

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI-ABUJA

HIS LORDSHIP: HON. JUSTICE M.S. IDRIS

COURT NUMBER: 28

DATE: 7<sup>th</sup> December, 2023

FCT/HC/CV/6080/2023

BETWEEN:

- |                              |   |            |
|------------------------------|---|------------|
| 1. MR. RAYMOND AKPORIAYE     | } | APPLICANTS |
| 2. MRS. SUSAN AKON AKPORIAYE |   |            |

AND

- |                               |   |             |
|-------------------------------|---|-------------|
| 1. DR. ADELANA OLAMILEKAN     | } | RESPONDENTS |
| 2. DSP OKIGBO                 |   |             |
| 3. THE COMMISSIONER OF POLICE |   |             |
| 4. FCT COMMAND                |   |             |

JUDGMENT

This motion was filed by the Applicants on the 1<sup>st</sup> day of May 2023, vide a motion on notice. The following reliefs were sought by the Applicants:-

1. A declaration of this Honourable Court that the threat of arrest and detention of the Applicants by the Respondents are illegal, unlawful, un-constitutional and a gross violation of the Applicants fundamental rights to personal liberty and freedom of movement guaranteed and protected by section 35 (1) and 41(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Article 6, of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.
2. A declaration of this Honourable Court that the whole circumstances of the case concerning the civil contract between Topaz Travels & Tours Limited and the 1<sup>st</sup> Respondent is a civil matter which the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have no

jurisdiction to enforce, hence the involvement of the 2<sup>nd</sup> 3<sup>rd</sup> Respondents at the instance of the 1<sup>st</sup> Respondent is unlawful.

3. A declaration of this Honourable Court that the refusal of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to inform the Applicants in writing of the facts and grounds for their arrest and threat of further arrest and detention is an abuse of the Applicants' fundamental rights to personal liberty as guaranteed and protected by section 35(3) of the 1999 Constitution of the federal Republic of Nigeria (as amended).
4. An order of this Honourable Court restraining the Respondents their agents, privies, servants or anyone acting for and on their behalf harassing, intimidating, threatening, arresting and detaining the Applicants unconstitutionally.
5. An order of this Honourable Court directing the Respondents to tender written apology to the Applicants published in two national Dailies.
6. An order of this Honourable Court directing the Respondents to severally and jointly pay the sum of N50,000,000.00 (Fifty Million Naira) only to the Applicants as compensation and damages for the violation of their fundamental rights as enshrined in the Constitution of the Federal Republic of Nigeria and in African Charter on Human and Peoples Right.
7. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances of this case.

The motion is supported by a 25-paragraph affidavit deposed to by the Applicant Mr. Raymond Akporiaye particularly paragraph 7 to 20 gave defence factual account of the whole transaction between the Applicant and the 1<sup>st</sup> Respondent.

for the avoidance of doubt the said paragraphs provides are as follows:-

7. That sometimes in late December, 2022 the 1<sup>st</sup> Respondent through his agent, Ms. Chinyere Okereke approached us for the reservation of a service apartment in London for him and for all travel Itineraries from Nigeria to London to spend Holiday from 16<sup>th</sup> December, 2022 to 16<sup>th</sup> January, 2023 at the peak of the season.
8. That the 1 Respondent was given the following options as it was a rush period in UK for upland service apartment at Gloucester Boutique, Pick the Place Lancaster and The Notting Hill Apartment around the Oxford Street area London. A Dalston

Apartment North East of central London was also forwarded as an option for the going rate of The Notting Hill Apartment when the Notting Hill Apartment

9. was no longer available, as it was rush period in December. That these options were forwarded to the 1<sup>st</sup> Respondent on 12<sup>th</sup> December, 2022 containing varying degrees of price differentia in the range of: a. One Thousand Six Hundred and Thirty Dollars (USD 1,620) per night. b. C. One Thousand Two Hundred Dollars (USD 1,200) per night and Four Hundred and Fifty Dollars (USD450) per night.

10. That the 1<sup>st</sup> Respondent elected for the least apartment of Four Hundred and Fifty Dollars (USD450) after our Client liaise with their United Kingdom Partner, Dalston Collection of Astoria Court, 73 Middleton Road, E8.4DW London and the following conditions were forwarded to the 1<sup>st</sup> Respondent.

a. Arrival will be on the 16<sup>th</sup> December, 2022

b. Two bedroom apartment.

c. Meal should be self catering.

d. Member of guest should be two adults, 4 children.

e. The payment shall be non-refundable after confirmation.

f. Keys are to be collected before reaching the property.

