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

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

**THIS THURSDAY THE 7TH DAY OF JULY, 2022**

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

**SUIT NO: FCT/HC/CV/1615/22**
**FCT/HC/M/5988/22**

**BETWEEN:**

**SULEIMAN OLALEKAN…….....APPLICANT**

**AND**

1. **INDEPENDENT AND FINANCIAL CRIME COMMISSION (ICPC)**
2. **THE CHAIRMAN, INPDEPENDANT CORRUPT PRACTICES & OTHER RELATED OFFENCES COMMISSION**
3. **HON. MIN. OF JUSTICE & ATTORNEY GEN. OF THE FEDERATION….....RESPONDENT**

## JUDGEMENT

The applicant approached this court by an originating motion for the enforcement of his fundamental rights against the defendants.

The reliefs sought by the applicant against the defendant are as follows:

1. **A declaration that the detention of the applicant since on the 20th day of April, 2022 till date without trial by the 1st respondentthrough the Agent/officers at its office at central Business District (CBD) Abuja at the instance of the 2ndrespondent is unconstitutional, illegal and a clear breach**

**and violation of the applicant fundamental Human right to personal liberty.**

**2. a declaration that the respondent, their officers, servants, agents, or however, named have no power to infringe circumscribe or violate the applicant fundamental rights to dignity of his person, personal liberty and freedom of movement as enshrined under section 34, 35 & 41 of the 1999 CFN (as amended).**

**3. A declaration that the detention and humiliation or the applicant by agents and officers of the 1st respondent at the instance of the 2nd respondent since the 20th day of April, 2022 till date without recourse to court amounts to violation of the applicant rights as a citizen of Nigeria and equally violation of his constitutional rights.**

**4. An order of court directing the 1st respondent to release the Applicant from its unlawful custody forthwith or to produce the applicant before the Honourable court to enable his counsel apply for his bail.**

**5. An order of court directing the 3rd respondent as the chief law officer of the Federation to ensure compliance with the order(s) or judgement of this Honourable court by the 1st& 2nd respondent.**

**6. An order of mandatory injunction restraining the respondent whether by themselves, offices, grants, agents or however named from further detentions, intimidating threating or infringing with the applicant fundamental rights.**

**7. An order of court directing the respondent to pay to the applicant the sum of N1,000,000.000.00 (One Billion Naira) only as damages and compensation for the aforesaid flagrant violation of the applicant fundamental Human right.**

**8. A written apology to the unwarranted and unjustified violation of the Applicant fundamental right to dignity of his person, personal liberty and freedom of movement guaranteed by the 1999 constitution of the FRN (as amended).**

**9. The cost of this action attached to the originating process is the statement accompany the application of 4 pagers.**

**The grounds upon which the application is brought are as follows:**

a. **The detention of the applicant in the manner complained of, is in violation of the applicant right to personal liberty guaranteed by the CFN 1999 (as amended) and Article of the African Charter on Human and Peoples Rights (Ratification and Enforcement Act) of 49, laws of the FN 2004.**

b. **The restriction of the movement of the applicant is a violation of right of movement of the applicant under the 1999 CFN (as amended).**

c. **The detention of the applicant right to human dignity guaranteed under the 1999 CFN (as amended)**

d. **The applicant is entitled to protection of his right to personal liberty, freedom of movement and dignity of his person**.

A long the said motion is an affidavit of 18 paragraph deposed to by one. **MukailaOyalaye** and a written address in support of motion on notice of 7 pages in compliance with the rules of this Honourable court and affidavit of urgency of 3 pages deposed to by **MukailaOlayeye** dated the 12-05-2022

It is the deposition of the applicant that precisely on the 20th day of April, 2022 the 1st respondent under the directive of the 2nd respondent stormed the **Abeokuta office of (SWAT) Nigeria police** where the applicant was invited and took him away to the **Ikoyi office** of the 1st respondent.

That upon arrival at the office of the 1st respondent office at **Ikoyi Lagos** in handcuff, he was detained in the 1st respondent detention facility there at **Ikoyi-Lagos office** of the 1st respondent.

