

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE GWAGWALADA JUDICIAL DIVISION

HOLDEN AT GWAGWALADA- ABUJA

DATED THIS FRIDAY 12TH MAY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/3094/2022

BETWEEN:

CHIDOZIE OBIWURU.....CLAIMANT

AND

- 1. NIGERIA POLICE FORCE**
- 2. INSPECTOR GENERAL OF POLICE**
- 3. COMMISSIONER OF POLICE, FCT COMMAND**
- 4. CSP, BAWA ANGLO, IGP, MONITORING UNIT,
FCT COMMAND..... RESPONDENTS**
- 5. IBEH CHUKWU, DPO, REGISLATIVE QUARTERS
POLICE STATION, APO FCT-ABUJA**
- 6. ANAYO ADIKAIBE**

JUDGMENT

The applicant approached this court by notice of application for an order for enforcement of his fundamental rights pursuant to;

- a. Order 2 rule 2 of the fundamental rights(Enforcement Procedure), rules 2009.**
- b. Section 34, 35 (1)(C) (5) and (6) and 37 of the 1999 CFR as amended.**

- c. Articles 5, 6 and 8 of the African Charter on Human and people's right. (Ratification and Enforcement) Act 2004.**
- d. And under the inherent jurisdiction of this court.**

Claiming the following reliefs:

- 1. A declaration of this honorable court that the arrest and detention of the applicant by the respondent from the 24th day of August, 2022 to the 29th day of August, 2022 (6 days) without food or water is illegal, unlawful and a violation of the applicant's right to dignity of human person granted by section 34 of the CFR 1999 (as amended) and article 5 of the African charter on Human and people's right (Ratification and enforcement) Act (cap A9) LFN 2004.**
- 2. A declaration of this honorable court that the detention of the applicant by the respondent from the 24th day of August, 2022 to 29th day of August, 2022 (6days) without bail and not taken before any court of law is illegal, unlawful and a violation of the applicant's right to personal liberty guaranteed by section 35 of the CFN 1999 (as amended) and article 5 of the African charter on human and people's right (ratification and enforcement) Act (CAP A9) LFN 2004.**
- 3.**
- 4. A declaration of this honorable court that the arrest and detention of the applicant by the respondent from the 24th day of August, 2022 to the 29th day of August, 2022 (6days), the seizure of the applicant's phone , forcing him to open it , accessing the appellant correspondence and denying him access to call anybody is illegal, unlawful, a violation of the applicants right and private and family life guaranteed by section 37 of the CFN and article 8 of the African charter on human and people's right (ratification and enforcement) Act CAP A9, LFN 2004.**
- 5. An order of the honorable court directing the respondent jointly and severally to stop any further acts of arrest, threat and harassment and intimidation to the life of the applicant.**

6. An order of this honorable court directing the respondent to publish an apology, to the applicant in a national newspaper for violating the applicant's fundamental right pursuant to section 35 (6) of the CFN 199 (as amended).

7. An order of this honorable court mandating the respondent jointly and severally to pay the sum of #100,000 (Hundred thousand Naira) as damages for the unlawful arrest and detention of the applicant.

This process was dated 19th September 2022 and filed on the same date, and accompanying it is a statement pursuant to order II rules 3 of the fundamental rights, enforcement procedure rules 2009. Three paragraphs affidavit in support of the application of the enforcement of the fundamental human rights deposed to by Chidozie Obiwuru of 28 paragraphs and attached to the affidavit are exhibit marked as Exhibit A, and A1, A2, B, B1, C, C1, D, E, F and G.

The processes was duly served on all the defendant/respondents, proof of service dated 2-11-2022, 3-11-2022 and the matter was then mentioned on the 9-11-2022 as the matter was adjourned for hearing to the 29- November, 2022.

On the 29th November, 2022, both parties were represented by their counsel, on this date, the claimant counsel informed the court that he received a counter affidavit from the 6th respondent and have equally filed applicant's further affidavit in response to the 6th respondent's affidavit, the said Applicant's further affidavit was filed dated the 29th November, 2022 and is yet to be served on the respondents, but was served on the 6th respondent in the court.

The 1st-4th respondent counsel who also told the court that they were not ready owing to the fact that the file was transmitted to them on the 28th November, 2022, despite the fact that the applicant counsel served the said process on the legal department on the 24th November, 2022.

The 5th respondent counsel, told the court that he has just been briefed on the 27-11-2022, while the 6th respondent equally informed the court that, they have filed the 6th respondent's counter affidavit on the 23-11-2022 and served on all parties, but they have an application for regularization of the processes. On this, parties to

this matter did not object to the motion for regularization, it was moved and granted and this matter adjourned to 24-01-2023 for hearing.

On the 24-01-2023, the applicant was represented by one Chidozie Eze and Monica Allio while the 6th respondent by P.T Longinous.

The 2nd-4th respondent counsel objected to the said letter and urged this court to proceed with the hearing of this case, while the 6th respondent counsel is not in opposition to the said letter of adjournment sent in by the 1-4 respondent and that in the said letter there is no sufficient reason stated hence the court refused to grant the request of the 1-4th respondent counsel and ordered the applicant's counsel to proceed with the hearing of this case.

Upon service of the motion on notice of the applicants, the 6th respondent filed a counter affidavit in opposition to the applicant's notice of the application for an order for enforcement of the fundamental rights filed dated the 19th September, 2022, filed and dated the 23rd November, 2022. The 6th respondent's counter affidavit was deposed to by one Anayo Adikaibe of 26 paragraphs and a written address attached thereto, where in the said written address, a sole issue was raised for determination to wit;

“Whether the 6th respondent upon and the arrest of the applicant on a reasonable suspicion of having committed a crime by the 1-5th Respondent was unlawful in the instance of this case that would warrant the honorable court to grant the applicant's reliefs as contained in the application.”

The applicant on the 29th November, 2022 filed the applicant's further affidavit to the 6th respondent's counter affidavit, the said counter was deposed to by one Chidozie Obiworu of 27 paragraphs with the exhibit attached as FAA. Being an application for bail for Chidozie Obiwuru dated the 26th of August, 2022.

