

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

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

**DATED TUESDAY 4<sup>th</sup> APRIL, 2023**

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

**SUIT NO: FCT/HC/CV/630/2023**

**BETWEEN:**

**MR TAYO HAMBOLU.....APPLICANT**

**AND**

- 1. INSPECTOR GENERAL OF POLICE**
- 2. COMMISSIONER OF POLICE (FCT)**
- 3. SUPO IDRIS APO RESSETLEMENT POLICE  
STATION, FCT ABUJA**
- 4. ASP SUNNY UMORU (IPO)CID DEPARTMENT  
AREA 10 POLICE STATION FCT ABUJA**
- 5. NWAMSAT HIRSE ESQ  
(TRADING UNDER THE NAME AND STYLE OF M.M  
HIRSE & CO) BN: 2295937**

## JUDGEMENT

The applicant approached this court by way of an originating motion for the enforcement of his fundamental rights against the defendants claiming the following reliefs:

- 1. A declaration that the 3<sup>rd</sup> and 4<sup>th</sup> respondents are liable for wrongful and unlawful arrest and imprisonment until the applicant provides a surety as same constitutes gross violations of his rights to liberty, dignity of the human person as guaranteed by the sections 33,34 and 35 of the CFN 1999 (as amended).**
- 2. A declaration that the 5<sup>th</sup> respondent resort to or instigation of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to use their coercive power to unlawfully arrest, blocking of applicant's bank account harassment with about eight police officers, and unlawful imprisonment of the applicant until he provided surety and subsequent intimidation, harassment and threaten with calls by the 4<sup>th</sup> respondent after he had been released on bail based on the facts of this case is a violation of or is capable of violating among others the right to dignity of human person, liberty and fair hearing under sections 34,35(6) and 36 of the CFN 1999 (as amended) and section 8(2) of the ACJA, 2015.**
- 3. An order that the of the respondents shall jointly and severally liable, unlawful imprison and blocking of the applicant's bank accounts hereby violates the applicant's fundamental rights for blocking account number 1005003302 UBA PLC and account number 1012098252 AND 1012805881 Zenith bank PLC and account number 20160117212 First bank PLC sometime in August 2021 respectively all in the name of IVAN RESOURCES INTERNATIONAL LTD and liable to pay the sum of Twenty million naira only (20,000,000)as compensation and general damages for the violation of the applicant's fundamental rights and oppressive conducts.**

- 4. An order of mandatory injunction directing the 3<sup>rd</sup> respondent to unblock the above mentioned bank accounts.**
- 5. An order quashing or setting aside as ultra vires, null and void and of no consequence whatsoever any or all of the steps taken by the including but not limited to the statement made to them by the applicant or as surety for bail of the applicant and unlawful blocked of the applicant's bank account without an order of court.**
- 6. An order of perpetual injunction restraining the 1<sup>st</sup>-4<sup>th</sup> respondents, their clients, servants, privies or any person acting for, on their behalf from taking any step or further steps/action including but not limited to threat, harassment of the applicant in relation to the facts in the case**

The grounds upon which the reliefs are sought are as follows:

- a. The applicant is entitled to fair hearing and personal liberty as enshrined and guaranteed by sections 34, 35, 36& 46 of the 1999 CFN (as amended).**
- b. That the actions of the 3<sup>rd</sup> and 4<sup>th</sup> respondents are against the applicant and constitutes a gross violation of the law and amount to an infringement on the applicant's fundamental rights as enshrined in sections 34, 35, 36& 46 of the 1999 CFN (as amended).**
- c. It is an abuse of the constitutional powers of the 1<sup>st</sup>-4<sup>th</sup> respondents and their agents, and privies to unlawfully block a citizen's bank account since August without an order of court and deliberately act as debt collector for the 5<sup>th</sup> respondent and turn the applicant to a suspect and subjected him to ridicule, harassment, intimidation, arrest and unlawful imprisonment of the applicant contrary to his will.**
- d. The police act does not allow the 1st to 4th respondents to unlawfully imprison any citizen of this country the way it is being done against the applicant who is a lawful citizen with rights to dignity and associate freely.**

- e. **That the action of the 3<sup>rd</sup> and 4<sup>th</sup> respondents against the applicant is a gross violation of section 8(2) of the ACJA 2015.**
- f. **The 3<sup>rd</sup> respondent having invaded the applicant's house unlawfully upon instigation of the 3<sup>rd</sup> respondent by the 5th respondent to block the applicants bank account till October without the order of court and subsequently put serious pressure on the applicant to refund the amount paid by the 5th respondent as an investment in the housing estate project the sum of N67, 000,000.00(Sixty-Seven million naira only).**
- g. **Consequent upon this, the Applicant was deprived of his right to operates his Bank Account feely which has caused a serious hardship to the Applicant and his family.**
- h. **The investigating police officer in charge of the case one ASP Sunny Umar with tel. no. 08094433702/08032946079 threatening to re-arrest the applicant if he fails to come and sign an undertaking.**
- i. **That attitude and conduct of 3rd and 4th respondent has put the applicant in state of perpetual fear and psychological instability & a regular blood pressure as a result of the 1<sup>st</sup> - 4<sup>th</sup> respondent's aggressive conduct.**
- j. **On the instruction of the team leader ASP Balathe IPO in charge of the case kept calling applicant with threats and intimidations that they would re-arrest the applicant if he failed to sign an undertaking or bring his wife to do so**

