

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 27TH DAY OF SEPTEMBER, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

MOTION NO.:-FCT/HC/M/11891/20

BETWEEN:

BLAISE CHIGOZIE ODIGBO:.....APPLICANT

AND

1. ECONOMIC AND FINANCIAL CRIMES COMMISSION	} :.....RESPONDENTS
2. MR. CHRIS ODOFIN	
3. CLEVER HOME LIMITED	

Francis Oguaji for the Applicant.
JekiyudwenAnabi for the 1st and 2nd Respondents.
Willy Adupu for the 3rd Respondent.

JUDGMENT.

By an Originating Motion dated and filed the 13th day of November, 2020, the Applicant instituted this suit against the Respondents claiming as follows:

1. A declaration that the detention of the Applicant from 5pm on 14th September, 2020 till 5:30pm of 22nd September, 2020 by officers of the 1st Respondent without a valid Court Order is contrary to Section 5 of the Administration of Criminal Justice Act, 2015 and a violation to the Applicant's right to dignity and personal liberty as guaranteed by Section 34 of the 1999 Constitution.
2. A declaration that the detention of the Applicant from 5pm on 14th September, 2020 till 5:30pm of 22nd September,

2020 by officers of the 1st Respondent beyond Twenty-four (24) hours as prescribed by Section 35 (5) of the Constitution, without a charge is illegal and unconstitutional and violates the Applicant's right to dignity, personal liberty and presumption of innocence.

3. A declaration that the act of 2nd Respondent forcing the Applicant to write a letter of undertaking to pay at about N10,700,000 (Ten Million Seven Hundred Thousand Naira) only to the 3rd Respondent (Clever Home Limited) in a civil wrong or breach of contract is violation of Section 8(2) of the Administration of Criminal Justice Act, 2015.
4. A declaration that the 1st Respondent overreached its statutory mandate when it sought and interfered with civil transaction between the Great Focus Nig. Investment Consultants Ltd and Clever Home Limited and forced the Applicant to refund about N10,700,000 to 3rd Respondent, is breach of his constitutional right.
5. An Order of this Court directing the 1st and 2nd Respondents to return the sum of N2,000,000 (Two Million Naira), only and N500,000 (Five Hundred Thousand Naira) only bank drafts issued in favour of the 3rd Respondent as directed by the 2nd Respondent in recovering a debt allegedly owed the 3rd Respondent by the Great Focus Nig. Investment Consultants Ltd.
6. A perpetual injunction restraining the 1st Respondent, whether by themselves, their agents, servants, privies, employees or whosoever, from further arresting, detaining and/or causing the arrest and detention of the Applicant or in any manner infringing on the Applicant's fundamental rights.
7. An order directing the 1st Respondent to issue a letter of apology to the Applicant in accordance with Section 35(6) of the 1999 Constitution.

8. Damages in the sum of N70,000.000 (Seventy Million Naira) only against the 1st Respondent for the arbitral, illegal detention and violation of the Applicant's fundamental rights to personal liberty and dignity of persons and in accordance with Section 35(6) of the 1999 Constitution.
9. And for such further or other order(s) as this honourable court may deem fit to make as the justice of the case may demand.

In the supporting affidavit deposed to by the Applicant, he averred that he was orally invited by the officer of the 1st Respondent by name Nuhu; one of the team members attached to Foreign Exchange Malpractice, who told him to report at the 1st Respondent's headquarters at Abuja on 14th September, 2020, while refusing to tell him the reason for the invitation.

He stated that he reported to the 1st Respondent's headquarters in Abuja at the Department of Foreign Exchange Malpractice on 14th September, 2020, at 10:30am accompanied by his lawyer. That the 2nd Respondent informed him that the 3rd Respondent wrote a petition against his company, Great Focus Nig. Investment Consultants Ltd in respect of the contract awarded to it to clear 34 containers belonging to the 3rd Respondent from the Port Harcourt wharf in Rivers State.

The Applicant averred that the 2nd Respondent told him to make statement under caution, which he did, but the 2nd Respondent rejected it and said the Applicant must write in answer to the questions he will ask the Applicant. He stated that he complied with the 2nd Respondent's instructions, and when he was done with writing the statement, the 2nd Respondent told him to sum up the amount of money he

transferred to people and the names of the persons and amount of money transferred to them through the company's account and to subtract it from the total money given to his company. He averred that he did so and left the balance of about N10,700,000 and the 2nd Respondent went further to ask him to send somebody to bring the money; that he would be detained until the money is completely paid. That the 2nd Respondent served him with outrageous bail condition and asked one of the officers to take him to their cell at Idiagbon House, Zonal Office of the 1st Respondent at Wuse II, Abuja.

