



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON TUESDAY, 26TH DAY OF SEPTEMBER, 2023
BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME

SUIT NO: FCT/HC/CV/2349/2023

BETWEEN

YAKUBU MOMOH JIMOH

APPLICANT

AND

1. NIGERIAN IMMIGRATION SERVICE
2. ISMAILA YAHAYA

RESPONDENTS

JUDGEMENT

The applicant commenced this action on 14/2/2023 via Motion on Notice for the enforcement of his fundamental rights. In support thereof are:

1. Statement setting out the name and description of the applicant, the reliefs sought and the grounds for the application;
2. The applicant's 26-paragraph affidavit;
3. Written address of Henry T. Ebu Esq.;

The applicant seeks the following reliefs against the respondents:

1. A declaration that the arrest, intimidation and detention for several hours by officers and men of the Nigerian Immigration Service (NIS) amounted to a breach of his fundamental right to personal liberty and fair hearing as provided by Section 35 and 36 of the Constitution of the Federal Republic of Nigeria 1999 as amended.
2. An Order of the Honorable Court ordering the respondents to jointly pay the applicant the sum of ₦20,000,000 (Twenty Million Naira) only

as general damages for the unlawful arrest, detention and the brutality suffered by the applicant in the hands of the officers and men of the Nigerian Immigration Service.

3. An Order of the Honorable Court ordering the respondents to jointly pay the Applicant the sum ~~N~~500,000.00 (Five Hundred Thousand Naira) only as cost of this suit.

In his affidavit in support of the Motion on Notice, the applicant stated that;

1. Mr Ibrahim JimohMomoh applicant's senior brother owns a plot of land at SabonLugbe 1 Extension layout and had shown him the offer of conveyance from AMAC and power of attorney given to him by the original allotteeBunmi Bako. Copies of these documents were attached as Exhibits A and A1 respectively.
2. That his brother has been in occupation and possession of the property for over 10 years till sometime in 2020 the 2nd respondent emerged and claimed to be the owner of the property.
3. That sometime in the month of March, 2020 the 2nd respondent met with his senior brother at the plot. That upon the fact that all of them were laying claim to the property, they peacefully agreed that they should submit themselves to the Nigeria Police for possible liaison with the FCTA Lands registry to resolve who the actual owner of the property was.
4. That during the period of COVID 19 when government was forced to order a lock down, the 2ndrespondent could access places easily because of his uniform and went to the plot to try to enter to carry out some activities on the property.
5. The security men at the site reported the incidentto his senior brother and he asked the applicant to go to the site on getting to the site where the plot is located, hewas accosted by the 2nd respondent who was with a junior officer.
6. 2nd respondent asked him to leave the plot claiming he was the owner of the plot and his senior brother's documents are fake. Applicant informed him that despite informing the 2nd respondent that he had been to the land several times and was one of the persons that made arrangements with the security men to stay on the plot and carry out farming activities, 2nd respondent commanded him to leave the plot or he will have officers arrest him at the site. Applicant called his senior brother based on the threat of arrest.
7. Before his brother could arrive, a hilux arrived with a number of immigration officers with guns who pounced on him and beat him up,

