

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

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

**THIS THURSDAY THE 15<sup>TH</sup> DAY OF SEPTEMBER, 2022**

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

**SUIT NO: FCT/HC/CV/361/22**

**BETWEEN:**

- 1. IDRIS KASHIM HUSSEIN**
- 2. CRUSH CAFE LIMITED.....APPLICANTS**

**AND**

- 1. CORDELIA ANGBIANDU UTAN**
- 2. NIGERIAN ARMY**
- 3. THE NIGERIA POLICE FORCE.....RESPONDENTS**

**JUDGEMENT**

In the matter of fundamental right enforcement procedure rules (2009) where the applicant file originating motion on notice pursuant to order 11 rule 1 of the fundamental rights enforcement procedure rules 2009, sections 34, 35, 41 and 46 (1) of the constitution of the Federal Republic of Nigeria 1999 (as Amended) and Article 5, 6 and 7 of the African Charter on Human and people's Rights (Ratification and Enforcement) Act (cap A9) CFN 2004, dated the 17<sup>th</sup> day of January, 2022, the Applicant claimed the following.

- 1. An order of this Honourable court restraining the 1<sup>st</sup> Respondent, whether by herself, her agents or privies howsoever called, from resorting to the instrumentality of**

**soldiers of the Nigerian army, personal of the Nigerian police or Any other person for that matter, or means to intimidate, harass and or cause the arrest of the applicant on the basis of a purely civil and commercial transaction between the 1<sup>st</sup> Respondent and the 1<sup>st</sup> Applicant's company, Rock Bridge Synergy Limited which is the building of a Duplex on a piece of land belonging to the 1<sup>st</sup> Applicants company, by the 1<sup>st</sup> Respondent.**

- 2. An order of this Honourable court restraining the 1<sup>st</sup> Respondent from further resorting to the instrumentality of soldiers of the Nigerian Army, personnel of the Nigeria Police or any other person for that matter, or means, to lay siege at, and or barricade the business premises of the 2<sup>nd</sup> Respondent, plot No: 23, First Avenue, by Bonny corner Shop, Gwarimpa Abuja, or even elsewhere in a bid to cause the arrest of the 1<sup>st</sup> Applicant on the basis of a purely civil and commercial transaction between the 1<sup>st</sup> respondent and the 1<sup>st</sup> Applicant's company, Rock Bridge Synergy Limited which is the building of a Duplex on a parcel of land belonging to the 1<sup>st</sup> Respondent's company, by the 1<sup>st</sup> Respondent.**
- 3. An order awarding damages in the sum of N200,000,000.00 (Two Hundred Million Naira) only against the 1<sup>st</sup> Respondent.**
- 4. An order awarding damages in the sum of N300,000,000.00 (Three Hundred Million Naira) only against the 2<sup>nd</sup> Respondent.**

The Applicant file a 22 paragraph affidavit in support of originating motion on notice to which two exhibit numbered exhibit 1 & 2 were attached respectively and a written address of 8 pages in compliance with the rules of this court wherein the written address a sole issue was formulated for determination to wit.

**“whether the instant application is meritorious and ought to be granted.**

On the receipt of the counter affidavit in response to the originating motion, the applicant file a further affidavit in response to the 2<sup>nd</sup> Respondent, counter affidavit of 19 paragraph. Dated the 16<sup>th</sup> June, 2022 and attached exhibit KK1, KK2, KK3, KK4 AND KK5.

On the part of the Respondents a counter affidavit of 15 paragraph was filed and in compliance with the rule of the court the 1<sup>st</sup> Respondent filed a written address of 12 pages dated the 21<sup>st</sup> day of February, 2022 wherein a sole issue was raised for determination to wit:

**“having regard to all the facts and circumstances of this case, as well as extent laws whether the Applicants are entitled to the reliefs sought.**

The 2<sup>nd</sup> Respondent also file notice of preliminary objections pursuant to order 43 of the High court (civil procedure) rules, order VIII rule 1 of the fundamental rights (enforcement procedures) rules, 2009 and under the inherent Jurisdiction of this Honourable court where he pray for the following:

- 1. An order of this court striking out this suit against the 2<sup>nd</sup> Respondent for want of jurisdiction and for failure to disclose a reasonable cause of action against the Respondent. In support of the preliminary objection file a written address of 7 pages where a sole issue was formulated for determination to wit:**

**Whether the applicant case discloses a reasonable cause of action against the 2<sup>nd</sup> Respondent.**

The applicant also filed a counter affidavit in opposition of the 2<sup>nd</sup> Respondent notice of preliminary Objection deposed to by one Ibrahim Remilekon of 5 pages dated the 16<sup>th</sup> June, 2022.

Before going into the substantive matter the count must first and foremost rule on the issue raised on the jurisdiction which is fundamental.

It is trite law, that jurisdiction is the bedrock, of any Judicial proceedings and the lifeblood of any adjudication. And its absence renders the courts proceedings, no matter how well conducted, liable to be set aside for being a nullity. Jurisdiction of a court is so fundamental that once it is challenged it must be addressed and resolved first before any other steps is taking in the proceedings' Jurisdiction is the legal capacity of a court to hear and determine

judicial proceedings, it is the power to adjudicate concerning the subject matter of the controversy. See *Nsirim V Amadi* (2016) 5 NWLR (PT.1504) page 42 at 60 paragraph C-D.

The challenge posits by the 2<sup>nd</sup> Respondent is whether the Applicant case discloses a reasonable cause of action against the 2<sup>nd</sup> defendant.

In law, cause of action denoted every fact (though not every piece of evidence which it would be necessary for the plaintiffs (therein referred to as an application) to prove, if traversed to support his right to the judgement of the court. A cause of action is the factual situation which if substantiated entitles the plaintiff (therein the Applicant to a remedy against the defendant (therein the Respondent). What is important is simply the presentation of the factual situation which if substantiated entitles the applicant to a relief against the Respondent. See ***Esuwoye V Bosere* (2017) 1 NWLR part 1546 PAGE 256 at 297-298 para D-D Par Onnoghen JSC (as the then was); *Labode V Otubu* (2001) 7 NWLR pt. 712 PAGE. 256 at 280 paragraph D-F Per Onu JSC. A cause of action is a combination of facts and circumstances giving rise to the rights to file a claim in court for a remedy. It includes all things which are necessary to give a right of action and every material fact which has to be proved to entitle the plaintiff/ Applicant to succeed. Cause of action normally arises as soon as the combination of acts giving a right to complain accrues or happens. ***Okafor V Bende Divisional Union Jos Branch* (2017) 5 NWLR (pt. 1559) page 385 at 417 paragraph E-G Par Kekere- Ekon JSC.****

The 2<sup>nd</sup> Respondent on the sole issue raised, as to whether the Applicants case discloses reasonable cause of action against the 2<sup>nd</sup> Respondent on this he answered in the negative and submitted, the Applicants have not in any way shown how their rights were infringed upon by the 2<sup>nd</sup> Respondent to necessitate joining the 2<sup>nd</sup> Respondent as a party to this suit. That the mere fact that they have instituted this action against the 2<sup>nd</sup> Respondent does not mean that their rights have been breached by the 2<sup>nd</sup> Respondent in this matter or in any way to warrant a remedy in law. Further submitted that where there is a legal wrong or violation of a right, there is a legal remedy, which presupposes that there must be a violation of right before a legal remedy can be sought against the violation, the **latin Maxim- Ubi-Jus ibisremedium, this he referred the court to *Avient Cargo Airline & Anor V Adeeleors* (2021) LPELR 55257(CA)** and submitted that there is nothing to show in the application of the applicant that posits a wrong done by the 2<sup>nd</sup> Respondent

against the Applicants and that the jurisdiction bothers on proof of facts. That the allegations of the applicants are mere conjectures, guess work and speculations, as the applicant has failed to show on the face of their originating processes whether indeed the alleged barricade, harassment, threat and intimidation were indeed carried out by the officers of the 2<sup>nd</sup> Respondent or some other unidentifiable group. That a court of law will never act on mere conjecture, guesswork and speculation and referred the court to the case of **Iviennagbor VBazuaya (1999) NWLR (pt.620)552 at 561** paragraph E-F the supreme court held that:

**“a court cannot decide issues on speculation no matter how close what it relies on may seem to be the facts.**

That a through perusal of the entire processes placed before this court by the Applicants, it is crystal clear that the Applicants have not in any way show a link to prove that the officers were indeed officers of the 2<sup>nd</sup> Respondents to sustain, an action against the 2<sup>nd</sup> Respondent.

