

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT MAITAMA, ABUJA**

**ON TUESDAY, 1<sup>ST</sup> DAY OF MARCH, 2022**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/1532/2021**

**BETWEEN**

**HON. EMMANUEL OMEBIJE**

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**APPLICANT**

**AND**

- 1. ECONOMIC & FINANCIAL CRIMES  
COMMISSION [EFCC]**
- 2. MICHAEL WETKAS**
- 3. MRS. GRACE EKPIWHRE**
- 4. OMA AND MAMUS NIGERIA LIMITED**



**RESPONDENTS**

**JUDGMENT**

The applicant commenced this action on 9/7/2021 vide Originating Motion for the enforcement of his fundamental rights. In support thereof are: [i] Statement setting out the name and description of the applicant, the reliefs sought and the grounds for the application; [ii] the applicant's 21-paragraph affidavit and Exhibits A1-A5, B & C attached therewith; [iii] written address of Gabriel O. SalifuEsq.; [iv] the applicant's 10-paragraph further affidavit filed on 22/7/2021

and Exhibits D1 & D2 attached therewith; [iv] reply on points of law of Gabriel O. Salifu Esq. filed on 27/7/2021 in response to the 3<sup>rd</sup> & 4<sup>th</sup> respondents' written address; and [v] reply on points of law of Gabriel O. Salifu Esq. filed on 4/8/2021 in response to the 1<sup>st</sup> & 2<sup>nd</sup> respondents' written address.

The applicant seeks the following reliefs against the respondents:

1. An order enforcing applicants fundamental human rights under sections 34[1], 35[1] & 41[1] of the 1999 Constitution of Nigeria [as amended] against the respondents herein in terms of the reliefs sought in the statement accompanying the affidavit in support of this application.
2. A declaration that the basic transaction between the applicant and the 3<sup>rd</sup> and 4<sup>th</sup> respondents is purely civil and therefore *ultra vires* the powers of the 1<sup>st</sup> respondent to inquire or intervene thereto.
3. A declaration that the 1<sup>st</sup> respondent is not a debt collector or recovery agent or institution and therefore *ultra vires* the powers to recover debt for or on behalf of the 3<sup>rd</sup> and 4<sup>th</sup> respondents.
4. An order of perpetual injunction restraining the 1<sup>st</sup> respondent whether by themselves, their agents, servants and or persons acting for and on their behalf from arresting, threatening to arrest, harassing or intimidating, detaining and or doing any other act that will interfere, jeopardize in any manner whatsoever with the personal liberty and other fundamental rights of the applicant.

5. An order directing the respondents forthwith to abate the use of threats, harassment, intimidation or any unconventional means to recover any purported debt from the applicant.
6. N5,000,000.00 exemplary damages/compensation in favour of the applicant against the respondents jointly and severally for wanton desecration of the applicants fundamental rights aforesaid.
7. And for such further order[s] as the Honourable Court may deem fit to make as the justice of this application may demand.

In opposing the Originating Motion, Adeleke David, an operative with the 1<sup>st</sup> respondent, filed a counter affidavit of 19 paragraphs on 22/7/2021; attached therewith are Exhibits EFCC 1, 2 & 3. AshibiAmedu Esq. filed a written address with the counter affidavit. On behalf of the 3<sup>rd</sup>& 4<sup>th</sup> respondents, YohannaIdrisa, a litigation secretary in the Law Firm of J. A. Atanawhemera& Co., filed a counter affidavit of 11 paragraphs on 19/7/2021; attached therewith is Exhibit A. J. A. Atanawhemera Esq. filed a written address with the counter affidavit. At the hearing of the Originating Motion on 14/12/2021, the learned counsel for the parties adopted their respective processes.

In his affidavit in support of the Originating Motion, the applicant stated that:

1. He is the Chairman and Managing Director of Farcarjo Properties Ltd., carrying on business of mass housing development in many parts of the Country.