The Applicant further averred that he was detained by the 1st and 2nd Respondents in their custody from 5pm on 14th September, 2020, and released on bail at about 5.30pm on 22nd September, 2020. He stated that while he was in detention, his wife rallied round to borrow N2,000,000.00 from friends for which she raised bank draft for its value in favour of the 3rd Respondent and submitted same to the 2nd Respondent on 17th September, 2020, but the 2nd Respondent insisted that he would not be released until the full money is paid.

That on 18th September, 2020, his sureties came to take him on bail but the 2nd Respondent refused to grant him bail until the whole money is paid, and that on 22nd September, 2020, he was forced to write letter of undertaking that he will pay about N8,700,000 within one month, after which he was granted bail and his sureties came and signed his bail bond before he was released at about 5pm on 22nd September, 2020.

He stated that he is still being threatened with further arrest, detention, harassment and intimidation by the 1st and 2nd Respondents on the same facts of this application for no justifiable reason whatsoever.

The learned Applicant's counsel, NnaemekaOguaju, Esq, raised three issues for determination in his written submission in support of the Application, namely;

- a. Whether the detention of the Applicant from 5pm on 14/9/2020 to 5.30pm on 22/9/2020 without a court order is an abuse of his fundamental right provided under Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and African Charter?
- b. Whether the Applicant is entitled to the enforcement of his fundamental rights as protected by Chapter 4 of the 1999 Constitution and African Charter?
- c. Whether the Applicant is entitled to the award of damages and public apology having recourse to the provisions of Section 35(5) of the 1999 Constitution?

Proffering arguments on issue one, learned counsel posited that the Applicant's fundamental rights provided under Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap 10, Laws of the Federation 2004, is likely to be infringed, where there are enough acts on the part of the Respondents aimed essentially and unequivocally towards the contravention of the Applicant's right.

He referred to **Ezeadukwu v. Maduka (1997) 8 NWLR (Pt.518) at 660-661.**

He argued that the Applicant's fundamental right has been breached by virtue of the 1st and 2nd Respondents detaining the Applicant for 8 consecutive days starting from 5pm on 14/9/2020 to 5.30pm on 22/9/2020 without a justifiable reason, or better still, an order of a competent court of record. He submitted, with reliance on Section 34(1)(a) of the 1999

Constitution and Section 8(1)(b) of the ACJA, 2015, that the law is trite that a suspect shall not be subjected to any form of inhuman or degrading treatment.

He contended that by virtue of the provisions of Section 35(5) of the 1999 Constitution, the reasonable time for keeping a suspect before he is charged to court is within 24 hours of such arrest. Thus, that where a suspect is held over for more than 24 hours, the arresting authority must be ready to provide satisfactory reasons that the Court was located outside the radius of 40 kilometres from its location. He referred to **Ajao v. Ashiru (1973) NSCC 525.**

He further argued that the power conferred by Section 3 of Administration of Criminal Justice Act, 2015 to arrest and investigate a suspect alleged or charged with committing an offence, does not include the power to detain the suspect at first instance without a remand order from a court of competent jurisdiction. He contended that the Applicant in this case, was detained and forced to pay money to the nominal complainant when a competent court of record has not pronounced that the Applicant is entitled to pay the said money to the nominal complainant. He referred to **Danfulani v. EFCC (2016) NWLR (Pt.1089) 298 at 322; Akeemv. FRN (2017) All FWLR (Pt.872) 1518.**

He urged the court to hold that the detention of the Applicant by officers of the 1st Respondent was without due process, and that same was illegal, unconstitutional and a breach of his fundamental rights as enshrined in the 1999 Constitution (as amended).

On issue two, learned counsel posited that Section 34(1)(a) of the 1999 Constitution provides for the right to dignity of persons which further translates that no person shall be subjected to

torture, inhuman or degrading treatment. He referred to **Iheme v. Chief of Defence Staff & Ors. (2018) LPELR-45354 (CA)** where the court expanded the scope of Section 34(1)(a) of the 1999 Constitution to include all pains occasioned to the mind or mental cruelty which affects the life or health of the Applicant.

He contended that the Applicant was ridiculed and humiliated by officers of the 1st Respondent before his wife and his friends, especially when he was detained and remanded in the cold cells of the 1st Respondent at its Zonal office at Wuse II, Abuja for 8 days.

He urged the Court to hold that the Applicant is entitled to enforce his fundamental right as enshrined in the constitution.

Issue three: On whether the Applicant is entitled to the award of damages and public apology, learned counsel posited that damages in compensation, legally and naturally flows from every act of violation of citizen's fundamental rights. He referred to **Ozide & Ors v. Ewuzie & Ors (2015) LPELR-24482 (CA)**.