Along the said motion is an affidavit of 30 paragraphs deposed to by one my TayoHambolu of plot 606 cadastral zone Apo Resettlement dated the 25th february,2022, and affidavit of Non multiplicity of action of 7paragraphs deposed to by one TayoHambolu and attached to the affidavit is a certificate of pre-action counseling and annexures marked exhibit 1,2a,2b,3a,3b,3c,3d,3e,4a,4b,5a,5b,6a,6b,6c,6d,6e and a written address in compliance with the rules of this court of 12 pages. On the written address a sole issue was distilled for determination to wit

**Whether the 5<sup>th</sup> respondent instigation of the 3<sup>rd</sup> to the 4<sup>th</sup> respondent's unlawful imprisonment of the applicant acted actively in the enforcement of obligation under the contract between the 5<sup>th</sup> respondent and her clients and the applicant or where the 3<sup>rd</sup> - 4<sup>th</sup> respondent acted as an agent of the 5<sup>th</sup> respondent does not amount to wrongful and unlawful act for which the respondents are jointly liable to the applicant in compensation for general damages and injunctions?**

Upon the service of the originating motion on all the 1-5<sup>th</sup> respondents proof of service by the court bailiff filed in the court file, none of the respondents filed any counter affidavit in response of the applicant originating motion apart from the 5<sup>th</sup> respondent who later filed a motion for extension of time within which to file his response to the applicant originating motion dated 12<sup>th</sup> may,2022 and filed on the same date and the said motion was moved on the 10/2/2023, same was granted and the applicant moved his originating motion likewise the 5<sup>th</sup> respondent and both adopted their written submission in support of their argument.

The Applicant on being served with the 5<sup>th</sup> respondent's counter affidavit filed the Applicant's reply affidavit to the 5<sup>th</sup> respondent's counter affidavit dated the 5<sup>th</sup> Feb, 2023 on the 8th-02-2023 deposed to by one MrTayoHambolu of 28 paragraph and annexed to the affidavit are exhibit marked 7,8a,8b,9,10,11&12 and a written address of 7 pages where a sole issue was distilled for determination to wit.

**"The question that is begging for an answer is that what is the essence of averments in counter affidavit without specific denials of facts on issue?"**

Before proceeding to the merit of this case I shall back forward the issues as formulated by the counsels

The Applicant counsel formulated a sole issue for determination to wit

**"Whether the 5<sup>th</sup> Respondents instigation of the 3<sup>rd</sup> to 4<sup>th</sup> respondent unlawfully imprison the applicant, acted actively in the enforcement of obligation under the contract between the 5<sup>th</sup> respondent and his clients and the applicant or where the 3<sup>rd</sup>& 4<sup>th</sup> respondent acted as agents of the 5<sup>th</sup> respondent, it does not amount to a wrongful and unlawful act for which the respondents**

**are jointly liable to the applicant in compensation for general damages and injunctions?**

While the 5<sup>th</sup> respondent formulated three issues for determination to wit.

- a. Whether the applicant has made out a case for the breach of his fundamental rights.**
- b. Whether the applicant is entitled in law to damages against the 5th respondent for the breach of his fundamental rights.**
- c. Whether paragraphs 7-28 of the affidavit in support of the originating motions procedure are not offensive to section 115 of the evidence act.**

The applicants reply affidavit to the 5<sup>th</sup> respondent's counter affidavit put up a sole issue for determination to wit.

**"The question that is begging for an answer is that what is the essence of averments in counter affidavits without specific denial of facts on issue"**

By the issues so formulated as brought forth I will consider the following issues for determination.

- d. Issue one of the applicants will be determined together with issues a, b of that of the respondent together.**
- e. Issue c of the respondent, hold that i shall adopt the issues as formulated by the parties as mine and will address both issues directly as stated above. it is on the basis of this issue that I will now proceed to consider the evidence and submission of counsel.**

First, the question to be asked is whether the applicant's fundamental rights have been breached by the respondents?

It is trite that where a person alleges that his fundamental rights as enshrined in the constitution has been, is being or is likely to be contravened in any state, the alleged breach must be the trunk in pivot in his application in order to rest jurisdiction in the court for enforcement, in other words, where violation of the alleged right is merely incidental or an addition to the primary claim or relief, it

will be improper and preposterous to address such action as one of enforcement for fundamental human rights.

It is settled principle of general application that an applicant for the enforcement of his fundamental human rights under chapter iv of the CFN, 1999(as amended) has the onus showing that the reliefs he claims comes within the provisions of the fundamental rights as enshrined or contained in chapter IV and this is clearly borne out by the express provision of section 46 of the CFN,1999(as amended) and order II rule 1 of the FREP rules 2009.

In *Uzoukwu V Ezeonu Ii* (1991) 6 NWLR (PT. 200) 708. Of 751 the court of Appeal in construing section 42 of the 1979 CFN which is pari-material with section 46 of the CFN, 1999 states as follows.

