

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 GWAGWALADA
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 5TH DAY OF DECEMBER 2022**

FCT/HC/CV/2214/2021

BETWEEN:

PASTOR JOEL DIPO.....APPLICANT

AND

1. NIGERIA POLICE FORCE

2. INTELLIGENT RESPONSE TEAM(I.R.T).....RESPONDENTS

3. TOBECHUKWU ENELE

***STEPHEN UKEH** holding the brief of **A. Y. JUBRIN** for the applicant.*

***EDEH UCHENNA CHUKWUEBUKA** appears with **PATIENCE AGYAH** for the 3rd respondent.*

RULING

This is a case of Enforcement of Fundamental Right of the applicant brought pursuant to the provisions of Order II Rule 1-7 Fundamental Rights (Enforcement Procedure) rules 2009. Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended), Sections 35,36, 41 & 46 of the Constitution of the Federal Republic of Nigeria (as amended) and under the inherent jurisdiction of the Honourable Court seeking for the following reliefs.

- a. An Order of Court declaring the arrest and detention of the Applicant from the Church while ministration was on-going on

11th day of January, 2021 at about 5:00 pm till 1:00 a:m on the 12/01/2021 by men and officers of the 1st Respondent Intelligent Response Team (I. R. T.) at Abuja on a civil transaction between the Applicant and the 3rd Respondent without regard to the infringement of the Applicant Fundamental Right is illegal, unlawful and same amount to a violation of the Applicant's Fundamental Rights as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended).

- b. An Order o Court declaring the incessant/invitation of the applicant with a view to detain the applicant on a purely civil transaction between the Applicant and 3rd Respondent by men and officers of the 2nd Respondent since January 2021 till date without charging the Applicant to Court for any offence is illegal, unlawful as same amount to a violation of the Applicant's Fundamental Rights as enshrined in the Constitution.
- c. An Order of Court mandating the refund of **Four Million Five Hundred Thousand Naira only (N4,500,000.00)** illegally collected from the Applicant by the 2nd and 3rd Respondents and another sum of **Four Hundred and Fifty Thousand Naira(N450,000.00)** from the Applicant wife **(totaling Four Million Nine Hundred and Fifty Thousand Naira only(N4,950,000.00))** and in respect of a civil transaction between the Applicant and the 3rd Respondent.

- d. An Order of Court stopping the incessant/continues phone calls threat of further arrest and detention of the Applicant on pretence of invitation of the Applicant's for whatsoever meeting or investigation activities in respect of a civil transaction between the Applicant and the 3rd Respondent and any act likely to cause the breach of the Fundamental Rights of the Applicant will amount to a violation of the Applicant's Fundamental Rights as enshrined in the Constitution.
- e. An Order of perpetual injunction restraining the Respondents jointly and severally, their servants, officers and privies from re-arresting and detaining the Applicant until the final determination of the substantive matter herein.
- f. The sum of **₦100,000.00 (One Hundred Million Naira only)** jointly and severally against the Respondents as general damages or compensation to the applicant for the unlawful, illegal and unconstitutional arrest and detention, as well as the wrongful acts of the Respondents on the Applicant.
- g. And for such further or incidental orders as the Honorable Court may deem fit to make in the circumstances.

In the statement of facts and the affidavit in support, the applicant claimed that he is an ordained minister of the Gospel with Word and Miracle Embassy Ministry. That he and the 3rd respondent are

engaged in visa business amongst other businesses that gave rise to the cause of action before this court sometime in 2019/2020 he engaged the services of the 3rd respondent to secure United State Visa, and after collecting his bank statement of account and the sum of **N600, 000(Six Hundred thousand Naira)** which later failed at the instance of the 3rd respondent without justification, the said money has not been refunded till date. Also that the 3rd respondent also engaged him to help her secure Canadian visa at late 2019 and early 2020 before the outbreak of Covid-19 worldwide which the 3rd respondent opted out.