2. The 2<sup>nd</sup> respondent is the Head of Operations of the 1<sup>st</sup> respondent. The 3<sup>rd</sup> respondent is a business woman trading in the name of the 4<sup>th</sup> respondent and also the customers of the applicant.
3. Sometime in 2009, the 3<sup>rd</sup> respondent applied for and was allocated 5 plots of land in the name of the 4<sup>th</sup> respondent at the Café Garden City Estate, Abuja at the cost of N15,000,000 each except the fifth plot [which is Shop 1] at the cost of N13,500,000. The plots are serially numbered as 1029, 1030, 1031, 1032 and Shop 1. The letters of allocation separately dated 22/7/2009 and 4/9/2009 are Exhibits A1-A5.
4. The 3<sup>rd</sup> respondent made full payment for the four plots [Exhibit A1-A4] and took possession of these plots but failed to complete payment in respect of the fifth plot [Exhibit A5] which is still vacant and unoccupied till date.
5. Part of the conditions for the allocation was to make full payment including payment for infrastructure in order to commence development on the plots and the 3<sup>rd</sup> respondent was adequately informed.
6. On several occasions, 3<sup>rd</sup> respondent was reminded to make full payment to develop the plot as FCDA constantly monitored the empty/vacant spaces and threatened to revoke their license. The 3<sup>rd</sup> respondent did not develop the plot and did not pay the outstanding money on the land including infrastructure rates.

7. By the letter dated 4/7/2018, the management of the Estate wrote a letter [Exhibit B] to the 3<sup>rd</sup> respondent after repeated demands for payment and or development.
8. He met with the 3<sup>rd</sup> respondent to implore her to pay the outstanding money on the plot and to develop it or in the alternative collect her deposit but she refused and left the plot vacant in the Estate till date.
9. The 3<sup>rd</sup> respondent resorted to using the EFCC to harass and intimidate him and had boasted of her connection in the Commission to arrest him. The 1<sup>st</sup>& 2<sup>nd</sup> respondents served him the letter of invitation dated 1/7/2021 [Exhibit C] to report at the Capital Market and Insurance Fraud Section of EFCC in Jabi.
10. It is in furtherance of the 3<sup>rd</sup> respondent's boast of her connection in the EFCC that she, acting in cohort with the 1<sup>st</sup>& 2<sup>nd</sup> respondents invited him to EFCC. The transaction with the 3<sup>rd</sup>& 4<sup>th</sup> respondents had nothing to do with Capital Market or Insurance Fraud Section of EFCC.
11. The 3<sup>rd</sup> respondent is merely using her connection with the EFCC to intimidate and harass him over contractual transactions they mutually entered into.
12. He has not committed any criminal offence to warrant the threats, harassment and intimidation; let alone dragging him for arrest at the Capital Market and Insurance Fraud Section of the 1<sup>st</sup> respondent.

13. He had received numerous phone calls to report at EFCC honourably or face forceful arrest by operatives of the 1<sup>st</sup> respondent. The 1<sup>st</sup>&2<sup>nd</sup> respondents will commit him to false imprisonment if they are not restrained.

In the applicant's further affidavit, he deposed to the following facts:

1. As a developer, he is used to the tricks and attitudes of clients making only deposits/part payments on allocated lands and build to completion without full payments for the land and rates for infrastructure.
2. He has suffered similar and numerous frustrations on account of unpaid land rates and infrastructure on his sites from allottees and customers who resorted to EFCC on frivolous allegations.
3. EFCC had on several occasions invited him upon spurious allegations only to find out the truth and at which point he would have suffered untold deprivations, agony and humiliation.
4. Notwithstanding the merit and reasonable explanations on any allegation before the EFCC, he had gone through harsh bail conditions which entail two serving directors in the Federal Ministries with landed properties in Abuja Municipal Area supported with Certificate of Occupancies as sureties. The letter of invitation and the conditions of bail are Exhibits D1 & D2 respectively.

5. He does not know any other serving director in the Federal Ministries and Agencies to stand surety for him on the usual stringent bail conditions by the 1<sup>st</sup>& 2<sup>nd</sup> respondents.

