

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

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

**DATED THIS TUESDAY, 5<sup>TH</sup> MARCH, 2024**

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

**SUIT NO: FCT/HC/CV/2112/23**

**BETWEEN:**

- 1. JOHN KPETSUM
  - 2. OBOH EVELYN OTE
  - 3. EJEH GIFT EGBIRI.....
  - 4. WAILA MICROFINANCE BANK LTD
- }.....**APPLICANTS**

**AND**

- 1. OGUNMOLA ABIKE IDOWU
- 2. THE NIGERIA POLICE FORCE
- 3. INSPECTOR GENERAL OF POLICE
- 4. DEPUTY COMMISSIONER OF POLICE, .....**RESPONDENTS**  
INTELLIGENCE RESPONSE TEAM (IRT),  
DEPARTMENT OF INTELLIGENCE (FIB).
- 5. POLICE SERVICE COMMISSION

**JUDGMENT**

The Applicants by an originating motion on notice dated 24<sup>th</sup> January, 2023 filed 29<sup>th</sup>/1/2023 with suit No: CV/2112/202, BROUGHT PURSUANT TO SECTIONS

6(6), 34(a), 35(1)& 6, 41 and 46 of the CFN 1999(as amended), Articles 2,3(2),4,6,7(1) and 7(2) and 12 of the African charter on Human and Peoples Rights (Ratification and Enforcement) ACR, section (1254) of the ACJA 2015 and order II Rule1,2&4 of the fundamental rights (Enforcement Procedure) Rules 2009, claims the following reliefs against the respondents.

- a. A declaration that the arrest and detention of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants on the 29<sup>th</sup> day of Dec,2022 by the men and officers of the 2<sup>nd</sup>,3<sup>rd</sup> and 4<sup>th</sup> Respondent at the instance of the 1<sup>st</sup> Respondent while in the lawful business of the 4<sup>th</sup> Respondent in its office at Farida plaza, One man village, Karu Local Govt, Nasarawa state at about 12:00PM and taken to the office of the 2<sup>nd</sup> Respondent at old Abattoir by Guzape junction. FCT, Abuja where they were detained till 8:00pm before they were released on bail, without a court order or warrant of arrest or any complaints against the applicant and in respect of a purported complaint against, Bara Finance LTD and other third parties is unlawful, illegal, inimical, unwarranted, unconstitutional, null and void and amounts to a violation of the Applicants fundamental rights to human dignity and integrity of their persons, their personal liberty and freedom of movement as enshrined in and guaranteed by section 34(i), 35(e), & 41 of the CFN 1999,(as amended) Articles' 4, 6 & 12 of the African Charter on Humans and Peoples Rights (Ratification & Enforcement) Act and Section of the ACJA 2015.
- b. A declaration that the invitation and detention of the 1<sup>st</sup> Applicant on the 19<sup>th</sup> January, 2023 by the men and officers of the 2<sup>nd</sup>,3<sup>rd</sup> and 4<sup>th</sup> Respondent at the instance of the 1<sup>st</sup> Respondent from 10:AM till on or about 12:00AM on the 20<sup>th</sup> January, 2023 before he was released on bail without a court order or warrant of arrest or any complaint against the 1s applicant and in respect of a purported complaint against, Bara Finance LTD and other third parties is unlawful, illegal, inimical, unwarranted, unconstitutional, null and void and amounts to a violation of the Applicants fundamental rights to human dignity and integrity of their persons, their personal liberty and freedom of movement as enshrined in and guaranteed by section 34(i), 35(e), & 41 of the CFN 1999,(as amended) Articles' 4, 6 & 12 of the African Charter on Humans and

Peoples Rights (Ratification & Enforcement) Act and Section of the ACJA 2015.

- c. A declaration that the continuous harassment, intimidation of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants and other staff members of the 4<sup>th</sup> Applicant and obstruction of its business activities by the men and officers of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondent at the behest of the 1<sup>st</sup> Respondent by way of subtle threat of arrest, and re-arrest, continuous invitation, calling to threat arrest without notice or any complaint of crime against the applicants is illegal,, inimical, unwarranted, unconstitutional, null and void and ultra-vides the powers of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents. And such amounts to a violation of the Applicants fundamental rights to life, their rights to personal liberty, rights to carry out lawful businesses, freedom of movement, freedom of association as guaranteed by section 34(1), 35(1), 36(8) & 41 of the CFN 1999 (as amended) and articles 7(1), & (2), 4, 5, 6, and 7(2) of the African Charter on Human and Peoples Rights (Ratification and Enforcement ) Act and section 112(4) and 5(e) of the ACJA 2015.
- d. A declaration that the arrest, harassment, intimidation and continuous harassment and intimidation by the men and officers of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondent in view of another person on an alleged complaint against third parties, to wit Bara finance LTD and others is illegal, inimical, unwarranted, unconstitutional, null and void and ultra-vides the powers of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents. And such amounts to a violation of the Applicants fundamental rights and in contravention of section of the ACJA 2015,
- e. An order of perpetual injunction prohibiting, restraining and directing the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondent whether by themselves, their agents, servants, privies, representatives, officers or by whosoever or howsoever described acting for or through them from in any way further inviting, arresting, detaining, intimidating, harassing victimising the applicants or intruding or invading the premises of the 4<sup>th</sup> applicant to obstruct their lawful business activities, under any guise or matter hinged on a petition or complaint made by the 1<sup>st</sup> respondent or any one against Bara Finance Ltd or any other person or whosoever called of which the Applicants an individual or corporate entity are not the person against whom the complaint was made,

as same is unlawful and does not and will not serve any public purpose or interest.

