

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GWAGWALADA- ABUJA**

**THIS FRIDAY THE 6<sup>TH</sup> DAY OF JULY, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI**

**SUIT NO: FCT/HC/CV/532/22**

**BETWEEN:**

- 1. AFRINICT LIMITED**
- 2. SAMUEL OLANIYI.....APPLICANTS**

**AND**

- 1. COMMISSIONER OF POLICE**
- 2. AYODEJI OMOTAYO.....RESPONDENTS**

**JUDGEMENT**

The applicant by motion on notice with suit No: CV/532/2022 dated and filed on the 21-2-2022, commence this suit on the 28-4-2022 for the enforcement of their fundamental right.

The motion is brought pursuant to **order 11 Rules 2 & 3 of the Fundamental rights (Enforcement procedure) Rules 2009, and sections 44 and 46 of the constitution of the Federal Republic of Nigeria. 1999 (as amended) and under the inherent jurisdiction of the court.**

In the originating motion on notice, the applicants claims as follows.

- 1. A declaration that the threat to life, intimidation and harassment of the applicant by the 2<sup>nd</sup> Respondents from the year, 2021 till date is**

**unlawful, illegal, oppressive, Capricious and unconstitutional and amounts to a gross violation of the applicants right to personal liberty as guaranteed under section 34 and 35 of the constitution of the Federal Republic of Nigeria 1999 (as amended).**

- 2. An order of this Hon. Court compelling all the respondents, their officers, agents, servant's privates or otherwise howsoever described to forthwith restrain from further threatening, harassing, and intimidating the applicant, their children, and relative or treating the applicants in any othermanner infringing the fundamental right of the applicant.**
  
- 3. Special damages of N5, 000,000.00 (Five Million Naira against the respondents jointly and severally as cost of legal service rendered to the applicant's particulars of special damages.**
  - a. Cost of legal service rendered to the applicants N5, 000.000.00 receipt of solicitors fee will be relied upon.**
  
- 4. An order directing the respondents jointly and severally to pay to the applicant the sum of N50, 000,000.00 (Fifty Million Naira) by way of exemplary and aggravated damages for the mental torture, stress and financial lost the applicant suffered and is still suffering as a result of the respondents actions.**

**The grounds upon which the relief are sought are:**

- a. That sometimes in September, 2020, the 2<sup>nd</sup> applicant discussed and I retained him as manager in the 1<sup>st</sup> applicant.**
  
- b. That the 2<sup>nd</sup> Respondent facilitated a contract with court of appeal and the company completed the job.**
  
- c. That part of the money was paid to the 2<sup>nd</sup> Respondent while the rest was plunged back to the company.**

- d. That the respondent become uncomfortable and requested that the money shall be given to him since he was the facilitator.**
- e. That is the above ground that he reported to Wuse Zone 3 Police Station.**
- f. That when I was invited, I made an undertaking to pay him part of the money because of fear of detention and most importantly my health situation.**
- g. That when I failed to comply with the undertaking he called to informed me that I should give him a post-dated cheque of N18,000,000.00 (Eighteen Million Naira).**
- h. That I am expected to be in the police on 25<sup>th</sup> of February, 2022.**
- i. That there is all tendency that I am going to be detained on that day since I and my company cannot raise the said N18, 000,000.00 (Eighteen Million Naira)**

Upon service on the process being served on the Respondents, the 2<sup>nd</sup> respondent file notice of preliminary objection filed dated the 26/04/2022; same served on the Applicants and file alongside is the counter affidavit in opposition to the application affidavit in support of the originating motion on notice dated the 26/4/2022 with a written address.

The applicant counsel also file counter affidavit in response to preliminary objection dated the 13-05-2022 with a written address, same served on the respondent and a date fixed for hearing of the 16-06-2022. On this date one **John Okorafor** appears for the applicants while neither the respondents or the counsels to the respondents were in court to move the said preliminary objection. In the absence of the respondent's counsel, the applicants counsel who stated, that since the respondent were not in court to move the preliminary objection means that they have abandoned it and to enable the business of the day to move as apply or asked the court to strike out the said application of

preliminary objection. The court upon the reason given by the applicant and the absence of the respondent rules and granted the applicant counsel and the said Application for preliminary objection was strike out for lack of diligent prosecution.