11. That in addition to the above, virtual access copy of the apartment was transmitted to the 1 Respondent for acceptance as no book on hold was allowed during the peak period of holiday in December In UK. Find attached the structures both the outside and inside at flat 2, Astoria Court, 73 Middleton Road, E84DW, UK as Exhibit Topaz1.12.

12 That when the 1 Respondent spouse, AdelanaOlamilekan took possession of the structure in London with her children on holiday, she complained the 2 bedroom was too small for her family and needed another place on the Friday 16<sup>th</sup> December, 2022 or that the money be refunded to her immediately.

13. That I was surprised that she could say thing against a verified partner and we requested her to take snap shots of the place whether is different from the one the 1<sup>st</sup> Respondent paid for under the terms and conditions agreed.

14. That she sent the screen shot of the place and also a video which shows there was no different in the whole house given to them. Find attached the photo she sent to us to show that the house is different from that which was given to her husband. The pictures were printed from our WhatsApp and are marked as Exhibit Topaz2.

15 That the payments are hereby attached which contained all the payments and agreed terms of offer that there will be no refund of money after payment. It is hereby attached and marked as Exhibit Topaz3.

16. That the 1 Respondent was induced by the spouse to fundamentally breach the terms as she insisted that she will vacate the place after spending a night on the 16<sup>th</sup> September, 2022 in the place but I tried if she could be assuaged by a replacement at the Ongar House, Baxter Road. N1 3ND but she left.

17. That we pointed to the 1<sup>st</sup> Respondent that what her spouse sent down is the same place that was agreed and paid for but he commences threat to arrest and delete the company from existence and detain us until the money is paid by refund to him.

18. That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents invited us to come to their place for the refund of the money to them on behalf of the 1<sup>st</sup> Respondent.

19. That the 2<sup>nd</sup> Respondent Incessant demands for the money on phone and threat to arrest and detain them despite knowing that we did not receive money but the money was transferred to the partners in London by the 1 Respondent.

20. That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents gave me a date to produce the 2<sup>nd</sup> Applicant who is outside the country for a program on the 18<sup>th</sup> May, 2023 or see their true colours by detaining us.

The motion on notice was further supported by various exhibits detailing the transaction between the Applicant and the 1<sup>st</sup> Respondent. The Application was further supported by a written address wherein the Applicant raise the following issue for determination :-

(A) Whether the Applicants fundamental right to personal liberty and freedom of movement was violated by the Respondent”

From the facts and circumstances of this case the Respondents has flagrantly violated the fundamental right to liberty and freedom of movement of the Applicant. See the case of *RANSOM KUTI& ORS VS A.G FEDERATION (1985)2NWLR (PT.6) 211; (1985)6 SC 245 At 276 -277, E.F.CC VS REINL (2020)9 NWLR (PT 1730)page 489 at 511-512 paragraph H-B* and the Court of Appeal of *STATMAK VS C.OP (2020)9 NWLR (pt 1728)176, EDA VS C.O.P BENDEL STATE (1982) 3 NCLR page 219, EMERE VS ANACHUNA (2018)LPELR 45065, IBE VS AJISE (2020)10 NWLR (pt 1731) page 1 at page 9 ratio 7.*

### ISSUE THREE

Whether the Applicants are entitled to the reliefs sought by them Counsel referred the Court to section 46 (1) and (2) of the constitution which give this Court the full jurisdiction and power to grant the reliefs sought by the Applicant see also section 35 (6) of the 1999 Constitution and the case of *MINISTER OF INTERNAL AFFAIRS VS SHUGABAABDULRAHAMAN (1982) 3 NCLR 915 AND THE CASE OF ABIOLA AND ABACHA*

Finally, Counsel urged the Court to resolve all issues in favour of the Applicants

On the otherhand the 1<sup>st</sup> Respondent AdelanaOlamilekan filed a 46 paragraph counter affidavit particularly paragraph 5- 43gave factual account that led to the filing of the counter affidavit.

5. That in furtherance to the averment of the 1<sup>st</sup> Applicant in Paragraph 4 of the affidavit I state that I am a businessman and the Managing Director of Zenith Carex International Limited a company incorporated under the Laws of the Federal Republic of Nigeria with corporate Headquarters at No 10 Langtang Street Area 3 Garki Abuja.