The 6th Respondent filed a reply to the applicant's further affidavit filed on the 29th November, 2022 of 15 paragraphs.

The 1st -4th respondent on the 23rd January, 2022 filed a proposed 1st, 2nd, 3rd, and 4th respondent counter affidavit in opposition to the applicant's application deposed to

by one ASP Kenneth Ogoji of 33 paragraphs and a written address of 6 paragraphs where one issue was raised for determination of the court to wit;

“Whether the applicant has made out a case under the fundamental rights enforcement procedure rules that will entitle him to the reliefs sought in his application.”

The 5th respondent filed the 5th respondent’s counter affidavit in opposition to the applicant fundamental human right enforcement action filed on the 19th day of September, 2022, the counter affidavit is deposed by one Emmanuel Umchi of 12 paragraph and a written address of 8pages. While the applicant responded to the further affidavit of the 1st, 2nd, 3rd and 4th respondent’s counter was filed dated the 1-02-2023 deposed to by one Chidozie Obiworu of 26 paragraphs, and a written address of 12 pages.

On the other hand, the 5th respondent filed a further and better counter affidavit to the applicant’s further affidavit filed on the 10-02-2023 and served on the 5th respondent on the 13-02-2023. The further and better counter affidavit deposed to by one Lilian Eze Onyekachi of 24 paragraphs and the 5th respondent’s reply address in support of the further and better counter affidavit of 3 paragraphs of 6pages.

The 6th respondent also filed the 6th respondents’ reply to the applicant’s further affidavit filed on the 29-11-2022 deposed to by Anayo Adikaibe of 16 paragraphs dated the 6th December, 2022.

The applicant counsel on the 24-1-2023 moved it’s application and added by way of adumbration, that it is on record that the 5th respondent has not opposed the application of the applicant by way of a counter affidavit and that, a party or counsel who fails to file a counter or a reply affidavit is bound by the state of facts as elected in the affidavit as those facts are deemed admitted in evidence. On this he referred this court to the case of Chairman EFCC V Little Child (2016)3 NWLR (PT 1458)72, and Mabamije V Otto (2016)13 WLR (PT. 1528) 171 at 192 paragraph G-H and the case of O.S.S.I.E.C V NCP (2013) NWLR (PT.1360) 451 cat 468 par F-G. All these cases deal with counter affidavit.

He Submits that, in totality the 5th respondent has admitted the facts presented on the affidavit in support of the application and stated that facts admitted needs no

further proof. On this he referred this court to the case of *Atanta V Aliyasu* (2013)6 NWLR (Pt. 1351) 529 at 551 par. A and the case of *Emeka V Okarofor* (2017) 11 NWLR (Pt.1517)410 at 513 par. G-H. He further Submits that facts before the court speaks for itself and the affidavit evidence as deposed to before have the same effect and words of mouth therefore needs no further proof. Therefore,he urged the court to hold that the 1st-5th respondent having admitted the fact before the court, that it is not place of the 6th respondent who instigated the 1st-5th respondent to carry out the act complained of by the applicant to put off a defence for the 1-5th respondent.

That while they agree with section 4 of the Police Act, which empowers to the 1st-5th Respondent to arrest, detain, investigate, interrogate and prosecute offenders. On This he referred to the case of *Onah V Okenwa* (2010)7 NWLR (Pt.1194) 512, he then Submitted further that, the 1-5th respondent must observe, enforce and secure the latin maxim *Let-Litres Juris*, (The law behind the law). That in this instant case, it's their submission that the unjustifiable and unlawful detention of the applicant without trial from the 24th August, 2022 to 29th August, 2022 manifests a failure to observe the latin maxim *Res Litro Juris* and lack of commitment and adherence to the rule of law.

Further that, while they also agree that the right to personal liberty and dignity of human person as enshrined in sections 34, 35, of the CFN 1999 is not an absolute right, it is a right which can be interfered with upon reasonable suspicions, commission of a crime, However, even on such circumstance thereremains a need to comply and adhere to stipulation of section 35(4) (5) of the 1999 CFN which provided for taken a person arrested and detained in accordance to section 35(a) (c) of the CFN 1999 (as amended) to a court within a reasonable time being one day or two days in the peculiar circumstance of the case.

That arrest and detention of the Applicant for the period of 6 days by all the respondent including the 6th respondent constitutes a violation of the applicant's constituted rights to personal liberty and dignity of human persons under section 34 and 35 (1) (C) of the 1999 CFN (as amended). Further that, in derogation of the breach of the right of personal liberty and dignity of human person who does not comply with the provisions of the requirements of procedure will be unconstitutional, unlawful no matter the duration and will constitute infringement of the right which entitles the victims to the judicial remedy provided for in section

35(6) of the 1999 CFN (as amended) on this, he referred this court to the case of C.O.P Lagos state & Anor V S Obechina & ors (2020) LPELR-500069 CA, Udeh V FRN (2001) FWLR (Pt61) 1734, and the case of FRN V Efegwu (2013) 1 NWLR (PT.843) 113 and therefore urged the court to grant all the reliefs sought by the applicant in the interest of justice.

Upon the submission of the applicant counsel, this court went through its court file and in the file, the 1st-5th respondents have indeed filed their counter while the applicant stated that he has not been served with the counter, therefore asked for a date to respond to the counter affidavit. This matter was then adjourned to 13-02-2023.

On the 13-02-2023, the applicant counsel informed the court that they are in receipt of two motions. From the 1st-4th respondent counsel, 1 from the 5th respondent counsel. The motions were for leave for an extension of time to file a counter affidavit. All the said motions for the 1-4th respondent, 5th respondent were moved and the relief sought there were all granted, the motions are with motion number M/153/2023, M/2068/22.

The 5th respondent's motion having been granted informed the court that he was just served with applicant's further affidavit and need time to respond, this also applies to the 6th respondent but he stated that he would not be responding. On the 22-3-2023 the applicant counsel proceeded, in continuation of the hearing of which started on the 24-1-2023. That they are in receipt of the counter affidavit from the 1-4th respondent dated the 15-2-2023 and filed on the 23-1-2023 in response to the applicant.

