IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

SUIT NO. FCT/HC/CV/7927/2023

DATE: 26-09-2024

B E T W E E N

MRS. NKECHI OKOROCHA } **APPLICANT**

AND

THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFFF) } **RESPONDENT**

JUDGMENT

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Applicant by an Originating Summons submitted two questions for determination by this Court. In the same vein, she prayed for four reliefs.

The questions for determination are:

1. In view of the subsisting Judgments of the Honourable Federal High Court in Suit No. FHC/PH/FHR/165/2021 and Charge No.: FHC/ABJ/CR/28/2022 and upon the construction of Sections 6, 35 and 287(3) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended), whether the Respondent may further invite, interrogate, arrest, harass, arraign the Applicant and/or engage in other investigative/prosecutorial activities, actions and proceedings, in respect of acts and matters relating concerning and/or pertaining to the Government of Imo State from 29th May, 2011 to 28th May, 2019 when Anayo Rochas Okorocha was Governor.
2. Upon the construction of Section 287(3) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended), whether the Respondent could lawfully interrogate and/or investigate the activities of the Applicant when there was extant Court order of this

Honourable Court in Suit No. FHC/ABJ/CS/475/2019 for 'Stay' of such action.

The reliefs being sought as a result of the consequences or anticipated favourable determination of the above questions are as follows:

1. A Declaration of this Honourable Court that upon the decision of the Federal High Court in Suit No. FHC/PH/FHR/165/2021 setting aside all investigation conducted by the Respondent herein, relating to acts and matters of, concerning and/or pertaining to the Government of Imo State, from 29th May, 2021 to 28th May, 2019, being the tenure of Senator Rochas Okorocha as Governor, the continued and or further investigation or preparation for investigation; and/or invitation for interrogation or further interrogating and/or threat of arrest and/or prosecution of the Applicant, in respect of acts or matters arising from and concerning the same Government of

Imo State, during the tenure of same Senator Rochas Okorocha as Governor, is in violation of Section 6(6) of the Constitution of the Federal Republic of Nigeria (As Amended) and in flagrant breach of the Applicant's Fundamental Human Right to personal liberty and fair hearing, guaranteed under the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.

2. An Order of this Honourable Court restraining the Respondent, its officers and men, staff, employees and agents, by whatsoever name called and howsoever described, from further interrogating or inviting for interrogation, investigating, arresting, obtaining statements or further statements, detaining or prosecuting the Applicant, on the basis of investigation of any allegation relating to acts and matters concerning and/or pertaining to the

administration of Imo State, between 29th May, 2011 and 28th May, 2019 which investigation had been set aside by the Federal High Court on 6th December, 2021, in Suit FHC/PH/FHR/165/2021.

3. **A Declaration that the investigation, interrogation and obtainment of Written Statement of the Applicant, despite the extant Order for stay of such action made by this Honourable Court, in Suit No. FHC/ABJ/CS/475/2019, is contrary to Sections 6(6), 36 & 287 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and in flagrant breach of the Applicant's Fundamental Human Right to fair hearing, guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.**
4. **A Declaration that the invitation, investigation, interrogation and obtainment of Written Statement of the Applicant and the continued**

investigation and threat of her arrest, in respect of acts and matters concerning and/or pertaining to the administration of Imo State, between 29th May, 2011 and 28th May, 2019, despite the Directive of the Honourable Attorney General of the Federation to stop such investigation and further recall of the Case File, is in breach of the Applicant's Fundamental Human Right to fair Hearing, guaranteed under the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.

The Originating Summons is supported by a 19 paragraphs affidavit and a written address. Attached to this affidavit are 8 annexures. They are marked as Exhibit P1 – P8. See the supporting affidavit.

The only Respondentin this case, Economic and Financial Crimes Commission (EFCC) did not file any counter affidavit in opposition to this suit.

The facts that culminated this suit could be deduced from paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14 of the supporting affidavit.

This in brief has to do with the substance of cases filed by the Respondent against the activities of Senator Rochas Anayo Okorocha's tenure as Governor of Imo State from 2011 – 2019 which actions the Federal High Court has set aside.

And the instant Applicant, being the wife to the then Governor now Senator was invited sometimes in 2021, interrogated, made to write extra – judicial statement in respect of acts and matters arising from, concerning, relating or pertaining to the Government of Imo State, between 29th May, 2011 and 28th May, 2019 being the tenure of Senator Rochas Okorocha as Governor of Imo State.