That no useful information whatsoever was disclosed as to the proper identity of those that allegedly carried out the said alleged infringement of fundamental Right referred to the case of **OlufunmilayoRansome-Kuti&ors V. A.G. Federation (1985) S.C. 123/1984.**

Further to this, submitted that, the burden of proving the allegations made against the 2<sup>nd</sup> Respondent rests squarely on the Applicant which they believed they have failed to carry out in its entirety and thus fail to show a reasonable cause of action against the 2<sup>nd</sup> Respondent. This he referred the court to the case of **Mrs Betty Darego V A. G. Leventies (Nig.) Ltd & 3 ors LPELR-(2015) CA /L/ 481** where Per Y. B. Nimpar JSC stated as follows:

**“It is trite law that he who asserts must prove”**

That the court in addressing the importance of proof of facts in a fundamental rights procedures stated thus in **Mezua&Annor V Okolo&ors (2019) LPELR-47666(CA)** thus:

**“in bringing a matter for the enforcement of fundamental rights where such right had been violated, such facts must be proved by relevant**

**evidence----- where has the burden of proof in a  
fundamental right case?**

It was stated in **Onah V Okenwa (2010) 7 NWLR (PT. 1194) 512 CA page 516** that.

**“he who asserts must prove. The burden of proof lies on an applicant who applied for the enforcement of their fundamental rights to establish by credible affidavit evidence that their fundamental right was breached” it is the duty of as applicant alleging breach of his fundamental right to place sufficient evidence before the court---**”

Submitted that the aggregate of facts brought before this court by the applicants against the 2<sup>nd</sup> Respondent is not supported by any form of evidence to show that the applicant have a reasonable cause of action against the 2<sup>nd</sup> respondent in this matter. that the Applicant is merely on a wild goose chase or at best a bootless errand. That failure of any course or matter to disclose a reasonable cause of action goes to the root of this case and robs the court of jurisdiction to try this matter. **Kebbi V Kwara investment Property Development Company Ltd (Ltd) 2021 LPELR -53992 (ca).** where the court held, Thus:

**“where there is failure to disclose a reasonable cause of action against a party, the court is obligated to strike out the case against the party”  
Abubakar V Falola (1997) II NWLR (PT. 530)  
638.**

That flowing from the above authorities the failure of the Application to disclose a reasonable cause of action in this matter empowers the court to dismiss this suit. The applicant in response to the notice of preliminary objection filed by the 2<sup>nd</sup> respondent filed a counter affidavit in opposition deposed to by Ibrahim Rehmeko of 15 paragraph and a written address of 7 pages where a sole issue was formulated for determination to wit:

**“whether the second respondent’s notice of preliminary objection ought to be sustained”**

On this he submitted that, the 2<sup>nd</sup> Respondent Notice of preliminary objection to the Applicant Application for the enforcement of their fundamental Right simply on the ground that the suit of the Applicant has not disclosed a cause of action against the 2<sup>nd</sup> Respondents. On this he defines. What in law is a cause of action. This which I have stated in the cause of this judgement and as needless to repeatsame.

He submitted, to ascertain whether a party's case has disclosed a cause of action against the Respondent, the pleading in this case, the affidavit stating the facts as to the acts leading to the violation of the fundamental right of the Applicant complained of must be looked at. This he referred the court to the case of **Samuel Osigwe Vs PSPL Management consortium Ltd & 13 ors (2009) 1 LEDLR 2.**

That at paragraph 10 and 11 of the affidavit insupport of theapplicant application for the enforcement of their fundamental rights, the Applicant stated that the soldiers of the 2<sup>nd</sup> Respondent numbering about 10 Men, on the prompting of the 1<sup>st</sup> Respondent, stormed the business premises of the 2<sup>nd</sup> Respondent located at No: 23 First Avenue by Bonney Corner, Gwarimpa Abuja on the 20<sup>th</sup> day of December, 2021 laid siege and barricade the entranced to the business premises of the 2<sup>nd</sup> Respondent and refused to leave until they find the 1<sup>st</sup> Applicant, arrest, detain and torture him until he allows the 1<sup>st</sup> Respondent to commence and continue the building of her allocated subplot 51 at the 1<sup>st</sup> Applicant company's construction site located at plot 559, Cadastral Zone Boo, Kukwaba District-Abuja.

The Respondent who moved the said preliminary objection and adopted the written address and urge the court to dismissed this suit against the 2<sup>nd</sup> Respondent. In response the applicant adopted his written address as their submission in support and urge the court to dismiss the 2<sup>nd</sup> Respondent Notice of preliminary objection. While counsel to the 1<sup>st</sup> Respondent avert that they have no objection of the 2<sup>nd</sup> Respondent challenging the Jurisdiction of this court and state that the question to be consider by the court is upon the notice of preliminary objection on ground of law. That as the 2<sup>nd</sup> Respondent has submitted that there is no affidavit to discountenance the counter affidavit file by the applicant. That the question what is the counter affidavit meant for when the preliminary objection is challenging the jurisdiction purely on point of law and no affidavit filed. That the counter affidavit is of no moment and ask the court to strikeout.

The applicant counsel in response to the 1<sup>st</sup> Respondent avert that by the nature of the Respond, If the preliminary objection is raised on the basis of no cause of action. This referred the court to the case of **Egbe. V Adeferansin (1978). 1 NWLR (PT.47) and the case of Ogbimi V Ololo (1993) 7 NWLR (PT. 304) 128** and also the case of **Lokpobiri V Ogala& 2 ors (2015) 10-11 SC PT. 2 at 102**. That all these cases are on the premises of law that the cause of action arises on the court construe and as to the cause of action we look at the facts, the affidavit that if the party is raising cause of action there is need to come by affidavit and that the respondent will put the case on the affidavit. And that was the reason they file an affidavit to put before the court of what happened, as there is no way they can convince the court that there is cause of action. Therefore, urge this court to consider the counter affidavit of the Applicant as the instrument of facts putting the facts before the court as to the transaction that lead to the filing of this action, urge the court to dismiss the said preliminary objection.

In response to 2<sup>nd</sup> Respondent counsel, reply to the Applicants stated that the counter affidavit filed by the Applicant in support of the preliminary objection, that they filed should be discountenance in totality. Submitted on the facts that the principle of law is very clear, that a counter affidavit files to a known existing affidavit insupport of any application before the court is a strength document and unknown to the rule of practiced. This he referred the court to the case of **Bode V Mubi Emirate council (2016) LPELR. 40 SC**.

And on the second leg that assuming but not conceding that the counter affidavit file by the Applicant is recognised by this court wish to state that the counter contradicts the affidavit file in support of the originality summons. This he referred the court to paragraph 4 of the counter affidavit filed by the Applicant that in paragraph 4 submit that the Applicant has named a particular officer stating that he was the one that allegedly admitted the fundamental breach of the Applicant, but the said officer is not even made a party to this suit. Therefore, submitted that the 2<sup>nd</sup> Respondent name be struck out on the basis that he is not a necessary party.

I have carefully read the preliminary objections filed, by the Applicant, the issues raised on the written address, the 2<sup>nd</sup> Respondent and the counter affidavit in opposition to the preliminary objection raised as well as the written address, and also considered the oral application by learned counsel to both parties and it seems to me that the issue to be resolved from the materials placed before the court falls within a very narrow legal compass and that is whether the applicant

**“case discloses a reasonable of action  
against the 2<sup>nd</sup> defendant (Respondent “**

And secondly

**“whether the Applicant would have Responded by  
filling a counter affidavit to opposition of  
Respondent preliminary objection which centre on  
point of law?”**

On this I will posit this question? Is there any obligation to file a counter to every affidavit?