6. That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are officers of the Nigeria Police Force in Federal Capital Territory Command as deposed by the 1 Applicant in paragraphs 5 and 6 of the affidavit.

7. That contrary to the 1<sup>st</sup> Applicant averment in paragraph 7 Ms Chinyere Okere is a marketing travel agent to the Applicants whose office address is also at Suite 8 Febson Mall Wuse Zone 4 Abuja who sources for clients and prospective travellers for the Applicant's company on commission basis and who in the course of her work marketed and linked the 1<sup>st</sup> Respondent to the Applicants for patronage.

8. That in response to paragraph 7 of the 1<sup>st</sup> Applicant's Affidavit I further state that on the 12<sup>th</sup> December 2022 Ms Chinyere Okere approached the Applicants to purchase Airline Tickets for the 1<sup>st</sup> Respondent and 5 other members of his family from Nigeria to the United Kingdom on a yuletide holiday vacation and the sum Twenty Four Million Seven Hundred and Ninety Eight thousand Five Hundred and Forty two Naira (N24,[798,542.00](#)) was paid to the Applicants for the British Airway ticket and in addition to this services the Applicants were tasked by the Applicant through the agent Ms Okere Chinyere to reserve for the 1<sup>st</sup> Respondent and his family specifically a 3 bedroom furnished apartment in Oxford Street London close to the Heathrow Airport from 16<sup>th</sup> December, 2022 to 16<sup>th</sup> January, 2023

9. That in furtherance to the 1<sup>st</sup> Applicant's deposition in paragraph 8 of the affidavit in support of the origination motion on notice I aver that the applicants forwarded 3 options of tastefully furnished apartments namely the Gloucester Boutique, Pick The Place Lancaster and the Notting Hill all close to Oxford street in from which I chose the Apartment in Notting Hill in London and I paid the sum of Thirteen Thousand Nine Hundred and Fifty Dollar \$13,[950.00](#) USD through one Mr Mbaya into the dollar GTB Account number of the Applicant's company Topaz Travel and Tours Limited GTB ACC NO [0024471850](#) at the rate of \$[450](#) per day for 31 days. The Photographs of the apartment in Notting hill and the receipts of payment for the air tickets and the accommodation are hereby attached and marked EXHIBIT A1-A7

10. That contrary to the 1<sup>st</sup> Applicant averment in paragraph 9 the option I selected and paid for was a tastefully furnished apartment at the Notting Hill Oxford Street In London which met my qualification and description at the rate of \$[450](#) and it was not as if I opted for the least or cheap one because I could have opted for anyone of the options if they met my description

11. That immediately the Applicant received the money in the sum Thirteen Thousand Nine Hundred and Fifty Dollars (\$13,950.00) from Mr Mbaya my BureauDe Change Agent they quickly sent me a message that the option of tastefully furnished service apartment in Notting Hill Oxford Street in London which the Applicants told me was reserved for me and which I paid for was no longer available.

12. That contrary to the averment in paragraph 10 of the Affidavit in support of the originating motion on notice the 1 Applicants apologised to me and forwarded another option of a 3bedroom apartment in Hammersmith also around Oxford Street and close to the Airport which specifically met my description only for them to send another message that the Hammersmith apartment was no longer available.. The 3 bedroom apartment in Hammersmith London forwarded to me is hereby attached and marked EXHIBIT 1 to B5.

13. That the Applicants told me they have made another arrangement for my family at Dariston Middleton Road London after they have received my money and when my family arrived in London on the 16<sup>th</sup> December [2022](#) they were driven to a very rustic, substandard old fashioned and dusty 2 bedroom service apartment in Dalston Astoria Court Middleton Road London a journey of 24miles away from the Heathrow Airport in London.. The 2 bedroom apartment at Darlston Middleton Road London is hereby attached and marked EXHIBIT C1 to C3

14. That while my family were going to the apartment in Dariston from the Heathrow Airport in London the driver asked if they knew how far the place was before they opted for the apartment and when my family finally got there in the night it was a disappointment as it dawned on me that I have been scammed by the Applicants because the Applicant collected money from me for a 3 bedroom apartment and if the 3 bedroom apartment was no longer available as they said immediately they received my money at least they should have given us an alternative that matched up and proportional to the money that I paid and not a substandard 2 bedroom in a remote village called Darkston 6 kilometres away from the airport.