Upon the ruling of the court the applicant counsel moved his originating motion on notice and asked the court to grant all the reliefs as contained in the motion paper.

The applicant counsel in moving his originating motion on notice, and the affidavit in support of originating motion on notice of 5 paragraph deposed to by one **Samuel Olaniyi**, the address in support of originating motion on notice formulated a sole issue for determination to wit:

**“Whether this Honourable court ought to exercise its discretion in allowing the reliefs sought in this application.**

The applicant counsel who urge this court to resolve the sole issue for determination infavour of the applicants and allow the reliefs sought in the instant application.

The applicant counsel haven't adopted the said written address, wherein the said written address, submit that this court is seized of the power of only to entertain the present application but also to allow the reliefs sought. On this referred this court to section 46 constitution of the Federal Republic of Nigeria, (1999) (as amended) provides as follows:

**“1. Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a high court in that state for redress.**

**2. Subject to the provision of the constitution, a high court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that state of any right to which the person who makes the application may be entitled under this chapter.**

Submit further that, the applicants are entitled to their rights to dignity of human persons, personal liberty, fair hearing and freedom from discrimination as guaranteed by **section 34, 35, 36 and 44 of the Federal Republic of Nigeria, (1999) (as amended)**.

These fundamental rights are essential to the existence of every citizens and the law enjoins the courts to ensure their enforcement in the event of any breach. **In FRN& Anor V Ifegwu (2003) 15 NWLR (PT.842)113, 185B. The supreme court per Uwaifo JSC Held that;**

**‘Fundamentalrights are regard as part of human right. The trend in every modern society where the rule of law operates is to protect them for the enhancement of human dignity and liberty.**

**Also in Onyinoha V IGP (2009)3 NWLR (PT.1128) 342-375 G-H. The court of Appeal Per Abdullahi JCA (later PCA) held that:**

**“it is now settle beyond peradventure that a Nigeria citizen is entitled to his God’s given natural right free from incarceration save in accordance with all the fundamental laws of land, i.e. the constitution of the Federal Republic of Nigeria and other relevant legislations which are not inconsistent with the former.**

That the essence of the affidavit insupport is to the effect that the fundamental rights of the Applicants have been grossly violated by the Respondents to continued arrest and detention of the applicant by the 1<sup>st</sup> Respondents at the instance and instruction of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents. Submitted that the forgoing clearly violates the provisions of the constitution of the FRN 1999 (as amended).

Further submit that this court ought to allow the relief for damages and referred this court to the case of **Odiba V Muemue (1999) 10 NWLR (PT. 622) 174, 190 AC the S. C. Per Ogwegbu JSC held as follows;**

**“Exemplary damages may be awarded only in the following cases.**

- I. **Of oppressive, arbitrary or unconstitutional acts by government servants,**
- II. **Where the defendants conduct had been calculated by him to make a profit for himself which might well exceed the compensation payable to the plaintiff.**
- III. **Where especially authorised by statute.**

On the other hand, aggravated damages may be awarded when damages at large and the conduct of the defendant was to injure the plaintiff proper feeling of dignity and pride”

Submitted that the circumstance of this case clearly demonstrated that the applicants have made out a case that entitles them to an award of exemplary and aggravated damages, and urge this court to allow this application in its entirety.

The respondents file these counter affidavit in opposition to the applicant affidavit in support of the originating motion on notice dated 20<sup>th</sup> April, 2022 filed on the 26-04-2022 with a written address in compliance with the rules.

On the date set for hearing, the respondents were not in court to more the counter affidavit nor adopt its written address.

