

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS 12TH DAY OF OCTOBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/1131/2013

BETWEEN:

NSIKAT JAMES UDONTA.....PLAINTIFF/APPLICANT

AND

- 1. COMMISSIONER OF POLICE FCT**
- 2. D. P.O KUBWA POLICE STATION ABUJA**
- 3. PASTOR WILSON AKUBO...DEFENDANTS/RESPONDENTS**

JUDGMENT

This is an originating motion on notice brought pursuant to order 7 rule 1, order 31 rule (1) of the FCT civil procedure rules 2004.

The relief sought in the statement accompany the application as follows:

- 1. An order directing the 3rd Defendant to return the original title document for the two plots in Lugbe-Abuja.**
- 2. An order directing the 1st and 2nd defendant to return all their title documents of their property at Kubwa Abuja to him.**
- 3. An order restraining the 1st and 2nd defendant from further arrest and detention of the plaintiff.**

- 4. A declaration that the purchase of the plot No: A180 & 189- in Lugbe Abuja by the 3rd Defendant from the plaintiff is completed and irrevocable.**
- 5. A claim of Twenty Million Naira (N20,000,000.00) from the Defendants for Illegal arrest and unlawful detention.**
- 6. And 20% yearly interest on the entire judgment sum until the sum is liquidated.**

Accompanying the originating motion on notice is a statement of claim of the plaintiff of 17 paragraphs dated the 19th November, 2013 and the plaintiffs attached thereto.

Upon the service of the originating motion on notice on the Defendants, the 1st & 2nd Defendant acknowledged dated the 25-11-2013 by Legal/prosecution section of Department (CID) FCT. Command Abuja and the third Defendant acknowledged by Family worship Centre Wuye dated the 25 November, 2013.

The 3rd Defendant filed it's memorandum of appearance dated 17th November, 2013 the 3rd Defendant counsel on the 18th April, 2023 filed a motion on notice, for an order of the court granting leave to the 3rd Defendant/Applicant to file and serve a further witness statement on oath and a deeming order. Attached to the motion on notice is the affidavit in support of motion on notice deposed to by James Adams of 5 paragraph and a written address in support of motion on notice of 4 pages and on additional witness, statement on oath of Pastor Wilson Akibo (the 3rd Defendant) of 47 paragraph dated the 18th April, 2023. The motion on notice was served on the claimant acknowledged by one Johnson A of Block 5 Flat 4 Area 2 Abuja dated the 18-04-2023. The motion on Notice was moved dated the 18-04-2023 and the prayers therein was granted.

Before proceeding wish to state that this matter is a transferred matter from former Hon. Justice O. O. Goodluck court by Hon. Justice H. B. Yusuf Chief Judge pursuant to the provision of section 66 (1) of the High court Act CAP 510 laws of the Federation of Nigeria 1990 dated 10th January, 2022 received by this court dated the 17-02-2022.

This matter was mentioned on the 9th June, 2022 parties were absent, but represented by their counsel, E. S. Maji for the 3rd Defendant with J.O. Anetekhai the claimant and the 1st, 2nd Defendants were absent. The Defendant counsel informed the court that he was aware that 1st and 2nd Defendants have

been served but the claimant has not been served. In the circumstance a new date was taken to 16-16-2022.

On the 16-06-2022 parties were absent. J.O. Anetekhai representing the 3rd Defendant was in court and Johnson Ahoruonye for the claimant was also in court. This he stated that the Defendants are yet be served i.e. the 1st & 2nd Defendants, he then applied for another date. This matter was adjourned to 30-06-2022 for report of service.

On the 30th-06-2022 parties were absent. Johnson Ahuruonye and E. S. Maji were in court for the claimant and the 3rd Defendant respectively. This the claimant counsel informed the court that the matter is stated for further mention and that the 1st & 2nd Defendant have been dully served and appliedfor a date for hearing. This the Defendant counsel did not object to and the matter was adjourned to 15th September, 2022 for hearing with an order to effect service on the 1st & 2nd Defendant and on the 26-10-2023 the matter came up for hearing. Both parties were absent and the matter was adjourned to 24th November, 2023.

On the 24-11-2022 parties were absent. Johnson Ahuruonye and J. O. Anetekhai represent the claimant and the 3rd Defendants respectively, the claimant counsel informed this court that they were constrained as this matter is a transfer matter to this court, and the file was transferred the exhibits were not transferred to this court.

Inview of the above he urged the court to grant them an adjournment. This the 3rd Defendant counsel did not object to, the matter was adjourned to 7th day of February, 2023 with an order that the 1st and 2nd Defendant be served with hearing.

Notice before the date fixed for hearing. On the 7th February, 2023 parties were absent, J.O.Abalakhai and Johnson Ahurunye appears for the claimant and the 3rd Respondent respectively. The claimant counsel informed the court that today's date is slated for hearing and applied to the court to take or put his first witness in court.

This the 3rd defendant counsel did not object, the claimant counsel who told the court that the 1st and 2nd defendants have not been served and applied for another date to effect service of hearing notice on the 1st and 2nd defendant. This matter was again adjourned to 7-3-2023 for hearing with an order that the 1st and 2nd defendant be served with hearing notice.

On the 7th day of March, 2023 parties were in court together with their legal representatives. The claimant counsel informed the court that today's date is slated for hearing and the 1st and 2nd defendant are all aware of today's date via

hearing notice served on them dated the 28/2/2023, and therefore prayed the court to proceed with the hearing. This the 3rd defendant did not object the matter proceeded to hearing in the absence of the 1st and 2nd defendants who were aware of today's date.

The court summarising the evidence of the claimant witness PW1 thus:

One Nsikat James Udonta of block 25 flat 2 phase II site 1 Kubwa-Kwali Street- Abuja a retiree civil servant.

That on the 19th November, 2013 and on the 1st 02 -2016 he deposed to witness testimony on oath, which he identified by his signature and urged the court to adopt same i.e. witness statement on oath as his evidence before this court.

Both counsel informed the court that they have settled all the document in this case hence applied to tendered them in evidence, this the 3rd defendant counsel did not object.