The section requires that a person who wishes to petition that he is entitled to a fundamental right

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

The next question will be

**"What happens where there is a breach of a fundamental right?"**

In this country the 1963 constitution s.32 provides the answer it says

**"Any person who alleges that any of the provisions of this chapter has been contravened in any territory in relation to him may apply to the high court of that territory for redress. Per JSC"**

**Ransome-Kuti V A.G. Fed. (1985) LPECR-2940(SC)**

Thirdly what constitutes breach of fundamental rights? Whether a person whose right has been breached can enforce same in court?

On this all that the 1<sup>st</sup> – 5<sup>th</sup> Respondents need to show to sustain this action are the facts or conditions stipulated in order 2 Rule 1 of the fundamental rights enforcement procedure Rules,2009, which says,

**"Any person who alleges that any of the fundamental rights provided in the constitution or African charter on Human and peoples right (Ratification and Enforcement Acts) as to which he is entitled, has been is being or is likely to be infringed, may apply to the court in the state where the infringement occurs or is likely to occur for redress"**

The fundamental rights which the applicant seeks to enforce are contained in sections 33, 34(1),(a), 35(1),(2),(6), 36& 46 of the 1999 CFN (as amended). This said section will be provided here under.

Section 33 provides:

- a. Every person has a right of life and no one shall be deprived intentionally of his life save in exception of sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.**
- d. A person shall not be regarded as having been deprived of his life in contravention of this section 6 if he dies as a result as a use of such extent and in such circumstances permitted by law, as such force as is reasonably necessary**
- e. For the defense of any person from unlawful violence or the defense of property.**
- f. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained or**
- g. For the purpose of suppressing a riot, insurrection or mutiny.**

Section 34(1)(a)

**Every individual is entitled to respect of the dignity of his human person and accordingly.**

No person shall be subject to torture or to inhumane or degrading treatment.

Section 35(1)(2)(6)

**Sub(2)Any person who is arrested or detained shall have the right to remain silent or avoid answering any questions until after consultation with a legal practitioner or any other persons of his own choice.**

**Sub(6)Any person who is unlawfully arrested, or detained shall be entitled to compensation or public apology from the appropriate authority or person and in this section "the appropriate authority or person" means an authority or person that is specified by law.**

Section 36

**In the determination of his civil rights and obligations including any questions or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or any other tribunal established by law and constituted in such manner as to secure the independence and impartiality.**

section46 (1)

**Any person who alleges that any of the provisions of this chapter has been, is being or is likely contravened in any state in relation to him may apply to the high court of that state for redress.**

And section 8(2) of the ACJA Act of 2015 provides

**"No arrested person shall be subjected to any form of torture inhuman or degrading treatment"**

The position of all sections above stated is that where there is evidence of arrest of an applicant in an application for enforcement of fundamental rights, it is for the respondents to show that the arrest and detention was lawful see the case of Ejefor V Okeke (2000)7NWCR (PT 665)P.363.

Here in this case it is not in doubt that the 1<sup>st</sup>- 4<sup>th</sup> Respondents are officers of the Nigeria police force, as such they have as their statutory duties the prevention and detection of crime, apprehension and prosecution of offenders. Section 4 and 23 of the police act as well as section 214(1)& 2(b) of the CFN,1999(as amended). See MR Cosmos Onah V MR Desmond Okenwa& others(2010) LPELR 47 81(CA)

They are therefore equipped with the power to arrest and detain a person upon reasonable suspicion of him having committed a criminal offence with section 35 of the CFRN,1999(as amended). This position as stated above was captured in the applicant's affidavit paragraphs 4,5 as represented below.

Paragraph 4:

**That I know for a fact that the 1<sup>st</sup>& 2<sup>nd</sup> respondents are officers of the Nigerian Police FCT Abuja under the supervision and control of the 1st respondent**

Paragraph 5:

**That I know as a fact that the 3<sup>rd</sup>& 4<sup>th</sup> respondents are officers and men of the 1st respondent at Apo resettlement police station FCT Abuja and CID Department Area 10 Police station FCT Abuja respectively under the control and supervision of the 1st respondent.**

Now to the main issues formulated. Here the facts as stated by the applicant counsel is that sometime in 2019 the applicant approached the 5<sup>th</sup> respondent in respect of a housing estate project, he indicated interest and invested in the applicant's project and agreed on a fixed percentage and the parties entered into a written agreement to that effect which was prepared by the 5<sup>th</sup> respondent. That subsequently the 5<sup>th</sup> respondent also approached the applicant to assist him to facilitate the issuance of block fund bank instrument via a provider and promised to pay for the services of the applicant and the provider. See Annexures 4,5& 6 but failed to pay for the charges of issuance of the block fund Bank instrument. That the 5<sup>th</sup> respondent resorted to self-help by instigating the 3<sup>rd</sup> and 4<sup>th</sup> defendants who used their coercive powers to block the applicants bank account in the name of VAN RESOURCES INTERNATIONAL LTD without the order of court, also unlawful arrest, imprisonment, threatening and intimidating the applicant with phone calls by the 4<sup>th</sup> respondent to come and sign an undertaking to refund the amount paid by the 5<sup>th</sup> respondent as an investment in a housing estate project (67,000,000.00)(sixty seven million naira only.)