The law is well settled that on an application for the enforcement of fundamental rights, its determination is premised on the affidavit evidence proceed and placed before the court. That is, it is the affidavit evidence produced and placed before the court. That is, it is the affidavit evidence which the court must meticulously peruse in order to reach a just determination of the application. **Bassey Nkanta Mbang V WIPC Janet & ORS (2015) ALL FWLR (PT.767) 766 at 784, Ukaobasi V Ezimora & ors (2016) LPELR-40174 (CA)**

The effect of fixing the substantive application for argument” on the 16-6-2022 was that it was for hearing on that day. When the application came up for hearing that day it became clear that the respondents filed their counter to the opposition to the applicants affidavit the said counter affidavit was dully served on the applicants where it was acknowledged by **John Okoroafor of Fabson Mall, Wuse Zone 4, Abuja** dated the 28/4/2022 and on the 1<sup>st</sup> respondent received by the legal prosecution section criminal investigation Department for command dated 18/5/2022.

It is therefore trite that, filing of a counter affidavit is a clear demonstration of a deponents intention to oppose whatever motion is served on him. The court is bound to consider it unless it is formally withdrawn. The court should not refuse to consider it because of the absence of the deponent in court as it amounts to a denial of fair hearing. **See Grever V China (1993) 9 NWLR (PT. 315) 97 (CA) at 106.** In view of the forgoing I shall consider the counter – affidavit file by the respondents mother to do Justice to the case. Failure to the applicant to file a reply to the Respondents counter- affidavit does not equally stops the court from considering all the opposition on the counter-affidavit.

Having said so, I shall peruse the counter -affidavit of the Respondents.

The respondents filed their counter affidavit in opposition to the applicants affidavit in support to the originating motion on notice dated 26-4-2022 and file same date. The said courter affidavit is deposed by one Ojochegbe Charles Ali of the counter is of 11 paragraph and in compliance to the law file a written address of 10 pages dated the 25-4-2021. In the written address a sole issue was formulated to wit:

**“Whether the applicants have been able to prove their case upon the balance of probabilities to be entitled to the reliefs sought against the 2<sup>nd</sup> Respondent.**

On this he submit that the applicant did not supply any evidence before this court to link the 2<sup>nd</sup> respondent in any way whatsoever to the alleged acts as deposed in the applicants affidavit. That the applicant merely mentioned in paragraph 4(d)(e) thus

**d. “that the respondent became uncomfortable and requested that the money shall be given to given to him since he was the facilitator.**

**e. that it is on the above ground that he reported to Wuse 3 police station”**

that the applicant did not in any of the paragraphs of their opposition before the court state facts linking the 2<sup>nd</sup> defendant to the Abuse of any of their fundamental rights, and that the allegation of the applicant contained in any paragraph of her affidavit in support are speculative abstract and vague. That there is no iota of evidence before the court to prove that the 2<sup>nd</sup> respondent directly or indirectly violated the fundamental rights of the applicant and that

the mere report of the applicants to the men of the Nigeria police in respect of their criminal antecedents and misappropriation of funds does not in any way translate into a breach of the fundamental rights of the applicants as alleged. That in paragraph 4(a) – (i) there is no specific allegation made against the 2<sup>nd</sup> respondent except the depositions which establishes that the life of the applicants is under threat; there is no intimidation or harassment whatsoever in violation of their right enshrined in the constitution. Referred the court to the case of **Olufemilayo Ramsome-Kuti & 5 ors V A G Federation (1985) SC 123/1984 and Fajemirokun V C.B. (C.L)10 NWLR (PT.774) 95 at 95** on the aspect of speculation the referred the court to the following cases:

**Jwan V Ecobank Nig. Plc (2021) 10 NWLR (PT. 1785) 419 at 480-481 Ibori V F.R.N (2009) 3 NWLR (PT. 1121) 94 at 104 Paragraph G. where the court held thus:**

**“Court do not entertain or act on speculations, but only on facts.**

**And the case of Agip (Nig.) Ltd V Agip Petrolic international (2010) 5 NWLR (Ppt. 1187) 348 at 413 where the court held:**

