IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE 17th OF FEBRUARY, 2022

SUIT NO: FCT/ HC/CV/2295/20

BETWEEN:

HON. (MRS.) RABI ANDREW ---------- APPLICANT

AND

1. **THE NIGERIAN POLICE FORCE**
2. **INSPECTOR GENERAL OF POLICE (IGP)**
3. **MR. A. A. ELLEMAN**
   (HEAD IGP MONITORING UNIT)
4. **ABUBAKAR GAWI**

---------- RESPONDENTS

O. O. ALAO *for the Applicant.*
Respondents not in Court and not represented by Counsel.

RULING

The Applicant in an originating Motion dated 27th July 2020 brought pursuant to Order 11 Rule 1, 2, and 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009 as prescribed by Section 315 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Articles 5, 6 and 12 of the African Charter on Human and People's Right (Ratification and Enforcement) Act and the inherent jurisdiction of the Court sought for the following reliefs:

1. An order for enforcement of the applicant's fundamental rights to personal liberty and property.

2. An order of perpetual injunction restraining the 1st - 3rd respondents from inviting or further inviting, interrogating or further interrogating, questioning or further questioning, arresting or further arresting, detaining or further detaining, harassing or further harassing the applicant forthwith.

3. An order directing the 1st – 3rd respondents to return and deliver and surrender unto the applicant the original title documents of her property lying at Asokoro illegally withheld or seized by them.

4. An order directing and compelling the respondents to jointly and severally pay to the applicant the sum of **₦500,000,000.00 (Five Hundred Million Naira)** only as damages for physical and psychological torture that the applicant has been subjected to.

5. And for such other order(s) as the honourable court may deem fit to make in the circumstance.

The grounds upon which the reliefs are sought are:

1. By virtue of Section 35, 37, 43, 44 and 46(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) read together with Articles 5, 6 and 12 of the African Charter on Human and People's Right (Ratification and Enforcement) Act (CAP A9) Laws of the Federation of Nigeria, 2004, every person shall be entitled to his or her personal liberty and property and no person shall be

deprived of such liberty and property except in accordance with the provision of the Constitution.

2. The 1st, 2nd and 3rd respondents have refused, failed and neglected to limit their activities and actions to their powers as enshrined in Section 4 of the Police Act by acting illegally as debt collectors or commission agents to the 4th respondent in a civil matter which subject is a civil agreement/contract of sale of motor vehicles.

3. The transactions between the applicant and the 4th respondent are purely or entirely civil which grievances can only be ventilated in a civil matter before the law court.

4. It is not within the power of the 1st – 3rd respondents to act as debt collection agents or debt recovery agents for the 4th respondent.

5. The applicant is also entitled to pursue and enjoy her freedom to personal liberty without any inhibition within the ambits or purview of Section 35 of the 1999 Constitution of the Federal Republic of Nigeria.

The applicant narrated in her 41 paragraph affidavit particularly at paragraphs 8 and 9 that she was awarded a contract for the supply of twenty nine (29) assorted vehicles by the Adamawa State Government and in a bid to get a reliable and reputable car dealer to supply the said

cars, she was introduced to the 4th respondent who is a car dealer with an office located in Abuja by an officer of the Ministry of Finance and Budget of Adamawa State. That the 4th respondent had eleven units of Land Cruiser Prado for sale totalling **₦247,000,000.00 (Two Hundred and Forty Seven Million Naira)**. And she immediately gave the 4th respondent an initial deposit of **₦100,000,000.00 (One Hundred Million Naira)** and undertook to pay the balance of **₦147,000,000.00 (One Hundred and Forty Seven Million Naira)** immediately the government of Adamawa State fulfils its promise of payment within 21 days or if she collects an ISPO from Adamawa State Government to access a loan from Zenith Bank Plc which offer she already had.

In paragraph 11 and 12 of her affidavit she also stated that she entered into another contract for the supply of 25 units of 2019 Model of Land Cruiser Prado at the cost of **₦575,000,000.00 (Five Hundred and Seventy Five Thousand Naira)** and promised to pay this amount within thirty (30) days from the date of receipt of the last car by which time Adamawa State Government ought to have paid her company for the cars. She exhibited a copy of the award letter, and letters of undertaking by her company to the 4th respondent.

