

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

DATED MONDAY 11TH DAY OF MARCH, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/2620/2023

BETWEEN:

MRS ENENE ESTHER IRABOR.....APPLICANT

AND

- 1. THE INSPECTOR GENERAL OF POLICE**
- 2. THE NIGERIA POLICE FORCE..... RESPONDENTS**
- 3. CITYGATE GLOBAL INVESTMENT LIMITED**
- 4. THE MANAGER, CITYGATE GLOBAL INVESTMENT LIMITED**

JUDGMENT

The Applicant approached this court for an Application for enforcement of fundamental Rights dated 5th August, 2022 and filed the same date.

The Application is brought pursuant to order 2 rule 1 of the Fundamental Right (enforcement Procedure), rules 2009, sections 46(1), 34(1), & 35(1) of the CFN 1999(as amended) and under the inherent Jurisdiction of this Honourable court praying this court for the following reliefs.

- A. A declaration that the false imprisonment of the Applicant by the 4th Respondent for four hours between the hours of 2:am to 6:pm on the 4th day of July, 2022 in front of Plot 2788, Linda Chalker Street Guzape Abuja by the 3rd and 4th Respondent like a common Criminal by the Respondent without any reasonable or probable cause or justification,**

constitute a violation of the Applicant a Fundamental Rights to personal liberty and the dignity of the human person as guaranteed by sections 34, 35, 36 and 46 (1) of the CFN 1999 (as amended) and article 5 and 6 of the African Charter on Human and People's Right (Ratification and enforcement) Act Cap A9 CFN, 2004.

- B. A declaration that the transaction between the Applicant and the 3rd and 4th Respondent is purely a civil transaction and does not warrant the investigation and intervention of the 1st and 2nd.**

- C. An order of this Honourable Court mandating the Respondent to immediately return the postdated cheque the Applicant issued to the 3rd Respondent that the cheque be returned to the Applicant forthwith.**

- D. An order of perpetual injunction restraining the Respondent by themselves their agents, servant, employee, or privies or any other person acting through them or on their behalf from further intimidating, harassing, arresting, re-arresting or detaining the Applicant over the loan transaction between the Applicant and the 3rd and 4th Respondent.**

- E. The sum of N100,000,000.00 (One Hundred Million Naira) only being general damages against the Respondent for Psychological torture and trauma, and for a violation of the Applicant's Fundamental Rights to personal liberty and the Dignity of the Human person, guaranteed by sections 34, 35, 36, and 41 of the CFN 1999 (as amended) and article 5 and 6 of the African Charter on Human and People's rights Ratification and enforcement Act Cap as CFN 2004.**

- F. The sum of N50,000,000.00 (Fifty Million Naira only) being punitive and/or an exemplary damages against the Respondent for abuse of power and careless Discharged for the rule of law.**

G. An unreserved public apology from the Respondents to the Applicant herein duly publicized in at least two National dailies.

H. And for such further order or other orders as this Honourable Court may deem fit to make in the circumstance.

Attached to the Application are statements of facts in support of the Application for enforcement of Fundamental Rights, the affidavit in support of the application of 16 paragraphs deposed to by one Mrs Enene Esther Irabor of Plot 2788 Linda Chalker Street Guzape Abuja and a written address in support of the Application of 15 pages where in the. Written address two issues were distilled for the court's determination to wit.

- 1. Whether the false imprisonment, arrest, and threat to re-arrest and obtain the applicant by the response over a purely civil/ transaction without any reasonable or probable cause does not constitute a breach of the Applicant's Fundamental Rights as guaranteed by sections 34, 35, 46(1) of the CFN 1999 (as amended).**
- 2. Whether damages including punitive and exemplary damages cannot be awarded by the court for a breach of fundamental Rights.**

Upon service of the Applicant's motion, the 1st – 3rd Respondent's filed the 1st – 3rd Respondent counter affidavit in opposition to the Application for the enforcement of Fundamental Human Rights dated the 5th July, 2023 and filed on the same date. Accompanying the counter affidavit are annexures marked as exhibit NPF1, NPF2 NPF3 and a written address, he in support of the affidavit of 8 pages, where in the written address formulated a sole issue distilled for determination to wit.