In the counter affidavit of the 1<sup>st</sup>& 2<sup>nd</sup> respondents, Adeleke David stated that:

1. He is a member of the team investigating the petition against applicant. The Commission received a petition dated 7/6/2021 [Exhibit EFCC 1] from J. A. Atanwhemera Esq. on behalf of 3<sup>rd</sup>&4<sup>th</sup> respondents against the applicant and his company, Farcarjo Properties Ltd. The petition borders on criminal breach of trust and misappropriation of N38,500,000.
2. A letter of invitation was written to the petitioner who came to the Commission and adopted her petition and made a statement to further explain the transaction that led to the petition.
3. A letter of invitation was sent to the applicant for him to come and give his own side of the story; a copy of the invitation letter is Exhibit EFCC 2.
4. The Commission received a letter dated 6/7/2021 from Barr. D. D.Makolo [Exhibit EFCC 3] acknowledging the receipt of the letter of invitation to applicant. He said the invitation letter got to the applicant late on the 5<sup>th</sup> of July and requested that the applicant be allowed to come to EFCC on 12/7/2021. The applicant never reported to EFCC.
5. The applicant's claim that the 3<sup>rd</sup> respondent is using EFCC to intimidate and harass him is not true. The officers of the EFCC do not issue threat to

people but are professional in their approach. The 1<sup>st</sup> & 2<sup>nd</sup> respondents are unaware of any threat, intimidation, harassment, humiliation or any likelihood of a breach of the applicant's fundamental right.

6. The action of the applicant in this case is mere conjecture and speculation as he never honoured the invitation to warrant the men and officers of the 1<sup>st</sup> respondent to harass or threaten him.

The depositions of Yohanna Idrisa in the counter affidavit of the 3<sup>rd</sup> & 4<sup>th</sup> respondents are:

1. Sometime in late 2009, the applicant offered the 3<sup>rd</sup> & 4<sup>th</sup> respondents a sale of property known as Shop 1, Plot 59 situate at Kafe Garden City, Kafe District, Abuja with the name of Farcarjo Properties Ltd. The consideration was the sum of N35,500,000 and additional payment of N3,000,000 for the provision of infrastructure.
2. The 3<sup>rd</sup> & 4<sup>th</sup> respondents accepted the offer and paid the total sum of N38,500,000 to Farcarjo Properties Ltd. and the applicant, in tranches. The receipt of the last tranche of the payments dated 9/2/2010 and a copy of the allocation letter dated 24/1/2014 issued by the applicant [Farcarjo Properties Ltd.] to the 3<sup>rd</sup> & 4<sup>th</sup> respondents as evidence of final payment for the said property is Exhibit A.
3. The 3<sup>rd</sup> respondent periodically went to check on the plot since it was a developing area which requires period of time to develop. At one of her

visits to the property, she saw a fence round the property and she demanded an answer from the Applicant.

4. The 3<sup>rd</sup> respondent was told that the fence was done by the applicant [Farcarjo Properties Ltd.] as part of their responsibilities in order to protect the land from encroachment by land-seekers
5. Sometime in April 2021, 3<sup>rd</sup> respondent sent her Surveyor and Architect to the said land with a view to developing it and to her amazement, they were denied access to the property and were chased out of the Estate by suspected workers of the applicant [Farcarjo Properties Ltd.].
6. Upon confrontation by the 3<sup>rd</sup> respondent, the applicant replied in his words *“the Plot was sold by my Son and Workers to another person when I went to contest for election in my State.”* All efforts to get the applicant and Farcarjo Properties Ltd. to restore the land or at least return the prevailing value of the land to the 3<sup>rd</sup> & 4<sup>th</sup> respondents proved abortive.
7. The actions and behaviour of the applicant are suspicious of cumulative economic and financial crimes transactions which are tantamount to misrepresentation, criminal breach of trust, outright fraud by obtaining monies under false pretence and conversion of 3<sup>rd</sup> and 4<sup>th</sup> respondents' funds into his personal use.
8. The 3<sup>rd</sup> respondent has no connection with the 1<sup>st</sup> & 2<sup>nd</sup> respondents and at no time did she boast to use her connection with 1<sup>st</sup> & 2<sup>nd</sup> respondents to deal with the applicant.