The following documents having been settled by the counsels were tendered and admitted in evidence. The documents are as follows.

1. An acknowledgment for re-certification of the statutory right of occupancy dated the 24-03-2021 as exhibit A.
2. Conveyance of provisional approval of the customary rights of occupancy dated 15-06-1995 as exhibit B.
3. Conveyance of provisional approval of the customary right of occupancy dated 15-06-1996 as exhibit C
4. Surveyors plan dated 1997 as exhibit D
5. Right of occupancy dated the 16/08/2006 as exhibit E.
6. Right of occupancy dated 29-6-1998 as exhibit E.
7. Zenith Bank teller dated the 2-2- 2011 as exhibit F.
8. Photocopy of AGIS receipt dated the 16-03-2010 as exhibit G
9. Deed of assignment dated 1-3-2010 as exhibit H.
10. Irrevocable power of Attorney dated 1-3-2010 as exhibit J.

He then prayed the court to grant all his reliefs and give him judgment.

Under cross-examination by the defendant counsel as re-produced below.

Q tell the court when plot 8206 was sold to the 3rd defendant.

A Sometimes in the year 2010

Q are you the one that plot 8206 was originally allocated to?

A it was a change of ownership.

Q when you sold plot 8206, the 3rd defendant didn't like it, so you changed it to plot 187 and 189?

A yes it is correct.

Q are you the original allottee of plot 187 and 189?

A all of them were changed. I am not the original allottee.

Q that after changing plot 187 and 189, the 3rd Defendant came back again that he didn't liked it?

A after the change he didn't come back at that moment.

Q when did he come?

A in the year 2011. That was after a year plus.

Q after two years of given him the land, he said he didn't like it, did he say anything?

A after I gave him the papers, I told him to go and confirm it and he did not come back at that moment to say whether it was okay or not.

He paid in instalment and after the whole confirmation he then gave me the balance of the money.

Q you said he later came back, did he give you reason?

A after a year he told me the he went to build and commence work and the FCDA development control obstructed him.

Q by obstruction what do you mean?

A it might be that he did not acquire the needed approval from the development control office before commencing the work.

Q did the 3rd defendant inform you that the FCDA pulled down the building?

A it is not the building but the fence.

Q did you sign any document of transfer of plot 187 and 189

A yes i signed an agreement

Q what document did you sign

A I couldn't remember there was a power of attorney.

Q the document you signed, was it in respect of plot 187 and 189?

A yes it is.

Q was it with the 3rd defendant

A yes it was with the 3rd defendant.

Q did you tender the power of attorney and the deed of assignment of plot 187 and 189?

A I don't have the copy, it is with the pastor.

Q are you aware that the person you sold plot 187 and 189, to the person who sign as the buyer was not the 3rd defendant?

A I don't know. All what I signed is for the 3rd defendant as he said he was buying it for his brother.

Q did you read the power of attorney and the deed of assignment before you signed it?

A yes I read before signing and saw the names that was written on it.

Q is it the power of attorney and the deed of assignment before you signed it?

A yes I read before signing and saw the names that was written on it.

Q is it the power of attorney you signed in respect of plot 187 and 189?

A yes

Q whose name is written on it as a donee?

A one Col. Michael and Sule.

Q is that the 3rd defendant in this suit?

A I don't know him as it is the 3rd defendant I know.

The power of attorney between Udonta James Nsikat donor and Lt. Col Michael Sule Davis (RTD) donee dated 19-10-2020 prepared by Timothy Amana Achimisois admitted in evidence as exhibit J.

Q how much did you sell plot 187 and 189?

A it is the same amount and they were sold for N2.8 Million.

Q are the two plots the same size.

A they are two in one.

- Q have you ever made an undertaking to refund the money to the 3rd defendant?
- A I didn't want to, but was forced to make a refund by the police.
- Q when did the police invited you?
- A they didn't invite me but invaded my house at night
- Q what year
- A between 2011
- Q reference to paragraph 11 of your statement of claim? Read.
- A that the 1st arrest was 2011 through one of the lawyer.
- Q what was the reason of the arrest?
- A they had wanted me to release my house at Kubwa to them, but I refused and I told them that this is my only property I had.
- Q reference to the undertaken- Read. Is that your signature on the document?
- A yes, because I was force by the police to sign the document.
- The undertaken dated the 18/4/2011 between Udente James Nsikat and Pastor Nelson Akabo for plot 187 and 189 was admitted as exhibit K.
- Q you told the court that the police arrested you in 2011 and 2013?
- A the police have never invited me but only came to arrest me in the year 2013.
- Q was the arrest because of the said undertaken?
- A yes, I was arrested for that.
- Q reference to Exhibit E & E1. Tell the court the names of the allottee in that document.
- A the name of the allottee is one Alh. AbdulazizSadiq and was changed to Pastor Atebte Wilson Akumo.
- Q who did the change?
- A at zonal land office at AMAC.
- Q who applied for the change?
- A it is the buyer that applied for the change

Q what date is on exhibit K

A 16-08-2006

Q you told the court that you sold the 1st land to the 3rd Defendant sometime in 2010?

A will I be correct that going by exhibit E you are not telling the court the truth?

A I am saying the truth.

Q do you remember the reason why the 3rd defendant returned this land was because the land was not in existence.

A I am not aware of that.

Q did you ever made a refund to the 3rd defendant?

A I have made a refund to N500,000.00.

Q what made you to make the refund.

A I asked him to return the papers of the land to Lugbe.

Q was it because the land is not in existence that you made the refund?

A No sir, as he had done all the research before the payment

Q in your witness deposition you bought the land in Lugbe and Kubwa plot 187 and 189 that you have asked the 3rd defendant to return the documents.

A I told him to return that of Lugbe since he didn't pay for it.

Q do you have any evidence to that effect?

A what we did was verbal and not written

Q while you were arrested in 2013 did you made an undertaken at Kubwa police station.

A yes I made undertaken.

Q did you know where the original undertaken is.

A I can't say for now

The letter of undertaking written by Godwin S. Udonte addressed to DPO Kubwa dated the 21-4-2013 admitted in evidence as exhibit L.

Q have you refund the money?