Whether the applicant has proved a breach of fundamental Human Rights to entitle her to the reliefs sought”

Also the 4th Respondent filed the 4th Respondent's counter affidavit in opposition to the Applicant's application for enforcement of Fundamental Rights of 6 paragraphs same was deposed to by one Samuel Doma of Plot 28 Okah Akoko Street Garki Abuja FCT, and annexed are exhibits marked exhibit A and a written address

of 8 pages wherein the written address we raised two issues for the court's determination to wit:

- 1. Whether the Applicant has made out a case entitling her to the reliefs sought.**
- 2. Whether the Nigeria Police force can be prevented from carrying out their statutory duties?**

The Claimant counsel in moving the said motion placed reliance on all the averments on the affidavit and adopted his written address as it's submission as the oral testimony before the court and urged the court to grant their relief sought therein.

So also the 1st -4th Defendants all adopted their written addresses as their oral submission and urged this court to dismiss the claim of the Applicant for being violations, frivolous with cost.

Now looking at the issue formulated by the parties.

The Claimant as I stated earlier formulated 2 issues as stated in this Judgement, while the 1st -3rd Defendants equally formulated a sole issue and the 4th Defendant/Respondent formulated 2 two issues for determination.

I have carefully gone through the issues formulated therein I will adopt the issues as mine.

On the first issue for determination as to

“whether the false imprisonment, arrest, and threat to re-arrest and detain the Applicant by the Respondent over a purely civil transaction without any reasonable or probable cause does not constitute a breach of the Applicant Fundamental Rights as guaranteed by sections 34,35,46(1) of the 1999CFN (as amended)

On this it is the submission of the learned Applicant counsel wherein he referred this court to the case of Odogwu V AGF (1996) 6 NWLR Pt. 455 page. 508 and ratio 6 which defines Fundamental Human Rights and also referred the court to the provision of sections 35(1) which provides thus:

Every person shall be entitled to her personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with the procedure permitted below.

On this he submitted that, the 3rd -4th Respondents falsely impersonated the Applicant unlawfully and since then has been consistently threatened to be re-arrested and detained over a purely civil transaction without any reasonable or probable cause and without any legal justification and without reasonable grounds for suspecting that the Applicant has committed a criminal offence can be said to be in accordance with a procedure permitted by law as clearly required by section 35(-) of the CFRN 1999 as amended. On this he submitted that, section 35(1) of the CFRN 1999 (as amended) contemplated that the liberty of a person is not to be restrained unless there are reasonable grounds for suspecting that he has committed a criminal offence or upon a valid order of a competent court of law. On this he stated that none of this condition existed in the present case.

Furthermore, submitted that, the reason for applicant's false imprisonment was simply to coerce and intimidate her to refund the loan she took from the 4th Respondent, and that there was no element of criminality in the loan transaction between the Applicant and the 4th Respondent as the transaction between them was purely contractual and patently civil in nature and does not constitute any offence known to Nigerian law.

The learned counsel further submitted that the Respondent herein have not followed the procedure permitted by law in the instant case, having not acted according to the provision of section 35 of the 1999 CFRN which then renders them liable for a breach of the Fundamental Right of the Applicant. On this he referred the court to the supreme Court, Per Kareem JSC (as he then was) in *Iyere V Duru* (1986) part 44 page. 665 at 680 paragraph A-B, where he stated this:

It cannot be over emphasized that police officers who in the performance of their official duties find it necessary to apply for remand and warrant must take cognizance of the provision of section 32 of the CFRN 1999 (as amended) this section 21 of that Fundamental Rights to personal liberty which is jealously guarded by every citizen of Nigerian. A person cannot therefore be deprived of such right except in the manner prescribed by that section and in accordance with a process permitted by law. A breach of that right entitles the victim to an appropriate remedy under the law.

On this he submitted that the arrest of the Applicant and threat to re-arrest and detain the Applicant by the Respondent without any reasonable or probable cause constitutes a flagrant violation of the Applicant Fundamental Rights as guaranteed by section 34 to 46 of the CFRN 1999 (as amended) and that it is the duty of the

police and other agencies of government concerned with the enforcement of the law to ensure and observe the protection of these rights and liberties guaranteed by the law. On this he referred to the case of *Sienalumhe V Amadi* (2001) 1 CTR- page 461 the court held this:

“The police have the responsibility to enhance the quality of the liberty and the dignity of the Federal Republic of Nigeria as guaranteed by the constitution where they fail in this task their failure must not be allowed to work to the detriment of law-abiding citizens. Their failure must be checked timeously to enhance the principles and ideals upon which a free society is built. Nigerian is a free country in democracy and an air of freedom must be inhaled by the citizens in their unbridled enjoyment of the well-entrenched Fundamental Human Rights.

