

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS FRIDAY THE 24TH DAY OF JUNE, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/616/22

BETWEEN:

AMODU BERNARD.....PLAINTIFF

AND

- 1. INSPECTOR GENERAL OF POLICE**
- 2. NIGERIAN POLICE FORCE**
- 3. COMMISSIONER OF POLICE FCT.
COMMAND, ABUJA**
- 4. ATORNEY GENERAL OF THE FEDERATION
AND MINISTER FOR JUSTICE.....DEFENDANTS**

JUDGEMENT

This is an application brought pursuant to section 35 of the constitution of the Federal Republic of Nigeria, 1999 (as amended), sections 293 and 296(1) of the Administration of criminal justice Act, 2015 sections 2 of the Anti-Torture Act, 2017, and order 2 rules 1, 2 & 3 of the fundamental Right Rules 2009.

This application is dated the 01/03/2022 filed on the 24-02-2022, assigned to court 49, dated the 01/3/2022 and received by the Registrar of this court dated the 15/3/2022.

The reliefs sought and the grounds as contained in the motion accompanying the application are as follows:

- 1. A declaration that the arrest and detention of the applicants for Twelve(12) months by the Respondents cell situate at the special Anti-Robbery Squad (SARS) Abbatoir, Abuja then to Anti-one chance in Jabi and finally back to the special Anti-Robbery squad (SARS) from the 22nd day of December, 2019 to 17th day of December, 2020 by the 1st -3rd respondents without any arraignment is unconstitutional, life threatening and gross violations of Applicant fundamental Rights guaranteed under section 34 and 35 of the constitution of the Federal Republic of Nigerian 1990 (as amended).**
- 2. A declaration that the continuous detention of the applicant at the correctional service, Suleja custodial centre since the 17th day of December, 2020 and till date on the order of the mobile court is an abuse of power, hence unconstitutional, null and void.**
- 3. A declaration that the torture or degrading treatment meted on the applicant by the respondents while in their custody from the 27th day of December, 2019 to the 17th day of December, 2020 is unconstitutional and unlawful.**
- 4. The sum of N50, 000.000 (Fifty million Naira) only as general damages for breach of the judgemental right of the applicant.**
- 5. The sum of N1,000.00 (one million Naira) only as cost of litigations.**

The ground upon which the application is sought are as follows:

- 1. The respondents arrested the applicant and detained the applicant from the 22nd day of December, 2019 to the 17th day of December, 2020 amidst torture, media parade before Newsmen and in search of evidence against the applicant without arraignment order of the Honourable court or remand order contrary to sections 293 and 296**

of the administration of criminal justice Act, 2015, sections 34 and 35 of the constitution of the Federal Republic of Nigeria, 1999, (as amended).

- 2. The applicant was remanded at the Suleja custodian centre by the mobile courts sitting at special Anti-Robbery Squad (SARS) abbatoir, Abuja on the 17th December, 2020 and has been there till date.**

- 3. The applicant is entitled to compensation/exemplary damages vide section 35(6) of the constitution of the Federal Republic of Nigeria 1990 (as amended).**

- 4. The application is supported by a 9 paragraph affidavit deposed to by one Isaac Mazo, a statement in support of the application for fundamental Human Right of 2 pages a written address was filed in compliance with the FREP rules in which a sole issue was raised as arising for determination to wit:**

“whether the applicant is entitled to the reliefs sought in this case?

The address of the applicant which forms part of the record of this court was essentially anchored on the fact that, the action of the 1-3 defendants/Respondents in arresting and detaining the applicant, for a period of Twelve (12) months without arraignment among other complaints constitute a violation of his fundamental right as enshrined in the constitution.