- hit his head with the butt of the gun injuring him and drove him to their headquarters along airport and detained him for several hours.
8. At the Immigration Headquarters, he was asked to admit that he trespassed into the land of the 2nd respondent so he can be set free which he refused. Upon realizing he was bleeding badly, they offered to take him to the Immigration clinic for medical care which he turned turn down considering the circumstances surrounding his arrest. He was taken to a health center at Ido along Airport. The receipt covering the payment for medical bills and the picture of the Applicant as he was being treated are attached as EXHIBITS B and B1.
 9. That 2nd respondent ordered his subordinate to take him to the Lugbe Police station to report the incident. The police informed him that someone had reported the incident asking for his whereabouts. 2nd respondent was advised to take him to the Ido Police station which is the police station covering the scene of the incident and where the plot is located.
 10. That at the Ido Police station while 2nd respondent and his men drove him into the station, his senior brother took pictures of the 2nd respondent and his subordinate staff including the Hilux vehicle with registration No. IS 13 HQ. Pictures are attached as Exhibit C, and C1.
 11. That while the 2nd respondents and his subordinates were driving into the police station at Ido the 2nd respondents took out his uniform and was with the inner vest of the Immigration Service as they entered the police station so that his name will not be seen. The Picture is attached as EXHIBIT D.
 12. That the Police authorities at Ido collected his statement and that of the 2nd respondent and requested that they come on a different day. On the appointed day, the 2nd respondent was absent.
 13. That after he arrived his house in Mararaba upon release owing to his head injury and the severe pains, he collapsed and was taken to the Mararaba Medical center for treatment. The medical report, receipt from Hospital Management Board Nassarawa state, receipt from the scan and receipt for the various drugs purchased were attached as **EXHIBITS E, E1, E2 E3.**
 14. That after undergoing the treatment because of the pain in his head, he went to a private scan and diagnostic center for a head injury and possible brain injury. The scan was conducted. The result of the scan was attached as **EXHIBIT F.**
 15. The 2nd respondent kept threatening to re-arrest applicant and his senior brother referring to his experience in the last detention. For fear of these incessant threats they caused a petition to be written to the

Comptroller General, Nigerian Immigration Service (IMS) since that letter was endorsed till date no response has been sent either to their solicitors or any action taken at all on the issue. The letter showing acknowledgement from the Nigerian Immigration Service is attached as **EXHIBIT G**.

16. Due to the lack of response from 1st respondent, applicant engaged his solicitors to file an application for enforcement of his fundamental rights. He was charged a sum of ₦1, 000,000.00 (One Million Naira) only and he paid a deposit in the sum of ₦500, 000.00 (Five Hundred Thousand Naira) only. The receipt of payment is attached and marked **EXHIBIT H**.

In the counter affidavit of the 2nd respondent, IsmailaYahaya stated that:

1. The 2nd respondent denied all paragraphs of the affidavit in support of the motion on notice.
2. That he has a plot of land at plot No. 3600 SabonLugbe 1 extension and he has fenced the entire plot of land but the applicant went and destroyed the entire fence claiming ownership of the plot.
3. 2nd respondent reported the matter to Iddo Sarki divisional police station.
4. Applicant destroyed his fence the second time, 2nd respondent took the pictures of the destroyed fence.
5. The divisional police officer,IddoSarki asked for his documents which he forwarded to him. The applicant went to his plot of land to pack his blocks and he was caught by the security man at the site and some of the blocks recovered.
6. Applicant's brotherlaid a complaint against 2nd respondent at Iddo police station and laid another complaint atlugbe Police Station Airport Road Abuja.
7. A direct criminal complaint was filed against 2nd respondent via summons in 2020 by the applicant and his brother Ibrahim Momoh and also another direct criminal complaint in 2021. He challenged it via a notice of preliminary objection and the ruling was delivered to the effect that the procedure was not followed by the complainant to institute the action and therefore the matter was adjourned indefinitely until the complainant takes the right steps.
8. That the applicant and his brother also filed a civil action against 1st respondent for a declaration of title to land at the FCT High Court Abuja since 2022 and the case is still on going.
9. That he attached copies of all the documents mentioned as exhibits

10. That he did not at any time instruct anybody including the 1st respondent to harass, intimidate, detain, or injure the applicant.
11. That the application by the applicant should not be granted, it should be dismissed. To grant it would amount to an infringement of his fundamental right as the matter is already before different courts in FCT, Abuja.

In the applicant's written address, Henry Ebu Esq. did not submit any issues for determination.