Relying on Section 35(6) of the 1999 Constitution, he submitted that any person who is unlawfully arrested and detained shall be entitled to compensation and public apology from the appropriate authority or person. He contended that the Applicant has been unlawfully detained for 8 days without a justifiable reason or order of court by the 1st and 2nd Respondents and that he is thus entitled to damages and compensation. He referred to **FBN PLC v. A.G. Federation (2018) 7 NWLR (Pt. 1617) 121**, and urged the Court to grant the Applicant's reliefs as prayed.

In opposition to the Originating Motion, the 1st and 2nd Respondents filed a 40 paragraphs counter affidavit dated 10/12/2020 and deposed to by Chris Odofin, the

2nd Respondent. He averred that on the 6th day of August, 2020, the 1st Respondent received a petition of obtaining money by false pretence, criminal breach of trust and criminal conversion against the Applicant by the 3rd Respondent. He stated that because the petition raised weighty issues against the Applicant, a case file was opened and investigation commenced.

The 2nd Respondent averred that the Applicant was invited by the 1st Respondent to investigate the alleged crime and he honoured the invitation on the 14th day of September, 2020. That the Applicant made confessional statement and was granted bail on the same 14th September, 2020 but the Applicant did not bring a surety to take him on bail until 22nd September, 2020 when one Mr Olorunda G. Taiwo of Federal Ministry of Labour, Abuja applied for the bail of the Applicant and the Applicant was immediately released to him by the 1st and 2nd Respondents.

The 1st and 2nd Respondents averred that the 2nd Respondent did not direct the Applicant on how to write his statement as all his statements were written in the presence of his lawyer and that the Applicant is the only one that has knowledge on how he disbursed the money he collected from the 3rd Respondent as can be seen from the attached Exhibit EFCC3.

The 2nd Respondent denied telling the Applicant that he would be detained until he brought the money; stating that the Applicant was granted bail on the 14th day of September, 2020 but he did not fulfil the bail condition. He stated that he never asked the Applicant to pay back the money and that the Applicant's wife has never brought any money/managers cheque to him or the 1st Respondent.

He averred that no surety came to take the Applicant on bail before the 22nd day of September, 2020; that instead, the Applicant's lawyer wrote to the 1st Respondent for review of the bail condition on the 18th day of September, 2020. That the Applicant was granted bail without any recourse to payment of monies collected from the 3rd Respondent and without any undertaking.

The 1st and 2nd Respondents further averred that they neither harassed, threatened nor intimidated the Applicant. That the 1st Respondent is yet to conclude investigation in the petition sent to its office against the Applicant, and it will be in the interest of justice to allow the 1st Respondent conclude investigation into this matter.

In his written submission in support of their counter affidavit, learned counsel for the 1st and 2nd Respondents, ChiomaChinyeluOkongwu, Esq, raised two issues for determination, namely;

1. Whether the 1st and 2nd Respondents are in breach of the Applicant's fundamental human rights?
2. Whether the Applicant is entitled to the reliefs sought?

Arguing issue one, learned counsel argued that in carrying out its responsibilities, the 1st Respondent conducted investigation into the allegation contained in the petition submitted to it by the 3rd Respondent, which necessitated the invitation of the Applicant to the 1st Respondent's office where he volunteered his statement in the presence of his lawyer and was immediately granted administrative bail.

He submitted that by the combined effect of Sections 6,7, 8(5), 13 and 41 of the Economic and Financial Crimes Commission (Establishment) Act, 2004, the 1st Respondent is empowered to

investigate all cases of economic and financial crimes reported to it for possible prosecution where a prima facie case is established.

He referred to **Fawehinmi v. I.G.P. (2000) 7 NWLR (Pt.665) 481 at 519-521, Femi Omoniyi v. Isaac Akinoyede & 3 Ors FHC/EN/M/174/10 (unreported)**, and submitted that the 1st Respondent has the statutory power to question anyone in the process of investigation, and that nobody is immune from investigation, especially where the person is directly connected with the substance of the complaints being investigated by a law enforcement agency.

He contended that the 1st Respondent, acting through the 2nd Respondent can thus invite the Applicant if by so doing, it will shed more light on the criminal investigation being conducted.

He submitted that the 1st Respondent acted in line with its mandate and did not act outside its powers or breach the Applicant's fundamental right.

On issue two, learned counsel argued that the actions of the 1st Respondent in merely carrying out its statutory responsibilities of investigation could not have amounted to a breach of the Applicant's fundamental rights as alleged by the Applicant. He thus contended that if the Applicant's claim of breach of his fundamental rights fails, then the reliefs he seeks will also automatically fail. He referred to **Ekwenugo v. FRN (2001) 6 NWLR (Pt.708)185.**

He further referred to Section 7(1)(a) of the Economic and Financial Crimes Commission (Establishment) Act, 2004, which empowers the 1st Respondent to conduct investigations into offences committed under the Act. He argued that investigation of offences is not interference with the fundamental rights of the

Applicant and that the Applicant cannot ask the Court to stop the 1st Respondent from carrying out its statutory responsibilities.