That the 4th respondent insisted on issuance of cheques to him on the amount being owed but it was agreed that those cheques shall not be presented unless and until confirmed from her and thus an unscription *'Confirm before processing'* was signed by her at back of the cheques. The copies of the cheques are attached thereto. She admitted in

paragraph 14 of her affidavit that the total amount owed the 4th respondent is **₦277,000,000.00 (Two Hundred and Seventy Seven Thousand Naira)** and that unfortunately the Government of Adamawa could neither give her the ISPO nor pay her as promised because of the outbreak of Covid-19 pandemic which all her creditors including the 4th respondent are aware because they all had insiders in the Ministry of Finance Adamawa State.

Her ordeal with the 1st – 3rd respondents started on the 18th July 2020 when at about 6:30pm, the 4th respondent came to her house in Life Camp, Abuja with four (4) Policemen and arrested her. She was taken to Life Camp Division of the Nigerian Police on the ground that she was owing the 4th respondent a sum of **₦277,000,000.00 (Two Hundred and Seventy Seven Thousand Naira)** being the balance of transactions of the cars he supplied her. That after taking her statement by one Mr. Bala hereafter referred to as the Investigating Police Officer, she requested for her bail which the Investigating Police Officer refused even when she informed him of her health challenges. That she was thrown into a stinking, congested, overpopulated, and terrible cell at about 10pm and she subsequently slumped just after thirty (30) minutes in the cell. She later found herself on the hospital bed in NISA Hospital located in Jabi, Abuja.

In paragraph 22 she further averred that contrary to the instruction of the NISA Hospital that she be taken to the National Hospital, Abuja or the Federal Medical Center, Jabi, Abuja, the Investigating Police Officer,

Mr. Bala ordered that she be taken back to Life Camp Police Station at about 2:30am and be remanded in custody until she is able to pay the 4th respondent the said amount owed. She also said that the Investigating Police Officer further instructed his men not to take her to the Hospital until he comes. Thus she was left on the ground/floor without medical attention at the Police Station until 3:30pm the following day when the IPO Bala came and informed her that he was going to grant her administrative bail only on the condition that she produced the original title documents of her house at Life Camp, Abuja.

That at this point she had started to vomit blood and based on that he allowed her to deposit the original title documents of her land situate at Asokoro, by A. Y. A. Filling Station and he also insisted that she produced one (1) surety who is/was to sign on her behalf. Thus she was eventually released from the Police detention at about 4pm over a matter that is/was purely civil and contractual.

That following the instruction of the NISA Hospital, she went to the National Hospital the following day and was immediately admitted and placed on drips. While still on drips in the Hospital, the IPO called her and insisted that she must report to the Force Headquarters despite informing him that she was on drip at the National Hospital, he was adamant. That after conducting series of tests and examinations on her, the Doctors advised that she should proceed on bed rest for two (2) weeks commencing from 20th July, 2020 and thereafter issued a letter to that effect. A copy of the said letter is attached as Exhibit 6.

She also stated that she was further advised against exposing herself to any physical or psychological trauma and stress but because of the insistence of the IPO, she instructed her Doctors to immediately discharge her to their anger and consternation. She later reported at the Headquarters as instructed by him at about 11am that same Monday.

She further alleged that the IPO and his men kept her waiting from the said 11am till about 4pm and threatened her that he would detain her again if she did not write an undertaking on how to pay her debt to the 4th respondent. That as result of her weakness and poor health, she could not write but Mr. Bala instructed one of her Directors, Engr Ada to write the undertaking on her behalf. Thus she was forced by the IPO to undertake to pay her indebtedness within thirty (30) days.

In paragraph 28 and 29 of her affidavit she alleged that on 24th July, 2020 at about 4pm, she received another call from the IPO that she should immediately report at the Force Headquarters despite informing him that she is under her doctor's instruction to have a bed rest for two (2) weeks. A copy of Exhibit 6 had earlier been given to Mr. Bala. And because of her inability to report as requested by him, he called her surety and instructed him to inform her that if she did not report on 25th of July, 2020 by 9am, her bail would be revoked and she would be rearrested and detained.