NdukaChinyere Esq. posed two issues for determination in the 2nd respondents' written address, which are:

- 1. Whether the applicant have made out a case of violation of fundamental human right as enshrined in the constitution of the Federal Republic of Nigeria***
- 2. Whether the applicant is entitled to the reliefs sought.***

From the affidavit evidence of the parties and the submissions of the learned counsel, the Court will determine this application on the following issues as posited by counsel to the 2nd respondent, which are:

- 1. Whether the applicant have made out a case of violation of fundamental human right as enshrined in the constitution of the Federal Republic of Nigeria.***
- 2. Whether the applicant is entitled to the reliefs sought.***

SUBMISSIONS OF LEARNED COUNSEL FOR THE APPLICANT:

Ebu Esq. submits that by virtue of Section 36 of the Constitution of the Federal Republic of Nigeria 1999 as amended (CFRN) before a person can maintain an action under the provision of the section, he or she must show that and or prove that his or her civil rights and obligations have been or are being contravened by the respondent(s). From this case, the applicant was arrested, beaten up, injured and detained by the respondents.

By virtue of Article IV of the African Charter of Human and Peoples' Rights, every individual shall have the right to liberty and security of his person, no one may be deprived of his freedom except for reasons and conditions previously laid down by the law.

From the affidavit of the applicant, he was merely sent to the plot in controversy on the call from the security men carrying out farming activities and also securing the property when he was arrested by the 2nd respondent who called for more hands from the office of the 1st respondent.

Counsel submits that the action of the respondents amounted to unnecessary show of force on an innocent and unarmed citizen. Assuming but not conceding to the fact that there was likelihood of altercation in the circumstances, the respondents owed the applicant and the society a duty to take him immediately to the Nigerian Police and incident the matter for proper investigation. However, the respondents' actions were ultra-vires their powers and therefore violated the right to freedom of movement of the applicant.

Ebu Esq. submits that Section 214 of the 1999 Constitution as amended provides for the establishment of the police force in Nigeria while Section 4 of the Police Act empowers the police to receive complaints from members of the public. The respondent rather than tow this path, instead towed the path of primitive justice by using the power of the gun and access to official machineries to intimidate and arrest the applicant.

Exhibits C, C1, C2, Exhibit D and EXHIBIT F showed the usual show of force by Nigerian Security agencies including the respondents before the court. **Exhibits E, E1 E2 E3 and E4** are receipts for expenses incurred by the applicant.

Ebu Esq. argued that by virtue of **Exhibits A and B**, the proper action the 2nd respondent should have taken was to seek declaration of title in a court of Law.

Exhibits C, C2 and D shows use of official machinery to suppress the applicant. By **Exhibit F** the 2nd respondent did not act alone because the letter written to the Comptroller General of Immigration seeking to hear the position the 1st respondent will take in the circumstances. The fact that since the letter was submitted and acknowledged, no call or communication as initiated to find out what transpired and or the situation with the applicant even when all the photographs were uploaded to the office of the 1st respondent.

Counsel argued that there are elements of vicarious responsibility on the part of the 1st respondent. At least the 2nd respondent went to the site not only with official uniforms but official vehicles as shown in exhibit **C, C1, C2 and C3**.

From the facts of the case, the applicant wrote to the 1st respondent with a view that an action should be taken against the 2nd respondent for using his official position and access to machineries to intimidate arrest and detain the applicant. Counsel submitted that for the 1st respondent to remain mute, this shows a subtle approval of the action of the 2nd respondent.

Counsel submitted that the action of the respondents clearly violates fundamental rights of the applicant and urged the court to grant the reliefs of the applicant.

Ebu Esq. argued that damages sought in this suit are for both the act of intimidation, harassment and injuries suffered. The pictures exhibited by the applicant and of course the receipts for medical expenses are clear evidence to persuade the court to believe that the reliefs being sought are not baseless. Relying on case of **UBN V CHIMAEZE (2014) VOL 33 W.R.N pages 1-39** particularly at page **8 ratio 9**.

Counsel also referred to the **DIRECTOR OF STATE SECURITY, KAWRA STATE vs NUHU (2014) VOL 14 W.R.N pages 117-156** particularly at page **121 ratio 1**;

"An application for the enforcement of fundamental right is required to show that there was an arrest and detention of the Applicant. The duty will then shift to the Respondent to justify the arrest and detention".