That the 5<sup>th</sup> respondent willingly issued a postdated cheque in favor of the applicant and his company for the services rendered by the applicant and the provider of instrument.

First and foremost, from the affidavit evidence and the address of the applicant and the response of the 5th respondent, it can be said that the rights of the applicant has been is being or is likely to be breached by the respondents. This is why the crux of the matter lies in paragraphs 14,16,20,24.

Paragraphs 14:

**That I know for a fact that the cause that led to the applicant arrest, harassment and intimidation by the 3rd respondent with about 8 police officers at the applicant's residence at Apo Resettlement sometime in September 2021 on the ground that a petition was written against the 5th respondent, that the 5th respondent sold his clients property and diverted the proceeds of sale and the money was traced to the applicant's bank account therefore all the applicant's bank account No:1005003302 UBA PLC and 1012098252 AND 1012805881 Zenith bank PLC and 20160117212 First bank PLC respectively all in the name of IVAN RESOURCES INTERNATIONAL LTD was blocked sometime in August 2021 till date without an order of court.**

Paragraph 16:

**That I know as a fact that the 5<sup>th</sup> respondent wrote another petition to CID Department Area 10 police station and alleged that the applicant fraudulently collected money from the 5th respondent, the 4<sup>th</sup> respondent officers and men in Nigeria police under the supervision and control of the 1st respondent invited the applicant and imprisoned the applicant until he provided a surety before he was released and continued to threaten the applicant to come and sign an undertaking to pay the money to the 5th respondent or bring his wife to write the undertaking to write and sign on his behalf.**

Paragraph 20:

**That I know as a fact that the 4th respondent did not investigate the matter but kept on threatening and intimidating the applicant with calls by the IPO on adaily basis and the applicant as a result of this has been placed in a state of perpetual fear, psychologically unstable, and suffering from a regular blood pressure.**

Paragraph24:

**That since the applicant was invited by the 4th respondent at the CID Department Area 10 FCT Abuja, the applicant has received calls by the IPO on daily basis under the instruction of the team leader ASP Bala the applicant was afraid and resulted to hiding and could not perform his legitimate activities at the clinic/hospital as the 4<sup>th</sup> respondent is requesting for the money on behalf of the 5th respondent.**

In the written address paragraph 10.B that the 3<sup>rd</sup> & 4<sup>th</sup> respondents acting under the instruction of the 5<sup>th</sup> respondent to enforce the payment of the sum paid by the 5<sup>th</sup> respondent as an investment in the housing estate and causing him unwarranted embarrassment, degrading treatment. It is by implication violation of the applicant's right to dignity section 34(1) of the CFN 1999 (as amended)

Paragraph 10:4 that having said this that the applicant was subjected to threatening with several phone calls, his liberty was curtailed by unlawful imprisonment. That the respondents had acted in concert to deprive him of his liberty without justification and that the police act does not empower the respondent to arrest and imprison a person contrary to his wishes for the purpose of enforcing the contractual agreement.

Also that the arrest and imprisonment of the applicant which made him suffer at the hands of the 3rd & 4th respondents were wrongful, unlawful and same amounts to violation of his fundamental human rights to liberty a this he referred the court to the case of Iyere V Duru (1986) NWLR (PT 44) 665 Per Kareem JSC (delivered the leading judgment) held.

**"It cannot be over emphasized that police officer must take cognizance of this provision of section 32 of the CFN,1979 this section which is similar to section 21 of the 1963 CFN gives to every person a fundamental right to personal liberty which right is jealously guarded by every citizen of Nigeria. A person cannot therefore be deprived except in a manner prescribed in that section and in accordance with a process permitted by law. A breach of that fundamental right entitles the victim to appropriate remedy.**

He therefore submits that section 35(1) of the CFN,1999(as amended)which guarantees the applicant's fundamental rights to liberty. That right to liberty is so sacrosanct that one can only be deprived of it in extreme circumstances and following due process of law.

That in the instant case the respondents have not followed any due process of law that warrants the deprivation of the applicants fundamental rights to personal liberty and movement of person that, the respondent for which they are liable to the applicant he referred this court to the case of;

Benue state government V Asien (2007) NWLR (PT1030) where the court of appeal held thus.

**"False imprisonment is an intentional instigation of the arrest and detention of a citizen of Nigeria without reasonable and probable cause.**

He submits further in section36 (1) of the CFN, 1999(as amended) that the respondent has decided or pre-determined the claim of the 5threspondent.

The pressure placed on the applicant to refund the sum paid by the 5th respondent as an investment in housing estate project instrumentally is a dagger blow assault on the constitution and power of court in adjudication of disputes between parties.