That since after then, she has been receiving several calls from the said IPO threatening to arrest her and she could no longer stay in her house because of fear of being detained and this has deteriorated or worsened her health condition. That the Investigating Police Officer informed her during her detention that it was the Head of the IGP Monitoring Unit, 3rd Respondent that instructed him to be harassing and detaining her.

In opposition, the 1st – 3rd respondents filed a 33 paragraph counter-affidavit deposed to by one Inspector Titus John. He claimed to have the consent of the 1st – 3rd respondents to depose to the counter-affidavit and so do on their behalf. The deponent is attached to the Inspector General of Police Monitoring Unit, Force Headquarters, Abuja. He averred that three (3) petitions were received, one dated 15th June, 2020, from the law office of Audu Karimu & Co., on behalf of one Mujaf Automobiles Nigeria Ltd, Captioned *"Complaint of being swindled, obtaining by false pretences, criminal misappropriation and cheating"* against Alh. Abubakar Mohammed Gawi Motors. Also on 22nd July, 2020, a petition was received from the law office of -Rich & Co., on behalf of Mohammed Najib, against Rabi Andrew (the Applicant herein), Isaiah David, Techno Investment Maintenance Ltd, on allegations of Criminal Conspiracy, issuance of Dud Cheque and Criminal Breach of Trust (Exhibit NP3). And lastly a petition dated 22nd July 2020 (Exhibit NP4) was also received on behalf of Abubakar Isah, against the applicant.

He averred that the applicant cautioned in English Language, she made a written statement and additional written statement to the team of police investigators. That she was detained upon remand warrant issued by the court. See Exhibit NP11, NP12 and NP13. And after the preliminary investigation she was released on bail to a surety on 19/7/2021 (sic), within twenty four hours. See Exhibits NP14 & NP15. That one Aliyu Umar arrested along with the applicant was also cautioned in English language and made a statement to the team of Police investigators (See Exhibit NP16) and released on bail. He asserted that the action of the Police was based on the aforementioned allegation of crime as per the above mentioned written petitions which were being investigated and not on the grounds of alleged indebtedness of the applicant to the 4th respondent.

That the applicant was not released on bail instantly because a reliable surety i. e. civil servant with proof and verifiable means of identification was not produced by the applicant, and when the applicant had sign of ill-health, she was taken to hospital for medical attention.

Furthermore in paragraph 23 and 24 of the counter-affidavit, the deponent averred:

Paragraph 23: “In further reaction to Paragraph 21 of the affidavit in support of the motion of the applicant and the averment therein are not true, I hereby state that from the available facts to the team of police investigators of the said case, when the applicant was ill, police

officers on duty made arrangement and she was taken to hospital, where she was treated and later discharged."

Paragraph 24: "That Paragraphs 22 and 23 of the affidavit in support of the motion of the applicant and the averment therein are not true, as the applicant after her medical treatment at the hospital was brought back to the police station and from the available fact, her health condition was stable, and no police officer left her on the ground/floor without medical attention as alleged by the applicant herein and depositing the said title document with the police was part of the conditions for applicant's bail in the criminal offences reported to the police against the applicant and cohorts, which the alleged offences are not civil and contractual but criminal in nature."

Let me pause and comment on the above paragraphs of the counter-affidavit. It is very clear that the deponent did not have the knowledge of what happened to the applicant when she was taken to Life Camp Division, particularly her ordeal in the hands of the IPO, Mr. Bala. One would have expected the said IPO to depose to the instant counter-affidavit because the entire allegations of the breach of fundamental human right of the applicant were centred around him. It is trite that actions instituted under Fundamental Rights Enforcement Procedure are fought on affidavit evidence, and are therefore governed by the provision of Section 115 of the Evidence Act. The provision of Section 115 (1) of the Evidence Act states:

"Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge of from information which he believes to be true."

Section 115 (3) and (4) of the Evidence Act are also very apt to the case at hand and it goes thus:

"(3) Where a person deposes to his belief in any matter of fact and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the fact and circumstances forming the ground of his belief.

(4) When such belief is derived from information recorded from another person, the name of his informant shall be stated and reasonable particulars shall be given respecting the informant and time, place and circumstance of the information."

In my view the facts deposed to in paragraph 23 and 24 of the counter-affidavit are hearsay; the deponent ought to have declared his source of information, the time and other particulars of the informant. The attempt by the deponent to defend the action of the said IPO cannot be countenanced by the court in the absence of the source of the information or facts which the deponent claimed were available to him and I so hold.