Counsel submits further that the applicant was arrested for a matter which fell outside the precinct of a criminal matter. He was not only detained, he suffered injury. He also suffered periodic seizures a number of times before he became stable.

SUBMISSIONS OF LEARNED COUNSEL FOR 2nd RESPONDENTS:

On Issue 1, NdukaChinyere Esq. submits that applications to enforce fundamental rights are based on affidavit evidence of the parties. It is the affidavit evidence before the trial court that the court relies upon for the determination of the matter. Relying on **MBANG V. JANET (2015) ALL FWLR (PT.767) 766 C.A**

Counsel argued that the applicant has not been able to make out a case of violation of fundamental human rights against the 2nd respondent. The applicant via the affidavit evidence has not been able to prove that it was the 2nd respondent who instructed the 1st respondent to arrest and detain the applicant.

Applicant through his affidavit evidence admitted that he trespassed on a plot of land which belonged to the 2nd respondent. Paragraphs 7 to 13 of applicant's affidavit evidence attests to this fact

Nduka Esq. submitted that it is the duty of the citizen of Nigeria to report cases of commission of crime to the police for their investigation and what

happens after such report is entirely the responsibility of the Police. The citizen cannot be held culpable for doing his or her civil duty unless it is shown that it is done mala fide. Relying on **EDO v ESSIEN (2014) ALL FWLA (PT 749) 1184**. Assuming but not conceding that the applicant was arrested by the 1st respondent, he committed an offence which warranted his arrest which did not amount to a breach of his fundamental rights.

On Issue 2, Nduka Esq. submitted that the applicant has not established a case of breach of Fundamental Human Rights against the 2nd respondent to warrant the application for the enforcement of same. The applicant has failed to establish evidence of breach of Fundamental Human Rights against the 2nd respondent.

It is the applicant that has been intimidating, harassing the 2nd respondent by taking 2nd respondent from one court to the other as seen by the exhibits attached to the counter affidavit. This clearly shows that it is the applicant that has caused untold hardship to the 2nd respondent by destroying his fence, stealing his blocks. The cases against the 2nd respondent by the applicant are still ongoing at the Magistrate Court and High Court FCT respectively.

The application by the applicant is an abuse of court process. Relying on the case of **SHERIFF V. PDP (2017) 14 NWLR PT 1585**

Counsel submitted that the applicant was detained by the 1st respondent for several hours on the instruction of the 2nd respondent failed as he did not state clearly the numbers of days, week and months that he was detained and the date and time of his detention. Court was urged to dismiss the application of the applicant for lacking in merit and substance and to award the sum of N1, 000,000 against the Applicant for bringing malicious application against the 2nd respondent.

ON REPLY ON POINTS OF LAW

Ebu Esq. submits that the 2nd respondent did not show any evidence relating to the fence work that was broken. 2nd respondent claimed that he reported the action of the applicant to the police. However, he did not put the result of the police investigation before the court.

Counsel submitted that 2nd respondent has not proven the fact that his fence was destroyed and his blocks stolen as well as the fact that he reported the applicant to the police, the burden falls on him to prove the fact as stated relying on Sections 131, 132 and 133 of the Evidence Act, 2011.

The 2nd respondent claimed that he had dragged him from one court to the other. The position of the applicant is that the 2nd respondent merely made assertions that were not supported by proof as He who asserts must prove relying on **IDOGHOR VS IDOGHOR (2014) 41 W.R.N Pages 164 - 175 particularly at page 167.**

The documents attached by the 2nd respondent to his affidavit being public documents. The only way another court can rely on them for the purpose of adjudication is when the said documents are presented as certified true copies (CTC) as required by **section 104 of the Evidence act. 2011.** Thus leaving the weight of the evidence flimsy before the court.