A only gave him N500,000.00 of that Lugbe only.

Q I will be correct that because he has not return the 3 million that is why you have not returned the original?

A it is not correct.

No re-examination.

The claimant then closes it's case and the matter adjourned to 18-04-2023 for defence.

On the 18-04-2023 the defence opened his case and DW1 testified as follows:

One pastor Wilson Akubo lived at Wuye District Abuja Plot 1090 Anthony Ozodonbi street with family ministry international family worship centre of plot 648 Idris Gidado way Wuye.

That he deposed to the witness statement on oath and he identified same through his signature and his photography, he adopted same as it's oral evidence/testimony before the court. The witness identified exhibit. A-L tendered before the court, as stated that the documents are in connection with the transaction between him and the claimant, and wish to place reliance on all the exhibit A-L and pray the court to dismiss the claim of the claimant and uphold his counter claim.

Under cross-examination by the claimant counsel:

Q the plots you purchased from the claimant, tell the court any form of due diligence before you purchased same.

A because of the relationship with the claimant, I didn't do any due diligence and believing that he was a genius man of God like us and believed that he was a fellow minister and a reliable person who has helped charities to get genuine land. That after he was introduced to him he invited me to his home and met with his family and because of all these I do not do any due diligent. As he deals with him base on trust.

Q reference to paragraph 4 of the witness statement on oath, you said in 2020 you transacted to sell the property in Kubwa to Col Micheal Davis

A yes you are correct

Q did the said Col. Michael Conduct due diligence.

A he did not do any due diligent as he trusted me also.

Q reference to paragraph 16 that Col was told that the land on the plot did not exist?

A yes

Q were you present with him when the search was conducted?

A No I wasn't present

Q the report from the land registry of the plot of land, is it before the court?

A I am not sure if it is before the court

Q reference to paragraph 18, that you purchase the plot at N250,000.00 each

A yes it is correct with extra N100,000.00 each for certification.

Q will I be correct to say that the title document still at your custody?

A the original that turned out to be fake are still in my possession.

I intend to return them as soon as I am paid.

Q you informed the court that the fence was demolished by development control?

A yes that is correct.

Q could you tell the court if Col. Davies Obtain approval from the relevant agencies before he created the fence.

A I am not sure what was the requirement for the creation of fence, but I'm sure he did due diligent before erecting the fence.

Q all the plots you purchase, Kubwa and 2 plot at Lugbe tell the court the identity if there was any of the third parties claiming title to those plots.

A I have no idea of any 3rd party.

Q you said when you reported the claimant to the 1st and 2nd defendant and that what they did was to carry out their constitutional authority?

A yes you are correct, I but reported to the constitutional authority.

Q will also be correct to say that the claimant was arrested by the 1st and 2nd defendant?

A I don't know but was called to come and lead them to their house which I did and he were invited to the station to write statement which he did.

Q meaning that you were present when the police accosted the claimant?

A yes I was together with the police when the both went to kubwa police station.

Q you informed the court that you reported the matter to the 1st and 2nd defendant before carrying on their constitutional duties to investigate?

A yes I did.

Q the report of the investigation by the 1st and 2nd defendant showing that the plot sold to you was indeed non-existence? Is the report before the court?

A I did not know anything of the report.

Q you also informed the court that the claimant made a refund to you in the sum of N500,000.00?

A that is correct.

Q and that refund is in respect to the plot in Lugbe?

A yes the two plots in Kubwa without the extra N200,000.00 for the certification.

No re-examination

The defence then closed its case and the matter was adjourned to 14-06-2023 for adoption of final written address.

On the 14-06-2023 parties adopted their final written address, but the defendant (3rd) adopted his final written address moved a motion with No: GAR/810/2023 dated 26-05-2023, seeking for extension of time dated 26-05-2023, seeking for extension of time within which the 3rd defendant may file and served its final written address and a deeming order. The motion was moved and granted.

The 3rd defendant in moving its final written address, adopted same as their oral argument and urged the court to dismiss the claim of the claimant and grant their relief of counter claim of the 3rd defendant.

On the reply on points of law of the final written address of the claimant filed & dated the 14-6-2023, they adopted the same reply on point of law as their further argument on the issue on point of law canvassed by the plaintiff and urged the court to grant the reliefs of the 3rd defendant/counter claimant and dismissed the case of the plaintiff/Claimant.

The claimant counsel's final written address was filed and dated 1-06-2023, he adopted and urged this court to enter judgment in infavour of the claimant and grant their reliefs.

The matter was then adjourned to 12-10-2023 for judgment and an order to serve the 1st and 2nd defendants hearing notices was made.

The 3rd defendant in it's final written address dated 26th May, 2023 formulated two issues for the court's determination to wit:

- i. **Whether the plaintiff has sufficiently proved the tort of false imprisonment or unlawful detention?**
- ii. **Whether there was a breach of contract by the plaintiff entitling the 3rd defendant to refund of the purchase sum and damages.**

The plaintiff on it's side filed their final written address dated the 1st June, 2023 and formulated two issues for determination to wit.

- i. **Whether the plaintiff is bound in law to refund the purchase price of plot No: A187 & A189 Kubwa to the 3rd defendant after the contract has been fully executed completed and concluded?**
- ii. **Whether the arrest and detention of the claimant was lawful?**
- iii. **Whether from the evidence before the court, the 3rd defendant is entitled to the reliefs in his counter claim.**

From a careful perusal of the issues so formulated, it is clear that issue 1 & 2 of both the 3rd defendant and the claimant rests on the same issue I adopt the said issues as mine,

In view of the foregoing, this judgement will be based on three issues as formulated by the claimant counsel.

On the issue as to whether the arrest and detention of the plaintiff/claimant was lawful.

