

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

TUESDAY 10TH DAY OF OCTOBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/GWD/CV/55/2023

BETWEEN:

- 1. IKECHUKWU UDEM**
- 2. EMEKA CRESENT ALI.....APPLICANTS**

AND

- 1. INSPECTOR GENERAL OF POLICE**
- 2. CP ANYASINTI JOSEPHINE NNEKA (PSFU)**
- 3. SP ALIYU M. HUSSAINI.....RESPONDENTS**
- 4. DETECTIVE BOLAJI (IPO)**
- 5. ZENITH BANK NIG. PLC**

JUDGMENT

This judgment is on a motion on notice dated 27-03-2023 and filed on the 30/3/2023 with motion no: FCT/HC/GWD/CV/55/2023. The motion on notice is brought pursuant to section 36, 37, 34, 35 of the 1999 CFRN as amended, Articles 4, 5, 6, 7 and 12(1) of the African Charter on Human and People's Right Ratification of the Fundamental Rights (Enforcement procedure) Rules 2009 and under the inherent Jurisdiction of the Honorable court as preserved by section 6(6) of the 1999 CFR (as amended).

In this motion, the Application is praying the court for the following.

- 1 A declaration that the assault, intimidation, threat, harassment extortion, arrest and detention of the 2nd applicant on the 21st of November, 2022 by the men

of the police special fraud unit Ikoyi, Lagos (PSFU) being the agents/officers of the 1st respondent acting on the behest of the 2nd and 3rd respondent over a legitimate sale of car at a car stand in Abuja is a breach of the applicant's fundamental rights.

2. A declaration that the persistent assault and continuous threats to the lives of the applicants by the 2nd to 4th respondents being the agents/officers of the 1st respondent over a legitimate sale of car Galadima Kubwa express road, Abuja is illegal, unlawful, unconstitutional and a continuous violation of the applicants fundamental rights to life and right to dignity of human life and right to personal liberty and movement as guaranteed under section 33, 34 and 35 of the 1999 constitution of the federal republic of Nigeria as amended and article 7 (c) of the African charter on human and peoples right (ratification and enforcement) act 2004.
3. A declaration of this honourable court that the sale of a Prado jeep 2014 model by the applicants to Gowan Usman Egbunu on the 23rd of November, 2021 is a legitimate sale at a car stand in Galadima Kubwa express road, Abuja
4. A declaration that the blocking of the 1st applicant company's account number 1016832975 Wizgood auto global ltd by the police special fraud unit Ikoyi, Lagos sometime in February, 2023 being the agents/officers of the 1st respondent is brazen, arbitrary, unlawful, oppressive and unconstitutional.
5. A declaration of this honourable court that the continuous invasion to the privacy of the applicants and continuous intimidation of the applicants and their families by the 2nd to the 4th respondents and their agents is illegal and unconstitutional as it offends the applicants right to life, dignity of human person and personal liberty as guaranteed under sections 33, 34 35 of the 1999 constitution of the federal republic of Nigeria.
6. A declaration of this honourable court that the blocking of the company's account number 1016832975 of the 1st applicant (Wizgood auto global ltd) which was blocked sometimes in February, 2023 by the team of police special fraud unit Ikoyi, Lagos over a legitimate sale of car at a car stand in Galadima, Kubwa express road, Abuja is illegal, arbitrary, unlawful, oppressive and unconstitutional.
7. An order of this honourable court directing the 5th respondent to unblock the company's account number 1016832975 of the 1st applicant (Wizgood auto global ltd) which was blocked sometimes in February, 2023 by the team of

police special fraud unit Ikoyi, Lagos over a legitimate sale of car at a car stand in Galadima, Kubwa express road, Abuja.

