

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

DATED THIS THURSDAY 1ST DECEMBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/49/2022

BETWEEN:

ARCHITECT DAVID ANDEAPPLICANT

AND

- 1. THE INSPECTOR GENERAL OF POLICE**
- 2. COMMISSIONER OF POLICE FCT**
- 3. NIGERIA POLICE FORCERESPONDENTS**
- 4. ECONOMIC AND FINANCIAL CRIME COMMISSION**
- 5. ALHAJI ISA MADURAWA**

JUDGMENT

In the matter of fundamental rights enforcement procedures rules 2009 where the applicant file originating motion on notice pursuant to order 11 rule I of the fundamental rights enforcement rules, 2009 sections 34,35,36,41 and 46 of The Constitution of the Federal Republic of Nigeria 1999 (as amended), article 4,5 and 6 of the African charter on human and people's rights and under the inherent jurisdiction of this court dated the 11th January, 2022, The Applicant claims the following: -

- 1. A declaration that the transaction between the applicant and the 5th respondent is civil.**
- 2. A declaration that the arrest and detention of the applicant on the 14th to the 17th day of July, 2021 by servants and agents of the 1st, 2nd and 3rd respondent on the complaint of the 5th respondent is illegal and unconstitutional in that the arrest and**

detention is a gross violation of the Fundamental Rights of the Applicant in guaranteed under section 34,35,36,41 and 46 of The Constitution of the Federal Republic of Nigeria 1999(as amended).

- 3. A declaration that the continuous invitation and threat of detention by the 4th respondent is illegal and unconstitutional null and void.**
- 4. An order of injunction restraining the respondents whether by themselves, officers, servants, agents, privies or otherwise however described from further inviting, arresting, detaining, intimidating, and harassing the applicant in respect of the complaint of the 5th respondent.**
- 5. The sum of ₦50,000,000.00 (Fifty Million Naira) as compensation for the unlawful arrest, detention, and harassment against the defendant as the case may be.**

The applicant filed statement pursuant to order 2 rules 3, 4 and 5 of the Fundamental Rights Enforcement Procedure Rules 2009, and the grounds upon which the reliefs sought are. That the arrest, detention of the applicant from the 14th to the 17th day of July 2021 by the agents of the 1-3 respondent to violate the Applicants right to personnel liberty, freedom of movement as guaranteed under section 34, 35, 36 and 41 of the CFN 1999 (AS AMENDED). The mandate given to the Applicant to report to the office of the agent of the 2nd respondent of the Monitoring Unit Garki Abuja on the 19th day of August with a substantial deposit as part of Payment of the loan he has liquidated and threaten to detain and torture the Applicant if he fails to make substantial deposit and undertake before them when he will pay the balance of the loan. The continuous invitation and weekly reporting to the office of the 4th respondent and threat of arrest and detention on the complain of the 5th respondent is not in accordance with any procedure permitted by law and not justified in any of the circumstance stated under the constitution. The Applicant is entitled to the protection of the fundamental rights of personal liberty and freedom of movement as well as compensation for violation of the aforesaid rights.

The Applicant filed a 52 paragraph affidavit in support of originating motion on notice a verifying affidavit of 52 paragraph deposed to by Architect David Ande and attached thereto are exhibits A, (memorandum of undertaking) exhibits B, petition against unlawful detention, arrest, and harassment of Architect David Ande by Mela Audu Nunghe solicitors of the Applicant addressed to the commissioner of police dated the 26th July, 2021, Exhibits C, letter

of invitation by the EFCC addressed to Architect Ande David dated the 6th September, 2021, and a written address of 7 pages where two issues were distilled for determination to wit:-

- 1. Whether from the totality of the evidence before the Honorable court, the applicant is entitled to the order sought in view of the absence of any accepted reason allowed by our laws for the arrest and detention.**
- 2. Whether the Act of the respondent is excusable in a democratically governed society such as ours”**

On being served with the originating motion on notice proof of service on the 1st and 3rd of each respondent dated the 1st of July, 2022. The 4th and 5th respondent filed respondent counter affidavit, the 4th defendant counter affidavit was filled dated the 25th March, 2022 and attached to the said affidavit are the following exhibits

- a. Exhibit EFCC1, EFCC2, EFCC3, EFCC4 EFCC5, and a written address of 6 pages dated the 24th of February, 2022 where two issues were distilled for determination to wit:**
 - 1. Whether the Applicant has made out a case to entitle this Honorable court to interfere with the statutory power/function of the 4th respondents to investigate all allegations of Economic and Financial Crimes, invite and arrest and where there is a ground prosecute where a prima facie case is established?**
 - 2. Whether the Applicant is entitled to the relief sought?**

While the 5th respondent also file before the court the 5th respondent counter affidavit in opposition to the applicant motion dated and file on the 20th of June, 2022 and attached to the counter is a written address of 8 pages where a sole issue was distilled for determination to wit:

“Whether in the circumstance of this case, the Applicant fundamental rights have been infringed upon by the 5th respondent such that this Honorable court would grant the relief sought?