The 2nd respondent did not deny the fact that the respondent was harassed, intimidated, detained and injured. He merely said he did not instruct anyone, not even the 1st respondent to harass, intimidate, detain and injure the applicant. In the opinion of the applicant, the 2nd respondent admitted the fact of the harassment, intimidation, detention and infliction of injuries on the Applicant and admitted facts need not be proved.

The 1st respondent from the record of the court was served with the processes of the court through substituted service as ordered by the court on the 26th day of April, 2023. The 1st respondent did not file any defense in court. In the records before the court, **Exhibits C, C1 and D** clearly shows vehicles of the 1st respondent that were used in to harass, intimidate and convey the applicant both to the nearby bush as well as the office of the 1st respondent where he was detained for several hours.

Failure of the 1st respondent to respond to Exhibit G as indicated in paragraph 23 of the affidavit of the applicant dated the 8th day of June 2020. Till date, the 1st respondent has not written or forwarded a response to the relevant office to either send in a report of investigation against the 2nd respondent nor dissociated itself from whatever transpired even when evidence of use of its official vehicles were attached to the complaint. Court was urged to deem the allegations against the 1st respondent as uncontroverted. Referring to **MODIBBO ADAMA UNIVERSITY VS ASIWAJU (2014) VOL 33 W.R.N pages 72 — 96 particularly at page 76 ratio 3.**

DECISION OF THE COURT:

On issue 1, The applicant seeks to enforce her fundamental rights under sections 35[1], 36 and 46 of the 1999 Constitution [as amended].

Section 35[1] of the 1999 Constitution [as amended] **provides that: "Every person shall be entitled to his personal liberty and no person shall be**

deprived of such liberty save in the following cases and in accordance with a procedure permitted by law”.

The procedure permitted by law are stated in section 35[1][a]-[f] thereof. Section 35 (5) provides that the expression “a reasonable time” means;

- (a) In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day, and
- (b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

Section 36 of the CFRN provides thus;

"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a Court or other Tribunal established by law and constituted in such manner as to secure its independence and impartiality"

Section 46 of the 1999 Constitution as amended reads;

"46(1) Any person who alleged that any of the provisions of this Chapter has been, is being or is likely to be contravened in any State in relation, to him may apply to a High Court in that State for redress."

The 1st respondent did not appear before this court neither did they file any processes in response to the Originating Motion and further affidavit of the applicant. In the circumstance of this case, where the 1st respondent failed and neglected to file any counter process in opposition to the evidence adduced by the applicant, the case of the applicant remains unchallenged, uncontroverted and not rebuttable as against the 1st respondent. See the case of: **ASAFA SEA FOOD V. ALRAINE [NIG] LTD [2002] NWLR [PT.781] 353**

Where evidence is uncontroverted, the onus of proof is satisfied on a minimal proof since there is nothing on the other side of the scale see **BURAIMOH V BAMGBOSE (1989) 2 NWLR (PT 109) 352.**

In **CHIEF MAURICE UDO IDUNG & ANOR v. THE COMMISSIONER OF POLICE & ORS (2017) LPELR-42333(CA)**

"It is well known in law that failure of a party to challenge or controvert depositions in affidavit of his opponent by filing a counter-affidavit, reply or further and better affidavit is deemed to have accepted the facts deposed in the affidavit. *AYOOLA VS. BARUWA (1999) 11 NWLR (PT. 628) 595; COMPTROLLER, NIGERIA PRISON SERVICE V. ADEKANYE (1999) 10 NWLR (PT. 623) 400. When an affidavit is unchallenged, the trial Court is at liberty to accept it as true and correct."* Per ADAH, JCA (Pp. 22-23, paras. E-A)

However, this court before it arrives at its decision must still consider the evidence of the applicant irrespective of the fact that the 1st respondent failed to file his defence to the Originating Motion. The burden still rests on the applicant to prove his case even though the requirement is minimal proof.