The applicant also stated that the 3rd respondent linked him with one of her friend (sic) by name Anita to help her process certificate from National Agency for Food and Drug Administration and Control and the said Anita paid money directly to the applicant and later opted out on ground of delay not on the part of the applicant but on the administrative procedure of NAFDAC. That misunderstanding arouse as a result of, giving rise to exchange of text messages between the applicant and the 3rd respondent which made the 3rd respondent unlawfully and illegally instigate the officers of the 2nd respondent to unlawfully arrest and unlawfully detained the applicant on the 11th day of January, 2021 from around 5pm till 1 am on 12/01/2021 where he was compelled to write undertaking to pay the 3rd respondent monies that he did not owe. That the 3rd respondent had so far use the officer of the 2nd respondent to collect the sum of **Four Million**

Five Hundred Thousand Naira (N4,500,000.00) from him and the sum of **Four Hundred and Fifty Thousand Naira (N450,000)** from his wife using the 3rd respondent bank details.

The applicant also claimed that he was privileged to be shown a copy of legal advice from the legal section of the 1st defendant stating that the issue between him and 3rd respondent is purely civil transaction that he has been receiving incessant calls from the office of the 2nd respondent since he refused to pay that the 3rd respondent and all in a bid to unlawfully and unjustly arrest him. The applicant counsel filed a written address. He formulated one issue for determination to wit:

“Whether or not the respondents most especially the 2nd respondent have inherent and unlimited power not to have regard to legal advice in her own custody by maliciously and continuously inviting the applicant all in a bid to unlawfully arrest the applicant on a civil transaction without regard to the breach of fundamental rights of the applicant as enshrined in the constitution of the Federal Republic of Nigeria (1999 as amended) and Fundamental Rights (Enforcement Procedure) Rules 2009.”

The 1st respondents filed a counter affidavit which was treated as abandoned by the 1st and consequently struck out on the 29th of June, 2022 before it was relisted on the 7th of November 2022 upon the grant of an application dated 18th October 2022.

The case of the 1st respondent as stated on their counter-affidavit deposed to by SgtJoshua Kantoma an Investigation Officer attached to the Legal and Prosecution Section of Nigerian Police Force Headquarters, Area 11, Garki, Abuja was that on the 15th day of March 2022, at about 1230hrs he received the following information from one Inspector Audu Egoh, a detective attached to the Intelligence Response Team (IRT), a unit of the 1st respondent and the 1st respondent's counsel Celestine u. Udo Esq and he verily believed them. That around 24/12/2020 a petition by the 3rd respondent dated 07/12/2020 titled; *Petition Against one Abadariki Oladipo Joel for Threat To Life, Attempted Kidnapping, Blackmail, Obtaining The Sum Of N20,000,000 By False Pretence* from Miss Anele, was assigned to his team at the IRT for investigation. The petition is annexed as NPF1. The 3rd respondent was invited through her counsel. She volunteered a written statement and also furnished some documentary evidence which gave the detectives reasonable ground to suspect the applicant of having committed the offence alleged in NPF1. Consequently the applicant's church was visited after cover search for him for several days at different places including his home. He was met at a church service, the detective Inspector Audu Egoh, joined and waited till the end of the church service at about 7:00pm, the accused was excused and invited by the detective. He arraigned his things and later joined the detectives. The applicant was charged and continued and

therefore taken to the IRT office where he volunteered his statement, where he admitted the allegation of receiving money made against him. His statement is annexed as Exh NPF3.

As the interview was progressing into the night, the applicant was advised to contact any reliable person to stand surety for him and he called one Aderale Adedeji who came and applied for his bail and they left at about 10:30pm. The application for bail was annexed as Exh NPF4. The applicant also wrote a petition to the Inspector General of Police as the case progressed, and his case file was forwarded to the Legal Section of the 1st respondent. This necessitated the invitation of the applicant for further investigations; he was invited through his surety but all to no avail. His surety also went into hiding. This necessitated a fresh search for the applicant. The applicant knowing that the detectives were in search of him filed the instant suit and forwarded it through Whatsapp to Inspector Egoh Audu's phone believing that it would deter the detectives from searching for him. And at that point his case file was handed over to the Legal Officers attached to the Intelligence Response Team for vetting.