8. An order of this honourable court compelling and directing the 1st to 4th respondents, their officers howsoever described to with immediate effect and unconditionally unblock the company's account number 1016832975 of the 1st applicant (Wizgood auto global ltd) which was blocked sometimes in February, 2023 by the team of police special fraud unit Ikoyi, Lagos over a legitimate sale of car at a car stand in Galadima, Kubwa express road, Abuja.
9. An order of this honourable court granting the sum of ₦100,000,000.00 (one hundred million naira) only as general damages against the respondents and in favour of the applicants for the breach of the applicants fundamental rights to privacy and fair hearing as guaranteed under sections 36 and 37 of the constitution of the federal republic of Nigeria 1999 (as amended).
10. An order of perpetual injunction restraining the respondents and their agents forthwith from intimidating, harassing, extorting and invading the house/offices of the applicants on account of the said civil/business car transaction.
11. An order of this honourable court granting the sum of ₦20,000,000.00 (twenty million naira) only against the respondents jointly and severally in favour of the applicants as damages for the intimidation, harassment, and invasion of the privacy to the applicants live.
12. An order of this honourable court directing 4th respondent (Sergeant Bolaji) of the police special fraud unit Ikoyi, Lagos to immediately refund the sum of N500,000.00 (five hundred thousand naira) he forcefully collected from Emeka crescent Ali in the guise of bail.
13. An order of this honourable court granting the sum of ₦20,000,000.00 (twenty million naira) as exemplary or aggravated damages against respondents and in favour of the applicant for the 3rd and 4th respondent's cruel, arbitrary and fraudulent breach of the applicant's fundamental right to fair hearing.
14. That the sum of N1,000,000.00 (one million naira) against the 1st to the 4th respondents as the cost of action in this suit.

Attached to the motion is the statement of facts pursuant to order 2 rules 3 of the FREPR 2009 of 8pages, affidavit in support of motion on notice deposed to by Emeka crescent of Galadimawa, Kubwa Express road Abuja, FCT of 20 paragraphs and a written address of 9pages in compliance with the rules of this court.

The respondents on being served with the applicants motion on notice, the 5th Respondent filed (Zenith Bank Plc.) filed a counter affidavit in response to the Applicants motion on notice of 9 paragraphs deposed to by one Blessing Edobor of suit D33, Emmanuel Plaza, Beside Chida Hotel Utako, Abuja and annexed to the counter are exhibits marked Exhibit ZEI being the investigation activities in the case of conspiracy, obtaining money by false pretense and stealing from the office of the commissioner of police special Fraud unit (PSFU) addressed to the chief compliance officer Zenith bank PLC, and exhibit ZE2 being the court order from Federal High Court sitting in Lagos a CTC dated 23-01-2023 and the 5th Respondent written address of 4pages.

The applicant before service on the respondents filed a motion exparte with motion no: FCT/HC/GWD/M/ 2145/2023 dated 28-04-2023 and filed on the 2-5-2023. The said motion is for an order of the court for leave to the Applicants to serve the 2nd-4th respondent the originating process/hearing notices of this court by substituted means through the legal unit of the Nigerian Police H/Q Abuja.

This application was moved dated 2-05-2023 and the said reliefs granted and the enrolment prepared and the 2nd-4th defendants were served through the legal unit of the Nigerian Police H/Q, Abuja. Proof of service dated 04-04-2023.

Despite the service on the 2nd-4th respondents, they never showed an appearance before the court.

Before I proceed with the main issue, I will first off dwell on the fundamental of service of processes.

It is trite law that service of court process is a pre-condition to the exercise of Jurisdiction by the court, where there is no service subsequent proceedings are a nullity ab initio. This is based on the principle of law that a party should know or be aware that there is a suit against him so that he can prepare a defense. Service of a process on a party to a proceeding is crucial and fundamental, it is also the means of summoning parties to court and also foists jurisdiction on the court to hear a

suit. It is therefore a very important aspect of Jurisdiction. See UBA PLC V J. M. & W (Nig.) LTD (2016)5 NWLR (PT 1504) 171.

It is equally trite that evidence of service is conclusive where a bailiff deposes to an affidavit to that effect. An affidavit of service deposed to by the person effecting the service, setting out the facts, place, mode and date of service and describing the process or document served shall be prima facie proof of the matter stated in the endorsement or affidavit.

A careful perusal of the affidavit of the bailiff of this court, it is clear that the 1-4th Respondent were served with hearing notices, proof of service dated the 13-04-2023.

Hold therefore that, the Applicants have complied with the provisions of the law. I say no more.

Now back to the main suit before the court.

The applicant in moving their motion on notice before this court dated the 26/6/2023 submit that the applicant's original reliefs are 15. That the 5th respondent having complied with their reliefs 7 & 8 urge this court to withdraw relief 7 & 8 against the 5th respondent and that all other reliefs apart from reliefs 7 & 8 are now against the (Defendant) Respondents.