On the first, issue as to whether the Applicant case discloses a reasonable cause of action against the 2<sup>nd</sup> Respondent. on this as already stated on this judgement a cause of action arises on the date or from the time the breach of duty occurs which warrant the person adversely affected by the breach or the injury there from to sue in a law court to assent or protect his legal right that has been violated. The moment a wrong is done to a party by another which factual situation entails the former to seek relief in the law court by way of enforcement. Therefore, in order to determine when a cause of action arises the court has a duty to consider or refer to the originating summons and the relevant disposition. **See Modibbo V Usman (2020) 3 NWLR (PT.1712) page 470 at 529.** Therefore, in determining whether the exists a reasonable cause of action this court will confine itself to the originating motion on notice filed by the Applicant and the affidavit insupport of originating motion on notice. A careful reading of the affidavit in support of originating motion on notice paragraphs 4,5,6,8,9,10,11 to 15 to my mind discloses substantive and reasonable cause of action to warrant the bringing of this application before the court, in view of the forgoing therefore hold that the preliminary objection of the 2<sup>nd</sup> Respondent does not hold since the court is not at this point bound to have a recourse to the Respondent counter affidavit in opposition to the said originating motion on notice. **Modibbo V Usman (supra).** In view of the forgoing therefore all issues discussed and argued in respect of same does not hold water. So long as the originating motion on notice discloses cause of action or raise some question fit to be decided by the court. The mere fact that the case is weak and not likely to succeed is no ground for striking it out. **See Thomas V Olurosoye (1986) INWLR (PT. 18) page 669.** All other issues canvassed in respect of filing a counter affidavit by the applicants to response to the 2<sup>nd</sup> Respondent preliminary objection as at this moment not important having accepted that the originating motion on notice discloses reasonable cause of action.

In view of the forgoing, I hold and I will maintain that there is a reasonable cause of action before the court hence the preliminary objection filed by the 2<sup>nd</sup> Respondent is hereby dismissed.

Now to the main issues before the court that was address in the written addresses of both the Applicant and the Respondent, the issues formulated by the Applicant and that of the Respondent looks similar as such the two issue raised can conveniently be accommodated under the umbrella of the lone 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 issue is,

**“Whether the Applicant Fundamental Rights have been breached by the Respondents.**

It is trite that where a person alleges that his fundamental Right(s) as enshrined, in the constitution has been, is being or is likely to be contravened in any state, the alleged breach of his fundamental Right must be the trunk or pivot in his application in order to rest Jurisdiction in the court for Enforcement in other words, where the violation of the alleged right is merely incidental or ancillary to the principal claim or relief, it will be improper and preposterous to address such action as one of enforcement for f a fundamental Right.

This court will therefore examine the reliefs sought therein the ground upon which they are predicated and the facts relied upon to found the action. See **SEA, trucks Nig. Ltd V PanyaAnigboro (2001) 2 NWLR (PT. 696) 159 at 178** on this, claim 1 & 2 are the same prayers hence shall be considered together as one.

Now it is settled principle of general application that an applicant for the enforcement of his fundamental Right under chapter IV of the constitution has the onus showing that the reliefs he claims comes within the purview of the fundamental rights as contained in chapter IV and this is clearly borne out by the express provision of **section 46 of the 1999 constitution and order 11 rule 1 of the FREP rules 2009. In Uzoukwu V Ezeonu ii (1991) 6 NWLR (PT.200) 708 at 751** the court of Appeal in construing section 42 of the 1979 constitution which is pari-material with section 46 of the 1999 constitution stated as follow:

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

- a. Must allege that any provision of the fundamental rights under chapter IV has been contravened or**
- b. B. is likely to be contravened and**
- c. The contravention is in relation to him**

The reliefs which therefore an applicant may seek under the FREP rules are specifically limited to any of the fundamental rights prescribed and embodied in chapter IV of the constitution, see **Dongtoe V Civil Service Commission Plateau State (2001)19 WRN 125.**

Now from the onset. I have spelt out the reliefs of applicant in his originating motion on notice and the affidavit and they clearly falls or come within the purview of the **fundamental Right under Chapter IV of the 1999 CFN.**

The burden therefore was on the Applicant alleging the infringement of his fundamental right to place before the court cogent and credible facts or evidence showing his breach or infringement to put the court in a clear position to grant the reliefs sought. See **Fajemirokun Vs S.B.C.I (Nig) Ltd (1999) 10 NWLR(Pt.774)195.** The facts upon which the crux of the matter arise will be briefly stated thus:

That the 1<sup>st</sup> Applicant is the alter- ego of the Rockbridge Synergy Limited. The 1<sup>st</sup> Respondent Subscribed to a Subdivided plot at the 1<sup>st</sup> Applicant company (Rockbridge) Over a Hectare plot 559. Cadastral zone Boo Kukwaba District Abuja. I shall take the pains to reproduce the relevant portion of the said affidavit, paragraphs 6-11 are germane and I reproduce them as follows:

- 6. That because the above referred company of the 1<sup>st</sup> Applicant Rockbridge Synergy Limited is the allottee and the statutory Developer, she is the one with the prerogative to seek and obtain approval of the Department of Development control of the Federal Capital Territory, and there after build or superintend the building of all and every building on the parent plot allocated her, including subdivided plot No: 8 allocated the 1<sup>st</sup> Respondent.**
- 7. That while the 1<sup>st</sup> Applicant and his above-mentioned company were in the process of finalizing the renewal of**

**building Approval over the parent plot, so that they do not get penalized by the Department of Development Control, the 1<sup>st</sup> Respondent, against the instruction of the 1<sup>st</sup> Applicant, on behalf of his above-mentioned company Rockbridge Synergy Limited, forcefully assumed the subdivided plot 8 allocated her, and commenced building.**

- 8. That because the 1<sup>st</sup> Applicant cautioned her, that it was contrary to the rule of the Department of Development Control, to commence building when the company was yet in the process of finalizing on the renewal of her building permit (as heavysanctions would be visited on the company). And also reminded the 1<sup>st</sup> respondent, that by the rules and convention of the estate being run by his above-mentioned company at the above referred parent plot, the 1<sup>st</sup> Respondent was to pay up the infrastructure fee she owing the 1<sup>st</sup> Applicant's company before she could build, the 1<sup>st</sup> Respondent with threats to the 1<sup>st</sup> Applicant.**
  
- 9. The 1<sup>st</sup> Respondent threatened the 1<sup>st</sup> Applicant, that she has several relative who are within the ranks of Generals in the Nigerian Army as well Commissioner and AIG'S in the Nigeria Police, who shall not hesitate to aid her with their men to cause the arrest, detention and torture of the 1<sup>st</sup> Applicant, should the latter continue to ask her to pay his company the infrastructure fee which she is owing the 1<sup>st</sup> Applicant Company, Rorkbridge Synergy Limited, which is a total sum of N4,000,000.00 (Four Million Naira), or should he ask her to wait the finalization of the renewal of the building approval which his company was pursuing with the Department of Development Control.**
  
- 10. That because the 1<sup>st</sup> Applicant stood his ground as maintained at the foregoing paragraphs, the 1<sup>st</sup> Respondent, in making true her threat of resorting to men of the Nigerian Army to cause the 1<sup>st</sup> Applicant's arrest, detention and torture, stormed the premises of the 2<sup>nd</sup> Applicant where and because they know the 1 Applicant frequents, with soldiers of**

**the 2<sup>nd</sup> Respondent, numbering about 10 (ten) in an apparent bid to arrest the 1<sup>st</sup> Applicant.**

- 11. That the said storming of the 2<sup>nd</sup> Applicant's premises referred to at paragraph 10 above, happened after an initial storming of the Applicant's Company's plot of land, Plot 559, Cadastral Zone BOO within Kukwaba District, Abuja, where the 1<sup>st</sup> Respondent had thought she would find the 1<sup>st</sup> Applicant and arbitrarily effect his arrest using the soldiers of the Nigerian Army her clout has aided her with, but which attempt fail, as they could not find the 1<sup>st</sup> Applicant at the said plot of land.**