I also hold a similar view in respect of the averments in paragraphs 25, 26, 27, 28 and 29 of the counter-affidavit. See **AG ADAMAWA STATE & ORS V AG FEDERATION & ORS (2005) LPELR 602 SC.**

JOSIEN HOLDINGS LTD & ORS V LORNAMED (1995) LPELR 1634 SC where the Supreme Court held:

"Now an affidavit is a statement of fact which the maker or deponent believes to be true to the best of his knowledge, information or believe. It must contain only true facts of which the maker or deponent his personal knowledge or which are based on information which he believes to be true (See Section 85 of the Evidence Act). In the latter case he must also state grounds of his belief (Section 87 of the Act) and state the name and full particulars of his informant. (See Section 88 of the Act) No legal arguments, conclusions or other extraneous matter must be included (See Section 86 of the Act).

Any paragraph which offends against any of the provisions may be struck out by the court but if it is not struck out, then the court should not attach any weight to it (See BARGUE DE AFRIQUE O CEIDINTILE V ALH BABA SHARFADE & ORS (1963) NNLR 21, HORN V RICKARD (1963) 2 ANLR 41, 1963 NNLR 67)." **– Per Kutigi JSC.**

From the foregoing, I hold that all the above stated averments contained in the counter-affidavit are unreliable as they did not frontally challenge or deny the allegations of the applicant in the affidavit in support of the originating motion.

The remaining facts in the counter affidavit are not therefore sufficient to sustain the defence of the 1st – 3rd respondents to the applicant's claim. Let me also put on record that the 4th respondent was represented by one Israel Obaniyi when the matter came up for hearing. The Counsel informed the court on behalf of the 4th respondent thus:

"We shall be relying on the processes filed by the 1st – 3rd respondents in urging my lord to discountenance the arguments of the applicant and dismiss the application."

The implication is that the allegations of the applicant were not effectively challenged by the respondents in their counter-affidavit. They are therefore deemed to have admitted the claim of the applicant.

I observed that the applicant filed a further affidavit and a reply on point of law. The applicant stated that despite the Order of interlocutory injunction granted by this court restraining the 1st – 3rd respondents from inviting and further inviting, arresting and further arresting her pending the determination of the substantive application, the 1st – 3rd respondents received service of the order but still went ahead on the 23rd of August, 2020 to break into her house and carted away two of her vehicles a Land Cruiser 2014 Model and Peugeot 508 Convertible. That she and her husband were further arrested on 23rd August 2020 and taken to Maitama Police Station, detained and were

only released on 26th August 2020 after the 1st – 3rd respondents obtained another undertaking from her to pay the 4th respondent. That as a result of the latest actions of the 1st – 3rd Respondents she filed another Motion before this Court dated 12th day of October 2020 seeking the order of Court to compel the 1st – 3rd Respondents to unconditionally release the two cars carted away. That despite the service of the said Order on the 1st – 3rd Respondents, they have refused to release her cars saying that until she finished paying the debt owed the 4th Respondent. Still in a bid to help the 4th respondent recover her debt the 1st – 3rd Respondents have lifted the restriction placed on her bank account to wit: Techno Investment Maintenance FCMB Account No. 6882927018 and placed same under their strict surveillance in order to know when her debtor the Adamawa State Government pays money into the said account.

The 1st – 3rd respondents by a further counter-affidavit deposed to by inspector Titus John, exhibited a remand warrant from a Grade 1 Area Court, Lugbe dated 24-08-2020, which he said was obtained when the applicant jumped bail earlier granted her by the police. In further denial of the allegations of the applicant, the deponent averred that the applicant's vehicles were released to her as soon as the order of the court was served on them and on conclusion of preliminary investigation of the aforesaid criminal offences. He relied on Exhibits BB and CC, the request for release of the applicant's vehicle and the bond to release the exhibits by the police. The deponent on behalf of the 1st

– 3rd respondents urged the court to discountenance the prayers of the applicant.

The learned counsel to the applicant **Mr. Olugbenga Adeyemi** attached to the main affidavit and the applicant's further affidavit his written submissions on facts and on point of reply. In the same vein, the 1st – 3rd respondents also filed its written submission in support of their counter-affidavit and further counter-affidavit.