By way of response, the applicant filed a 25 paragraph further affidavit dated the 1-2-2023 and filed on the same day in response to the 1-5th respondent's counter affidavit. Further that on the 9th Feb, 2023, he was in receipt of a counter affidavit from the 5th respondent dated the 29-Nov, 2022 filed on the 30-11-2022 in response to the application of the applicant. And by way of response, the applicant has responded to a 25 paragraph of further affidavit dated the 10-2-2023 filed the same day in response to the 5th respondent's counter affidavit and attached to it is exhibit marked FA2 and submit that, the court should discountenance the 1st-4th respondent and 5th respondent's counter affidavit and grant all the substantive application of the applicant. The same date, that they are in receipt of further

affidavit from the 1-4th respondent, the 6th Respondent and also received further affidavit from the 5th respondent and choose to respond to the further affidavit of all respondents on point of law.

In response, stated that it is their contention that the 1st-5th respondents are creations of the law, they are established by section 214 of 1999 CFN and as such they must act within the limits of the law. That it is the law that any person alleged to have committed such offence are sacrosanct and must jealously be guided by the court. That by section 35(5) of the 1999 CFN the 1-5th respondent are mandated to charge the applicant to court within a period of 1day, that is because the distance between the 1-5th respondent police station are less than a radius of 10km therefore the 1-5th respondent has no right to violate any provision of the constitution.

That the primary duty of the 1-5th respondent under the police Act 2020 is the prevention of crime, prosecution of offenders on this he referred this court to the case of *Ibiyeyi V Gold* (2012) All FWLR (Pt.659) 1074.

Further, that it is their contention that the 1-5th respondents are only permitted by the constitution being the ground norm of detaining the suspect and to hold for investigation for a reasonable time.that section 4 of the police act 2020 which empowers the 1-5th respondent to arrest and detain the suspect is not in conflict with the constitution neither is the 1-5th respondents' power there is be clothed by the constitution rather the provision of the constitution strikes the balance. Refers the court to section 6(21) (2) of the police act 2020. That the permission is very clear, ambiguous and mandatory. That section 62(1)(2) is very clear as it did not give the power to detain a suspect indefinitely, that by the clear provisions of the constitution and police act, he submits that, under no guise should the police fail to charge the suspect within the constitutional time frame and the that he does not know under which law that 1-5th respondent relies upon, to detain the applicant for 6 days. He referred the court to the case of *Oleyede Ishola vs Ajiboye*[1994] 7-8 SCNJ.

Further submitted that the arrest and detention of the applicant for 6 days constitutes a violation of applicant's right to personal liberty,dignity of human person under section 35(1)(4,5,)of 1999 CFN.That the arrest and the detention for 6days is before and clearly in excess and longer than the stipulated period which is prescribed for a limited period of one day. Therefore,he submits that the

respondent merely engaged the 1-5th respondent to arrest not for prosecution for any alleged offence but for recovery of debt. On this he referred the court to the following cases.

- a. **Mclaren & Anor V Jammiee (2003) FWLR 154.**
- b. **Okafor & Anor V AIG zone II (2019) LPELR-46405.**
- c. **Kure V C.O.P (2020) LPELR-43378 SC and sections 8 (2) of the ACJA 2015 which provides that a suspect shall not be arrested merely on a civil wrong or breach of contract. Therefore, urge this court to discountenance all the argument of the respondent and grant the relief sought by the applicant.**

Counsel to the 1st-4th respondent in response submits that they are in receipt of the originating process of the applicant and duly entered appearance for the 1-4th respondent. That they also filed a counter affidavit in opposition to the applicant's application.

That on being served with further and better affidavit by the applicant, they filed a reply to the applicant's further and better affidavit filed on the 10-2-2023. That both the counter affidavit and the reply to the applicant's affidavit were duly served on the applicant and other respondent.

That the 1st-4th respondent's counter affidavit in opposition to the applicant's affidavit dated the 15-12-2022 and filed on the 23-01-2023, the counter affidavit deposed by ASP Kenneth Ogboji from General Investigation. That in all the two affidavit and counter and better affidavit it is their argument in all the processes filed and served just to bring to the notice of the court that an arrest of suspect and release of suspect is not the end of investigation/matter. That the suspect is expected to be reporting to the police station as at when needed and that instead of the applicant to do so he rather ran to the court, he therefore urged this court to discountenance the submission of the applicant counsel and further urged the court not to strike the matter out but to dismiss it totally for being baseless and an unmeritorious fiction and that it's a mere academic exercise and a gold digger adventure with a substantial cost.

The 5th respondent in response urged the court to dismiss the application of the applicant with substantial cost.

The 5th respondent in response to the original process dated the 19th September 2022 filed the 5th respondent's counter affidavit dated the 29th November, 2022 filed on 30th November, 2022. The applicant filed a further affidavit on the 10/2/2023 which was served on them which necessitated them to file a further and better affidavit dated 21/3/2023. The affidavit dated the 30/11/2023 of 12 paragraphs with a written address. The affidavit of 21/03/2023 is a 24 paragraphs with a written address on point of law. He submits that the processes as encapsulating the case of the 5th respondent and also the written address forming part of overall submission on this matter upon which they urge the court to see through to dismiss the applicant suit with cost.

On the issue of order 12(2) of the FREPR, he submits that this court is mandated to do justice to both parties. That the court is to look at the fundamental principles of law by which the court will determine the justice of the case. That in doing so, he wants the court to consider two issues:

- 1. Is this a criminal matter? Or is it a civil or contractual matter?**
- 2. Was the claimant/applicant wrongfully or unduly detained by the respondent over and above the time permitted by law.**

On the first issue as it relates to the 1st respondent, on this he referred the court to paragraph 4(1-13) of the 5th respondent's counter affidavit.

That the counter affidavit clearly summarizes this matter in seeing the offences committed by the applicant how he sold goods and criminally misappropriated the money to his personal use.