- f. An order for the sum of ₦100,000,000:00(one Hundred million naira) only against the respondents as general damages in favour of the applicants to be paid by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and the 5<sup>th</sup> respondents jointly and severally for unwarranted, and arrest and detention in breach of the Applicant's fundamental rights, occasioning loss and injuries to the applicants.
- g. An order for the sum of ₦50,000,000:00(fifty million naira) only against the respondents as punitive/General damages in favour of the applicants and for the desecration of the applicant's fundamental rights as aforesaid.
- h. A public apology to the applicants, the apology should be published in two national newspapers to wit: Punch newspaper and the nations newspaper in accordance with the provision of section 30(6) of the CFN 1999(as amended) and for the infringement and total desecration of the fundamental rights of the applicant
- i. The wit of this action as assessed by this Honourable court
- j. And for such other orders this Honourable court may deem fit to make in the circumstance of this application.

Attached to the motion are statements of facts which includes the name and description of applicants. Facts leading to the application 1-34 reliefs sought by the applicants, A-J on the grounds upon which the reliefs are sought which is incorporated on the declarations sought by the Applicant 1-16 and an affidavit in support of originating motion on notice of 6 pages out of time in defence of this action and deeming order. The motion on notice was moved dated the 11<sup>th</sup>-December, 2023 and the order sought therein were granted.

The 1<sup>st</sup> Respondent in response to the Applicant's originating motion filed the 1<sup>st</sup> respondent's counter affidavit in opposition of the Applicant's motion for Enforcement of fundamental human rights of 34 paragraphs dated the 17-04-2023 and filed the same date deposed to by Ogunmola Abikeidowu C Business women & a tenant in Area A Block 16 flat 6 Nyanya Abuja, and the 1<sup>st</sup> respondent written address in opposition to the motion on notice filed by the applicant to enforce their rights of 10 pages and attached to the affidavit are annexure marked exhibits A in the written address 3 issues were formulated for determination to wit.

1. Whether the applicant's fundamental human rights as guaranteed by the CFN 1999 (as amended) has been breached, or threatened by the actions of the respondents.
2. Whether taking into consideration all the facts of this case the respondents acted within the law?
3. Whether the applicants are entitled to the reliefs sought?

the 2<sup>nd</sup>-5<sup>th</sup> respondent on their counter affidavit deposed to by Oboh Evelyn, a staff of Waila Micro finance Banking LTD, Farida plaza before Adeliu filling station opp. Keffi express way Karu LGA Nasarawastate and annexed to the affidavit are exhibits marked exhibits A, B, C1, C2, D, E, F & G and a written address of three pages wherein the written addressed three issues which were formulated for determination to wit.

1. Whether in the circumstance of this case and considering the provisions of the relevant laws, the applicant fundamental rights have not been breached to entitle the applicant the reliefs sought.
2. Whether the arrest and detention of the applicant in view of another does not ultra vires the powers of the respondents and so amounts to breach of the fundamental rights of the applicant?
3. Whether the applicants are not entitled to public apology?

The respondents in receipt of the applicants originating motion on notice, the 1<sup>st</sup> respondents, 2<sup>nd</sup> – 5<sup>th</sup> respondents filed a motion on notice dated 11-04-2023 for an order of court granting leave of the 1<sup>st</sup>, 2<sup>nd</sup> – 5<sup>th</sup> respondents to file their counter affidavit and written address which was filed and the 2<sup>nd</sup> – 5<sup>th</sup> Respondent's counter affidavit to the notice for application for order enforcing the applicant's fundamental rights pursuant to order 2 rules, Fundamental rights (Enforcement Procedure) Rules 2009 of 42 paragraph deposed to by inspector Joshua Yohanna of NPF Headquarters Abuja & attached to them are annexures marked as exhibits NPF1, NPFR, the 2<sup>nd</sup>-5<sup>th</sup> Respondent's written address in response to the motion on notice filed by the 1<sup>st</sup> – 4<sup>th</sup> applicant for the enforcement of their fundamental rights of 12 pages wherein their written address three issues were distilled for determination to wit.

1. Whether the applicant's fundamental human rights as guaranteed by the CFN 1999 (as amended) has been breached, or threatened by the actions of the respondents.
2. Whether taking into consideration all the facts of this case the respondents acted within the law?
3. Whether the applicants are entitled to the reliefs sought?

The 1<sup>st</sup> Applicant on receipt of the Respondent's counter affidavit filed the applicant's further affidavit and reply on points of law to the 1<sup>st</sup> Respondent's counter affidavit dated 17th April and filed same date of 23 paragraphs deposed to by Ejeh gift Egbiri a staff of waila micro finance Bank LTD, Farida Plaza before Auchu filling station opp DBM plaza one man village (Ado) Abuja- Keffi express way Karu LGA Nasarawa state & the Applicant's further affidavit and reply on points of law to the 2-5<sup>th</sup> respondent's counter affidavit Dated 17<sup>th</sup> April 2023 of 23 paragraph deposed to by one Ejeh Gift Egbiri accompanying same with the reply on point of law to the 1<sup>st</sup> respondents counter affidavit.

The Respondents on receipt of the applicant's further affidavit, the 1<sup>st</sup> respondent filed a further counter affidavit to the applicant's further affidavit dated 25/7/2023 of 12 paragraphs same deposed to by one Ogunmola Abike Idowu a tenant of Area A Block 16 flat 6 Nyanya Abuja and in response to the further counter affidavit has exhibit marked exhibit A likewise the 2-5<sup>th</sup> respondent filed a further affidavit and a reply on points of law filed on the 25- 2-2023 of 21 paragraph deposed to by one Inspector Joshua Yohanna NPF HQ Abuja and the 2-5<sup>th</sup> respondents reply on point of law of 6 pages

Now to the merit of the substantive application for the enforcement of fundamental rights of the Applicant.