Furthermore, submitted that, the security agencies are not debt recovery agencies. This he referred to the case of *EFCC V Diamond Bank Plc* (2018)8 NWLR (Pt. 1620) pg. 61. The supreme Court Per-Peter Odili JSC held thus:

“Nigerian police force and other security agencies are not debt recovery agencies and should shun all entreaties in that regard”

The court held further, as follows,

“Accordingly, it is hereby declared that the invitation of the applicant/Appellant vide exhibit V by the 2nd Respondent at the behest of the 1st Respondent is unlawful and a violation of the fundamental Rights of the Applicant/Appellant’s personal liberty and a continuation of the harassment of the Applicant/Appellant by the 1st Respondent in relation to the disputed or dubious debt/allegation owed by the Appellant to the 1st Respondent.

Similarly, the Apex court by Per BageJSC, further condemned the action of the police in allowing itself to be used for debt recovery at pay so paragraph C-E thus.

What is even more disturbing in recent times is the way and manner the police and some other security agencies, rather than focus squarely on her statutory functions, of investigation, preventing and prosecuting crimes, allow themselves to be used by overzealous and/or unscrupulous characters for the recovery of debts arising from simple contract, loans or purely civil transaction.

Also the court of Appeal Per-Akomolafe -Wilson JCA, in Obiaegue V AGF (2014) 5 NWLR (Pt. 1399) 171 at 214-215 paragraph F-A has this to say.

“The fact that a statement was obtained to refund an advance payment which the Plaintiff allegedly made to Georgie Dredging & Co Ltd within one month from the (date of) release from custody confirms irrevocably that the main object of the detention of the Applicant was the recovery of money involved in the said contract”

Further-more in the case of EFCC V Diamond Bank Plc (Supra) the Apex court deprecated such action of the police in the strongest terms thus:

“the Appellants have shown that the 1st Respondent uses law enforcement agencies, as his attacking spinal, to harrass‘them, particularly the 1st Appellant, to pay Dubious debt, the situation as found by the court below is unfortunate and it is indeed disheartening and would not augur well for the nation if an investigating agent such as the Appellant EFCC would proceed to interfere in a matter already before a court of competent Jurisdiction. This court has had the occasion to cry out on such practices of flooring with monstrous effect the power and integrity of a court of law.

The learned counsel also referred to article 5 of the African Charter on Human and People’s right (Ratification and enforcement) Act Cap A9 CFN 2004, section 34(1) of the CFRN 1999 (as amended) which provides thus:

“Every individual is entitled to respect for the dignity of his person and accordingly:

- a. No person shall be subjected to torture or to inhuman or degrading treatment.

And that the above provision employs such operating words as

1. Torture
2. 2. Inhuman or
3. Degrading treatment to connote the seriousness of the issue at stake.

On the above he submitted that, the actions of the Respondent constitute a violation of the Applicant’s Fundamental right to personal liberty and the dignity of

the human person as guaranteed by section 34 and 35 of the CFRN 1999 (as amended) and urged the court to resolve issue one in favour of the Applicant.

In response, the 1st -3rd Respondent counter affidavit in opposition to the Applicant's motion for the enforcement of Fundamental Human Rights and in its argument on this issue submitted that the Applicant has not put before this court any material facts to show or prove that his fundamental Rights has been unreasonably breached, threatened or about to be breached or is threatened by the Respondent.

On this he submitted that, the applicant who alleges that his fundamental Human Rights was unduly breached has the duty/ onus to establish that his fundamental Rights was actually breached or is about to be breached without any justification or reasonable suspicion that he has committed any offence or about to commit an offence, on this he referred the court to the case of Fajemirokun V Commercial Bank (2009) 2 in JSC (part 11) 114 at 140 paragraph C where Mohammed JSC held thus:

“from the claim of the Appellant who was the Applicant at the trial court, the duty to establish that his fundamental Rights was breached, rested squarely on the Applicant. It is trite law that he who asserts must prove.

On this he referred the court to section 131 to 133 of the Evidence Act 2011.

It is therefore the submission of the learned counsel to the 1st -3rd Respondent that throughout the affidavit evidence of the Applicant, there is nothing to show that the Respondent actually breached or is about to breach the applicant's Fundamental Human Rights without justification.

