Abuja measuring an area of about 30 ft by 30 ft.

d) That after making necessary inquiries I found out that the said land/property Kpaduma 1, Beside Classic Estate, Asokoro Extension, F.C.T, Abuja measuring an area of about 30 ft by 30 ft in which the uncompleted two shops structure was located was a communal/customary land under the federal capital territory administered by the district head in that area

e) That on inquiry from the 3rd Respondent as to his proof of ownership to the said land, the Defendant produced a Land Agreement between him and the former customary owner of the land dated 18th (1n) of August 2016 The Land Agreement between the 3rd Respondent and the former customary owner of the land dated 18th day of August 2016 is herein attached as EXHIBIT ECE.1.

f) That on inquiry to confirm ownership, the Chief of Kpaduma village, confirmed the ownership of the 3rd Respondent and gave a go ahead for I and the Defendant to transact

g) That the 3rd Respondent agreed to sell the said property to me for the sum of N9, 000,000.00 (Nine Million Naira) Only, of which both parties agreed that the said money will be paid in the sequence bellow

i. That I was to hand over my land/property to the 3rd Respondent located and known as Plot 442, Karu Village Extension li Layout, F.C.T, Abuja Valued at N3,000,000.00 (Three Million Naira) Only.

ii. That I was to hand over my car Toyota avensis to the 3rd Respondent valued at N2, 000,000.00 (Two Million Naira) Only.

iii. That I was to write two postdated cheque of N2, 000,000.00 (Two Million Naira) Only to be cashed on or before the day of August 2022 31st 31

h) That in furtherance and compliance with the above I did the following.

i. Handed over my land/property to the 3rd Respondent located and known as Plot 442, Karu Village Extension li Layout, F.C.T, Abuja Valued valued at N3,000,000.00 (Three Million Naira) Only.

ii. Handed over my car Toyota avensis to the 3rd Respondent valued at N2, 000,000.00 (Two Million Naira) Only.

iii. I wrote two postdated cheque of N2,000,000.00 (Two Million Naira) Only to be cashed on or before the 31st day of August 2022

i) That after fulfilling the above conditions placed by the 3rd Respondent, the Defendant handed over Land Agreement between the 3rd Respondent and the former customary owner of the land dated 18th of August 2016 in respect of the Partly Completed Two Shop Structure located at Kpaduma 1, Beside Classic Estate, Asokoro Extension, F.C.T, Abuja measuring an area of about 30 ft by 30 ft.

j) That after the above parties went shook hands and went our separate ways

k) That I then moved into the said property, bought materials including sand, cement, stones etc and started the conclusion of the construction on the Partly Completed Two Shop Structure located at Kpaduma 1, Beside Classic Estate, Asokoro Extension, F.C.T, Abuja measuring an area of about 30 ft by 30 ft.

l) That in early July 2022, I received a phone call from the 3rd Respondent who informed me that he is seriously ill in the hospital and in need of an operation with limited funds and cannot wait till the 31st of August to cash the postdated check with him and needed the money

m) That at the behest of the 3rd Respondent who was in the hospital and needed immediate financial assistance, I started making money transfers to the Defendant in the following trenches and date

i. The sum of N400, 000.00 (Four Hundred Thousand Naira) Only on the 21st Day of July 2022

ii. The sum of N700, 000.00 (Seven Hundred Thousand Naira) Only on the 27th Day of July 2022

iii. The sum of N500, 000.00 (Five Hundred Thousand Naira) Only on the 3rd Day of August 2022

iv. The sum of N400, 000.00 (Four Hundred Thousand Naira) only on the 9th Day of August 2022

v. The sum of N100, 000.00 (One Hundred Thousand Naira) only on the 3rd Day of August 2022

The statement of account evidencing the above payments is herein attached as EXHIBIT ECE.2.