That the applicant was taken away from the 1st respondent **Ikoyi-Lagos** detention in handcuff on the 20th day of April, 2022 and was deposited at **life-camp police station where he had since been till date.**

**That the applicant is a mechanic by training who did not know why he was arrested by the 1st respondent on the instruction of the 2nd respondent till date.**

**That upon arrival at the 1st Respondent office, rather than availing the Applicant the reason while he was arrested, he was clamped down in detention first at Ikoyi-Lagos and thereafter transported from Lagos to Abuja.**

**That the Applicant was invited by SWAT to Abeokuta on issue bothering on the Applicant family land at Ogija, Ikorodu-Lagos.**

**That the 1st Respondent has not taken the applicant before any court since on the 20th day of April, 2022 when he was taken away from Ikoyi-Lagos till date**

**That the Applicant had severally demanded to know the bass for his arrest and detention by the 1st Respondent since that 20th April, 2022 as he was never a civil servant nor a contractor to any government agencies but the 1st Respondent had refused to tell him anything till date.**

**That the Applicant is not a civil servant and so was palpably shocked that the 2nd Respondent ordered his detention by the 1st Respondent till date**

**That the 1st Respondent has not shown the Applicant any petition sponsored against him by any individual or group of persons neither was he verbally told the basis for his arrest and incarceration that has lasted closed to 40 days as at date.**

**That after over 30 days of the Applicant detention without any charge or charges preferred against him in any court, the 1st Respondent insisted that he can only be released upon presentation of 2 serving he can be granted administration bail.**

**That the 1st Respondent has refused to charge the Applicant before any competent court but instead had consistently been patronising Magistrate Court for detention order and extension of same claiming that it is still investigating the Applicant who has been in detention since on the 20th April, 2022 till date.**

**That I was informed by the Applicant on the 14th day March, 2022 at the Life-Camp Police Station facility of the 1st Respondent, when I went there to see him, at about 6:00 pm of the following facts which I believed to be true.**

i. **That there is really suffering in the detention of the 1st Respondent as his health is now being challenged.**
ii. **That he is fast losing his sight following the darkness in the room where he was detained by the 1st Respondent.**
iii. **That the 1st Respondent has refused all entreaties to grant him administrative bail notwithstanding that he was reliable sureties to take him on bail but insisting on production of two (2) serving**

**federal permanent secretaries whom it knows he cannot procure as a mechanic.**

iv. **That the 1st Respondent has not preferred any charge against him nor arraigned him before any court for any offence whatsoever since his arrest spanning about 30 days.**

v. **That is wife and children did not know where he was taken to by the 1st& 2nd Respondent until my visit after 25 days' incarceration by the 1st Respondent**

vi. **That he has suffered indescribable trauma as a result of his illegal detention by the 1st Respondent at the instance and instigation of the 2nd Respondent for no justifiable reason.**

**That I was informed by Efekemaraya G. Daniel Esq. of counsel, in his office at No: 14 Alexandria Crescent, Off Aminu Kano Crescent, Wuse, 2 Abuja at about 9:30am on the 16thday of May, 2022, after our failed attempt to get the applicant**

A written address was filed wherein a sole issue to wit:

> **"whether this Honourable court should exercise its discretion power in granting the reliefs sought herein considering the totality of the facts revealed in the affidavit and the circumstance of this case"**

Arguing on the above, learned counsel submit that, the applicant has established sufficient grounds warranting the grant of the reliefs. That it is equally evident from the deposition in the affidavit that the respondent has infringed and are still infringing on the fundamental rights of the applicant by unlawful restraining the applicant's freedom of movement as well as trampling upon the applicant's inalienable fundamental right and to liberty. That **section 46(1) of the 1999 CFR (as amended)** proves that:

> **"any person who alleges that any of the provisions of his chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that State for redress"**

And similarly **order 11 rule 2 of the Fundamental Rights (Enforcement procedure Rules (2009)** thus:

> **"any person who alleges that any of the fundamental Rights provided for in the constitution or African Charter on Human and Peoples Right. Refrigeration and enforcement Act and to which he is entitled has been, is being, or is likely to be**

**infringed, may apply to the court in the State where the infringement occurs or likely to occur, for redress"**

And that this application is anchor on the provision **of sections 33(1), 35(3), 35(4), 35(5) a, b**

**SECTION 33(1)**

**"every person has a right to life, and no one shall be deprive intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.**

**SECTION 35(3)**

**"any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.**

**SECTION 35(4)**

**"any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of-**

a. **Two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail, or**
b. **Three months from the date of his arrest or detention in the case of a person who has been released on bail,**

**He shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.**

**SECTION 35 (5) a, b**

**"in subsection (4) of this section, the expression "a reasonable time" means-**

a. **in the case of an arrest or detention in any place where there is a court of competent jurisdiction with a radius of party kilometres a Forty of one day and**

**b. in any other case a period of two days or such longer period as in the circumstance may be considered by the court to be reasonable"**

That the right to freedom of movement is also provided for by the constitution under **section 41.**

The section provides that every citizen of Nigeria is entitle to move freely through out Nigeria in line with **Section 35(6) of the CFN 1999 (as amended**) any person who is unlawful arrested or detained in entitled to be released and a grant of as injunction to restrain further breach of the guaranteed rights. See **Igwe V Ezeanochie (2010)7 NWLR (PT. 1192) at 71,** the court of Appeal maintained that.