That going through the petition, there is an allegation of issuance of Dud cheque and endurance fee fraud, attached (exhibit NPF1). That the applicant alleged that she was detained for three hours on this he stated that they did not see such even if it is true breached the right of the Defendant. On this he submitted that Respondents are officers and men of the NPF, a statutory organization saddled with constitutional power to investigate, arrest, detain offender where necessary, protection of lives and properties and prosecution of offenders. Referred to section 214, 215 and 216 of the CFRN 1999 (as amended) and section 4 of the police Act 2020 and the case of Fawehemi V IGP (2007) 7 NWLR (part 665) CA 48/page 504 Aderemi JSC held thus:

Under the provision of section 4 of the police Act, the police have Inter alia, the duty to detect crime. In the performance of that all- important duty, the police in trying to discover whether, or by whom an offence has been committed, is entitled to question any person, whether suspected or not from whom he thinks that useful information may be obtained. That very act of the Police is called investigation. As I said, in the exercise of the power conferred on him under section 4, of the police Act, the police are entitled to question”

Submitted that, based on the above, contention that Applicant’s Fundamental Human Rights have not been breached by any of the Respondent.

Furthermore, that there was a valid criminal allegation that caused 1st -3rd Respondent to invite the Applicant and he was allowed to go”

That he invited the Applicant to Wuse zone3 police station after they allowed her to go, she failed to appear again before the police and has fragrantly refused to honour the police invitation served on her and has been hiding to prevent the execution of arrest warrant against her.

He referred the court to the case of Gbajor V Ogunboregui (1961) 1 ALL NLR 853, FCMB V Ette (2008) 22 CRN 1 referred to CP 536 paragraph A-C, Ona V Okenwa (2010) 7 NWLR (Part1194) 512, where it was held that the power conferred on the police under the police Act includes

- 1. Investigation**
- 2. Arrest**
- 3. Interrogation**
- 4. Search and**
- 5. Detention of suspect,**

On this he submitsthat, this suit is not statutorily immune from Criminal Investigation and prosecution. On this he referred the court to section 308 of 1999 CFRN 1999 (as amended).

The learned Counsel to the 1st -3rd Respondents further submitsthat, it is settled law that this court lacks the legal power to stop the Nigerian police force from performing their statutory duty especially where there is no manifest breach of the law or the breach of the fundamental Rights of an individual.

Further that the allegation against the applicant is not a civil/matter but a criminal Act which the Nigeria Police is competent to investigate and the Applicant was not

Detained beyond a statutory period granted by the constitution and therefore cannot be heard to complain that his right has been breached. That for certainty and clarity, the allegation against the Applicant is criminal in nature and there is a reasonable suspicions of crime and it is not a civil contract. That by section 320 of the penal code the offence of cheating was defined as whoever by deceiving any person.

- 1. Fraudulently or disheartening induces the person or to consent that any person shall retain any property or**
- 2. Intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and which acts or omission causes or is likely to cause damage or harm to that person in body, mind reputation or property.**

The learned counsel further argued that it's a wrong proposition founded on invalid premise for the Applicant counsel to contained that the allegation against the Applicant is a civil contract considering the above definition of cheating.

It is his submission that there is valid criminal allegation against the Applicant that warranted her arrest haven conspired with others and defrauded the nominal complainant her hard earned money and since then refused to report back to the police or honour an invitation from the police.

Finally submitted that this court lacks the Jurisdiction to grant reliefs 5 and 6 sought by the Applicant and urge this court to dismiss the Applicant application or in alternative, strike it out for lacking in merit, premature and frivolous and the court to award exemplarycost against the Applicant in favour of the Respondent, to serve as deterrence for this frivolous suit and order her to submit herself to the law enforcement agencies for investigation.

I have carefully gone through the submissions of the learned counsel to the Applicant, the reliefs sought therein in 1-7 and the grounds upon which the reliefs are sought a-I and the facts supporting the grounds 1-18 and the affidavit in support of the Application 1-16 and the written address in support of the Application introducing/summary of facts, where in the written address, the learned counsel to the Applicant formulated three issues for determination to wit.

- 1. “Whether the false imprisonment, arrest and threat to re-arrest and detain the Applicant by the Respondent over a purely civil transaction without any reasonable or probable cause does not constitute a breach of the Applicant’s Fundamental Rights as guaranteed by section 34, 35, 46(1) of the CFN 1999 as amended.**
- 2. Whether damages (including punitive and exemplary damages) cannot be awarded by the court for a breach of fundamental Rights.**

The 1st–13 paragraph in response filed a 13 paragraph counter affidavit and annexed exhibits NPF1 -NPF3 and a written address wherein the written address formulated a lone issue for determination to wit:

“Whether the Applicant has proved a breach of fundamental Human Rights to entitle her to the reliefs sought.