The applicant who argued that the affidavit supporting the instant application vividly discloses a purely civil and commercial transaction between the 1<sup>st</sup> Applicant's company; - Rockbridge Synergy Ltd. That the two have some disagreement whereof the 1<sup>st</sup> Respondent did not only threaten to cause the arrest and detention of the Applicant by stating that he has several relations who are within the Ranks of General. In the Nigerian Army as well Commissioner and AIG's in the Nigeria Police who shall not Hesitate to aid her with their men to cause the arrest, detention and torture of the 1<sup>st</sup> Applicant. These which the 1<sup>st</sup> Respondent procured Soldiers of the Nigerian Army to cause the 1<sup>st</sup> Applicant arrest, detention and torture, stormed the premises of the 2<sup>nd</sup> Applicant with Soldiers of the 2<sup>nd</sup> Respondent Numbering about 10 (Ten) in the apparent bid to arrest the 1<sup>st</sup> Applicant having initially stormed the 1<sup>st</sup> Applicant company plot of land plot 559 Cadastral Zone Boo within Kukwaba District Abuja, where the 1<sup>st</sup> respondent had thought will find the 1<sup>st</sup> Applicant and arbitrarily effect the arrest using the Soldiers of the Nigeria Army. That the 1<sup>st</sup> Respondent continue to threaten that she would either use the Soldiers of the 2<sup>nd</sup> Respondent to arrest and detain the 1<sup>st</sup> Applicant for clearing to demand that she pays the infrastructure fee and asking her to await finality of building permit before carrying on with building on the plot allocated her that the 1<sup>st</sup> Respondent who again resumed her act of intimidation, harassment and threat of arrest against the 1<sup>st</sup> Applicant on the 15<sup>th</sup> day of January, 2022 by resorting to the same old style or using Soldiers of the 2<sup>nd</sup> Respondent to coured the 1<sup>st</sup> Applicant in a bid to cause his arrest, detention and torture by laying siege and barricading the business premises of the 1<sup>st</sup> Applicant Plot No: 23 First avenue by Bonny Corner Gwarimpa all in a bid to still effect the arrest of the 1<sup>st</sup> applicant. in this submitted that by virtue of section (46(1) of the 1999 CFN (as amended). The applicant does not need to wait until the threat to arrest and clamp him into

detentions is carried out before he approaches the court. And that for the Applicant to safeguard against the infringement upon his constitutional guaranteed right to liberty and the right to freedom of movement as enshrined in section 35 & 41 of the 1999 CFN (as amended) by the 1<sup>st</sup> Respondent via the instrumentality of either the 2<sup>nd</sup> or 3<sup>rd</sup> Respondent.

On this the Respondent in their counter affidavit avert that he is not in position to admit or deny paragraph 1 of the affidavit insupport as the statement is within the personal knowledge of the Applicant.

The 1<sup>st</sup> Respondent in its counter which I will take pain to re-produce below in order to highlight the green arrears for the purpose of accentuating the issues found by the parties and the resolution of same. They are paragraph 6a, -e, 7a-z, and 8, 9, 10, 11, 12 and 13

**6. I have been informed by Peter O. Abang Esq, (Counsel) during meeting in his Chambers at Suit C2, Fatima Plaza, Mambolo street, Wuye, Abuja on the 14<sup>th</sup> February, 2022 at about 10:00 am both of whom I verily believe; and I depose as to the following facts:**

- a. That Ibrahim Remilekun is not a party to this Suit and cannot depose to the said Affidavit in support without fulfilling certain conditions as provided under the Fundamental Right Enforcement Procedure Rule 2009.
  - b. That Rockbridge Synergy Limited is not a party to this Suit and is not joined by the Applicant as a Party from where facts are elicited.
  - c. That paragraphs 3 to 15 of the Supporting Affidavit are facts in respect of matters which are either within the personal knowledge of Rockbridge Synergy Limited who is not a party to this Suit and/or the 1<sup>st</sup> Applicant.
  - d. That Ibrahim Remilekun did not disclose the circumstances upon which he became aware of the fact he sought to rely on in paragraphs 3 to 15 of the Supporting Affidavit and no consent was given to him to disclose those set of facts.
  - e. That paragraphs 3 to 15 of the Supporting Affidavit are contrary to the provision of the law on Affidavit Evidence.
- 7. That in any event, in response to and/or in rebuttal of paragraphs 3 to 15 of the Supporting Affidavit I now depose as follows:**

- a. **My family and I are bonafide purchaser for value of the said Plot 51 within the parent Plots refer to as Aqua Planet Estate at Plot 559, Cadastral Zone, Boo Kukwaba District, Abuja.**
- b. **That the said Plot was bought as family property, while I superintend the said Plot for and on behalf of my family and it is expected that I give periodic report of the progress and development of the said Plot to all the members of the family.**
- c. **I am aware of the fact that I am not the only subscriber of Aqua Planet Estate at Plot 559, Cadastral Zone, Boo Kukwaba District, Abuja and I am also aware of the fact that as at the time the Plot 51 was subscribed for and fully paid, the entire Plot was also fully paid for by various subscribers.**
- d. **In further response to paragraph 6 of the Affidavit, after indicating interest in the said Aqua Planet Estate, I was told to pay the sum of N50, 000. 00 (Fifty Thousand Naira) for Application form, which I did and I was issued a receipt. A copy of the receipt is attached as Exhibit A.**
- e. **Upon completion of the form, I was directed to pay the sum of N10, 000, 000. 00 (Ten Million Naira) by Rockbridge Synergy Limited and on 28<sup>th</sup> August, 2019, upon a full payment of my Plot, for and on behalf of my family, I was issued with a receipt of payment of the amount by Rockbridge Synergy Limited for the purchase of the said Plot as well as a Letter of Allocation. A copy of the Receipt as well as Allocation Letter are now produce and marked Exhibit B and C respectively.**
- f. **I am aware of the fact that neither did the 1<sup>st</sup> Applicant nor any other person applied to the Development Control for building approval on my behalf or on behalf of any other subscriber. Rather it was the Department of Development Control that noticed that the 1<sup>st</sup> Applicant and some other persons have commenced building without approval sometime in 2018 that the Department of Development Control directed the 1<sup>st</sup> Applicant to stop work and thereafter, the illegal structures built without approval was demolished.**
- g. **Furthermore, it was the 1<sup>st</sup> Applicant who personally informed me and other subscribers of the Plot to commence building, subject to the payment of infrastructure fee of N4, 000, 000. 00 (Four Million**

- Naira) only as agreed by all the parties to Exhibit A as well as subscribers of the Plot.
- h. That I vehemently deny Paragraph 8 of the Affidavit and state further that the Deponent Ibrahim Remilekun is not seized of the fact as he has no personal knowledge of the transaction. That some of the subscribers of the Estate and myself, on behalf of my family paid the sum of N1, 200, 000. 00 (One Million, Two Hundred Thousand Naira) only as part payment for infrastructure fee so that we could commence building on the said Plot while the balance is to be paid after getting to a certain level of development of the Plot, of which the 1<sup>st</sup> Applicant conceded to.**
  - i. As a matter of fact, the 1<sup>st</sup> Applicant also gave me and some of the subscribers the option to procure our materials and/or equipment, manpower, machineries, professionals, etc for the development of the various Plot but that the structures shall be in line with the specification and same to be done under his supervision, from the process of excavation and foundation laying till completion of the building.**
  - j. That after I brought the foregoing to the attention of my family members for which same was approved and we paid the sum of N1, 200, 000. 00. (One Million, Two Hundred Thousand) in two tranches of N700, 000. 00 and N500, 000. 00 as agreed, we commenced building on the behest of the 1<sup>st</sup> Applicant with day to day supervision by the 1<sup>st</sup> Applicant's Engineers on the process of work done and the quality of materials used on the site. That as a matter of fact, I opted for his site Engineers and Labourers for the construction and building, which was been supervised on daily bases.**
  - k. That it was in the course of the building that the Department of the Development Control noticed that several structures were springing up, that was when I and other subscribers were told to stop work because the 1<sup>st</sup> Applicant is yet to apply for any building approval, when in fact the 1<sup>st</sup> Applicant fraudulently misrepresented to me and other subscribers that he has been granted approval to commence the said Estate Development.**
  - l. That consequent upon the foregoing, all the subscribers unanimously agreed that no further some shall be paid to the 1<sup>st</sup>**