The law is that a plaintiff must establish the case he put forward by credible evidence. He must satisfy the court by the evidence called by him. see **OGOLO V FUBARA (2003) 5 SC 41.**

A plaintiff must succeed upon the strength of his case and not on the weakness of the defence, although he is entitled to rely on evidence revealed in such weakness to strengthen his case. See **OTUNBA ABDULLATEEF OWOYEMI V PRINCE OLADELE ADEKOYA 2013 12 SCNJ 131.**

The case of the applicant as gleaned from the affidavit in support of the application Paragraphs 3-26 is that he went to the plot in dispute and was beaten by a number of immigration officers with guns who pounced on him, beat him up, injured him on the head using the gun butt and drove him to their headquarters where he was detained for several hours all on the instigation of the 2nd respondent who claims to be the owner of the plot in dispute.

The case of the 2nd respondent from paragraphs 6-19 of the counter affidavit in opposition to the applicant's motion wherein he claimed the applicant went and destroyed the entire fence of his plot of land and he reported the applicant to the Iddo Sarki Divisional Police station. The applicant also went to pack the blocks when he was caught by the security man on the site and some of the blocks recovered. The brother to the applicant went to the Iddo police station to lay a

complaint and since then has filed 2 direct criminal complaints against the 1st respondent and civil suits for declaration of title to land.

The question this court must answer is whether the incident on that fateful day amounted to a breach of the applicant's fundamental rights. The case of the applicant as reproduced below is thus;

10. That immediately I got to the site where the plot is Sabon-Lugbe 1 Extension Layout, I was accosted by the 2nd respondent who came with a junior officer to the site. I informed him that i was sent by my senior brother based on the call from the security men at site.

11. That he asked me to leave the plot claiming he was the owner of the plot and that any document being carried by my senior brother is secondary and fake. I responded that my senior brother had taken me to the particular land on several occasions and I was part of the persons that made arrangement with the security men to stay at the plot and carry out farming activities thereon.

12. That he commanded me to leave the place otherwise he will call his office to send officers to arrest me at the site. I picked up my phone and called my senior brother to come quickly to the site because of the threat of arrest from the 2nd respondent.

13. That before the arrival of my senior brother I saw a Hilux Vehicle arrived with a number of Immigration officers with guns who suddenly pounced on me, beat me up, injured me on my head using the gun butt and drove me to their Headquarters along airport and detained me for several hours.

To prove the assertions above, applicant attached Exhibits C, C1, C2, D, E, E1, E2, E3, E4 and F. pictures of the head injury, the hilux carrying the immigration plates as well as medical expenses receipts and reports. All these go to prove the assertions of the applicant.

The question important to answer is whether the 1st respondent herself is responsible for the breach of the applicant's fundamental rights?

I'll reproduce the provisions of **Section 35(1)(a)-(f) of our extent constitution** for clarity purpose;

Section 35 (1) states;

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

(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

(b) by reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;

(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

From the account of events by the applicant, the 1st respondent cannot be exonerated in the action taken by the 2nd respondent as there is vicarious responsibility. The use of the machineries of the 1st respondent to intimidate, arrest and detain the applicant by the 2nd respondent using his official position and the 1st respondent remaining mute, shows a subtle approval of the action of the 2nd respondent. It is trite law that this court does not delve into the realm of speculations.

Speculation is the art of theorizing about a matter as to which evidence is not sufficient for certain knowledge. See: **BLACKS LAW DICTIONARY 6TH EDITION**. A trial Court must not base its decision on speculation as that will occasion miscarriage of justice. See **GWANDU V. FRN (2014) LPELR-23992(CA)(PP. 43-44 PARAS. F)**.

From the affidavit of the applicant and the exhibits attached even though the 1st respondent filed no counter affidavit or documents in support of her position, the applicant still cannot make a case against the 1st respondent as this court does not speculate as to the involvement of the 1st respondent without concrete evidence. Failure to respond to **Exhibit G** cannot automatically be interpreted to mean that the 1st respondent be held responsible for the purported breach of his fundamental rights.

ON RELIEF 1, did the arrest, intimidation and detention for several hours by officers and men of the Nigerian Immigration Service (NIS) amount to a breach of his fundamental right to personal liberty and fair hearing as provided by Sections 35 and 36 of the Constitution of the Federal Republic of Nigeria 1999 as amended?

