

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

DATED THIS TUESDAY THE 27TH DAY OF FEBRUARY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/2831/2023

BETWEEN:

YUSUF HUSSAINI MANJALO.....APPLICANT

AND

- 1. KEYSTONE BANK LTD.**
- 2. ALH. RABIU**
- 3. DR. HASSAN**
- 4. ALHAJI SANI AHMED IBRAHIM**
- 5. RAYMOND ANUFORO**
- 6. ANSAR TECHNOLOGY LIMITED**
- 7. PRODUCE AFRICA TECHNOLOGIES LIMITED**
- 8. TAK LOGISTIC LIMITED**
- 9. DAWIB NIG. LTDS**
- 10.FAMSAD AGRICULTURAL SERVICES LTD.....RESPONDENTS**
- 11.SULTAN RICE INTEGERATED LTD**
- 12. AL-FURQAN GLOBAL SERVICE**
- 13.BALAD AGRIC ENTERPRISE LTD**
- 14.MR. DARE (For himself and representing Chizzy, Uche, Femi and Tony)**
- 15. THE ECONOMIC AND FINANCIAL CRIMES COMMISSION**

JUDGMENT

This Judgment is on a Motion on Notice on declaratory Judgment brought pursuant to sections 34(1)(a), 35,36 and 41(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended, Order 11 Rule (1) – (5) of the Fundamental Rights (Enforcement Procedure) Rules 2009 and under the inherent jurisdiction of this Honourable court.

The Applicant claims the following orders:

- 1. A declaration that putting the 4th and 5th respondents under pressure and influencing them or making them to say that the Applicant gave out the certificate(s) of Occupancy in issue and/or the search report thereof which will enable the 14th-15th respondents arrest the applicant when the said respondents through 2nd and 3rd respondents had in case No. DC/CR/455/2021, Alh. Rabi'u & 1 or vs Alh. Abubakar Dankogi complained and got the person that procured the same certificate of occupancy, convicted constitutes a serious threat to the Applicants fundamental right to person's liberty, freedom of movement and this contravenes sections 35 and 41(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).**
- 2. A declaration that the use of mental, physical and psychological torture, denial of bail, promise of freedom from further detention and freedom from prosecution to the 4th and 5th respondents (among others) by the 14th, 15th respondent demanding them to mention and involve the applicant with a view to arrest him in a petition written by the 1st respondent against the 2 – 13th respondents for their failure to repay loans advanced to them and their use of alleged fake certificate(s) of Occupancy and particulars to secure the said loan constitutes a flagrant threat to the applicants fundamental rights under sections 34(1)(a) and 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and articles 4,5,6,9,12 and 14 of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act Cap 10LFN 1990 and therefore wrongful and contravenes section 31 and 41(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).**
- 3. A declaration that the Applicant did not borrow any money whatsoever from the 1st Respondent, either directly or through any of the Respondents**

and consequently has no question to answer pertaining to the loan, it's documentation and grant and any inducement to the 2nd -13th Respondents to access the loan to the Applicant without hearing from him is a breach of his constitutional and fundamental human right to fair hearing.

4. An injunction restraining the Respondents, their agents, privies, servants or officers from further threatening to violate or from violating the fundamental rights of the applicant through unlawful arrest, harassing, embarrassing, disturbances and threat of detention in relating to the facts of this matter.

5. An order for damages of N50,000,000:00 (Fifty Million Naira) against the 2nd, 4th to 13th Respondents jointly and severally for seeking to instigate the 14th to 15th Respondents to arrest and seize the International Passport of the Applicant and to arrest him at the Airport when returning to Nigeria and subject him to inhuman treatment for no just cause.

6. And for such further order(s) as this Honourable court may deem fit to make in the circumstances.

Accompanying the Motion on Notice is an affidavit of 16 paragraphs deposed to by one Yusuf Hussaini manjalo of Suite D03, Kanyi 02 Mall & Champagene Lounge Kaura Abuja and attached to the affidavit are annexures marked as Exhibits A & B respectively, the statement pursuant to Order 11 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009 which set out the relief sought as brought down and the Grounds upon which reliefs are sought 1 – 14.

In compliance with the rules of this court filed a written address of 9 pages wherein the written address raised a sole issue for determination to wit:

“In the circumstances of this case, is the applicant not entitled to be granted the reliefs sought for, the Respondents having failed or neglected to invite, the applicant for his side of the matter or prefer a charge against the applicant if their investigation genuinely point to the applicant as having a case to answer”

Upon the filing of this suit, the Applicant filed a Motion Exparte for an order of substituted service dated the 27/3/2023 on the 2nd, 3rd, 5th, 9th, 10th, 11th, 12th and

13th Respondents. The Motion was moved and the order sought therein was granted and the matter adjourned to 6-10-2023.