**“It is trite principle also that a court should not decide a case on mere conjecture or speculation. Courts of laws are courts of fact and laws- they decide issue on facts established before them and on laws. They must avoid speculation.**

Before I dwelt to the main issue, I will address ask this basic question that is, who can apply to enforce a fundamental right. The fundamental rights (enforcement procedure (Rules) 2009 defines who an applicant is the following words:

**A party who files an application or on whose behalf an application is filled under the rules”**

It is obvious therefore that an application can be filed on behalf of another going by the definition of an applicant in the rules itself. Reinforcing the definition is the preamble to the rules which states thus: the court shall encourage and welcome public interest litigations in the human rights. Field and no human rights case can be dismissed or struck out for want of locus standi, in particular, human rights, advocates or groups as well as any non-governmental organisation may institute human rights applications on behalf of any potential

applicant. In human rights litigation, the applicant may include any of the following:

- I. Anyone acting in his own interest.**
- II. Anyone acting on behalf of another.**
- III. Anyone acting as a member of, or in the interest of a group or class of persons,**
- IV. Anyone acting in public interest.**
- V. Association acting in the interest of its members or other individuals or groups.**

The above listed possible applicants is a sharp departure from the 1979 Rules which was restricted as it only recognized the locus standi of the victims.

Preambles are all know can shed light on the purpose of an enactment or statute, it either restricts it or extends it depending on the language used, in Lord Normand in **A.G. V H.R.H. Prince Ernest Augustus of Hanover (1957) AC 456 thus.**

**“When there is a preamble it is generally in its recital that the mischief to be remedied and the scope of the act are described. It is therefore clearly permissible to have recourse to it as an aid to constructing enabling provision”**

It is an established practice in public interest litigation and jurisprudence that a legal action is initiated for the enforcement of a public interest or general interest in which the public has interest or rights are affected, it is therefore not necessary that the applicant has suffered any personal wrong to initiate proceedings under the fundamental rights procedure. It is in that rights has been, is being, or is likely to be infringed may apply to the court in the state where the infringement occurred or is likely to occur, for redress.

One may even asked if representative is not allowed how then can violations to right to life be redressed when the victim of the deprivation would have been dead? Furthermore, the Constitution of the FRN also provides for any person to take action or initiate proceedings where any of the right are in issue it provides thus:

**“Any person that alleges that any or the provisions of chapter IV of the constitution has been, is being or likely to be,**

**contravened in relation to him may apply to high court for redress”**

In interpreting any statutory or constitutional provisions the apex court in a plethora of case said that our courts should be liberal so that the internment of the instrument or constitution can be met. **(Onnoghen JSC in the case of C.C.C.T.C.S Ltd & ORS V Ekpo (2008) 6 NWLR (pt. 1083) 362 SC held as follows:**

**“It is settled law that where the words of a statute or constitution are clear and unambiguous, they call for no interpretation, the duty of the court in such a circumstance being to apply the word as used by the legislature.**

The combined effect of reading these sections together shows that there is no limitations a qualification to the nature of persons who may seek to enforce contravention of their right under chapter IV of the constitution is beyond any argument and are without expectation or qualification for all persons. The sections undoubtedly give access to court for the enforcement of the rights guaranteed under chapter IV of the constitution to all manner of people without exception, who claim their rights have been trampled upon, just as section 6(6) gives access to court for the enforcement and determination of all civil rights and obligation including right guaranteed under chapter IV of the constitution.

Now coming to the main claim I will take the liberty to take reliefs 1,2,3,& 4 together as the four reliefs speaks the same turn, that deals with the breach of the applicant fundamental rights under sections 34 &35 of the constitution of the FRN (as amended and section 46(3) of the constitution.