The applicant's counsel formulated a sole issue formulated for determination to wit: ***"Having regards to the circumstances of this case especially the fact that the contract of sale of cars and relationship existing between the Applicant and the 4th Respondent is civil, whether the Applicant is entitled to the reliefs being sought."***

The 1st – 3rd Respondents on the other hand formulated six (6) issues for determination to namely:

i. ***Whether there is any reasonable cause of action and the Applicant has made out a case under the Fundamental Rights Enforcement Procedure Rules (2009) that will make him to be entitled to the reliefs sought in this application.***

ii. ***Whether from the facts and circumstances of this case, the 1st and 3rd Respondents did not act within the scope of their statutory power.***

iii. ***Whether the arrest, interrogation and any other action against the applicant by the 1st to 3rd respondents in the course of investigation of the aforesaid alleged offences at the relevant time, having regard to the nature of the case was not legitimate.***

iv. ***Whether injunctive reliefs are sought for as a matter of course.***

v. ***Whether there is any material fact placed before the court from which to infer infringement of the constitutional rights of the Applicant by the 1st to 3rd Respondents herein***

vi. ***Whether from the facts and circumstances of this case the Applicant is entitled to award of any form of damages and apologies from the 1st – 3rd Respondents herein.***

I have perused the written arguments of learned counsel to both parties, and in my view all the issues formulated by the parties can be summarized into a sole issue and that is:

Whether from the facts and circumstances of this case there has been an infringement of the fundamental right of the applicant as to entitle her to the reliefs sought.

The learned counsel to the applicant submitted and rightly too that onus is on the applicant to show that the reliefs he/she seeks is within the purview of the fundamental right as enshrined in Chapter IV of the

Constitution. And that this is clearly brought out in Section 46 of the 1999 Constitution as amended which states that:

"Any person who alleges 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 for redress."

He further submitted that an applicant must situate his alleged infringement within the provision of Section 33 – 45 of the 1999 Constitution as amended. In other words the main or principal claim and the consequential reliefs thereto must be for the enforcement of his fundamental right. The violation of his fundamental right shall not be incidental, ancillary or peripheral to the principal claim or relief sought. See **OLAITAN V O. O. U & OR 2015 LPELR 41718 CA** where the Court of Appeal held thus:

"It has been settled in a long list of cases that in an application for the enforcement of fundamental rights, the court must find out whether the breach of a fundamental right is the main plank or claim on the application. This is because where the violation of a fundamental right is merely subsidiary or ancillary or incidental to the main or principal claims it cannot be litigated under the Fundamental Right Enforcement Procedure Rules. See TUKUR V GOVERNMENT OF TARABA STATE (1997) 6 NWLR (PT. 510) PG 549, DONTOE V CIVIL SERVICE COMMISSION (2001) 19 WRN 125 @ 137."

See **UMUAHIA CAPITAL DEVELOPMENT AUTHORITY V IGNATUS (2015) LPELR 24910 CA; NWACHUKWU V NWACHUKWU & ANOR (2018) LPELR 44696 SC** where the Supreme Court also held that for a matter to be instituted under the Fundamental Right Enforcement Procedure Rules, the enforcement of such right(s) must be the main/substantive claim before the court not ancillary.

The applicant in the instant suit have brought her application under Section 34, 35, 43, 44 and 46(3) of the 1999 Constitution as amended. The applicant in paragraph 20 of her affidavit stated:

"After taking my statement by one Mr. Bala an IPO, I subsequently requested for a grant of bail and which Mr. Bala refused even when I informed him that I have a health challenge. He insisted and I was thrown into a stinking, congested, overpopulated and terrible cell at about 10pm and subsequently slumped just after 30 minutes in the cell. I later found myself on the hospital bed in NISA Hospital located in Jabi, Abuja."

It is trite that a suspect is entitled to his dignity as a human being. The fact that the person is accused or suspected to have committed an offence does not derogate from his right as a human being. Therefore dehumanizing or degrading a suspect or even a convict is a flagrant abuse of the fundamental right of the citizen. The conduct of the IPO, Mr. Bala as stated by the applicant is highly reprehensible. The said IPO was said to have clamped the applicant into a cell, after arresting her,

even without an investigation into the alleged complaints contained in the petition.