Secondly, that the applicant admitted having sold the vehicle given to him to sell to some suspected persons, and third parties. That if the case and the exhibit before the court that they are dealing with civil matter. Therefore, he urged that the authority cited by the applicant is inapplicable to this case and therefore urged the court to discountenance the submission made by the applicant counsel and dismiss it in totality.

That section 8(2) of the ACJA 2018 cited by the applicant is also inapplicable in this case. This case is not the one contemplated by the said section applying the wrong law to the wrong facts.

On the issue of wrongful detention, referred the court to the case of Doc Pavi Emeka V Rev Prof Okorofor (2017)11 NWLR PT 1577 at 410-438, Adamawa state ministry of Land and Survey V Salisu (2021)2 NWLR (PT 1759) 1 at 30, and that being the case the applicant has no case against the 1-4th and 5th respondent.

Reference to section 115 of the Evidence Act 2011, that they have pointed the infraction of the applicant's paragraph of the affidavit in support, the most gracious of the requirement of S115 of the E.A 2011. The open words of paragraph 20... that the law is clear, that every affidavit used in the court must contain specific... That paragraph 20 of the applicant does not contain the mandatory requirement of this section, he therefore urged this court to strikeout paragraph 20 of the paragraph of the affidavit of the applicant and urged the court to dismiss in its entirety the claim of the applicant with substantial cost to serve as deterrence.

The 6th respondent stated that upon being served with the applicant's originating process dated the 19/9/2023, he filed the 6th respondent's counter affidavit in opposition to the applicants' application. The said counter was dated the 23/11/22. That the applicant subsequently filed further and better affidavit dated the 29/11/2022 and the 6th respondent in his reaction filed a reply to the applicant's further affidavit dated 7/12/2022 of 26 paragraphs and two exhibits marked as A & B and a written address at paragraph 1.5 objected to the content of paragraph 20 of the affidavit and therefore urged the court to dismiss the applicant's application for lacking in merit in its entirety.

I have decided to bring out the submission of the 1st-6th respondent, in view of the opening matter of the applicant in this case. Having said so, it then means that the argument canvassed by the applicant in the opening of this matter cannot hold as it stands now, the issue was not joined when he opened his case. Now that the issue has been joined, I shall now go into the merits of the matter.

But before proceeding, I shall touch light the issue of paragraph 20 of the applicant's affidavit where the respondents 1-6 urged this court to strikeout section 115 of the evidence Act 2011. The section provides thus;

“Every affidavit used in the court shall contain only a statement of facts and circumstance to which the witness deposes either of

his own personal knowledge or from information which he believes to be true.”

Paragraph 20 of the affidavit in support provides thus:

“That my lawyer informed me of the following facts and I believe him as follows;

- a. That when he brought the application for bail dated 26th day of August, 2022 the 5th respondent left instruction at his police station that nobody should accept the application for bail, hence, the application for bail was refused; the said application for bail dated the 26th day of August, 2022 is herein attached and marked as exhibit C.**
- b. That he made every effort to see me on the morning of the 26th day of August, 2022 but was denied access, unknown to him that the 5th respondent have secretly moved me from the police station legislative quarters police division Apo Abuja to Zuba Division headquarters where the 6th respondent’s business was located and which was where I collected the goods from the 6th respondent on credit.**
- c. That it was when he could not have access to me and with no knowledge of my where about that he called the FCT, police public relations officer CSP Josephine Adah and a call to the 5th respondent revealed that I have been moved from the 5th respondent’s police station, Legislative Quarters police division Apo, Abuja to Zuba division Divisional police station.**
- d. That it was at Zuba police Division that the 6th respondent gave his statement for the first time after I had been detained for three(3) days without being informed of my offence, without food or water, without being granted bail nor charged to any competent court of law.**

In Edu V Cawrral(2001)FWLR (Pt.55) 433 CA the court held thus:

“An affidavit is a statement of fact which the maker or deponent swears to be true to the best of his knowledge, information or belief, it must contain only those facts of which the maker or deponent has personal knowledge or which was based on information which he believes to be true and he should state the name and full particulars of his informant.”

Here, paragraph 20 of the Applicant's affidavit is not disputed that the facts deposed to in the application supporting affidavit by Chidozie Obiwuru residing at Kubwa village Abuja are not within his personal Knowledge, as in paragraph 20 (iii) the name of the informant was indicated as CSP Josephine Adah the FCT, police public relation officer, in view of the above hold that, I can see how paragraph 20 of the applicant's affidavit offends section 115 of the Evidence Act. In *Abiodun V C.J Kwara state (2007)18 NWLR (Pt.1065)109 CA*, it was held as follows:

“The practice for deposition to and use of affidavit in court proceedings is set out in the Evidence Act, nothing stops a third party, in the same way as he can testify as a witness in a suit, from swearing to an affidavit in a motion in which he is not a party. Any person in possession of relevant facts can depose to those facts in support of any party to the litigation”

In view of the above, I hold that the argument canvassed by the respondents 1-6 in this matter cannot hold, hence the argument is not water tight and hence thrown into the dustbin.

Now going into the substantive claim or reliefs of the applicant, I have gone through the reliefs as stated from the applicant's motion, I shall take relief 1-3 together as it deals with a declaration that the arrest and detention of the applicant by the respondents from 24th day of August, 2022 to 29^h day of August, 2022 (6days) is illegal, unlawful and a violation of the applicant's right to dignity of Human person guaranteed by section 34, right to personal liberty, private and family life as guaranteed by section 35 to 37 of the CFN 1999 as (amended) and article 5 and 8 of the African Charter on human and peoples' right (Ratification and enforcement) Act (Cap A9) LFN 2004.

On this, I will reproduce the aspect of infringement to the applicant's fundamental right, paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the applicant affidavit.

Paragraphs 13-25

13. That the 6th Respondent threaten and vowed that he will deal with me, for refusing his request, and in order to carry out his threat the 6th Respondent called the 5th Respondent to arrest me on flimsy allegations.