The law is for a claim to fall squarely within the provisions of chapter IV of the **CFN 1999 (as amended)** and thus enforceable under the provision of the fundamental rights. (Enforcement procedure) Rules, the claim must either be one wholly founded on a breach of the provisions of chapter IV of the **CFN 1999 (AS AMENDED)** or the principal claim must be one founded on a breach of any of the provision of chapter IV of **the CFN 1999 (as amended)**. In **Nweke & Ors Vs The IGP & ors (2013) LPELR-21173 (CA) PER Adah JCA said;**

**“Fundamental rights are rights that are not basic to the citizens they are rights that have been entrenched in chapter**

**IV of the 1999 CFN (as amended). These rights are sacrosanct and very important to everyone within the borders of Nigeria.**

**These rights are moulded into freedom blocks that fence the citizen from forces or unbridled aggression, oppression, repression and authoritarianism. Where these rights are to be enforced in court the court within reasonable limits must do all that is necessary to cause a flourishing of these rights”**

**By the grounds upon which the Reliefs are sought by the applicant can it be said that the applicants rights to fundamental rights (enforcement rules has been breached. The grounds are stated below:**

- a. That sometimes in September 2020, the 2<sup>nd</sup> applicant discussed and I retained him as manager in the 1<sup>st</sup> applicant.**
- b. That the 2<sup>nd</sup> Respondent facilitated a contract with court of appeal and the company completed the job.**
- c. That part of the money was paid to the 2<sup>nd</sup> Respondent while the rest was plunged back to the company.**
- d. That the respondent become uncomfortable and requested that the money shall be given to him since he was the facilitator.**
- e. That is the above ground that he reported to Wuse Zone 3 Police Station.**
- f. That when I was invited, I made an undertaking to pay him part of the money because of fear of detention and most importantly my health situation**
- g. That when I failed to comply with the undertaking he called to informed me that I should give him a post-dated cheque of N18,000,000.00 (Eighteen Million Naira.**
- h. That I am expected to be in the police on 25<sup>th</sup> of February, 2022.**
- i. That there is all tendency that I am going to be detained on that day since I and my company cannot raise the said N18, 000,000.00 (Eighteen Million Naira)**

**This is the main prank of the Applicant for the enforcement of his fundamental rights.**

**From the foregoing can it be said that the applicant rights have been breached or likely to be breached? This will be answered within the context of the law.**

**This the 2<sup>nd</sup> respondents counsel in its counter affidavit paragraph 3 c, d, e, f & g which will reproduce below.**

- c. that paragraph 4 (c) of the applicants affidavit is tritely false and misleading, stated that he did not receive any Money in respect of the contract in paragraph 4 (b) of the applicant affidavit.**
- d. that the deposition of the applicants in paragraph 4 (c) that the money paid was plunged is within his personal knowledge**
- e. that I do not have control over the account of the 1<sup>st</sup> Applicant rather the 2<sup>nd</sup> applicant those.**
- f. that the 2<sup>nd</sup> applicant misappropriated the founds that was paid to him in respect of the contract executed by the 2<sup>nd</sup> applicant, his company (the 1<sup>st</sup> Applicant) and I.**
- g. that the criminal tendencies and actions of the application led to my reporting them to the Wuse zone 3 police station Abuja for investigation. Be that as it may by section 4 of the police Act,**

**“The police shall be employed for the prevention and detention of crime, the preservation of law and either, the protection of life and property and the due enforcement of all laws and regulation with which they are directly charged”**

Thus when a crime is imported as it was stated above by the respondent

“the police reserve the right to invite the suspects which the Respondents reported for purposes of investigating the allegation. An invitation by the police to a citizen with the aim of ascertaining the veracity or otherwise of allegation levelled against the said cannot be any stretch, of imagination constitute a breach or threat to the fundamental right of the said applicants hold that the police acted within the ambit of the law when they invited the applicant for questioning.

**See Fajemirokun V Commercial Bank Redet Lyonnais) Nig Ltd (2009) 5 NWLR (PT. 1135) 558, 600.**

The kernel or crux of this dispute is whether the actions of the respondents within the context of the precise complaints of applicant can legally and be constitutional countenance.