In my humble view, the first step that ought to have been taken by the agent of the 1st – 3rd respondents was an invitation to the applicant upon receipt of the petitions against her. It is very worrisome the ease at which agents of the 1st – 3rd respondents obtained warrant of remand from the Area Courts in Abuja and in most undeserving cases, such warrants are used as instruments of abuse, intimidation and humiliation of the citizenry by the Police in connivance with the Area Court Judges.

The respondents in their written address made a heavy weather of the statutory functions of the Police and relied on Section 4, 24, 28 of the Nigerian Police Act LFN 2004, and Section 35(4)(a)(b) and 35 of the 1999 Constitution as amended. The respondents in the address submitted that the arrest, interrogation and detention of the applicant was within a relevant time and upon allegation of crime as contained in the petition. The respondents relied on the case of **GARBA V UNIVERSITY OF MAIDUGURI (1986) NWLR (PT. 550) PG 554 RT. 23, OLATINWO V STATE (2013) 8 NWLR (PT. 1355) PG 126 @ 141 PAR E (SC)** where the Supreme Court **Per Akaaha JSC** held:

"Criminal investigations are carried out by the Police based on information (criminal complaint) at the disposal of the force and the

investigator uses his own discretion to determine how to go about the work."

It is not in doubt that the police is imbued with the powers to arrest, detain and try suspects in our law courts. The exercise of such powers is not without checks and balances. The Nigerian Police Act 2020 and 1999 Constitution as amended provide the framework for the conduct, operations and the functions of the men of the Nigerian Police. Section 31 of the Nigerian Police Act 2020 states:

"Where an alleged offence is reported to the police or a person is brought to the police station on the allegation of committing an offence, the police shall investigate the allegation in accordance with due process and report its finding to the Attorney General of the Federation or of a state as the case may be for legal advice.

32(1): A suspect or defendant alleged or charged with committing an offence established by an Act of the National Assembly or under any law shall be arrested, investigated and tried or dealt with according to the provision of this Act except otherwise provided under the Act.

34: A suspect or defendant may not be humiliated, bond or subjected to restraint except;

a. … … … … … …

b. … … … … … …

c. by order of a court.

37(1): A suspect shall be accorded humane treatment, having regard to his right to the dignity of his person.

(3) not to be subjected to any form of torture, cruel, inhumane or degrading treatment."

In addition to Section 34 of the Constitution states:

"34(1): Every individual is entitled to respect for the dignity of his person and accordingly;

a. No person shall be subjected to torture or to inhumane or degrading treatment."

The 1st – 3rd respondents did not controvert or challenge the allegation of the applicant that she was put in the cell by the IPO, at about 10pm and she slumped after 30 minutes in the cell and later found herself in the hospital. This act of the IPO is very callous, inhumane and an abuse of the dignity of the applicant. The applicant is entitled to protection of her dignity under the provision of Section 34 of the Constitution of Nigeria 1999 as amended.

There is nothing on record to show that the allegations contained in the petition against the applicant were investigated before the respondents embarked on the arrest and detention of the applicant. She averred

that before she was released on bail she was made to deposit her title document. In paragraph 22 of her affidavit she stated thus:

"That contrary to the instruction of the NISA Hospital that I be taken to either the National Hospital or the Federal Medical Centre Jabi, Abuja the IPO, Mr. Bala ordered that I be taken back to Life Camp Police Station at 2:30am and be remanded in custody until am able to pay the 4th respondent the said amount that I owe him. He further instructed his men not to take me to Hospital until he comes. That I was left on the ground/floor without medical attention in the Police Station until 3:30pm the following day when he came and informed me that he was going to grant me administrative bail only on the condition that I produce the original title documents of my house at Life Camp, Abuja."