On this it is the submission of the learned counsel to the 3rd Defendant that there has been no case of false imprisonment. That the claimant in this suit has completely failed to adduce enough credible and/or sufficient evidence to show that the 3rd defendant is indeed liable in the tort of false imprisonment alleged by the claimant. On this he cited the case of Zenith International Bank Ltd V Alobu imprisonment is defined as follows:

“false imprisonment involves the unlawful and unjustifiable restrain to of a person's right and liberty to move about freely. The tort of false imprisonment consists of threats of arrest and detention or complaint or information received in the course of imprisonment of a plaintiff without lawful justification by the police or other law enforcement agencies on their duties”

Furthermore, submitted that for a case of false imprisonment to arise, the said arrest must have been done unlawfully and without justification and what

amounts to lawful justification was aptly encapsulated in the dictum of the court in *Mainstreet Bank (Nig) Plc V Egwu* (2015) 15 NWLR (Pt. 1482) 336. Pg. 350 paragraph C-D- where the court held

That:

“the act of indicating to the police a person who one suspects to having committed an offence is not itself sufficient to make one liable for false imprisonment or false arrest should the police decide on their own initiative to arrest that person. To succeed in such a claim, the plaintiff must show that the defendant was actual/instrumental in setting the law in motion against him or her”

Also in *FBN Plc V Onukwugha* (2005) 16 NWLR (PART. 950) 120, 139 paragraph A-C.

“----if therefore the reporting party upon suspicious of a felony made a complaint to the police, upon which the police themselves acted on action in false imprisonment cannot be upheld.

On this the learned 3rd defendant counsel submitted that, in the instant case, the 3rd defendants having bought plots of land discovered upon enquiry at the land registry that the lands were infact non-existent. That there is no undoubted conclusion anyone could have possibly reached, which is that he or she has been defrauded. The 3rd defendant has shown at trial, he had been doped by the claimant and rightly reported the matter to the police. On this he submitted that, the complaint made by the 3rd defendant was hinged upon his reasonable suspicions of the commission of an offence which remain the situation from the preview of false imprisonment. It is trite law, that where a person simply makes a complaint to the police who then proceeds to investigate and arrest a suspect, such a complainant would not be liable in the tort of false imprisonment see *Zenith International Bank Ltd V Alobo* (supra) and *FBN Plc V Onukwughe* (supra) at page.139 Paragraph A-C the court held that in order for a plaintiff to succeed in an action for false imprisonment;

“the plaintiff must establish that the defendant was instrumental in setting the law in motion passing an information to the police is not enough. The police are a nominal party as they act upon the invitation of or an information. Made by some person. If therefore, the reporting party upon suspicion of a felony made a complaint to the police, upon which the police themselves acted, an action on false imprisonment cannot be upheld.

He submitted that, from the above, the act of the 3rd defendant reporting to the police what he reasonably believes to be a case of obtaining by false pretence a fraud, cannot be said at law to be an act which can found as an action in the tort of false imprisonment. And that the contention of the claimant that the matter was purely civil in nature is misconceived and erroneous as certain facts can give birth to a civil/action as well as a criminal action and that the instant case at hand is a very readily and example. Urge the court to so hold.

The claimant counsel in respect of the above submitted and referred to paragraph 11, 12, 13, 14, 15, 16 & 17 of his witness statement on oath to the effect that he was arrested and detained for three (3) days by the 1st & 2nd defendant on the instructions and instigation of the 3rd defendant. That the claimant testified in paragraph 17 that he was tortured by the 1st & 2nd defendant while he was in their custody. He drew the attention of the court to paragraph 22 of the 3rd defendant's amended statement of defence, where the 3rd defendant pleaded the claimant's bail document, but same was not tendered.

On this he submitted that, the reluctance of the 3rd defendant to tender same was because the date on the bail bond and that of the undertaking (Exhibit K) would show that the claimant was only granted bail when he was forced to sign the undertaking. In relation to exhibit K, submitted that the police is not a debt recovery agency and as such cannot compel the complainants to make such undertaking as same was made under duress. See *Kure V COP* (2000) 9 NWLR (part. 1729) 326 paragraph B-C per Abba Aji JSC

“by virtue of section 4 of the police Act Cap P19 LFN 2004, the primary duty of the police is prevention of crime investigation and detection of crime and the prosecution of officers. The police are not debt recovery agents and has no business to dabble into contractual disputes between parties arising from purely civil transaction.

And in *A. C. (O.A.O) Nig Ltd V Umanah JCA* held:

“a civil arrangement is not a matter for the police the police are not a debt collecting organisation. In any community of civilised people, the police are not and should not be used as debt or levy collectors or in the resolution of settlements of civil disputes among people. In the instant case, there was no doubt that the respondent was falsely imprisoned and the vehicle illegally detained. It was therefore apparent that the detention of the respondent and the seizure of the vehicle by the police were illegal acts.

Also in IbeAjise (2020) 10 NWLR (part. 123) p. 2930 paragraph F-A Abundaga JCA held:

“for an arrest and detention to be lawful, it must be based on reasonable suspicions. In considering whether an arrest is illegal unconstitutional and a violation of an application related to liberty and dignity of his person, the court is only concerned with whether or not from the facts deposed to in the affidavit or counter affidavit before the court, there was reasonable suspicion that the Applicant had committed a criminal offence at the time he was arrested and detained. Once there is evidence of arrest and detention of the plaintiff, it is for the defendant who is the arresting person to show that the arrest and detention was lawful. Failure to do so will entitle the plaintiff to succeed and to get damages”

The plaintiff counsel submitted that the evidence before the court, it is evident that the transaction between the claimant and the 3rd defendant was purely civil in nature.

Furthermore, that the 3rd defendant at page 39 of his additional witness statement on oath, stated that he took the 1st and 2nd defendants to the claimant house. This proof that the 3rd defendant knew and the invitation of the 1st and 2nd defendants into civil suit was ultra-vires. Therefore, I hold that the defendant have failed to place before the court any material evidence to warrant the arrest and detention of the claimant on this the learned counsel referred the court to the case of UAC Nig. Plc V Sobodu (2007) 6 NWLR (PRT. 394) Paragraph F-G Per Garba JCA. Held:

“false imprisonment involves the unlawful, illegal and unjustifiable restrained of a person’s right and liberty to move about freely. In cases that usually end up in the court, the wrong of false imprisonment consists of act of arrest and detention or imprisonment of plaintiff without lawful justification by the police or the other law enforcement agencies on complaints or injunction deceived in cause of their duties.