Now it is not in doubt that the provisions of sections 34 & 35 of the 1999 CFR (as amended) provides for the right of dignity of the human person and the right to personal liberty.

The sections provide as follows;

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 inhuman or degrading treatment.**
- b. No person shall be held in slavery or servitude and**
- c. No person shall be required to perform forced or compulsory labour.”**

**“35 (1) Every person shall be entitled to his personal liberty, and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law:**

- a. In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty,**
- b. By reason of his failure to comply with the order of a court or in order to secure<sup>4</sup> the fulfilment of any obligation imposed upon him by law.**
- c. For the purpose of bringing him before a court in executive of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.**
- d. In the case of a person who has not attained the age of Eighteen years, for the purpose of his education or welfare.**
- e. In the case of persons suffering from infections or contagious disease, persons of unsound mind, persons addicted to drugs, or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community or.**

**f. For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:**

The above sections appear to me clear and unambiguous such that the task of interpretation can even hardly be said to arise. Section 34 (1) emphasis treatment of the human person with respect and therefore any act which makes people lose their sense of self respect, value or works would degrading. Section 35 (1) on the other hand places premium on the personal liberty of every personal any deprivation of same must be consistent with the procedure permitted by law. The court obviously serves as a necessary bulwark in the protection of these fundamental rights and any transgression or proved violation of these constitutional provisions are met with necessary legal consequences.

The task then is to apply the above clear provision in relations to the alleged infractions and determine whether these infractions and determine whether these infractions were proved. I will start with the complaint that there is all tendency that I am going to be detained on that day since I and my company cannot raise the said N18, 000, 00 and that the arrest of the applicant infringed on the Fundamental rights.

Now it is common defend that the 1<sup>st</sup> respondent is a body statutory created with precisely streamlines powers under section 4 of the police Act as stated on the body of this judgement being the power of the 1<sup>st</sup> respondent.

In my opinion the essence of the complaint is to enable the 1<sup>st</sup> respondent or law enforcement agency to evaluate same and exercise their power(s) on what further actions to take dependent on the strength and credibility of the complaint. **See Olatinwo V State (2013) 8 NWLR (PT.1355) 123.**

A logical and necessary corollary of the complaint would necessary require the basic step(s) of investigation which is the examination of fact of the situation. There may or may not be the need to call in people for questioning in the process.

The process may take a period of time and the invitation for questioning may also be repeated. There is no cast iron formal or on how the process will pan out. These are issues largely directed by the facts uncovered in the process of investigation. The only point to add here is that the process must be conducted

with civility and decorum. From the affidavit in support of the motion of the applicant there is nothing creditably established on the evidence that the above process were carried out in a manner inconsistent with any provision of the constitution and which violated his fundamental right. There is equally nothing on the evidence t demonstrate how the invitation extended to him which he freely honour violated any provision of the police Act.

It is my humble opinion, that cases fought on affidavit evidence, the court expects the parties (the applicant) to place before the court all the relevant facts in proof of their case. **See Feemirokun V CBCCL (Nig.) Ltd.**

The law is that who alleges that the respondent threatens his life, intimidated, harvested to show that the respondent set the law in motion against him and that the respondent i.e. the 1<sup>st</sup> respondent was actually instrumental to his arrest and detention. The applicant must also that the arrest and detention if any were unlawful, **See Fajemirokun V C.M. (C.L) supra.**

In the instant case, the only issue was that the applicant haven't failed to comply with the undertaken, and was called to be in the police station on the 25<sup>th</sup> of February, 2022, and thinking that tyhere is all tendency that he will be detained on that day since the applicant cannot raise the said N18, 000,000.00 does not make his case or complaint a constitutional; one. In the case of **Peterside Vs I.M.B. (1993) 2 NWLR (PT.278) 712 AT 718-719** "it was held

**"It has now become afashim or style for parties to push or force the provisions or chapter IV into most claims which cannot in law be accommodated by the chapter.**

Parties at times take undue advantage of the general and at times nebulous provisions of the chapter and try to tailor in their actions even when the size the "cloth" does not fit into it: the provisions and large both in there. Character and context are chained here and there by constitutional gadgets by way of safeguards--.