> **"…. Where the facts relied on disclose infringement of fundamental right of the Applicant as amin or basis of the claim, then it is clear case for the enforcement of such rights through the Fundamental Right (Enforcement procedure) Rules…..**

The court went further that

> **"in Nigeria, Fundamental right of the citizen though acquire naturally, are constitutionally quaranteed under chapter IV of the constitution of the Federal Republic of Nigeria 1999.**

On the aggravated damages submit that damages may be awarded to an applicant adduces evidence of arbitrariness and malice against the respondents. That the fact that he was abducted from Abeokuta to **Ikoyi-Lagos** and then to Abuja and has since been in detention from 20th day of April 2022 till date without any order of court amount to violation of the Applicant constitution rights.

That the insistence of the 1st and 2nd respondent that unless the applicant produces Two serving Permanent Secretaries further confirmed the arbitrariness of the 1st and 2nd respondent. Thus he referred the court to the case of **Dasuki V DSS (2020) 10 NWLR (pt. 173) page 153 paragraph C-A** that the recent introduction of the requirement of level 16 officer and above as sureties is not part of our law and that same negate the fight against corruption which everybody including the 1st respondent is championing that bail under our laws is not meant to be a mirage. **By section 165(1) of the ACJA, 2015,** the condition for bail in any case shall be at the discretion of the court with due regard to the circumstance of the case and shall but be excessive. That it is

crystal clear that the respondent refused to arraign the applicant before any court of law and will continue same unless this Honourable court intervenes. See **Dele Cuwe V IGP (1993) NWLR (PT. 193) PG. 593 at 650-651.**

That consequently upon the above the applicant herein is claiming among other reliefs the sum of **N1,000,000,000.00 (One Billion Naira) only** as damages and compensation for the unwarranted and unjustifiable violation of his right to liberty and freedom of movement guaranteed by the **1999 CFN (as amended).** That the applicant has clearly shown that the actions of the 1st& 2nd respondent subjected. Him to degradation of the dignity of his human person and worst, that the applicant is not a civil servant nor was there any allegation of fraudulent transaction of any sort levied against him by any known complainant(s) but instead, the respondent resorted to executive lawlessness using tax payer monies to suppress and subjugate citizen.

That the enabling Act of the 1st& 2nd respondent did not vest the power to hear and determine issue bothering on land and inheritance.

That the applicant was charge to court by the police on same issue and he was discharge and acquitted by a court sitting at Shagamo in Ogun State.

Applicant counsel further submit that it is settled law as it is provided in section **46(2) of the CFN (as amended)** and equally stated in **order XI of the FRE**PR **2009**, that in an application for enforcement of fundamental Human Right, the High Court shall have original jurisdiction" – to make such order, issue such courts and give such direction as it may consider just or appropriate for the purpose of enforcing or securing the enforcement of any of the Fundamental Rights provided for in the constitution or African Charter on human and Peoples Right. (Ratification and enforcement) Act to which the Applicant may be entitled" that in the light of their submission most humbly urge the court to hold that right of the applicant have been crossly and flagrantly violated by the respondents and grant their prayers as prayed.

The applicant counsel who equally file alongside the affidavit an affidavit of urgency of 24 paragraph response to the Applicant motion on notice filed the 1st& 2nd defendant counter affidavit to the applicant motion on notice dated the 20th May, 2022 and filed on the 24th May, 2022. The said counter affidavits deposed to by one **Iliya Markus** of 31 paragraphs dated the 17-06-2022. Attached to the counter affidavit with annexure marked exhibits ICPC 1 being the statement of one **Olalekan Suleiman O.** and exhibit marked ICPC2 being the statement of **one DanesiRoseline**, exhibit ICPC3 being the court order remanding the applicant made at **Senior Magistrate court 11 of FCT Abuja**

**Holden at Bwari Abuja by His Worship Hon. Taribo Z. Jim, exhibit ICPC 4**, court order extending the remand order dated the 13-5-2022, **exhibit ICPC 5, ICPC6** and a written address in support of the 1-2nd respondent counter affidavit of 6 pages. Wherein the written address a sole issue was formulated for determination to wit:

> **"whether having regard to the facts and circumstance of this case, the applicant is entitled to the relief sought.**

On this referred the court to section 35 of the **CFR 1999 (as amended) and the case of Fowehimi V Babagana (2003) FWLR-(PT. 146) 835.**

Where it was held that.