In response, the 5<sup>th</sup>respondent denied paragraph 7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29 and submit in paragraph 5 K, I, M, N, T thus:

**Paragraph K:**

**That the 5<sup>th</sup>respondent went to the police to investigate the matter and make a complaint in as required of him.**

**Paragraph I:**

**That the police could not locate the applicant and had to employ extensive tracking devices to locate and apprehend him.**

**Paragraph M:**

**That at the police CID he admitted to have converted the monies to his own use and that he was pleading for him to be allowed to raise the money and refund same to the 5<sup>th</sup> respondent.**

**Paragraph N:**

**That he was granted bail the same afternoon he was apprehended and since being admitted to bail has gone underground again.**

**And paragraph t, y, ii, mm, nn,**

**Paragraph T:**

**That the complaint to the police was not abort and recovery, it was for theft and stealing of monies meant for project collecting the monies under false pretense and criminal breach of trust.**

**Paragraph Y:**

**That the 5<sup>th</sup> respondent made a complain to the police to investigate the matter.**

**Paragraph II:**

**That as a Nigerian citizen he made a complaint to the police for investigation**

**Paragraph MM:**

**That the investigation was to his knowledge very discreet and the police were civil to all parties.**

**Paragraph NN:**

**That he did not at any point do anything untoward to the applicant and had not because anybody to do anything that violates the fundamental right of the applicant.**

That in his written address he submits that the act of the 5<sup>th</sup> respondent is as constitutionally guaranteed as the duty of every law abiding citizen of this country. Where a crime is alleged a citizen is expected to lodge a complaint to the

authorities and the police is to investigate on this he referred the court to the case of Usman & ors V IGP & ors (2018) LPELR 4531 where it was held thus.

**A citizen of this country has the right to report crime and that cannot be an infraction of fundamental rights of the person who gets arrested in the course of investigating such complaint, such also cannot sue the police for breach of his rights"**

Also the case of Ahmed V Aliyu & ors (2015) LPELR- 40720 (CA) per Muktar JCA

**"---The application of the fundamental rights procedure rules is meant to protect a person whose fundamental rights have been, is being or is likely to be abused. The statutory duty of the police and other appropriate authorities to arrest investigates and prosecutes any person reasonably suspected to have committed an offence within the scope of the law is not extinguished by fundamental rights procedure rules"**

We submit further that therefore that there was no breach of the rights of the applicant and therefore cannot be any awards or reliefs against the 5th respondent. He cited the case of Ubochi V Ekpo (2014) LPELR-23523 CA per Otisi JCA held

**-----The appellant was certainly acting with his rights in laying a complaint before the police and he cannot be wrong on this score. He cannot be held responsible for the actions taken by the police. Fundamental rights are not breached simply because a respondent has made a legitimate complaint to the police or when the police investigates and act on the complaint duly made to them.**

And in Raph V Ikuegbowa & ors (2020) LPECR-45253 CA it was held

**It seems to be settled law that where all a person does is lay a complaint to the law enforcement agencies, it is for them to decide what action they should take on the report or complaint.**

In Ubajor V Ogunmbergi (1961)1 ALL NLR it was held thus

**by the odds any person who feels that an offence has been committed has a right to report to a law enforcement agency, which upon receipt of such a report has statutory power to investigate, arrest, interrogate, search and detain any suspects**

Also in the case of *Onah v Okenwa* (2020) 7NWLR (PT1194) at 536 and section 4 of the police act

**for the appellant to be held to have violated the respondents fundamental right it has to be shown that he did more than lodge a formal report with the police it is trite law that if a person orders policemen to arrest another person it is an imprisonment by the person ordering the arrest as well as the policemen. They are joint tortfeasors and their conduct can ground an action in unlawful arrest and detention. However, merely taking a report to a policeman who on his own responsibility takes the person into custody is no arrest or detention by the person who made the report. There is no doubt that someone who merely gives information without more, information which leads to the arrest of a suspect by the police acting within their mandated responsibility cannot be liable in an action of unlawful arrest or detention.**

Also in the case of *Afribank v Onyiora* (2004) 2NWCR (PT858)654

**In order for a person to successfully maintain an action for violation of his fundamental rights consequent upon an arrest and detention. It is not enough to merely establish that a report was made to the police wherein he was named the suspect. It needs to be established for example that the police did not act of their own volition when they decided to arrest the person or that the report was totally false, malicious without foundation.**

In the case of *Nwadinobi v Botu* (2000)15WRN 32at40, in *Igbosonu v obayagbe* (2015) LPECR (41870)1at54-55 this court per Mbaba JCA

**By law a person cannot be held liable for breach of fundamental rights simply because he made a complaint of commission of offence against**

**another to the police, and the police used their discretion to arrest that other for questioning. He can only be faulted if the complaint was ill motivated and founded on dishonesty.**

Also in *Ogbonna v ogbonna* (2014) 23WRN48at88 it was held that for liability to lie against a complainant to the police, leading to the arrest, detention, and prosecution of defendant, the complaint must have been made in bad faith and the complainant did more than mere reporting the matter to the police and spear headed the arrest, detention and prosecution of the victim of his false report, even where there is no basis for it.