Submitted in view of the above that the defendants have failed to justifying by any credible evidence the arrest and detention of the claimant and urged the court to so hold.

Having considered the evidence adduced by the plaintiff along with the 3rd defendant as well as all the documents admitted by the court for both parties, the issue before the court to resolve is to whether the arrest and detention of the claimant, was justifiable at this circumstance. In the instant case, it is the duly of

the claimant to established that his fundamental right has been breached by placing credible and cogent evidence before the court. It is the law that the burden of proof is on the claimant who has alleged breach of his fundamental rights and same can be proved and established by cogent or credible evidence section 131-133 of the evidence Act.

The claimant has asked the court to declare the purported order to arrest, detention on the request of the 1st and 2nd defendant or their agents as violating the claimant's fundamental human rights, to dignity of human person.

However, section 4 of the police Act Cap P 19 LFN 2004 only specifies the powers and duties of the 1st and 2nd defendants thus:

“the police shall be employed for the prevention and detention of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and still perform such military duties within or outside Nigerian as required of them by or under the authority of this or any other Act”

The above provisions of the above act has been judicially interpreted to exclude debt recovery. In Kure V C.O P Per F.G. where the court held as follows:

On whether breach of agreement by a person is an offence and can result in criminal charge”

There is no known law where a breach of an agreement between two parties which has no element of criminality can result in a criminal charge and subsequently conviction. At best it can be a breach of contractual relationship which the criminal law lacks the legal capacity or competence to enforce and punish.

In this instant case, the plaintiff offered to sell to the 3rd defendant a plot of land in Kubwa, which the 3rd defendant turned out not to like after seeing same. The plaintiff offered the 3rd defendant a different plot at another location which the 3rd defendant liked and for which the 3rd defendant paid the sum of N3,000,000.00 (Three Million Naira only to the plaintiff on behalf of his younger brother.

After the 3rd defendant paid the plaintiff for the purported plot A206, Kubwa Abuja, it was agreed that the allocation be changed to the defendant's brother's name. the 3rd defendant has no reason to doubt the integrity of the plaintiff, especially since he was also a church worker who was dealing with a pastor and the plot were in the name of the plaintiff. On the basis of the above, the

3rd defendant purchase additional 2(two) plots for N250,000.00 each at Lugbe from the plaintiff, he gave a further N200,000.00 split into two each to carry out the process of re-certification on his behalf. The 3rd defendant did not see any need to carry out a search on any of the plots because of the relationship that had developed between them.

In 2020, the 3rd defendant attempted to sell the plot in Kubwa to one Col. Michael Davis (Rtd) and because the sale of the plot in Kubwa has not been perfected, the 3rd defendant directed the plaintiff to do a direct transfer of the plot in Kubwa to Col. Michael Davis (Rtd) which he did through power of attorney. After the sale, the Col. Erected a six fence on the plot. The said fence was demolished by the development control unit of the FCDA. This prompted the 3rd defendant to make refund to Col. Michael Davis (Rtd) the purchase price and decided to carry out a search at the AMAC land Registry in Kubwa, where he was told verbally that the plot did not exist, also the land situated at Lugbe were also not in existence.

The plaintiff who made a refund of N500,000.00 out of N700,000.00 being the payment for the two plots and re-certifiacte of the said land in Lugbe. The 3rd defendant then reported the matter to the 1st and 2nd defendant as he was convinced that the plaintiff had no land to sell in the first place and never had any intention to return his money. The plaintiff was then called for questioning at the police station where he admitted his fraudulent act and pledged to payback within one month and deposited his land documents a sign of seriousness and commitment to repaying the sum he took from the 3rd defendant.

From the above, can there be any breach of fundamental right of the plaintiff? I will answer in the affirmative. The above facts which were not disputed nor can it be said that the plaintiff was arrested and detained on the allegation of fraudulent dealings, as his arrest and detention was predicated on his failure to repay the balance of the two plots of land where he made a deposit of N500,000.00 to the 3rd Respondent.

The plaintiff counsel on this submitted that the 1st and 2nd defendant deciding to engage in such conduct is despicable and outside the statutory duties of the police in *Nnoruga& Ors V Enidwo (2015) LPELR-24275 Abiriyi JSC* held as follows:

“as I have stated above, no law in this country gives the police the power to dabble into purely civil transaction between parties”

This decision is intended with section 8 (2) of the ACJA 2015 which provide thus:

“a suspect shall not be arrested merely on civil wrong or breach of contract”

the dictum of the court of appeal make it explicit that the police in performing it's duties under Section 4 of the police Act are entitled to question any person whether suspected or not, in connection with the complaint which they are investigating. See *Omoniye V Mr Isaac Akinyede & 3 ors* FHC/EN/M/174/10 unreported where his lordship held that.

“the police are duty bound to investigate any crime reported and that anybody right can be curtailed for the purpose of investigation.

I therefore hold that the 1st and 2nd respondents have the statutory powers to question anybody in the process of investigation and if need be arrest detain if by so doing it will shed more light on the allegation being investigated by virtue of the above the 1st and 2nd respondent has only invited the plaintiff to give statement on the allegations levelled against him in the petition. In view of the above. I shall resolve the first issue in favour of the 3rd respondent. so I hold. That is the plaintiff is bound to refund purchase price of plots No A187 and 189 Kubwa to the 3rd defendant as the contract has not been concluded even though it was executed. Therefore, hold that issue 1 & 2 of the plaintiff. Is thereby resolved in favour of the 3rd defendant.

On relief C as to whether the evidence before the court, the 3rd defendant is entitled to the relief in his counter claim.