15. That my family comprising my wife and 4 children could not even unpack their luggage because the whole house was dusty, emitting unpleasant odours because

it was apparent that it had not been occupied for many years so I asked my wife to make a video coverage of the apartment and send to me and which I immediately forwarded to the 1 Applicant to see and the only thing the Applicant did was to apologise blaming it on flimsy rush and peak period. The whatsapp conversation between me and 1<sup>st</sup> Applicant containing the apology to me by the 1 Applicant is hereby attached and marked EXHIBIT D

16. That contrary to the averment in paragraph 11 the Applicant did not forward the pictures of the 2 bedroom apartment in Dariston to me and did not furnish me with the detail of the condition of the apartment the only thing the applicants said since they told me that the initial apartment which I paid for was no longer available was that they have made another arrangement of equal standard for my family only for my family to get to the apartment and be confronted with an eye sore.

17. That contrary to the averment in Paragraph 12 my wife who was surprised and annoyed with the quality of the apartment in Dalston which was too small and uncomfortable advised that the Applicants either relocate them to a better apartment or we contact our agent in London for a better accommodation but when the Applicants are not forthcoming I found and contacted my London agent Mr Joe's and instructed him to provide a 3 bedroom furnished apartment in Oxford area which he found at the Gloucester in Oxford where my family spent nights and later moved to Crawford at the rate of E371.42 pound Sterlin per night from 17<sup>th</sup> December to 15<sup>th</sup> January 2023 when I joined them, an additional cost to make my family comfortable. The Whatsapp Communication between me and the agent in London and the receipt of payment for the additional cost far less to what I paid to the Applicants are hereby attached and marked EXHIBITs 1 to E2 and E3.

18. That contrary to the averment in paragraph 15 there was no agreed term of offer stating expressly that there will be no refund to me before I paid for the apartment and there was no document place before me to sign a no refund policy because all the transaction was done while I was on transit from the United State of America to Nigeria and if there was something like that the Applicants fraudulently kept it away me knowing fully well that such offer might scare me

from paying the money for the accommodation therefore it is unprofessional .callous and fraudulent to come up with afterthought of a 'no refund policy' as an excuse to refund my money.

19. That in reaction to paragraph 16 of the Induce me to change the apartment to 1 Applicant's averment my wife did no a better one she only complained to me that the apartment they were driven to was too small, dirty and old fashioned and was not comfortable for them as they had to squeeze themselves for the only one night they spent and that they could not even get a place to buy as ordinary as water to drink as the place was a desolate lacking in basic amenities which almost led to suffocation and death of one of the children who coughed throughout the night and caused panic and that is why we had to make alternative arrangement when the Applicants abandoned us.

20. That in reaction to the 1 Applicant averment in paragraph 171 only intimidated the Applicants of the progress I made through another agent when they did not act timeously to provide an alternative for my family and also that I will demand for a refund of my money when I returned to Nigeria to avoid any legal action against them and I never threatened then in any way beyond exploring all legal means to seek justice.

21. That following this development while in England I called my solicitor Ayodeji Akande Esq of Deji Akande & co and informed him about the issues and instructed him to write a letter demanding for a refund of my money for the services the applicants failed, refused and ignored to render.

22. That on the 20<sup>th</sup> December2022 my lawyer wrote a letter of demand to the applicant's company Topaz Travel & Tours Limited for a refund of the sum of Thirteen Thousand dollars (\$13,950.00) being the total amount paid by Mr Mbaya on my behalf me into the company's GTB Dollar Account Number 0024471850 for a three bedroom apartment in Gloucester Oxford United London. The letter of demand dated 20<sup>th</sup> December, 2022 written by my lawyer to the Managing Director Topaz Travels & Tours Limited the 2<sup>nd</sup> Applicant is hereby attached and Marked EXHIBIT F

23. That the Applicants' solicitor Upper Chambers Law Firm replied my lawyer's letter of demand in a very arrogant letter dated 21 December 2022 denying that the Applicants are indebted to me and stating specifically that there will be no refund on the transaction. The letter from the Applicant's lawyer dated 21 December 2022 is hereby attached and marked EXHIBIT G

24. That I was very disappointed and sad that the applicants replied my lawyer in such an arrogant manner without any iota of regret despite the fact that the ticket I bought to the United State of America from where I concluded this transaction of London vacation and accommodation was purchased from the applicants through the Ms ChinreyeOkere and the all the Air tickets for the London trip for a family of 6 which means that the applicants cared less about my comfort and satisfaction but are more interested in ripping me off...