The Respondent did not file any counter affidavit against this application. The applicable principles of law and of course the

only facts and view or submission of the Learned Counsel to the Plaintiff shall be acted upon as found by this Court. See the case of AYALA VS. DANIELS & ORS (2019) LPELR 47184 (CA) where it was held thus:

> "I consider it apt at this stage to put on record that the 1st and 2nd Respondent did not file any counter process to the affidavit evidence and Exhibits AM 1 - AM 7 attached to the affidavit in support of the originating summons by the Appellant. At the hearing of this appeal, the Court confronted the learned Counsel representing the 1st and 2nd Respondent whether or not he filed any counter affidavit in their defence before the trial Court. His answer was in the negative. In unequivocal terms he said they did not file any counter affidavit before the trial Court. The position of the law is trite on circumstance of this nature.Failure to file a Counter affidavit in response to an affidavit in Support to challenge or controvert the depositions in the adverse party's

affidavit is deemed to have accepted the fact deposed in the affidavit in support in question. It is also trite that unchallenged and uncontroverted facts in an affidavit are treated as established. See CONTROLLER, NIGERIA PRISON SERVICE V. ADEKANYE (1990) 10 NWLR (PT. 623) 400, AYOOLA V. BARUWA (1999) 11 NWLR (PT.628) 595. Narrowing the foregoing position of the law down to this case which is initiated vide an originating Summons where the affidavit in support by the Plaintiff is regarded as the statement of claim and the counter affidavit by the Defendant is regarded as the statement of defence. That is to say that it is the affidavit evidence filed by the respective parties that is considered in the determination of the issues for determination. See ETIM V. OBOT (2010) 12 NWLR (PT. 1207) 108 at 171, INAKOJU V. ADELEKE (2007) ALL FWLR. (PT. 353) 3 at 75, PORT AND CARGO HANDLING SERVICE COMPANY LTD AND ORS V.

MIGFO NIGERIA LTD AND ANOR (2012) 18 NWLR (PT. 1333) AT

609, N.N. P. C. AND ORS V. FAMFA OIL LTD. (2012) 17 NWLR (PT. 1328) 148 at 189." Per ONIYANGI ,J.C.A in ayala v. daniel&ors (2019) LPELR-47184(CA) (Pp. 29-31 paras. C)

Be that as it may. I will take the two (2) questions together and I will link them with the reliefs as prayed for.

Questions 1 and 2

Arguing the two questions together, it is the submission of the learned SAN that **Section 46(1) of the 1999 Constitution** as amended codified the right of every person whose fundamental right has been, is being or likely to be infringed to institute an action or seek redress before the Court.

It provides thus:

> ***"Any person who alleges that any of the provisions of this 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"***

In the same vein, **Order 2 Rule 1** of the **Fundamental Right (Enforcement procedure) Rules 2009** provides as follows;

> ***"Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples Rights (Ratification 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 is likely to occur, for redress: Provided that where the infringement occurs in a state which has no Division of the Federal High Court, the Division of the Federal High Court administratively responsible for the state shall have jurisdiction. Form No. 1 in the Appendix may be used as appropriate"***

It is based on the above enabling provisions that the Applicant approached this Court for protection and enforcement of her fundamental human rights as enshrined in our constitution.

The Learned Silk, Mr. Ola Olanipekun, SAN of Counsel to the Applicant submitted that fundamental rights to personal liberty of every citizen of Nigeria is guaranteed by **Section 35(1) of the 1999 Constitution** (As Amended) thus;

> ***"Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law"***

Also, **Article 5 of the African Charter on Human and Peoples' Right** provides as follows;

> ***"Every individual shall have the right to the liberty and to the security of his person. No one may be deprived of his freedom. Except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained"***

I agree with Mr. Ola Olanipekun, SAN that our grundnurm guaranteed the right of every individual to personal liberty. This is accepted and recognized by all and sundry.

However, there are exceptional circumstances enumerated in Section 35(1) under which this right to personal liberty could be curtailed which much be done in accordance with a procedure permitted by law.

In this instant application under consideration, is procedure laid down and permitted by law followed? This is the vex question.

The above facts in a nutshell detailed in graphic form the facts of this case. See paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14of the supporting affidavit and Exhibits P1 – P8 attached thereto.