The 4th Respondent also filed a counter affidavit of 5 paragraphs and annexed exhibits marked A and a written address, wherein the written address formulated two issues for determination to wit.

- 1. Whether the Applicant has made out a case entitling her to the reliefs sought**
- 2. Whether the Nigeria Police force can be prevented from carrying out their statutory duties.**

A careful perusal of the issues so formulated, I will adopt issues 1 of the 1st-3rd Respondent and issue 1 of the 4th Respondent as one single issue. While issue 2 of the 4th Respondent will be discussed separately hence I shall in all this suit based on three issues.

On the first issue to be discussed is.

“Whether the Nigerian Police can be prevented from carrying out their statutory duties.

On this it is the submission of the 4th Respondent that a court of law does not have the competence to protect a criminal or prevent Nigerian police from carrying out her constitutional roles as statutorily provided under section 4 of the NPF Act 2020 on this referred SMH court to whip case of IGP Obah (2015) 11 NWLR (Pt.1471) 405. Where the court of Appeal held

“It is the duty of the Police to investigate Criminal allegation against citizens. The court cannot stop the Police from performing the statutory functions. If there is

evidence of an infringement of any of the Fundamental Rights of a party, the situation can be remedied, but not by stopping police investigation.

Also in the case of *Iber V Ajise* (2020) 10 NWLR Pt. 1731. The court held as follows.

It is the duty of citizens of Nigeria to report cases of commission of crime to the police for their investigation and what happens after such report is entirely the responsibility of the police. The citizens cannot be held culpable for doing their civil duty unless it is shown that it is done malafide. The condition that it should not be done malafide shows that the citizens right in performing their civic responsibility has a caveat to observe.

On this he submits that, this Hon. Court cannot prevent Nigeria Police from doing their statutory duties as provided under section 4 of the police Act.2020.

So also, it is the submission of the learned counsel to the 1st -3rd Respondent that an Applicant who alleges that his fundamental Human Rights was unduly breached has the duty/onus to establish that his fundamental Rights was actually breached or is about to be breached without any justification or reasonable suspicion that he has committed any offence or about to commit an offence. See the case of *Fajemirokun V Commercial Bank* (2009) 2 MJSC (Pt.11) 114 at 140 paragraph C where Mohammed JSC held thus:

“From the claim of the Applicant at the trial court the duty to establish that his fundamental right was breached rested squarely on the Applicant. It is trite law that he who asserts must prove. Section 131 to 133 of the EA. 2011.

The learned counsel in response to the above issue submitted that the Nigerian courts are not bazaar or a charitable organization where the crafty and the clever will make wild claims not subject to disagree policy.

He further submitted that the Respondents are officers and men of the Nigeria Police force a statutory organization saddled with constitutional power to investigate, arrest, detain offender where necessary, protection of lives and properties and prosecution of offenders. He referred to section 214 and 215 and 216 of the CFN 1999 as amended and section 4 of the police Act 2020 and the case of *Fawehemi V IGP* (2007) 7NWLR (Pt.665) CA. 481 particularly pg. 504 *Aderemi JSC* held thus:

“under the provision of section 4 of the police Act, the police detect Crime in the performance of that all-important duty, the police in trying to discover whether or by whom an offence has been committed is entitled to question any person, whether suspected or not from whom, he thinks that useful information may be obtained. That very act of the police is called investigation. As I said in the exercise of the power conferred on him under section 4 of the police are entitled to question.

Furthermore, submitted that there was a valid criminal allegation that caused the 1st-3rd Respondent to invite the Applicant and she was allowed to go granted immediately, but the applicant has failed to appear again before the police and she was flagrantly refused to honour the police invitation served on her and she has been hiding to prevent the execution of arrest warrant against her.

See the case of Gbajor V Ogunboregui (1961) 1 ALL NLR 853, FCMB V Ete(2008) 22 WRN1referred to (pg. 536 paragraph A-C, On a V Okenwa (2010) 7NWLR (Part.1194) 512 where it was held that the power conferred on the police under the police Act includes investigation, arrest, interrogation, search and detention of suspect.