At the hearing Festus Akposhalino Esq counsel to the Applicant relied on the paragraph of the supporting affidavit and adopted the submission in the written address, and also urge this court to struck out prayer No: 4 as the applicant has been charged to court immediately their received the process as the prayers has been overtaken by events. The applicant counsel who place reliance on paragraph 4-8 of his affidavit in support, the statement attached and the written address which encompasses their argument and the legal position in support of their application and the fact that the applicant has been released from detention does not deter the court from proceeding because the presumption of innocence is infavour of the applicant and there is no proof of evidence before the court

upon which this court will establish whether a prime facie case has been established in a criminal trial.

That he had read the reply of the counsel to the 1-2 & 3rd Respondents and found it needful to reply on point of law, the said reply which was filed on the 25-4-2022, said which he adopted as their reply in opposition to the submission of the leaned counsel to the 1st-3rd Respondents.

That a careful reading through the 1st-3rd defendants reply found out that the major plank of their defend is that the period of detention does not run when the applicant was arrested and detained for breach of capital offence. And that the operative's words in the constitution in that regard is reasonable suspicious under section 37 and since there is no proof of evidence before the court upon which the responsibility of the arrest and detention can be anchor and upon which the court will see through to know whether the charges are reflection of evidence. That it will be proper for the court to disregard all the authorities and the submission of the learned counsel to that regard.

That they have also file the reply on point of law to the address of the 4th Respondent on the 31-05-2022, adopted same as their argument on point of law, and that the defend of the 4th Respondent that there is nothing that concern the Attorney General of the Federation in this case, that the AGMJ is the law officer of the Government of the Federal Republic of Nigeria, and that all agencies, their counsels, are counsels to the states and are to appear to defend actions on behalf of the government.

Secondly, that the 4th defendants cited, the law in line with vicarious liability, that the Attorney General is not vicariously liable for the action and inactions of the Nigerian police force. He went further to state that the principles of vicarious liability is a common law principle which cannot be displaced by the provision of the constitution, given them power from the office of the D. P.P., responsible for this kind of matters and there are ample recognize by **section 296 and 297 of the ACJA, 2015**. Finally, that the principles of vicarious liability cannot be used as a defence or a shield in this case, because both the Nigerian police force and the Attorney General of the Federation are all agency of a common disclosed principles which is the Federal Republic of Nigeria. Therefore, urge this court to do Justice to this matter and grant their relief sought therein.

Counsel to the 1, 2 & 3 defendants in reaction to the original application, of 7-4-2022 filed a counter affidavit, same which was deemed as properly filed and served on the 6-4-2022. The counter affidavit is of 5 paragraph deposed to by one Idris Sadeeq annexed to the counter are exhibits A & B. in moving the said counter affidavit relied on all the paragraph together with the counter filed a written address of 16 pages wherein he formulated asole issue for determination to wit:

“whether by the aggregate of facts presented before this Honourable court, the applicant has disclosed a breach of his fundamental right to entitled him to a grant of any or all the reliefs sought”

The defendant counsel who adopted the argument and all the submission contained in the said written address. In response to the applicant counsel oral submission stated that on the suspicious that responsibility of the necessitated of the arrest and incastration of the applicants, which the applicant has submitted is not present in the instant case as same has not been demonstrated by the 1st -3rd Respondent, this he referred this court to exhibit ‘B’ annexed to the counter affidavit.

Secondly, that the applicant submitted that the applicant was charge upon the institution of this action, submit that the submission was erroneous and tends to mislead the court. That the amended charge for exhibit ‘B’ was filed on the 13-08-2021 and this action was filed on the 24-2-2022 several months after the amended charge has been filed against the (Respondent).

That on the merit of this case, or this instant case, is predicted on section 35 of the constitution of the Federal Republic of Nigeria (1990) (as amended) and a cursory perusal of section 35 of the constitution will reveal that sections 35(4) upon which this action is predicted is not absolute and has an exception. This he referred this court to **section 35(7) of the same constitution** which lacks entirely the provisions of **section 35(4)**, when an applicant is being investigated on a capital offence or detained then the provisions of **section 34(4)** will not apply. This he referred this court to exhibit B and that the applicant is currently facing a criminal charge bordering on capital offence. That despite the fact that **sections 35(7)** of the constitution place no obligation on the 1st-3rd Respondents to release the applicant the 1st-3rd Respondent approached the court and got a remand warrant to further hold and detained the applicant submit further that if

the court finds out that the entire proceedings of this court border on **section 34** or found out that it is founded on **section 35(7)**, it is there submission that the entire reliefs sought by the applicant ought to fail and collapse and therefore urge the court to dismiss this instant action as same lacks an iota of law insupport, same is frivolous and should be given a defeating dismissal order.