25. That it was obvious that the applicant deceived me into paying for the 3 bedroom apartments as requested but delivered a 2 bedroom apartment in Darlston far below the standard of what I paid for.

26. That the conduct of the Applicants is unprofessional, a criminal breach of trust and cheating in all intent and purposes for failure to deliver an alternative apartment equal to the status of what I paid for.

27. That it was suspicious to cancel the 3 bedroom apartments at in Hammersmith Oxford street blaming the unavailability on rush and peak period after receiving payment from me and cancelling the alternative ones because apparently the applicants fraudulently misrepresented the apartment which I paid for and the one they eventually delivered to me.

28. That I have bought Air tickets running into several millions of Naira purchased from the applicants and I feel that I do not deserved this kind treatment therefore I should be refunded my money with immediate effect with apologies from the applicants at least that would have ensured continuity of the patronage but the applicants never bothered about the consequences.

29. That when I returned from England I instructed my lawyer to petition the Inspector General of Police against the Applicants for criminal breach of trust, cheating conspiracy, fraudulent misrepresentation and threat to life.

30. That my lawyer petitioned the IGP in a letter dated 1 February 2023 alleging criminal breach of trust, cheating, conspiracy fraudulent misrepresentation and threat to life against the Applicants and asked specifically to investigate and treat accordingly. The petition to the IGP written by my solicitor on my behalf against the Applicants are hereby attached and marked EXHIBIT H

31. That the Inspector General of Police in a letter dated 6<sup>th</sup> February 2023 directed the Commissioner of Police FCT the 3<sup>rd</sup> Respondent in this matter to investigate the case against the Applicants. The IGP letter to the Commissioner of Police FCT is hereby attached and marked EXHIBIT 1

32. That the Commissioner of Police FCT who is the 3<sup>rd</sup> Respondent in the case directed the Anti-Fraud Unit of the FCT Police Command in Abuja to investigate the matter and treat accordingly and I was invited by the DSP Okigbo who is the 2<sup>nd</sup> Respondent in this matter to write a statement of what transpired between the Applicants and me, an invitation which I honoured.

33. That contrary to the Applicant's averment in paragraphs 18 and 19 I state that after my statement the 2<sup>nd</sup> Respondent invited the Applicants through a whatsapp message on the 26<sup>th</sup> February 2023 and only the 1 Applicant reported at the Police station and the day the 1 Applicant reported he was in the company of his lawyer Barr Daniel Obaike and he was never detained by the Police in fact he was allowed to go after he wrote his statement after which the Police asked us to come for a meeting to resolve the matter having established that the money I paid went into the GTB dollar account of the Applicants; company. The Whatsapp message of invitation to the 1<sup>st</sup> Applicant is hereby attached and marked EXHIBIT J

34. That contrary to the averment in paragraph 22 the 2<sup>nd</sup> Applicant has never one day honoured police invitation in respect of my petition and despite the fact that the police have issued several invitations to her through the 1 Applicant but the 1 Applicant deliberately shields his wife to honour police invitation and the 1 applicant that honoured the police invitation was never detained by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

35. That contrary to the 1 Applicant's averment in paragraph 20 the police organised a meeting between me, my lawyer and the Applicants and their lawyer and in the process advised that the matter be settled amicably.

36. That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents extended invitation to the 2<sup>nd</sup> Applicant through the 1<sup>st</sup> Applicant as they later found out that the 2<sup>nd</sup> Applicant did not travel out of the country contrary to what the 1<sup>st</sup> Applicant told them as her excuse for dishonouring police invitation.

37. That sometime in January,2023 the Applicant counsel Obaike Daniel Esq met with my lawyer in his office and offered a 50% refund to my client, an offer which I rejected and in the same way the Applicant offered at the Police station to pay 50%to me which I vehemently turned down and in the spirit of amicable settlement I asked that the one night spent in Dariston be removed while the balance paid to me but the Applicant refused opted to issue subsequent Airtravelling tickets to me when the 1 applicant heard that I will be travelling to 7 countries for 1 month to cover my money which I also rejected

38. That contrary to the deposition by the 1<sup>st</sup> Applicant in paragraph 21 and 22 I only asked for a refund of the money I paid for services the Applicants failed, refused and neglected to render and did not in any way control, influence or interfere with the 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents investigation or violate or breach the applicants fundamental rights and in fact that 2nd applicant has never honoured Police invitation and the 1 applicant who honoured police invitation in respect of my petition was never detained for one day

39. That the Police in the course of investigation discovered that the 2<sup>nd</sup> Applicant will be needed to write her own side of the story and that is why the Police extended invitation to her through the 1<sup>st</sup> Applicant contrary to paragraph 20 and 21'.