Attached to the written address are the following exhibits:

- 1. Exhibit A, Irrevocable power of Attorney between Foelen Construction Limited (Donor) and Maho Integral Concept Nigeria Limited (Donee) in respect of a Unicef project for the renovation of 36 Health Care Facilities in Kebbi State Plot dated the 14th February, 2019.**

- 2. Exhibit B, Agreement between Macho Nigeria and Foelen Construction dated the 18th January, 2020.**
- 3. Exhibit C, subcontract from Maho.**
- 4. Exhibit D, CTC of complaint of one Alhaji Isa Madurawa against Architect David Ande by A.M Jegae Associates addressed to the C.O.P dated the 10th of June, 2022.**
- 5. Exhibit E, Complaint of criminal conspiracy, cheating and intimidation against Mr. David Ande and others by Maho Integral Concept Limited addressed to the Commissioner of Police dated the 25th of June 2021.**
- 6. Exhibit F, Statement of witness/accused from The Nigerian Police of Ande David Ele dated the 14th July, 2021 of 16 pages.**

The Applicant file a further affidavit in support of motion on notice Dated the 11th February, 2022 of 4 pages dated and filed the 17th July 2022.

The Applicant counsel also filed an amended motion on notice of 3 pages accompanied with the statement pursuant to order 2 rules 3, 4 and 5 of the FREP 2009, affidavit in support of the motion for the enforcement of Fundamental Rights opposed to by Architect David Ande of 53 paragraph dated the 13th October, 2022 attached to the affidavit are the following exhibits:

- 1. Exhibit A, Memorandum of understanding between Foeler Construction Limited and Maho Integral Concept Nigeria Limited in respect of a Unicef project in Kebbi State for Renovation of 36 Primary Health Facilities.**
- 2. Exhibit B, Petition against unlawful detention, arrest and harassment of Architect David Ande by Mela Audo Nunghe, SAN & Co addresses to the Commissioner of Police dated the 26th July, 2021.**
- 3. Exhibit C, Letter of invitation from EFCC Reference No: CR: 3000/EFCC/ABJ/PES/H/|TC/Vol10/484 dated the 6th September, 2021 addressed to Architect David Ande Ele. And in compliance with the rules of the court file a**

written address in support of motion for the enforcement of fundamental rights of 9 pages where two issues were two issues were distilled for determination to wit:

- 1. Whether from the totality of the evidence before to this Honorable court, the Applicant is entitled to the orders sought in view of the absence of any accepted reason allowed by our laws for the arrest and detention.**
- 2. Whether the act of the Respondent is excusable in a democratically governed society as ours.**

The Applicant again file a further affidavit, the Applicant in support of motion on notice for the enforcement of fundamental rights of 4 pages opposed to by one Architect David Ande. The said served on all the defendants who acknowledge same dated the 18th October, 2022.

Before proceeding to the substance application, I wish to state that the 1st to 3rd Respondents were duly served with all the processes in this suit but choose not to file any counter affidavit in respect of the applicant motion on notice. It is trite that service of court process is a pre-condition to the exercise of jurisdiction by the court this is based on the principle of law that a party should know or be aware that there is a suit against him so that he can prepare a defense. Services process is so fundamental because it is a means of summoning parties to court and it is also foist jurisdiction on the court to hear a suit. See U.B.A Plc and V.J.M and Co Nigeria limited (2016) 5 NWLR (PT. 1504)171. Also it is trite that services of processes is essential to ensure that a party is put on notice of the pending litigation and what stage it is. Service on a defendant or any party is for him to know the claims against him so that he may be aware of and be able to resist if he so desires that which is claimed against him. See Rivers State Government VS specialist consult (2005)7 NWLR (PT.923)145.

In this suit, the 1-3 defendants who were duly served proof of services acknowledged by them but choose not to defend this action for no reason to the knowledge of the court. The process server filed before the court is evidence of proof of service hence trite that evidence of proof of service is conclusive who's a bailiff deposes to an affidavit to that effect, therefore it is not the duty of the court to wait for a party who is duly served with the processes of court and fails to show up. The court on being satisfied that the parties were duly served, is free to begin hearing any matter. See Nyamati Ent. Ltd V NDIC (2006) ALL FWLR (PT. 293) 350. This is all I can say on issue of service. The record of this court speaks for itself. I stop here.