> **"the liberty of a citizen is on of grave constitution importantly and any attempt to curtail same must be done to strict compliance with the forms and rules of law.**

Equally referred the court to section 35(1) b & c of the same. Constitution provides:

> "**every person shall be entitled to his personal liberty and no person shall be deprived of such liberty gave the following cases and in accordance with procedure permitted by law:**
>
> **b.by reason of his failure of comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;**
>
> **c. for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicious of his having committed a criminal offence, or to such extent as maybe reasonably necessary to prevent his committing a crime offence;**

That paragraph 5 of the 1st and 2nd respondent's counter affidavit with reveal that a petition was submitted to the 1st respondent and upon careful analysis of the said petition it was discovered that there was a need to conducting an investigation will sole aim of ascertaining whether the applicant has committed any criminal offence that can warrant prosecution. That preliminary investigation revealed that the applicant presence before the 1st respondent was very necessary since there was a prima facie allegation of criminal offence by the applicant. That the invitation of the 1st, 2nd respondent was not honoured by the applicant as stated at paragraph 12 of the 1st and 2nd respondent counter

affidavit. That failure from the applicant side was what prompted his arrest and subsequently taken down to the head office of the 1st respondent where he was determine in accordance with law having sought for and obtained remand order.

Further argued that no court of law can grant a relief which is capable of turning the applicant or any citizen for that matter into an outlaw in a democratic society as it was held on the case of **A.G of Anambra V Chris Uba (2005) 15 NWLR (PT. 9947)44 at 67 paragraph G**. as follow:

> **"for a person therefore to go to court to be shielded against criminal investigation and prosecution is interference of power given by the constitution to law officer in the control of criminal investigation.**

And the case of **Okanu V C.O.P. (2001) (CHR).** where it was held as follows:

> **"I wish to state that it is the duty of the police to investigate and arrest a citizen who are suspected to have committed one offence or another. In the legitimate exercise of this duty and the police cannot be sued in court for breach of fundamental right now to oral submit.**

The applicant counsel in adopting his written address submit that, the 1st& 2nd respondent counsel alleged that there was a petition not even before the court. That on paragraph 7 of the counter affidavit the 1st& 2nd respondent went into the market shopping for land related matter, that it is notorious and very elementary that land related matter by virtue of the **land use Act 1978,** is vested on the High Court of states and FCT. Paragraph 8 on the same counter affidavit including the document of the said land which are not before the court hence invoke the position of the evidence Act that he who challenge most prove. That on paragraph 11 of the counter affidavit he alleged that the applicant forged the document and that the said document is not before the court nor brought before the Honourable court. That by virtue of the averment of the 1st& 2nd respondents and paragraph 13 invoke the provision of the evidence Act that there is no letter of mutation annexed to the court or any sentile of document disputing the claim of the applicant that he is a mechanic.

That the purported detention order obtained 12 days after the detention of the applicant from **Lagos to Abuja**. That the 1st respondent detained the applicant in one of the detention facility at **life-camp police station**, while the 1st respondent office is in the central Area in confirmation in proving that he wants to release on their illegal act went to **Bwari Magistrate court** abandoned about **32 Magistrate Court in Wuse** and its environs to procure an order of detention.

And that 10 days after the applicant have been brought from L**agos to Abuja** in total contravention of **Section 35 (4) of the 1999 CFN 1999 (as amended)** that same respondent by virtue of the purported statement move by the applicant dated 26th April, 2022 while he was arrested on the 18/4/2022 in total contravention of the supreme court decision in that an interpreter must called to be examined and re-examined before the purported transaction can be accepted by court of law.

That under the doctrine of state decide that the purported language and statement made by the applicant are not before the court for the reason that they have not and cannot be deemed as proper before the court. That it is the law that the position of the court has a binding force on all citizen and institution, and section 6 of the **1999 CFN (as amended)** vested the judicial power on the courts that the detention of the applicant having done illegally and the reason for the detention was ultra vires and humbly and most respectively urge the court to grant all the reliefs of the applicant so that none lawyer and other persons operating by the court will believe that the court is the last hope of the common man.

The respondent counsel written address draw the attention of the court to **section 64 of the ICPC Act 2000** provide thus:

> **"64(1) –subject to sub-section (2) where any compliant made by any officer of the commission states that the compliant is made in consequence of information received by the officer making the complaint, the information referred to in the complaint and the identity of the person from whom information is received shall be secret between the officer who gave the information, and everything contained in such information, identity of the person gave the information and all other circumstances relating to the information, including the place where it was given shall not be disclosed or be ordered or be ordered or required to be disclosed in public but only to be trial judge and the defence lawyer in attendance in any civil, criminal or other proceedings in any court or tribunal"**

That on the issue of forgery, that what is before the court is alleged breach of fundamental Human Right of the applicant Human Right and not whether the Applicant is guilty. That investigation is still on going and deemed it unnecessary to attached the said document to their counter affidavit but that is what is before the court.