From the facts deposed to by the Applicant herself which remained unchallenged which the Court as a matter of established law must belief and act upon, it is obvious that the invitation by the Respondent has to do with the activities of her husband's tenure as Governor of Imo State. A subject matter that has been set aside by a competent Court of Jurisdiction upon which the Respondent filed no appeal against.

The question that comes to the mind instantly, is can this be permitted in law? My swift answer is capital NO. That is why I pitch my tent with the Applicant's Learned Silk when he

beautifully wrote at page 19 paragraph 4.7 of his written address thus;

> ***"We humbly submit that no law in Nigeria permits Respondent to disobey a subsisting Order of Court such as in Suit No. FHC/PH/FHR/165/2021……."***

Paragraphs 4.8, 4.9, 4.10, 4.11, 4.12 and 4.13 of his written address are also relevant and apt submissions of the Learned SAN to this suit under consideration.

In **paragraph 4.8**, he submitted thus:

> 4.8 we further submit that by dint of the mandatory provisions of Section 287(3) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended), all authorities and persons, including the Respondent herein, are bound to give effect/enforce the decision of this Honourable Court, Coram: Hon. Justice Stephen Dalyop Pam, delivered on 6th day of December, 2021, in Suit No.

FHC/PH/FHR/165/2021. For ease of reference, Section 287(3) of the Constitution (supra) is herein reproduced:

The decisions of the Federal High Court, a High Court and of all other Courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons and by other Courts of law with subordinate jurisdiction to that of the Federal High Court, a High Court and those other Courts respectively.

4.9 The provisions of the aforesaid Section 287(3) of the Constitution (supra) are clear and unambiguous. We refer to the cases of **APC v. AGBAJE & ORS. (2015) L.P.E.L.R. – 25668 (CA); PDP v. INEC (2014) 17 N.W.L.R. (PART 1437) 525; AKEREDOLU v. MIMIKO (2014) 1 N.W.L.R. (PART 1388) 402** to submit that it is settled principle of law that where the provisions of a status is clear and

unambiguous, same should be given literal interpretation. In the case of **A-G OF FEDERATION v. A – G OF LAGOS STATE (2013) L.P.E.L.R. – 20974 (SC)** it was held thus:

"It is trite that in the interpretation of statutes, the Constitution and like matters, words must be given their natural and ordinary meaning. There are numerous legal authorities on this subject matter. In WAHAB AIGHOTOSHO SIFUOLA OLANREWAJU v. THE GOVERNOR OF OYO STATE (1992) N.W.L.R. (PART 265) 335 thisCourt per Karibi-Whyte, JSC said "It is well settled that where the words of a statute are clear and unambiguous, the ordinary meaning of the words are to be adopted" See also FRED EGBE v. M.D. YUSUF (1992) N.W.L.R. (PART 245) 7, ALL N.L.R. 62; YEROKUN v. ADELEKE (1960) 5 FSC 126; AHMED v. KASSIM (1958) FSC 51; SHUAIBU ABDULKADRIM v. INCAR

(NIG.) LTD. (1992) N.W.L.R. (PART 251) 1; NAFIU v. THE STATE (1981) N.C.L.R. 293 at 326. "Per ALAGOA, JSC (pages 175 – 176, paras. E – B)"

4.10 From the foregoing, we submit and urge your Lordship to hold that the Respondent was bound to obey/enforce the decision/order of the Federal High Court, Coram: Hon/. Justice Stephen Dalyop Pam, in Suit No. FHC/PH/FHR/165/2021, setting aside the investigative actions/activities of the Respondent pertaining to the administration of distinguished Senator Rochas Anayo Okorocha, as Governor of Imo State, between May, 29th 2011 to May 28th, 2019. The Respondent is also bound to obey/enforce the decision/order of same Federal High Court, Coram: Taiwo Taiwo, J. in Suit No. FHC/ABJ/CS/475/2019. We submit that it does not lie within the powers of the

Respondent to treat the order as inconsequential and/or not binding. The law mandates the Respondent to comply with the order until same is set aside. In the case of **AG ANAMBRA STATE v. AG F.R.N. & ORS. (2005) L.P.E.L.R. – 13 (SC),** the Apex Court held as follows:

The law in this instance is clear that it is the unqualified obligation of every person against or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged and this the moreso, where the person affected by the order believes it to be irregular or void. In so far as the order exists, it must be obeyed to the letter. See MILITARY GOVERNOR OF LAGOS STATE v. OJUKWU & ANOR. (1986) 1 N.W.L.R. (PART 18) 621 SC. *An order of Court, no matter the fundamental vice attaching thereto, remains*

legally binding and valid until set aside by due process of law"