**Applicant in the guise of infrastructure fee because there was no evidence of any infrastructure development on the said plot and that payment shall be made for infrastructure when he provides one, which he never did.**

- m. That when the subscribers to the Aqua Planet Estate and myself sought to know why the Estate still remain undeveloped and the structures thereat are been demolished, the 1<sup>st</sup> Applicant told me not to worry and that all modalities are in place to resolve the issue with the Development Control and to get the necessary approvals. However, the 1<sup>st</sup> Applicant became evasive and stopped answering his calls when the pressure from all subscribers became enormous.**
- n. As a matter of fact, the 1<sup>st</sup> Applicant disappeared into thin air and refused to show himself up again till sometimes in 2021 when he came demanding for another payment for infrastructure fees.**
- o. I and my family later became aware of the fact that the 1<sup>st</sup> Applicant and his syndicates company has fraudulently oversubscribed the entire sud-divided Plots together with those belonging to other subscribers including ours, within Plot 559, Cadastral Zone, Boo Kukwaba District, Abuja, which was fully paid for to unsuspecting subscribers who were not aware of his fraudulent schemes.**
- p. That I only became aware of this development, when I went to my own Plot at the site and I noticed that someone has already encroached on our own Plot and had continued to build on the already existing foundation work which was laid on site by my family and I on our Plot.**
- r. That I immediately informed my brother Lt. Jude TerkimbiUttan who is a senior military officer of the Nigerian Army and also shares ownership of the said Plot as a family property, he went with me to the site to confirm my findings, which turned out to be true, he immediately put a call across to the 1<sup>st</sup> Applicant but the 1<sup>st</sup> Applicant refused to pick his calls despite several attempts.**
- s. I am aware of the fact that on 20<sup>th</sup> December, 2021, Lt. Jude TerkimbiUtaan made a formal complaint to the Army of Military Police in line with its operational mandate and rules of practice as a senior Military Officer. That neither did Lt. Jude TerkimbiUtaan result to self-help nor did I threatened to arrest, detain or torture**

- the 1<sup>st</sup> Applicant for any reason whatsoever as falsely alleged in paragraph 9 of the rather incompetent Affidavit in support.
- t. That contrary to paragraph 10, 11 and 12 of the Affidavit in support, after the formal complaint was received by the Nigerian Army Military Police Unit of the 2<sup>nd</sup> Respondent, as opposed to the blatant false statement of the Applicant that about ten (10) Personnel were sent to arrest the 1<sup>st</sup> Applicant, I am aware that 3 unarmed Investigating Personnel of the 2<sup>nd</sup> Respondent in line with its operational procedures were directed to go to the site for further investigation and to ascertain the nature of the complaint as presented to the 2<sup>nd</sup> Respondent.
  - u. That on 20<sup>th</sup> December, 2021, when the 3 Military Police Personnel got to the site, I was present at the site with my younger brother, Jeremiah SesughUtaan, Esq who is also a legal practitioner but the 1<sup>st</sup> Applicant was not present on site. We however, met the 1<sup>st</sup> Applicant's workers, site manager as well as the site engineer who provided the 1<sup>st</sup> Applicant Telephone number and immediately thereafter, the investigating Military Police Personnel to my hearing and to the hearing of everyone present called the 1<sup>st</sup> Applicant for more that fifteen (15) times but he refused to pick up his call.
  - v. That I do not know where the 1<sup>st</sup> Applicant resides or carries out business but it was two of the staff of the 1<sup>st</sup> Applicant, the Site Manager, who incidentally was the same person in charge of the building and supervising my family's Plot as well as the site Manager that opted to take the Military Personnel and myself together with my younger brother to where the 1<sup>st</sup> Applicant does business at No. 23, 1<sup>st</sup> Avenue, by Bonny Corner, Gwarimpa, Abuja.
  - w. That on getting to the said premises, we noticed that the said premises belonged to one Crushed Café Limited. That again, the Military Personnel called the 1<sup>st</sup> Applicant for over twenty times by the 1<sup>st</sup> Applicant blatantly refused to pick his calls despite the fact that he was not within the said premises.
  - x. That one of the Military Personnel sent an SMS to the 1<sup>st</sup> Applicant stating the reasons why they were at the premises and that they needed to ask some questions to aid their investigation and nothing more. That the 1<sup>st</sup> Applicant received the SMS and after his Phone rang for two more times, he switched off his mobile phone and

never honoured the presence of the Personnel of the 2<sup>nd</sup> Respondent.

- y. That the Personnel did not touch anyone at the said premises, neither did they barricaded laid siege of the said premises at any time. They never wielded any arms to command any fear or threats of intimidation, arrest and torture of anyone at the premises. As a matter of fact, the only reason why I was present at the premises was with the intention of identifying the 1<sup>st</sup> Applicant and nothing more but when the 1<sup>st</sup> Applicant refused to show up, at the instance of the three Military Personnel, they entered their vehicle and left without touching or harassing anyone.
  - z. That the Deponent was not present when the foregoing transpired either at the site or at the said premises and the said statement in the Affidavit in Support were not within his personal knowledge nor did he mention the source and circumstances of his information and belief.
8. I know as a fact that neither was the 1<sup>st</sup> Applicant, his staff nor any onlooker arrested and the said premises not barricaded as business continued uninterrupted contrary to the statement in paragraph 13 of the Supporting Affidavit. As a matter of fact, I have seen Exhibit 1 and I know that the said Exhibit is incongruous and has no bearing whatsoever.
9. Contrary to paragraphs 14 and 15 of the Supporting Affidavit, I have never been to the 1<sup>st</sup> Applicants Business Premises after the investigating Military Personnel called to the 1<sup>st</sup> Applicant's premises to invite him for further investigation. That I was not even in Abuja on 15<sup>th</sup> January, 2022, as falsely stated and no one has threatened to arrest the 1<sup>st</sup> Applicant or any of his associates or even went to the said premises on the said day as falsely alleged.
10. That it was as a result of the 1<sup>st</sup> Applicant fraudulent oversubscription schemes and reselling of peoples fully subscribed subdivided plot including the one I bought for and on behalf of my family, when he in fact made another person to build on my already existing foundation and building that led to a formal complaint been laid by my brother for proper investigation. That since his refusal to honour his invitation, no

one has ever threatened to arrest, detain or torture him contrary to paragraphs 17 and 18 of the Supporting Affidavit.

11. As a matter of fact, the 1<sup>st</sup> Applicant moves freely and has been going to the said Aqua Planet Estate to supervise building and construction that is still ongoing by other subscribers without any hindrance as falsely alleged.
12. Contrary to paragraph 19, I know as a fact that I am one of the many who had made part payment for infrastructure fee despite the that there are no infrastructures on site, hence why it was unanimously agreed that no subscriber of the Plot will pay any amount in the guise of infrastructure fee until some development is seen on site. Moreover, the 1<sup>st</sup> Applicant and other subscribers are constantly on their various Plots and building is currently ongoing, while the 1<sup>st</sup> Applicant set me and another subscriber on a collision course as to who is duly allocated the said Plot 51 within the Plot 559, Cadastral Zone, Boo Kukwaba District, Abuja which has halted further development on the said Plot.
13. That paragraphs 20 to 21 is a calculated to curry cheap favour and to mislead this Honourable Court and I state further that no security Officer whatsoever, be they Personnel of either the 2<sup>nd</sup> and /or 3<sup>rd</sup> Respondent is at his business premises or at the said Plot with the intention to unlawfully arrest and detain the 1<sup>st</sup> Applicant.