- n) That I further made cash payment to the tune of N250, 000.00 (Two Hundred and Fifty Thousand Naira) Only.
- o) That the total money I have paid the 3rd Respondent out of the N4, 000,000.00 (Four Million Naira) Only to be paid to the Defendant by the two postdated cheque of N2, 000,000.00 (Two Million Naira) Only to be cashed on or before the 31st day of August 2022 is the total sum of N2, 350,000.00 (Two Million, Three Hundred and Fifty Thousand Naira).
- p) That at that stage, the balance payment owed to the 3rd Respondent was the sum of N1, 650,000.00 (One Million, Six Hundred and Fifty Thousand Naira).
- q) That I then asked the 3rd Respondent who has then been discharged from the hospital for the two postdated cheque of N2,000,000.00 (Two Million Naira) Only to be cashed on or before the 31st day of August 2022 as he has paid more than 50% of the total of N4,000,000.00 (Four Million Naira) Only to be paid on or before the 31st day of August 2022 but the 3rd Respondent refused which led me to withhold further payments.
- r) That to my utter amazement and shock the 3rd Respondent went to cash the said cheque which bounced when I instructed my bank not to honor same.
- s) That after this the 3rd Respondent took some persons to the said property trespassed therein and stopped the workers working on the site
- t) That there are also rumors going around that the Defendant is taking steps to resale the Partly Completed Two Shop Structure located at Kpaduma 1, Beside Classic Estate, Asokoro Extension, F.C.T. Abuja measuring an area of about 30 ft by 30 ft to a new buyer at a higher price.
- u) That on hearing this rumors, I called him and instructed him not to come to the land again as we have already concluded the transaction and I was just owing him some remaining balance.
- v) That after last month, the 3rd Respondent started making unending threats to recover the land from me and even use their closeness with the security apparatus and agencies of the country including the 2nd

Respondents to recover the said land document 1st and 2nd respondent to recover the said land document.

w) That my fears was confirmed when I received a call from the 2nd Respondent, who claimed to be an officer of the 1st Respondent and that I should report to their office immediately.

x) That the intention of the 3rd Respondent is to use the 1st and 2nd Respondents to subdue and collect my Money and land from me

y) That I know as of fact that the 1st and 2nd Respondent are not court of law to mitigate between parties in both civil matters and matters.

z) That I know of fact that the function of the 1st and 2nd Respondent criminal in nature and dose no involve Civil transaction.

And the issue formulated for determination by both the applicant counsel and that of the respondents counsel which issues are reproduced here under.

- 1. Whether the respondent can arrest/detain or threaten to arrest/detain, harass, intimidate and generally infringe, restrict, limit, a bridge the applicant's fundamental rights to liberty and human dignity in breach of their fundamental right/rights enshrined in the constitution of the Federal Republic of Nigeria and the African Charter on Human and Peoples Right in a matter civil in nature and bothering on title to land?**

On the other side the 3rd respondent also formulated a lone issue distilled for determination thus:

“Whether the 3rd respondent has right to report the conduct of the applicant to the police or reporting the conduct of the applicant to police constituted breach of fundamental rights of the applicant”

I will adopt the issues so formulated as mine which will form the basi^s of my decision.

On the first issue it is the argument of the applicant that by virtue of Section 46 (1) of the CFN as amended and order 2 rule 1 of the 2009 rules this Honourable court has requisite and ample jurisdiction to hear this application, his submission is supported by paragraph 2 of the applicant affidavit where he

submitted that he has place sufficient material/facts before this Honourable court to assist the court as to the issue at play in this application.

Furthermore submitted that can the respondent be allowed under our extant laws to carry on with the crass impunity manifest in paragraph 2 having regard to the constitution of the Federal Republic of Nigeria 1999 (as amended), the African Charter on Human and Peoples right (Ratification and Enforcement Act) and the freedom of information Act 2011? On this submitted that the answer is no.