On the 9-10-2023, one A.C Amaechi appears for the Applicant and one Francis Agunbiade appears for the first(1st) Respondent. On this date the 1st Respondent's counsel moved his Motion for regularization of his process and the order sought therein was granted same date, counsel to the Applicant informed the court that counsel to the 14th – 15th Respondents called and asked for a date to enable her come into the matter and Elizabeth Alabi. In view of the foregoing this matter was then adjourned to the 21-11-2023 for hearing of the Applicant's Motion.

On the 21st day of November,2023 one A.C Amaechi appeared for the Applicant, while Francis Agunbiade appears for the 1st Respondent, Atna K and Joy Atekpe appears for the 6th and 8th Respondents and Elizabeth Alabi appears for the 14th and 15th Respondents respectively. On this date the Applicant's counsel informed the court that all the Respondents have been served.

Upon service of the originating Motion on Notice, the 1st Respondent filed the 1st Respondents counter affidavit in opposition to the Applicants application filed on the 28th day of March, 2023 deposed to by one Sadiq Idris of D5008, Brains and Hammers Estate, 5th Avenue Gwarimpa Abuja of 5 paragraphs and in compliance with the rules of this court filed the 1st Respondent's written address of 15 pages, and a Memorandum of Appearance, while the 5th Respondent also filed the 5th Respondents counter affidavit of 4 pages deposed to by one Raymond Anugoro of Chile Akunnakwe & Company Suite 311 Anbeez Plaza, Plot 15, Ndola Crescent Wuse Zone 5, Abuja FCT & in compliance to the rules of this court filed alongside the 5th Respondents written address of 9 pages where he formulated three issues distilled for the court's determination to wit:

- 1. Whether or not from the facts of this case, the court has jurisdiction to entertain this case in view of the principal claim of the Applicant.**
- 2. Whether or not, the Applicant has placed sufficient material facts to ground a case of Breach of Fundamental Right against the 5th Respondent.**

3. Assuming but not conceding that the 5th Respondent implicated the Applicant, whether or not the 5th Respondent is duty bound to report the Applicant to the office of the 15th Respondent?

The 6th and 8th Respondents filed before this court a counter affidavit dated the 20th November, 2023 filed the same date. The Motion was deposed to by Olumide Onimole of 4th Floor, Merjanator House 1, Zambezi Crescent Off Agunyi Ironsi Street, Maitama Abuja of 18 paragraphs and in compliance with the rules of this court filed a written address in opposition to Applicant's Application for Enforcement of Fundamental Rights of 11 pages wherein the counter raised three issues for determination to wit:

- 1. Whether the Applicant has disclosed a cause of action against the 6th and 8th Respondents.**
- 2. Whether the Applicant has proved a case of breach of fundamental human rights against the 6th and 8th Respondents.**
- 3. Whether the 6th and 8th Respondents are necessary parties to this suit, whose presence is needed or essential for the determination of the Applicant's right in this suit.**

So also the 14th and 15th Respondents also filed their counter affidavit of 33 paragraphs deposed to by one Chizi Orlu an operative of the EFCC plot 301/302 Research & Institute Cadastral District, Jabi, Abuja and attached to the counter are annexures marked as Exhibits EFCC1, EFCC2, EFCC3, EFCC4, EFCC5, EFCC6 and EFCC 7 and the 14th and 15th Respondents written address in compliance with the rules of this court of 13 pages wherein the written address formulated 3 issues distilled for determination to wit:

- 1. Whether the 14th and 15th Respondents has statutory powers to carry out investigation for the commission on cases that Borders on financial crimes?**
- 2. Whether the Applicant has made out a case against the 14th and 15th Respondents, to warrant the grant of the reliefs sought as contained in the Motion paper.**
- 3. Whether the case of the Applicant does not amount to mere speculations?**

The Applicant on receipts of the counter affidavits, filed a further affidavit of 6 paragraphs deposed.

To by one Daniel Kasim of V.V.I Lagos Street/Keffi Road, Kaduna and the Applicants written address on points of law of 8 paragraphs dated the 27th November, 2023.

The 1st Respondent on the 16/6/2023 also filed a Notice of preliminary objection dated the same date for an order of this court striking out the name of the 1st Respondent as party in this suit disclosing no reasonable and justifiable cause of action against THE 1ST Respondent/objector. The said Motion which the counsel to the claimant and other respondents who filed their counter affidavit did not oppose. In view of none opposition, the court granted the reliefs sought therein and the 1st Respondent name was struck out from this suit. The said Motion was moved on the 1/12/2023.

On the same date, the claimant's counsel moved his Motion on Notice and after moving his motion he stated that upon the exchange of the affidavit, submit that the 14th – 15th Respondents did not challenge the material assertion in their affidavit that they induced pressure the Respondents to mention the name of the Applicant except the general traverse i.e paragraph 4 of their counter, which he submit that it is not ineffective denial. And that this is enough to persuade the court to grant this application.