14. That despite all my pleas, the 5th Respondent called officers of the 1st, 2nd, 3rd, and 4th Respondents to arrest me with the threats that I must rot in jail and I was arrested in my shop at Mararaba Nasarawa state with hand cuff like a common criminal and detained at Legislative Quarters Police Division, Abuja for three (3) days (24/08/2022 to 26/08/2022) without any information about the offence or reason for my detention, without due investigation, without police bail or taken before a competent court of law.

15. That upon getting to the police station on the 24th August, 2022, the 5th Respondent took my phone from me forced me to open it, access my correspondence and denied me access to call anybody, access to food or water.

16. That it was by the intervention of a good Samaritan who visited the police station on the 25th day of august, 2022 and secretly used his phone to call one of my friends whose phone I have off heart and informed him that I am at Legislative Quarters Police Division, Apo, Abuja.

17. That when my friend traced me to the 5th respondent's station, Legislative Quarters Police Division and brought food to me but he was also denied access to give me food

18. That it was my friend, who later called a lawyer, and when the lawyer came to the 5th Respondent Police station and applied for my bail, the 5th Respondent requested my lawyer to come with a bail application which my lawyer did.

19. That when the 5th Respondent notice the presence of a lawyer he became agitated, knowing that his games are over he secretly arranged to move me out of his police station.

20. That my lawyer informed me of the following facts, and I believed him as follows:

- i. That when he brought the application for bail dated 26th day of August, 2022 the 5th Respondent left instruction at his police station that nobody**

should accept the application for bail, hence the application for bail was refused. The said application for bail dated 26th day of August, 2022 is herein attached and marked as Exhibit G.

- ii. That he made every effort to see me on the morning of 26th august, 2022, but was denied access, unknown to him that the 5th Respondent has secretly moved me from his police station Legislative Quarters Police Division Apo, Abuja, to Zuba Divisional headquarters where the 6th respondent business was located, which was where I collected the goods from the 6th Respondent on credit.
- iii. That it was when he could not have access to me and with no knowledge of my where about that he called the FCT Police Public Relation Officer CSP Josephine Adah, and a call to the 5th Respondent police station, revealed that I have been moved from the 5th Respondent police station, Legislative Quarter Police Division, Apo, Abuja to Zuba Divisional police station.
- iv. That it was Zuba Police Division that the 6th Respondent gave his statement for the first time after I had been detained for three(3) days without been informed of my offence, without food or water, without been granted bail nor charged to any competent court of law.

21. That I was further transferred to IGP Monitoring unit of the FCT police Command, Garki, Abuja, and was further detained at Abattior, Garki, Abuja for another three (3) days (26/8/2022 to 29/8/2022)

22. That IGP Monitoring Unit of the FCT Police Command, Gaki, Abuja hastily assumed jurisdiction without due investigation and I was detained among notorious criminals at the Abattoir, Garki, Abuja detention Centre, without Police bail or charge without any competent Court of Law.

23. That when the Respondent discovered that they have no reason for keeping me, the 6th Respondent hen alleged that the Golf car which he used to settle me with, that he did not give ownership simple because when he gave me the Golf car, the 6th Respondent dubiously did not give the original particulars claiming that he cannot find it, but handed over the photocopies to me withthe understanding that whenever he finds the original particulars, he will give it to me.

24. That every effort to secure my bail within the period of my detention at the custody of the 1st, 2nd, 3rd, 4th and 5th Respondents were bluntly refused and opposed by the Respondent.

25. That I was detained like a condemned criminal for complete six (6) days by the combined action of the 1st, 2nd, 3rd, 4th, and 5th Respondents without food and water which was inimical to my health and caused me emotional trauma and serious emaciation.

Now to the main issue raised before the court that was addressed in the written addresses of both the Applicant and the respondents, the issues so formulated by the applicant and the issues so formulated by the respondents are brought down. So as to have a glance on the arguments canvassed on those issues.

On the side of the Applicant the issues are four:

The 1-4 respondents raised three issues for determination, the 5th respondent in it's written address raised a sole issue for determination while the 6th respondent raised a sole issue for determination.

Applicants issues for determination are:

- 1. Whether the act of arrest and detention of the applicant by the respondent from 24th to 29th day of August, 2022, Six (6) days without food or water does not constitute a violation of the right to the dignity of the Applicant guaranteed by Section 34, of the CFN 1999 (as amended) and article 5 of the African Charter on Human and peoples Right (Ratification and enforcement) Act (Cap A9) LFN 2004.**
- 2. Whether the act of arrest and detention of the applicant by the respondents from 24th to 29th day of August, 2022 (6)days without bail or bringing him before a court of law does not constitute a violation of the rights of the Applicant to personal liberty guaranteed by section 25 of the CFN 1999 (as amended) and article 6 of the African Charter on Human and peoples right (Ratification enforcement) Act (Cap A9) LFN 2004**
- 3. Whether the act of arrest and detention of the applicant by the respondent from 24th to 29th August, 2022 six (6) days and seizure of the applicants phone forcing him to open it, accessing the applicants**

correspondence and denying him access to call anybody without any justification does not constitute a violation of right of private and family life guaranteed by section 37 of the CFN and article 8 of the African Charter on Human and peoples right (Ratification and enforcement) Act (Cap A9) LFN 2004.

- 4. Whether the applicant is not entitled to the enforcement by the constitutionality guaranteed fundamental Rights and other reliefs sought in this suit based on the facts and circumstance of the suit.**

While the 1st-4th respondent's issues are:

- 1. Whether the applicant has made out a case under the fundamental rights enforcement procedure rules that will entitle him to the reliefs sought in his application**
- 2. Whether the investigation of the applicant for conspiracy, cheating, criminal misappropriation and forging constitute a violation of his fundamental right.**
- 3. Whether this honorable court can restrain the 1, 2, 3 and 4th respondent from the performance of their duties.**

The 5th respondents issue for determination are;

Whether the arrest and detention of the applicant who refused to willingly honor police invitation on a reasonable suspicion of having committed a crime by the 1-5th respondent was unlawful in the eyes of the law that would warrant the honorable court to grant the applicant reliefs in this case.