The 4th Respondent counsel in response to the applicant motion filed the 4th Respondents counter affidavit dated the 16/5/2022 the said counter was deposed to by one Oni Micheal of 4 paragraphs, a written address filed alongside in compliance with the rules of this court of 21 pages wherein he raised a sole issue for determination to wit:

“whether considering the facts of the applicant. Case, any cause of actions whether circumstantial or otherwise has been disclosed against the 4th respondent/applicant and whether the joinder of the 4th defendant/applicant is not a misjoinder?”

Submit that among other things in the written address referred the court to paragraph 4:11 that even though the constitutional provision of personal liberty **section: 35(7)** provides a derogation from the same regards. That in this present case, that the rights was withheld base on the nature of the allegation, hence adopt the said written address insupport of their counter affidavit and submit that the applicants are not entitle to the reliefs sought therein.

I have given an insightful consideration to all the processes filed by parties together with the oral application. And it seems that notwithstanding how each party framed the issues, and arising for determination, the material issue that really calls for the most circumspect this courts consideration is simple,

“whether on the facts and material placed before the court, the applicant has proved that his fundamental rights were infringed upon by 1st to 4th respondent to entitled him to the reliefs sought”

Now to the merit of this case on the issue stated above.

It is settled principles of general application that an applicant who seeks for the enforcement of his fundamental rights under chapter IV of the constitution of the **Federal Republic Nigeria (1990) (as amended)** has theonus of showing that the reliefs he/she claims comes within the purview of the fundamental rights as contained in chapter IV and this is clearly borne out by the express

provisions of **section 46 of the 1999 constitution and order 11 rule (1) of FREP Rules 2009. In Ozoukwu V Ezeonu II (1999) 6 NWLR. (PT. 2000) 708 of 751**, the court of appeal in construing **section. 42 of the 1999 constitution** which is in pari-material with **section 46 of the 1999 constitution** stated as follows:

“The section requires that a person who wishes to petition that he is entitled to a fundamental right.

a. Must allege that any provision of the fundamental right under chapter IV has been contravened or

b. is likely to be contravened,

and

c. the contravention is in relation to him”

The reliefs which therefore an applicant may seek under the **FREP rules** are specially limited to any of the fundamental rights prescribed and embodied in **chapter IV of the constitution see Dongtoe V Civil Service Commission Plateau State (2001) 19 WRN 125**. The burden of proof therefore was on the applicant alleging that his fundamental rights have been contravened or likely to be contravened to place before the court cogent and credible facts or evidence to enable the court grant the reliefs sought. **See Fajemirokun Vs C. B. C. I. (Nig.) LTD (1999) 10 NWLR. (PT. 77) 95.**

In resolving this dispute, it may be necessary to give a brief background facts of the matter as classified from the processes filed on both sides of the aisle for a proper appreciation of the issues to be resolved.

On the part of the applicant, his case in summary is that, the applicant was arrested by the officers of the 1st -3rd Respondents on the 22-12-2019 and taken to the special Anti-Robbery Squad (SARS) cell of the 1st -3rd at abbatoir Abuja and after (3) three months amidst torture and inhuman treatment transferred the applicant to the Anti-one chance office of the Respondents at Jabi-Abuja where he was detained and subjected to further torture including the use of hot machete and cutlasses on him. That the applicant was therefore transferred back to the 1st-3rd respondents special Anti-Robbery squad (SARS) cell in Abbatoir where he was further tortured and subjected to inhuman and degrading treatment with **inspector AchangAtemobi** as his chief persecutor. That the

applicant spent Twelve (12) months i.e. from 22nd December, 2019 to 17 December, 2020 without arraignment, court order or remand order.