Now to the main issues before the court that was addressed in the written address of both the Applicant and the Respondent which issues were re-produced in this Judgment for ease of reference which this court will have the liberty to have a cursory look of the issue so

formulated in other to bring out the real crux of the matter as to whether this court will or will not grant the order sought therein.

The Applicant counsel formulated two issues for determination to wit:

- 1. Whether from the totality of the evidence before this honorable court, the Applicant is entitled to the Orders Sought in view of the absence of any accepted reason allowed by our laws for the arrest and detention.**
- 2. Whether the act of the Respondent is excusable in a Democratically Government society such as ours.**

The Defendants issues for determination are as follows:

- 1. Whether the Applicant has made out a case to entitle this Honorable court to interfere with the statutory powers/functions of the 4th Respondent to investigate all allegations of Economic and Financial Crime, invite and arrest and where there is a ground prosecute where a prima facie case is established?**
- 2. Whether the Applicant is entitled to the relief sought.**

While the 5th Respondent on its side forwarded a sole issue for determination to wit:

“Whether in the circumstance of this case, the Applicant fundamental rights have been infringed upon by the 5th Respondent such that this Honorable court would grant the relief sought.

A combined relief of the Applicant counsel and that of the 4th& 5th Respondents as stated above will show that relief of the Applicant and relief of the 4th Respondent and 5th Respondent looks similar as such the issues can be conveniently be accommodated under the umbrella of the alone issue as it has with clarity brought out the crux of the contest subject of the extent inquiry. It is on the basis of this issue that I will now proceed to consider the evidence and submission of counsel.

The issues are:

- 1. Whether the applicant has made out a case to entitle this Honorable Court to interfere with the statutory powers/functions of the 4th Respondent to investigate all allegations of Economic and Financial Crime, invite and arrest and where there is a ground prosecute where prima facie case is established.**

2. Whether in the circumstance of this case, the Applicant fundamental rights have been infringed upon by the 5th Respondent such that this court would grant the relief sought.

On the first issue as stated above, it is the submission of the 4th Respondent that the action of the 4th Respondent inviting the Applicant is in line with the statutory provision backing the 4th Respondent under the law and that by the combined effect of the sections 6,7,8,(5),13 (1), 41 and 46 of the Economical and Financial Crime Commission (Establishment) Act 2004, the 4th Respondent is amply empowered to investigate all cases of Economic and Financial Crimes reported to it and to prosecute offenders where a prima facie Case is established.

That section 13(1) and 8(5) of the Economical and Financial Crimes Commission (Establishment) Act 2004 is in pari material with section 4 of the Police Act: on this referred the court to the case of Fawehinmi V IGP(PT.665) 481 at 519-521 where the court of Appeal held as follows:

“Under the provision of section 4 of the Police Act, the Police have inter alia the duty to detect crime, in the performance of that, all important duty, the police in trying to discover whether or by whom an offence has been committed, he is entitled to question any person whether suspected or not from. Whom he thinks that useful information may be obtained.”

That the dictum of the court of Appeal make it explicitly that the police in performing its duties under section 4 of the police Act are entitled to question any person whether suspected or not, in connection with the complaints which they are investigating. See Femi Omoniye V Mr Isaac Akinyede & 3 Ors FHC/EN/M/174/10 unreported where his Lordship held that:

“The police are duty bound to investigate any crime reported and that anybody right can be curtailed for the purposes of investigation.”

Therefore, submit that the 4th Respondent has the statutory powers to question anybody in the process of investigation and if need be, arrest, detain if by so doing it will shed more light on the allegations being investigated. That by virtue of the above submitted that the 4th Respondent has only invited the Applicant to sue statement to the allegation leveled against him in the petition and further submit that the 4th Respondent has powers as conferred on them by the provisions of Economical and Financial Crimes Commission (Establishment) Act 2004, to investigate the Applicant upon reasonable and genuine complaints the petitioner listed and has power to commence and conclude such investigations as to assist in it coming to and forming its own independent logical opinion on the case, without interference by the court or any other body or person whatsoever.

He referred the court to the case of **A.G of Anambra State Chief Chris Uba (2005) 15 NWCR (PT 947) 67-68**, where the court appeal per Bulkachuwa JCA held *inter alia*;

“For a person to therefore go to court to be shielded against criminal investigation and prosecution is an interference of powers given by the constitution to law officers in the control of criminal investigation, the plaintiff has no legally recognizable right to which the court can come to his aid. His claim is not one that the court can take for it has disclosed no cause of action. The plaintiff cannot expect a Judicial fiat preventing a law official in the exercise of his constitutional power.”