The 6th respondent issues are:

Whether the 6th respondent report on the arrest of the applicant on a reasonable suspicion of having committed a crime by the 1-5th respondent was unlawful in the circumstance of this case that would warrant the honorable court to grant the applicants relief as contained in the application.

The applicant's issues 1st-4th will be taken together with that of issues 1 of the 1st-4th respondent. While issues 2 & 3 of the 1st-4th respondent and issue 1 of the 5th respondent and that of the 6th respondent will be treated separately.

On issue 1 & 4 of the applicant and that of issue 1 of the 1-4 respondent which I have set out in this judgment, which boils down on whether the arrest, detention of the applicant from the 24th-29th day of August, 2022 for a period of (6) days was a violation of the Applicants right to dignity of the Applicant, personal liberty, life of private and family life so guaranteed by the constitution s.34, 35 37 of the CFN 1999 as (amended) and articles 5, 6 and 8 of the African charters on human and peoples right (Ratification and enforcement) Act (Cap A9) LFN 2004.

The applicant's counsel in arguing issue one stated that, he was just left abandoned by the respondent without food or water for a 6dayperiod and that even when the friend brought food for him at the 5th Respondent's police station, the Respondent did not allow the Applicant's friend to give him food or water, that the applicant was subjected to ridicule and taunts by men of the respondent that noting can be more degrading than denying a human being access to food and water by a person who simply arrested the person for civil transaction .

On this he cited section 34(1) of the 1999 CRN (as amended) the section provide thus:

“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 labor”**

And that article 5 of the African Charter on human and peoples right (Ratification and enforcement) Act (Cap A9) LFN 2004 provides thus:

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status; All forms of exploitation and degradation and particularly slavery, slave trade, future, cruel, inhuman or degrading punishment.

He went further in paragraph 13 of the applicant's affidavit deposed that, the 4th respondent sent police men armed with guns, hand cuffs and tear gas him with, the aim of publicly disgracing the applicant like a common criminal in perfection of

threat of the 6th respondent and that the applicant also explained the mental and psychological torture meted on him while in the custody and that to 5th respondent . This he cited the case of Uzoukwu vs Ezean (1993) and NWCR (177200)708 where the court defined torture to include mental harassment, as well as physical brutalization in human treatment means, any act without feeling for the suffering of the other, and that degrading treatment by Niki Tobi is the element of lowering the societal status, character, value or position of a person. He Submitted that, the conduct of the respondent and the threat of continued torture of the applicant constitutes violation of his fundamental right to human dignity.

On the second issue, submitted that the 1-5th respondents who arrested the applicant and had detained him at it's detention cells in Abuja from the 24th day of August, 2022 to the 29th day of August, 2022 without any form of allegation by the Respondents and that the applicant's fundamental right to personal liberty is guaranteed by section 35 of the 1999 CFN as (amended).

“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.”

Similarly article 6 of the African Charter on human and people's right (Ratification and enforcement) Act, (Cap A9) LFN 2004

“Everybody individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for the reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

In Adesanya V FRN (2012) ALL FWLR PT.649;1067 pg.1074. the court reiterated the sanctimonious provision of section 35(1) of the CFN 1999 which provides that, every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save and in accordance with the procedure permitted by law, the case of Agbakoba V DSS (1994)6 NWLR (PT351)475 the court held thus:

“Where there is an evidence of arrest and detention of an applicant which was instigated by the respondent in an action for the enforcement of fundamental rights application, it is for the respondent to show that the arrest and detention were lawful, in other words, the onus is on the

person who admits detention of another to prove that the detention was lawful.

On this it is in the affidavit of the 1-4th respondent paragraph 9 where he stated that the applicant was transferred to SCID Garki Abuja from Zuba Divisional Headquarters on Friday 26th August, 2022 and was released on the 29th of August, 2022 being a working day and that there was no how the applicant who was transferred on Friday when investigation actions were still on going to be released within the Saturday and Sunday which are not office days, and that at the time the applicant was transferred from Zuba H/Q , there was no exhibit recovered . that the statement of the applicant was recorded on the 26th of August, 2022 (Friday) exhibit NPF2 and also attached is the voluntary statement of the applicant as exhibit NPF3.

That the statement of the applicant with the police at SCID led to the invitation of one Success Amodu, Okechukwu Onyeanusu on the 27th August, 2022 being Saturday and one Ismail Hamza and Talabi Ojo on the 29th of September,2022 attached are the voluntary statement of the suspects arrested marked as exhibit NPF4, NPF5, NPF6 and NPF7.

Submitted further that the applicant couldn't have been released since the investigation activities were still going on and being weekend and a Friday when the applicant's case was transferred from Zuba Divisional H/Q to SCID when the applicant was released on the 29th of August, 2022.

Paragraph 18-22 of the 1st -4th respondent's counter.

18. that the Applicant is being investigated with Criminal Breach of trust, cheating, Criminal Conspiracy, Forgery and Theft, by the 1st ,2nd ,3rd ,4th , and 5th Respondent which commenced from the office of the 5th Respondent until the case was transferred considering its delicate nature of the SCID, wherein several suspects were invited and exhibit recovered from the suspects.

19. that the investigation conducted reveals that the Complaint Adikaibe Anayo was a master to the Applicant who served him. Afterwards settled him with the sum of N2,000,000.00 (Two Million) and assisted him with a vehicle Volkswagen Golf with Reg. No KUI 762TY and to return the car after

sometimes and also the complainant gave his goods worth N6,500,000.00 (Six Million Five Hundred Naira only) to pay and refund the money after sale.

20. That investigation reveals that the Applicant entered into ownership Transfer/Sale Agreement with one Favour Chidi Atuloma in an effort of selling the vehicle using forged document. The Vehicle Ownership Transfer/Sale Agreement is attached and marked as Exhibit “NPF”.