On the part of the 1st-3rd respondents their case also in summary is that, sometimes between 2019 and 2020, the 1st -3rd respondents received persistent complaints from members of the public regarding a syndicate notorious for disturbing public peace and ripping innocent commuters and residents of the Federal Capital Territory, Abuja and their valuables whilst disguising as commercial drivers. That in line with their statutory duty to investigate criminal complaints, the 1st -3rd respondents swung into action and commence investigation and search for members of the syndicate, which led to the arrest of the **one OsitaDroma, ChukwuerbukaObiekulie a.k.a. Jesus, Daniel Owowa, Ojobolfesmachi a.k.a.Holy water, Friday Musa A.K.A. Afra, Shedrack John a.k.a. Shark, Oliver Orji, UdogoChidi, Solomon and Ex-CPL Amodu Bernard a.k.a. No: 1. (the applicant)** on the 16th of December, 2020. And that the 1st -3rd respondent's investigation revealed that the applicant together with other members of the syndicate committed the offences of armed robbery and culpable homicide at different times between 4th January, 2019 and 21st April, 2020.

On the part of the 4th respondents their case also in summary is that the 4th respondent only became aware of this matter upon service of the applicant processes on him that 4th respondent is not vested with the power to arrest or detain the applicant or any other person. That the 4th respondent does not dictate duties to the 1st to 3rd respondent and neither are they agents of the 4th respondent and therefore not subject to his authority or control in the performance of their statutory duties.

I have above deliberately and at length sought to capture the essence of the narrative on both sides. The kernel or crux of this disputes is whether the actions of the respondents within the context of the precise complaints of applicant can legally and be constitutionally countenanced.

Now it is not in doubt that the provisions of sections 34 and 35 of the 1999 constitution provides for the rights to dignity of the human person and the right to personal liberty.

The sections provide as follows.

“section 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 hold in slavery or servitude, and**
- c. No person shall be required to perform forced or compulsory labour;**

“section 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 court in respect of a criminal offence of which he has been found suit,**
- b. By reasons of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law.**
- c. For the purpose of bringing him before a court in executing of the order of a court or upon reasonable suspicious 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 ofeighteen years, for the purpose of his education or welfare.**
- e. In the case of persons suffering from infectious or contagious disease 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 task of proceedings relating thereto:

Therefore, the task before me is to properly examine the reliefs sought by the applicant as a party seeking to enforce her fundamental right, the grounds for seeking the reliefs and the facts relied upon to support the reliefs being sought, if the reliefs sought, the grounds upon which the reliefs were sought together with the facts relied upon in support of such reliefs, have disclosed that breach of fundamental right. Is the main plank upon which the reliefs are being sought, then redress may be sought by the **fundamental Rights (Enforcement Procedure) Rules, 1979**? However, where the alleged breach of fundamental rights is incidental or ancillary to the main complaint, it is incompetent to proceed under the rules. There are many decision of the court spilling out clearly the position of the law in this respect. Few among such decisions are:

1. **Egboonu V Borno Radio Television corporation (1997) 12 NWLR (pt. 53) 29,**
2. **Tukur V Govt. of Taraba State (1997) 6 NWLR (PT. 510) 549,**
3. **SEA Trucks (Nigeria) LTD VS Anigboro (2001) 2 NWLR (PT.696) 159**

I start with the complaint that the arrest of the applicant infringed on fundamental right of the applicant. Now is it common ground that the respondents isa body statutorily created with precisely streamlined powers under the police Act.