40. That it is very sad that the 1<sup>st</sup> Applicant is protecting his wife the 2<sup>nd</sup> Applicant from the long Arm of the law and instead of honouring the police invitation the Applicant sought judicial protection by rushing to this honourable court to obtain an interim order dated 23 May 2023 against me, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who

never breached or violate the Applicants' fundamental rights to freedom of movement or personal liberty.

41. That the Applicants are devising all means and ploy not to refund my money and that is why they instituted this matter thinking that the court will protect them from prosecution having failed woefully to deliver to me the services which I paid for.

42. That I urge this honourable court to vacate the interim order dated 23 May,2023 against me and allow the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to conclude their investigation because the Law permits me to report the commission of any crime against me to the Law enforcement agencies.

43. That I urge this honourable court to dismiss the entire reliefs from 1 to 7 sought by the Applicants for being vexacious, exploitative, lacking in merit, gold digging, frivolous and a gross abuse of court.

44. That contrary to the averment in paragraph 21 I have in no way whatsoever interfered or breached the Applicant's Fundamental Rights in any manner.

The Respondent filed a written address in support dated 9 June, 2023 same raised issues for determination :-

1. Whether the Applicant has placed sufficient material before this Court to disclose any reasonable cause of action against the 1<sup>st</sup> Respondent having regard to the record before the Court.
2. Whether the Applicant has successfully proved that the 1<sup>st</sup> Respondent in any manner breached the Applicants fundamental rights as alleged.
3. Whether the Applicants can use the instrumentality of the Court process to prevent the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from exercising their lawful rights in investigating a valid petition brought before them and prosecute.
4. Whether this action does not amount to an abuse of Court process since the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are yet to conclude their investigation of a petition brought before them against the Applicants by the 1<sup>st</sup> Respondent.
5. Whether the Applicants are entitled to the monetary reliefs claimed by them against the 1<sup>st</sup> Respondent in this suit.

On issue one Counsel refer the Court to the case of *FAJEMIROKUN VS COMMERCIAL BANK(CREDIALYBANNAIS)NIG LTD (2009)5 NWLR (pt 1135) 558 at 600* and the case of *DURU VSNWANGWU (2006)5 SCNJ 394 at 402*.

In issue two counsel cited the case of *GUSAU V UMUEZURIKE (2012) ALL FWLR (pt 655)291 @ 318* and *GUSAU V UMUEZURIKE (supra)* and the case of *NACHPN VMHWUN (2010)2 NSCR 101 @ 138*

On issue three Counsel referred the Court to the case of *ATTORNEY GENERAL OF THE FEDERATION V CHIEF CHRIS UBA(2005) 15 NWLR (pt 947) 44* and the case of *INSPECTOR GENERAL OF POLICE & ANOR V DR. PATRICK IFEANYI UBA& ORS (2014)LPELR 23968 (CA). AND FAWEHIMI V IGP (2002)7 NWLR (pt 767) 606*

On four Counsel refer the Court to the case of *ATTORNEY GENERAL OF THE FEDERATION V CHIEF CHRIS UBA (2005) 15 NWLR (supar) AND INSPECTOR GENERAL OF POLICE & ANOR V DR. PATRICK IFEANYI UBA& ORS (supra)*

On issue five Counsel refer the Court to the case of *GUSAU V UMUEZURIKE (supra) and NACHPN VMHWUN (supra)*

Counsel urge the Court to refuse this application and instead award a cost of N10,000.00 as general damages against the Applicant. The grounds upon this application and the statement of facts are therein contained in the processes filed by the Applicant. Having reproduced the facts,evidence and legal argument of all Counsel in this suit respectively I believe all the issues raised for determination are substantially interwoven. I therefore deem it adequate to formulates two issues for determination thus:-

1. Whether the Applicant Fundamental Right is actually violate
2. Whether the reliefs sought for damages in grantable based on the fact stated above.