On the other hand, which response of the 2<sup>nd</sup> Respondent counter affidavit in opposition will also be reproduced below:

4. That I know as a matter of fact that almost all the depositions stated in the Applicants' affidavit in support of the originating Motion are not true.
5. That the 2<sup>nd</sup> Respondent was not involved in the alleged breach of the Fundamental Human Rights of the Applicants or that of any other person at all.
6. That the 2<sup>nd</sup> Respondent is not in the position to deny or admit the depositions in paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 17 of the Applicants' Affidavit in support of their Originating Motion, and therefore puts the Applicants to the strictest proof of same.

- 7. That the 2<sup>nd</sup> Respondent vehemently denies the depositions in paragraphs 9, 10, 11, 12, 13, 14, 15, 18, 19, 20 and 21 of the Applicants' Supporting Affidavit, and in response, states that the Nigerian Army is saddled with the responsibility to protect the nation's integrity and safety against external aggression and does not engage in contractual conflict between civilians.**
- 8. That in specific response to the depositions in paragraph 9 of the Applicants' Supporting Affidavit, the 2<sup>nd</sup> Respondent states that none of her Officers or Generals take orders from the 1<sup>st</sup> Respondent or from any person other than the Commanding Officer.**
- 9. That in specific response to the depositions in paragraphs 10 and 11 of the Applicants' Supporting Affidavit, the 2<sup>nd</sup> Respondent states that none of 2<sup>nd</sup> Respondent's officer in Abuja or any other place invaded the said work premises of the 2<sup>nd</sup> Applicant at Plot No. 23, First Avenue, by Bonny Corner, Gwarimpa, Abuja, or the Company premises of the 1<sup>st</sup> Applicant at Plot 559, Cadastral Zone BOO within Kukwaba District, Abuja or any premises at all to arrest, intimidate, harass, detain and torture the 1<sup>st</sup> Applicant or any other person at any point in time.**
- 10. That in further response to the deposition in paragraph 12 of the Applicants' Supporting Affidavit, the 2<sup>nd</sup> Respondent states that no military invasion or assault was carried out by Officers of the 2<sup>nd</sup> Respondent at the said work premises and Company mentioned by the Applicants or any other premises. In fact, there was no military assault carried out that resulted in the infringement of the Fundamental Right of the 1<sup>st</sup> Applicant or anyone whatsoever contrary to the Applicants' assertions on the alleged date or any other day.**
- 11. That in specific response to the depositions in paragraph 13 of the Applicants Affidavit in Support, the 2<sup>nd</sup> Respondent vehemently states that her Officers did not storm the work or company premises of the Applicants. The 2<sup>nd</sup> Respondent was not aware or in receipt of any Demand letter attached by way of Exhibit to the Supporting Affidavit**

requesting for the payment of an alleged breach of Fundamental Rights of the Applicants.

12. That in specific response to the depositions in paragraph 14 of the Applicants' Supporting Affidavit, the 2<sup>nd</sup> Respondent unequivocally states that the Officers of the 2<sup>nd</sup> Respondent did not lay siege or barricade the business premises of the 2<sup>nd</sup> Applicant at Plot No. 23, First Avenue, by Bonny Corner, Gwarimpa, Abuja, in a bid to effect the arrest of the 1<sup>st</sup> Applicant at all.
13. That the 2<sup>nd</sup> Respondent denies the depositions in paragraph 18 of the Applicants' Supporting Affidavit and in response states the 2<sup>nd</sup> Respondent's Officers did not intimidate, torture, harass, threaten, or obstruct the free movement of the 1<sup>st</sup> Applicant or that of any person at all within Abuja or any other place.
14. That in specific response to the depositions in paragraph 19 of the Applicants' Supporting Affidavit, the 2<sup>nd</sup> Respondent's state that the 2<sup>nd</sup> Respondent's Officers do not take order from the 1<sup>st</sup> Respondent as her Officers cannot be used to carry out the purported threats allegedly issued by the 1<sup>st</sup> Respondent.
15. That the 2<sup>nd</sup> Respondent denies the depositions in paragraph 20 of the Applicants' Supporting Affidavit, and in response states that the Officers of the 2<sup>nd</sup> Respondent are not being used by the 1<sup>st</sup> Respondent to hound the 1<sup>st</sup> Applicant at his business premises.
16. In further response to the above paragraphs, the 2<sup>nd</sup> Respondent states that the 2<sup>nd</sup> Respondent always respects and upholds the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and do not embark on any act that seeks to breach the Fundamental Rights of citizen as enshrined in the Constitution, Africa Charter on Human and Peoples Rights and all other enactments.
17. That the Applicants are to put to the strictest proof of the alleged breach of their Fundamental Rights by the 2<sup>nd</sup> Respondent.

**18. That the 2<sup>nd</sup> Respondent did not commit any wrong against the Applicants to warrant granting their prayers sought before this Honourable Court.**

**19. That I was informed by John Oladipo Esq, Counsel in the Law Firm of Messrs. O. M. Atoyebi SAN & Partners, the legal representative of the 2<sup>nd</sup> Respondent, in their office at Plot 994, Edwin Ume Ezeoke Street, Off Ameh Ebute Street, Wuye District, Abuja, at about 4:30 pm and I verily believed him as follows:**

- a. That the Applicant's Originating Application dated 17<sup>th</sup> January, 2022, is at best merely speculative, frivolous, conjecture and gold digging.**
- b. That the Applicant's Originating Application dated 17<sup>th</sup> January, 2022, discloses no reasonable Cause of Action against the 2<sup>nd</sup> Respondent.**

**20. That I know as a matter of fact that the 2<sup>nd</sup> Respondent did not give directive to any unidentified men to harass or breach the Fundamental Rights of the 1<sup>st</sup> Applicant.**

**21. That the Officers and Men of the 2<sup>nd</sup> Respondent is guided by approved Rules of Engagement and Code of Conduct which prohibit any form of human right violation.**

And the written address whereof two issues were formulated to wit:

- 1. "whether a non-military person can command or use officers of the 2<sup>nd</sup> Respondent (Nigerian) Army to interfere in civil matters between citizens?"**
- 2. Whether from the processes filed, by the Applicant the 1<sup>st</sup> Applicant has successfully proved his case against 2<sup>nd</sup> Respondent for the alleged violation of his fundamental rights to freedom of movement to entitle him to the reliefs and orders sought.**

Arguing issue one, he answered in the negative and avert that the burden of proof is on the party who alleged the affirmative. Non-neganti incumbit probatio"

whoever desires any court to give judgement in his favour as to any legal right or liability must prove that the facts exist.that in this instant case, the Applicant have alleged the infraction of the fundamental right to freedom of movement of the 1<sup>st</sup> Applicant, the onus is therefore on the Applicants to prove the allegations thereto: referred Maihaja V Gaida (2017) LPELR-42 474 (SC) and the case of Kala V Potiskum (1998) 3 NWLR (pt 540) 1 AT 17 Para. A-B. and Section 131 (1) (2) of the evidence Act, therefore submitted that the Applicants have not in any way proved the alleged infringement of 1<sup>st</sup> Applicant Fundamental right to freedom of movement by the 2<sup>nd</sup> Respondent in any way, form or manner. He went on state that, the allegations are speculative against the 2<sup>nd</sup> Respondent as the applicant has failed to identify neither the commanding officer of the said operation or any of the officers allegedto how participated in the said act either by their names or designations and therefore renders the said allegations as one lacking in evidence.