Section 23 of the police Act, apart from the general duties of prevention and detection of crime, apprehension of offenders, preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations in section 4 of the Act, added this duty or responsibility to the police namely:

Section 23 subject to the provisions of section 174 of the 1999 constitution (as amended), the Attorney-General of the Federation shall hold power,

- a. **Institute and undertake criminal proceedings against any persons before any court of law in Nigeria, other than a court-martial in respect of any offence created by or under any act of the National Assembly.**

- b. To take over and continue any such criminal proceedings that may have been instituted by any other authority or person and**
- c. To discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.**

2. the power conferred upon the Attorney-General of the Federation under subsection (1) of this section may be exercised by him in person or through officers of his department.

It is clearly within the purview of the above provisions of the police Act and **section 174 of the 1999 constitution of the FRN**, the name of the applicant features in the petition.

In my opinion the essence of the basic steps of investigation by the 1st -3rd Respondents which is the examination of the facts of the situation. The process which may take considerable time. This is no cast iron formula on how the process will pan out. These are issues largely dictated 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.

Now coming to the reliefs sought by the applicant.

- 1. A declaration that the arrest and detention of the applicant for twelve (12) months by the respondents at first at the 1st -3rd respondent cell situated at the special Anti-Robbery Squad (SARS) Abbatoir, Abuja then to Anti-one chance in Jabi and finally back to the special Anti-Robbery squad (SARS) from the 22nd day of December, 2019 to 17th day of December, 2020 by the 1st -3rd respondents without any arraignment is unconstitutional, life threatening and gross violations of Applicant fundamental Rights guaranteed under section 34 and 35 of the constitution of the Federal Republic of Nigerian 1990 (as amended). This relief is the main crux of application. This affidavit of the application paragraph 8(1)(11)(111) explain this situation of detention. This the 1st-3rd respondent in their counter affidavit paragraph 3(b) denied the entire facts contained IN PARAGRAPH 8,9 & 10 of the applicant affidavit and stated in paragraph 3(c) that sometimes between 2019 and 2020 the 1st -3rd respondent received persistent complaints from members of the public regarding a syndicate notorious for disturbing**

public peace and ripping innocent commuters and residents of the FCT Abuja of their valuables whilst disguising as commercial drivers. This necessitate the 1st -3rd respondents to swung into action and commenced investigation and search for members of the syndicate. That the 1st -3rd respondent's investigation revealed that the applicant together with other members of the syndicate committed the offences of armed robbery and culpable homicide at different times between 4th January, 2019 and 21st April, 2020 and that upon arrest of the applicant and other members of the syndicate, they were all detained at the instance of the 3rd respondent on the said 16th December, 2020. This the applicant in its affidavit clause 8(1) stated that the applicant was on the 22 day of December, 200019 arrested by the officers of the 1-3rd respondent and detained for a period of 3 months at Special Robbery Anti-Squad (SARS) and transferred Anti-One-Chance Jabi office and finally transferred back to the respondents special Anti-Robbery Squad, where he was detained until the 17 day of December, 2020 (Twelve 12 months).

The question to be asked is this: what happened between the period of 22nd day of December 2019 to the 17th day of December, 2020? This the respondents have not given details explanation either in their counter affidavit or reply on point of law. All that was stated was that he was detained at the instant of the 3rd Respondent on the 16th of December, 2020 and no more and that the 3rd Respondents sought and obtained an order of the chief Magistrate court 1 Wuse Zone 2 Abuja on the 17th day of December, 2020 remanding the members of the syndicate including the applicant at the correctional centre Suleja attached herewith and marked as exhibit 'A' with respect to the complaint that the applicant was detained for a period of 22nd day of December, 2019, to 17th day of December, 2020 i.e. (Twelve)12 months, there is nothing before me to situate that he was in Anti-Robbery Squad (SARS) for those number of days. Now even if we assumed that he stayed there for Twelve (12) months as the applicant contended, what is clear was the date the applicant and other members of the syndicate were detained at the instance of the 3rd respondent on the 16th December, 2020 and that in order to prevent the applicant from committing further offence(s) if granted bail and tempering with the course of investigation, the 3rd respondent sought and obtained an order of the Chief Magistrate court 1 Wuse Zone 2 Abuja on the 17th day of December, 2020 remanding the members of the syndicate including the applicant at the correctional centre Suleja. Exhibit

A being the Remand warrant signed by the Chief Magistrate dated the 17-12-2020 for the offence of criminal conspiracy, Armed Robbery, being in possession of police service pistol and culpable Homicide.