In the applicant's written address, Gabriel O. Salifu Esq. submitted one issue for determination, to wit:

Whether the application is meritorious as to entitle the applicant to the reliefs sought.

AshibiAmedu Esq. distilled three issues for determination in the 1<sup>st</sup>& 2<sup>nd</sup> respondent's written address. These are:

1. Whether the claim of the applicant is vexatious or frivolous to grant an injunction against the 1<sup>st</sup>& 2<sup>nd</sup> respondents.
2. Whether the 1<sup>st</sup> respondent has the power to investigate and prosecute an offender.
3. Whether the Court has the power to stop the investigative power of the 1<sup>st</sup> respondent [EFCC].

For his part, J. A. Atanawhemera Esq. posed one issue for determination in the 3<sup>rd</sup>& 4<sup>th</sup> respondents' written address, which is:

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 adopts the issue formulated by the applicant's counsel as the issue for determination in this action, which is:

*Whether the application for enforcement of the applicant's fundamental rights is meritorious as to entitle him to the reliefs sought.*

**SUBMISSIONS OF LEARNED COUNSEL FOR THE APPLICANT:**

Learned counsel for the applicant posited that by virtue of section 46[1] of the 1999 Constitution [as amended] and Order 2 of the Fundamental Rights [Enforcement Procedure] Rules, 2009, this Court has jurisdiction to grant redress to a person whose fundamental rights have been violated or likely to be violated. He referred to the case of **Abdulhamid v. Akar [2006] All FWLR [Pt. 321] 199.** Also, by section 35[1] of the Constitution, every person is entitled to his personal liberty. Section 35[1][c] thereof provides the circumstances under which a person's liberty may be derogated from; one of which is where a person is reasonably suspected to have committed an offence.

Gabriel O. Salifu Esq. further stated that the right to personal liberty entails that every person should be free and not subjected to arbitrary exercise of power by persons in authority as clearly demonstrated by the 1<sup>st</sup> respondent's *"unconscionable and inexplicable harassment, intimidation, and threats of arrest and detention of the Applicant."*

The applicant's counsel submitted that the relationship between the applicant and the 3<sup>rd</sup> & 4<sup>th</sup> respondents is centered on contract or business. That being the case, it is a civil matter for which the 1<sup>st</sup> respondent *"ought, as a matter of legal expediency, extricate itself."* He cited **Onagoruwa v. State [1998] 1 ACLR 435** to

support the view that breach of civil or business relation cannot ripen into criminality. Thus, the 1<sup>st</sup> respondent cannot arrogate to itself the function of debt collection as in this case. The 1<sup>st</sup> respondent being a creation of law must limit itself to its operations within the confines of the law creating it. It was further submitted that the onus rests on the respondents to prove that the continued harassment, intimidation and threats to the applicant are legal and constitutional. He referred to Iyere v. Doru [1998] 5 NWLR [Pt. 44] 30.

**SUBMISSIONS OF LEARNED COUNSEL FOR 1<sup>ST</sup>& 2<sup>ND</sup> RESPONDENTS:**

AshibiAmedu Esq. stated that throughout the affidavits of the applicant, there is nothing to show that 1<sup>st</sup>& 2<sup>nd</sup> respondents are threatening or intimidating or are likely to intimidate or harass him. By sections 6 & 7 of the Economic and Financial Crimes Commission [Establishment] Act, 2004 [i.e. EFCC Act], the 1<sup>st</sup> respondent has the power to investigate the applicant since there is a petition against him alleging the offences of misappropriation and criminal breach of trust of the sum of N38,500,000. The case of Amaechi v. INEC [2008] 5 NWLR [Pt. 1080] 272 was cited to support the submission that EFCC is a statutory body and its duties include the investigation and prosecution of a class of criminal offences. Counsel submitted that the invitation of the applicant by the 1<sup>st</sup> respondent is part of the process of investigation to hear his own side.