With regards to the 1<sup>st</sup> issue. I painstakingly perused the Applicants application in order to consider the particular Fundamental Right that was breach by the 1<sup>st</sup> -4<sup>th</sup> Respondent. admittedly based on the relevant authorities cited by the Applicant and the relevant judicial authorities the Applicant failed to show how these right were contravened or likely to be contravened by the Respondent. Essentially the

duty to establish such violation lies squarely on the Applicant. This is mainly achieved by affidavit evidence. I must state in this judgment that the law that establish 2<sup>nd</sup>-4<sup>th</sup> Respondent gave them the power to discharge this duty effectively in accordance with the law see section 4 of the Police Act for emphasis since mere invitation by the 2<sup>nd</sup> -4<sup>th</sup> Respondent does not amount to a violation of the Applicants Fundamental Right. The violation must be expressly and convincingly established by affidavit evidence from the entire process filed by the Applicant.

I have not seen any such violation. Including the threat, intimidation harassment etc.

It is the duty of the Applicant to established such violation mere averments could not be construed to amount to violation of the Fundamental Right of the Applicant see *AMYN INVESTMENT LTD & ORS VS EFCC ANOR (2020) LPELR 58713 CA*. for an application alleging infringement of the Applicant Fundamental Right to succeed, he must placed before the Court all vital evidence regarding the infringement or breach of such rights. It is only thereafter the burden shifts to the Respondent. Where that has not been done or scanty evidence was put in by the Applicant, the Court can strike out such application for being denied of merit see *FAJEMEROKU VS CB LTD (2002)10 NWLR (pt 724) 95*.

The question of infringement of fundamental right is largely a question of facts and does not depend on the dexterous subrum of Counsel on the law. So it is the facts as disclose by the affidavit evidence that is usually examine analyzed and evaluated to see if the Fundamental right have been eviscerated as claimed or otherwise dealt with in a manner that is contrary to the constitution and other provision on the Fundamental Right of an individual. See *OKAFOR VS LAGOS STATE GOVT. ANOR (2016) LPELR 41066*. I have no doubt in my mind that Applicant based on all the averment s and the exhibit attached I have not seen the fulfilment of the requirements of the law done by the Applicants the issue of threat intimidation harassment has not been established by affidavit evidence.

On the 2<sup>nd</sup> issued of compensation it is the view of the Court that in so far as the circumstance of the Respondents intimidation amount to the likely curtailment of the Applicants inviolable in alienable right to personal liberty. the court cannot

award any compensation in the absence of proof of loss or injury to the Applicant see *JIMOJAJA VS C.O.P RIVERS STATE (2013)6 NWLR (PT 1350) 225-2554 SC.*

The Applicant's claim in connection with the breach of his fundamental Right to his liberty by the Respondent. The onus is on him to show that he was unlawfully arrested and detained i.e that his fundamental right has been violated if this is proved by virtue of the provision of section 35 (6) of the 1999 Constitution the complainant is entitled to compensation and apology where no specific amount is claimed. Where a specific amount is claimed it is for the Court to consider the claim and in its opinion the amount that would be justified to compensate the victim of the breach. In this respect the common law principle on the award of damages do not apply to matter brought under the enforcement of Fundamental Right Procedure.

In conclusion all the reliefs sought by the Applicant is hereby refused. Also on the otherhand the award of damages apply for by the 1<sup>st</sup> Respondent is also refused. Parties are to bear their respective cost in all aspects of this case. However I deem it just to add in this judgment that although the law that establishes the power of the 2<sup>nd</sup> -3<sup>rd</sup> Respondent section 4 Police Act such law is not without limitation I therefore while carrying on their constitutional duty to 2<sup>nd</sup> – 4<sup>th</sup> Respondents shall on no account detain, arrest or any form of inhuman degradation should not be meted on the Applicant. However the Respondent have the right to lawfully conduct their investigation timeously and arraigned the Applicant if need be based on their investigation.

I repeat the Applicant shall not be detained. Consequently for lacking in merit this application is hereby struck out .

I so hold 2<sup>nd</sup> -4<sup>th</sup> Respondent have not filed their counter affidavit all pervious orders made in this matter are hereby vacated.

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HON. JUSTICE M.S IDRIS  
(Presiding Judge)

Appearance

AyodejiAkande:- For the 1<sup>st</sup> Respondent