The facts upon which the instant application is predicated are as analysed in the Applicant's affidavit in support, para 35.1-86

The applicant in his written address as stated in this judgement formulated three issues distilled for determination same with the 1 & the 2-5<sup>th</sup> respondent shall adopt the issues so formulated as mine which forms the basis of this judgment.

In the written address, counsel to the applicant submitted that the circumstance of this case shows that the actions of the respondents through their men and officers under complaint of the 1<sup>st</sup> respondent are ultra vires, oppressive, high-handed and malicious in breach of the applicant's fundamental rights.

The crux of the applicant's application is that the applicants while in their lawful business were invaded, arrested, & detained by the men and officers of the 2<sup>nd</sup> -4<sup>th</sup> respondent at the behest of the 1<sup>st</sup> respondent without a complaint against them or reasonable suspicion of having committed any offence and without warrant of arrest and taken outside jurisdiction of their state to FCT where they were detained, humiliated and intimidated. That prior to the arrest and detention, there was no invitation which the applicants were in default of honour. On this he submitted that the said arrest of the Applicants by the respondent were without a just cause, unlawful, illegal, ultra vires the power of the respondents & connotes to breach of the fundamental rights of the applicants, reference to the case of Nigerian copyright commission &ors v musical copyright society of Nig LTD & ORS (2017) LPELR- 50743 (CA) The court defined what amounts to unlawful arrest as follows:

In law an arrest and detention will be illegal or unlawful if done against the requirements of the rule of law and in breach of procedural guarantees in the relevant and applicable laws. I had cause to examine and pronounce in what in law would amount to unlawful arrest and detention

In Emonenale V IGP&ors (2016) LPECR-41489 (CA) Pg. 19. I reiterated in which it still holds true to me inter-alia thus "in law an arrest and detention is said to be unlawful when it is done against the requirements of the rule of law in breach of the rights of the citizen liberty of any person responsible for putting the law in motion leading to such an arrest would be liable once it is shown that it was done without reasonable cause.

On this the learned counsel to the Applicant submitted that the invasion of the premises of the 4<sup>th</sup> Applicant earnest and detention of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicant on the 19<sup>th</sup> January 2023 without warrant of arrest, prior notice or invitation or any court order and/or allegation of crime against the applicants by the men and officers of the 2-4<sup>th</sup> respondents at the instance of the 1<sup>st</sup> respondent is without a

reasonable cause, illegal, unlawful, and against the requirements of the rules of law and therefore a breach of fundamental rights of the applicants right to personal liberty, dignity of human person & freedom of movement.

On this he relied on the provision of section 41(i) of the CFN 1999 (as amended) which provides thus

“Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part ---”

And section 35(1) of the CFN 1999 (as amended) provides thus

“Every person shall be entitled to his personal liberty no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law”

On this he submitted that by the combined effect of section 33(1), 41(1) of the CFN 1999 (as amended) the applicant is entitled to his right to personal liberty and freedom of movement.

He submitted that the conduct of the respondents infringed upon the rights of the applicants, that from the affidavit in support, it is clear that the respondents have no reasonable cause or ground for arresting and detaining the applicant.

Furthermore, that article 4 of the African charter on Human Peoples Rights (Ratification and Enforcement) Act provides that:

Human beings are inviolable. Every human being shall be entitled to respect of his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 6 of the same law provides that

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

also section 35 (1-6) of the CFN 1999 (as amended) provides for a situation and circumstances under which a citizen could be deprived his fundamental rights and

particularly the citizens right to personal liberty, on this he referred the court to the case of Jim-Jaja v C-op (2011) 2NWCR (PT 1231)375 at 390 para B to F wherein the court held as follows.

Under section 35 (1)(c) of the 1999 CFN there are three circumstances under which interference with the personal liberty of the appellant will be justified that is:

- i. For the purpose of bringing him before a court in execution of an order of court or
- ii. Upon reasonable suspicion that he committed an offence or
- iii. When it is reasonable and necessary to prevent his committing a criminal offence.

On this the learned counsel submitted that in the affidavit in support, the Applicant has shown that their arrest and detention does not fall under any of the justifiable circumstances, contained in section 35(1) of the CFN 1999 (as amended) since the invasion, arrest, invitation and detention of the applicant cannot be justified and is arbitrary. Also that it is dehumanizing and traumatic for a human being to be arrested for no just cause, arrest & detention are degrading acts in themselves and submitted that, the applicant's arrest and detention in a manner done by the respondents was improper and they ought not to have been treated the way they were by the respondents.

That by article 5 of the same law which also provides thus:

Every individual shall have the right of the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

On this he submitted that treatment meted out to the applicants at their place of business by the respondent is inhuman and degrading of the integrity of his person has occasioned to the mental anguish and health of the applicant especially the 1<sup>st</sup> applicant who complained of ill health state at the point of arrest but fell on deaf ear of the men and officers of the respondent.

Reference also to article 2 of the same act which provides that, applicant is entitled to enjoy all the rights guaranteed in the chart. Article 4 which provides that the applicant is inviolable and article 5&6 the applicant should be in no way exploited or deprived his right to liberty and freedom that the law is trite, that no citizen's rights should be violated, especially that no one should be arbitrarily arrested except with the due process of the law. Ref to the case of Jim JaJa (supra) where the court held thus:

“It is now settled peradventure that a Nigerian citizen is absolutely entitled to his freedom and cannot be deprived of it until and unless due process of law is meticulously observed”

On this the learned counsel described the arrest and detention of the applicant as unlawful.

Aside the foregoing circumstances no person shall be deprived of his liberty and dignity to human person and freedom of movement. The position of the law is that where there is evidence of arrest and detention of an applicant in an application for enforcement of fundamental rights, it is for the respondent to show that the arrest and detention was lawful see the case of Ejefor v Okeke (2000) 2 NWCR (PT 665) P.363 at 381 para f. this now takes me to the respondent's counter affidavit in response to the applicant's motion on notice.