That in their affidavit they have exhibits marked as A, B, C, & D and submit that they relied on all the averments as contained on the affidavit and also adopts its written address as an argument and submission in this matter.

The 5th respondent in response filed a counter affidavit in opposition to the applicant's motion on notice and attached to the counter, is an affidavit of 9 paragraphs and a written address in compliance with the rules of this court, whereof he adopted the content of the affidavit and the written address as its oral submission.

On the written address of the applicant he formulated a sole issue for determination to wit:

“Whether having regards to the facts and affidavit evidence before this honorable court, the Applicant's are entitled to the reliefs sought.”

While the 5th respondent in its written address also formulated a sole issue for determination to wit:

“Whether the 5th Respondent is bound to comply with an order of court including the directions of the Nigerian Police force backed up by a valid order of court.”

The gist of this matter are as follows;

That sometimes in February, 2021 one Gowan Usman Egbono came to the car stand of Mr. Ikechukwu who is a car dealer at Galadima Kubwa Express Road, Abuja, informed him that he needed a car, Prado Jeep 2014 model. After negotiation, Mr. Gowan usman Egbunu agreed to pay the sum of #12,000,000.00(twelve Million Naira) only for the purchase of the Prado Jeep 2014 model.

Though what was transferred to the account of Emeka Crescent Ali is #11,500,000.0 (Eleven million, Five hundred thousand Naira). Mr. Gowan Usman Egbunu collected the account number of the manager to Mr. Ikechukwu udem to enable him transfer the money for the purchase of the Prado Jeep of Zenith bank which MR Ikechukwu Udem had a network problem on that day, Mr Emeka crescent Ali got an alert of the sum of #10,000,000.00 and #1,500,000.00 on the 22nd and 23rd of November, 2021 and Mr. Gowan Usman Egbunu called that the money is for the purchase of the Prado Jeep even though the agreed price on the invoice was #12,000,000.00 (Twelve million naira).

Mr. Gowon Usman Egbuna went to the car stand of Mr Ikechukwu Udem at Galadima kubwa Express Road, Abuja on the 23rd November, 2021 to take delivery of the Prado Jeep 2015 model which he paid for.

On the 9th November, 2022 Mr. Emeka crescent Ali the manager of Mr. Ikechukwu Udem received a call from Detective Bolagi from police special force unit Ikoyi, Lagos and invited Mr. Emeka crescent Ali to their office in Lagos. Mr. crescent Ali travelled to Lagos to honor the invitation of the police special fraud unit Ikoyi Lagos and on getting there Mr. Emeka crescent Ali was intimidated, assaulted, harassed, threatened and detained for 10days over a sale of car by which receipt was issued and the buyer hand the said car was registered at the vehicle inspection office in Abuja.

On the 8th day of the detention of Emeka crescent Ali at the police special fraud unit Ikoyi, Lagos, Seagent Bolaji who was the IPO proceeded to the court to get a court order to detain Mr. Emeka crescent Ali for another 30days. Mr Emeka Crescent Ali was forcefully brought to Abuja by Sargent Bolagi and inspector Alex where they collected the sum of #100,000 (One hundred thousand naira) for their hotel accommodation in Guzape Abuja which Mr. Emeka transferred the sum of #50,000 to the hotel manager through his first bank account number 3101346732.

Seagent Bolaji and his team took Mr. Emeka crescent Ali back to Lagos where Seagent Bolaji, after finding out that the car was sold legitimately at a car stand to Gowan Usman in Abuja, demanded the sum of #1,000,000.00 from Mr. Emeka crescent Ali for his bail which after discovering that Mr. Emeka has no money in his account, told him to call his friends to send money for hid bail if he wants to stay alive.