In addition, that the 4th and 5th Respondents did the pressuring. But the 4th Respondent did not deny this though served with the processes.

Furthermore, that the 5th Respondent filed a counter affidavit before the court, the counter dated the 3-11-2023 and in the counter apart from denying that he doesn't know the Applicant, and has not met him in his life, doesn't know the Applicant and had never mentioned the name, and how then did he mention the Applicants name in his affidavit if he was not pressured and asked to mention his name?

Reference to paragraph iii of the 5th Respondents counter affidavit submits that Bound, by definition from Black's Law Dictionary denotes constraint in other words he was constrained to mention the name of the person he doesn't know in his life. That this is the evidence to say that he was pressured to mention the name

of the Applicant, on this he submits that the court should not close its eyes to the application of the Applicant. He went further to submit that the other Respondents have never mentioned the name of the Applicant, that particularly known to them said he gave the Applicant the certificate and indeed they are not opposing the application.

That a look at the counter affidavit of the 14th and 15th Respondent dated 20-11-2023 the counter exhibited listed as EFCC 1-7 on this he submits that the exhibits were not certified and that this court should not consider these exhibits as authentic documents before the court. That the exhibits are public documents not certified. That each deposition in the said affidavit is contrary to the exhibits marked EFCC 1-7 and that nothing in the statement exhibited shows what the deponent is saying i.e that the applicant gave Ahmad those documents and nothing in exhibit EFCC 2 said so i.e there is nothing to show on the said exhibit EFCC 2 that the Applicant gave them a loan.

Reference also to paragraph 16 of the counter of the 14th and 15th Respondents, that they relied on exhibit EFCC3 to say that the solicitor of the 1st Respondent said he is not a lawyer but a political scientist. That this Raymond was invited by the 14th and 15th Respondent and stated that the Land Document was given to him by Toyin Kehinde Exhibit EFCC 3.

Furthermore, on paragraph 17 of exhibit EFCC3, that on the said exhibit, there is nothing like it at all. In paragraph 24 of the affidavit of the 14th and 15th Respondents. They relied on exhibit EFCC7 to say that the solicitor, that is not a lawyer went on and checked all documents which they claimed that the Applicant gave the Respondents were fake and relied on exhibit EFCC 7 to say this. That a close look at exhibit EFCC7, does not say so at all. That it rather said someone confirmed to be genuine while others are not and this submits that this paragraph of the counter affidavit are false and urge this court not to rely on the falsehood in determining the faith of Nigerian Citizens. On this referred this court to the case of EZENBO V. IBENEME (2000) 10 NWLR (PT 674) 61 @ 74 PARAGRAPH B, on this submit that the deponent of this affidavit has this inconsistent affidavit/position i.e the court can choose any hence asked the court to reject the inconsistency.

That even if the affidavit of the 14th and 15th are to be looked at, the said Applicant gave the Respondents and the third party collateral to show that such wage given to the Applicant. That following to this the 14th and 15th Respondent, mentioned one Toyin Kehinde there is no evidence attached to show that Toyin Kehinde mentioned the Applicant. Referred to paragraph 13 of the counter of 14th and 15th Respondent.

That there is no evidence on record that the 14th and 15th Respondent even invited the Applicant not even a letter of invitation was exhibited. That there is exhibit A and B which the Applicant attached that somebody was convicted in the court of FCT, submit that this was denied and urge the court to consider that. That the totality of the 14th and 15th Respondent shows that they are the ones accusing the Applicant and their job is to prosecute and urge the court to grant the relief sought therein.

In response by the 5th Respondent he submits that the 5th Respondent does not in any way know the Applicant, neither does he know what transpired between the Applicant and other Respondents. That contrary to what the Applicant stated that they mentioned the Applicant, he denied not mentioning the Applicants name anywhere in their counter affidavit and therefore urge this court to dismiss this suit for lacking in merit against 5th Respondent.

Response by the counsel to the 6th and 8th Respondents he submits that the Applicants failure to prove the case of Fundamental Rights against 6th and 8th Respondents, in this submit that the Applicant from the affidavit and all other process has failed to disclose a cause of action against the 6th and 8th Respondents. Also that the 6th and 8th Respondents are not necessary parties and urge this court to dismiss the Applicants claims against the 6th and 8th Respondents.

On the side of the 14th and 15th Respondents, response, submit that in all the affidavit and the further affidavit filed by the Applicant, there is no paragraph where he denied that he was invited by the 14th and 15th Respondents. That after the 14th and 15th Respondents received the Applicants petition by the 1st Respondents investigation commenced, and submit that his name was not initially mentioned in the petition but as the investigation progresses, his name was

consistently mentioned by other Respondents. And in the interest of justice he was invited to tell them his role in the whole transaction.