The 1<sup>st</sup> respondent in it's counter filed a 34 paragraphs, see paragraph 4-30.

In response the 1<sup>st</sup> respondent submitted that in respect of the 1<sup>st</sup> issue, that the complaint of the applicants of the breach of their fundamental rights for criminal offence of obtaining money under false pretence and threat to life for which investigations had been carried out and a criminal case made out against the applicants do not fall within the purview of the fundamental rights guaranteed under chapter 4 of theCFN 1999 (as amended) since these rights are qualified as not absolute. Ref to section 35(1) (c) of the CFN 1999 (as amended) which empowers the police officers to exercise reasonable curtailment on a person's liberty upon reasonable suspicion of having committed a crime as shown in exhibit A1.

On this it is the submission of the learned counsel to the 1<sup>st</sup> respondents that by the virtue of section 35(1) (c) of the CFN 1999 (as amended) the police are empowered to arrest and detain any person for the purpose of bringing him before a court or in execution of the order of a court or upon reasonable suspicions of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence. That from the deposition of the counter affidavit especially paragraph 5-33 and the exhibit A1 annexed, there is no doubt that the reason upon which the applicants were invited and investigation is being conducted were reasonable, as the applicants were invited upon having reasonable suspicion of having committed a criminal offence of obtaining money under false pretence and threat to life.

He Furthermore submitted that, from the deposition in the counter affidavit, it is imperative that the invitation of the applicants pursuant to the complaint of crime of obtaining money under false pretence and threat to life against the applicant was within the provisions of 35(1) (c) of the CFN 1999 (as amended) and the investigation conducted by the police to determine whether or not an offence has been committed by the applicant was within the powers of the respondent as provided by section 4 of the police Act, hence the action taken by the police did not breach or threaten the breach of the right of the applicant.

On the second question as to whether there has been or established any infringement of these rights, on this he submitted that, there has not been established any infringement of the rights of the applicants as the applicants in their supporting affidavit did not say anything about collecting money from the 1<sup>st</sup> respondent.

Further submitted that the purported arrest and detention which the applicant claimed was carried out by law enforcement officers in discharging their duties to unravel the authors of crime was within the constitutional limits of the respondents, as the invitation was predicated on a legitimate complaint of crime reported by the 1<sup>st</sup> respondent per Ex A1 which was annexed and bound to be on merit worthy of investigation. Therefore, submitted that failure of the applicants to establish any infringement of their rights this action might fail. On this he asked that can the 1<sup>st</sup> respondent be held liable for performing her civic responsibility of promptly informing the police of an envisaged commission of wide scale fraud perpetrated

by the applicants and their cohorts who absconded to evade justice? On this referred the court to case of *Fajemirokun v Commercial bank of Nig. LTD (2009) ALL FWCR PT 487 P1* where the court held thus:

“Mere reporting of complaint to the police for investigations are lawful and cannot be held liable.”

On this submitted further that no evidence exists to proof beyond reasonable doubt that the police overstepped their limits, the nebulous claim that they were detained for some hours without proof will not make the respondents liable. Ref to case of *Fajemirokun v Commercial bank of Nig. LTD (Supra)* where the court held:

“For an applicant 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 respondents. Where that has not 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 case was right in holding that the application was devoid of merits as the applicant failed to provide sufficient facts in his supporting affidavit to establish that his fundamental rights was infringed”

On this submitted that from the totality of the facts before this court, it is clear that the applicant’s rights have in any way been breached, as the applicant have not put forth any material proof before the court to show that they have been arrested, detained or dehumanized or even denied fair hearing unlawfully by the respondents in the course of investigation of the allegation made against him. That the mere assertion that their rights have been breached or threatened is not enough to establish that the respondents infringed on their rights.

Furthermore submitted that threat of arrest or detention is not sufficient in action for enforcement of fundamental rights of unlawful arrest or detention: that the applicant must prove to the smallest detail that the arrest and detention is unlawful, that the laid down procedure was not followed by the person effecting the arrest, detention or threat to arrest and therefore urged the court to hold that the applicant’s rights has not been infringed upon or threatened by the respondents.

Also the 2-5<sup>th</sup> respondent in response to the Applicant's motion on notice filed a 42 paragraph affidavit for ease of reference see paragraph 5-40 of the affidavit in support.

On this he submitted on the first question that the complaint of breach of their fundamental rights for the criminal offence of conspiracy, obtaining money under false pretence, advanced free fraud and threat to life for which investigation had been substantially conducted and a prima facie case made out against the applicant do not fall within the purview of the fundamental rights guaranteed under chapter 4 of the CFN 1999 (as amended). Reference to section 35(1) (c) and paragraph 4-40 and exhibits NPF1 and NPF2 to their counter affidavit. Submitted that by the virtue of section 35(1) (c) of the CFN 1999 (as amended) the police are empowered to arrest and detain any person for the purpose of bringing him before a court or in execution of the order of a court or upon reasonable suspicions of him having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence and that what exists in the instant case, is invitation of the applicants to respond to the allegations levelled against them and the police are justified to do so or even arrest and detain within a reasonable time of the day or 48 hours or such longer period which the court will consider reasonable. Section 35(4) & (5) (6) of the 1999 CFN. On this submitted that the fundamental rights are not absolute. Referred the court to the case of Ekwenugo v FRN (2001) 6 NWCR (PT 208) 171 at 328-329 it was held thus:

“A person can be deprived of his right to personal liberty upon his being reasonably suspected of committing a commercial offence.”

