

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON WEDNESDAY THE 27<sup>TH</sup> DAY OF MARCH, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/253/2023**

**BETWEEN:**

**ABDULMALIK MUSA**

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**APPLICANT**

**AND**

**1. SAMUEL OLADELE**

**2. COMMISSIONER OF POLICE,  
ABUJA FCT COMMAND**

**3. DIVISIONAL POLICE OFFICER,  
GALADIMAWA, ABUJA FCT**

**RESPONDENTS**

## **JUDGMENT**

On the 17<sup>th</sup> November, 2023 the Applicant, Abdulmalik Musa instituted this action against the Respondents – Samuel Oladele, Commissioner of Police FCT Command and Divisional Police Officer Galadimawa, Abuja FCT claiming the following:

- (1) A Declaration that the contractual and land dispute between the Applicant and the 1<sup>st</sup> Respondent is purely a civil matter

and that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents or their agents have no jurisdiction as Police officers over same.

- (2) A Declaration that the 1<sup>st</sup> Respondent's act of using the agents of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to arrest or to threaten the Applicant with arrest or to restrain the Applicant's Right to freedom of movement over a civil matter that is already pending in Court, constitutes an infringement on the Applicant's Right to personal liberty and freedom of movement as guaranteed under the 1999 Constitution (as amended).
- (3) An Ancillary Order of Injunction restraining the 1<sup>st</sup> Respondent from further causing the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents or any other security agents howsoever to arrest the Applicant or to threaten the Applicant with arrest over a purely civil matter that is already pending in Court or over any other matter upon which the Police has no jurisdiction to entertain.

The application is based on the following grounds:

The Applicant Mr. Abdulmalik Musa and Mr. Samuel Oladele, the 1<sup>st</sup> Respondent, were involved in a complex transaction involving the exchange of a car for a land property. The Applicant, a realtor and businessman residing in Galadimawa opposite ECWA Curch, owns a piece of land in Beechams Estate Phase II, Lugbe, Abuja. On the 22<sup>nd</sup> of July, 2023 the 1<sup>st</sup> Respondent, a car seller, expressed interest in purchasing his land. Instead of cash transaction, the 1<sup>st</sup> Respondent proposed to compensate the Applicant with a car valued at 4 Million Naira, slightly below the land's asking price of 4.5 Million Naira. The Applicant agreed to this arrangement, reducing the land price to 4 Million Naira to match the car's value.

However, the situation became complicated in October 2023. The 1<sup>st</sup> Respondent, facing financial constraints, requested the Applicant to convert the land into cash and provide him with the amount. The Applicant, not having immediate cash availability, suggested finding a buyer for the land to generate the required funds. The 1<sup>st</sup> Respondent has since resorted to threatening the Applicant's life and has even caused his arrest at several times. The involvement of the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents, which is only proper when there is an indication of potential criminal charges against the Applicant, amounts to abuse of authority and has led to the violation of his Fundamental Human Rights to freedom, movement and safety. The Police have no powers under the Constitution to interfere with the Applicant's Fundamental Rights to personal liberty and freedom of movement over a contractual matter involving land upon which they have no jurisdiction. Hence this application.

He based the application on the facts contained in the 17<sup>th</sup> paragraphs Affidavit in support of the application. He also filed a Written Address.

In the Written Address he raised a sole Issue for determination which is:

**“Whether he is entitled to the Reliefs sought?”**

He answered in the affirmative. He submitted that he is entitled to the Reliefs sought as the action of the Respondents constitutes an infringement of his Right to personal liberty and freedom of movement. He referred to **SS. 35 (1) & 41 (1) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). That he should not be deprived his personal liberty save in accordance with a procedure permitted by law.

That as a citizen he is also entitled to move about freely. But that the action of the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents based on the instigation of the 1<sup>st</sup> Respondent has infringed on his Right to move freely and his liberty too.

That by **S. 46 (1) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) he has a right to apply to Court as he has done where his Right is being or about being or had already been infringed. That the actions of the Respondents have infringed on his Rights. That the 1<sup>st</sup> Respondent has boasted to use the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents (Police) to arrest, detain and intimidate him when he has not committed any crime. He referred and relied on the case of:

**Abdulhamid V. Akar**

**(2006) 13 NWLRR (PT. 996) 127 @ 149 Para B – C**

That the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents has harassed him over a civil matter between him and the 1<sup>st</sup> Respondent. That Police has no power to meddle into a pure contractual matter/dispute. That the action of the Police led to the infringement of his extant Rights. He referred to the case of:

**Igwe V. Ezeanochie**

**(2010) 7 NWLR (PT. 1192) 61 @ 93 Para B – C**

He urged the Court to so hold and grant his Reliefs as sought.