The learned Counsel to the 1st-3rd Respondents further submitted that it is trite law that no citizen's freedom or liberty is absolute. That if there is any reasonable suspicion that a person has committed an offence, his liberty may be impaired temporarily in the same vein, a person's liberty may be tampered with so as to prevent him from committing an offence. See Ekwenugo V FRN (2001) 6 NWLR (Pt.208) at 185, also DokuboAsari V FRN(207) 12 NWLR (PT. 1048) 320 pg. 633 paragraph A-C on this he submitted that this suit is mischievous since Applicant is not statutorily immune from Criminal Investigation and prosecution Reference to section 308 of the 1999 CFN 1999 as amended).

Furthermore, he submitted that this court lacks the legal power to stop the Nigerian Police Force from performing their statutory duty especially where there is no manifest breach of the law or the breach of the Fundamental Right of an individual has been established

The applicant counsel on the supporting grounds paragraph 9, 10, 11, 12, 13, 14, & 15, 16 which is reproduced below

Paragraph 9.

“The Applicant states that she borrowed money from the 3rd Respondent sometimes in 2022 as a money tender and consequently upon this, the 3rd Respondent gave her loan of Ten Million which loan she paid back within the agreement time

Paragraph 10

The Applicant states that having concluded this first loan transaction the 4th Respondent gave her another loan of Ten Million (N10,000,000.00) which loan the also agreed to pay back within a space of six months.

Paragraph 11

The Applicant states that part of the condition for the loan to be given is the presentation of a signed blank postdated cheque which the Applicant fulfilled.

Paragraph 12

The Applicant states that she paid Two Million Naira Two Hundred Thousand Naira (N2,200,000.00) to the 3rd Respondent in June, 2022 but because the business did not go as planned in July 2022, as result of which the default payment for two weeks, the 3rd Respondent threatened to criminalized the civil/case and that the Applicant informed the 3rd Respondent not to file and present the chequebut all pleas fall on deaf ear.

Paragraph 13

Applicant states that she has been servicing the loan but because the Applicant default for two weeks due to some circumstance beyond her control, the 3rd and 4th Respondent threatened to crimize the civil case by involving the 1st and 2nd Respondent who succumbed to the pressure and stapped in the inviting the Applicant. paragraph 10, 11, 12, & 13 as stated above.

The question then is can the failure to pay the loan as agreed amount to the Applicant’s breach of fundamental Rights as Claimed by the 1st -4th Respondent in this instant case.

In answering this question, I will first of all state that there is no court in this country that can stop the law enforcement agencies from performing their lawful duties provided that they acted in good faith and in accordance to the provision of section 4 of the police Act, CFN 1999 as amended.

The question is that can the none fulfillment of the Payment of the loan agreement amount to a criminal case that will warrant the police the 1st and 2nd Respondent to invite the Applicant for investigation. The question was partially answered by the Applicant's counsel wherein it's written address he submitted that the Respondent herein have not followed the procedure permitted by law in the instant case.

That the Respondent has not acted according to the letters and intent of the provision of section 35 of the 1999 CFN as amended

On this, posits the question that what makes a detention lawful?

In answering this question, the learned Counsel submitted that a detention is lawful if and only if it is done in consequences of a valid court order or upon reasonable suspicion that the person detained has committed a criminal offence. That any detention which is not based on any of these two groups is illegal and unconstitutional.

That it is immaterial the length of the detention. See UBN V Ajagu (1990) 1 NWLR (PT. 126) 328 where the court held the Defendant liable for a detention that lasted only 45 minutes.

On this he submitted that, the arrest of the Applicant and threat to re-arrest and detain the Applicant by the Respondent without any reasonable or probable cause constitute a fragrant violation of the Applicant's Fundamental Rights as guaranteed by section 34 to 46 of the CFN as amended.

On this it is the learned Counsel's submission that it is the duty the police and other agencies of government concerned with the enforcement of the law to ensure and observe the protection of these rights and liberty as guaranteed by the law. See Isenalumhe V Amadi(2001) 1 CFRpg. 461 the court held thus.

“The police have the Responsibility to enhance the quality of the liberty and the dignity of the FRN as guaranteed by the constitution. Where they fail in this task failure must not be allowed to work to the detriment of law- abiding citizens. Their failure must be checked timeously to enhance the principles and

ideals upon which a free society is built. Nigeria is a free country in democracy and air of freedom must be inhaled by the citizens in their unbridled enjoyment of the well-entrenched Fundamental Human Rights.

And the failure of the authorities to follow the due process of law as expounded above by the court entitles the aggrieved person to damages.

The 1st -3rd Respondent in their counter affidavit in of position to the Application paragraph 5 (c) (d) (e) (f) refers

Paragraph 5(c)

That on 03/04/2023, the 4th Respondent wrote on official petition to the office of the Area Commander Maitama for the offence of cheating and issuance of dud cheque after the Applicant refused to resolve the issue with her. Exhibit NPF.