Thatit is trite principle of law that mere averment without evidence in proof of the facts pleaded is no proof of the facts averred therein where they have not been admitted. See Adegbite V Ogunfadlue&Anor (1990) LPELR-93 (SC). Submitted further that, the bare depositions of infractions in an affidavit cannot suffice to sustain the Applicant claims without more and that the mere stating of fact does not prove the credibility of that fact without cogent and compelling evidence to substantiate same. That the Applicants have merely stated that the fundamental right to freedom of movement of the 1<sup>st</sup> Applicant has been infringed upon, but the Applicant have failed to support same with any ounce of evidence. On this referred the court to the case of **Mezue& Anor V Okolo&Ors (2019) LPELR-47666 (CA) stated thus:**

**“in bringing a matter for the enforcement of fundamental rights where such right had been violated, such fact must be proved by relevant evidence... where has the burden of proof in a fundamental right case? It was stated in ONAH V. OKENWA (2010) 7 NWLR (pt. 1194) 512 CA PG. 516 that he who asserts must prove. The burden of proof lies on an Applicant who applied for the enforcement of their fundamental rights to establish by credible affidavit evidence that their fundamental right was breached.” It is the duty of an applicant alleging breach of his fundamental rights to place sufficient evidence before the court. It was held in FAJEMIROKUN V. CB (CL) LTD (2002) 10 NWLR (part 774) 95 @ 113-114 paragraph H-A that: “for an application alleging infringement of his fundamental rights to succeed, he must**

**place before the court all vital evidence regarding the infringement or breach of such rights. It is only thereafter that the burden shifts to the Respondent. Where that has been done or where scanty evidence was put in by the Applicant, the trial court can strike out such Application for being devoid of merits. In the instant case, the trial court was right in holding that the application was devoid of any merit as the Appellant failed to provide sufficient facts in his supporting affidavit to establish that his fundamental right was infringed.”**

Further that for the applicant to succeed against the 2<sup>nd</sup> Respondent, they must be able to Discharge the burden of proving the fact that the 1<sup>st</sup> Applicants right to freedom of movement was indeed infringed upon by the 2<sup>nd</sup> Respondent as alleged in their deposition and that the court is not an explorer like Christopher Colombus who went outside his territory to discover the “Americas” or Vasco Dagama” a Portuguese explorer who discovered the sea route to india- and submitted that, there is no evidence by the Applicant to substantiate their claims against the 2<sup>nd</sup> Respondents and the law forbid the court from going outside the facts presented to it in court.

He went further to state, that the applicants in their affidavit averred that, officers of the 2<sup>nd</sup> Respondent were used to intimidate and harass the 1<sup>st</sup> Applicant, but there is no form of proof by way of Exhibit or any other form attached to the affidavit to show that officers of the 2<sup>nd</sup> Respondent were indeed used by the 1<sup>st</sup> Respondent to harass the 1<sup>st</sup> Applicant, and hence the deposition contained in the affidavit of the Applicants are mere speculations. It does not reveal the identity of the Alleged officers, of the 2<sup>nd</sup> Respondent that were allegedly used to harass or intimidate the 1<sup>st</sup> Applicant. That the allegation of infringement of fundamental rights is to be proven solely on cogent, concrete and unequivocal evidence and not on speculation like the Applicants have done in this instant case. That infact no useful information whatsoever was disclosed to the proper identity of those that allegedly carried out the said alleged infringement of fundamental rights. See **Olufunmilayo Ransome-Kuti & ors V A. G. Fed (1985) SC. 123/1984** and the case of **Mr. Ugochukwu Amadi-Wali V PHEDC (2021) LP (Legal Pedia (CA) 61715** where this position has been Judicially Favoured thus:

**“the question of infringement of fundamental rights is largely a question of facts and does not depend so much on the exteros submission from the forensic arsenal of learned counsel on the law. It is fact-**

**based. So it is the facts of the matter as disclosed in the processes filed that are examined, analysed and evaluated, to see if the fundamental rights of the Appellant were eviscerated or otherwise dealt with in a manner that is contrary to the constitutional and other provisions on the fundamental rights of an individual. The law remains rudimentary that he who asserts must prove, so the appellant had the onus of proving by credible affidavit evidence that his fundamental rights were breached.**

The court in restating the need for an applicant to prove his case and not rely on the weakness of the Respondents case (if any) in an action for fundamental Right enforcement. See **Mr. Ugochukwu Amadi-wali (supra)**. Therefore, it is there submission that the Applicant have failed to prove that the fundamental rights of the Applicants or any other person were indeed infringed upon by the 2<sup>nd</sup> Respondent. See **Mirchandi V IGP & ORS (2021) LPELR- 54016 (CA)** Where it was held that:

“----before a plaintiff or Applicant invokes the third limb he must be sure that there are enough acts on the part of the Respondent armed essentially and unequivocally towards the contravention of his rights. A mere speculative conduct on the part of the Respondent without more, cannot ground an action under the third limb” what this means is that the fundamental rights of a person must be in imminent peril or risk of being violated before an action may be founded on the third limb. Thus, a mere perceived/sensed future threat or a simple verbal or oral threats not backed with some overt act or as attempt to infringe the fundamental rights of an applicant by a respondent, is not enough to sustain an action for a threatened breach as a fundamental right. In other words, a respondent must be shown to have been determined or been unequivocally poised and/or had reached a point of no return to have the Appellants personal liberty curtailed, and the action is unwarranted and unjustifiable, before a suit under the third segment/limb of **section 46 (1) of the 1999 CFN (as amended) and order II RULE (2) (1) of the FREP Rules** can hold.

Hence submitted that in the instant case, no wrong has been done to the 2<sup>nd</sup> Respondent.

In this instant case, the Applicant built his case on the third component part of the constitutional provision and the FREP Rules. By his affidavit under consideration, he contended that there is likely to be an infringement of his fundamental right. This is one of the situation for the grant of an application of

this nature in order to protect the fundamental rights of a person. See **Igwe V Ezeanochie (2010) 7 NWLR. (PT.1192) 61. Ifegwu V FRN (Supra)**. However, the conditions for the applicability of this third limb was well explained in case of **Uzoukwu V Ezeonu (1999) 6 NWLR(PT.200) 708-784**. Therein the court held that, before a plaintiff or applicant involves the third limb, he must be sure that there are enough acts on the part of the Respondent armed essentially and unequivocally towards the contravention of his right. A mere speculative conduct on the part of the Respondent without more, cannot ground an action under the third limb. What this means is that the fundamental right (s) of a person must be in imminent peril or risk of being violated before an action may be founded on the third limb. Thus, a mere perceived sense future threat or oral threat not backed with some overt act of an attempt to infringe the fundamental rights of an applicant by the Respondents, is not enough to sustain an action for a threatened breach of a fundamental rights. In other words, the Respondents must be shown to have been determined or been unequivocally poised and /or had reached a point of no return to have the Applicant personal liberty curtailed, and the action is unwarranted and unjustifiable before a suit under the third limb segment/limb of section 46 (1) of the CFN (as amended) 1999 and order II rule 2 (1) of the FREP Rules can hold.

The crux of this application as stated in paragraph 9, 10, 11, 12, 13 of his affidavit, is exhibit 1, titled the unlawful invasion of Business premises known and described as plot 23 1<sup>st</sup> Avenue by Bonny Corner shop Gwarimpa via Resort to army personnel (demand for immediate Apology and Compensation) paragraph 10, is so specific it states:

**“that because the 1<sup>st</sup> Applicant stood his ground as maintained at the forgoing paragraph the 1<sup>st</sup> Respondent, in making true her threat of resorting to men of the Nigerian Army to cause the 1<sup>st</sup> Applicant arrest, detention and torture, stormed the premises of the 2<sup>nd</sup> Applicant, where and because they know the 1<sup>st</sup> Applicant frequents, with soldiers of the 2<sup>nd</sup> Respondent, numbering about 10 (ten) in an apparent bid to arrest the 1<sup>st</sup> Applicant”**

**“the word, in an apparent bid to arrest the 1<sup>st</sup> Applicant”**

Meaning that the arrest was not carried out by the Respondent.