That with respect to the statement of the Applicant that was attached to their counter, there is no need to call the person who interpreted that particular statement to come before the court. That these matter is to be determine by looking at their affidavit and the Applicant Affidavit and not otherwise and that oral testimony is not needed in the instant application. And that being the case is needed for calling the person who interpreted from Yoruba Language to English language. That the exhibit attached with the affidavit is to be acted the way it is by the court of law. Referred the court to the case of **MicheaelOndoka V Obote&ors (2021) LPELR-56605 SC**. In view of this urge the court to dismiss this application for lacking in merit.

Before I proceed I will ask one Question?

"what is fundamental Right?

It is a right derived from natural or fundamental or constitutional law. Black Law dictionary 8th Edition. Page 692. In this country the fundamental rights of the citizens though acquired naturally, are constitutional guaranteed. **Chapter IV of the CFN 1990 (as amended)** See **Chief (D.O. Fejemiroken Vs Commercial Bank Nig. Ltd (2009) 5 NWLR (pt. 1132) 588 at 611**.

Also in the case of **Ransome-Kuti Vs A.G.F. (1985) 2 NWLR(PT.6) 221 ESO JSC (as he then was)** described a fundamental right thus:

> **"it is right which stand above the ordinary laws of the land and which itself is antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our constitution since independence---- is to have there rights enshrined in the constitution so that the rights could be immutable to the extent of the "Nura-inevitability" of the constitution itself"**

**COURT:** it is instructive to state from the onset that the Applicant has withdrawn his relief No: 4 leaving reliefs No: 1,2,3,5,6,7,8, & 9.

I shall therefore put my search light or my judicial search light on the originating summons to ascertain whether the applicant is entitled to the reliefs sought. Procedurally speaking. Application for enforcement of fundamental Human is made by way of motion on notice stating the grounds and affidavit in support which serves as evidence.

I shall now beam my search light on the application to ascertain whether the case is breach of fundamental Right is established.

In have carefully read the originating court processes filed by the applicant together with the written address and also considered the oral application by the learned counsel to the applicant, so also that of the 1st 7 2nd respondent counter affidavit, the exhibits attached thereto marked exhibits **ICPC12, ICPC3, ICPC4, ICPC5 & ICPC6.** The written address in support of the 1st& 2nd respondent counter affidavit, issue for determination formulated by the applicant and that of the 1st& 2nd respondent it seems that the issue to be resolved from the material before the court falls within claim 1,2,3,4,5, & 6 which deals with the issue of the breach of the applicant fundamental Human Right whether it was violated by the 1, 2, & 3, respondent to entitled him to reliefs sought.

Secondly whether the applicant claims 7 & 8, and 9 is proved for him to be entitled to reliefs sought therein. Based on the above, I shall consider the issues so formulated in view of the reliefs sought by the applicant.

By the affidavit of the applicant which was well articulated and in it, he stated that on the 20th day of April, 2022, the 1st respondent under the directive of the 2nd stormed the **Abeokuta office of (SWAT)** where the applicant was invited and was taken away to **Ikoyi office** of the 1st respondent and upon arrival at the office of the 1st respondent office of **Ikoyi Lagos** in handcuff, he was detained in the 1st respondent detention facility and from there while still on handcuff on the 20th day of April, was deposited at life-camp[ police station at FCT, Abuja.

The applicant who stated that he is a mechanic by training, that he was invited by SWAT, to Abeokuta on issue bothering on the applicant farm land at **OgijoIkorodu Lagos.**

The applicant who demanded to know the basis for his arrest and detention by the 1st respondent since the 20th April, 2022 as he was not a civil servant non a contractor to any government agencies but his offer was turned down. That he spends 30th days in the detention.

The issue that comes to mind was on the issue of invitation letter which the applicant counsel stated that they 1st& 2nd respondent has not exhibited the said invitation to its counter affidavit, but in its i.e. the 1st& 2nd respondent counter affidavit he averts that, on the 7th March, 2022, 1st respondent received a petition dated the 25th November, 2021 against the Applicant for the alleged commission of the offence of forgery, demand of bribe, criminal trespass among others. The offence as alleged builds down to the issue family land that was allegedly that the applicant has trespass, into, demanded bribe and forged same document this in exhibit ICPC1 the statement made by **Olalenkan**

**SuleimanOdufowore**on the 26-04-2022 before the ICPC investigation Department in Yoruba Language and translated into English, clearly shows that the issue was on the sates of the family land of **Ogunseruwa in Ikorodu** where in the said statement he denied knowledge of the said sale of the entire family land to NIALS corporative and that all he knows was the land 10 acres of the land to NIALSS and that he did not hear any rumours of his family members selling the 27acres of land. That the said 10 acres of land was sold by his Father to NIALS in the year 1995 and the said land was not part of the 27 acres. That was his story as it was stated and same marked ICPC1 & ICPC2 in summary.