Applicant has been able to prove that he was beaten by the 2nd respondent and other unidentified officers of the Immigration services by virtue of the exhibits B, B1, B2, B3, C, C1, D, E, E1, E2, E3, F & G, this court is convinced that the 2nd respondent meted out the injuries along with others on the applicant. The Applicant has alleged that his arrest, detention for several hours and intimidation was unlawful and this the Applicant has been able to prove with credible evidence. See **Nsefik v. Muna [2007] LPELR-3934 [CA]**.

ON RELIEF 2;

The powers of the immigration to arrest, detain and prosecute suspects is as provided for under the immigration act. In the case of **EZUMA & ANOR. V FRN (2017) LPELR-433821 (CA) (PP 23-25 PARAS C); MBABA JCA** held;

The Immigration Act makes provisions for arrest, detention and prosecution of any person, contravened by the operatives, and allows any Immigration Officer, Police Officer or Prison Officer, concerned, power to act, as authorised by the Minister. See Sections 2 and 31 of the Act. And by Section 251(1)(i) of the 1999 Constitution of Nigeria, as amended, matters relating to immigration, passports and visas are under the jurisdiction of the Federal High Court. Appellants have admitted that the complaints and indictment which Appellants are tried on, in this case, relate to application for issuance of passport, or attempt to procure Nigerian

Passports for which the Nigeria Immigration Service is legally and lawfully empowered to handle, under which the Immigration Service is empowered to arrest any person, investigate allegation of infraction of the law and charge offender to Court.

It is obvious that the parties are disputing ownership of the said plot of land and this is a civil matter which ought to be ventilated in the civil court. Now, can the applicant be arrested and detained in the manner he was by the officers of immigration? From the case of **EZUMA V FRN** *supra* it is outside the powers of the Nigerian immigration who can only act within the purview of matters relating to immigration and a declaration of title to land is not one of them. The fact that the applicant was arrested and taken to the immigration office for questioning is a clear violation of his fundamental rights and outside the powers of the Nigerian immigration.

The 2nd respondent resorted to self-help in a matter which appears to be purely civil. **Per JEGA, J.C.A in NWELE V. ODUH (2013) LPELR-21236(CA) (PP. 23-24 PARAS. F)** held; "The simple question is assuming that the assertion of the Respondent that they own the land on which the building is erected is correct, is the Appellant permitted in law to resort to self-help by locking up the building as alleged. The answer is certainly in the negative. Nobody is allowed to resort to self-help, this Court in **NIGERIAN NAVY V. GARRICK (2006) 4 NWLR (PT 969) at pages 163 - 104** states thus: **"Everybody (including private individuals, public individuals, government or police) is forbidden to take possession or repossession of premises by self help, force and strong hand or with multitude of people. Everyone entitled to possession or repossession of premises can only do so by due process of the law. They must not take the law into their hands. They must apply to the Courts for possession and act on the authority of the Court."**

The applicant has shown to this court that the arrest and detention was in breach of section 35 of the CFRN. It is well settled that any violation of a citizen's guaranteed fundamental rights, for however short a period, must attract a penalty under the law. See: **ALABO vs. BOYES (1984) 5 NCLR 830**. The

Appellant is therefore entitled to the award of damages." And Per **ONYEKACHI AJA OTISI, JCA (P. 42, paras. E-F)** in **REV. POLYCARP MATHEW ODIONG v. ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 6, CALABAR (2013) LPELR-20698(CA)**

In the Appellate decision of **NAIGE V. AHAMAD & ANOR (2019) LPELR-48136(CA) (PP. 37 PARAS. C)** It is settled law, generally that, a fact admitted needs no further proof. This is elementary as captured in Section 123 of the Evidence Act except where specific proof is required or as may otherwise be ordered by the Court, facts admitted require no further proof."