The 1<sup>st</sup>& 2<sup>nd</sup> respondents' counsel also submitted that the Court cannot make an order to restrain the performance of the statutory duties of investigation

and prosecution of any person who is alleged or suspected to have committed a crime. He referred to Fawehinmi v. IGP [2002] 7 NWLR [Pt. 767] 606 and Bamidele v. Commissioner for Local Government [1994] 2 NWLR [Pt. 329] 568 and other cases. Any order purporting to restrain the performance of the statutory duty of investigation and prosecution of crime is null and void and of no effect. The case of Attorney General of Anambra State v. Chief Chris Uba [2005] 33 WRN 191 was referred to.

**SUBMISSIONS OF LEARNED COUNSEL FOR 3<sup>RD</sup> & 4<sup>TH</sup> RESPONDENTS:**

J. A. Atanawhemera Esq. posited that section 46[1] of the 1999 Constitution [as amended] has three segments. The first segment is on the contravention of a person's fundamental right; the second is on the fundamental right being contravened, meaning that the contravention is in progress; while the third segment is on the likely contravention of the fundamental right, meaning that the contravention of the right is expected or probable. He submitted that the case of the applicant falls short of all the segments.

**REPLY ON POINTS OF LAW OF LEARNED APPLICANT'S COUNSEL:**

In his reply on points of law, Gabriel O. Salifu Esq. argued that section 6 of the EFCC Act did not vest the 1<sup>st</sup> respondent with general powers to investigate and prosecute all offences. Rather, EFCC is charged with the responsibility of coordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial

crimes in Nigeria. He referred to Hon. Emmanuel Omebije v. EFCC &Ors. [unreported] Judgment delivered on 28/5/2015 by this Court [Coram: Hon. Justice Y. Halilu].*[NOTE: Judgment not submitted to the Court]*. The allegations of criminal breach of trust and misappropriation against the applicant are not within the class of criminal offences contemplated under the EFCC Act as they are not financial and economic crimes. These are offences which the Nigeria Police deal with under the Penal Code and other penal provisions.

The applicant's counsel further submitted that it is a misconception of the law that the 1<sup>st</sup> respondent cannot be restrained by this Court from delving into matters that are outside the scope of its functions. He referred to the decision of the Federal High Court, Abuja Division *[Coram: Hon. Justice InyangEkwo]* where - according to learned applicant's counsel - the Court restrained EFCC from arresting Mike Ozekhome, SAN for criticizing Ibrahim Magu. *[NOTE: Judgment not submitted to the Court]*.

### **DECISION OF THE COURT:**

In relief 1, the applicant seeks to enforce his fundamental rights under sections 34[1], 35[1] and 41[1] of the 1999 Constitution [as amended]. Section 34[1] provides that: *"Every individual is entitled to respect for the dignity of his person ..."*Section 35[1] of the 1999 Constitution [as amended] provides: *"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. Paragraph [c] of subsection [1] of section 35 reads:

*[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.*

Section 41[1] of the 1999 Constitution [as amended] reads:

*Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.*

The unchallenged and uncontroverted facts in the counter affidavit of the 1<sup>st</sup>& 2<sup>nd</sup> respondents are that the 1<sup>st</sup> respondent received a petition written on behalf of 3<sup>rd</sup>& 4<sup>th</sup> respondents against the applicant. The allegations in the petition dated 7/6/2021 [Exhibit EFCC 1] against the applicant and Farcarjo Properties Ltd. are fraudulent allocation of landed property, criminal breach of trust and financial conversion and diversion of the sum of N38,500,000 to personal use. By letter dated 1/7/2021 [Exhibit EFCC 2], 1<sup>st</sup> respondent invited the applicant to come to its office on 6/7/2021.

By letter dated 6/7/2021 [Exhibit EFCC 3], Dr. D. D. Makolowrote to the 1<sup>st</sup> respondent and stated that the letter of invitation has not gotten to applicant as

*“it was delivered late yesterday.”* He requested that applicant *“should be allowed to come next week being the 12<sup>th</sup> July 2021 by 12 noon subject to your convenience please.”* On 9/7/2021 the applicant filed this suit.