Based on the forgoing can it be said that constitutional right of the applicant has being violated. This the 1st -3rd respondents in their written address at 4:11 stated that while the applicant has amongst other sundry claims alleged that his arrest and detention for twelve (12) months was a breach of his fundamental rights, it is important to draw the courts attention to the fact as affirmed and replete in a host of judicial authorities that the fundamental rights conferred on every citizens of citizen is not absolute as such rights can be curtailed to the extent permitted by law. See **Kalu vs FRN & ORS (2012) LPELR-9287 (CA) where it was held;**

“the court including the Federal High Court, know the law and would not do things to whimsically undermine the rights of parties guaranteed by the constitution. The rights to personal liberty and freedom of movement guaranteed respectively by sections 35 & 41 of the 1999 constitution are not absolute----- an application for enforcement of a party’s fundamental right presupposes the right has been, is being or is likely to be violated otherwise than in accordance with the procedure permitted by law. That argument will be defected when it is apparent that the right has been, is being or is likely to be violated otherwise than in accordance with the procedure permitted by law. That argument will be defected when it is apparent that the right has been deprived of in accordance with the procedure permitted by law”

This the 1st -3rd defendants counsel stated that it is against this background that **section 35(7)** of the constitution permits the detention of a person such as the applicant who his reasonable suspected of committing a capital offence beyond the period provided for in **section 35(4)** of the constitution.

In view of the above wish to state that the more fact of the involvement of the question of fundamental human right does not automatically entitle the applicant to approach the court by the fundamental human rights enforcement procedure. It must form the main plank of the action. **Governor Kwara State V**

Lawal(2006) ALL FWLR (pt. 336) 313 CT 346 paragraph A-E per Muntaka Coomessie JCAC as he then was),

Federal Republic of Nigeria V Ifegwu (2003)15 NWLR(PT. 842) 113 at 180 paragraph A-H.

I wish on this note state that the respondents have the undisputable power to investigate, arrest and detain any person who is suspected of the commission of any offence, under the police Act. Generally, the Nigeria police force has all the power bestowed by section 23 part IX of Police Ac.

“Subject to the provision of sections 160 and 191 of the constitution of the Federal Republic of Nigeria(which relate to the power of the Attorney-General of the Federation and of a state to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria), any police officer may conduct in person all prosecutions before any court whether or not the information or complaint is laid in his name,

There is no doubt that under section 4 of the police Act, the respondents have the duty to detect crime.

Implicit in that duty is the duty to investigate complaints on the commission of crimes. **Section 50(1) of the ACJA 2015 provide thus:**

“a police officer may intervene for the purpose of preventing and shall to the best of his ability prevent the commission of and offence.

Is to this effect that the 1st -3rd respondent acting on the complaint received regarding a syndicate notorious for disturbing peace and ripping innocent residents of the Federal Capital Territory Abuja of their valuables. Therefore, the action taken by the 1st -3rd respondents were justifiable in order to prevent a breach of the peace, hence hold that as it was stated by counsel to the 1st - 3rd respondents at page 13 of his written address point 4:19, that where a person (such as the applicant) is arrested on suspicious of committing a capital offence, the provision of section 34(5) would not avail and for benefit of such person, referred the court to the case of **Ogwuche V FRN & ORS (2020) LPELR-52523 (CA) where the Apex court held thus:**