That the Applicant ran to the court to stop the investigation this relied in the case A.G ANAMBRA V. UBA. That in the exhibit certified, submit that's an attachment to an affidavit and urge this court to refuse the application and all the reliefs sought by the Applicant against the 14th and 15th Respondent with a heavy cost.

Now to the issues as captured in this Judgment.

Firstly, the Applicants counsel formulated a sole issue as to?

“Whether in the circumstance of this case, is the applicant not entitled to be granted the reliefs sought for, the respondents having failed or neglected to invite the applicant for his side of the matter or prefer a charge against the applicant if their investigation genuinely point to the applicant as having a case to answer?”

1st Respondent formulated a sole issue for determination to wit:

“Whether by the aggregate of facts presented before this Honourable court the Applicant has disclosed a breach of his fundamental rights by the 1st Respondent to entitle him to a grant of any or all the reliefs sought.”

The 5th Respondent also formulated three issues for the court's determination to wit:

- 1. Whether or not from the facts of this case the court has jurisdiction to entertain this case in view of the principal claim of the applicant.**
- 2. Whether or not the applicant has placed sufficient material facts to ground a case of Breach of Fundamental Right against the 5th Respondent.**
- 3. Whether or not the 5th Respondent is duly bound to report the applicant to the office of the 15th Respondent.**

The 6th and 8th Respondents on it's side formulated three issues distilled to wit:

- 1. Whether the Applicant has disclosed a cause of action against the 6th and 8th Respondent?**
- 2. Whether the Applicant has proved a case of breach of fundamental human right against the 6th and 8th Respondents.**
- 3. Whether the 6th and 8th Respondents are necessary parties to this suit, whose presence is needed or essential for the determination of the applicants claims in this suit?**

The 14th and 15th Respondents counsel formulated three issues for determination to wit:

- 1. Whether the 14th and 15th Respondents has statutory powers to carry out investigation for the commission on cases that Borders and financial crimes.**
- 2. Whether the Applicant has made out a case against the grant of the relief sought as contained in the Motion Paper.**
- 3. Whether the case of the Applicant does not amount to mere speculations.**

I have carefully studied all the issues formulated above I will consider the above as my issues, there as follows:

- 1. Whether in the circumstance of this case, is the applicant not entitled to be granted the reliefs sought for the Respondent having failed or neglected to invite the applicant for his side of the matter or prefer a charge against the applicant if their investigation genuinely points to the applicant as having a case to answer.**

This issue will be discussed alongside issue No:1 of that of the 6th and 8th Respondents and issue1 of the 14th and 15th Respondents and issue 1 of the 5th Respondents

- 2. Whether or not the applicant has placed sufficient material facts of fundamental right against the 5th Respondent, this issue will be entering alongside issue 2 of that of the 6th and 8th Respondents counsel and issues No:2 of that of the 14th and 15th Respondents together.**

- 3. Whether or not the 5th Respondent is duty bound to report the Applicant to the office of the 15th Respondent.**
- 4. Whether the 6th and 8th Respondent are necessary parties to this suit whose presence is needed or essential for the determination of the applicant claims in this suit?**
- 5. Whether the case of the Applicant does not amount to mere speculation.**

On the issue as stated above, I will refer to the affidavit of the Applicant and the exhibits marked, Exhibit A and B which are found respectively on paragraph 12 of the affidavit, I will take the pain to reproduce the relevant portion of the said affidavit and the argument canvassed to by the Applicant in it's written address to address this court as to whether the failure of the Respondents to invite the applicant for his side of the matter or prefer a charge against the Applicant if their investigation genuinely point to the applicant as having a case to answer. The relevant position of the affidavit are as reproduced below:

Paragraph 4:

The 1st Respondent wrote a letter to the Nigeria Police Force against the 2nd - 13th Respondents and upon investigation by the police, I was not involved in any way whatsoever regarding the allegations in the said 1st respondents petition.

Paragraph 5:

The complaint of the 1st Respondent later went to the 15th Respondent (EFCC) wherein arrest and interrogations were carried out by the 14th Respondent.

Paragraph 6:

Neither the Petitioner nor the alleged offenders mentioned my name in their Loan agreement with the 1st Respondent or any particulars thereof.

Paragraph 7:

It was from the petition/complaint that the 1st Respondent advanced Loans of various amounts to the 6th -12th Respondents.

Paragraph 8:

I am neither a staff of the 1st Respondent nor a staff of the 2nd – 13th Respondent and was neither part of the application for the Loan nor was I given any money from the Loan.

Paragraph 9:

It is obvious the 1st Respondent's complaint that the 6th – 12th Respondent were unable to repay the Loan advanced to them by the 1st Respondent hence the petitions – when the 1st respondent could not rely on the Deeds of assignment and the certificate of occupancy used to serve the Loans to recover same.