After several calls by Mr. Emeka, he was able to get the sum of #500,000.00 (Five hundred thousand naira) which Seagent Bolaji ordered him to transfer to his brother Mr. Johnson Ogwuja who is the surety to bring cash to him as Seagent Bolaji do not want to be linked to any account or money. Mr. Emeka transferred the sum of #500,000.00 (Five hundred thousand) naira to his brother Mr. Johnson Ogwuja while still in detention through his first Bank Account number 3101346732 who then gave Sargent Bolaji the #500,000.0 in cash. Sargent Bolaji threatened Emeka Ali not to tell his boss that he collected the sum of #500,000.0 from him for his bail. After collecting that sum from Mr. Johnson Ogbuja, one SP Aliyu Hussaini called Bolaji to confirm if Mr. Emeka Ali have paid the #500,000.00, this he confirmed and said Yes he had paid.

While Mr. Emeka Crescent Ali was in detention at the police special fraud unit Ikoyi Lagos, Sgt. Bolagi harassed, intimidated and threatened Mr. Emeka Ali to give him money, if he does not want to receive the beating of his life. Mr.Emeka Ali in order not to die in detention transferred the sum of #15,000.00 through an Opay digital service on the 28th November, 2022 to Sgt. Bolaji. Still Sgt. Bolaji continued with his threat, intimidation, harassment and extortion.

On the 16th February, 2023 Sgt. Bolaji called Mr. Emeka Ali to send more money if he values his life and because of fear Mr. Emeka Ali transferred the sum of #10,000 to Sgt. Bolaji through account Number 817937553 Monie point micro finance bank.

Sgt. Bolaji after confirming that the car was legitimately sold to Mr. Gowan Usman Egbunu he still went and blocked the company accounts of Mr Ikechukwu Udem in February, 2023 of Zenith Bank Account number 1016832975 Wizgood Aut Global Ltd.

On the 20th June, 2023, the matter came up for hearing, one Godwin Diagu appeared for the Applicants while one Elochukwu Peter Alaba appeared for the 5th Respondent. The 1, 2, 3 & 4th Respondents had no representation. On this the Applicant counsel stated that from the record of this court the 2-4th Respondent were served through the legal unit of the respondents dated the 4-5-2023, hence applied to proceed to move his motion.

In moving his application, he stated that this application was brought pursuant to section 36, 37, 34, 35 of the CFN 1999 (as Amended), Article 4, 5, 6, 7 & 12(1) of the African Charter of Human and Peoples rights ratification of the fundamental rights (Enforcement Procedure) rules 2009 and under the inherent Jurisdiction of this Honorable court as preserved by section 6(6) of the CFN.

That the applicant seeks originally 15 reliefs, that the 5th respondent having complied with reliefs 7 & 8 urged the court to withdraw relief 7 & 8 against the 5th Respondent.

Further that all their reliefs now is against the 1-4th respondents. Alongside the motion, is an affidavit of 23 paragraphs with annexure marked exhibit A, B, C & D. thus he relied on all the averments as contained in the affidavit deposed to by one Emeka crescent Ali, statement of fact contained on pages 6, 7, 8 & 9 in support of the application and a written address, whereof he adopted same as his oral argument and submission in this matter.

He Prayed the court to grant their reliefs on as the applicant prayers except 7 & 8 and urged the court to so hold, as relief 7 & 8 does not affect all the respondents.

The learned counsel to the 5th respondent in response to the motion of the applicant, filed a counter affidavit of 9 paragraphs deposed to by one Blessing Edobor dated 14-4-2023. Accompanying the affidavit are two exhibits marked ZE1 & ZE2, alongside the affidavit filed a written address in compliance with the rules of court dated 14-04-202. The said written address which he adopted and urged the court to discountenance the applicant's application and strike out the motion on notice dated 27-03-2023.

Furthermore, stated that the account of the applicant is no more under restriction having complied with the court order of Federal High Court Lagos.

Having considered the motion on notice and the response from the 5th respondent, I am of the view that this court will strikeout the name of the 5th respondent from this suit, having complied with the order of the Federal High Court Lagos. It is also the submission of the learned Applicant counsel, that reliefs 7 & 8 should be struck out.

Therefore, the application made by the 5th respondent for the court to discountenance the applicant's application and strikeout the motion on notice dated the 27-03-2023 cannot hold, as the reliefs sought therein affects the 1-4th respondent and does not affect the 5th respondents.