“having regard with the court below that the appellant was being charge with a capital offence at the trial court, it follows that by the provision of section 35(7) of the constitution of the Federal Republic of Nigeria (1999) (as amended) section 35(4) of the same cannot apply to the case of the appellant who was arrested and detained upon reasonable suspicious of having committed an act of terrorism, a capital offence, for the avoidance of doubt, section 35(4) and (7) of the constitution provides thus: from the above provisions, it is crystal clear that although section 35(4) of the 1999 CFRN (as amended) provides for the period to which a person suspected of having committed an offence may be detained and produced in court, that provisions is however not applicable to persons suspected of having committed a capital offence by virtue of section 35(7) (a) therefore Hold that the applicant arrest and detention for offences of a capital nature, hisdetention by the 1st -3rd respondent is justified. This the respondent counsel submits that considering the peculiar circumstance of this case hold that the applicant’s right to personal liberty was not in any way breached by the 1st -3rd respondents, as the applicants and other suspects were charged before a competent court for the offences of conspiracy to commit culpable homicides, conspiracy to commit armed Robbery, armed robbery and culpable homicide Exhibit B being a charged of the amended charge dated the 12-08-2021.

In view of the above, I cannot justifiable situate where or how the respondent right was violated as alleged. The case of the applicant unfortunately false, even though, or assuming without conceding that the applicant, as alleged was arrested and detained for(Twelve) 12 months that rights cannot be claim. In view of the offences allegedly committed by the applicant i.e. capital offence.

The principles, has always being that, in a fundamental rights enforcement matter, which is a serious matter, the court will not declare an application rights(s) to be infringed simply because he says so and in the absence of credible evidence or proof: the material also supplied by applicant in the circumstance must also not be such that is incredible impossible or sharply falls below the standard expected, in a particular case. It must establish that the rights

claimed exist and has been infringed upon or is likely to be infringed. **See Neka B.B.B. Manufacturing & Co Ltd. V A.B.C. LTD (2004) 2NWLR (PT.858) 521-551.**

The statutory point in matters of this nature is simply that the court in carrying out its invaluable judicial oversight functions, must be circumspect in this very delicate balancing Act between direction of the fundamental right of citizens from unnecessary attack on one hand and on the other hand providing sufficient space to the law enforcement agencies to carry out their statutory duties in what we must concede are challenging times or circumstance.

Though it is the submission of the applicant counsel that, having read the respondents reply on point of law, and reading through the reply found out that, the major plank of their defence is that the period of detention does not run when the applicant is arrested or detained for breach of capital offence, submits that the operative words in the constitution on that regard is reasonable suspicious under section 37 and since there is no proof of evidence before the court upon which the reasonableness of the arrest and detention can be anchored and upon which the court will see through to know whether the charges are reflection of evidence. This as I stated earlier in this judgment, exhibit 'B' being charges against the defendant's **section 35(4)** can not apply defect the end of justice since the offence borders on capital offence simplified:

- 1. On the principle of vicarious liability posed by the counsel where he stated in its open paragraph, that the 4th respondent in this case has no substance as it tends to exonerate the AGF from undertaking his no avowed constitutional responsibilities and to defend the responsibilities and to defend the respondents. On this submit that, the 4th respondents is the Chief Legal Officer to the Government and all Agencies and ministries of Government of Federal Level and constitutionally responsible for the defence of all actions against the government and cannot shirk that responsibility under any guise. Referred the court to section 150(1) of the CFN (1990) as amended. And the case of AG Federation V ANPD & ORS (2003) LPELR-630(SC). And Ezomo VS A.G. Bendel State (1986) LPELR (21SC) where the apex court in respect of the vital position being held by the 4th Respondent. That as a legal adviser to all agencies of government, they are minimal parties in all actions involving the government and its agencies whether the A G is aware or not, and that it is not the**