He posited that the reliefs sought by the Applicant all contravene the provisions of the Economic and Financial Crimes Commission (Establishment) Act, 2004 which gives the 1st and 2nd Respondents power to investigate cases.

He referred to **Attorney General of Anambra v. Chris Uba (2005)15 NWLR (Pt.947)67-68,** and urged the Court to hold that the fundamental rights of the Applicant have not been breached and that the Applicant is not entitled to the reliefs sought.

In response to the 1st and 2nd Respondents' counter affidavit, the Applicant filed a 5 paragraphs counter affidavit wherein he reiterated the fact that despite the outrageous bail conditions given to him by the 1st and 2nd Respondents, two sureties, a civil servant and Directors, came to the office of the 2nd Respondent to take him on bail, but the 2nd Respondent refused, saying that he was acting on instruction not to release him until he brought N10m.

That despite borrowing money by his wife and raising a draft (manager's cheque) of N2m and depositing same with the 2nd Respondent on 17/9/2020, the 2nd Respondent insisted that the money was too small and refused to grant him bail. That the 2nd Respondent only reluctantly granted him bail after he had written letter of undertaking to pay the balance of N8,700,000 within a month on 22/9/2020.

The Applicant averred that after his release on bail, he was told to report to the commission on 26/10/2020 with the balance of N8,700,000 and that he reported to the 2nd

Respondent's office on 28/10/2020 and told him that he was not able to get N8,700,000, whereupon the 2nd Respondent asked him how much he brought, and he said N500,000. He stated that the 2nd Respondent insisted that he would be detained until he brought the whole balance. That he started pleading with the 2nd Respondent until he received draft (Bank cheque) of N500,000, a copy of which the Applicant exhibited on the further affidavit.

In his written submission in support of the further affidavit, learned Applicant's counsel raised for determination, the issue of "whether the detention of the Applicant from 14/9/2020 to 22/9/2020 without an Order of court is a breach of his fundamental right as enshrined in Chapter 4 of the 1999 Constitution (as amended)?"

He posited in his submissions that the position of the law is clear that the proper thing the 1st and 2nd Respondent should do after detaining the Applicant is to charge him to court. He submitted that the failure to charge the Applicant to court after detaining him for 8 days without the order of court is abuse of his fundamental right.

He referred to **Danfulani v. EFCC (supra).**

On the insistence of the 2nd Respondent that the Applicant should pay N10,700,000 before he will be released on bail, learned counsel referred to the unreported High Court case of **Barr. Oji D. Emole v. EFCC &Anor; Suit No. FCT/HC/CV/189/6** where the court stated that: "The EFCC has a lot of work to do with the increased rate of corruption in Nigeria, rather they are busy occupying themselves with the unnecessary race in civil matters to collect debt."

Relying on **Mclaren v. Jennings (2003) FWLR (Pt.154) 528,** he posited that the transaction between the Great Focus Nig. Investment Consultants Ltd and the 3rd Respondent is a civil transaction, and that police do not have the powers to detain a person for breach of contractual obligations as it is an action outside their jurisdiction.

He urged the court to hold that the 1st and 2nd Respondents had violated the Applicant's right to dignity of human person and liberty contrary to Sections 34 and 35 of the 1999 Constitution, and to grant all the reliefs sought by the Applicant in the Originating Motion.

Also in opposition to the Originating Motion, the 3rd Respondent filed a 21 paragraphs counter affidavit, supported by exhibits and written address.

In the counter affidavit deposed to by one EbubeOnyekwelu, litigation secretary in the law firm of 3rd Respondent's counsel, the 3rd Respondent, a Chinese Company, averred that she engaged the Applicant based on recommendation of a Chinese Nationale, to clear her 34 containers of aluminium roofing sheets at the cost of N61,000,000.00. She stated that the Applicant assured her that he will clear all the 34 containers within a month's time and the 3rd Respondent at various times and dates paid the agreed sum of N61,000,000.00 into the accounts of the Applicant, but the Applicant in total breach of his assurance to clear the containers within a month's time, failed to deliver on his promise.

The 3rd Respondent averred that she obliged the Applicant a further time within which to clear the containers but he still was unable to clear them rather the Applicant resorted to outright blackmail, harassment, intimidation and threatening the 3rd Respondent's Director so as to scare and dissuade the 3rd

Respondent from demanding for her containers or the money that she gave the Applicant.