Paragraph 11 of the affidavit state thus:

**“That the said storming of the 2<sup>nd</sup> Applicant, premises referred to at paragraph 10 above, happened after an initial storming of the 1<sup>st</sup> Applicants company’s plot of land plot 559, Cadastral Zone BOO within Kukwaba District, Abuja, where the 1<sup>st</sup> Respondent had thought she would find the 1<sup>st</sup> Applicant and arbitrarily effect his arrest using the soldiers of the Nigerian Army her clout has aided, her with, but which attempt failed, as they could not find the 1<sup>st</sup> Applicant at the said plot of land.**

Paragraph 12,

**“that the only reason the about 10 (ten) soldiers arbitrarily resorted to by the 1<sup>st</sup> Respondent to cause the arrest and detention of the 1<sup>st</sup> Applicant could not achieve the 1<sup>st</sup> Respondent purpose, on the 20<sup>th</sup> day of December, 2021 when they first stormed the business premises of the 2<sup>nd</sup> Respondent hunting for him was also because they could not find him at the said premises.**

By the affidavit stated above can it be said that the fundamental right of the Applicant was breached by the Respondents? This is the question that this court could not find an answer from the affidavit as sated above. This I referred to the judgement in the case of **Uzoukwu V Ezeonu (supra)**, where the court stated,

**“before a plaintiff or applicant invokes the third limb of section46(1), he must be sure that there are enough acts on the part of the Respondent armed essentially and unequivocally towards, the contravention of his right. A mere speculative conduct on the part of the Respondent without more cannot ground an action under the third limb”**

This statement or affidavit of the Applicant from my view, were devoid of any legal parentage and de-jury had no substratum to stand and command any viability they are disabled from birth. Thus a mere perceived future threat or a simple verbal or oral threat not backed with some avert act or an attempt to infringed the fundamental right of an Applicant by the Respondent is not enough to sustain an action for a threatened breached of a fundamental right.

The allegation by the Applicant, that he was arrest detained was not back up with any cogent reasons or explanation.

From the above affidavit stated above at what point was he arrested, detained, in whose custody was he detained, were the question that deserve an answer, which from the affidavit the issue of arrest and detention were mere speculative and devoid of any iota of truth. The law as settled by many decisions of the supreme court, is that the court has a duty not to indulge in conjecture, guesswork or speculation. It is trite law, that

**“a suit is speculative, if it is based on speculation, that is to say, not supported by facts or very law on acts but very high in guesses. A court of law is not established to adjudicate on guesses but on facts and any suit based on such act of speculation deserves nothing but a dismissed. See Plateau State Vs A.G. Federation (2006) SCNJ”.**

The court do not speculate on possibilities, they act on actualities courts do not speculate or conjecture because, it is dangerous to do so in the absence of admissible evidence. See **Ejezie Vs Anuwo (2008) 4 SCNJ113**. And **Ibrahim V The State (1986) 1 NSCC. 230** and **Igabede V State (2006) of SCNJ. 124 Per S.C. Oseji JCA**.

Also in the case of **Adefulu V Okulaja (1996) 9 NWLR (pt. 473) 668**, **Orhue V NEPA (1998) 7 NWLR (pt. 557) 187 Per Oredola JCA** stated thus:

**“the principle is trite, that a trial court is precluded and should not decide a case on mere assumption, conjecture or speculation. Indeed, courts of law are courts of both facts and laws. Hence, they decide issues placed before them on facts as pleaded and established by evidence adduced before them, predicated on applicable law. They are enjoined to avoid speculations of whatever colouration.**

It is to be noted, that human rights are basic rights and freedoms that belongs to every person in the world, from birth until death. These rights are fundamental, inalienable, natural and lawful and are attached to human existence. Nigeria is a sovereign country with all the rights and privileges that goes with an independent nation. These rights are naturally extended to the citizens and violation of it is an abuse of such right. Hence Nigerian army as part of the Nigerian nation is not exempted from respecting these rights in or out of conflict situations. The primary rules of the Nigerian Army are to protect the territorial integrity of Nigeria and to assist the civil authority when called upon to do so.

In the light of this, the Applicant has failed to show how his fundamental rights to dignity and to personal liberty guaranteed under **section 34, 35 (1) 41, & 46 (1) of the constitution (supra)** are likely to be breached by the Respondent. The mere averment in paragraph 9, 10, 11, & 12 of the affidavit, in support is just a mere speculative deposition which cannot found an action. Under the third limb as the alleged threat was not backed up with any overt act of an attempt by the Respondent to arrest and detain the Applicant.

Now even if we assumed that the applicant was detained by the Respondents as contended, what is clear is that there is nothing stated therein the affidavit at what point was he detained and in whose detention facilities was he detained? I take the questions of the alleged threats and harassment and the allegations that the Applicant is being intimidated should the Applicant continue to ask her to pay his company the infrastructure fee which she is owing the 1<sup>st</sup> Applicant company Rockbridge Synergy, Ltd. The Applicant clearly has the burden of proving these allegations. It is trite law that he who asserts must prove. **See Section 13 (1) of the evidence Act, 2011.** Unfortunately, on the materials before court no clear case was made with respect to these alleged harassment and threats to further arrest Applicant. If the applicant was coerced and or threatened or harassed, there is nothing in evidence showing or streamlining how this was done and by whom and the court cannot speculate as all that was stated was that the 1<sup>st</sup> Respondent threatened the 1<sup>st</sup> Applicant that she has several relatives who are within the ranks of Generals in the Nigerian army as well as commissioners and AIG's in the Nigerian Police, who shall not hesitate to aid her with their men to cause the arrest, detention, and torture of the 1<sup>st</sup> Applicant, should the latter continue to ask her to pay his company the infrastructural fee which she is owing the 1<sup>st</sup> Applicant company.

I cannot also justifiably situate where or how the Respondent further threatened or harassed the Applicant in the manner stated in the claim. I cannot equally situate the likelihood of further violation of Applicant's rights as alleged. There is room for speculations or guess work. The guiding principle or rule is that, a court must not grant a party what it has not asked for in clear terms and sufficient proved. **See Joe Golday Co Ltd V Cooperative Dev. Bank Ltd (2003) 35 SCM 39 at 105.**

The point again to underscore is that, a court of law qua justice only acts or decides on the basis of what has been clearly demonstrated and credibility proved. I must also add that bare averment of infraction in an affidavit cannot suffice especially here where they are seriously controverted or challenged. I do not think that the assertion of applicant can stand or be accepted as correct

without proved. The mere stating of a fact does not prove the correctness or credibility of that fact without cogent evidence to substantiate same.

The principles 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 circumstance must also not be such that is incredible, improbable or sharply falls below the standard expected in a particular case. It must establish that the rights claimed exist and has been infringed upon or is likely to be infringed. **See Neka B. B. B. Manufacturing Co Ltd V ACB LTD (2004) 2 NWLR (PT. 858) at 550-551.**

I have carefully considered the materials before me and I cannot locate any violation of the relevant constitutional provision as stated by the Applicant in its affidavit before the court. There is absolutely no evidence of such quality and cogency beyond controverted speculative averments showing that the Applicants rights were violated and that he was arrested, torture and detained. It is a fundamental principle of our legal system in respect of facts averred that where they are weak, erroneous, insufficient or feeble, then it would amount to a case of failure of proof. A plaintiff/applicant whose affidavit does not prove or discloses the reliefs he seeks must fail. **See A. G. of Anambra State V A. G. of Fed (2005) ALL FWLR (PT. 268) 1557 at 1611: 1607 G-H.**

Thus, only actions founded on a breach of fundamental rights guaranteed in the constitution of the F.R.N can be enforced under the fundamental Rights (enforcement procedure rules) 1979 and where an applicant under the fundamental rights (enforcement procedure rules) is enable to pigeon hole his complaint within any of the guaranteed fundamental rights, the action is liable to be dismissed.

In the final analysis, the issue raised as arising for determinations is substantially answered in the negative. For the avoidance of doubt, all the reliefs or claims of applicant on the alleged violation of his fundamental rights are not availing. The monetary and other related claims predicated on the alleged violation of his fundamental rights must equally fail. You cannot put something on nothing and expect it to stand; the entirety of the case of applicant is hereby accordingly dismissed.

**SIGNED**

**HON. JUDGE**

**APPEARANCE:**

1. Iyok Daniel for the plaintiff.
2. Peter O. Abang for the 1<sup>st</sup> Defendant
3. E. C. Sogo for the 2<sup>nd</sup> Respondent.