The issue that triggered was that his detention by the 1st& 2nd respondent at **Ikoyi Lagos** and life Camp police station was unlawful as he was handcuff on the 20th day of April 2022 and was deposited at life Camp police station. The 1st& 2nd respondent who denied paragraph 4-18 of the Applicant affidavit in defence he stated that on the 7th March, 2022 the 1st respondent received a petition dated the 15th November, 2022 against the applicant for the alleged commission of the offence as stated on this judgement. This in response, the applicant counsel averts that the 1st respondent has not shown the applicant any petition sponsored against him by any individual or group of person neither was he verbally told the basis for his arrest and incarceration that has lasted to 40 days.

On the part of the 1st respondent he stated he received a petition which revealed element of the offence stated, and therefore satisfied the requirements for investigation under section 6(a) of the corrupt practices and other related offences **Act, 2000** they can commence investigation to determined velocity of the complaint, and when the investigation was going on, they obtained a detention warrant from the Magistrate court sitting at **Bwari FCT, Abuja** for a period of two weeks remand under the 1st& 2nd respondent. Applied for the extensional two weeks from the same Magistrate court **Bwari** Exhibited as ICPC4 and upon the expiration of the extended order on the 27TH May, 2022 the applicant was taken to the same court that ordered for his remand and the court was informed of the completion of investigation by the 1st& 2nd Respondent for the Applicant to be released on bail which the trial Magistrate granted the Applicant bail on the same 27th May, 2022.

In the sum of **N500,000.00** and surety in like sum who must be a resident of the FCT, Abuja and must as will be a civil servant with verifiable address, exhibit and marked ICPC5. Upon the release on bail the applicant could not met up with the bail condition not until the 8th June, 2022 when he met the condition and was released exhibited and marked ICPC6.

The above which the applicant counsel in support stated that it is clear that he who alleges must prove, that paragraph 5 of the counter affidavit there was a petition which is not even before the court and paragraph 7 of the counter affidavit, that the respondent went into Market shopping for land related matter, that it is notorious and very elementary that land related matter by virtue of the land use Act 1978 is vested on the High Court of State or FCT, Again that in paragraph 8 of the same counter affidavit and including the document of the said land which are not before the court hence involve the provision of evidence Act that he who allege must prove. And on paragraph 8 the respondent alleged the document, the said document of the 1st and 2nd respondent of paragraph 13 involve the provision of the evidence Act. That equally there is no letter of invitation annexed to the court on any citing of document disputing the claim of the applicant that he is a mechanic. On this stated that the 1st respondent being a creation of law, and the enable lows that created the 1st respondent stated clearly that he can only approached the Magistrate court, hence the detention of the Applicant and his taken from Lagos to Abuja. That question that he asked was that, the 1st respondent office is in the central Area, and in confirmation in proving that he went to revile on their illegal act. Went to Bwari Magistrate court abandoned about 32 Magistrate in Wuse and its environs to procure an order of detention 10 days after the Applicant has been brought from Lagos to Abuja in total contravention of **section 34(4) of the 1999 constitution of FRN (as amended).** That the act of the respondent based on the statement made by the Applicant dated 26/4/2022 while he was arrested on the 18/4/2022 in total contravened the supreme court decision in that an interpreter must be called to be examined and re-examined before the purported transaction can be accepted by court of law.

That it is trite law, that the position of the court has a binding force on all citizen. Institution and section 6 of the Judicial power on the court. That the detention of the Applicant having done illegally and the reason for the detention is ultra vires.

On this I wish to state that, the ICPC in investigating any complaint, is bound to obscure the provision of **section 35 of the CFR 1999(as amended).**

The power of the ICPC to investigate is no licence for it to contravene the provisions of the constitution with regard to the rights guaranteed every citizen against arbitrary arrest and detention by the Government or its agencies.