That the constitutional to person liberty is sacrosanct that no citizen liberty or freedom is absolute. This he referred this court to the case of Ekwenugo of the Federal Republic of Nigeria (2001) NWCR (PT.708) 171 at 185 paragraph H of Abiyi JCA held thus:

“If there is a reasonable suspicion that a person committed an offence, has liberty may be impaired temporarily in the same vein, a person’s liberty may be tampered with so as to prevent him from committing an offence. In short, it is clear that no citizen’s freedom or liberty is absolute. The freedom or liberty of a citizen ends where that of another man starts.”

Submit that, the actions of the 4th Respondent in the instant case is in conformity with the provision of the constitution of the Federal Republic of Nigeria 1999. This the 4th Respondent has not acted *ultra vires* not infringed on the fundamental rights of the Applicant. Thus the court is not in doubt in view of the submission of the 4th Respondent but wish to state that the essence of the basic steps of investigation by the 1-4 Respondent as which the extermination 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 to the crux of this suit, that deals with the fundamental rights, and whether the 1-4th Respondents on the compliant of the 5th Respondent actions has infringed on the fundamental rights of the Applicant pursuant to sections 34, 35, 36, 41 and 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Article 4, 5 and 6 of the African charter on human and people’s rights. These are questions that deserve an answer from this court.

The case of the Applicant as stated in its amended motion on notice is this:

“That the Applicant at all material time is an architect, a contractor, self-employed business man and an indigene of Kogi State. The Applicant was invited to the police at the ACP ACCID Abuja on the 26th May, 2021 and upon arrival and after his statement was taken, the ACP observed that it was a civil matter and granted him from bail on self-recognizance. The 5th Respondent became dissatisfied that the Applicant was not detained so he transferred the case to the office of 2nd Respondent in the Monitoring Unit Garki-Abuja that he was invited and upon arrival at the monitoring unit of the 2nd Respondent office he was asked to provide the sum of sixty-eight million purportedly due to the 5th Respondent from the contract awarded to the company of the Applicant. The Applicant tried to explain to the Respondent i.e. the 2nd Respondent has his connection with the 5th Respondent but the Respondent said it was only after a substantial deposit that he will be heard. When the Applicant told them he has no money, he was taken to a detention center of Wuse Zone, Abuja where he was detained on the 14th day of July, 2021 and he was given no food or water until the 16th day of July, 2021 when his Wife was allowed to see him and she brought food for him.

That he was released on the 17th day of July, 2021 and to report every day in the police station. That it was when he went to the police station with his lawyer that he was asked to make a statement and was told by the Respondent agents to deposit some money as part payment of the debt he purportedly owes the 5th Respondent or be ready to be dumped in the detention until he is due to pay. His explanation that he is not owing the 5th Respondent and to make the Respondent see reasons that it is a civil matter has fallen on deaf ears as the 1-3 Respondent continue the harassment and the threat of further detention. That when all these were going on the 5th Respondent who has done and has also blocked all the bank accounts of the Applicant. That between the months of September to November 2021., the Applicant have reported to the 4th Respondents office for interrogation which sometimes leads to writing fresh statements nine (9) times to wit: 6th September, 2021, 13, 14, 23 & 29 September, 2021 October, 4 & 6, 2021 and November, 23 & 30th, 2021.

In the written address, counsel to the Applicant submitted that the act of the Respondent to detain the Applicant in such a deplorable detention site has portrayed the Applicant a common criminal before right thinking members of the society. That section 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides:

Every individual is entitled to respect for the dignity of his person and accordingly, no person shall be subjected to torture or to inhuman or degrading treatment etc.

He relied in the case of Nemi V A.G. of Lagos State (1999) 6 NWCR (PT452) 42 of 44 that even condemned criminal is entitled to remedy for inhuman and degrading treatment Per Uwacfor JCA

“To end the life of a condemned prisoner, it must be done according to the process of the law.”

Furthermore, that, section 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) clearly states that the Applicant for the enforcement of his fundamental right must prove to be entitled to judgment, the following:

- a. Any provision of the fundamental rights under chapter IV of the 1999 constitution has been contravened**
- b. Is likely to be contravened and**
- c. The contravention is in relation to him (Applicant).**

This he submitted that, the Applicants case strictly falls within the provision of sections 34, 35, 36(5) and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which the Applicant for enforcement of his fundamental rights under chapter IV of the 1999 must prove on this referred this court to the case of Dr. Patrick Nwangwu and Anor V Barrister John Duru (2002) 2 NWCR (PT 751) 267, where the court of Appeal held thus:

“Personal liberty is one of the fundamental rights guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (section 35) this right is crucial and an infraction of the right includes unlawful arrest and detention will attract the sanction provided for in section 32(6) and will result in compensation and an apology from appropriate authority or person.”