The 3rd defendant's claims for counter claim are as follows:

- 1. The sum of N3,200,000.00 (Three Million, Two Hundred Thousand naira only) being the monies owed the 3rd defendant/counter claimant by the claimant/ Defendant to counter claim with respect to plots in Lugbe and Kubwa in the sum of N700,000.00 (Two Hundred Thousand Naira respectively.**
- 2. 10% of the said sum monthly from the 1st March 2010 till the date Judgment is delivered in this suit and 10% of the sum after judgment is delivered until the full satisfaction of the judgment sum.**
- 3. N5,000,000.00 as general damages.**
- 4. The cost of action.**

The defendant in proof of it's counter claim and reference to it's additional witness statement on oath paragraph 8-20 reproduce below:

Paragraph 8

“that sometimes in the year 2010 in the course of scouting for a plot, I was introduced to the claimant by a mutual friend and the claimant offered to sell to me a plot of land in Kubwa, which I turned out not to live after seeing same. The claimant offered me a different plot at another location which I liked and for which I paid the sum of N3,000,000.00 (Three Million Naira Only) to the claimant on behalf of my junior brother.

Paragraph 9

That the claimant was introduced to me by my mutual friend as a church worker, who has been responsible for buying lands for the Dunamis International Gospel Church being a minister of the Gospel, i Trusted the claimant and did not bother to conduct any search as I was relying on the word of another Christian, seeing also as the land was in the name of the claimant

Paragraph 10

That I paid the claimant for the purported plot A206, Kubwa Abuja, and it was agreed that the allocation be changed to my brother’s name.

Paragraph 11

That the demand for new plot was before money exchanged hands and the said demand was based on my dislike for the location of the plot.

Paragraph 12

That I only accepted the new plots and no reason to doubt the integrity of the claimant, especially since he was a pastor, beside the plots were in the name of the claimant. I relied on the integrity and expertise of the claimant and saw no reason to conduct a search at AMAC the zone AGIS at the same time.

Paragraph 13

That based on the relationship that existed between us, at the time, to wit: the claimant introduced me to his wife at one time and his son, and invited me to the house regularly, I agreed to purchase two additional plots for N250,000.000 each. Split into process of re-certification on his behalf that I did not see any need to carry out a search on any of the plot, because of the relationship that had developed between us.

Paragraph 14.

That sometimes in 2010, I was in need of money to develop one of the plot for my personal use and thus attempted to sell the plot in Kubwa to one Col. Michael Davis (Rtd) because the sale of the plot in Kubwa has not been perfected, I asked the claimant to do direct transfer of the plot in Kubwa to the said Col. Michael Davis (Rtd) which he did.

Paragraph 15

That after the purported sale of the plot to the said Colonel. The Colonel erected a six block fence, on the plot, the said fence was demolished by the development control unit of the F.C.D.A. for trespassing.

Paragraph 16.

That I had to return to Colonel Michael Davis (Rtd) the purchase price, when he carried out a search in the AMAC land Registry in Kubwa where he was told that the plot did not exist.

Paragraph 17

That I notified the claimant of this development and it was agreed that the claimant would refund the full sum paid to me on account of a non-existent plot in Kubwa just like he did with respect to the two non-existent plots in Lugbe to no avail.

Paragraph 18:

That the claimant refunded N500,000.00 (Five Hundred Thousand Naira) only out of the N700,000.00 (Seven Hundred Thousand Naira) given to him for the purchase and re-certification of the two (2) Lugbe plots and no other money whatsoever was paid by the claimants.

Paragraph 19.

That after executing an agreement with the 3rd defendant in 2010, the claimant refused to pay the total sum for both the Lugbe and Kubwa Plots but only paid the sum of N500,000.00 out of N700,000.00 for the two plots in Lugbe and re-certification in 2011, thereafter he started evading the 3rd defendant and avoiding his calls. The claimant changed his numbers and he was never at home. This continued between 2010, to 2013, whereof the 3rd defendant being convinced that the claimant had no land to sell in the first place or any intention to return his money, reported the situation to the office of the 1st and 2nd Defendant who are statutorily empowered to investigate and prosecute Criminal offence whereof they proceeded to carry out their duty.

Paragraph 20

That the claimant never refunded any amount to me other than the N500,000.00 (Five Hundred Thousand Naira only) paid earlier....”

The 3rd defendant counsels in arguing this issue submitted that there existed a valid and binding contract of sale of land between the plaintiff and the 3rd Defendant. That the failure to put the 3rd defendant in possession of the said plot, which he, the 3rd defendant paid good and valid consideration, for amounted to a breach of contract by the plaintiff thus entitling the 3rd defendant, an innocent purchaser, whose only mistake was to deal in trust with the plaintiff, to rescind the contract for sale and demand for restitution/refund of monies paid and compensation of damages suffered. See *Olusoga V Adetola* (2017) LPELR- 50724 (CA) wherein the court of Appeal Per Ogakwu JCA, on the principle of rescission” held as follows:

“The law is that where one party has committed a serious breach of contract, the innocent party has a right to rescind the contract. In such circumstance, the contract is said to be rescinded de futuro. The exercise of the right to rescind would be dependent on whether there has been a breach of the terms of the contract or a mere misrepresentation and whether the breach is sufficiently serious to justify rescission de futuro of the contract. See Halsbury’s laws of England (4th Edition Vol 9. (1) paragraph 989 and *Dantata Vs Mohammed* (2000) LPELR (925) 1 at 16-17 (SC. As stated in *Treitel’s law of contract*, 5th Edition, pages 772-773. “a party who has wholly or in part performed his side of the contract and not received the agreed counter performance in full may sometimes be entitled to restitution in respect of his own performance. Where this consists of a payment of money, the party will simply seek to get it or will simply seek to get it back where it consists of some other benefit he will claim recompense for a quantum meruit in respect of it..... the statement of the law in paragraph 1129 of Halsbury law of England 4th Edition Vol 9 (1) is instructive. It is therein stated, as follows:

“a complete failure of consideration in a contract occurred where one of the contracting parties fails to receive the benefit of valuable consideration which brings from the roots and is the essence of the contract.

The learned 3rd defendant counsel referred to paragraph 5:1, 5:2 and 5:3 of the plaintiff’s, final written address, the plaintiff counsel submitted that 3rd defendant have failed to satisfactorily discharge the evidential burden of proof.

The plaintiff also submits that the 3rd defendant is not entitled to any refund whatsoever of the total sum of N3,200,000.00 (Three Million Two Hundred Thousand Naira) yet unpaid by the plaintiff in repaid of plot A206, Lugbe and re-certification of plot A187 and 189 Kubwa, unless he gives, satisfactory explanation as to why the purchase price should be refunded to him.

