

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI, ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS  
COURT:28**

**DATE:- 13<sup>TH</sup> APRIL, 2022**

**SUIT NO:- FCT/HC/GWD/CV/39/2021**

**BETWEEN**

**1. BELWIGG LIMITED  
2. NURA BASHIR SULAIMAN  
AND**

**APPLICANTS**

**1. ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC)  
2. GUARANTY TRUST BANK PLC**

**RESPONDENTS**

**JUDGMENT**

By an Originating Motion dated the 12<sup>th</sup> day of March, 2021 and filed on the 17<sup>th</sup> day of March, 2021 in the Registry of this Honourable Court, the Applicants herein commenced this Fundamental Rights Enforcement proceedings against the Respondents under Order 2 Rules 1 and 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 (henceforth in this Judgment called FREP Rules) and Section 35 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), (henceforth in this Judgment called the constitution), Article 6 and 7 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, (Cap A9) Laws of the Federation of Nigeria and the Inherent Jurisdiction of this Honourable Court, praying the Court for the following orders to wit:-

- 1. A DECLARATION** that the arrest and continuing threat of arrest of the 2<sup>nd</sup> Applicant by the agent of the 1<sup>st</sup> Respondent without lawful justification of him having committed an offence is illegal,

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Hon. Justice M.S Idris

unconstitutional and ultra vires of the statutory duties of the 1<sup>st</sup> Respondent under the Nigerian Laws.

2. **A DECLARATION** that the invitation and or threat of arrest and detention of the 2<sup>nd</sup> Applicant by the agents of the 1<sup>st</sup> Respondent on the ground that he must make a payment of the sum of ₦10, 000, 000.00 (TEN MILLION NAIRA) without reference to allegation of him having committed any offence is illegal, unconstitutional and ultravires of the statutory duties of the Respondent under the Nigerian laws.
3. **A DECLARATION** that the freezing of the 1<sup>st</sup> Applicant's account domiciled at Guaranty Trust Bank account numbers: 0154136900 (Naira), 0154152841(Dollar), 0160486202 (Dollar) and 0160486192 since 2018 without any lawful justification whatsoever, is illegal, unconstitutional and ultra vires of the statutory duties of the 1<sup>st</sup> Respondent under the Nigerian laws.
4. **A DECLARATION** that the 1<sup>st</sup> Respondent has no power to direct and or command the 2<sup>nd</sup> Respondent to freeze and place post no debit order on the 1<sup>st</sup> Applicant's accounts domiciled with the 2<sup>nd</sup> Respondent without a valid Court order of competent jurisdiction as provided under the Nigerian Laws.
5. **AN ORDER OF PERPETUAL INJUNCTION** restraining the 1<sup>st</sup> Respondent by themselves, or their agents, servants and or privies or howsoever otherwise described from further inviting, arresting and or detaining the 2<sup>nd</sup> Applicant with a view to harass, intimidate and or enforce non-existent and fictitious complaints against the Applicant.
6. **AN ORDER OF PERPETUAL INJUNCTION** restraining the 1<sup>st</sup> Respondent whether by themselves, or by their agents, servants, officers, privies or howsoever described from further interfering with the fundamental right of the Applicant in any manner whatsoever.

7. **AN ORDER** of this Honourable Court directing the 2<sup>nd</sup> Respondent to forthwith unfreeze all the 1<sup>st</sup> Applicant's accounts domiciled with her.
8. **AN ORDER** of this Honourable Court granting the sum of ₦100, 000, 000.00 (ONE HUNDRED MILLION NAIRA) against the Respondents as general damages for the infringement of the Applicant's rights as protected under Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap A9, LFN, 2004.
9. **AND FOR SUCH FURTHER AND ANY OTHER ORDER OR ORDERS** as this Honourable Court may deem fit to make in the circumstance.

**The Grounds Upon Which This Application Is Brought Are As Follows:-**

1. By virtue of section 35(1) and (3) of the 1999 Constitution and Article 6 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, (Cap A9) LFN (2004), every Nigerian Citizen shall be entitled to his personal liberty and no person shall be deprived of such liberty except in accordance with a procedure permitted by law.
2. By virtue of section 44 of the Constitution of the Federal Republic of Nigeria, 1999 (As amended), No moveable property or any interest thereof shall be taken possession of compulsorily and no right over or interest in any property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law.
3. By virtue of section 6 and 7 of the Economic and Financial Crimes Commission (Establishment) Act, 2004, the statutory function of the 1<sup>st</sup> Respondent does not extend to unlawful arrest.
4. The 1<sup>st</sup> Respondent have concluded plans to effect the arrest of the 2<sup>nd</sup> Applicant without any justifiable cause and have threatened that they

will deal with him including initiating criminal proceedings against him unless the Applicant pays to the 1<sup>st</sup> Respondent the sum of ₦10, 000, 000.00 (TEN MILLION NAIRA ONLY) or its Dollar equivalent.