21. that investigation further reveals that the Applicant forged the document of the vehicle and used same to sell the vehicle out to Chidi Otulaloma without the consent and approval of the owner, and that the Applicant herein sold the goods and refused to return the money to the Complainant. Attached is Exhibit “NPF10” the forged documents of the vehicle while the original of same was still in possession and custody of the 6th Respondent, the Complainant.

22. that the bail of the suspects was granted on the 29th day of August, 2022 being on a MONDAY a working day, and after the Police have concluded their investigation and come up with their report. The applications for bail of the suspects are attached and marked as Exhibits “NPF11”, “NPF12” and “NPF13”

The respondent 1-4 in answering the question put forward by the applicant stated that, the applicant is being investigated for conspiracy, criminal misappropriation , cheating , forgery as exhibited on the counter affidavit exhibit NPF1 and therefore submitted that, where a policeman acts in accordance with the powers conferred upon him by law and he makes or attempts to make an investigation and prosecute as in the instant case, same cannot amount to a violation of the applicant’s fundamental right, he referred the court to the case of Okanu V State Commissioner of police (2001) 1 CHRP.407 at 411 where the court held that a citizen who is invited by the police in the legitimate exercise of their lawful duties cannot sue the police in court as in the instant case and therefore submits that the fundamental rights of the applicants were not breached and/or likely to be breached by the 1, 2, 3 & 4th respondent as mischievous claimed by the applicant and therefore urge the court to resolve this issue in favour of the 1-4th respondent and the court to hold that the invitation and arrest of the application which led to many other suspect been invited is lawful and not in violation of the Applicants fundamental rights.

From the foregoing, the crux of this matter is that the applicant was an apprentice with the 6th Respondent, in that wise, the 6th respondent settled the Applicant in January, 2022 with the sum of two million Naira (2,000,000,00) coupled with a big shop so that he will have a soft landing in his business and grow gradually. That the applicant after the settlement went back to the 6th respondent and pleaded to be given goods on credit basis with a promise to be remitting back the money on weekly basis and further pleaded to him also to give him his Golf Car with Ref No: KUJ .762 TY Abuja to be using it to convey his goods and promised bringing back the car in 5months which he obliged.

That since May, 2022 the applicant neither sent in any money nor bring back the car as he promised and after taking goods (bags) worth about Five Million fifty thousand naira (5,050,000.00) from his shop at Zuba. That he tried reaching the applicant to no avail. And between June and July, 2021 called the Applicant, who refused to make any further monetary payment since the last one he did paid in April, 2022. He then told the applicant to return his car (Golf car). On the 1st day of August, 2022 he told the applicant to bring back the bags (goods) he collected, and also the Golf car. The applicant then told the 6th respondent that the Golf car is at a mechanic workshop, and he refused to disclose the direction of the mechanic workshop to him. The applicant who told the 6th respondent that the bags are no more that he sold them and used the money and ordered for goods from the republic of china that he will pay him the value of the bag on or before the 15th day of August, 2022 which he never did.

That on the 21st day of August, 2022, he informed the applicant that if he does not bring back the bags or pay its monetary value equivalent and bring back his Golf Car that he will report him to the constituted authority. That it was at that point that the applicant told the 6th respondent that the Golf car is no longer with him in his possession.

That it is the respondent who reported the Applicant to the 5th respondent division who then invited the applicant on the 25/08/2022 to the station but did not honor the invitation on the 26th August, 2022 the 5th respondent invited the 6th respondent to his station together with the applicant who confessed that he had sold the Golf car to one association without his consent using forged documents prepared by himself, and denied that he did not entrust any goods under his custody.

That the 5th Respondent informed him that his station does not have power to investigate the matter since the incidence happened outside his state, so they transferred the suspect to Zuba police station. That Shortly after getting to Zuba police station received a call or signal that the matter should be transferred to FCT command Garki by old CBN

That in FCT command the Applicant who admitted he collected goods (Bags) worth about Five Million Fifty Thousand (5,050,000.00) from the 6th respondent's shop, but insisted that he had sold all the bags and used the money to order for shipment of goods from the republic of china, but never provided the particulars of the shipment transaction.

On the whereabouts of the car, the appellant changed the narration before the 4th respondent that he did not sell the Golf car rather he forged the car documents and used same as collateral to obtain a loan facility from one association. That the men of the second respondent during investigation recovered the car which is in the custody of police at Garki FCT command.

The copy of the forged document exhibited as Exhibit A series.

That on the next date the applicant was released on bail pending investigation and the car was being tracked by the 3rd respondent. That the original vehicle documents are still with him marked exhibit B. that due to the transfer of the 4th respondent out of the FCT police command, the police could not conclude investigation activities, hence the applicant hurriedly filed this suit to stop the 1-5th respondent from proceeding to conclude their investigation in para 23 of the 6th respondent counter affidavit, he stated that he knew as a fact that, the applicant was given food and water and also was granted bail at the 4th respondent general office.

From the above can it be said that the applicant's fundamental right has been breached or is being breached by the 1-5th respondent with the instigation of the 6th respondents.

In *Onyinohu V IGP* (2009) 2 NWLR (PT.1128) 342-375. The court of Appeal per Abdullahi JCA (later PCA) held that:

“it is now settled beyond peradventure that a Nigeria citizen is entitled to his God's given natural right free from in cerceration in accordance

with all the fundamental laws of land. i.e., the C F R and other relevant legislation which are not inconsistent with the former”

The essence of the affidavit in support is to the effect that the fundamental rights of the Applicant have been grossly violated by the 1-5 Respondent to continue arrest and detention of the Applicant for a period of (6) clear days from 22-day of August, to 29th August, 2022 by the 1-5th Respondent.

The law is settled that, on an application for the enforcement of fundamental rights, it's determination is premised on the affidavit evidence presented and placed before the court. That it is the affidavit evidence which the court must meticulously pursue 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. Having said so, wish to state that when a crime is reported as it was stated above by the 6th Respondent,

“the police reserve the right to invite the supports which the 6th Respondent 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 allegations levelled against the said (Applicant) cannot be any stretch of imagination constitute a breach or threat to the fundamental right of the applicant, the 1st - 5th Respondent acted within the ambit of the law when they invited the applicant for questioning.