She stated that when she got information that the continued non-clearance of the containers had attracted over N200m in demurrage and with no possibility of them being cleared by the Applicant, the 3rd Respondent engaged her solicitors to write a petition against the Applicant to the 1st Respondent.

The 3rd Respondent stated that she did what any other law abiding citizen would have done by causing a petition to be written against the Applicant for the 1st Respondent to investigate the matter as what the Applicant did amounts to cheating, criminal breach of trust, impersonation, fraud and obtaining by false pretence. She stated that the Applicant was treated with civility by the 2nd Respondent as he was not harassed, intimidated, threatened or forced to make any statement or confession during and after his statement was obtained and that his statement was voluntarily obtained in the presence of his lawyer after which he was immediately granted administrative bail.

In his written address in support of 3rd Respondent's counter affidavit, learned 3rd Respondent's counsel, Willie Adukwu, Esq, raised a lone issue for determination, to wit;

“Whether the Applicant has proved a case of infringement of his fundamental right?”

Proffering arguments on the issue so raised, learned counsel posited that a citizen or resident of Nigeria who is a victim of a criminal offence committed by another person is permitted by law to report such crime to the police or its sister agencies, in this case the Economic and Financial Crimes Commission. He argued that the 3rd Respondent was deceived by and indeed,

defrauded of her hard-earned money by the Applicant on the guise that he is a licensed clearing agent when in actual fact, he is not. He contended that the Applicant did not clear the containers for which he had received payment from the 3rd Respondent, neither did he refund the money back to the 3rd Respondent. He urged the court to hold that the action of the Applicant amounts to cheating, obtaining by false pretence and criminal breach of trust, which offences the law allows the 1st Respondent through the 2nd Respondent to investigate.

He referred to **Maduka v. Ubah&Ors (2014) LPELR-23966 (CA)**, and **Fajemirokun v. Commercial Bank(Credit Lyonnais) Nigeria Limited (2009) 5 NWLR (Pt.1135) 558**, on the right and duty of citizens to report cases of commission of crime to the Police.

Learned counsel contended that the 3rd Respondent has not committed any act that has in any shape and form violated or breached the fundamental rights of the Applicant to warrant his resort to filing this suit before this court against her. He referred to **Igbo &Ors v. Duruke&Ors (2014) LPELR-22816 (CA)** and urged the Court to disregard and dismiss this application by the Applicant and allow the 1st and 2nd Respondents to continue with the investigation of the matter pending before it with a view to prosecuting the Applicant and recovering the money that he defrauded the 3rd Respondent of.

Responding to the 3rd Respondent's counter affidavit, the Applicant filed a 6 paragraphs further affidavit wherein he averred that he was detained from 14/9/2020 to 22/9/2020 by the 1st and 2nd Respondents and that the detention was an infringement of his fundamental right as there was no reasonable ground for the his detention for 8 consecutive days.

He supported the further affidavit with a written address wherein learnedApplicant's counsel still raised the issue of ***“Whether the detention of the Applicant from 14/9/2020 to 22/9/2020 without an order of Court is a breach of his fundamental right contrary to Section 34 and 35 of the 1999 Constitution (As amended).”***

Referring to paragraph 16 of the 3rd Respondent's counter affidavit where the 3rd Respondent averred that the Applicant's wife on her own volition refunded the sum of N2,500,000.00, he further referred to **EFCC v. Diamond Bank PLC (2018)8 NWLR (Pt.1620)pg 7**, where it was held that EFCC is not a debt recovery agency and should refrain from being used as such.

He argued that the Respondents admitted that the Applicant was detained from 14/9/2020 to 22/9/2020 without justifiable reasons in breach of his fundamental rights to liberty and dignity of human person contrary to Sections 34 and 35 of the 1999 Constitution (as amended). He submitted that evidence admitted need no further proof and that the Court is duty bound to act on admitted evidence. He referred to **Jukok Int'l Ltd v. Diamond Bank PLC (2016) 6 NWLR (Pt.1507)**.

He urged the court to grant to the Applicant all the reliefs sought in his Originating Motion in view of the glaring evidence of admission of detention of the Applicant by the Respondents.

The issue for consideration is **whether the Applicant's Fundamental Rights was breached?**

By Section 7 (1)(a) of the Economic and Financial Crimes Commission(Establishment, etc) Act, 2004, the 1st Respondent, and by implication, the 2nd Respondent, is empowered to:

“(a) cause investigations to be conducted as to whether any person, corporate body or organisation

has committed an offence under this Act or other law relating to economic and financial crimes.”

The exercise of this investigative powers by the 1st and 2nd Respondents may in some situations, entail the arrest and detention of the suspect within the ambit of the law.