5. The initial arrest and subsequent threat of arrest of the 2<sup>nd</sup> Applicant arose by virtue of the fact that the 1<sup>st</sup> Respondent informed the 2<sup>nd</sup> Applicant that certain person made a complaint that a sum of money was wrongly lodged into the 1<sup>st</sup> Applicant's account since the year 2014 and the 2<sup>nd</sup> Applicant failed to return same. However, the 1<sup>st</sup> Respondent agents failed to identify the complainant and the date of the transfer as well as the 2<sup>nd</sup> Applicant's account statement showing a wrong transfe, rather the 2<sup>nd</sup> Applicant has been subjected to unnecessary investigative appointment since 2018 over an allegation of 2014.
6. The Applicants seriously feels that the arrest and continuing threat of arrest or carrying the threat into action amounts to a gross violation of the Applicant's right to personal liberty as protected by section 35(1) and 44 of the 1999 Constitution (as amended).

The Application was supported by a 24 paragraphed affidavit, documentary evidence marked as Exhibit A, found at paragraph 4 of the supporting Affidavit. The Applicants' affidavit evidence deposed to by Nura Bashir Sulaiman, (the 2<sup>nd</sup> Applicant) seems to tell a flowing story (even though from the Applicant's standpoint) of the factual background to the institution of this suit especially as it chronicles the underlying events leading to the above action. Also filed with the Application is a written address in support of the Origination motion, urging the Court to grant the Applicants prayers as contained therein.

On their part, the Respondents have filed a Counter-affidavit in reply to the Claims of the Applicants. The 1<sup>st</sup> Respondent filed a 22 paragraphed Counter-affidavit deposed to by Abubakar Muhammad

Kwaido (being an investigating officer attached to the cyber crimes section of the 1<sup>st</sup> Respondent detailed to investigate the case involving the Applicants) having the consent of the 1<sup>st</sup> Respondent, same filed on the 17<sup>th</sup> day of May 2021. Also attached to the Counter-affidavit are documentary evidence marked exhibits EFFC 1-11, the 1<sup>st</sup> Respondent's Counter-affidavit debunking the averments of the Applicant is also supported by a written address.

The 2<sup>nd</sup> Respondent similarly filed a 7 paragraphed affidavit deposed to by Margaret E Ogbonah (being a legal practitioner in the law office of Ojile, Ojile and Associates, Counsel to the 2<sup>nd</sup> Respondent and having the consent of the 2<sup>nd</sup> Respondent to depose therein, same was filed on the 22<sup>nd</sup> day of July, 2021, also attached to the Counter-affidavit are documentary evidence marked exhibits GT1 - GT2D, the 2<sup>nd</sup> Respondent's Counter-affidavit debunking the averments of the Applicant is also supported by a written address.

The Applicants in response to the 1<sup>st</sup> Respondent's Counter-affidavit filed a further and better affidavit dated the 22<sup>nd</sup> day of September, 2021.

From the facts reviewed above (as presented by the parties in dispute). I have no doubt that the pith and substance of the action of the Applicants against the Respondents is rooted in an investigative effort made by the 1<sup>st</sup> Respondent with the assistance of the 2<sup>nd</sup> Respondent on allegations of involvement in cybercrime activities, illegal receipt of funds and illegal transfers as well as alleged infringement of the Applicant's fundamental rights flowing from the investigations.

In the determination of the above issue, it is my informed view to adopt the sole issue as raised by the Applicants in its Written Address to wit:

“Whether the Applicants are entitled to the reliefs sought having regards to the peculiar circumstances of this case?