On the written address of the applicant counsel, he raised a sole issue distilled for the determination of this court, to wit:

“Whether having regards to the facts and affidavit evidence before this court, the applicants are entitled to the reliefs sought”

On this he answered in the affirmative and submit that, section 36, 34, 37 of the CFN 1999 (as amended) guarantees every citizen a right to fair hearing, to the dignity of human person and the right to private and family life. Consequently, no person should be subject to the fear for his life and that of his family. He submitted further that no law supports the invasion, intimidation and harassment of person by the police and that the respondents have not shown any Justifiable reason why the Applicant should be harassed and intimidated without any just reason.

He further submits that the reliefs sought by the applicant is not one seeking an order of court to stop the police from conducting an investigation but an order for the police to follow the due processes of law and the constitution. That as a law enforcement agency, the police have a sworn duty to uphold the sacred provision of the constitution and the rights provided there under. He Prayed this court to reaffirm the supremacy of the constitution and the sanctity of the fundamental freedom granted every Nigerian thereunder and protect the applicant and other Nigerian citizens from acts of lawlessness and overzealousness of the Nigerian police who seeks to destroy the very foundation of the law they were called and sworn to protect.

In summation he prayed this court to grant the reliefs sought by the applicant.

On the claim of exemplary and aggravated damages, he submitted that it may be awarded against the respondents jointly and severally as the acts of the respondent are oppressive, arbitrary, and unconstitutional. On the strength of the above, he urged the court to grant the reliefs sought and prayed.

As earlier stated in the beginning of this Judgment, that from the records of the court the respondents 1st-4th were duly served with the processes and have had all the opportunity to respond, but choose not to but stay away in defence of this suit.

It is therefore trite, that it is not the duty of this court to wait for a party who is duly served with the processes of the court and fails to show up. The court at this point is free to begin hearing when it is satisfied that the parties to the case 1st-4th respondents were duly served with hearing notice(s). This is exactly what transpired in the instant case that the applicant was granted the order to proceed to hearing, having complied with all the laws.

Flowing from above, the question on infringement of fundamental rights of an individual is largely a question of facts. It therefore does not depend on the submission of counsel on the law, no matter how brilliant and impressive it is. It is the fact as disclosed by the affidavit evidence that is usually examined, analyzed and evaluated to determine whether indeed the fundamental rights of a person has been, is being or is likely to be eviscerated/breached as claimed or otherwise dealt with in a matter that is contrary to the constitution and other provisions of the law.

Upon a proper consideration, the averments in the applicant's affidavit when taken wholistically, does it establish a case of a likely breach of the applicant's fundamental right to personal liberty and freedom of movement by the 1-4th respondents?

This is more so when the provisions of section 4 and 23 of the police Act confer on the 1-4th respondent's extensive powers of maintaining law and order and prosecution. By section 4 of the Act: the police shall be employed for the prosecution and detention of crime, the apprehension of offenders, the preservation of law and regulation with which they are directly charged."

The exercise of these powers have been re-enforced by the decision of the Apex court and this court in the following decisions: Fawehinmi V IGP (2002)7 NWLR (PT 767) 606, Ozah V EFCC (2017) LPELR-43386, and Azuka V IGP (2007) CHR 69.

Against this background, the question which must be answered is:

“Would the grant of the reliefs sought by the Applicant against the respondents be appropriate in the circumstance?”

It has been serially and consistently held that the mere invitation of a person by the police, without more is within the powers of the police and except it can be shown that the police misused their power, no court will interfere with police action in the performance of their constitutional duties and responsibilities to investigate crime.

Thus, the power of the police to investigate crime and to invite persons to be interviewed/questioned simpliciter, cannot amount to the breach of fundamental rights of the applicant of such person.

See *Akanbi v C.O.P Kwara State* (2018) LPELR-44049, *Kalio V Dawari* (2018) LPELR-44628.

Thus, courts are quite hesitant in preventing the police from performing their lawful and constitutional roles, unless for good and exceptional reasons.

The powers of the police with respect to the investigation of criminal allegations are provided for in section 214 of the constitution as well as section 4 of the police Act and these powers have been interpreted and pronounced upon in the following decision of court.

Anambra State V UBA (2005) 33 WRN 191, *Ihua-Maduenyi V HM Eze Robinson* (2019) LPELR-47252 (CA).

In the light of this, can it be said that the Applicants right has been breached or is being breached or is likely to be breached by the 1-4th respondents?