He submitted based on the above authority that the 5<sup>th</sup> respondent was certainly acting within his rights in taking a complaint to the police. On this, he referred the court to the case of *Fajemiyokun v Comm Bank of Nig. Ltd* (2009) SC 336/2002 the Supreme Court per Ogebe JCA said

**Generally, it is the duty of citizens of this country to report commission of crime to the police for their investigation and what happens after that is entirely the responsibility of the police. The citizens cannot be held culpable for doing their civic duty unless it is done malafide in concurring with the lead judgment**

A.M. Muktar JSC (NUW CJN) said

**"I have said earlier on the respondents were exercising their legal rights to seek the police intervention, indeed no one can deprive any citizen of that right more so when there was good ground for action taken by the police, as it was not a result of mere suspicion."**

Also in *Owoner v flourmills (Nig) LTD* (1995)9 NWCR (PT421)627 at 629 where the court held as follows.

**It is for the police to investigate a complaint laid before them and upon investigation take appropriate actions. There is no evidence that the applicant did any more than lay his complaint to the police**

He has not been shown to have interfered with or otherwise directed the police investigation. A report made to the police does not without more amount to investigation by the police in any way. The applicants were certainly acting within

their rights in laying a complaint and cannot be faulted on this score. He cannot be held responsible for actions taken by the police. Fundamental rights are not breached simply because a respondent made a legitimate complaint to the police, or when the police investigated or acts on the complaint duly made to them. The submits further that the applicant had stated clearly that he collected monies from the 5th respondent for a project. And that in paragraph 17 of the applicant's deposition, he stated that his physical challenge has not allowed him to commence the project. He has not stated the whereabouts of the huge funds he collected in the guise of commencing the project that the deposition of the applicant gives credence to the fact that responsible cause has arisen for the case to be investigated and that the complaint against him was brought in good faith and the investigation in accordance with the statutory mandate of the police. That he was granted bail and he absconded. Therefore, submits that the grouse of the Applicant is unfounded and ought to be condemned in the strongest terms by awarding substantial cost against him.

A careful perusal of the processes, the claim of the applicant the argument canvassed therein and that of the 5th respondent, cases acted thereto I wish to state as follows:

That the burden of proof is on the party who alleged that his rights has been breached to prove with credible evidence before the court that indeed his rights has been breached by the respondents. "Non-negantiincumbit probation" whoever desires any court to give judgment in his favor as to any legal right or liabilities must prove that the facts exist. In this instant case, the applicant have alleged the infractions of his fundamental right to liberty, dignity and fair hearing as enshrined in 1999 constitution of the FRN as (amended), the onus is more on the applicant to prove the allegations thereto.

It is true principle of law that mere averments without evidence in proof of the facts pleaded is no proof of the facts averred therein.

In *Adegbite v Ogun Fadlue&anor* (1990) LPECR-93(SC) the bare depositions of infractions in an affidavit cannot suffice to sustain the applicants claims without more and that the mere stating of facts without cogent and compelling evidence to substantiate same. The applicants in this case have merely stated the fundamental rights to his liberty, dignity and fair hearing has been infringed upon by the 1-5th

respondents, but the applicant have failed to support same with any ounce of evidence.

The applicant submitted that the applicant was subjected to threatening with several phone calls his liberty was curtailed by the unlawful imprisonment and that the police act does not empower respondents to arrest or imprison a person contrary to his wishes for the purpose of enforcing a contractual agreement. Here in the instant case, the allegation by the applicant that he was arrested and imprisoned was not backed up with any cogent reasons or explanations. Therefore, the relief of the applicant having not backup with cogent and compelling reasons as to how the 1st -4th respondents wrongful and unlawful arrest and imprisoned the applicant and in whose custody was he imprisoned and in which order of court was he imprisoned were not stated by the applicant, all what the applicant stated were mere speculative in the sense that it was not backed up with cogent and compelling reasons to justify the issue of arrest and imprisonment.

The law as settled by many decisions of the Supreme Court, is that the court has a duty not to indulge in conjecture, guesswork or speculation it is trite law that

**A suit is speculative, if it is based on speculations, that is to say not supported by facts or very low on acts but very high on guesses. A court of law is not established to adjudicate on guesses but on facts and any suit based on such acts of speculations deserves nothing but a dismissal.**

See Plateau state v AG fed (2006) SCNJ.

**The court do not speculate on possibilities they act on actualities, courts do not speculate or conjecture because it is dangerous to do so in the absence of a --- cogent evidence. See Igabede v state (2006)SCNJ.124**

Also in the case of Orhere v NEPA (19998) 7 NWCR. (PT.557) 187 Per Oredola JCA stated thus

**"The principle is trite that a trial court is preceded and should not be deciding a case on mere assumption, conjecture or speculation. Indeed, courts of law are courts of both facts and laws. Hence they decide issues placed before them on facts as pleaded and established by evidence put before them, predicated on applicable law. they are enjoined to avoid speculation of whatever coloration"**

It has to be noticed that human rights are basic rights and freedom that belongs to every person in the world, from birth until death. These rights are fundamental, inalienable, natural and lawful and are attached to human existence. Nigeria is a sovereign country with all the rights and privileges that goes with an independent nation. These rights are naturally extended to the citizens and violation of it is an abuse of such right. Hence Nigerian police and their officers are not exempted from respecting these rights in or out when carrying out their lawful duties as enjoyed under the police act. The primary duties are enshrined in the police act and in the CFN 1999.