Let me start by reminding myself that based upon the ex-parte application of the Applicants filed on 17<sup>th</sup> March,2021, I was minded after going through the affidavit in support of the application to grant some restrictive orders against the Respondents as a stopgap measure in these terms:-

- 1. The 1<sup>st</sup> Respondent or its agents is hereby restrained from further inviting, arresting or detaining the 2<sup>nd</sup> Applicant in connection with the subject matter of this suit pending the determination of the originating motion.***
- 2. The Respondents whether by themselves, agents, officers, servants or howsoever describe are hereby restrained from further interfering with the fundamental rights of the Applicants in any manner whatsoever pending the determination of the originating motion.***

So far, the Applicants have enjoyed the protection order of this as there was no allegation that the Respondents have by any means violated the terms of the order as beneficially granted the Applicants.

On the sole issue for determination, Counsel to the applicant submitted that by virtue of section 6 and 7 of the Economic and Financial Crimes Commission (EFCC) Act, the functions of the Economic and Financial Crimes Commission (EFCC) does not include arrest without lawful justification. Counsel further submitted citing the case of ***ARAB CONTRACTORS NIGERIA LTD V GILLIAN UMANAH (2012) LPELR-7927 (CA)*** that the police and all law enforcement agencies cannot and are not empowered to be used as debt collectors or to settle contractual

dispute and was therefore wrong for the Respondents to allow itself to be used for such actions.

Counsel to the Applicant also submitted that the attempt to arrest the 2<sup>nd</sup> Applicant by the 1<sup>st</sup> Respondent without any reasonable ground of him have committed an offence is a contravention of the provision of **Section 46 of the Constitution** and in support cited the case of ***IGWE & ORS V EZEANOCHIE & ORS (2010) 7 NWLR (PT.1192)***.

Counsel to the Applicant concluded by stating that the material presented before this Court is one which shows that there is in fact a threat to infringe on the Applicant's right and the Court has the right and power to prevent the threatened infringement from taking place, commending this Court to the case of ***NEMI V A.G LAGOS STATE AND ANOR (1996) 6 NWLR (PART 452) CA 42***.

The 1<sup>st</sup> Respondent's Counsel in reply to the sole issue above intimated the Court that it is trite law that he who asserts must prove and that an Applicant who alleges that his fundamental rights was breached or about to be breached has the duty to establish and prove same. Counsel referred the Court to the case of ***FAJEMIROKUN V COMMERCIAL BANK (2009) 2 MJSC (PT.11) 114 AT 140 PARA C***, Counsel similarly made reference to section 131-133 of the **Evidence Act 2011** providing the fundamentals required in prove of facts where there lies an allegation.

Counsel to the 1<sup>st</sup> Respondent stated that from the affidavit evidence of the Applicants, there is nothing to show that the 1<sup>st</sup> Respondent breached/infringed the fundamental rights of the Applicants. That it is trite law that no Citizen's freedom of liberty is absolute, that where there is reasonable suspicion that a person has committed an offence, his liberty may be impaired temporarily and may similarly be tampered to prevent him from committing an offence. Counsel cited the cases of ***EKWENUGO V F.R.N (2001) 6 NWLR (PT. 708) 171 AT 185*** and also ***DOKUBO***

***ASARI V F.R.N (2007) 12 NWLR (PT.1048) 320 P.633. PARAS A-C and SECTION 35(1) (C) CFRN 1999.***

The 1<sup>st</sup> Respondent submitted that by virtue of **Section 8(5) of the EFFCC Act 2004, Section 4 of the Economic and Financial Crimes Commission (EFCC) Act, 2004** and the case of ***FAWEHINMI V I.G.P (2000) 7 NWLR (PT.665) C.A 481***, the Commission has the powers to invite and interview any person whether suspected or not as long as the commission is satisfied that such a person may give valuable information that will assist its investigation. Therefore, the action of the 1<sup>st</sup> Respondent in interviewing the 2<sup>nd</sup> Applicant is excusable as it is in furtherance of its investigation of an alleged offence reported.

Counsel to the 1<sup>st</sup> Respondent further submitted that virtue of **Section 6 (5) (b) of the Money Laundering Prohibition Act, 2011**, the 1<sup>st</sup> Respondent is authorized to place a stop Order not exceeding 72hours on any account or transaction if it is discovered in the course of their duties that such account or transaction is suspected to be involved in any crime and that in the instant case, the 1<sup>st</sup> Respondent wrote to Banks to put a hold to the outward movement of cash from the accounts of the Respondent in compliance with the section and the Bank complied with the stop order which expired after 72 hours.