Paragraph 23: "*At this point, I have started to vomit blood and based on that he allowed me to deposit the original title document of my land situate at Asokoro, by A. Y. A. Filling Station and he also insisted that I produced one (1) surety who is/was to sign on my behalf. Thus I was eventually released from the Police detention at about 4pm over a matter that is/was purely civil and contractual."*

The act of the 1st – 3rd defendants in detaining the applicant and forcing her to deposit her land document without an Order of Court is rash and ultra vires the powers of the respondents. The surrendering of the land documents to the 1st – 3rd respondents as a condition to granting her bail is unconstitutional; it negates the provision of Section 44 of the

1999 Constitution as amended which prohibits compulsory acquisition of property. I agree with the submission of learned counsel to the applicant that it is only a court of competent jurisdiction that has the power to order the surrendering of a citizen's property to either the court or Federal Government of Nigeria. The Police have no such powers. The act of the Police is an usurpation of the powers of the court. From the foregoing the surrendering of the title document to the 1st – 3rd respondents by the applicant is illegal and I so hold.

Let me also state categorically and for umpteen time that it is not the business of the Police to dabble into failed contractual agreement between parties; see Section 32(1) of the Police Act 2020 which states that; *"A person shall not be arrested merely on a civil wrong or breach of contract."* It is rather unfortunate that the Police have turned themselves into debt recovery agents and instruments of harassment and intimidation by parties at the instigation of a party to a failed contractual agreement. The documents exhibited by the applicant showed that there was civil agreement between the parties. There is no material fact in the counter-affidavit showing that the applicant swindled the 4th respondent or had been paid by the Government of Adamawa and converted it to her personal use. The 4th respondent instead of using the instrumentality of the civil court, preferred to instigate the 1st – 3rd respondents to intimidate, harass, embarrass and detain the applicant. The applicant also claimed in her further affidavit particularly paragraph 7 – 12 that despite the service of the court order

issued in the hand of my learned brother Justice V. S. Garba on the 4th of August 2020 retraining the 1st – 3rd respondent from further inviting, harassing and interrogating the applicant, see Exhibit 1 attached to her further affidavit. The 1st – 3rd respondent continued to harass, intimidate and embarrass the applicant and her husband, by breaking into her house, beat her husband, Pastor Babade and catered away her two of her Land Cruiser 2014 Model and Peugeot 508 Convertible. She stated further in paragraph 12 of the further affidavit; ***"In a further bid to recover debt for the 4th respondent I and my husband was (sic) also arrested for the 2nd time and were taken to Maitama Police Station where we spent the next four (4) hallowing days in detention and we were only released on 26th August 2020 after the 1st – 3rd respondents obtained another undertaking to pay the 4th respondent from me."***

In reaction to the allegation of the applicant, Inspector Titus John averred in paragraph 5 of the further counter-affidavit as follows:

"That in reaction to paragraph 11 and 12 of the further affidavit of the applicant therein, I hereby state that all vehicles recovered in the course of Police Investigation of the aforesaid alleged criminal offences were released to the applicant upon conclusion of preliminary investigation into the case, and after the order of court and application of the applicant herein was processed and approved by the police authorities, and the applicant was not made to do or write any undertaking for payment of any money to the 4th respondent as alleged by the applicant."

It is very obvious that when the vehicles of the applicant were impounded there was no court order empowering the 1st – 3rd respondents to so do. The act of impounding the vehicles of the applicant by the 1st – 3rd respondents is unconstitutional, brazen, and also illegal in the absence of a valid court order. Furthermore the 4th respondent by reporting the applicant from one Police Station to another in a bid to recover his debt is highly mischievous and oppressive. It amounts to a mental torture, harassment and intimidation of the applicant. The law does not allow the 4th respondent to use the Police to settle a civil score between him and the applicant. The act of the 4th respondent by instigating the 1st – 3rd respondents constitutes a breach of the fundamental right of the applicant and in consequence the applicant is entitled to damages. See **IFEMEJE V UMUCHU COMMUNITY BANK NIG LTD (2020) LPELR 50623 CA; MEZUE & ANOR V OKOLO & ORS (2019) LPELR 47666 (CA)**

"Whether the duty of the police includes the settlement of civil dispute or debt collection "In UMOERA V. COP (1977) LPELR- 3371 (SC), reference was made to OKUYEMI V. POLICE where Fatayi-Williams J.S.C stated that:

"Police investigations are not necessarily followed by judicial proceedings but they may be. Moreover, it is only after investigations have been completed that the Police decide whether to prosecute the suspect or not."