The Legal officers requested that the applicant be further searched for and produced for his arraignment in court. And on the 8/09/2021 the applicant was re-arrested, charged and cautioned. He was taken to the intelligence Response Team office where he was confronted with recent findings and evidence occasioned by his

petition to the to the Inspector General of Police. The applicant volunteered an additional written statement annexed as NPF 7. He was quickly arraigned before a court at Magistrate where a court order for his remand in police custody from the 08/09/2021 to 21/09/2021 was made. A copy of the court order is annexed as NPF8. And that notwithstanding the pendency of NPF8, he was arraigned before an FCT Magistrate court sitting at Wuse Zone 4 on a First Information Report (FIR) a copy of which is annexed as Exhibit 9. Sometimes before his arraignment and date fixed for trial, the Legal Section of the 1st respondent asked for the updated case file and consequently the case at the Magistrate Court Wuse Zone 4, Abuja was taken over by the 1st respondent's counsel Celestine U. Odo Esq. that the applicant was released on bail the same 11/01/2021 when he was arrested and not on 12/01/2021. The applicant he averred did not write any undertaking to pay any money at the Intelligence Response Team office to the 3rd respondent and no officer of the IRT facilitated the collection of any amount of money from the applicant. And that the legal advice from the legal section of the 1st respondent to the IRT was a confidential official communication not shown to the applicant.

In addition the deponent also averred that he was informed by the counsel to the 1st respondent Celestine U. Udo Esq at about 4:00hrs on the 15th March 2022 that he was the officer assigned the applicant's petition to the Inspector General of Police titled "**Request**

for Your Legal Examination and Review of the Case File in Intelligence Response Team (IRT) Between Tobechukwu Anele 'F' and Pastor Joel Dipo 'M'" when the applicant alleged that he was to be charged to court by the operatives of the Intelligence Response Team over a civil matter. That he called for the case file and vetted it. And that sometimes around 17/9/2021, the Commissioner of Police Legal Section receive another petition from the 3rd respondent alleging that the applicant was charged to a Magistrate Court for offences other than those she was aware were revealed by investigation by investigation. And that the petition was assigned to him, since he had already dealt with a sister petition. He called for the updated file and after vetting he was directed to take over NPF9 pending in the Magistrate Court Wuse Zone 4, Abuja. That having discovered that the applicant was taken to the magistrate court by the legal officers of the Intelligence Response Team, C. U. Udo Esq asked for a transfer of the matter to the appropriate court upon an amendment and substitution of the First Information Report at the magistrate court. On the 8th December 2021, the FIR was Substituted with NPF10, but the learned trial magistrate refused the application for transfer but rather struck out the NPF10 and discharged the applicant. Following this development C. U. Udo decided to file a fresh charge in the appropriate court. And that the said C. U. Udo is currently preparing the charge to be filed against the applicant at the High Court. That the filing of the instant application by the

applicant is to delay the preparation for his arraignment in the High Court by over-burdening the 1st respondent and his counsel. That the period of arrest /detention from 11/01/2021 to 1:00am of 12/01/2021 as alleged by the applicant was within a reasonable and justifiable time. The deponent finally averred that the suit is unmeritorious, frivolous and vexation and ought to be dismissed with cost.