The 1<sup>st</sup> Respondent in conclusion submitted that the Applicant have failed to establish the breach of his fundamental right to entitle them to the sum of ₦100, 000, 000.00 (ONE HUNDRED MILLION NAIRA) as general damages, as the rights of the Applicants have not been breached in any way, neither there are facts to show their rights are under any threat of being breached by the 1<sup>st</sup> Respondent. That the Application of the Applicant is an attempt to circumvent his investigations and the Application should therefore be dismissed.

The 2<sup>ND</sup> Respondent in response to the above issue asserted that the Applicant in light of **Section 131 of the Evidence Act 2011** have failed to discharge the burden of proving the allegations against the Respondents. Counsel submitted that the requirements expected by the Applicants by law is much more than just asserting, that they must place before the Court cogent and direct evidence supporting the assertions.

The 2<sup>nd</sup> Respondent's Counsel similarly drew the attention of the Court that the Applicants in the instant case have failed to place before the Court any prove to show that the 1<sup>st</sup> Applicant's accounts were blocked beyond 72hours as demanded by **Section 6(5) (b) of the Money Laundering Prohibition Act, 2011**. Counsel further submitted that the Applicants failed to establish before the Court that the 2<sup>nd</sup> Respondent arrested or notified the 1<sup>st</sup> Respondent to arrest the 2<sup>nd</sup> Applicant or that he was arrested at the 2<sup>nd</sup> Respondent's premises in Lekki or at any premises at all to have at least accorded them a cause of action against the 2<sup>nd</sup> Respondent. Counsel urged the Court to dismiss the Claims of the Applicant's originating motion against the 2<sup>nd</sup> Respondent.

Having regards to the submissions above, it is my informed believe that by virtue of the provisions of **Section 35(1) and 36(6)** of the 1999 Constitution, every citizen of Nigeria is entitled to his personal liberty and no person shall be deprived of his liberty except as stipulated by the constitution or statute. **See ADAMS V A.G. FEDERAL (2006) VOL. 4 INRN (PG.46) PP (5) 56.**

It also goes to say that every person in Nigeria has the right to go about his or her own business unmolested or unhampered by anyone except in exceptional circumstances, such as when he is found to have violated the law of the land.

It is in this respect that, it is said that human right is not absolute in some given circumstances. So therefore, from the record of the Court processes

as filed, the Applicant is of the view that he was intimidated, arrested, threatened to be arrested and his Bank Accounts frozen by the Respondents. The Respondents asserted that the law has given them powers to quickly intervene in a situation whenever a report is placed before them in their office or when they observed that there is a possibility of breach of peace.

It is the position that by virtue of Section 4 of the Police Act Cap 359 LFN 1990, the 1<sup>st</sup> Respondent being an agency with all rights and privileges of members of the police by virtue of **Section 8(5), Section 4 of the EFCC ACT, 2004** are empowered by law to protect life and property of the citizen/persons, prevent and detect crimes, apprehension of offenders, preservation of law and order and the enforcement of all laws and regulations. **See DR. ONOFORURU V I.G.P (1991) 5 NWLR (PT. 193) P. 593 at 645, P.4**

Section 35(1) (c) of the 1999 Constitution further reinforced such powers to arrest and detain anybody reasonably suspected of having committed a crime. That is to say the Applicant who is seeking the order of Court against the Respondents cannot be an exception of the power given to the 1<sup>st</sup> Respondent by law if at all he is reasonably suspected to having been involved in any criminal act whatsoever.

Indeed it is true that the Nigeria Police or other law enforcement agencies which the 1<sup>st</sup> Respondent falls under by decisions of Court are not debt collectors, but the law has empowered them to act properly whenever a report is brought to them to conduct an investigation before taking any further action. It is the same method in my view used in the case of the Applicant.

I have studied the affidavit of the Applicant and counter-affidavit of the 1<sup>st</sup> Respondent, to my mind the 1<sup>st</sup> Respondent acted within the confers of the

law when they apprehended the Applicant and granted him unconditional bail afterwards.

In my humble and respected view, the claim of the Applicant of been intimidated, arrested, detained, threatened to be arrested and his Bank Accounts frozen unlawfully by the 1<sup>st</sup> Respondent are unfounded as there are no evidence placed before the Honourable Court to substantiate the allegations.

To this end therefore, haven found that the whole allegations of the Applicants are mere genic, the applications and the prayers sought must fail, no passion is allowed by law to stop the 1<sup>st</sup> Respondent being a law enforcement agency recognized by our law in performing their designate duties as provided for by the constitution of Nigeria 1999 and the EFCC Act, 2004. I so hold.