Paragraph 10:

The 2nd – 13th Respondents and their agents/servants particularly the 4th – 5th Respondents were promised freedom from further detention and freedom from trial by the 14th Respondent and at the same time mentally and psychologically torturing them to mention names of the person who must have given the 2nd - 12th Respondents all the certificates of occupancy they used to apply for the Loans given to them by the 1st Respondent – ignoring the fact that the Deeds of Assignment used for the Loans show that the borrowers are saying that the properties used for the Loans are there's.

Paragraph 11:

Till today 28th March,2023 one man known as Pastor C a staff of AGIS is still in the detention of the 14th and 15th respondents (for about 3 weeks now) and being pressurized with all manner of tactics to say that the applicant was the person that conducted search for all the properties used it for the Loan. But the applicant was never given such an assignment by the 1st Respondent or any other person.

Paragraph 12:

The 2nd – 3rd Respondents obviously represented the other respondents and they got the person who gave them the said certificates of occupancy convicted and sentenced in a court in the FCT in 2011. The Certified True Copy of

the proceedings of Upper Area Court Zuba and the Direct Criminal Complaint exhibited as A and B respectively.

Paragraph 13:

The exhibit A did not state that the applicant was part of the Loan application or that he had anything to do with the certificates of occupancy used in obtaining the Loan from the 1st Respondent.

Paragraph 14:

The 5th Respondent even informed me in Abuja sometime in December, 2022 and I verily believe him that, while under pressure, he forgot the name of the person convicted at the Upper Area Court, Zuba and mistakenly mentioned my name in error. Since the 14th and 15th Respondent has been using different tactics to induce or entice any person arrested in connection with the case to mention my name and get bailed or to be detained indefinitely if he refused to. I was not invited nor questioned. Rather the 14th respondent planned to arrest me and seize my International passport at the Airport upon my arrival as I am currently Not in Nigeria. The 14th and 15th Respondent have my telephone number.

Paragraph 19:

The 6th - 13th Respondents ignored to replace the collateral that are being questioned about by the 1st Respondent rather on buck passing on any person they can remember his full name seeking to hide the fact that they took the Loan. They used various Deeds of Assignment (in their various names and signatures to secure the said Loans).

From the affidavit of the Applicant as stated above can it be said that they the reliefs sought by the applicant is availing in this circumstance?

On this I wish to state that it is pertinent to note that the special procedure stipulated for the enforcement of fundamental rights is radically different from the normal proceedings instituted by writ of summons. But once a particular procedure has been chosen it has to be strictly complied with in line with the appropriate rules of the court. Therefore, the applicant in challenging the violation of fundamental

rights, the relief sought by an applicant should be formulated from chapter IV of the constitution and/or the African Charter on Human and Peoples Rights (Ratification and Enforcement Act Cap A9 LFN 2004).

It is trite law that the breach of a fundamental right alleged by an applicant must be the main plank in the application for enforcement, where the violation of a fundamental right is merely incidental or ancillary to the principal claim or reliefs it is improper to constitute the action as one of the enforcement as a fundamental rights see TRUCKS NIGERIA LTD VS ANIGBORO (2001) IV WRN 78. The factors that will assist this court to discover the principal claim in fundamental rights application include the reliefs sought, grounds for seeking the reliefs and the supporting affidavit. See OLAWOYIN V OBAFEMI AWOLOWO UNIVERSITY (2004) 2 FHCLR – 166 and RAYMOND DUNGTOE V CIVIL SERVICE COMMISSION OF PLATEAU STATE (2001) 19 WRN 125@ 147, the Supreme Court Per Garus White JSC held:

“The claim of the appellant was for an order enforcing his fundamental rights against (1) Plateau State Civil Service Commission (2) Board of Internal Revenue Plateau State (3) Attorney General of Plateau State in terms of the reliefs set out in the Motion. None of the reliefs claimed by the appellant falls within any of the specific rights enumerated in Chapter IV where a breach of the provision of Chapter IV is the principal claim, the procedure can be invoked even though other claims are made – DIN VS A.G OF THE FEDERATION (1988) 4 NWLR (PT87) 147 SC see BORNO RADIO TELEVISION CORPORATION V BASIL EGBUONU (1991) 2 NWLR 81 @ 89 CA. In the instant case none of the principal claims which appellant seeks to enforce before the learned trial Judge can be brought within the provision of Chapter IV accordingly, the learned trial Judge had no vires to exercise jurisdiction on this from the principal claims of the Applicant 1 – 2 and 3 can’t be said to come under Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria as amended to warrant this

**court to exercise its jurisdiction for the applicants
fundamental rights?**

On this he the 5th Respondents counter affidavit while responding to the allegations made by the Applicant of the breach of his fundamental rights at paragraph 3:1 of its argument on issue (1) where he stated that, the Applicant has in his principal claim asked for “A declaration that putting the 4th and 5th Respondents under pressure and influencing them or making them to say that the Applicant gave out the certificates of occupancy in issue and /or the search report thereof which will enable the 14th – 15th Respondents arrest the Applicant when the said Respondents through the 2nd and 3rd Respondents had in case number DC/CR/455/2021 ALH RABIU & 1 OR VS. ALH. ABUBAKAR DANKOGI complained and got the person that procured the same certificates of occupancy convicted, constitutes a serious threat to the Applicant’s fundamental rights to personal liberty freedom of movement and contravenes section 35 and 41 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to which the 5th Respondents has deposed of paragraph 3(h) and I of his counter affidavit that the court lacked the jurisdiction to entertain the suit as the principal claim of the Applicant does not bother on breach of fundamental right.