The learned 3rd defendant counsel submitted further that, where a party admits his indebtedness to the party claiming, such admittance remove the party claiming of the burden of proving he/she is entitled to such indebtedness as such admission of indebtedness amounts to a confession from the horse's mouth. See Copytech Design and Print (Nig) Ltd V First Bank (2021) LPELR)- Section 3521 (CA) wherein the court of Appeal Per Ugo JSC held as follows:

“I have already held in agreement with the trial judge that appellant in exhibit D6 admitted it's indebtedness to respondent in the said sum of N10,369,000.00 respondent counter claimed from it. I therefore do not see how respondent still needed to prove that admitted sum and or that it's decision not to tender appellant statement of account affects the proof of the sum. Appellant admission in exhibit D6 is a relevant fact and constitute admission against it's interest under section 20 of the evidence Act 2011. It is a fact which respondent as his opponent is entitled to rely on in proof of it's case. See Awote V Owodumi (1987) 1 NSCC 590 and 594, Akaninwo V Nsirim (2009) 9 NWLR (pt. 1093) 439 and 482 (SC), Spasco Vehicle and plant Ltd V Alraine (1995) 5 NWLR (PT. 416) 655 AT 6774-675 paragraph B-C (SC). Admission being in the nature of confession coming from the horse's mouth, so to speak is the best form of evidence of it is unequivocal as appellant did in exhibit D6: having so admitted it's indebtedness to respondent in the amount claimed by respondent, appellant had relived respondent of the need to tender it's statement of account. It therefore cannot be heard to complain about the absence of that document. It's statement of account was no longer relevant for purposes of showing that it was indebted to respondent in the said sum of N10, 369, 000.00 claimed by it.

Also the case of Zee Agro Livestock Product Ltd V Springfield Agro Ltd (2022) LPELR- 57365 (CA) wherein the court of Appeal Per Tukur JS on the effect of admission of indebtedness by a debtor held as follows.

“the position of the person expressly admits owing another a sum of money is clear, and is to the effect that judgment may

be entered on the sum so admitted. See Swiss Pharma(Nig) Ltd V Marsh-Vicoro& ors (2018) LPELR-46562 (Ca) AND Ifemesia V Ecobank (2018) LPELR-46589 (CA). the foregoing is an offshoot of the hollowed principle of law makes an admission of facts against his interest, then no other evidence is required to prove such facts. Thus, the popular legal maxim: Facts admitted, need no proof.

On this the learned 3rd defendant counsel submitted that in the instant case, the plaintiff by exhibit K and L, admitted his indebtedness to the 3rd Defendant and voluntarily undertook in two separate occasions to refund the 3rd Defendant, the total sum of N3,700,000.00 (Three Million, seven Hundred Thousand Naira) paid to the plaintiff in respect of plot A206 , Lugbe and plots A187 and 189, Kubwa of which the plaintiff has only refunded the sum of N500,000.00 (Five Hundred Thousand Naira) leaving a balance of N3,200,000.00 (Three Million, Two Hundred Thousand Naira)

On this he further submitted that, the above submission of indebtedness by undertaking as in exhibit K & L being documentary admission duly signed by the plaintiff, he cannot dispute said admission, with parole/oral evidence. See Odubawa V FSDH securities Ltd (2020) LPELR-49559 (CA) Ogbuinya JCA held as follows:

“indubitably, the admission is in documentary, not parole, form being documentary, it is permanent, incorruptible inelastic, indelible and invincible. It is more reliable and dependable than oral admission which dozes out from the local cord of man and submissive to distortions. The lower court, in due allegiance to the law, merely endorsed the appellant admission, which binds him, if his indebtedness to the respondent.

Further that the plaintiff in a bid to mislead this court during cross-examination attempted to dispute his indebtedness to the 3rd Defendant by maliciously claiming that his admission/ undertaking. Particularly that made to the divisional police officer Kubwa Police Division was made under duress. On this he submitted that, it is trite law that a party pleading duress-must establish the ingredients of duress and/or coercion sufficient to make the undertaking agreement violable and to lead credible evidence to prove them. See Calabar Central Cooperative thrift & credit society Vs Ekpo (2001) 17 NWLR (PT. 743) 649. Where it was held as follows:

“the party pleading duress must establish the ingredient of duress and/or coercion sufficient to make the undertaking/agreement voidable and to lead credible evidence to prove them.

On this the learned 3rd Defendant counsel submitted that, it is trite law that the court has a duty to discountenance and/or expunge any evidence received in respect of matters not pleaded. See *Ltd & ors V Ekpe& ors* (2000) LPELR-1561 (CA) wherein the supreme court per Ejiwunmi JSC held as follows:

“I need to observe that parties are bound strictly by and are not allowed to depart from their pleadings. See *Ogiamen V Oglamen* (1967) NMLR 745. Hence parties can then lead evidence in support of their pleadings N.I. PC `LTD V Thomson Organisation Ltd (1969) NMLR 9. Evidence lead which is not supported by the pleadings goes to no issue such evidence if inadequately admitted will be expunged.

Submitted further that a careful perusal of the pleading. Will undoubtedly reveal that the plaintiff did not lead any pleading or documentary evidence to establish duress.

That the plaintiff failed to supply any material evidence as to his claim of duress. Exhibit K and L referred that the said undertaking was made voluntarily and free from duress and urge the court to discountenance the submission of the plaintiff under issue so stated.

The defendant who went further to state that, the plaintiff under issue so stated.

The defendant who went further to state that, the plaintiff in his pleadings and oral evidence admitted at paragraph 4: 9 of his final written address that plots A187 and 189 were offered to the 3rd defendant in exchange for plot A206 located at Lugbe earlier sold to the 3rd Defendant, it therefore raises the question if the plaintiff already refunded the sum of N500, 000.00 (Five Hundred Thousand Naira) paid for plots A187 and 189, given in replace of plot A206, what about the sum of N3,000,000.00 (Three Million Naira) paid for the said plot A206? Lugbe and N200,000.00 (Two Hundred Thousand Naira) paid for the re-certification of plots A187 and 189 which never happened.