On this he submitted that in the instant case no iota of deprivation of the applicant's fundamental rights exist but mere case of invitation to police highest investigation body FIBIFCID. Thus cited section 4 of the police Act and the case of Gani Fewehinmi V IGP (2000) 7 NWCR (PT. 665) at 528 para EG where the court held thus:

“That in the performance of all that important duty, the police in trying to discover whether or by whom an offence has been committed, is entitled to

question, whether suspected or not from whom he think useful information may be obtained.”

On this it is the submission of the learned counsel to the 2-5<sup>th</sup> respondent that the invitation or even arrest of all the applicants to respond to criminal allegations of advanced fee fraud, obtaining money by false pretence and threat to life which prime bail has been established for the purpose of uncovering the authors of crime is within the confines of the law. Ref to Judges rules No 1.

On this submitted that, from the depositions in the counter affidavit especially paragraph 5-39 and exhibits NPF1 & NPF 2, there is no doubt that the reason upon which the applicants were invited and investigation being conducted were reasonable. Furthermore, submitted that, from the deposition in the counter affidavit, it is imperative that the invitation of the applicants pursuant to the complaint of crime against the applicant was within the provisions of 35(1) (c) of the CFN 1999 (as amended) and the investigation conducted by the police to determine whether or not an offence has been committed by the applicant was within the powers of the respondent as provided by section 4 of the police Act & ACJA 2015.

On the second question as to whether there has been established any infringement of these rights, that from the totality of the facts before this court, on this he submitted that there has not been established any infringement of the rights of the applicants, and that the principal suspect now at large formed a company called BARA INVESTMENT LTD under the guise of legitimate investment, into forest agriculture and other businesses but have failed to establish these facts. Furthermore, submitted that the applicant have not put forth any material proof before the court to show that they have been arrested, detained or dehumanized or even denied fair hearing unlawfully by the respondents in the course of investigation of the allegation made against them, that the mere assertion that their rights have been breached or threatened is not enough to establish that the respondents infringed on their rights.

Furthermore, submitted that report of arrest and threat of arrest or detention is not sufficient in action for enforcement of fundamental rights of unlawful arrest or detention: that the applicant must prove to the smallest detail that the arrest and

detention is unlawful, that the laid down procedure was not followed by the person effecting the arrest, detention or threat to arrest see the case of Ezeadukwa V Madueke (1997) 8 NWLR PT 578 pg 635 Ration I.

The learned counsel further submitted that the applicants hinged their argument on the premise that an arrest was conducted without warrant or valid court order. On this submitted that section 18 of the ACJA 2015 allows for arrest without warrant in an offence of this nature and once arrest has been conducted and the suspects investigated are found culpable for prosecution irregularities in procedure of arrest will not affect the proceedings. That in the instant case, the applicant did not prove that they were arrested and detained unlawfully or there was a breach on how the arrest or detention was carried out and that merely asserting that he was arrested and detained and no more as there was no further facts to substantiate their claim & that he who alleges must prove see section 135 of the Evidence Act 2011.

The applicant in it's further reply on point of law, cited the case of Diamond Bank v Opara&ors (2018) LPECR- 43907 (SC) when it is held as follows. On the second issue, that all it is required for the 1<sup>st</sup> & 2<sup>nd</sup> respondent need to show and sustain this action are the facts or conditions stipulated in order 2 rule1 of the FREPR 2009 and that the rights the 1<sup>st</sup> and 2<sup>nd</sup> respondent seeks to enforce is the right to personal liberty guaranteed by section 35(1). On this submitted that it is an undisputed fact from the affidavit evidence of the applicant that while the 2<sup>nd</sup> and 3<sup>rd</sup> applicant were taken unaware and arrested at the premises of the 4<sup>th</sup> applicant while on duty as the employee of the 4<sup>th</sup> applicant, the 1<sup>st</sup> applicant was given an invitation all the way from Kebbi state, and upon honouring the invitation was denied bail until late hours of 19/20 January 2023 before he was released alone under a serious threat to life with further invitation on weekly basis and threat to further arrest.

Furthermore, submitted that the 1<sup>st</sup> respondent had relied on reasonable suspicion to justify the ultra-vires and unlawful arrest, detention and purported invitation of the applicants with the aim of ruining the legitimate business of the 4<sup>th</sup> applicant that this is without any proof of the reasonable suspicions. This he referred the court to the case of Emesiani v E mesiani (2013) LPECR. 21360 (CA) where the court held thus:

“It is trite lawthat he who alleges must prove”

Also in the case of *Ukeje & Anor V Ukeje* (2014) LPECR 22724 (SC) where the noble court of the Apex held that:

“It is not enough for a party to make an allegation before a court; he must lead credible evidence to prove same”.

That in the instant case the applicant had by their affidavit evidence with attached exhibit shown status report of the 4<sup>th</sup> applicant and the 2<sup>nd</sup> and 3<sup>rd</sup> applicant employment letters the 1<sup>st</sup> respondent who try to justify her action and that of the other respondent of investigating arrest on the innocent citizens under the use of reasonable suspicions, relying on exhibit A1 attached to her counter claim, a complaint which has no bearing with the applicant but against the third party has not been able to establish by evidence any pattern or links between the applicant and Mr Peter Agida or Bara Finance LTD where she purportedly invested her money and complained against neither the 2<sup>nd</sup>-5<sup>th</sup> respondent showed by evidence any link or legal relationship between the applicant and the person complained against to warrant the applicant being arrested. That the 4<sup>th</sup> applicant being a limited liability company and financial institution, its details of shareholders, Directors and whoever in position of ownership could be gotten by search to Corporate Affairs Commission or CBN as the regulatory bodies to ascertain the ownership which the respondent failed to do but just intruded and arrested the applicants on more speculation and unverified allegation and what determine the reasonable suspicion for the purpose of arrest was decided in the case of *NCS Board and ANN V GAR* (2021) LPECR – 54595 (CA).