Furthermore that the African Charter and the freedom of information Act, have secured the fundamental rights of the applicant to be free from any impediment to his fundamental right. See George Vs FRN (2014) ALL FWLR (Pt 718) 879. The Supreme court reaffirmed the internal principles enunciated in Asho Vs Fagbemi (1961) 2 ALL NLR. 400

“That no man should be suffered or put at pain for an offence not known in law”

The applicant’s counsel went further to state that, it is the act of the respondents that has made the applicant to approach this Honourable court to seek for redress as there is a great belief that there is a groundswell of plan by the respondents to embarrass, intimidate, harass, arrest or detain the applicant. The counsel further submitted that, the duty of this Honourable court in enforcing the fundamental right of the applicant has been clearly enunciated. See Federal Civil Service Commission Vs Noye (1998) 2 NWLR (Pt. 16) 650, 702 D – F the Supreme court Per Oputa JSC (as he then was) held as follows:

“It is the duty of court to safe guard the rights and liberties of individual and to protect him from any abuse or misuse of power when the court is described as the last hope of a common man, had implies that it is the duty of judiciary (a duty which it owes to the course of justice) to ensure that any encroachment on the right of the individual, any encroachment action is justified by law. In the equal combat between those who possesses power and those on whom such power bears, the court primary duty is to protective from any abuse of power”

The learned applicant’s counsel further submitted that, having regard to all that have been sated above to bring to focus the duty cast upon this court in this application and enunciated in the premise to the 2009 rules.

The counsel therefore prayed this court to give effect to the above adumbration as contained in the preamble.

On the side of the 3rd respondent argued in support of the issues so formulated that, in determining the liability of the 3rd respondent recourse should be had to Section 4 (a) (b) (c) (e) (f) (g) (h) of the police Act, 2020 and the parties affidavit before the court.

That a perusal of the applicant's affidavit in support of the originating motion on notice especially paragraph C, F. G. I (ii), H (i) (ii), I, O, P, S, T, U, V, X, Y, Z shows that the applicant has speculated and made false reposition above paragraph F of his reposition about the 3rd respondent particularly the Chief of Kpaduma who is late for a very long time and a new one has been installed even before the document was deceitfully taken away by the applicant. The 3rd defendant who has categorically denied all reposition with material allegation inclusive of the fabrication in the aforementioned paragraph of the application supporting affidavit. that from the said paragraph of the applicant, there is no specific wrong (steps) or action the 3rd respondent took apart from reporting the questionable conduct of the applicant to the police and noting has been said or placed before this court by the applicant to substantiate the bogus speculation deposition. See UBA PlcVs Astra Boklers Ltd (2010) 5 NWLR (Pt. 1186) at ratio 13, the court of appeal held thus:

“When a case is tried and on affidavit evidence, the facts or deposition in the affidavit have to be proved like averments in pleadings”.

Furthermore, that the 3rd respondent has denied the deposition of the applicant and that the burden is on the applicant to address evidence to substantiate his allegation claims on the 3rd respondent or 1st and 2nd respondent acted in his affidavit that consequently breached his right as alleged. On this submitted that the question of infringement of fundamental rights is largely a question of facts and not mere allegations of assertion that cannot be substantiated and proved with material evidence particularly where the opposing party has vehemently denied the allegation. See African Continental Bank PlcVsEmostrade Ltd (2002) 8 NWLR (Pt. 770) 500 at 515 Uwaifo JSC said:

“It is a fundamental procedural requirement that when issues are joined or the pleadings evidence is needed a prove then it is the person upon whom the burden of establishing that issue lies That must adduce satisfactory evidence. Where there is no

such evidence, the issue must be resolved against him and the consequences of that are as evident. Of the case presented as to the materiality of that issue. The nature of the evidence that will suffice as to whether it is documentary or oral may will depend on the issue and requirement of the law”.

Also in *Nirokem Vs CBNS Ltd* (2002) 10 NWLR (Pt 774) Page 95 at 99 ratio 4. The court held that.

“For an applicant alleging infringement of his fundamental right to he must place before the court vital evidence regarding the infringement or breach of such rights”.

But where that has not be done for scanty evidence was not in by the applicant the trial court can strike out such application for being devoid of merit.

That in the instant case, the trial court was right in holding that applicant failed to provide sufficient facts in his supporting affidavit to establish that his fundamental rights was infringed.