The kernel or crux of this dispute is whether the actions of the 1st -5th Respondents within the context of the precise complaint of Applicant can legally and be constitutional countenanced.

Now it is not in doubt that the provisions of sections 34, 35 (1) (c), 415 and 6 and section 37 of the CFN 1999 as amended provides for the right to personal liberty and the Appellant's right to provide and family life.

The sections provide thus:

“Section 34 of the Constitution of the Federal Republic of Nigeria adopted in 1999, and amended in 2010, includes the following provisions:

Every individual is entitled to respect for the dignity of his person, and accordingly -

(a) no person shall be subject 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.

The above sections appear to me clear and unambiguous such that the task of interpretation can even hardly be said to arise. Sections 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 be degrading section 35(1) on the other hand places premium on the personal liberty of every person and deprivation of same must be consistent with the procedures permitted by law. the court obviously serves as a necessary bulwark in the protection of those fundamental rights and any transgression or proved violation of these constitutional provision are met with necessary legal consequences.

The task ahead of this court is to reply the above clear provisions in relation to the alleged infractions and determine whether these infractions are proved.

I have stated in this judgement that the act of the 1st -5th Respondent, in discharging their duties is to prevent crime and in doing so, I have the right to act on the complaint of the 6th Respondent to see if there is any crime committed. A logical and necessary corollary of the complaint of the 6th Respondent would necessarily require the basic steps of investigation which is an examination of facts of the situation, the process may take a period of time. There is no cast iron format on how the process will pan out. These are issues largely directed by the facts uncovered in the processes of investigation. The only point to add here is that the process must be conducted with civility and decorum.

On This it is the submission of the 6th Respondent that neither section 34, 35 nor 37 of the CFN regarding the Applicant's right were breached.

It is pertinent and imperative to reiterate the position of the law that, personal liberty of an individual within the contemplation and legal prison of section 35(1) CFN is not absolute/rather qualified right in the context of this particular case and by virtue of subsection (1) c) therefore, which permits restriction on a person's right in the course of judicial inquiry or where as in this case, the applicant alleged

to having been detained for 6 days from 22 August, to 29 August 2022 without food or water, which the 1st -5th Respondent denied.

Upon a close perusal of the affidavit of the 6th Respondent it is clear that the Applicant has committed offences which are known to law notwithstanding that the 1st -5th Respondent have not commenced prosecution, of an offence, except as provided under the law, it is equally the contention of the 6th Respondent that the Applicant was granted bail on the 29th August, 2022 as that the day the matter was transferred to SCID was on weekend which involves more detailed investigation of the Zuba Divisional Police Headquarters did not transfer any exhibit to them to continue from where they stop.

So the allegation by the Applicant that he was detained for 6 days from 22nd August, 2022 to 29th August, 2022 violates it's fundamental right cannot be ascertained. As no court can stop the 1st -5th Respondents from carrying on detailed investigation in order to resolve the complaint made by the 6th (Defendant) Respondent.

This the 6th Respondent Submitted and referred this court to the case of Dokubo Asari V FRN (2007) 12 NWLR (pt. 1048) 320 at 360 SC.

Here in this case the court held thus:

“for a person therefore, to go to court to be shielded against a 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 recognized right to which the court can take cognizance of fear it has disclosed no cause of action. The plaintiff cannot expect a judicial fiat preventing a law officer in the exercise of his constitutional of Federal Republic of Nigeria (1999) as amended) has been breached by the 1-6th Respondents the averment in 12-14, 15, 18, 19, 20, 21, 22, 24, 25 of the affidavit in support is just a more speculative disposition which cannot be found in action.

The allegation by the Applicant that he was detained for 6 days without food and water was not established beyond preponderance of evidence, there is nothing on the affidavit or the evidence of the Applicant that shows indeed food and water in the Respondent detention Centre.

The point I am saying is that. A court of law or justice only acts or decides on the basis of what has been clearly. The mere stating of facts does not prove the correctness or credibility of those facts without cogent and compelling evidence to substantiate same.

The principle has always been that in a fundamental rights enforcement matter, the court will not declare an applicant's right (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 circumstances must also not be such that it is incredibly improbable or sharply falls below the standard expected in a particular case. It must establish that the rights claimed exist and have been infringed upon or are likely to be infringed. See *Neka B. B. Manufacturing Co Ltd. V ACB Ltd* (2004) 2 NWLR (PT. 858) at 550-581.

I wish to also state that, generally on the 6th Respondent, it is his duty as a citizen of this country to report a case (s) of commission of a crime to the police for their investigation and what happens after such report is entirely the responsibility of the police. The 6th Respondent cannot be culpable for doing his civil duty except it is shown that it is done *malafide*.

A careful perusal of the material placed before the Court cannot locate any violation of the relevant constitutional provisions as stated by the Applicant in its affidavit before the court, that his rights have in fact been breached. There is absolutely no evidence of such quality and cogency before this court that shows that the Applicant's right was violated. It is a fundamental principle of our legal system in respect of facts averred that where there is weak, insufficient evidence then it would amount to a case of failure of proof. An applicant whose affidavit does not prove or disclose the reliefs he seeks must fail. See *A.G. of Anambra State V A.G. of Federation* (2005) ALL FWLR (PT. 268) 1552 at 1611.

I hold that I am unable to pigeon hole his complaint within any of the guaranteed fundamental rights. The action is liable to be dismissed.

In the final analysis, the issues raised as arising for determination are substantially answered in the negative.

For the avoidance of a doubt, all the reliefs or claims of the Applicant on the alleged violation of his Fundamental rights are not availing.

The monetary and other related claims predicated on the alleged violation of the Applicant's fundamental right must equally fail. You cannot put something on nothing and expect it to stand, the entirety of the case of the Applicant is hereby accordingly dismissed.

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HON. JUSTICE A. Y. SHAFI

APPEARANCE:

1. Chigozie Eze for the Applicant.
2. Isaac Anumudu for the 5th Respondent with Ogenayi James Abba.
3. P.T. Longinus for the 6th Respondent.