In DANFULANI V. EFCC & ORS (2015) LPELR-25899 (CA), the case of AG. ANAMBRA STATE V. UBA (2005) 15 NWLR part 947 pg. 44 at 67 was cited where Bulkachuwa J.C.A (as he then was) held that: "For a person to go to Court to be shielded against criminal investigation and prosecution is an interference of powers given by the Constitution to law officers in the control of criminal investigation."

The responsibility to investigate a matter and determine whether the matter should be prosecuted based on the evidence is that of the Police confirmed by the provisions of Section 4 of the Police Act, 2004.

However, the Police have no duty nor right to use their coercive power to compel parties in a civil matter to make undertaking to pay off debts. The Police is not a debt recovery agency. The Police must not detain any citizen of this country until he pays off a debt to another citizen. That would be territorial trespass into the realm of judicial functions.

The Police must draw a line between civil and criminal matters. They should also know when to refer a complainant with a civil matter to the Court to seek redress instead of delving into it themselves." **Per DONGBAN-MENSEM ,J.C.A (Pp. 20-21 paras. A)**

The 1st – 3rd respondents in the counter-affidavit claimed that one of the allegations against the applicant was issuance of dud cheques. Curiously there was no dud cheque attached to the petition marked as

Exhibit NP3 attached to the counter-affidavit. One wonders what forms the basis for the arrest and detention of the applicant.

In one of the cases cited by the 1st – 3rd respondents in their written submission to wit the case of **OLATINWO V STATE (2013) 8 NWLR (PT. 1355) PG 126 @ 141, PAR E SC** the Supreme Court **Per Aka'ah JSC** held:

"Criminal investigations are carried out by the Police based on information (criminal complaint) at the disposal of the force and the investigator uses his own discretion to determine how to go about the work."

The 1st – 3rd respondents cannot place reliance on this authority because they have ran foul of the said principle postulated by the Supreme Court in the case. Furthermore Section 35(1)(c) of the 1999 Constitution provides:

"Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following case and in accordance with a procedure permitted by law;

a. … … … … … …

b. … … … … … …

c. For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of having committed a

criminal offence or to such extent may be reasonably necessary to prevent his committing a criminal offence."

In my humble view the 1st – 3rd respondents have not placed before me material facts that constitutes reasonable suspicion of having committed a criminal offence by the applicant to warrant arrest and detention. See **DURUAKU V NWOKE (2015) 15 NWLR (PT. 1483) PG 417** where the Court held that:

"Where there is evidence of arrest and detention of an applicant which were done or instigated by the respondent in an action for enforcement of fundamental rights, it is for the respondent to show that the arrest and detention were lawful. That is to say, the onus is on the person who admits detention of another to prove that the detention was lawful."

See **FAJEMIROKU V CN(CL) NIG LTD (2002) 10 NWLR (PT. 774) 95.**

On the whole, I find and hold that the arrest and detention of the applicant at the instigation of the 4th respondent is illegal, unlawful and a flagrant breach of the applicant's fundamental right under Section 35 of the 1999 Constitution as amended.

2. The seizure or the confiscation of the applicant's vehicles without an Order of the court is also illegal, unconstitutional, and abuse of power by the 1st – 3rd respondents.

3. The arrest and detention of the applicant and her husband at the Maitama Police Station on the 23rd of August, 2020 before they were released on 26th day of August 2020 is also illegal, unlawful and in contravention of the applicant's right to liberty under Section 35 of the 1999 Constitution as amended.

The sole issue formulated by the court is resolved in favour of the applicant and it is hereby ordered as follows:

1. The 1st - 3rd respondents are hereby restrained from further inviting, interrogating or further interrogating, questioning or further questioning, arresting or further arresting, detaining or further detaining, harassing or further harassing the applicant forthwith.

2. The 1st - 3rd respondents are to return and deliver unto the applicant the original title documents of her property lying at Asokoro illegally withheld or seized by them.

3. I award the sum of **₦5,000,000.00 (Five Million Naira)** against the 1st – 3rd respondents in favour of the applicant for violation of her fundamental human rights. I also award the sum of **₦2,000,000.00 (Two Million Naira)** against the 4th respondent for instigating the arrest and detention of the applicant, and for physical and mental torture the applicant was subjected to in the hands of the 1st – 3rd respondents.

4. Cost of this action is assessed as **₦100,000 (One Hundred thousand Naira)** against the respondents.

SIGNED

HON JUDGE
17/2/2022