On the 12<sup>th</sup> day of February, 2024 upon receipt of the application the 1<sup>st</sup> Respondent filed a Notice of Preliminary

Objection challenging the competence of the application and the jurisdiction of this Court to entertain same.

He supported the Preliminary Objection with a Written Address.

The 1<sup>st</sup> Respondent also filed a Counter Affidavit of 20 paragraphs in challenge of the application.

The 2<sup>nd</sup> & 3<sup>rd</sup> Respondents also filed a Counter Affidavit in challenge of the application too.

In the Counter Affidavit filed by the 1<sup>st</sup> Respondent it claimed that the Applicant swaddled the vehicle in issue from him. The Applicant denied that but stated that he had an understanding and written Agreement with the 1<sup>st</sup> Respondent for a purchase of the Rav 4 by trade by barter on the land and the vehicle. But the 1<sup>st</sup> Respondent after a time said he needed cash instead of the land. That they agreed to look for a buyer. But because there was no buyer the 1<sup>st</sup> Respondent decided to report him to Police alleging that he defrauded him, a fact which is not true.

That he was forced to make an undertaking to pay the 1<sup>st</sup> Respondent or return the vehicle. That by ordering and forcing him to write an undertaking and not taking him to Court amounts to violation of his Right. That by the invitation, arrest and detention and the undertaking written as well as the humiliation and threat to further arrest and detain him, the 1<sup>st</sup> – 3<sup>rd</sup> Respondents violated his Right to personal liberty and freedom of movement and

dignity too. Hence he filed the Suit seeking for the Enforcement of the said alleged Rights.

In the Counter Affidavit the 1<sup>st</sup> Respondent raised a sole Issue for determination which is:

**“Whether the Applicant has established a case of breach of his Fundamental Rights by the 1<sup>st</sup> Respondent justifying enforcement.”**

He submitted that the Applicant has not established any case against the 1<sup>st</sup> Respondent. That the Applicant wants to use the Court to stop Police from continuing the investigation against the Applicant for the alleged crime he has committed.

That the Applicant has not placed any vital evidence before the Court to be entitled to the Reliefs sought. The 1<sup>st</sup> Respondent relied on the case of:

**Fajemirokun V. CB (CI) Ltd  
(2002) 10 NWLR (PT. 7114) 94**

That the application did not show any infringement of the Applicant’s Right to warrant grant of the Reliefs sought. That the 1<sup>st</sup> Respondent cannot be held responsible by the act of the Police since he did act in bad faith. He referred to the same case of:

**Fajemirokun V. CB (CI) Ltd Supra**

That the 1<sup>st</sup> Respondent carried out his civic right by reporting alleged fraud, misrepresentation and forgery to the Police. That his action is within constitutional duty to

report the alleged fraud to Police for investigation. He urged Court to dismiss the application for lacking in merit as it was brought malafide to stall the investigation by the Police.

On their part, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed a joint Counter Affidavit of 24 paragraphs. They attached 5 documents marked as NPF 1 – 5. They comprise of the Extract from Police Crime Diary dated 7<sup>th</sup> November, 2023. That document was not signed by anyone. It was not certified too. They also attached Statement of the 1<sup>st</sup> Respondent allegedly made on the same 7<sup>th</sup> November, 2023. They equally attached Statement made by the Applicant, Abdulmalik Musa on the same 7<sup>th</sup> November, 2023 recorded by Inspector B.J. In the document the Applicant undertake to pay the 1<sup>st</sup> Respondent the sun in issue or return the vehicle – Rav 4. The 2<sup>nd</sup> & 3<sup>rd</sup> Respondents also attached the letter written on 9<sup>th</sup> November, 2023 by the Applicant titled “Undertaking.”

In it he undertook to pay the 1<sup>st</sup> Respondent the money for the vehicle or bring the car on or by Thursday of that week which was 16<sup>th</sup> November, 2023. Under the letter the 1<sup>st</sup> Respondent consented to the Undertaking, hence confirming that the whole aim of the 1<sup>st</sup> Respondent going to and involving the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents was solely to force the Applicant to pay the 1<sup>st</sup> Respondent the money in Issue. Hence, the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents by that, acted as Debt Recovery Agents which they are not. Both the Applicant and the 1<sup>st</sup> Respondent signed the document and

dated same. The Undertaking was addressed to the 1<sup>st</sup> Respondent.

The 2<sup>nd</sup> & 3<sup>rd</sup> Respondents also attached and exhibited the Statement of Complaint made by one Max Udeme who claimed that the Applicant used the vehicle as collateral for a loan facility. All those documents were marked as **EXH NPF 1 – NPF 5** respectively.

The 2<sup>nd</sup> & 3<sup>rd</sup> Respondents claimed that the case was based on breach of trust and fraud. That the Applicant used the vehicle to obtain loan from an undisclosed loan company. That the Applicant fraudulently took possession of the vehicle and disappeared. That parties never agreed on trade by barter.