This I can say, the reliefs sought and a careful perusal of the affidavit of the applicants does not fit the cap,' to be brought under **Chapter IV of the 1999 constitution of FRN (as amended).**

On thorough scrutiny of the reliefs claimed, it is my view that the principal and ultimate claims is the failure of the applicant to honour agreement entered

which does not in it falls within the purview of **Chapter IV of the 1999 constitution of the FRN (as amended)**.

Assuming but not conceding that the applicant believed, that his claims and actions falls within the ambit of chapter IV of the 1999 constitution it behold on the applicant to proof same to the satisfaction of this court. To my mind there is absolutely no evidence of the breach of chapter IV of the constitution i.e. section 34 & 35 of the 1999 constitution and no evidence of such quality and cogency beyond controverted speculative averments showing that the that the applicant right were violated and that he was arrested and detained beyond the period constitutionally allowed if any and the conclusion I reach is that the applicants narrative lacks credibility and value. As the questions of infringement of fundamental rights is largely a question of facts and does not so much depend on the dexterous submission of counsel on the law. So it is the facts as disclosed by their affidavit evidence that is actually evaluated to see if the fundamental rights have been eviscerated as claimed or otherwise dealt with in a manner that is contrary to the constitutional and other provision on the fundamental right of an individual

**“Per Ogakwu JCA Okafor V Lagos State Government (2016) LPELR – 41066 (CA)**

It is a fundamental principle of our legal system in respect of facts averred that where they are weak, tenuous, insufficient or feeble, then it would amount to a case of failure of proof. A plaintiff whose affidavit does not prove the reliefs he seeks must fail. **See AG of Anambra State V AG of Fed. (2005) ALL FWLR. (pt. 268) 1557 AT 1611: 1607 G-H.**

In all however, as submitted by the respondent counsel that there is no reasonable cause of action against the 2<sup>nd</sup> respondent herein and the case of the applicant is devoid of merit against the 2<sup>nd</sup> respondent and submit further that it is elementary law of evidence that he who asserts must prove. This is founded in the latin maxim “affirmati Non Neganti incumbit probatio” it is trial that the burden of proof is on the party who alleges the affirmative, whoever desire any court to give judgement in his favour as to any legal right or liability most prove that the facts exist. Equally **section 131CD (2) of the evidence Act 2011 prove that**

**“1. Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts shall exist.**

**2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.**

Therefore, submit that the mere disposition of infraction in an affidavit cannot suffice to sustain the applicant’s claims, especially where they are seriously denied and controverted like in the instant case. That the assertions of the applicants cannot stand or be accepted without proof that the mere stating of facts does not prove the credibility of that fact without cogent and compelling evidence to substantiate same and submit that, in a fundamental rights enforcement matter, the courts will not declare the applicant right(s) to be infringed simply because he says so without credible evidence or proof.

We posit that the position of the law is clear that declaration reliefs are not granted as a matter of course or even an admission or weakness of the defendant defence.

It is the duty of the applicants alleging the breach of their fundamental rights to place sufficient evidence before it.

**See *Fajemirokun V C.B. (C.L) Nig Ltd (supra)***

In view of the above I hold bold to say that the applicant has not placed sufficient, credible evidence before the court in justification that his rights have been violated.

In the final analysis, the issue raised is substantially answered in the negative. For the evidence of doubt, all the reliefs or claims of applicant on the alleged violation of his fundamental rights are not availing. The monetary and other related claims predicated on the alleged violation of his fundamental rights must equally fail. You cannot put something on nothing and expect it to stand is a well-known legal axiom. The entirety of the case of applicants is hereby accordingly dismissed.