On this he cited the case of WAEC V AKINKUNMI (2008) LPELR.34 E8 (SC) P.P 15-17 PARA (C) where the Supreme Court held that:

“The settled principle is that in ascertaining the justifiability or competence of a suit commenced by way of an application under the Fundamental Rights (Enforcement Procedure) Rules 1979, the court must ensure that the enforcement of the Fundamental rights under Chapter IV of the constitution is the main claim and not the ancillary claim. Where the main claim is not the enforcement of a fundamental right, the jurisdiction of the court cannot be said to be properly invoked and the action will be liable to be struck out for incompetence....”

On this he submits that, the principal claim sought by the Applicant as indicated above is unknown to our legal jurisprudence.

That assuming but not conceding, that the 5th Respondent mentioned the name of the Applicant, it is difficult to fathom how making a statement before law enforcement agencies which implicates the Applicant will automatically amount to a breach of fundamental right, especially knowing that the office of the 15th Respondent has a statutory duty to carry out investigation on an allegation of crime?

On the other side of the coins, I wish to state that, owing to the fact that the state remains the greatest violator of fundamental rights, it is the general belief that actions relating to infringements of such rights can only be brought against Government or any of its agencies, or officials and not against private individuals. The provision of Chapter IV of the Constitution are designed to protect the fundamental rights of individual citizens of Nigeria against the tyranny and excesses of government and/or their agencies and not against other individual citizens In ABDULHAMID V AKAR (2006) 13 NWLR (PT 986) reinstated the position thus:

“The position of the law is that where fundamental rights are invaded not by government agencies but by ordinary individuals as in the instant case, such victim have right against the involved perpetrators of the acts as they would have done against state actions. It follows therefore that in the absence of clear position prohibition which precludes an individual to assist a violation or invasion of his fundamental rights against another individual, a victim of such invasion can also maintain a similar action in a court of law against another individual for his act that had occasioned wrong or damage to him or his property in the same way as an action he could maintain against the state for a similar infraction”.

By the above decision and the instant application can it be said that the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th and 14th defendants who are individuals breached the fundamental rights of the Applicant? That made the 15th Respondents EFCC to act? If that will be the case does the EFCC have the power to act on the petitions written by the 1st Respondent. If Yes, the action taken by the

EFCC amounts to a breach of the Applicant's fundamental right? Section 7 of the EFCC Act, provides the powers conferred on EFCC, it provides thus:

“Cause investigation to be conducted as to whether any person, corporate body or organization has committed any offence under this act or other law relating to Economic Enforcement Crimes”.

On this it is their submission that the 14th and 15th Respondents have the power to invite, arrest and investigate any person that is suspected to have or is likely to commit a financial crime. And that in the instant case, the 14th and 15th Respondent received a petition from the 1st Respondent bothering on a case of money mismanagement and diversion of CBN funds totaling 2 Billion, Two Hundred and Seventy-Eight Million, Eighty-Six Thousand, Two Hundred and Twenty Naira (N2,758,086,270.00) and upon the receipt of the petition the 14th and 15th Respondents in line with its statutory obligation swung into investigation of the alleged criminal act.

The learned counsel to the 14th and 15th Respondents submit that, the application by the Applicant is a calculated attempt to stall investigation into the alleged crime reported to have been committed. The learned counsel further submits that sections 12(1) and 13(1) of the EFCC Act 2004 makes the 14th and 15th Respondents enjoy the same powers with the Nigeria Police Force when it comes to investigation and prosecution of offender's section 4 and 23 of the Police Act on this referred the court to the case of FAWEHINMI V IGP (2000) NWLR (PT 665) C481 and 519 – 521 where the court of Appeal held inter-alia that:

“Under the provisions of section 4 of the Police Act, the police has inter-alia, the duty to detect crime, - in the performance of that allimportant duty, the police is trying to discover whether or by whom can offence has been committed, he is entitled to question any person whether suspected or not from whom, he thinks that useful information may be obtained that may act if the police is called for investigations”

That by virtue of the above authority, it goes without saying that the applicant can be invited or arrested by the 14th and 15th Respondents with the aim to shed more light on the petition received by the 1st Respondent. Acting on the above, the

Applicant when invited by the 14th and 15th Respondent did not honour the invitation but rather ran to this court for a shield.