**"Police shall be employed for the prevention and detection of crime, the preservation of law and order, the protection of life and property and due enforcement of all laws and regulations with which they are directly charged.**

Thus when a crime is reported as stated in this instant case by the 5th respondent, the police reserve the rights to invite the suspects which the 5<sup>th</sup> respondent reported for purpose of investigating the allegations. An invitation by the police to a citizen with the aim of ascertaining the veracity or otherwise of allegation leveled against the said applicant cannot by any stretch or imagination constitute a breach or threat to the fundamental rights of the said applicant ihold that the 1<sup>st</sup>-4<sup>th</sup> respondent acted within the ambits of the law when they invited the applicant for questioning.

The kernel or crux of this dispute's whether the actions of the respondents within the context of the precise complaints of the applicant can legally and be constitutional countenance.

It is not in doubt that the provisions of section 33, 34, 35, & 36 of the 1999 CFN(as amended) provides for the rights of the dignity of the human person, rights to personal liberty etc.

The above sections of the constitution appear to me clearly and unambiguous such that the task of interpretation can even hardly be said to arise.

**Section 34 emphasizes treatment of human person with respect and therefore any act which makes people lose their sense of self-respect, valve or work would be degrading.**

**Section 35 on the other hand places premium on the personal liberty of every person and deprivation of same must be consistent with the procedure permitted under the law.**

The court obviously serves as a necessary bulwark in the protection of these fundamental rights and any transgression or proved violation of these constitutional provisions are met with necessary legal consequences.

The task then is to apply the above clear provisions in relation to the alleged infractions and determine whether these infractions were proved. On this I will refer to the affidavit of the applicant which I have reproduced earlier in the course of this judgment paragraphs 14, 15, 16, 17, 24. A logical and necessary corollary of the complaint, reference to the paragraphs stated would necessarily require the basic step(s) the steps of investigation which is the examination of facts of the situation. The process may take a period of time and the invitation for questioning may pan out. These are issues largely directed by the facts uncovered in the process of investigation. The only point to add here is that the process must be conducted with civility and decorum.

From the affidavit in support of the motion of the applicant there is nothing creditably establishing that the above process was carried out by the 1<sup>st</sup>-4<sup>th</sup> respondent in a manner inconsistent with the provisions of the constitution and which violated his fundamental rights. There is equally nothing like evidence to demonstrate the petition written by the 5<sup>th</sup> respondent and the act of the 1<sup>st</sup> - 4<sup>th</sup> respondents have violated any provisions of the police act.

This is the contention that

- 1. The 5<sup>th</sup> respondent went to the police to investigate the matter and made a complaint as required of him**
- 2. That the police could not locate the applicant and had to employ extensive tracking devices to locate and apprehend him and the applicant admitted to have converted the monies to his own use and pleaded for him to be allowed to raise the money that necessitated the petition by the 5th respondent to the 1-4th respondent to investigate on this I can say, the relief sought and a careful perusal of the affidavit of**

**the applicant does not fit the cap to be brought under chapter iv of the 1999CFN (as amended).**

On thorough scrutiny of the reliefs claimed, it is my view that the principal and ultimate claims is the failure of the applicant to honor the agreement entered which does not fall within the purview of chapter iv of the 1999 CFN (as amended).

Assuming but not conceding that the applicant believed that his claim and actions falls within the ambit of chapter iv of the CFN 1999 as amended it behold on the applicant to prove same to the satisfaction of this court.

To my mind there is nothing, absolutely no evidence of the breach of section 33, 34, 35, chapter iv of the 1999 CFN (as amended) and no evidence of such cogency beyond controverted or speculative averments showing that the applicant's rights were violated and that he was arrested, detained and imprisoned by the 1-4th respondent

If any and the conclusion reached is that the applicants narrative lacks credibility and value. as the question of infringement of fundamental rights is largely a question of facts and does not so much depend on dexterous submission of counsel on the law. So it is the fact as disclosed by their affidavit evidence that is actually evaluated to see if fundamental rights have been breached as claimed or otherwise dealt with in a manner that is contrary to the constitutional and other provisions on fundamental rights of an individual.

It is a fundamental principle of our legal system in respect of facts averred that if they are weak and tenuous, insufficient or feeble then it would amount to a case of failure of proof. see AG Anambra state v AGOF FED(2005) ALLFWCR. (PT268)1557 CT1611:1602

Finally, I take the question of the alleged continuous threats, of harassment. Here the applicant has the burden of proving these allegations. It is trite law that he who asserts must prove, see section 131(1) of the evidence act 2011.

Unfortunately, on the materials before the court no clean case was made with respect to this alleged arrest, detention, imprisonment, harassment and threats to further arrest the applicant. If the applicant was coerced or harassed and nothing before the court to show that the applicant's bank account was blocked, there is

nothing in evidence showing or streamlining how this was done and by whom and the court cannot speculate.

I cannot also justifiably situate where and how the respondents threatened or harassed the applicant in the manner stated in the claim. I cannot equally situate the likelihood of further violation of applicants right as alleged. As stated earlier on the materials the applicant has been admitted to bail the very day he was arrested and later went into hiding until the 1-4th respondents used other means to track him down.