In answering this simple question, I will torchlight the affidavit of the Applicants paragraphs 9, 10, 11, 12, 13, 14, 19 & 20 which I will reproduce below:

Paragraph 9:

That on the 9th of November, 2022, I received a call from one detective Bolaji the 4th Respondent who said, he is from the police special fraud unit Ikoyi Lagos, and he invited me to their office in Lagos. Exhibit A letter of invitation attached.

Paragraph 10:

That I travelled to Lagos on my own accord to honor the invitation of the police special fraud unit Ikoyi Lagos.

Paragraph 11:

That on getting there I received the highest intimidation of my life, I was intimidated, assaulted, harassed, threatened and detained for 10days over a sale of car at Galadima, Kubwa Express Road, Abuja by which receipt was issued and the buyer went to vehicle inspection office in Abuja and registered the car. Exhibit B.

Paragraph 12:

That on the 8th day of my detention at the police special fraud unit Ikoyi Lagos, Sergeant bolaji who is the IPO of this case proceeded to court to get a court order to detain me for another 30days, when they have the receipt of the purchase of the car by Gowan Usman also registered the car at the vehicle inspection office in Abuja.

Paragraph 19:

That while I was in detention at the police special fraud unit Ikoyi, Lagos, Sergeant Bolaji harassed, intimidated and threatened me to give him money if I do not want to receive the beating of my life and in order not to die in detention I transferred the sum of #15,000.00 through an Opay digital service on the 28th November, 2022 to sergeant Bolaji.

In the instant case, paragraph 9 and 10 of the affidavit in support was a mere invitation for the purpose of conducting investigation and by the provisions of the police Act, they have a duty to investigate and where substantial facts are found, they can institute criminal prosecution against the applicant. The averments in paragraph 9 & 10 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 4th respondent to arrest and detain the Applicant. I say no more.

On paragraph 11, the Fundamental rights the 4th respondent seeking to enforce is the right to personal liberty guaranteed by section 35(1) of the CFN 1999 (as amended) the section provides thus:

“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 procedure permitted by law.”

Here in the instant case, the action of the respondents was nothing but an abuse of process of law. However, the action of the 4th respondent constituted breach of fundamental right of the applicant. The threat and detention for 10days by the police special fraud unit Ikoyi, Lagos, where he was compelled to pay the sum of #500,000.00 (Five hundred thousand naira) by paragraph 14 of the affidavit in support reproduced below.

Paragraph 14:

That Sgt. Bolaji and his team took me back to Lagos, where Sgt Bolaji after finding out that the car was sold legitimately at a car stand to Gowan Usman in Abuja demanded the sum of #1,000,000.00 (One million Naira) from me for my bail which Sgt. Bolaji after discovering that I have no money in my account, told me to call my friends to send money for my bail is I wish to stay alive.

Paragraph 15:

That after several calls, I was able to get the sum of #500,000.00 (Five hundred thousand naira) which Sgt. Bolaji forcefully ordered me to transfer to my brother Mr. Johnson Ogwuja who is my surety to bring cash to him as Sgt Bolaji did not want his boss to know that he collected up to #500,000.00 from me nor any account linked to him.

Paragraph 16:

That I transferred the sum of #500,000.00 to my brother Mr. Johnson Ogbuja while still in detention through my First Bank Account No; 3020201608 who then gave Sgt Bolaji the sum of #500,000,00 cash as Sgt Bolaji do not want to be traced with any money in his account. Reference Exhibit C.

In view of the forgoing, there is no way the 1-4th respondent could have reasonably suspected the applicant to have committed fraud or any offence when the investigation which the applicant submitted himself to the police special fraud unit Ikoyi, Lagos was concluded by the 4th respondent, upon the issue, clearly state that the car in question which receipt was issued and the buyer went to vehicle

inspection office Abuja and registered the said car was a breach of the Applicants fundamental right of fair hearing, personal liberty and life to dignity of human person as enshrined in the constitution of the FR 1999 (as amended).