There is no doubt that by virtue of the EFCC Act, 1<sup>st</sup> respondent is statutorily empowered to investigate all cases or allegations of economic and financial crimes. In the course of the investigation, the 1<sup>st</sup> respondent can invite, arrest and detain a suspect. However, in the exercise of its power of arrest and detention, the 1<sup>st</sup> respondent must act in accordance with the law and not arbitrarily. In the instant case, it is not in dispute that the 1<sup>st</sup> respondent merely invited the applicant to its office.

One of the arguments put forward on behalf of applicant is that the transaction between the applicant and 3<sup>rd</sup> & 4<sup>th</sup> respondents is purely civil and therefore *ultra vires* the powers of 1<sup>st</sup> respondent to investigate. Now, it is worthy to note that an allegation of crime may arise from a civil transaction like the instant case where the 3<sup>rd</sup> & 4<sup>th</sup> respondents made allegations of crime against the applicant and Farcarjo Properties Ltd. arising from the transaction for the purchase of property. The 1<sup>st</sup> respondent is entitled to investigate the allegation in order to determine whether, *prima facie*, a criminal offence has been made out against the applicant and Farcarjo Properties Ltd.

Mr. Gabriel O. Salifu also contended that the allegations of criminal breach of trust and misappropriation against the applicant are not within the class of

criminal offences contemplated under the EFCC Act as they are not financial and economic crimes. With due respect, I disagree with this opinion. I hold the view that the allegations of criminal breach of trust and misappropriation of N38,500,000 are financial and economic crimes which EFCC can investigate.

In paragraphs 14 & 15 of his affidavit, the applicant complained of harassment, threats and intimidation by the 1<sup>st</sup> respondent. He stated that he had received numerous phone calls from operatives of the 1<sup>st</sup> respondent to report at the Commission honourably or face forceful arrest. In the same vein, applicant's counsel complained of *"unconscionable and inexplicable harassment, intimidation, and threats of arrest and detention of the Applicant."* The applicant has the onus to prove that he was harassed, intimidated and threatened by the officers of the 1<sup>st</sup> respondent. It is trite law that he who asserts must prove his assertion. See **Nsefik v. Muna [2007] LPELR-3934 [CA]**.

The applicant did not give particulars or evidence of the alleged harassment, intimidation and threat of arrest and detention or phone calls. As I said before, on 6/7/2021, applicant's lawyer wrote a letter to inform the 1<sup>st</sup> respondent that the applicant will honour the invitation on 12/7/2021. On 9/7/2021, the applicant filed this action. One wonders when the officers of 1<sup>st</sup> respondent harassed, intimidated or threatened the applicant. I hold that the applicant did not prove the said allegation to warrant the intervention of the Court.

In the further affidavit, the applicant narrated his experience in EFCC in the past based on allegations made against him by other people. The applicant

stated that he was granted bail by EFCC; although he alleged that the bail conditions were harsh. In my humble view, this deposition does not support his allegation that the 1<sup>st</sup> respondent has violated, or is likely to violate, his fundamental rights to dignity of human person, personal liberty or movement.

Finally, in relief 3, the applicant prays the Court to declare that 1<sup>st</sup> respondent has no power to recover debt for the 3<sup>rd</sup>& 4<sup>th</sup> respondents as it is not a debt collector or recovery agent or institution. I hold that there is nothing before the Court to support the grant of this declaratory relief especially as the applicant has not reported to 1<sup>st</sup> respondent to respond to the allegations in the petition.

From all that I have said, the applicant's suit lacks merit. It is dismissed. I award cost of N100,000.00 to the 1<sup>st</sup>& 2<sup>nd</sup> respondents and N100,000.00 to the 3<sup>rd</sup>& 4<sup>th</sup> respondents payable by the applicant.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of Counsel:*

1. G. O. SalifuEsq. for the applicant.
2. AmeduEsq. for the 1<sup>st</sup>& 2<sup>nd</sup> respondents.