Finally submitted that, the submission of the 3rd defendant that based on the aforementioned Judicial authorities and section 20 of the evidence Act 2011, the 3rd defendant is relieved from the burden of proving he is entitled to the reliefs now counter-claimed to wits the sum of N3,200.000.00 (Three Million, two Hundred Thousand Naira) and 10% of the said sum monthly from 1st March,

2010 till the date of judgment and the court is to hold in favour of the 3rd Defendant.

In response to the counter claim of the 3rd Defendant, by the claimant/plaintiff counsel, he submitted that, the 3rd defendant upon cross-examination informed this court “that as far as he was concerned he was not aware of any third party claim or interest on the land.

That the 3rd defendant testified that the lands in Kubwa and Lugbe were not in existence but placed no evidence before the court to support his assertion. The 3rd defendant also informed the court that he became aware of the non-existence of the plots when he conducted search at the AMAC land Registry in Kubwa and the AGIS. On this he submitted that the 3rd defendant owed a duty to this court to present the search report of the searches, he conducted as proof of the non-existence of the plots:

Further that, the 3rd defendant was still in possession of the title document of the plots in Lugbe having acknowledged receipt of the sum of N500,000.00 (Five Hundred Thousand Naira) only from the claimant being the purchase price and on several demands by the claimant by the 3rd defendant has refused to return same.

In view of the above submitted that the 3rd Defendant has failed to prove it's case and thus is not entitled to the reliefs sought and prayed the court to resolve issue 3 in favour of the claimant and dismiss the 3rd defendants counter claim.

Having considered the evidence adduced by the 3rd defendant in it's counter claim, along with the plaintiff's as well as all the documents admitted by the court i.e. exhibit K and L by the 3rd Defendant, I hold that 1 prayer the evidence of the 3rd defendant to that of the plaintiff. The 3rd defendant's evidence was not controverted while the document tendered fully support the case of the 3rd defendant. I therefore hold that, the 3rd defendant's evidence on it's counter claim of the sum or N3,200,000.00 (Three Million Two Hundred Thousand Naira) on a failed contract on plot A260 and the balance of N200,000.00 on plots A187 and 189 at Lugbe and Kubwa respectively is prayed to the evidence of the plaintiff, which in my view the evidence of the plaintiff is very weak and as he did not justify the refund of the N3,200,000.00 ((Three Million Two Hundred Thousand Naira he collected from the 3rd defendant from the non-existence of plots A260 and plots A187 and 189: having refunded the sum of N500,000.00 (Five Hundred thousand Naira) being the amount collected for plots of land that is non-existent from the 3rd defendant it beholds on the plaintiff to equally refund the 3rd Defendant the sum of N3,000,000 ((Three

Million naira) and N200,000.00 (Two Hundred Thousand Naira) paid for re-certification in respect of the two lands in question.

In view of the forgoing hold that I shall resolve this head of claim in favour of the 3rd Defendant. I so hold.

On the claim of 10% of the said sum monthly from the 1st March 2010 till the date of judgment is delivered and 10% of the said sum until the full satisfaction of the judgment. This by order 39 rule 7 of the rules of this court. The court may order interest at a rate not exceeding 10% per annum to be paid on any judgment commencing from the date or afterwards, as the case may be. The 3rd defendant is entitled to the interest on the judgment sum of 10% of N3,200,000.00 only.

As per general damages of N500,000.00 on this I wish to state thus, that general damages are damages that the law presumes and they flow from the type of wrong complained about by the 3rd defendant they are compensatory damages for harm that results from the wrong for which a party has sued, that the harm is reasonably expected and need not be alleged or proved. See *Mekwunge V Emirates Airlines* (2019) 9 NWLR (PT. 1677) 191 SC. The award of general damages is within the discretionary powers of the court. However, the exercise of such discretion must be based on the evidence before the court. In *MTN (Nig) Co. Ltd V corporate comm. Inc Ltd* (2019) GNWLR (pt. 1678) 427 (the supreme court held that in affirming the trial court Judgment, the court of appeal found and held that the trial court considered the respondent pleading and evidence. That it would have earned N100 Million from the sum kit activation exercise and from other repaid activation bonuses if the appellant had not abruptly terminated the contract, and that the trial court considered all immediate losses which were reasonably within the contemplation of the parties at the time of the agreement. See *Okoko V Dakolo* (2006) 14 NWLR (PT. 1000) 40.

In the instant case it is not in doubt that the plaintiff agreed to refund to the 3rd defendant the sum collected for the failed land contract of plots A200 and A187 and 189 and refunded the sum of N500,000.00 by exhibit K and L tendered and before the court. And having considered the date on exhibit K and L.

I will award the sum of N1,000,000. as general damages in favour of the 3rd Defendant. So I hold.

On the last action. In the case of *Guinness Nig Ltd V NWOKE* (2000) 1 NWLR opponent in suit.

(pt. 689) 140 at 150 paragraph C per Ibiyeye JCA. Held thus

“it is unethical and an affront to public policy for a litigant to pass on the burden of his solicitor fees to his opponent in a suit.

In the light of the above, I hold that whatever cost of prosecuting this case, or action stands for it is not grantable by this court. The claim is dismissed.

In the final analysis I hold that the 3rd defendant has proved his case against the plaintiff/claimant in it’s counter claim, accordingly I make the following order.

- 1. The claimant to refund the sum of N3,200,000.00 (Three Million, Two Hundred Thousand Naira) only being the monies owed the defendant/counter claimant with respect to plot of N200,000.00 (Two Hundred Thousand Naira) only and N3,000.000.00 (Three Million Naira).**
- 2. 10% percent interest per annum on the judgment sum of N3,200,000.00 (Three Million Two Hundred Thousand Naira) only until full satisfaction of the judgment sum.**
- 3. N1,000.000.00 as general damages.**
- 4. As per the cost of action it is hereby refuse.**
- 5. This is the judgment of the court.**

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

Appearance:

1. Johnson Ahuruonyefor the Claimant.
2. J.O. Anetekhai for the 3rdDefendant.