The learned counsel to the 1st respondent formulated two (2) issues for determination to wit:

- 1. Whether the 2nd respondent is a competent party to enable the court assume jurisdiction against it and by implication the 1st respondent sued in a vicarious capacity.***
- 2. Whether any of the fundamental rights of the applicant has been, is being or is likely to be breached by the 1st respondent or any Police officer to entitle him to the reliefs sought.***

With respect to issue No. 1 the counsel to the 1st and 2nd respondent argued that the 1st respondent is not a natural person capable of violating the rights of the applicant without the instrumentality of a human agent occupying any office of the 1st respondent, that the applicant in his accompanying statement of facts as well as affidavit failed to disclose the name of the officers or men of the 1st respondent who allegedly violated, is violating or is likely to violate any of his fundamental rights. The learned counsel argued and rightly so that the 2nd respondent is a unit of the 1st respondent. I am

in agreement with the submission of the counsel for the 1st and 2nd respondents that even though the 1st respondent may be held vicariously liable for the act of any of his officers or men, such men or officers have to be indicated as parties in order to make them personally liable in the case of any excessive use of his authority. He made reference to regulation 34, of the Police Act & Regulation CAP P19 LFN 2010. He further submitted that the liability of such officer or men must first be established notwithstanding that the 1st respondent could be held liable for the act of his men or officers. The learned counsel relied on the case of GENEVA V AFRIBANK (NIG) PLC (2013) AFWLR (PT. 702)1652 @ 1678, REGISTERED TRUSTEES OF IROYIN AYO BAPTIST CHURCH V SANUSI & ANOR (2019) LPELR 47720 (CA). He urged the court to strike out the name of the 2nd respondent for being a non-juristic person. And that upon striking out the name of the 2nd respondent, there is no case left against the 1st respondent as there will be no reasonable cause of action against it since it was not alleged that it did anything to the applicant.

I am in total agreement with the submission of the learned counsel to the 1st and 2nd respondent and adopt the legal authorities cited in support of his arguments that the 2nd respondent is a unit of the 1st respondent and not natural or juristic person that can be sued as a respondent. The 2nd respondent is therefore struck out from this suit. On whether there is a cause of action against the 1st respondent, this fact shall be alluded to in the cause of this judgment.

On the other hand the 3rd respondent filed a 26 paragraphs counter affidavit which was deposed to personally by her. She denied paragraphs 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the applicant's affidavit in support and states as follows;

That there was never a time she had any business relationship of any kind with the applicant, as she is a successful beautician. That sometimes in the year 2018, she met the applicant through the social media platform .i.e. the Instagram. From his account known as @dipo_social. The applicant identified as Oladipupo Obaderila Joel when she wanted to have a strong internet presence of her business. That she got to know the applicant as she had mechanical issues with the operation of her business account on her Instagram account known as @healthcuresadbeauty, the applicant she said was identified as an expert and her online account manager, and they became close. The applicant was always working around her because of her business opportunities. That the applicant begin to bring up lots of internet issues which he hoaxed as impediments to the smooth running of his online business, she made payments at various intervals but was not sorted out.

That the applicant further informed her that all the online issues can be solved by online provision, increase of viewership and followership of her instagram page to an online coverage of millions of instagram users all over the world. And that the applicant offered to established online web hosting and placement of advert of her

products on various blogs online shop e.g Jumia, Konga, Agus etc over the internet. The applicant she said still offered that payments of these purported services shall be at various phases as it progresses her business and same will all manifest successfully at completion. That she had no doubt on the applicant ability to deliver on his offer seeing how he had operated and managed his instagram account. That she paid the applicant at various intervals from her personal account with Zenith and Access Bank Plc. Thus; Tobechukwu Anele with account number 0027307330 Access Bank and Zenith Bank Tobe Anele account number 2007579736.

The 3rd respondent gave a detailed information and particulars of the payments made into various accounts both directly to the applicant's account to his cronies on the instruction of the applicant, all the amount summing up to **₦7,100,000.00(Seven Million One Hundred Thousand Naira)**. The statement of account attached to the affidavit as Exhibit TA3. She further alleged that the applicant demanded the sum of **₦790,000 (Seven Hundred and Ninety Thousand Naira)** which was transferred to the applicant on the 19th day of November, 2018 from corporate account of Healthy Cures and Beauty Enterprise domiciled in Zenith Bank for dissolution of her marriage. And that as her husband was giving her trouble. Also at a point she paid the sum of **₦4,700,000(Four Million Seven Hundred Thousand Naira)** to the applicant for the purchase of land in Ogun State for Estate development.