The documents relied upon by the 2nd respondent in his affidavit are public documents. The only way this court can rely on same for the purpose of adjudication is if they are certified true copies (CTC) as required by section 104 of the Evidence Act. The Exhibits attached which emanated from the magistrate court and high court were not certified cannot be relied on by this court and are hereby discountenanced.

I find that the 2nd respondent is solely responsible for the inhuman treatment meted out to the applicant as well as the brutality suffered by the applicant.

Issue 1 is hereby resolved in the affirmative and in favour of the applicant and against the 2nd respondent.

ON ISSUE 2,

The law is settled that a person whose fundamental right is violated is entitled to compensation whether or not an actual damage or injury is suffered. See Section 35 (6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), **ARULOGUN V. C. O. P (LAGOS STATE) & ORS. (2016) LPELR - 40190 (CA). (P. 11, paras. B-D)**

In **SSS & ORS V. INCORPORATED TRUSTEES OF THE PEACE CORPS OF NIGERIA & ORS (2019) LPELR-47274(CA) (PP. 26-27 PARAS. D);**

"The law is trite, that once it is adjudged that the fundamental rights of an applicant has been violated, damages is inferred and activated, as the Applicant is entitled to compensation in damages. The quantum of damages awardable is always at the discretion of the trial Court, depending on the gravity of the violation and claims/parties affected. See the case of **IWUNUNNE VS EGBUCHULEM & ORS (2016) 40515 CA**, where it was held:

"On the allegation that the damages was not proved by credible evidence and that the person who, in fact, caused the damages must be established, Appellants' Counsel appeared to have forgotten that general damages need not be specifically pleaded or proved, as the same tends to flow from the act/conduct of the defendant complained against. And in fundamental rights matters, damages automatically accrue, once there is evidence of breach or violation of Applicants fundamental right(s). SEE SECTION 35(6) OF THE 1999 CONSTITUTION AND THE CASE OF OZIDE & ORS VS EWUZIE & ORS (2015) LPELR - 24482 CA.

In **IGWEOKOLO VS AKPOYIBO & ORS (2017) LPELR - 41882 CA**, MY LORD, IKYEGH JCA held:

"Once violation of a fundamental right is proved, the award of meaningful damages in form of compensation must automatically follow whether asked for or not by the Claimant, in addition to the order of written apology..."

In **REV. POLYCARP MATHEW ODIONG v. ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 6, CALABAR (2013 supra P. 21 paras C-E)**; wherein the appellate court referred to the apex decision of **Okonkwo vs. Ogbogu (1996) 5 NWLR (pt.449) 420 at 435 paragraphs "F"-"G"** where the Supreme Court held as follows:

"Any trespass to the person, however slight, gives a right of action to recover at any rate nominal damages; even where there has been no physical injury, substantial damage may be awarded for the injury to the man's dignity or for discomfort or inconvenience. Where liberty has been interfered with damages are given to

vindicate the plaintiff's rights even though he has not suffered any pecuniary damage. It is also not necessary for the plaintiff to give evidence of damage to establish his cause of action or to claim any specific amount of damage... "

ISSUE 2 is hereby resolved in the affirmative and in favour of the applicant as against the 2nd respondent.

I hereby order as follows;

1. I declare that the arrest, intimidation and detention for several hours by 2nd respondent amounted to a breach of his fundamental right to personal liberty and fair hearing as provided by Section 35 and 36 of the Constitution of the Federal Republic of Nigeria 1999 as amended.
2. the 2nd respondent to jointly pay the applicant the sum of ₦2,000,000 (Five Million Naira) only as general damages for the unlawful arrest, detention and the brutality suffered by the applicant in the hands of the 2nd respondent
3. An Order of the Honorable Court ordering the respondents to jointly pay the applicant the sum ₦500,000.00 (Five Hundred Thousand Naira) only as cost of this suit is refused.

HON. JUSTICE NJIDEKA K. NWOSU-IHEME

[JUDGE]

Appearance of Counsel:

- **Martha Ikona Esq for Applicant**
- **ChinyereNduka Esq for 2nd Respondent**