In the joint Written Address the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents raised 2 Issues for determination which are:

- 1. Whether the Applicant's Right has been breached by the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents.**
- 2. Whether the Applicant is entitled to the Reliefs sought.**

**On Issue No. 1**, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents jointly responded that they have power under the law to invite citizens as they did in this case, where such citizen is reasonably suspected to have committed a crime. They referred to **S. 31 & 32 of the Police Act 2020**.

That they are mandated under the law to arrest and investigate crimes reported to them. They referred to **S.**

**214 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). They referred to the case of:

**Fajemirokun V. CB (CI) Ltd Supra**

They also referred to the provision of **S. 35 (1) (c) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended).

They submitted that they never detained the Applicant.

That the Applicant tricked the 1<sup>st</sup> Respondent to release the vehicle to him with a fake promise to pay the 1<sup>st</sup> Respondent later. That there was serious allegation of crime against the Applicant based on which the Applicant was invited. That the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents acted within the ambits of the law. They referred to the case of:

**Attorney-General Anambra V. Uba**  
**(2005) 15 NWLR (PT. 947) 44 @ 67**

That the Applicant has no recognizable Right which the Court can come to his aid. They urged Court to dismiss the Suit.

**On Issue No. 2**, the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents submitted that the Applicant is not entitled to the Reliefs sought as he has not established the infringement of his Right as alleged in his application. That he has not led any evidence in proof of the Suit too. They referred to the cases of:

**Onah V. Okenwa**  
**(2010) 7 NWLR (PT. 1119) 512**

**Ebo & Anor V. Okeke & Ors  
(2019) LPELR – 48090 (CA)**

That they cannot be held liable for violating the Right of the Applicant in this case as he was arrested in the legitimate course of their duty. Hence, the Applicant's Right was not violated or breached. They referred to the case of:

**Hassan V. Economic and Financial Crimes Commission  
(2014) 1 NWLR (PT. 1389) 607 @ 630**

That since there is no breach Court cannot hold them (2<sup>nd</sup> & 3<sup>rd</sup> Respondents) liable for breach and that the Applicant is not entitled to the Reliefs sought.

That the application is a ploy by the Applicant to avoid prosecution and that it is an abuse of Court Process. They referred to the case of:

**7up Bottling Company V. Abiola & Anor  
(1996) 7 NWLR (PT. 463) 714**

They urged Court to dismiss the application for lacking in merit.

## **COURT**

This Court has summarized this case by the Applicant and the Counter Affidavit of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents respectively. The question is, is there breach of the Applicant's Right as alleged? Is the Applicant entitled to the Reliefs sought?

It is the humble view of this Court that there is a breach of the Applicant's Right and the Applicant has, from the Affidavit in support, established that his Rights were breached by the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents at the prompt and instigation of the 1<sup>st</sup> Respondent. The Applicant deserves the grant of the Reliefs sought in this Suit. So this Court holds.

To start with, the issue in this case is on the allegation that the arrest and detention of the Applicant by the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents at prompt and instigation of the 1<sup>st</sup> Respondent was unjustified, hence it violated the Right of the Applicant to freedom of movement and personal liberty. This is because of the arrest and detention and further arrest and detention of the Applicant.

Most importantly, it is illegal as the Police – 2<sup>nd</sup> & 3<sup>rd</sup> Respondents delved into a matter which is purely contractual and commercial in nature.

In this case the matter is on the buying and selling of a vehicle – Rav 4 Jeep sold by the 1<sup>st</sup> Respondent and bought by the Applicant. It is not in doubt that there was such transaction. It is not in doubt that there was trade by barter in that the 1<sup>st</sup> Respondent sold the Rav 4 Jeep to the Applicant for a consideration of a parcel of land. That was why the 1<sup>st</sup> Respondent released the vehicle to the Applicant. If there was no such Agreement the 1<sup>st</sup> Respondent would not have released the vehicle to the Applicant. Again, the 1<sup>st</sup> Respondent equally released the documents or particulars of the vehicle to the Applicant

too. The story that the 1<sup>st</sup> Respondent left the vehicle particulars in the vehicle and the Applicant took same band fraudulently changed same is too strange to believe. This is because no car dealer will leave particulars in a vehicle he has displayed for sale. Besides, he would not have handed over the vehicle to the Applicant without holding on to the document where the Applicant had not paid any money. This Court does not believe the submission of the 1<sup>st</sup> Respondent on that. Hence, there is no justification for going to report to Police raising issue of fraud. There is no fraud in the transaction which is glaringly purely commercial in nature. The transaction was a pure clear transaction.