Hold that the case of the Applicant unfortunately seems compromised for want of proof or credible evidence. There is no reason for speculation or guess work. The guiding principles or rules is that a court must not grant a party what it has not asked for in clear terms and sufficiently proved. see Joe-Golday&ors v cooperative dev bank LTD (2003) 35 ratio 39 at 105.

On the counter affidavit the 5<sup>th</sup> respondent denied all the facts as deposed therein as stated from the beginning of this judgment. The applicant in response to the said counter affidavit of the 5<sup>th</sup> respondent urge this court to dismiss the counter affidavit in the interest of justice as the applicant shall be prejudiced. On this I wish to state that a court of law not only acts or deals on the basis of what has been clearly demonstrated and creditably proved, arguments of infractions in an affidavit cannot suffice. I do not think that the assertions of the applicant can stand to be accepted as correct without proof. The mere stating of facts does not prove the correctness or credibility of that facts without cogent evidence to substantiate same.

The principle has always been that is a fundamental rights enforcement matter which is a serious matter the court will not declare the applicant's rights to be infringed simply because he says so and is in the absence of credible evidence or proof. The material also supplied by the applicant in the circumstance must also not be such that is incredible, improbable or sharply falls below the standard expected in a particular case It must be established that the rights claimed exist and has been infringed upon or is likely to be infringed upon see Neka B.B.B Manufacturing co. LTD v ACB LTD (2004)of NWLR (PT858)521at550-551.

The solitaries point in matters of this nature is simply that the court in carrying out its invaluable judicial oversight functions must be circumspect in this very delicate

balancing act between protection of fundamental rights of citizens from unnecessary attack on one hand and on the other hand providing sufficient space for the law enforcement agencies to carry out their statutory duties in what we must concede are challenging times or circumstances.

I only again need to emphasize on the imperative of the police and indeed the law enforcement agencies, like all progressive institutions and notwithstanding the challenges they face, must keep strict fidelity to rule of law in all their actions. There is therefore no room for highhandedness or arbitrariness in the discharge of their duties and responsibilities. they similarly must not succumb to the unwieldy dictates or whims of any person no matter how wealthy or powerful. the police must only at all times serve to enhance the quality of liberty and dignity of the persons as enshrined in the CFN 1999 (as amended). The investigative and prosecutorial paths where the police play critical roles must as much as possible be kept pristine clear, transparent, free, fair and unfettered. Police duties under the relevant statutes including the police act, is not for the police to act as debt collectors. Debt collection is therefore ultravires their enabling statutes. Once a transaction is in a form of contract the police are enjoined to exercise restraint.

It is important for me to pause and say here that the powers conferred on the police to receive complaints and prevent and/or fight crime does not extend to the investigation and/or resolution of disputes arising or resulting from simple contracts or civil transactions in this case. The police have an inherent duty to scrutinize all complaints that it receives carefully. No matter how carefully crafted by the complaining party, and be bold enough to counsel such complainants to seek appropriate and lawful means to resolve their disputes.

What is even more worrisome and disturbing is the way and manner the police rather than focus squarely on their statutory functions, of investigating preventing and prosecuting crimes, allow themselves to be used by overzealous and/or unscrupulous character for the recovery of debts arising from simple contracts, loans or purely civil transactions. The police must know that the citizens confidence in them ought to first be ensured by the agency themselves by jealously guarding the integrity of the uniform and powers conferred on them.

The beauty of salt is in its taste once salt loses its own taste the value is irredeemably lost. But it is my belief that all hope is not lost, many women and

men of deep integrity are in our security agencies and they need to rise now to the occasion. See Diamond bank PLC V H.R.H. Eze(Dr) Peter Opara& ors (2018) LPECR 43907(SC)Per BAGE JSC PP.18-30 PSC BB

I say no more and leave it at that. I have deeply and carefully considered the material before me, I cannot locate any violations of the relevant constitutional provisions or even the police act. there is absolutely no evidence of such quality or cogency beyond mere speculative arguments showing that the applicants rights were violated and that he was arrested detained and imprisoned beyond constitutional allowance where it is very clear from the affidavit that the applicant was indeed admitted bail the same date he was arrested, and the conclusion therefore is that the applicant's narrative lacks credibility of value. I so hold.

It is a fundamental principle of our legal system in respect of facts averred that where they are weak and tenuous, insufficient or feeble, then it would amount to a case of failure of proof. A plaintiff whose affidavit does not prove the reliefs he seeks must fail. See AG of Anambra state V AG of Fed (2005) ALL FWCR (PT268)1557 at 1611,1607.G-H

In the final analysis, the issue raised as arising for determination is substantially answered in the negative. For the avoidance of arrest, all the reliefs or claims of the applicant on the alleged violation of his fundamental rights are not availing.

The monetary and other related claims predicated on the alleged violation of his fundamental rights must equally fail. you cannot put something on nothing and expect it to land in a well-known legal action. The entirety of the case of the applicant is hereby accordingly dismissed.

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**HON. JUSTICE A. Y.**

**SHAFIA**

**APPEARANCE:**

1. Usman Olowookere for the Applicant.