Furthermore, that the respondents in their argument relied on the section 35(1)(c) of the CFN & the reasonable suspicion as the basics for the arrest of the applicant. Submitted that the respondent have failed to disclose any reason in arresting the applicants, at the time the applicant were arrested no reasonable suspicion has been established against the applicant that the 1<sup>st</sup> respondent could not show by evidence the money paid into any account belonging or connected with the applicant, the man and officers of the 2-5<sup>th</sup> respondent on their part did not make any inquiry or ascertain any crime or otherwise of the complaint that is not even against the applicant but just invaded and arrested the applicant the ordinary employees of an organization on a mere speculation and conjecture without consolidating or investigating the title to the relevant regulatory bodies to ascertain the actual owner

of a particular company & distinguish them from the perpetrators of the crime for the purpose of arrest.

Furthermore that it is trite, that a court of law cannot give recognition to speculation and conjecture in determining disputes submitted to it by parties reference to the case of Lawson NnamdiChukwu& Anor v Hon Lolo Stella Chukwu&ors (2018) LPECR – 45482 (CA) where it was held that

“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 both courts of law and facts. Hence they decide issues placed before them or facts as pleaded established by evidence adduced before them predicated or applicable laws. They are enjoined to avoid speculation of whatever coloration”

Also the case of Ejezie V Anuwu (2008) 34 NSC QR. 996 where it was held that

“A court of law has no jurisdiction to speculate or conjecture. A court must confine itself to the evidence before it and give judgement on the evidence and the evidence alone.”

Furthermore, that assuming but without conceding that the 1st Respondent was represented by Bere France d or Mr Peter Agora as alleged by her affidavit in support who are separate person and entity from representing the said allegation is not verified and no evidence or residence evidence to support same, that the purported/ increment is only specified as there is no any price opposing to the said accounts purportedly opposite to effective to their xli get affidavit and evidence of payment to any account belonging to the applicant effected to her counter evidence, hereinafter court cannot give credence to speculation of a crime in a section based on speculations. Some response to that of the 2<sup>nd</sup> – 5<sup>th</sup> Respondents, there is no need to repeat somewhere any reference was on court the 2<sup>nd</sup> – 5<sup>th</sup> Respondents, in thereby on point of law by the Applicant Counsel.

From the above submission of arguments following from the above, the question on infringement of the fundamental rights of the individual is largely a question facts, it is therefore does not depend on the submission of counsel on the law, no matter how brilliant and impressive it is, it is in facts as disclosed by the affidavit

evidence that is usually examined, analyzed and evaluated to determine whether indeed the fundamental rights of 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 or the person charts to Human and person right rectification enforcement) rules, 2009

Upon a proper consideration, the averments in the applicant's affidavit as taken holistically does it establish a case of alikely breach of the applicant fundamental right to personal liability, freedom of movement by the 2<sup>nd</sup> – 5<sup>th</sup> respondents. Thus is more so when provision of faction 4 – 23 of the police act counter on the 2 – 5<sup>th</sup> Respondent extensive powers of maintaining law and order and prosecute 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 reinforced by the deem in of the apex court of the court in the following decisions following vulip (supro), 02th v EFCC (2017) – 43386 – Azokavigpc 2007

Against this background, the question which must be answered is

“Would the grant of the relief sought by the Applicant against the Respondents be appropriate in the circumstance”

It has been serially and consistently held that the mere invitation of persons by the police, without more is within the power of the police, and except it can be shown that the police misused their power, no court will interpret with police action in the performance of their constitutional outcomes and responsibilities to investigate crime. Thus, the power of the police to investigate crimes to invite persons to be interviewed, questioned, simply put, cannot amount to the breach of fundamental rights of the applicant of such person's See. Akanbi VCOP. Kwara State (2018) LPELR – 44049, Kaho vs Dawari (2018) LPELR – 44628.

Thus Courts are quite hesitant in preventing the police from performing their lawful and constitutional roles unless for good exceptional reasons. The powers of the police with respect to the investigation of criminal allegations are provided for in section 214 of the CFN 1999 as well as section 4 of the police Act of the power have been interpreted and pronounced upon by the following occasions as court.

1. Anambra state v UBA 92005) BURN 191
2. IhuaMadenyi v HM Ezerobinmson (2019) LPELR – 47252 (CA)

In the light of this can it be said that the applicant's right has been breached or is being breached or is likely to be breached by the 2<sup>nd</sup> – 5<sup>th</sup> Respondents.

In answering this simple question, I will torchlight Respondent of the Applicant 5 paragraph 44 – 60 on paragraph 67 wherein the applicant's alleged that there is no court order directing that application is and any of the staffs or members the 1<sup>st</sup> Applicant to be arrested or determined by the Respondents of the instant of the complaint of the 1<sup>st</sup> Respondent. This has been answered in this judgment when the 2<sup>nd</sup> – 5<sup>th</sup> Respondents whom by their ways, this court refers to the previous of section 35(1) of the 1999 CFN as amended, the police are empowered to arrest, detain any person for the purpose of bringing him before the court or on extension of the area of court over

“Upon reasonable suspicion of his having committed a common offence to such effect as may be reasonable necessary to prevent his community a communal offence”

Thus they referred to paragraph 5. 33 and the exhibits A1 annexed thereto, to the fact, the appropriate parties were invited and investigation was being conducted was reasonable cause for the invitation of the applicant which was pursuant to the complaint of crime which is receiving money under false pretence and threat to life against the Applicant within the provision of section 35(1) (e) of the CFN of the investigation conducted by the police to determine whether or not an offence has been committed by the applicant was within the powers of the respondent as provided by section 4 of the police Act. Also that the action of the police investigation, the applicant upon reasonable suspicion of this having committed crime do not breach or threaten the breach of the right of the Applicant's fundamental right as entitled by the Applicant in its affidavit paragraph 14, 15, 16 which paragraph provides thus:

14. Despite the release of the 1<sup>st</sup> Applicant at the late hour of night, the 1<sup>st</sup> Applicant was mandated to report at the police next morning whereof he reported he was kept till evening before granted bail on bond.