That in the affidavit evidence in support of the motion on notice, the Applicant was arrested on the 14th day of July, 2021 until the 17th day of July, 2021 when he was released on bail and in view of the above hold that the Applicant rights to personal liberty was restrained by the agents of the Respondents, hence held that the liberty has been unnumbered and curtailed by the Respondents without any reasonable course. This he referred to the case of Fajeminokun V CBC (1) (Nig.) Ltd. (2000) 10 NWCR (PT 774) 95 at 98 ratio I. The court of Appeal held reference:

“Where there is evidence of arrest and detention of an Applicant which were done or instigated by the Respondent in an action for enforcement of the fundamental rights application. It is the Respondent to show that the arrest and detention is lawful.”

Urge the court to hold that, the arrest and detention of the Applicant is in violation of the fundamental rights of the Applicant as protected by the constitution.

That in their affidavit before the court they have demonstrated that the entire transaction between the Applicant and the 4th Respondent was purely civil in nature and ought not to concern the police. In the case of *Kure V C.O. P* (2020) 9 NWLR (PT 1729) 296 at 326 paragraph B-F THE SC held

“when a person reports a purely civil matter to the police, such a person cannot go scot free as the report ought not to have been at all since it is not within the purview of the police duties”.

It is a report made mal-fida and he will be equally liable for the action taken by the police in respect of whether he actively instigated them or not since he had no business involving the police in a purely civil matter in the first place. Such conduct which portrays a disregard of the law and is armed at using the coercive powers of the state to punish contracting powers in a purely civil matter ought to be muisted in exemplary damages.

Here the 1-3 Respondents in this case did not file a competent counter affidavit to challenge or dispute the Applicants affidavit evidence.

Nevertheless, this court must take judicial notice of the fact that the 1-3 Respondents are undoubtedly officers of the Nigerian Police Force, as such they have as their statutory duties the prevention and detention of crimes, apprehension and prosecution of offenders. Section 4 and 23 of the police act as well as section 214(1) and 2(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). See also *Mr. Cosmos Onah and Mr. Desmond Okenwa & Ors* (2010) LPELR-4781 (CA) they are therefore equipped with the power to arrest and detain a person upon reasonable suspicion of his having committed a criminal offence in accordance with section 35of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Following from the above in paragraph 2 of the Applicants affidavit. He stated thus:

“That on the 26th day of May, 2021, I was invited by the police at the ACP ACCID Abuja and upon arrival and after my statement was taken, the ACP

observed that it is civil matter and granted me bail on self-recognizance and advised I and the 5th Respondent to go and resolve our differences.

Para 12. The 5th Respondent became dissatisfied that I was not detained so he told me he will use his connection in the Police and EFCC to make sure I give him all the money I was paid for the project.

Para 13. To my utmost surprise, the matter was transferred to the office of 2nd Respondents office. I was asked to provide the sum of sixty-eight million purportedly due to the 5th and 6th Respondent from the contract sum paid.

Par 14. That I tried to explain to the Respondents my connection with the 5th Respondent but the agents of the 1-3 Respondents told me that it is only after a substantial deposit has been made that I will be heard.

Para 15. That I told the agents of the 1-3 Respondent that am not owing the 5th Respondent such an amount of money and have no such money. I was then taken to a detention center at Wuse Zone II Abuja where I was detained on the 14th day of July 2021.

Para 17. That I was neither given food nor water until the 16th day of July 221 when my wife was allowed to see me and she brought food for me and I ate.

Para 19. It was on the 17th day of July 2021 that I was released on bail to my pastor and my mother in-law.

I have looked critically at the affidavit of the Applicant and the circumstance of the Applicants arrest and detention from the 14th day of July to 17th day of July when he was released on bail this facts that the transaction between the Applicant and the 5th Respondents is basically on an execution of projects where the 5th Respondents agreed to fiancé to the tune of sixty four million Naira (₦64,000,000.00) and that the 4th Respondent only gave him the total sum of Fifty Nine million Naira (₦59,000,000.00) through the 6th Respondent which was paid in bits at different times with the understanding that I will pay him back when I received payment from UNICEF and that they entered into a memorandum of understanding. Exhibited and marked as exhibit A and that after he was paid by UNICEF. I paid the 5th Respondent through the 6th Respondent the sum of Ninety-Seven Million, Eight Hundred Thousand Naira (₦97,800,000.00) to cover up the amount used to finance the project and the cost of other activities carried out by the 5th Respondent in the course of the project.

By virtue of section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), a person arrested shall be brought before a court of law within a reasonable time.

Subsection (3) of section 35 defines the expression “reasonable time” to be within a period of two days at most or such longer period and may be considered by the court to be reasonable.

The implication of this on the instant Case is that the Applicant would only be detained by the 1-3 Respondent for a maximum of two days. The Applicant must either be charged to court or released from detention within the period by the Respondent. Where the Applicant is held in detention for more than two days without being charged to court, such detention will be unconstitutional except the 1-3 Respondent can justify such longer period of detention to this court.