The constitution of the Federal Republic of Nigeria, 1999 (as amended), in Section 35(1) envisages the fact that a citizen's right to personal liberty is not absolute, but may be curtailed in appropriate situations within the ambit of the law.

Thus in **Salihu v. Gana&Ors (2014) LPELR-23069(CA)**, the Court of Appeal, per Abini, JCA, held that;

“It must be understood that fundamental rights of a citizen are not absolute... They can be curtailed by the appropriate authorities where there are grounds for doing so.”

If therefore, there are no justifiable grounds for curtailing the fundamental rights of a citizen, such curtailment should be resisted as that will amount to a breach of the citizen's rights.

In the instant case, the Respondents admitted that the Applicant who honoured the invitation of the 1st Respondent to its office, was detained from the day he honoured the invitation, the 14th day of September, 2020 to the 22nd day of September, 2020, before he was released on administrative bail. Let me remind the parties what bail means – it is a process where a person arrested based on any allegation of committing an offence is released by the authority upon provision of adequate security guaranteeing that the suspect or accused would report to the Police or Court as the case pending the time for investigation or trial to be concluded. Thus in **CalebOjo v. FRN (2006) 9 NWLR (Pt.984) 103.** Bail is defined as ***“Freeing or***

setting at liberty one arrested or imprisoned upon others becoming sureties by recognizance for his appearance at a day and place certainly assigned, he also entering into self-recognizance.”

Where an accused person is arrested on the suspicion/allegation that he has committed a crime, the law provides that such an accused person must not be unduly detained in the Police custody as a form of punishment because the mere fact that a person has been alleged to have committed an offence does not necessarily mean that he is guilty of the offence. Section 35(1) of the 1999 Constitution of Nigeria Guarantees the right to liberty of all Nigeria and Section 35(5) provides that an accused person who has been arrested on the allegation of having committed an offence must be charged to Court within 24 hours where a competent Court of jurisdiction is located within the radius of forty kilometres from the Police Station, and where a Court is out of the reach of forty kilometres radius from the Police Station, the accused person must be charged to Court within 48 hours or such longer period as a Court might consider reasonable. Bail is therefore, a right of every accused person although several factors are usually taken into consideration before an accused person can be granted bail.

Section 30(1) (2) & 31 Administration of Criminal Justice Act endears the Police or any coordinate authority like EFCC to admit suspects on bail in offences other than offences of capital punishment within 48 hours. This does not deter them from continuing with their investigations. Unfortunately the Police notoriety in keeping suspects beyond 24 hours on the basis that investigation is on-going is a disregard of the law that established the Police of Government agency like EFCC.

Noteworthy, is that any accused person arrested by Police of any Government agency has the right to administrative bail pending the time he is charged to Court. This of course will assist in decongesting their cells and ensuring the suspect or accused that bail is not a form of punishment. However it is unfortunate that most Police officers misuse the power of granting bail and use it as a sort of punishment on a suspect who fails to abide by their biddings.

The contention of the Respondents however, is that the Applicant was granted administrative bail on the same day he was arrested but that he failed to fulfil the bail conditions, for which reason his lawyer later applied for variation of the bail conditions. The 1st and 2nd Respondents attached exhibit '4', "Condition for Bail" to their counter affidavit.

Going through the said exhibit, I cannot but agree with the Applicant that the bail conditions given to him by the 1st and 2nd Respondents were outrageous. The bail conditions contained in the said Exhibit 4, buttress the fact that the 1st and 2nd Respondents had no intention of releasing the Applicant on bail, and therefore, they stipulated conditions which they very well knew the Applicant could not fulfil. I must remind the government agencies and the Police that the power to grant bail is not limitless, unguarded and un-conscienceless. Granting of administrative bail must be done within the ambit of the law that is judiciously. Meaning showing or done with good sensible judgment or being prudent. The Police or government agencies must be seen to express the capacity to take wise and just decision. What I observed in Exh 4 **"condition for bail"** attached by 1st Respondent is unattainable conditions and a smokescreen to justify reasons for detention of the Applicant at their own pleasure. Considering the alleged offence the Applicant is being charged with, the bail should be on liberal

term more so when the 1st Respondent has not shown the probability of the Applicant not surrendering himself for further investigation or trial.

What then was the reason for the Applicant's arrest?

From the evidence before this court, as distilled from the affidavits of the parties, it is evident that the Applicant's company and the 3rd Respondent entered into a contract in which the Applicant's company, Great Focus Nig. Investment Consultants Ltd was to clear the 3rd Respondent's containers from the Wharf. The 3rd Respondent provided a consideration of about N61m but the Applicant's company failed to perform its part of the deal at the time stipulated. In a bid to recover its money as the contract failed, the 3rd Respondent wrote a petition against the Applicant's company alleging *"conspiracy, obtaining by false pretence, criminal breach of trust, cheating, blackmail, threat to life and criminal conversion."*

The Applicant was thus invited by the 1st and 2nd Respondents on the strength of this petition, and on honouring the invitation, the Applicant was arrested and detained by the 1st and 2nd Respondents.