4.11 Further refer to the case of **EDILCON (NIG.) LTD. v. UBA PLC (2017) L.P.E.L.R. – 42342 (SC),** where it was held thus:

"The law is settled beyond any argument that a Judgment or ruling of a Court of law, no matter how incorrectly arrived at is valid, binding and subsisting until it is set aside by the same Court through a judicial review or by appellate proceedings. See OBINECHE v. AKUSOBI (2010) 12 W.L.R. (PART 1208) 383 AT 405"

4.12 My noble Lord, the subsisting Judgment of the Federal High Court, Coram: Hon. Justice Stephen Dalyop Pam, in Suit No. FHC/PH/FHR/165/2021, setting aside the investigative actions. Activities of the

Respondent pertaining to the administration of distinguished Senator Rochas Anayo Okorochas, as Governor of Imo State, between May 29th, 2011 to May, 28th, 2019, is a Judgment in rem. Therefore, the Respondent cannot context the applicability of the Judgment to the Applicant herein.

4.13 We submit that the aforesaid Judgment, in Suit No. FHC/PH/FHR/165/2021, determined the unlawful status of the investigation conducted by the Respondent. We further submit that the Judgment order operates in favour of and/or against the whole world. Put differently, the Judgment Order is binding on everybody, parties and non-parties to the suit alike. In the case of **COLE v. JIBUNOH & ORS (2016) L.P.E.L.R. – 40662 (SC),** the Apex Court held:

"In the case of OGBORU v. UDUAGHAN (2011) 17 N.W.L.R. (PART 1277) 727 at 764 – 765 CA, a

Judgment in rem was defined thus: "A Judgment in rem is a Judgment of a Court of competent jurisdiction determining the status of a person or thing as distinct from the particular interest of a party to the litigation. Apart from the application of the term to persons, it must affect the "res" in the way of condemnation, forfeiture, declaration, status or title. The feature of a Judgment in rem is that it binds all persons, whether party to the proceedings or not. It stops anyone from raising the issue of the status or person or persons or things, or the rights or title to the property litigated before a competent Court. It is indeed conclusive against the entire world in whatever it settles as to status of the person or property. All persons whether party to the proceedings or not are estopped from averring that the status of persons is other than the Court has by such Judgment declared or made it to be. "See also: OKPALUGO v. ADESHOYE (1996) 10 N.W.L.R. (PART 476) 77; FOINTRADES LTD. v. UNI ASSOCIATION

CO. LTD. (2002) 8 N.W.L.R. (PART 770) 669; OLANIYAN v. FATOKI (2003) 13 N.W.L.R. (PART 837) 273; ADESINA OKE v. SHITTU ATOLOYE & ORS. (1986), N.W.L.R. (PART 15) 241."Per KEKERE – EKUN, JSC (pages 37 – 38), para. D"

4.14

Referring to Exhibit P1, the Learned Silk argued that the Judgment order operates in favour of and/or against the whole world. Put differently, the Judgment Order is binding on every body, parties and non-parties to the suit alike. He cited in support of this argument the cases of **COLE VS. JIBUNOH & ORS. (2016) L.P.E.L.R. 40662 (SC), IGWE EMMA & ANOR. VS. OBIDIGWE & ORS. (2019) L.P.E.L.R. 48112 (SC).**

Based on the above submission and in view of the salient provision of **Section 287(3) of the 1999 Constitution**, can the Respondent lawfully arrest, detain and further interrogate the Applicant? In respect of any act or matter relating, concerning and/or pertaining to the Government of Imo State from 29th May, 2011 to 28th May, 2019 until the **Judgment Order in Suit No.**

FHC/PH/FHR/165/2021 and the order in **Suit No. FHC/ABJ/CS/475/2019**are set aside that is Exhibit P2 and P7 respectively.

The only reasonable conclusion from the above submissions is that all the Respondent's threat, including threat of arrest, detention and further interrogation of the Applicant, in relation to the same interrogation which has already been set aside in Exhibit P2 and P7 are unlawful and amounts to breach of the fundamental right of the Applicant and I so hold.

The two questions are resolved in favour of the Applicant and against the Respondent.

Therefore, and in essence all the 4(four) reliefs sought by the Applicant in this case are hereby granted.

This is the Judgment of this Court.

……
S. B. Belgore
(Judge) 26-09-24