On the issue of fair hearing under section 36 of the CFN 1999 (as amended) on this I quote Fortescue J in R V Chancellor of Cambridge (1723)1 strange 557 is quoted to have made a graphic analogy of how the principle was invoked in the investigation of the offence of Adam and Eve in the Garden of Eden, he put it thus:

“The laws of God and man both give the party an opportunity to make his defence, if he has any I remember to have heard if observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. Adam (says God) where art thou? Hast thou not eaten of the tree, whereof I commanded thou should not eat? And the same question was put to Eve also” I do not think any proposition can be more clearly established in the administration of Justice there is no doubt that no determination involving the civil rights and obligations can be properly made until the person whose civil rights and obligations may be directly affected has been notified of the matter and given the opportunity of answering the case against him” Per Adolphus Godwin karibi Whyte JSC.

In Chief Oyeyemi V Comm. L.G Kwara State (1992) 2 SCNJ226. Per Helen moronkeji Ogunwumiju JCA stated thus;

“There is no doubt that fair hearing includes giving notice of allegation to the person who may be adversely affected by the result of the inquiry and affording him the opportunity of being heard or putting forward his defense.

I said this based on the fact that the police special fraud unit Ikoyi, Lagos, headed by Sgt. Bolaji the IPO having been aware that the receipt of the purchase of the car by Gowan Usman Egbunu proceeded on the 8th day of the Applicants detention to procure another 30days court order to detain the applicant without giving him time to present his matter to the authority who cause his detention. This thereby amounts to the breach of rights of fair hearing, right to personal liberty and dignity to human persons. Hence I hold that the applicant’s fundamental rights have been breached by the 1-4th respondents. I so hold. This answered reliefs 1, 2, 3, 4 & 5 of the applicant’s reliefs sought.

On reliefs 9, 11 and 13 being claim for damages, it will be taken and discussed together. On this, the applicant counsel in its written address did not mind to address the issue of damages claimed.

Damages are presumed or implied in every breach or violation of a legal right and which flows naturally from the respondents wrongful or unlawful act to or on the applicant. The quantum or measure needs not to be pleaded or proved since it is presumed by the law and the objective list of what the opinion or Judgment of a reasonable person would be in the circumstance of the case would apply in the assessment. In *Okala v Odoh* (2019)9 NWLR (pt. 1678) 562. The Applicant pleaded to have suffered intimidation, harassment, threaten and assaulted by the Respondents. Here the court have the discretion and power to award general damages.

On exemplary damages, they are claimed and usually awarded whenever the respondents conduct is sufficiently outrageous, to merit punishment as where for instance, it discloses flagrant disregard of the law. See *Adibe V Azege* (1998) 9 NWLR (PT.516) 370.

On relief 12 being an order of this court directing 4th respondent (Sgt. Bolaji) of the special fraud unit Ikoyi Lagos to immediately refund the sum of #500,000.00 (Five hundred thousand naira) he forcefully collected from Emeka Crescent Ali in the guise of bail.

On this paragraph 13, 14, 15, & 16 which I will produce below:

Paragraph 13:

That I was forcefully brought to Abuja by Sgt. Bolaji and Insp Ali wherein they collected the sum of #100,000.00 (One hundred thousand naira) from me for their hotel Accommodation in Guzape Abuja. I transferred the sum of #50,000.00 (Fifty thousand Naira) to the hotel manager through my first bank account number 310134672. Attached exhibit C.

Paragraph 14;

That Sgt. Bolaji and his team took me back to Lagos, where Sgt Bolaji after finding out that the car was sold legitimately at a car stand to Gowan Usman in Abuja demanded the sum of #1,000,000.00 (One million Naira) from me for my bail which Sgt. Bolaji after discovering that I have no money in my

account, told me to call my friends to send money for my bail is I wish to stay alive.

Paragraph 15: That after several calls, I was able to get the sum of #500,000.00 (Five hundred thousand naira) which Sgt. Bolaji forcefully ordered me to transfer to my brother Mr. Johnson Ogwuja who is my surety to bring cash to him as Sgt Bolaji did not want his boss to know that he collected up to #500,000.00 from me nor any account linked to him.

Paragraph 16:

That I transferred the sum of #500,000.00 to my brother Mr. Johnson Ogbuja while still in detention through my First Bank Account No; 3020201608 who then gave Sgt. Bolaji the sum of #500,000,00 cash as Sgt Bolaji do not want to be traced with any money in his account. Reference Exhibit C.