On the 'conditions for Bail', Exhibit '4', the 1st Respondent stated that it was investigating a criminal case of "obtaining money under false pretence", and for this it demanded as conditions for the release of the Applicant on bail:

- a) Two (2) serving Directors in any of the Federal Ministries/agencies, with landed properties in Maitama or Asokoro areas of Abuja, supported with original Certificate of Occupancy by the sureties,
- b) Deposit of N250million Bank guarantee by the sureties,

c) Deposit (of Applicant's) International Passport with the Commission.

The 1st and 2nd Respondents clearly dabbled into a civil transaction involving failed contract/consideration, and having secured the detention of the Applicant, the evidence showed that the 1st and 2nd Respondents proceeded to pressure the Applicant to refund the money paid to his company by the 3rd Respondent.

The law establishing the 1st Respondent does not invest it with the powers to function as debt recovery agency. See Section 6 and 7 of the Economic and Financial Crimes Commission (Establishment, etc) Act, 2004. The Respondents have not denied that the arrest of the Applicant emanated from the contract between the Applicant and the 3rd Respondent. It was mischievous of the 3rd Respondent to have the Applicant arrested by reporting a civil breach of trust to the Economic and Financial Crimes Commission (EFCC) which turned it into a criminal breach of trust. Let us assume without conceding that the very well-equipped government agency Economic and Financial Crimes Commission (EFCC) with well-trained lawyers and experienced personnel were unaware that this transaction was purely civil. The slim delineation between criminal breach of trust and civil trust was expanded by Jason Yong Koe Kok Yaw in his article 'Difference between Criminal and Civil Breach of Trust', 9th January, 2021

“... under civil law, a breach of trust occurs when a person breached their duty which is imposed by a trust instrument (e.g. a will) (In the instant case a contract agreement)

... On the other hand, the criminal offence of breach of trust is contained in Section 405 to Section 409 of the

Penal Code. Essentially the elements which the prosecution will have to prove are:

- ***The accused must be entrusted with the property or with dominion (i.e. control) over it.***
- ***That the accused then dishonestly misappropriated, converted, used or disposed of the property or wilfully suffers any other person to do so; and***
- ***That such acts were in violation of law or any legal contract.”***

It is not in doubt that criminal breach of trust could result from a legal contract but it can only be a criminally breach of trust where it is discovered that the accused acted dishonestly by misappropriating or converting or using, or disposing of the said property in his domain.

The prosecution must establish the criminal intent or guilty mind or mensrea. That is establishing the criminal intent of dishonest misappropriation of the property on the part of the accused. It appears to me in this case and in many other similar cases I have tried that the complainants have always pretended not being able to differentiate between civil and criminal breach of trust. The Police and government agencies like Economic and Financial Crimes Commission (EFCC) have allowed themselves to be used to interfere in contractual obligations between parties for greedy purposes I suppose. The legal professional in these agencies have a duty to protect the integrity of the Police/Economic and Financial Crimes Commission (EFCC). They are in a position to advice complainants on whether their petitions borders on civil or criminal breach of trust. Many unwarranted cases have arisen against the Police and Economic and Financial Crimes

Commission (EFCC) and in their negligence have dabbled into civil matters making themselves out to become debt collectors. This ineptitude had caused the Federal Government of Nigeria a lot of financial losses resulting from damages awarded against the Police and Economic and Financial Crimes Commission (EFCC).

The 1st and 2nd Respondents were therefore, acting ultra vires their powers when they arrested and detained the Applicant and attempted to recover the money which the Applicant's company allegedly received from 3rd Respondent by a legal contract agreement.

Having illegally arrested and detained the Applicant, the 1st and 2nd Respondents, over reached their legal authority and acted ultra vires by collecting part of the contract sum. I cannot therefore, but agree with the Applicant, in the circumstance of the foregoing, that the fundamental right of the Applicant to personal liberty, has been grossly violated by the 1st and 2nd Respondents.

In the instant case however, the 3rd Respondent was fully aware of the nature of transaction it had with the Applicant's company, being civil/contractual in nature and the courts have repeatedly frowned at the use of police or law enforcement agencies for debt recovery by individuals.