From the above and other reasons given I hold that the 14th and 15th Respondents have the statutory power to investigate any financial crimes reported to it and this present case is not an exception.

From the totality of what I have said and the reason given therein I can hardly find or situate on the argument canvassed by the Applicant that his fundamental right has indeed been breached by the Respondent. Not only that, the reliefs sought by the Applicant 1,2,3 and 4 herein stated in this Judgment does not fall within Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) hence I shall resolve the first issue in favour of the Respondents especially the 14th and 15th Respondents. This also answered issues No2 that is to say that the Applicant has not been able to place sufficient material or facts of fundamental rights against the 5th Respondent.

On the third issue as to whether or not the 5th Respondent is duty bound to report the Applicant to the office of the 15th Respondent. On this the learned counsel to the 5th Respondent submitted that the 5th Respondent has deposed that paragraph 3 (i) of his counter affidavit that assuming but not conceding he implicated the Applicant before the office of the 15th Respondent, he has a duty to so act and submit that if the 5th Respondent actually did as alleged, it was duty bound by law to so report or implicate the Applicant if he reasonably believed that he had a hand in the case being investigated by the office of the 15th Respondent and therefore cannot be held liable for any breach of fundamental rights, that may arise thereto. This he referred this court to the case of MADUKA V UBAH & ORS (2014) LPELR – 23966 (CA) PGS 35 -36 PARA. B where the court of Appeal held thus:

“Indeed every citizen has a right or even a duty to report to the police anyone suspected of committing a crime and the police have a corresponding duty to investigate the report in the course of their statutory functions of prevention, detection of crime and generally preservation of law and order. In the case of FAJEMINKOM V COMMERCIAL BANK (CREDIT LYONNIS) NIG. LTD (2009) 3 NWLR

(PT. 1135) 558, the Supreme court held that generally, it is the duty of citizen of this country to report cases of commission of crime to the police for their investigation and what happens after such report is entirely the responsibility of the police. The citizens cannot be held culpable for doing their duty unless it is shown that it is done Mala Fide see also ONAH V OKENWA (2020) 7 NWLR (PT 1194) 5.2 cited by the appellant where the court held “ Every person in Nigeria who feels an offence has been committed has a right to report to the Nigerian Police Force once the right of complaint to the police who are custodian of order, in the society is exercised the right shifts to the police to entertain, their statutory powers under section 4 of the Police Act. The power conferred on the police under the Police Act includes, investigation, arrest, interrogation of any suspect” per Iyezoba JCA in MADUKA V UBAH & ORS (2014) LPELR – 23966 CA PP. 35-36 PARA. B.

In conclusion he urged this court to dismiss this with substantial costs as same is vexatious and I agross abuse of court process. On this it is the submission of the 14th and 15th Respondents counsel, that the 14th and 15th Respondents has the power to invite, arrest and investigate any person that is suspected to have or is likely have to commit a financial crime. That in the instance case, the 14th and 15th Respondents received a petition from the 1st Respondent bothering on a case of money mismanagement and diversion of CBN funds totaling Two Billion, Two Hundred and Sixty-Eight Million, Eighty-Six Thousand, Two Hundred and Twenty Naira (N2,268,086,220.00).

The Learned counsel to the 14th and 15th Respondents further submit that the statutory role the 14th and 15th Respondents is playing in this case is to carry out thorough investigation into the alleged criminal conduct of the Applicant, and submitted that this application by the Applicant is a calculated attempt to stall investigations into the alleged crime reported to have been committed, on this referred this court to section 6 and 7 of the EFCC (Establishment) Act, 2004 that vested the 15th Respondent with the powers to investigate and prosecute all Economic and Financial Crimes which duties are statutory on this referred this

court to the case of JOLLY TERORO NYAME VS. FRN SC 136/2009 (2020) E.C.L.R VOL/P 240 – 240 where it was held by the Apex court thus:

“The Federal government of Nigeria created the Economic and Financial Crimes Commission by an Act of the National Assembly in 2004, Section 6 of the Act provides that the Economic and Financial Crimes Commission shall be responsible for enforcement and over administration of the provision of the Act. The investigation of all the Financial Crimes including advance fee fraud, money laundering, counterfeiting, illegal transfer, futures market fraud, fraudulent market fraud, fraudulent encashment of negotiable instrument, computer credit card fraud, contract scam etc.