That due to the level of trust she had in the applicant, she never smelt any foul play as the applicant continue to promise her that all was well. However, the applicant never showed her any documents or even summons or invitation to any court once to show that the divorce proceedings was instituted on her behalf. That at various intervals she had queried the applicant of the documents evidencing the supposed processing and licensing. That the cat was let out of the bag when she was contacted by one Annie Law who claimed she was the applicant's wife and has been seeking for her attention she referred to a copy of the whatsapp chat attached as Exhibit TA4. The applicant's wife informed her about the fraudulent activities of the applicant and that the Canadian visa process was all fraud. It was at this point she realized the fraudulent activities of the applicant. She reported to the mentor of the applicant one Pastor Peter Balogun who called for a meeting with the applicant, his wife and the 3rd respondent.

The applicant admitted collecting money from the 3rd respondent at the meeting and voluntarily agreed to refund the sum of **₦7, 500,000.00(Seven Million Five Hundred Thousand Naira.** The agreement dated 4th November, 2020 is attached and marked as Exhibit TA6. That the applicant in a bid to evade the payments of the funds began to issue threats to her life and relations vide whatsapp messages attached as Exhibit TA7. She was also receiving numbers of blackmails from unknown sources. A copy of such mails attached

and marked as Exhibit TA9. She also claimed that the applicant was suspected to have master minded the kidnap attempt but when confronted he claimed to have spiritually delivered him and had his church burnt. That it was upon these development that she made a report at the police formation known as Intelligence Response Team for her protections and investigation. She denied the applicant or his wife paying the sum of **N4,500,000(Four Million Five Hundred Thousand Naira)** to her in satisfaction of the debt owed or to the police. That in her presence the officers of the police formation were very kind and lenient to the applicant by waiting till 5 pm on the 11th of January, 2021 for the applicant to conclude the church programme before he was invited and was still granted administrative bail same day. That the applicant subsequently jumped bail and has been charged to court for his alleged criminal conduct and the matter still pending.

His counsel Edeh Uchenna C. also filed a written submission where he also formulated an issue for determination to wit;

“Whether the application for enforcement of Fundamental Rights filed by the applicants discloses a reasonable cause of action against the respondents”

In response to the counter affidavit of the 3rd respondent the applicant filed a further affidavit dated 13/12/2021 while the 3rd respondent filed a reply on point of law to the applicant's further

affidavit. I need not to repeat all the submissions of learned counsel to the parties as contained in their written addresses as they all formed part of the record of the court. However let me state that I found the issue formulated by the 1st and 3rd Respondent's counsel more concise and encompassing the issue formulated by the applicant's counsel.

From the averment in the affidavit of the applicant his grouse is hinged on his perceived threat of **“unlawful arrest and unlawful detention”** with regard to the transaction that took place between him and the 3rd Respondent. He has averred in paragraphs 15, 16, 17 and 18 that the 3rd Respondent have **“unlawfully and illegally”** instigated the 1st and 2nd Respondents to unlawfully and illegally arrested and detained him. All these averments in the above stated paragraphs are all conclusions and offend the provision of section 115(2) of the Evidence Acts which provide that **“An affidavit shall not contain extraneous matter by way of objection, prayer or legal argument or conclusion”**. These paragraphs are defective and are hereby struck out.

Having struck out the offensive paragraphs, can it be said that the applicant has been able to on the strength of the remaining facts proved that his fundamental rights have been being or likely to be breached by the Respondents? As rightly pointed out by the learned counsel to the 3rd Respondent the burden of proof is on the applicant to adduced material facts in proof of his claim, failure

which judgment will be given against him. See the provision of Sections 131 and 132 of the Evidence Act 2011 which states:

“131(1) whosoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must proof that those facts exist”.