business of the court to know whether they were informed of the detention of the applicant and that the object of the joinder of the 4th respondent is to enable the A G to meet his clients and resolve issues or present their case before the court and not the other way round. He went further to state that when the A. G. is joined in actions, he is not joined on the basis of the common law of torts of vicarious liability, but on the basis of the statute i.e. the CFRN(1999) (as amended) which saddled his office with the duties as the Chief Legal officer of the Federation and a nominal party in all cases involving the government and all its agencies. This he referred this court to section 150 of the CFRN (1999) as amended, and the case of Ezomo V A.G. Bendel State (supra) that is there contention that a common law principle cannot override the clear statutory provision of the CFRN (1999) (as amended). That the common law rule not agency must bow to the constitution which is the supreme Law. Further that the Nigeria police is and undoubted an important agency of the Federal Government. The law making the A.G. A party to actions torching the government and his agencies is a clear exception to the common law principles or agency and the principle, of vicarious liability, in that the statute prevails over the common law that the constitution being the ground norm and every other law including the principle of vicarious liability has no place in the face of a clear provision of the A.G. in matter involving the government, and its agencies. See Patthun Industries Ltd V Niger Shoes Manufacturing Co Ltd (1988) LPELR-2906 (SC) where the SC held thus:

“again where a statutory provision is in conflict or differ from common law, the common law gives place to the statute. A statutory right may be conferred in addition to, and not in derogation of a common law rights.

In response to the point raised by the 4th respondent, the applicant counsel response and argued that the 4th respondent is the chief legal officer of the officer of the government of FRN and all his agencies, there are counsels to the state and are to appear to defend action on behalf of the government. That the constitution has given 1-4 respondent power from the office of the DPD (Directorate of public prosecution responsibility for this kind of matters and they are ample recognizance by **section 296 and 297 of the ACJA, 2015**, hence the principle of vicarious liability cannot be used as a shield in this case by the

defence, because both the Nigeria police and the AGF are all agency of a common disclosed principle which is the AG of Nigeria.

A careful perusal of the argument canvassed by the 4th respondent counsel and the response on point of law by the applicant counsel, I will at this point disagree with the argument advance by the applicant on the issue of vicarious liability of the office of the AGF. The office of the AGF and that of the police are both a creation of the constitution having different function and duties assigned to each to be performed. In the case of prosecution, it is not without doubt the office of the AGF is responsible to prosecute all cases in the name of the Federal suit of Nigeria, through the office of the DPD (1) Directorate for Public Prosecution. But in a situation where the police or the 1st -3rd Respondents file a case on behalf of the Federal Government of Nigeria, the office of the AGF constitutional is to act as adviser if called upon by the 1st -3rd Defendants. It is the submission of the 4th defendant counsel that they become aware of the process of this case, when the charges were filed and served on them and did not partake in investigation. In view of the forgoing hold that the principle of vicarious liability being a common law principle does but operate to override the constitution of the Federal Republic of Nigeria hence does not apply in this instance case.

From the submissions of the counsels to the applicant and that of the 1st -4th defendants and a careful perusal of the materials placed before me I cannot locate any violation of the relevant constitutional provisions there is no absolutely no evidence of such quality and cogency beyond controverted speculative averment showing that the applicant rights were violated and that retained beyond the period constitutionally allowed and the conclusions I reach is that the applicants narrative lacks credibility and value. I so hold.

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 AGS of Anambra State V A.G. of Fed (2005) ALL FWLR (PT.268)1557 at 1611: 1607 (11).**

In the final analysis, the issue raised as arising for determination is substantially answered in the negative. For the avoidance of doubt, all the reliefs, or claims of applicant on the alleged violations of his fundamental rights are not availing.

The monetary and other elected claims predicted 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 the applicant is thereby accordingly dismissed.

This is the judgement of the court.

Right of Appeal within 30 days from today.

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HON. JUSTICE A.Y. SHAFI

Appearance:

- 1. Festus Akpoghalino for the applicant.**
- 2. Jamiu Agono for the 1st, 2nd & 3rd with Francis Agunbiade for the defendants.**
- 3. Olayinka Akande for the 4th Respondent.**

COMMENT OF THE COUNSELS

Plaintiff counsel we are very grateful for the Judgement

Counsel to 1st -3rd we are grateful for well consider Judgement

Counsel to 4th we are very grateful my Lord

SIGNED

24/6/2022