In the instant case, the Applicant was arrested on the 14th July, 2021 being on Wednesday and released on bail on the 17th July, 2021 being on Saturday, The release of the Applicant on 17th July 2021 being on Saturday this makes the period of the detention of the Applicant unconstitutional and void and the 1-3 respondent and in violation of the constitutional provision that provided two days therefore hold that the 1-3 respondent are in breach of the provision of Constitution of the Federal Republic of Nigeria 1999 (as amended) hence, breach the fundamental rights of the Applicant to personal liberty, freedom of movement. The detention from 6th to 7th July, 2021 is unjustifiable and null and void.

By the above breach, this fundamental rights guaranteed under chapter IV of Constitution of the Federal Republic of Nigeria 1999 (as amended) against the 1-3 Respondent, the law is that they applicant established that is right to liberty and freedom of movement has indeed being breached by the 1-3 respondent by the actions of the 5th respondent. The whole essence of the constitutional provision chapter IV is to approach the interpretation of the constitution in order to uphold it to meet the purpose of the framers and the aspirations held out by it for the larger society primarily by looking at the words used until there is the need to take of their factors into consideration. When the terms are plain and involved no ambiguities they must be given their meaning upon the ordinary and surrounding circumstances.

This the 5th respondent in its counter affidavit in opposition to the applicant’s motion, as reproduced below i.e. paragraph 5 to 36:

5.I know as a fact that the applicant is the owner of FOELER CONSTRUCTION LTD and the 5th Respondent is the owner of MAHU INTEGRAL CONCEPT NIG LTD.

6. I also know that FOELER CONSTRUCTION LTD awarded contract for the renovation of 36 health centers in Kebbi State by UNICEF

7.I know that FOELER CONSTRUCTION LTD acting through the applicant sold the contract to the 5th Respondent acting through MAHU INTERGRAL CONCEPT NIG LTD.

8.I know that sometimes in March, 2019 I was approached by the applicant through Ibrahim Chairman, Abdullahi Duniya and Abubakar (Ministry) to speak to the 5th Respondent to purchase the contract awarded to FOELER CONSTRUCTION LTD.

9.That I know as a fact that Ibrahim Chairman, Abdullahi Duniya and (Abubakar Ministry) who was the mandate to the Applicant met with the 5th Respondent in Sokoto to discuss the purchase of the contract.

10.That the 5th Respondent, myself, the Applicant, Abubakar Minister and one Kaura the Quantity Surveyor to the Applicant Negotiated the price of the contract and the 5th at the rate of 18% of the contract sum and to execute the contract in the name of FOELER CONSTRUCTION LTD.

11.I know as fact that the 5th Respondent ask me to come to Abuja to talk to the Applicant and to collect the Document of the contract.

12.I know as a fact we travelled to Kebbi state together with the Applicant and Kaura the Quantity Surveyor working for the Applicant and handed over the said document to the 5th Respondent in Birnin-Kebbi, Kebbi State.

13. I know that the applicant brought a memorandum of understanding for execution of the project to the 5th Respondent. The applicant made the 5th Respondent to believe that upon payment of 18% of the contract sum, the 5th respondent can execute the contract.

14.That I know as a fact that upon the submission of the contract document to the 5th Respondent, the 5th Respondent immediately paid part payment of N 32,344,146 of the agreed sum and commenced the renovation work on the promise to pay the remaining balance of N32,344,146 to the applicant upon received money from UNICE.

15. That in order to secure the interest of the 5th Respondent, the 5th Respondent insisted on a power of attorney being donated by FOELER CONSTRUCTION LTD in favour of MAHU INTERGRAL CONCEPT NIG LTD.

16. That I know as a fact that the applicant executed a power of attorney in favour of the 5th Respondent's company wherein all payment for the project were to be paid directly by UNICEF to the account of MAHU INTERGRAL CONCEPT NIG LTD maintained with Zenith Bank Account Number: 1013774124. Copy of the power of attorney donated by FOELER CONSTRUCTION LTD is hereby attached as exhibit "A".

17. I know as a fact that the applicant undertook to ensure that the power of attorney was brought to the attention of UNICEF for payment of the funds to MAHU INTEGRAL CONCEPT NIG LTD.

18. I know as a fact that upon substantial execution of the project by the 5th Respondent, the 5th respondent demanded payment from UNICEF for the workdone.