Then the learned counsel to the 3rd Respondent reinforced his argument with the case of **A. C. B. PLC. V. EMOTRADE LTD. (2002) 8NWLR (PT 770) 501-815** per Uwaifo JSC:

“It is a fundamental procedure requirement that when issues are joined on the pleadings, evidence is needed to prove them. It is the person upon whom the burden of establishing that issue lies that must adduce satisfactorily evidence when there is no such evidence, the issue must be resolved against him and the consequences of that are as decisive of the case presented as the materiality of that issue. The nature of the evidence that will suffice, as to whether it is documentary or oral, they will depend on the issue and the requirement of the law”.

The counsel to the applicant in his un-paginated written address submitted; ***“that it was on the instigation of the 2nd and 3rd Respondents that the applicant is being invited on several occasion and to this end we urge the court to see the applicant supportive (sic) affidavit in support of the originating motion before the court”.***

The applicant is peeved by the invitation of the 1st and 2nd

Respondents and according to him upon the instigation of the 3rd Respondent. The applicant have not told this court what made the invitation by the 1st and 2nd Respondents unlawful or illegal. It is not in doubt that the 1st and 2nd Respondents have the statutory responsibility to invite or arrest or even detain a suspect upon a reasonable suspicion of having committed an offence.

In paragraphs 9 and 10 of his affidavit, the applicant admitted to a transaction between him and a friend to 3rd Respondent which failed and led to a misunderstanding. Applicant on his own concluded without providing the particulars of transaction that it was a civil transaction. This claimed civil transaction led to him being reported by the 3rd Respondent and he was unlawfully arrested and illegally detained on the 11th of January, 2021 from around 5pm till 1 am on the 12/01/2021. This claim of the applicant with respect to his arrest and detention is preposterous because under the constitution, a detention between 5pm – 1am cannot be described as illegal and unlawful. The applicant did not deny the fact that he was admitted to bail by the police and neither did he deny that he has been charged to court. The applicant in my view wanted to use the instrumentality of this court as a shield to escape prosecution by the police. The court is not a safe haven for criminals.

Furthermore rather than take laws into their hands, it is the right of every responsible citizen of Nigeria to report a crime to the law enforcement agents. See Section 4 of the Police Act and Section 18

(1) (a) of the Administration of Criminal Justice Act 2015. Any suspect that declines an invitation by the law enforcement agents is definitely incurring the heavy hand of the agency in form of arrest. A suspect who goes into hiding upon an invitation cannot claim that his Fundamental Right is breached or being breached or about to be breached without any positive proof when he asserted. I agree with the submission of learned counsel to the 3rd respondent that the applicant have failed woefully to discharge the burden of proof placed upon him.

I have also perused the further and better affidavit of the applicant and the facts deposed to by the applicant himself, they are incongruous to the claim of the applicant as contained in the originating summons. In addition I also accede the submission of the 3rd respondent's counsel that the exhibits A1, A2, B, D1, D2 and F attached to the further and better affidavit are not in compliance with the provision of Section 84 (4) of the Evidence Act 2011 on the production of certificate of identifying the statement generated from the computer and the manner it was produced. The documents are irrelevant and lacking in probative value. However with respect to Exhibit G, a letter addressed to the Inspector General of Police by A. Y. Jubrin & Co of counsel to the applicant, the letter is not a public document, it is a private document produced between the Counsel to the applicant and the 1st respondent and therefore

needs no certification in accordance with the provision of Section 104 (1) of the Evidence Act 2011.

On the whole, I found the affidavit evidence of the 3rd respondent more cogent and convincing. The applicant have failed to contradict all the facts averred to by the 1st and 3rd respondents to my satisfaction. Consequently, I hold that the applicant's claim is frivolous, baseless and an attempt to escape from the long-hand of the law. The action is dismissed accordingly.

Signed

Hon. Judge
5/12/2022