Para 15: The Respondent through their officer CSP Goodluck still fixes meeting at the interval of less than a week for he has known that the 2<sup>st</sup> Applicant resides far at Kebbi will his children where he does business and come on flight to honour their invitation as a law abiding citizen of Nigeria.

Para 16 That the men and officers of the 2<sup>nd</sup> – 4<sup>th</sup> Respondents are still given threat of invading their premises of the 4<sup>th</sup> Applicants to arrest a detain his staff without of just cause but only at the influence of the 1<sup>st</sup> Applicant who

is boasting in the eyes of people at the station that she will use her influence to shut down the business of the bank.

From the above, I hold that the paragraph of the affidavit mentioned above are more specific as this court does not act on mere speculations but on the credible evidence.

In the instance case that the respondent stated above, in the applicant affidavit was a mere invitation for the purpose of conducting investigation and by the provisions of the police act, they have a duty to investigate where substantial facts are found, they can institute criminal proceedings against the applicants. Therefore, the averments in paragraph 14 – 16 of the affidavit in support are just mere speculative depositions which cannot ground on section funded on fundamental rights of the Applicant if the alleged threat was not backed up with any other act of an attempt of the 2<sup>nd</sup> – 5<sup>th</sup> Respondents to arrest or detain the applicant. Have this ensue the realize no a,b,c,e of the Applicant. Hence I residue the issue infavour of the Respondents, I so hold.

On the issue as to whether the Applicants are entitled to the relief sought whether Applicants filing the suit is an abuse of the court process on this it is the submission of the 1<sup>st</sup> Respondent, that the Applicant having failed to established that their agents as the respondents, is not entitled to the reliefs sought on this it is the submission of the learned counsel to the 1<sup>st</sup> Respondents that this suit is an abuse of court process. On this he brought the attention of this court to the case of African reinsurance comp v JDP cons (2003) 13 NSC QR P. 23 at 231 Ratio 7 e8, when the Apex court held thus:

“Abuse of court process is a form generally applied to proceeding which is wanting in bonafide and frivolous, vegetation’s of oppressive. Abuse of court process can also mean abuse of legal procedure or improper use of legal process as in the instant case. Abuse of court process involves some bias, matice, some deliberations, some desire to misuse or pervert the system there is service to been abuse of the process of the court when a party improperly uses the issue of the process of the when a party improperly uses the use of formal process to the irritation and annoyance of his opponent, such as instituting a multiplicity of action on the same issues as in the instant case. Where the court comes to the conclusion the it’s process is abused the proper error is the dismissal of the process”.

On this it is the submission of the learned counsel that the sort of the applicant was instituted to harassed, and the respondents further submitted that, relying on all the paragraphs of their counter affidavit to establish exhibits annexed to their counter

affidavit, and that this suit is frivolous, prejudicious and expressive. That it refrains the respondent from carrying out their statutory responsibility.

The 2<sup>nd</sup> – 5<sup>th</sup> Respondents on this meditate same submission represent to same case as stated above;

On this I wish to state that a party who is exercising a constitutional right cannot be said to be abusing the process of court, on this see *Adesokuin v Adeyoro* (1997) 3 NWLR (Pt 1089) 225. The concept of abuse of court process is not precise, it is a circumstance or situation infinite varieties and conditions. But common feature of it is the improper use of judicial process by party in litigation to interfere with the due administration of justice. It is trite that for a person to go to court to be shielded against criminal investigation a prosecution is in interference with the powers given by the constitution to law officers in the control of criminal investigation. First likely the instant case. I Hold that by the action of the Applicant in this instant case shows that the application amounts to annoy or harass the respondents of the discharge of their constitutional mandate as enshrined in section 4 of the Police act. Hence surely the action of the Applicant amounts to an abuse of court process in the instant case I so hold that resolves this issue in favour of the Respondents.

On the order of perpetual injunction sought by the Applicants prohibiting/restraining entirely the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> – 5<sup>th</sup> Respondent whether by themselves, their agents, servants, privies, representatives. This on by whatsoever, whosoever reserved acts for or through them from in any way further inviting/arresting, detaining, intimately, harassing, representing the Applicants or introducing /involving the premises of the 4<sup>th</sup> Applicant to obstruct their lawful buttress activities under any false or matter hinged on operation or complaint mark by the 1<sup>st</sup> Respondent or any against Bira finance Ltd or any other person or whosoever called of which the Applicant as an individual or corporate entity are not the person against whom the Applicant was made, as some is unlawful and does not I will not serve any public purpose or interest.

On this it is the submission of the Learned counsel to the applicants that the arrest or the detention of the applicant is unlawful and further submitted that the arrest and the detention of the applicants on an allegation against a third party amounts to arrest and is prohibited, unlawful and illegal and contrary to the provision of sections seven of the act of 2015 24 section provides

“A person shall be arrested in place of a suspect.

See the case of Dasauli&amor vs GTB &Ano (2022) PELR 57:419 (CA).

Where the court held thus

"The respondent had admitted arresting and retaining the 2<sup>nd</sup> applicants in the course of investigation of the of the detention of the first respondent but said that the 2<sup>nd</sup> Applicant was released promptly the next day even through his wife first applicant did not surrender to be arrested detained or show up I think that was a cross abuse of the powers of the 2<sup>nd</sup> Respondent to arrest and between the 2<sup>nd</sup> applicant for the alleged offence of the wife we have appreciated this filtration several times that it is wrong to arrest a wife or husband in her or the other or another mother for false the child (suspect) to come to the police Allah enforcement agency.