Paragraph 5 (d)

That on 5-04-2023 on official invitation was sent to the Applicant and she sent to the Applicant and she fragrantly refused to honour police invitation exhibit NPF 2 where she acknowledges the letter.

Paragraph 5€ that the commissioner approached a court and an arrest warrant was issued against the Applicant and allegation made to execute it has proved abortive of the Applicant has continued to evade arrest exhibit NPE3- Arrest warrant

That the paragraphs stated above were contrary to the deposition in paragraph 8 of the Applicant affidavit, there was no time the Applicant affidavit, there was no time the Applicant was detained by the police or threatened and forced her to sign any undertaking or forced her to sign any undertaking.

Paragraph 7

That the investigation being carried out by the Applicant in paragraph 8, 9, 10 and 11 of the Applicant affidavit but a criminal offence of issuance of dud cheque contrary to section 1(1) of the dud honourchequeAct (refer the court to exhibit NPF1)

Paragraph 8

That there was no time the Respondent threatened the Applicant to pay any money or sign any undertaking instead it was the Applicant who undertook to go and settle the matter with the 4th Applicant.

Paragraph 9

That the Applicant has come before the court to use the shield of the court from being investigated haven failed and neglected to honour the police invitation and continued to evade police arrest.

I have carefully gone through exhibit NPF3, the arrest warrant being issued by the chief Magistrate one MuinatFolashadeOyekan dated the 04-05-2023 against the Applicant and the offence stated on the Arrest warrant was criminal breach of trust, cheating and issuance of dud cheque. The petition exhibit NPF1 was dated the 30th March, 2023 while the dud cheque that it was said to be subject at investigation was issued on the 28-10-2022 and Zenith Bank Plc cheque.

The Application for enforcement of Fundamental Rights dated 5th August, 2022 and filed the same date.

From the above it seems to me that the Application for the enforcement of Fundamental Rights of the Applicant was filed before the petition was filed to the Area Command Office and before the warrant of arrest was issued by the Magistrate court at Wuse Zone 2.

The question to be answered is how come the petition and the warrant of arrest after the filing of the petition for the enforcement of Fundamental Rights which said was dated the 5th August, 2022 and filed the same dates. This aversion has been answered by the 1st – 4th Respondents, in either they deposed in the affidavit or in their various written address. From the above can it be said that, there was an attempt made by the 1st -3rd Respondent to arrest the Applicant before the Respondent went and secured the arrest warrant?

From a layman's perspective, on investigation supposed to commence after the receipt of exhibit NPF1 and NPF3 and after the filing of the Application for the enforcement of Fundamental Rights of the above have to agree with the Applicant where he stated in it's affidavit paragraph 13, 14, 15 &16, the said paragraph is reproduced here under

Paragraph 13

Applicant states that she has been servicing the loan but because the Applicant defaulted for two weeks due to some circumstance beyond her control, the 3rd and 4th Respondent threatened to criminalized the civil case by involving the 1st and 2nd Respondent who succumbed to the pressure and stepped in by inviting the Applicant.

Paragraph 14

That in view of this, the 1st and 2nd Respondent are already threatening to arrest the Applicant over the civil transaction between the Applicant and the 3rd Respondent when no cheque has been presented and returned as unpaid.

Paragraph 15,

That the Applicant had in good faith told the 3rd Respondent not to present the cheque because if she has the money, she would have paid for July, 2022.

Paragraph 16

That the transaction between the Applicant and the 4th Respondent is purely civil and does not have any criminal element to warrant the involvement of the 1st and 2nd Respondents.

From the above analysis, I hold that the invitation of the Applicant vide exhibit NPF2 by the 1st -2nd Respondent is unlawful and a violation of the Fundamental right of the Applicant personal liberty and a continuous threat, intimidation, harassment, and detaining the Applicant over the loan agreement between the applicant and the 3rd, 4th Respondent. On this he had to agree with the submission of the learned counsel to the Applicant that the transaction between them was purely contractual and patently civil in nature and does not constitute any offence known to law. The Applicant counsel also referred to the speech of the former Director General Security Service in his inaugural address to the officers and men of the Nigerian Police in Lagos where he stated thus:

“once a matter is civil, it is civil. And once a matter is commercial, it is commercial, you must stop criminalizing civil or commercial matters this is one Area I think the CP must look into. The degree of intervention of the police in these transactions should be strictly restricted to alternative Dispute resolution (ADR- Solomon Arase Former DG, Security Service in his maiden Address to the officers and

men of the NPF HQ Ikeja Lagos on the 8th of May, 2015 reported in the Nation Newspaper of 9th May, 2015.