Whether applicant was kept in detention for a period of 10 days without charging him to court, it is a flagrant violation of the right of the Applicant. The detention warrant obtained by the ICPC exhibit ICPC & ICPC was after taught

as there is nothing before this court like petition as alleged by the ICPC to back their allegation which prompted the ICPC to sweetly moved the applicant from **Ikoyi-Lagos to Life Camp Police Station,** where he was under handcuff as if he was an armed robbery suspect. They handcuff alone is a breached of the provision **Chapter IV of the CFR 1999 (as amended) and section 34(1) (a)** which provides thus:

1. **Every individual is entitled to respect for the dignity of his person and accordingly:**
   a. **No person shall be subject to torture or to inhuman or degrading treatment;**

**And section 35(1)(3)(4)(5) & (6)**

Which provides thus**:**

1. **every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save the following cases and in accordance with procedure permitted by law:**

35(3) proves

> **"Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention. On this I referred to exhibit ICPC1 & ICPC2.**

On this I will disagree with the applicant counsel as exhibit ICPC 1 & ICPC 2 is self-explaining subsection 4

> **"any person who arrested or detained in accordance with subsection I(c) of this section shall be brought before a court of law within reasonable time, and if he is not trial within a period of**
>
> **d. two months from the date of his arrest or detention in the case of a person who is in custody or not entitled to bail or**
> **e. three months. From the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may, be brought against him) be released either unconditionally or upon such condition as are reasonable to ensure that he appear for trial at later date.**

From the arrest and detention of the applicant can it be said it was above two months? This the applicant stated that he was arrested on the 20th April, 2022

taken to **Ikoyi-Lagos** and later taken to life camp police station FCT, Abuja before the ICPC obtained a detained warrant from **Magistrate Court Bwari,** the said which was renewed for a further period of two weeks and on the expiration of some court who granted him bail on the same date being 27th May, 2022 but could not fulfil the said condition not until on the 8/6/2022 before he was released.

This again I don't think the action taken by the ICPC was contrary to the provision of the said section of the law, hence the argument canvassed by the Applicant cannot hold.

Subsection (5) in subsection (4) of this section, the expression "a reasonable time means:

> **"a. in the case of an arrest or detention in any place where there is a court of competent jurisdiction with a radius of party kilometres a Forty of one day and**
>
> **f. in any other case a period of two days or such longer period as in the circumstance may be considered by the court to be reasonable"**

this again hold that the 1st& 2nd respondent had contravened the provision of this section, the expiration reasonable time under subsection 5(a) above, the reasonable home contemplated by the constitution is stated to be a period of one day" and there is no discretion under this ambit of subsection (5(a) unlike under subsection 5(b) which provide period as the court may considered reasonable in the circumstance.

From the deposition of the Applicant in its affidavit and the written address, it is clear that the 1st and 2nd respondent have clearly not acted within the scope or purview of the above clear constitutional provisions with respect for his personal liberty and dignity of his person.

In **Eda V NCLR. 219 at 226 Paragraph 5-6** the court of appeal while interpreting section 32 of the 1999 constitution which is in Pan-Matane with the provision of section 35 supra laid down these instructive principles to wit:

1. **that when a person is arrested or detained by the police in connection with an allegation of reasonable suspicious of a crime and they are actively pursuing investigation of the matter the duty of the police is in appropriate case to offer bail to the suspect and or bring him to court of law within one day or two days as the case may be no matter under what section of the criminal procedure Act or police Act 1967 of the police may purport to be acting.**

The applicant without any shadow of doubt has been deprived of his personal liberty and his dignity actively violated or assaulted in a manner not countenanced by the constitution or indeed any applicable law. **See Martins V Nwachukwu& 2 ors ---------- and Jimoh V A.G of the Federation (1981) 1. HPLRA.513.**

In my opinion, I did not accept that the dignity and liberty of a citizen can be tempered with on whimsical or flimsy grounds except there are strong reason to the contrary. If a citizen is arrested on ground of allegation of offence of forgery demand to bribe, criminal trespass among other which is sufficiently a serious allegation, there must be sufficient evidence upon which a charge can be based and even then, such person must be charged to a competent court to enable him ventilate his right without any delay or granted bail as the constitution clearly provides.

Notwithstanding the difficulties and challenging security challenges the law enforcement agencies deal with i.e. ICPC and all must concede that they are commendably doing their best, there is however no room for the arrest and detention of anybody for days or months on end without sufficient legal and factual basis and without either that person been charged to court or in the minimum that such person is granted bail to enable him face his trial at the appropriate time.

In **Fawehinmi V I.G.P (2002) 7 NWLR (PT.767) 606**. The supreme court stated instructively as follows:

> **"it is unlawful to arrest until there is sufficient evidence upon which to charge and caution a suspect. It is therefore completely wrong to arrest, let alone caution a suspect before looking, for evidence implicating him"**

The power of the ICPC must be exercised with circumspection and scrupulous wherence to the rule of law and legally at all times. These powers must not be subjected to the unwieldy whims and caprice of any individual. Therefore, the mere allegation of committing a crime or wrong doing against a suspect and irrespective of the seriousness cannot operate to curtail the inalienable fundamental rights of the suspect nor can it operate to justify the incarceration and ill-treatment of the suspect. **See Martins V Nwachukwu (supra)** that is what I can say and no more.