19. I know also that the applicant who had agreed to liaise with UNICEF told the 5th respondent that the money had not been paid by UNICEF but he will source funds to enable the 5th respondent to complete the project,

20. I know as a fact that the Applicant requested subcontract from the 5th Respondent on the 18th/01/2020 to complete [10 project] at the cost of #60,000,000 [Sixty Million Naira] only and to be paid after completion by the Applicant and the 5th Respondent is hereby attached and Marked as Exhibi 'B'

21. I know as a fact that the Applicant requested another subcontract from the 5th Respondent on the 18th /18/2020 to complete [another 5 projects] at the cost of #40,000,000 [Forty Million Naira]. The agreement between the Applicant and the 5th Respondent is hereby attached and Marked as Exhibit 'C'.

22. That the applicant purportedly advanced a loan of #60,000,000 to 5th respondent to complete the execution of the remaining project.

23. That upon the 5th respondent visited UNICEF office for payment of the contract, the 5th respondent discovered that the sum of #290,000,000 out of the contract sum had been fraudulently collected by the applicant in violation of the power of attorney donated by him through FOELER CONSTRUCTION LTD.

24. That the sum of #60,000,000 purportedly given to the 5th respondent as loan was actually part of contract sum which ought to have been paid to the 5th respondent by UNICEF.

25. I state that the applicant mischievously suppressed the power of attorney donated by him through FOELER CONSTRUCTION LTD in favour of MAHU INTEGRAL CONCEPT NIG LTD in order to conceal the criminal element and to mislead this honourable court.

26. I know that the memorandum of understanding between FOELER CONSTRUCTION LTD and MAHU INTEGRAL CONCEPT NIG LTD was signed on 14th March 2019 while the power of attorney donated by FOELER

CONSTRUCTION LTD in favour of MAHU INTEGRAL CONCEPT NIG LTD was also executed on 14th March 2019.

27. That I know as a fact that dissatisfied with the act of the Applicant in violation of the power of attorney signed by the Applicant, the 5th Respondent by way of Criminal Complaint dated 25th day of June, 2021 to the 2nd Respondent to wade into the matter and bring the culprits to book.

28. I know as fact that the Counsel handling this matter applied for the CTC of the said Complaint written by the 5th Respondent to FCT Command the copies of the said application, the copy of the compliant and the statement of the Applicant are hereby attached and marked as Exhibit 'D' and E respectively.

29. I also know that the Applicant was invited by both Agencies and made a confessional statement at the FCT Police Command and the Applicant confessional statement is here by attached and marked as Exhibit 'F'

30. I know as a fact that when the 5th Respondent reported the matter at the FCT Police Command, he was asked to go till they put call on him which he did.

31. In response to paragraphs 15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32 and 33 of the affidavit in support of the applicant's application, the true position is that upon the complaint of the 5th Respondent, the 2nd Respondent caused an investigation into the matter in line with their statutory mandate for which the 5th Respondent is not a party to such investigation.

32. That the 5th respondent's complaint was only made to these agencies being dissatisfied with the act of the Applicant contrary to paragraphs 14,15,24,25 and 26 of the affidavit in support of the applicant's application.

33. I know that the Applicant's Fundamental Right were not threatened and violated by the Respondents contrary to paragraphs 15,16,17,18,19 and 20 of the affidavit in support of Applicant Application, I also know that investigation have not been concluded by the 2nd Respondent.

34. That the Applicant aim for filing the instant application is to stop the constitutional and statutory duties of the 2nd respondent as it relates to investigation of crime.

35. That the entire paragraphs 34,35 and 36 of the affidavit in support of the applicant's application are false, untrue and misleading and same those not represent the true facts of the matter.

36. That in response to paragraph's 37,38,39,40,41 and 42 of the applicant I know also as a fact that the applicant like any other citizen is not above the laws of the land and subject to be investigated upon any complaint to the 5th Respondent.

From the forgoing paragraphs of the counter affidavit of 5th respondent it is clear that this case is purely of civil nature which the 5th respondent can as well approach the court to claim all his entitlement assuming without conceding with the action of the 2-3rd respondent were justifiable the same office of ACCID on the 26th day of May, 2021 whom the ACP invited the Applicant and upon arrival and after statement was taken, the ACP observed that it is a civil matter and granted him bail on self-recognizance and advised the Applicant and the 5th Respondent to go and amicable resolve their difference. The 5th Respondent being dissatisfied decided to use the 2nd Respondent in the Monitoring Unit Garki Abuja and the EFCC meaning that the 5th Respondent is using all he has to intimidate and make sure the Applicant is detained in a purely civil transaction. The best for the 5th Respondent was for him to approach the civil court for redress and nothing more. The action of the 2nd Respondent to have arrested and detained the Applicant from 14th July, 2021 to the 17th July, 2021 when he was formally granted bail was unjustifiable, null and void hence the detention of the Applicant is not from the truth that his constitutional right of personal liberty and freedom of movement has been curtailed by the action of the 5th Respondent through the office of the 2nd Respondent as the law as stated in this judgment is that the 2nd Respondent detained the Applicant from 14th July to 17th July, 2021 which is against the constitutional requirement and if there is the need to further detain for more investigation, the law give the 2nd Respondent under section 293 which provides for an application for an application for remand of suspects by the law enforcement agency, this the 2nd Respondent did not do but rather decided to keep the Applicant for such a long period not provided for by the constitution. This is why the 2nd Respondent went wrong and such breach of the Applicant fundamental rights to his personal liberty and freedom of movement.