I have agreed with the Applicant counsel on the declaration that the false imprisonment of the Applicant by the 4th Respondent for four hours between the hour of 2.00pm to 6.00pm on the 4th day of July, 2022 in front of Plot 2288 Linda Chalker Street Guzape Abuja by the 3rd and 4th Respondent constitute a violation of the Applicant's Fundamental Right to personal liberty and the dignity of the Human person as guaranteed by sections 34, 35, 36 and 56 (1) of the CFN 1999 as amended and section 6 of the African Charter on Human and People's Right (Ratification and Enforcement Act) LFN 2004.

So I hold

On the 2nd relief, a careful perusal of the inside of this judgement it is clear that the transaction between the Applicant and the 3rd and 4th Respondents are purely civil transactions being transactions of money loan to the Applicant by the 3rd and 4th Respondent and nothing more.

On the 3rd relief sought by the applicant, that the Respondent's mandate to return the postdated cheque the Applicant issued to the 3rd Respondent that the cheque be returned to the Applicant. On this I will say no as this has not been established by the Applicant, as there are disputes as to whether the said cheque issued was under to be presented to the Bank, on a certain dated before it was presented and returned unpaid due to insufficient funds in the account of the Applicant. The Applicant in it's facts supporting the grounds paragraph 11, stated that part of the condition for the loan to be given is a postdated cheque which the Applicant fulfilled, it is also clear that failure of the Applicant to pay in July, 2022 for two weeks could have been the reason of the presentation of the said cheque that was returned for not having sufficient funds. It is also in the affidavit of the Applicant that he told the 3rd Respondent not to present the said cheque but all pleas fell on deaf ear. Also in paragraph 10, of the affidavit that the Applicant had in good faith told the 3rd Respondent not to present the cheque because if she has the money, she would have paid in July, 2022.

From the above it will not be wise for the Respondent to return the cheque as stated in the reliefs. The essence of the cheque given to the Respondent is to an assurance of payment hence to order the Respondent to return the cheque to the Applicant will not work well on the part of the 3rd Respondent.

Hence the relief is hereby refused.

On the issue of order of perpetual injunction restraining the Respondent themselves, their agent's servant, employees or privies or nay person acting through them or on their behalf from further intimidating, harassing, arresting, re-arresting, or detaining the Applicant.

On this after a careful perusal of the claim before this court, it is as I said purely on civil (loan) hence the Respondent are hereby restrained from intimidating, harassing arresting and re-arresting or detaining the applicant over the loan transaction between the Applicant and the 3rd and 4th Respondent.

On the claim of N100,000,000.00 (One Hundred Million Naira only) being general damages against the Respondent for psychological torture and trauma and for a violation of the Applicant Fundamental Right to personal Liberty and the dignity of the human persons guaranteed by section 34, 35, 36, and 41 of the CFN 1999 as amended) in this wish to state that there is nothing put forward to convinced this court to award the sum so stated. Though there was a breach of the Applicant rights but that does not culminate to the award of N100 million as general damages. Hence this head of claim must fail. And it is hereby refused.

As for the claim of N50,0000.00 (Fifty Million, Naira only being punitive and/or exemplary damage against the Respondent for abuse of power and careless disregard for the rule of law.

On this will equally refused same as the action of the Respondent was in respect of the petition by the 3rd and 4th Respondent. Though on civil transaction, between the Applicant the Respondent which transaction failed that resulted to the petition for not complying and because to made the payment for three weeks. Having defaulted raised the issue of the petition written by the 3rd and 4th Respondent to the 1st and 2nd Respondent. Hence the head of claim must also fail as there is nothing for court to act on in awarding the stated sum against the Respondent. It is hereby refused.

On the claim of unreserved public apology from the Respondent, to the Applicant herein, duly published by at least two national dailies. This equally must fail on the action of the Applicant failure to comply with the payment is the failure of the reliefs sought also.

In all, the reliefs claimed by the respondent must fail hence not grantable by this court.

This is my judgement

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Hon. Justice A. Y. Shafa

Note:

None of the counsel nor their client were in court. they are all aware of today's date hence the court will not wait for them.

Hence in the absence of the parties I proceeded with the Judgement.