Furthermore, submitted that, section 12(1) and 13(1) (2) of the EFCC Act 2004 makes the 14th and 15th Respondents enjoy the same powers with the Nigerian Police Force when it comes to investigation and prosecution of offenders see section 4 and 23 of the Police Act see FAWEHINMI V IGP (2004) NWLR (PT665) 481 @ 519 – 521 where the court of Appeal held inter alia that:

“Under the provisions of section 4 of the police Act, the police has inter-alia the duty to detect crimes- in the performance of that all-important duty, the police it trying to discover whether or by whom an offence has been committed, he is entitled to question any person, whether suspected or not from whom he thinks that useful information may be obtained, that very act of the police is called investigation” That by virtue of the above submitted that, the applicant can be invited or arrested by the 14th and 15th Respondents with the aim to shed more light on the petition received by the 1st Respondent. That the Applicant when invited did not honour the invitation but ran to this court for a shield. In conclusion urge the court to hold that the 14th and 15th Respondents has the statutory power to investigate any financial crimes reported to it and this present case is not an exception.

On this I have this to say, by the provisions of Section 7 of the EFCC Act, 2004 (as amended) the commission shall have power to:

- 1. Cause investigation to be conducted as to whether any person, corporate body or organization has committed an offence under this Act or other relating to economic and financial crimes.**
- 2. Cause investigation to be conducted into the properties of any person if it appears to the commission that the person's lifestyle and entirety of the properties are not justified by his sources of income.**

Apart from the above, the powers conferred on the EFCC is not only receiving complaints from individuals but EFCC does not need any complaints or request, formal or informal from a particular organization or victim before it can carry out investigation in respect of the commission of an economic crime in relation to that organization or victim see *KALU V F.R.N (2001) 1 NWLR PT 479*.

In this instant case, the 1st Respondent whose name factors to have written a petition to the office of EFCC which prompted the officers of EFCC to cause investigation on the alleged petition written by the 1st Respondent has been struck out from this instant case. The name having been struck out hold that the action taken by the 15th Respondent cannot be seen to have been in violation of the fundamental rights under section 34(1) (a) and 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as the office of EFCC has that power to cause investigation without receiving any complaints either formal or informal from a particular organization or victim before it can carry out investigation, in respect of the commission of an economic crime in relation to that organization or victim. I therefore hold that the order sought by the Applicant has no substance hence I shall resolve this issues in favour of the 5th Respondent. I so hold.

On the last issue as to whether the case of the Applicant does not amount to mere speculation? On this it is the submission of the 14th and 15th Respondents that the Applicant's application is purportedly for an order of interlocutory injunction against the 14th and 15th Respondents from harassing, intimidating and arresting the applicant in respect of pending petition. This he submitted that it is a mere speculation because the Applicant has not even honoured the invitation made to him by the 14th and 15th Respondents. That his own story has not been made known to the 14th and 15th Respondents.

On this it is the argument of the Applicant where in its written address submitted that the continuous pressure and demand on witnesses particularly the 2nd – 5th Respondents to include the Applicant or they would be immediately detained by the 14th and 15th Respondents, the threat to arrest the Applicant at the Airport upon his entry into Nigeria even without inviting him or hearing from him, is unconstitutional as it infringes on the Applicants right to freedom of movement and fair hearing enshrined in section 36 and 41 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) on this he referred this court to the case of *AGBAKOBA V THE DIRECTOR SSS* (1994) 6 NWLR (PT 351) 475 where it was held that the right to freedom of movement and right to enter and exit from Nigeria is guaranteed.

By this proposition can it be said that the rights of the Applicant has been breached under sections 36 and 41(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)? On this I will disagree with the submission of the Applicants counsel on this point I say so in line with the proposition that a mere allegation of crime or wrong doing against a suspects, irrespective of its seriousness, cannot operate to curtail the fundamental rights of the suspects nor can it operate to justify re-incarceration and torture of the suspects as alleged by the Applicant see *DUROAKU V UWOKE* (2015) 15 NWLR (PT 1483), *ELIM V ASIKPO* (2008) CHR 78. Also in the same case it was held that a party will be held liable where he deliberately, falsely, maliciously, vindictively set the machinery in motion for the breach of and Applicants right. In such a situation this court will enforce the fundamental rights of the Applicant. In this instant case there is nothing like that, as the 1st Respondent whom he claimed wrote the petition struck out his name has been struck out from this instant case. Having struck out this case cannot stand. Hence the order sought by the Applicant for interlocutory injunction is also not availing on the Applicant. I so hold.

In conclusion or in summation as I rightly said or observed from the beginning, this action cannot stand as the main claim on the Declaration sought against the 4th and 5th Respondent which will enable the 14th and 15th to arrest the Applicant is not acting.

Hence in totality, i hold that the claim or Declaratory reliefs sought by the Applicant and the order sought therein is not grantable by this court. Hence this case lacks merit and hence is dismissed.

This is my Judgment.

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Hon. Justice A. Y. Shafa

Appearance:

1. Atna Ayuembo with me is Abdulbase Shauib for the 6th and 8th Respondent.
2. Luke C. Enelechi for the applicant and holding the brief of A. C Amaechi.
3. Charles Adeyemi for the 5th Respondent.