In **Oceanic Securities International Limited v. Alh. Bashir Olaide Balogun & Ors (2012) LPELR-9218 (CA)**, the Court of Appeal, per Mabab, JCA held thus;

“It has been stated many times that the police (in this case, the EFCC), has no business in enforcement of debt settlements or recovering of civil debts for banks or anybody. Only recently in the unreported decision

of this court in the case of Ibiyeye & Anor. vs. Gold & Ors, Appeal No:- CA/IL/M.95/2010, delivered on 7/12/2011, I had cause to scream thus, in my contributory judgment: “I have to add that the resort to police by parties for recovery of debts outstanding under contractual relationship, has been repeatedly deprecated by the court. The police have also been condemned and rebuked severally (?) for using its coercive powers to breach citizens’ right and/or promote illegalities and oppression.

Unfortunately, despite all the decided cases on this issue, the problem persists and the unholy alliance between aggrieved contractors/creditors with the police remains at the root of many fundamental rights breaches in our courts.”

The menace of this “unholy alliance”, as the learned Justice called it, has still not abated till date. Even though the act of detention is that of the arresting authority, in a situation of wrong use of the police or the Economic and Financial Crimes Commission (EFCC) as in the instant case, the person or entity who engaged in such wrong use instead of approaching the civil courts to ventilate his grievance, must equally be held liable for the breach of the citizen’s rights, even though the actual breach was done by the arresting authority.

The 3rd Respondent herein, could have done the right thing by instituting an action in court against the Applicant’s company, or even against the Applicant, if it felt aggrieved against the Applicant, but no, it rather chose what it considered the easier way, albeit an illegal route, by unleashing the Economic and Financial Crimes Commission (EFCC) against the Applicant. In the circumstances therefore, the 3rd Respondent cannot but be

equally liable for the breaches committed by the 1st and 2nd Respondents.

With respect to the perpetual restraint order, it is unconstitutional for the Court to clamp on the Police/Economic and Financial Crimes Commission (EFCC) a perpetual injunction on their investigating powers. Thus, in **A.G State v. Chief Chris Uba (2005) 15 NWLR (Pt.947) 44**, the Court of Appeal, per Bulkachuwa, JCA, held that;

“The order of perpetual injunction restraining the appellants is unconstitutional because it is an interference with the powers given by the constitution to police officers to investigate and prosecute crimes....

It is indeed trite that no court has the power to stop the police from investigating a crime...

‘For a person, therefore to go to court to be shielded against criminal investigation and prosecution is an interference with powers given by the constitution to law officers in the control of criminal investigation.’

The relief of perpetual injunction against the 1st Respondent will therefore, not be granted by this court. If while carrying out its constitutional duties the 1st Respondent breaches the constitutionally guaranteed right of the Applicant, or any citizen for that matter, the courts are always there for the person to seek redress.

In respect of the relief 5, the Applicant is at liberty to ventilate his civil grievances against the 3rd Respondent in a civil Court of law.

From the totality of the foregoing therefore, the reliefs sought in this application partly succeed, and fail in part.

Accordingly, this court partly enters judgment for the Applicant as follows:

1. It is declared that the detention of the Applicant from 5pm on 14th September, 2020 till 5:30pm on 22nd September, 2020 by officers of the 1st Respondent without a valid court order is contrary to Section 5 of the Administration of Criminal Justice Act, 2015 and a violation to the Applicant's right to dignity and personal liberty as guaranteed by Section 34 of the 1999 Constitution.
2. It is declared that the detention of the Applicant from 5pm on 14th September, 2020 till 5:30pm on 22nd September, 2020 by officers of the 1st Respondent beyond twenty-four (24) hours as prescribed by Section 35(5) of the Constitution, without a charge is illegal and unconstitutional and violates the Applicant's right to dignity, personal liberty and presumption of innocence.
3. It is declared that the act of the 2nd Respondent forcing the Applicant to write a letter of undertaking to pay about N10,700,000 (Ten Million, Seven Hundred Thousand Naira) only to the 3rd Respondent (Clever Home Limited) in a civil wrong or breach of contract, is ultravires of the duties of the Respondents.
4. It is declared that the 1st Respondent overreached its statutory mandate when it sought to and interfered with civil transaction between Great Focus Nig. Investment Consultants Ltd and Clever Home Limited and sought to force the Applicant to refund about N10,700,000 to the 3rd Respondent.
5. Relief (5) is refused and dismissed accordingly.
6. Relief (6) is equally refused and also dismissed.

7. The 1st Respondent is ordered to issue a letter of apology to the Applicant in accordance with Section 35(6) of the 1999 Constitution.
8. The sum of N10,000,000.00 (Ten Million Naira) is ordered against the 1st, 2nd and 3rd Respondents and in favour of the Applicant as damages for the arbitral, illegal detention and violation of the Applicant's fundamental rights to personal liberty and dignity of his person.
9. Cost of this action in the sum of N200,000.00 (Two Hundred Thousand Naira).

HON. JUSTICE A. O. OTALUKA
27/9/2021.