That assuming without conceding that the 3rd respondent made a complaint to the 1st and 3rd respondent on the issuance of dole cheque by the applicant on criminal breach of trust, obtaining under false pretence and cheating and dropped documents of the properties together with two dole cheque to the down A property worth (N10,000,000.0) Ten million naira only and collected the original agreement of the two shops built by defendant and absconded and when the 3rd respondent reported to the 1st and 3rd respondent and an invitation was extended to him and he failed, refused and neglected to respect the invitation, the 3rd respondent cannot be held liable where there is a failure and/or neglect on the part of the 1st, 2nd and 3rd respondent to comply a properly activate the provision of Section 34 and 35 of the CFN 1990 (as amended) and Section 8 (2) of the ACJA, 2015.

Furthermore, that the activation of the said section is the excessive pressure of the 1st and 2nd respondents consequently where there is neglect or failure to comply with the aforesaid section, the 3rd respondent cannot be held liable for such none compliance or default.

In conclusion submit that every citizen of this country has a statutory responsibility and right to report a suspected criminal offence to the police for investigation Section 4 (a) (b) (c) (d) (e) (f) (g) (h) and (i) of the police Act,

2020 empower the 1st and 2nd respondents to invite the applicant for investigation, the invitation which he turned down and rush to the court to obstruct the course of justice.

Without knowing that the court is a court of justice. See *Afri Bank NigPlcVsOnyima* (2004) 2 NWLR (Pt. 855) P. 654, that even when a citizen of this country reasonable believes that a crime is about to be committed has a right to report to the police.

In conclusion submit that in the absence of any material evidence to substantiate the bogus and empty Deposition of the applicant in his supporting affidavit to the originating summons against the 3rd respondent urge the court to dismiss the applicant's suit against the 3rd respondent with substantial cost for being grossly misconceived and founded on sentimental fabrication.

I have carefully read the originating court processes filed by the applicant together with the written address and also considered the oral application by learned counsel to the applicant and it seems to me that the issue to be resolved from the material facts before the court falls within a very narrow legal compass and that is whether the facts and material before the court the applicant has credible established that his fundamental human rights were violated by the respondents to entitle him to the reliefs sought. So also applied to the learned counsel to the 3rd respondent's submission and argument therefrom.

The lone issue raised by the applicant and that of the 3rd respondent can be conveniently accommodated under the umbrella of the lone issue raised by court as it has with clarity brought out the crux of the contest subject of the extent inquiry. It is on the basis of the lone issue that I will now proceed to consider the evidence and submission of counsels.

Now it is correct and submitted by the applicant's counsel that the applicant approached this court upon the impending threat to arrest, intimidate, harass or detain her on spurious allegation that is totally devoid of any criminality and the likelihood of the 1st and 2nd respondents to contravene of his fundamental right at the instance of the 3rd respondent on matters that are civil in nature regarding civil transaction between the applicant and the 3rd respondent.

Now, I had at the beginning spelt out the reliefs of applicant in his statement accompanying the application and they clearly come within the purview of the fundamental rights under chapter IV of the 1999 CFR. The burden therefore was on the applicant alleging the infringement of his fundamental rights to place

before the court cogent and credible facts or evidence showing the breach or infringement to put the court in a clear position to grant the reliefs sought. See *Fajemirokun Vs C.B.C. I Nig Ltd* (1999) 10 NWLR (Pt. 774) 95.

The facts leading to this application as stated by the applicant on simple and straightforward. I will be brief and summarize the essence of what is encapsulated. From the affidavit, the applicant is a businesswoman where in the year 2022 she was approached by the 3rd respondent who stated he wanted to sell his partly completed two shop structure located at Kpadoma I Besive classic Estate Asokoro Extension FCT, Abuja measuring an area of about 30 ft by 30 ft and after necessary inquires found out the said uncompleted two shops structure was located was a communal/customary land and to proof ownership to the said land, the defendant produced a land agreement between him and the former customary owner of the land dated 18th of August, 2016. Further to that, the Chief of Kpaduma village confirmed the ownership of the 3rd respondent and gave a go ahead for them to transact and the 3rd respondent agreed to sell the said property for the sum of N9,000,000.00 (Nine million naira) only for which both parties agreed and payment was made instalmentally as follows:

- 1. The applicant hands over her land/property to the 3rd respondent located and known as plot 442, Karu village Extension II layout FCT Abuja valued of N3,000,000.00 (Three million naira) only.**
- 2. The applicant to hand over his car Toyota Avensis to the 3rd respondent valued at N2million.**
- 3. The applicant to write two postdated cheque of N2million only to be cashed on or before the 31st day of August, 2022.**

In furtherance and compliance with the above, the applicant did exactly as stated above. After fulfilling the above conditions, the 3rd respondent (the defendant) handed over the land agreement between the 3rd respondent and the former customary owner of the land dated 18th of August, 2016 in respect of the partly completed two shop structure located at Kpadoma I beside Classic Estate Asokoro extension FCT Abuja measuring an area of about 30ft by 30ft. after the handing over, the applicant then moved into the said property, bought materials and started conclusion of the construction on the partly completed shop 1 that in early July, 2022 received a call from the 3rd respondent who informed the applicant that he is seriously ill and in the hospital and needed money for an operation and cannot wait till the 31st August to cash the postdated

cheque at that point she made the following transfer in trenches to the 3rd respondent.

- 1. N4,000,000.00 on the 21st July, 2022**
- 2. N700,000.00 on the 27th July, 2022**
- 3. N500,000.00 on the 3rd August, 2022**
- 4. N400,000.00 on the 9th August, 2022**
- 5. N100,000.00 on the 3rd August, 2022**

Attached exhibits ECE2 and further N250, 000.00 case. The total money paid the 3rd respondent out of the N4million by the two postdated cheque of N2million to be cashed on or before the 31st day of August, 2022 was the sum of N2, 350,000.00 leaving the balance payment owed to the 3rd respondent N1, 650,000.00.

On being discharged from the hospital, the applicant requested for the two postdated cheque but the 3rd respondent refused which led the applicant to withhold further payments. The applicant further stated that he was shocked when the 3rd respondent went to cash the said cheque which bounced when the applicant instructed the bank not to name same. After this the 3rd respondent took some persons to the said property trespassed therein and stopped the workers working on the site.

That there are rumors that the defendant was taking steps to resell that partly completed two shop structure to a new buyer at a higher price. On hearing this called him and instructed him not to come to the land as they have already concluded the transaction and was just owing balance of the money.

After this, the 3rd respondent threatened to recover the land from the applicant and used the closeness with the security apparatus and agencies including the 1st and 2nd respondent to recover the said land document. Based on this the applicant received a call from the 2nd respondent who claimed to be the officer of the 1st respondent that she should report to their office. That the intention of the 3rd respondent is to use the 1st and 2nd respondent to siphon and collect her money and land from him. That he knows as a fact that the 1st and 2nd respondents are not court of law to mitigate between parties in both civil matter and also know as a fact that the function of the 1st and 2nd respondents criminal in nature and does not involve civil transaction.

From the above what I can deduce is that the transaction between the applicant and the 3rd respondent is civil in nature. Secondly, it is clear from the affidavit

that the applicant was invited by the 1st and 2nd respondents but fail to honour their invitation. these are the crux of this application.

On this the applicant in his reply to 3rd respondent's counter affidavit submitted that the existence of a contract between the applicant and the 3rd respondent is not in doubt and the 1st and 2nd respondent is not taking steps with regards to the 3rd Respondent's petition when there exists a clear contract between them which ought to be adjudicated by a court of competent jurisdiction is a step away from their function and infringement of the fundamental rights of the applicant.

On this I wish to state that, the mere invitation of a person by the police without more is within the powers of the police and except it can be shown that the police misused their powers, no court will interfere with police action in the performance of their constitutional duties and responsibilities to investigate crime thus, the power of the i.e. The 1st and 2nd respondents, in the instant suit to investigate crime and to invite persons to be interviewed, questioned simpliciter cannot amount to be breach of fundamental rights of the applicant of such person.