So therefore, I do not find it worthy thence the Applicant rushing to the Court for the purpose of dragging the Court to deprive the Respondents from performing their duties and also seeking for damages on what they term to be an unlawful arrest, continuing threat of arrest and detention, all these are mere stories with no substance at all.

It should be noted that the Court have severally decried the practice of rushing to Court to be shielded against actions of law enforcement agencies, that is, arrest and investigation. See the case of ***A.G Anambra State v Chief Chrin Uba (2005) 15 NWLR (PT.947) PG. 44 at 67*** where it was held that:-

***"For a person therefore to go to Court to be shielded against criminal investigation and prosecution is an interference of the powers given by the Constitution to law officers in the control of criminal investigation. The***

***Plaintiff has no legally recognizable right to which the Court can come to his aid. His claim is not one that the Court can take cognizance of. The Plaintiff cannot expect a judicial fiat preventing a law officer in the exercise of its constitutional powers”.***

In view of the above thereof, it is absolutely clear that the investigative efforts by the 1<sup>st</sup> Respondent being a law enforcement agency are not an infringement of anybody's Fundamental Right if done in accordance with the law and procedure as enshrined in the 1999 Constitution (as amended).

In conclusion the right of man to own property, whether moveable or immovable and to use the property for whatever lawful purpose he desires is one of those fundamental laws of nature that led to the civil rights crusades and the consequential legislation in the first place. This right is at the very foundation of a capitalists and democratic society. It is only under communist and to an extent socialist government that the major tools of production are expropriate by the Government and put to use that they deem communal. Under democratic Capitalist that Nigeria professes, the right of man to own land and other moveable properties is protected strictly by law and recognized as a fundamental right by the constitution. See section 44 of the constitution the law is that if there is in existence a law that stipulates the modes of compulsory acquisition of property, such a law must be followed strictly by the Government, otherwise the acquisition will be vitiated. This was the position of the Supreme Court **in *BELLO VS DIOCESES SYNOD OF LAGOS STATE & ORS (1973) ALL NLR (pt 1) 247 at 268*** the Court held that expropriatory status which encroach on personal proprietary right must be construed *FARTISIMNE CENTRE PREFERMENT*, that is strictly against the acquiring authority but sympathetically in favour of the citizen whose property rights are being

deprived; thus, against the acquiring authority, there must be strict adherence to the formalities prescribed in acquisition. This principle of law was followed in ***PEENOK INVESTEMENT VS HOTEL PRESIDENTIAL LTD (1983) 4 NCLR 122 at 665.***

It is clear that constitutional provision against compulsory acquisition of properties, save upon strictly considered prerequisites, is a very serious part of the fundamental rights of a citizen. It is paramount to note that the procedure of enforcement of fundamental right of a citizen is *sue generis* which is essentially based on affidavit evidence the Applicant has failed to establish by way of material evidence that his right is been breach or there is likely a breach of the fundamental right of the Applicant. All the issues raised by the Applicant have been answered by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent substantially. However under the inherent powers relied on this Court regarding an application of this nature I hereby averred that the 1<sup>st</sup> Respondent shall charge the Applicant if they so wish from now to the 31<sup>st</sup> May, 2022 to any Court of competent jurisdiction. However where the 1<sup>st</sup> Respondent failed to comply with the above order the account of the Applicant must be unfreeze and the fundamental right of the Applicant after the expiration of the above period shall not be infringe by whatever means. No order is been made in favour of the Applicant against the 2<sup>nd</sup> Respondent. Also no order as to cost whether general or special damages this is in line with principle of substantial justice as echoed by the Supreme Court.

Also the Applicant shall not be detain and he should report to the 1<sup>st</sup> Respondent between 9:00 clock in the morning to 3:00 clock until the 1<sup>st</sup> Respondent might have finish their investigation or charge same to Court if need be. The above order is subject to invitation to be made to the Applicant by the 1<sup>st</sup> Respondent. The Applicant must be given at least a week notice for him to appear before the 1<sup>st</sup> Respondent.

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**HON. JUSTICE M.S IDRIS**  
**(PRESIDING JUDGE)**  
**13/4/2022**

Appearance

Abdul M Saleh:-For the Applicant

H. M. Muhammed:-For the 1<sup>st</sup> Respondent

Namdi Ahare:- For the 2<sup>nd</sup> Respondent.

**Sign**  
**Judge**  
**13/4/2022**