On this it is the response of the first respondent in paragraph 19 and 20 of the affidavit is state thus

Para 19

"That we Lodged a complaint of criminal conspiracy obtaining by False pretense, advanced fee fraud and threat to life."

Para 20

That I know as a fact that the applicants were invited and were never subjected to degrading or inhuman treatment by the police as I was there when they reported and were granted bail on the same day.

Para 22

That we merely reported a complaint of crime as actions of fraud perpetuated by the applicants and their cohorts now at large to the police as part of our civil responsibility to be investigated.

Para 23

That I know as a fact that police are law enforcement officers vested with powers to investigate crime

Para 24

That I don't have such powers to control the way or manner our police conduct their status and duties and police acted at my instant of behest as averred.

Para 8

That it is not out of fear or of the truth being revealed that caused the applicants to rush to the court to be used as a shield to evade lawful investigation

In the written address submitted that the main reporting of complaints to the police for investigation are lawful and cannot be heard liable *Fajemirokun v. Commercial bank Nigeria Ltd (2009) ACC FWLR (Pt 487)*. I further submitted that no evidence exists to prove beyond reasonable doubt that the police over steps there limits or that the loss claim that they were retained for some hours without proof will not make the respondent liable.

This on the error of perpetual injunction to restrain the police from further arresting him or this submitted that this court cannot restrain a constituted authority like the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from performing their constitutional statutory duties especially where they are no facts before the court bringing their respondents with the breach of the applicant right as in the instant case see the case of *Olatunwo the State (2013) 8 NWLR (pt 1355) p. 126* where the court held thus.

"Court lacks the power to issue declaratory injunction with a clear to. The result of police investigation made portions to the statutory duties on section 4 of the police act.

That by section 211(I) of the CBC 1999 as amended. In respect to the power of the AJ to a state this a person cannot buy inductive relief be shielded from criminal investigation or prosecution. See the case of *Danfulani v EFCC (2016) NWLR (Pt. 1493)* where the court held that a party cannot be shielded from criminal investigation"

Preview of the above submitted investigation to be completed as many citizens have fallen victim of this white scam fraud and are ambitiously waiting for the Justice of this honourable court as their hope to prevail.

Your response by the 2<sup>nd</sup> to 5th respondents the learnedcounsel submitted that by virtue of section 4 of the police act the NPF 2<sup>nd</sup> to 5th respondents are empowered to protect life & property, prevent and defeat crime, apprehension of offenders among others I submitted that it is the duty of the police to investigate complaints of commission of crime and investigate through that a crime has been committed to

prosecute same. See *Fawehinmi vs IGP* (2007) NWLR pt 655 page 481 of 593 ratio 4 a section 35 (dcc) of the 1999 provides that the respondent can arrest and detain upon reasonable suspicion of having committed a criminal offense in this submitted that the position in paragraph five to 39 of the 2<sup>nd</sup> to 5<sup>th</sup> Respondent counter affidavit and the exhibit annexure to the counter affidavit here is no doubt of there was an allegation of commission of an offense for which the applicants were invited by the respondent that the action of the respondent university of conspiracy obtaining by false pretense advanced fee ordered

Threat to life reported by the 1<sup>st</sup> respondent against them are within the purview of the duties respondent and hence does not amount to a breach of the applicant's right.

Furthermore, he submitted that the applicant's rushing to institute this action for an order of restraining respondent by way of perpetual injunction after they were released on the clearly shows that they are desperately trying to use this court as a shield and submitted that this court should not allow itself to be used as a shield by the applicants on this he referred this court to the case of *Anambra State V Chief Chris Uba* (2005)33 W.R.N. 191 thus

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

Furthermore, posits the question that the police are empowered to arrest and investigate witness and consequently inviting and releasing him on bail to be charged for the offense I within the power and duties of the 2<sup>nd</sup> to 5<sup>th</sup> Respondents as provided by the law.

We urged the court to hold that the respondent within the law is not entitled to the relief of perpetual injunction or to any relief at all

I have equally gone through the submission of the learned counsel to the applicant and cases cited by the first to 5<sup>th</sup> respondents I hold that it is within the power of the police under section 4 of the police act to cause investigation on receipt of petition from any citizens of this country and the police in doing so shall act in the confines of the law that I recite the Nigeria police force indeed or agency entitled to investigate.

I say all this based on the fact that any citizen who believed that an offense has been committed can Lodge a complaint to the police provided such reports is made in good faith he cannot be held liable for doing so.

In the instant case the first respondent exercised it's constitutional right by making a complaint to the police the police invited the applicants the applicant who honored the invitation of the police on an offence which was committed the same day. It is therefore not the duty of this court to direct the police as the police has not bridged any of the rights of the applicant.

The application by the applicants of the infringement of their fundamental rights was done to shield them from investigation as this court cannot make an order sought by the applicants as the report by the first respondent to the police was made in good faith and the police has not violated any of the rights of the applicants I so hold.

In view of the foregoing, I hold that the issue is equally resolved in favor of the respondents.

Having resolved all reliefs and the issues in favor of the respondents hold that whatever may be the submission of the learned counsel to the applicants on claim e, f, g, & h cannot hold as one cannot put something on nothing and expect it to stand, hence the reliefs e, f, g, & h is also desolved in favour of the Applicant as this court cannot grant same based on my finding as stated in this Judgment and hence the said relief are not availing-hence dismissed.

The entire reliefs sort by the applicants has no merits hence this case is dismissed.

As to cost, I order parties to bear their respective costs.

This is my judgment.

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**Hon. Justice A. Y. Shafa**

**Appearance:**

1. F. I. Ochi for the Applicant
2. Audu Garba for the 2<sup>nd</sup> to 5<sup>th</sup> Respondent