See *Akanbi V C.O.P Kwara State* (2018) LPELR – 44049, *Kalo V Dawari* (2018) LPELR – 44618.

Thus, courts are quite hesitant in preventing the police from performing their lawful and constitutional rules, unless in good and exceptional reasons. The powers of the police with respect to the investigation of criminal allegation are provided for in Section 214 of the Police Act and these powers have been interpreted and pronounced upon in the following decision of court. *Anambra State V UBA* (2005) 33 WRN 191, *Ihua – Maduenyi V HM Eze Robinson* (2019) LPELR – 47252 (CA).

In the light of this can it be said that the applicant's right has been breached or is being breached by the 1st and 2nd respondents in this instant suit?

On this it is the submission of the 3rd respondent that he made a complain to the 1st and 2nd respondent on the issuance of a dole cheque by the applicant on criminal breach of trust sustained under false pretence and cheating and dropping document of two properties together with two dole cheques to the down a property worth (N10million) and collected the original agreement of the two shops built by the defendant and absconded and when the 3rd respondent reported to the 1st and 2nd respondent and on invitation was extended to him and he failed, refused and neglect to respect the invitation.

As such the 3rd respondent cannot be held liable where there is a failure and/or neglect on the part of the 1st, 2nd and 3rd respondents to comply or properly carry out the provisions of Section 34 and 35 of the CFN and Section 8 (2) of the ACJA, 2015 as the activation of the laid sections is the exclusive preserve of the 1st and 2nd respondents.

Consequently where there is neglect or failure to comply with the aforesaid section, the 3rd respondent cannot be held liable for such noncompliance or default.

In conclusion we submit that every citizen of this country has a statutory responsibility and right to report a suspected criminal offence to the police for investigation. Section 4 (a) (b) (c) (d) (e) (f) (g) (h) and (1) of the Police Act, 2020 empowered the 1st and 2nd respondents to invite the applicant for investigation, the invitation which the applicant turned down and rush to court to obstruct the course of justice without knowing that the court is a court of justice.

From the above it is clear that the basis of the invitation by the 1st and 2nd respondents was to answer questions with respect to an investigation relating to an alleged criminal breach of trust, obtaining under false pretence and cheating and stop document of two properties together with two dud cheques to the down property worth (N10million). This the applicant failed to honor the said invitation by the 1st and 2nd respondents. By the act of the applicant for failure to honor the invitation by the 1st and 2nd respondents amount to a breach of the applicant's fundamental right. I answer the above in affirmative as the failure to honor the 1st and 2nd respondents does not amount to a breach of the applicant fundamental right as envision therefore hold that the argument canvassed therein by the applicant's counsel that the 1st and 2nd respondents have breached the applicant's fundamental human right by the act of the 3rd respondent cannot hold.

On the second issue as to whether the 1st and 2nd respondents can dive into a civil transaction. According to the ACJA, 2015, police officers do not have a role to play in civil disputes. Section 8 (2) of ACJA states that, a suspect shall not be arrested merely on civil wrong or breach of contract. In *Nwadiugwu V KD & Ors* (2019) LPELR – 26037 (CA) the Appeal court maintained that the police are neither debt collectors nor arbitrators and Section 24 of the Police Act, 2004 does not list settlement of disputes or collection of debts among the duties of the police. The court further held that by interfering in civil matters,

police muzzled the rights and freedom of Nigerian even where cases are clearly outside their jurisdiction, power or corridors. But in the instant suit, is a different scenario all together, it is the failure of the applicant to honor the 3rd respondent petition to the 1st and 2nd respondents that was the crux of the matter, hence hold that the failure to honor the invitation does not amount to the 1st and 2nd respondent dwelling into civil matter as the contained of the petition is clear I order.

In view of the foregoing i hold that the entire claim of the applicant cannot be granted by this court as there is no breach of the applicant's fundamental right by the 1st and 2nd respondents; hence all the reliefs sought by the applicant are not grantable by this court. Hence this case is hereby dismissed.

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Hon Justice A. Y. Shafa

Appearance:

1. N. C. Azubuike for the claimant.