The 5th Respondent in his written address 3.14, section 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides for freedom of movement and it is restricted by section 45(1) of the same constitution which provides thus:

Nothing in section 37,38,39, 40 and 41 shall invalidate any law that is reasonably justifiable in a democratic society,

- a. In the interest of defense of public safety, public order, public morality, public health.**
- b. For the purpose of protecting the right and freedom of other persons.**

Here I beg to disagree with this submission and the section cited by the 5th Respondent, the section is just to cover the wrongful act of the 2nd Respondent in view of this hold that the act

of the 2nd Respondent is unconstitutional null and void and a breach of the Applicant's right to has personal liberty and freedom of movement. This is all I can say.

As for the action of the 4th Respondent, there is nothing wrong for them to invite and investigate the petition brought before them by the 5th Respondent, hence not liable for the Applicant.

In summation, have to agree with the Applicant counsel that the Applicant right and his personal liberty and freedom of movement has been breached by the 2nd Respondent and the 5th Respondent who set the ball rolling in the first place having been advised by the officers in the office of ACCID in Abuja at the ACP office.

It is simply wrong and unacceptable that a citizen of this country will be arrested and detained for days without end under circumstances that are certainly not pleasant without the person been charged to court to answer to whatever allegations that maybe leveled at him. It is the more warring that such protected detention can be affected on grounds that at the best hazy, unclear and imprecise as in this case.

Inlined to the view that it is indeed high time that law enforcement agents like the officers of the 2nd Respondent in this claim become self-accounting and apologize to individuals even without the prompting of court where such flagrant violation as happened in this case occurs. The police institution notwithstanding the challenges they face, and we must concede they are trying most like all progressive institutions submit to the rule of law and ensure that their actions serve only to enhance the quality of the liberty and dignity as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended). This unfortunately did not happen in this case.

Before I drop my pen, it is imperative I say or make some general comments with regard to the exercise of our agencies, courts to the over lasting benefit of all (whatever it is imperfection or weakness) remain an eternal and veritable bulwark against any form of tyranny that manifest in different forms and at different levels on our society. It is a solemn responsibility that courts carry out in a dignified manner without fear or favor, ill-will or affection on the bet to be made of people who wield authority and refuse to comply with the rules lay down by our constitution which is our grand norm and those agencies who treat it with levity are disdain in that they do so out of ignorance. We must have strong institutions like the judiciary but the role of people (agencies) is even more critical.

The question I pose to people or the agencies of law enforcement who choose to deliberately undermine what ordinarily should bend decent societies is how will they feel and where will they seek for help if they are places in Applicants position? Your guess is as good as mine. This is food for thought. I say no more.

On the totality of the facts and circumstance of this case, it follows that the Applicant fundamental rights for his personal liberty, dignity and freedom was infringed upon by the action of the officers of the 2nd Respondent i.e. the Monitory Unit which exercise must be checked, this for me is sufficient Recompense.

In summation and for the avoidance of doubt, the Applicant has made out a case with considerable merit and I hereby accordingly make the following orders:

- 1. That the arrest and detention of Applicant from 14th to 17th July 2021 without arraigning him in court in the circumstance unlawful and unconstitutional by the 2nd Respondent by the complaint of the 5th Respondent is in a gross violation of the fundamental rights of the Applicant right as guaranteed under sections 34, 35, 36, 41 and 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).**
- 2. The continuous invitation, harassment and threat of detention by the 2-4th Respondent is illegal and unconstitutional null and void.**
- 3. It is hereby by ordered that the 1st-4th Respondent are restrained whether by themselves, officers, servant, agents, privies or otherwise., however described from further inviting, arresting, detaining, intimidating and harassing the Applicant in respect of the complaint of the 5th Respondent.**
- 4. The sum of Four Million Naira (₦4,000,000.00) is awarded against the 2nd and 5th Respondents jointly and severally infavour of the Applicant for the breach of his fundamental human rights, while the 1, 3 &4th Respondent are free from liability of the Applicant, I so hold likewise to the 3rd and 4th Respondents.**

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HON. JUSTICE A. Y. SHAFI

APPEARANCE:

1. Sylvester Ogbelu for the applicant.
2. Ahmed Mohammed Jega for the 5th Respondent