Paragraph 17;

That immediately Sgt. Bolaji (IPO) collected the sum of #500,000.00 cash from Mr. Johnson who is my surety, SP Aliyu Hussaini who is the boss to Bolaji called Sgt. Bolaji to confirm if I have paid the #500,000.00 (Five hundred thousand naira) which Sgt. Bolaji confirmed Yes and I was released on bail.

This evidence was not challenged nor controverted by the 3rd or 4th respondent despite service of hearing notice on the respondents.

The rules governing affidavit evidence and pleadings is that when a fact(s) asserted, is not denied or controverted by the adverse party, who has a duty to do so, the same is deemed to be admitted by him (adverse party) and the court would be justified to rely on the fact and use it to settle the issue in controversy, if the asserted facts is plausible.

In view of the forgoing I shall grant the relief sought therein by the Applicant I so hold.

On the last relief of the cost of action of the sum of #1,000,00.00 (One million naira) against the 1st to the 4th respondent.

On this, it is solely at the discretion of the trial court to award cost. In awarding the cost, the court will look at the cost incurred in the prosecution of the action and award costs accordingly. See Theobros Auto Link LTD V B.I.A.E Co LTD (2013)

2 NWLR (pt. 1338) P 337 (CA). costs follow event and a successful party should not be deprived of his costs unless for good reasons. The essence of costs is to compensate the successful party for part of the loss incurred in litigation. Cost cannot cure all the financial loss sustained in the litigation. It is not meant to be bonus to a successful party, and not to be awarded in sentiments. See *Salby V Olaogun* (1999) 14 NWLR (Pt. 637) P.128.

In view of the foregoing hold that, the applicant is entitled to cost.

In the final analysis, the issued raised is as substantially answered in the affirmative. All the reliefs of the applicant on the alleged violation of his fundamental right has been proved. The monetary and other claims predicated on the alleged violation of his fundamental right is also answered in affirmative.

In summation this court will grant the following reliefs against the respondents;

- 1. It is hereby declared that, the assault, intimidation, threat, harassment, extortion, arrest and detention of 2nd Applicant on the 21st of November, 2022 by the men of the police special fraud unit Ikoyi, Lagos (PSFU) being the agent/officer of the 1st respondent action on the behest of the 2nd to 3rd Respondents over a legitimate sale of a car at a car stand in Abuja is a breach of the Applicants fundamental rights.**
- 2. It is hereby declared that, the persistent assault and continuous threats to the lives of the applicant by the 2nd-4th respondent being the agents/officers of the 1st respondent over a legitimate sale of car at Galadima Kubwa express Road Abuja is illegal, unlawful, unconstitutional and a continuous violation of the applicants fundamental rights to life and right to dignity of human life and right to personal liberty and movement as guaranteed under section 33, 34, and 35 of the 1999 constitution FRN (as amended) and articles 7(c) of the African Charter of Human and peoples Right (Ratification and Enforcement Act 2004).**
- 3. It is hereby declared that the sale of a Prado Jeep 2014 model by the applicants to Gowan Usman Egbunu on the 23rd November, 2021 is a legitimate sale at a car stand in Galadima Kubwa express Road, Abuja.**

- 4. It is hereby declared that the continuous invasion to the privacy of the applicant and continuous intimidation of the applicant and their families by the 2-4th respondent and their agent is illegal and unconstitutional as it offends the applicants right to life, dignity of human person and person liberty as guaranteed under section 33, 34 and 35 of the 1999 CFN (as amended).**

- 5. I grant the sum of 1million naira in favor of the applicant for the breach of the applicant’s fundamental right, damages for intimidation, harassment and invasion of the privacy of the applicant.**

- 6. It is hereby ordered that the 4th respondent (Sgt Bolaji) of the police special fraud unit Ikoyi, Lagos should refund the sum of #500,000.00 (Five hundred thousand naira) he forcefully collect from Emeka Crescent Ali in the guise of bail and the sum of #50,000 (Fifty thousand naira) used for hotel accommodation for Sargent Bolaji.**

- 7. As for the cost of action I grant the sum of #200,000.00.**

This is the judgment of the court.

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Hon. Justice A. Y. Shafa

Appearance:

1. Godwin Diugwu for the Applicant
 2. Elochukwu Peter Alobe for the 5th Respondent.
- Court: 1st – 4th Respondent not in court.