It is for the above reason that I held that the arrest, handcuff, detention of the applicant right from **Ikoyi-Lagos to life Camp police station FCT, Abuj**a from the 20th day of April, 2022 to the date the warrant of detention was

obtained at the **Magistrate Court Bwari** is a clear Negation of his (Applicant) fundamental rights to personal liberty and respect for the dignity of his person.

Now to the claim of damages **N1,000,000,000.00 (One Billion Naira**). It is clear by virtue of the express provision of **section 35(6) of the CFN 1999(as amended)** that a person unlawful arrested or detained shall be entitled to compensation and public Apology from the appropriate authority or person.

In this instant case, I have already found that the applicant rights to the respect for dignity of his person, was assaulted without any legal basis and he was also unlawfully deprived of his personal liberty and therefore should enjoy same compensation or damages. As provided for by the constitution.

See **Odogwu V A.G. Federation (1996)6 NWLR (PT.436).508**. these damages therefore ordinarily incur to the applicant having found that his right have been violated and are essentially compensatory and are intended to redress the loss that the Applicant has suffered by reasons of the 1st -2nd defendants wrongful conduct.

It is not in doubt that a crime upon which the applicant is suspected to which the all should be concerned but it is simply wrong and unacceptable that a citizen will be arrested and detained continuously without end and his family and relations are kept in the dark as regard why the arrest and detention was effected in the first place and indeed why there is no explanation for the long incarceration, such conduct or action is utterly oppressive and deplorable and does so much incalculable damages to the value and integrity of the person, his reputation, affects his friends and family etc. their action unfortunately serve to undermine confidence in the enforcement agencies.

Having said so, I will equally say the risk the law enforcement agencies face notwithstanding, they handicap they are trying, they most however, submit to the rules of the law and ensure that their actions serve only to enhance the quality of the liberty and dignity of the human person as enshrined in the **1999 CFN (as amended).**

In conclusion, I can say without iota of doubt and with the fear of the Lord Almighty that base on the facts of this case, it follows that the applicant is entitled to damages in line with the provisions of the constitution.

The damages clearly with however be available only as against the 1st& 2nd defendants/respondent only the personnel under him reasonable for his unfortunate and unavoidable infraction of the liberty of the applicant.

Hold therefore that the applicant had made out a case with considerable merit but this court will be considerate base on the facts and the circumstance of the duties of law enforcement agencies to the Nation and to humanity.

On the last claim of the claimant on cost. On this it is trite law that cost follows events, but the event that lead to the claim of cost must be justified in accordance with the law. The law is that the claim should have been specifically proven before it can be awarded.

The cost as claimed as the counsel is not clear whether the sum claimed is legal fee paid by the plaintiff to his counsel or as a fee paid to court or out of pocket expenses.

In **Divine Ideas Ltd. Vs Umoru (2007) ALL FWLR (PT. 380) at 1509 paragraph A-D. the court of Appeal, Abuja Division** held thus:

> "**cost of action or solicitor's fees are in the realm of special damages which must be specifically pleaded and strictly proved**.

In the instant case the appellant did not specially and specifically plead the detail of the amount expended by it in the prosecution of the ligation in the trial court. It is also did not adduce any evidence in proof of this nonspecific claim has been abandoned. The appellant is therefore not entitled to be awarded any amount as general damages and or costs of action in the trial court.

And the court of appeal Benin Division held also that:

> "**it is unethical and an affront to public policy for a litigant to pass on the burden of his solicitors fees to his opponent in suit. See Guinness (Nig.) PLC V Nwoke (2000) 15 NWLR (PT.689) 140 at 150 paragraph C Par Ibiyeye JSC.**

In the light of the above, I hold that whatever cost of prosecuting this action 'stand for' it is not grantable by this court as no such claim was proved before me.

This head of claim is hereby dismissed.

In the final analysis of this hold that the applicant has proved his case against the 1st& 2nd defendants accordingly make the following orders

1. **the 1st and 2nd Respondent are hereby restrained by themselves, officers, servants, agents or however named from further detaining, intimidating, threatening or infringing on the Applicant Fundamental rights.**

2. **The N5,000,000.00 (Five Million Naira) is awarded as general damages against the 1st and 2nd Defendants in favour of Applicant for the Breach of his Fundamental Rights,**

**On the other claim of written apology is as well dismissed.**

This is my judgement.

**SIGNED**

**HON. JUDGE**