It is not in doubt that the Applicant was arrested and detained on 2 occasions. One is the day he made the first Statement dated 7<sup>th</sup> November, 2023. The second day was on 9<sup>th</sup> November, 2023; the day he made an Undertaking before the Police to pay the money in issue or to return the vehicle. Hence, the Police allowing the Applicant or ordering and humiliating the Applicant to undertake to pay as seen in the document tendered by the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents marked **EXH NPF 3 & NPF 4**. Even the content of **EXH NPF 1 & 2** confirmed that the business between the Applicant and the 1<sup>st</sup> Respondent is purely commercial. The 2 are no strangers to each other. They both described each other as friends. See **NPF 2 & NPF 3** and the extant paragraph of the 1<sup>st</sup> Respondent's Affidavit.

It is not in doubt that the sole aim of the 1<sup>st</sup> Respondent was to use the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents to either recover the

money of the Rav 4 Jeep. This is seen in paragraph 16 of the Counter Affidavit where the 1<sup>st</sup> Respondent stated he made the report to make the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents to “... **recover my car.**”

Given the “story” or narratives of both parties, it is not in doubt that the business was commercial. Again, it is not in doubt that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents acted as Debt Recovery Agency. That is why they allowed the Applicant and humiliated him into writing the Undertaking which the 1<sup>st</sup> Respondent and invariably the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents consented to. That is why the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents did not charge the Applicant to Court. If actually as alleged the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents felt that the Applicant has committed or about to commit the alleged cheating, why did they not charge him to Court immediately? Why should they release him on Bail only to re-invite him to ache out an Undertaking from him? The simple straight answer and reason is because the whole invitation and arrest and detention is to intimidate the Applicant to agree to undertake to pay or return the vehicle.

It is therefore the humble view of this Court that the action of the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents in this case violated the Right of the Applicant. The 2<sup>nd</sup> & 4<sup>rd</sup> Respondents also acted as Debt Recovery Agents for the 1<sup>st</sup> Respondent which they are not. So this Court holds.

Again the **EXH NPF 5** – Statement from Max Udeme further shows malice and extent of cover-up. In the Statement from the Max Udeme it shows that the Applicant

used the vehicle as collateral for a loan of **₦2, 000,000.00 (Two Million Naira)**. It is strange that the same Udeme did not disclose the name and address and License Number of the Loan outfit from where the said money was given. He described himself as a Forensic Expert who works in the unnamed loan office. It is strange that the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents did not attach any document evidencing the loan to show that the Applicant went for the loan as they claimed. Besides, the same Udeme stated that he had already returned the vehicle to the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents. The Court does not believe that story.

From the fact that the Applicant had licensed the vehicle and was using same as Udeme submitted, it shows and confirmed that the Applicant had a genuine transaction with the 1<sup>st</sup> Respondent and there was agreement as to method of payment. This is so because the 1<sup>st</sup> Respondent would not have wholly trusted the Applicant with the vehicle and the papers. Even if the papers were in the vehicle, the 1<sup>st</sup> Respondent would have asked the Applicant to release same to him. The 1<sup>st</sup> Respondent would not have given Applicant the papers if there was no agreed method of payment.

From the whole story it is clear that the Applicant was invited 2 times; one on the 7<sup>th</sup> November, 2023 and another on the 9<sup>th</sup> November, 2023 as he alleged. The whole invitation is to recover the money or vehicle for the 1<sup>st</sup> Respondent.

Again the Statement by the Max Udeme made on 21<sup>st</sup> December, 2023 was even made long after the Suit was instituted. This case was filed on the 17<sup>th</sup> day of November, 2023 – Eight days after the Applicant made the Undertaking at the Police Station. While the Statement of Max Udeme was made on the 21<sup>st</sup> day of December, 2023 which means that even while the matter was already pending the Respondents were still tormenting the Applicant.

As has been held in several cases, the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents have no right to meddle in a commercial transaction. By them meddling – inviting the Applicant in this case, they violated his Rights. It is not only when a person is bruised that he can seek redress in the violation of his Right.

The Applicant is right in instituting this action against the 1<sup>st</sup> – 3<sup>rd</sup> Respondents. He has discharged the onus on him as required by law, showing the facts as averred in the Affidavit that his Right was violated by the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents at the instigation of the 1<sup>st</sup> Respondent who cried “wolf” and spurred the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents to arrest, detain and humiliated the Applicant into signing an Undertaking. The said Undertaking shows and established the whole intension of the 1<sup>st</sup> Respondent and confirmed the action of the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents.

From the foregoing, the 1<sup>st</sup> – 3<sup>rd</sup> Respondents violated the Right of the Applicant. The Applicant proved same and he is entitled to the Reliefs sought.

There is merit in this Suit and the Court grants the Reliefs to wit:

The Court grants all the Reliefs sought by the Applicant in this Suit.

**This is the Judgment of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2024 by me.**

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**K.N. OGBONNAYA**  
HON. JUDGE