

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY,  
HOLDEN AT APO ABUJA.**

**ON WEDNESDAY THE 28TH DAY OF JUNE 2021  
BEFORE HIS LORDSHIP**

***THE HON. JUSTICE FRANCES ERHUVWU MESSIRI.  
(JUDGE).***

**SUIT NO.            FCT/HC/CV/070/2020**

**BETWEEN:**

**BARR. IGWEONYESOM UGOCHUKWU ..... APPLICANT**

**AND**

**1. KYC INTERPROJECT LTD            }            RESPONDENTS  
2. MR. MICHAELAYUBAAUTA        }**

**[JUDGMENT].**

By an Originating Summons dated the 11/1/2021 and filed on the 14/1/2021, the Applicant, Barr. Igwe Onyesom Ugochukwu seeks to enforce his Fundamental Rights under the Fundamental Rights

## Enforcement Procedure Rules.

The Applicant posed the following questions for determination in the originating summons:

1. Whether having regards to section 34 of the Constitution of the federal Republic of Nigeria, the Respondents were right in invading the construction site of the Applicant with thugs and arresting, assaulting, and manhandling him by dragging and forcefully abducting him from his building site at AngwaGboko, Sabon Lugbe 2 Behind Aso Estate, Along Airport Road, Lugbe Abuja with dangerous weapons such as machetes, long sickles, axes. to the Respondent's estate under the threat of serious bodily harm on the 17th December 2020.

2. Whether having regards to section 35, 36 and 41, of the Constitution of the Federal Republic of Nigeria, the Respondents can use thugs or any other group of persons to arrest the Applicant from his building site at AngwaGboko, Sabon Lugbe Behind Aso Estate, Along Airport Road, Lugbe Abuja with dangerous weapons such as machetes, long sickles, axes and forcefully move him to the Respondent's estate under the threat of serious bodily harm and detain him in their KYC Estate or any other place for no just cause and without a court order.

3. WHETHER the act of arresting, detaining and

assaulting, the Applicant, forcefully abducting him from his site by the Respondents at AngwaGboko, Sabon Lugbe 2, Behind Aso Estate, Along Airport Road Lugbe Abuja and forcefully moving him to the Respondents' KYC Estate on the 17th December, 2020 between the hours of 8 am to around 10am using thugs or any other group of persons for no just cause and no court order violates the applicant's fundamental right to human dignity, personal liberty, fair hearing and freedom of movement as guaranteed by the 1999, Constitution (As Amended).

4. Whether the Applicant whose fundamental rights aforesaid are violated is entitled to exemplary/aggravated damages for the physical public assault, illegal arrest and detention, embarrassment and psychological trauma he was subjected to by the Respondents on the 17th December 2020 from his building site at AngwaGboko, Sabon Lugbe 2 Behind Aso Estate, Along Airport Road, Lugbe Abuja to the Respondent's KYC Estate.

On the determination of the above questions in his favour, the applicant seeks the following reliefs;

1. A Declaration that the acts of the Respondents of arresting and assaulting the Applicant with thugs,

hoodlums or any other group of persons at his building site at AngwaGboko, Sabon Lugbe 2, Behind Aso Estate, Along Airport Road, Lugbe Abuja with dangerous weapons such as machetes, long sickles, axes and forcefully moving him to and detaining him at the Respondents' estate under the threat of serious bodily harm without any just cause or any Court order on the 17<sup>th</sup> December, 2020 between the hours of 8 am – 10am is illegal, reckless, outrageous and amounts to flagrant breach of Applicant's Fundamental Right to human dignity, personal liberty, fair hearing, and freedom of movement, as provided and guaranteed by sections 34,35,36 and 41 of the Constitution of the federal Republic of Nigeria, 1999 as amended.

2. AN ORDER of this Honorable court perpetually restraining the Respondents, their agents, assigns or any other persons acting for or on their behalf from further arresting, detaining, abducting, conscripting or in any other manner restrict the movement or violate the liberty of the Applicant aforesaid without a court order and without due process of law.
  
3. AN ORDER of this Honorable court restraining the Respondents, their agents, assigns or anybody

acting for or on their behalf from further invading the building site of the Applicant to assault or in any manner harass him without a court order.

4. An award of the sum of (₦50,000,000.00) Fifty Million Naira only, as exemplary/aggravated damages to the Applicant against the Respondents for their capricious, willful, reckless and outrageous breach of the Applicant's fundamental right to human dignity, personal liberty, fair hearing, and freedom of movement as provided and guaranteed by sections 34, 35, 36, and 41 of the Constitution of the federal Republic of Nigeria, 1999 on the 17<sup>th</sup> December, 2020.
  
5. The sum of Ten Million Naira as General Damages against the Respondents for their illegal trespass to the Applicant's land, situated at AngwaGboko, Sabon Lugbe2, Behind Aso Estate, Along Airport Road Lugbe Abuja.
  
6. 10% interest on the judgment sum from the date of the judgment to the date of final liquidation of the judgment sum.

The above reliefs were repeated in the mandatory

statement accompanying the Originating Summons.

In support of his case the Applicant deposed to an affidavit of thirty (30) paragraphs on the 14/1/2021, annexed to the affidavit is one annexure marked as Exhibit KYC1.

The grounds upon which the reliefs contained in the mandatory statement are being sought are predicated were outlined thus;

(1). The Applicant as a law-abiding citizen of Nigeria is entitled to the exercise of his Fundamental Rights as guaranteed under the Constitution of the Federal Republic of Nigeria.

(2). The Respondents have no powers under the law to deprive the Applicant his Fundamental Rights guaranteed under the Constitution by arresting, assaulting and detaining the Applicant at their Estate for no just cause and without a court order.

(3). The Flagrant breach of Applicant's Fundamental Rights aforesaid by Respondents entitles Applicant to both general and exemplary damages.

In compliance with the Rules of this Honorable Court as it relates to originating summons and the fundamental right enforcement procedure rules, the Applicant filed

his address along with the originating Summons dated 11/1/2021 settled by the Applicant himself.

The originating summons was duly served on the Respondents. In response thereto the Respondents filed a Joint Counter Affidavit of Twenty-three (23) paragraphs deposed to by one Michael Ayuba on the 30/3/2021. Annexed to the counter affidavit are four exhibits, marked as Exhibits E.O.1, Exhibit E.O.2, E.O.3 and Exhibit E.O.4. Along with Counsel's final written address in opposition to the suit.

Upon receipt of the joint counter affidavit of the Respondent, the Applicant filed a further affidavit of 14 paragraph deposed to by the Applicant on the 10/3/2021. Annexed to the further affidavit are 2 annexures namely Exhibit.AAF1, ExhibitAAF2.

The Applicant filed a reply to the Respondents joint Counter Affidavit and written submissions spanning through six(6).Pages dated 10/03/2021.Written addresses filed were adopted by Learned Applicant and Learned Counsel for Respondents at the hearing on the 30/3/2021.

The said addresses are incorporated into this Judgment,I shall refer to the relevant portions when the need arises.

By the provisions' of section of order 2 rule 7 of the fundamental rights enforcement procedure rules 2009, which provide that :

The Applicant may on being served with the Respondent's Written Address, file and serve an address on points of law within 5 days of being served, and may accompany it with a further affidavit.

The Applicant is only entitled to file a reply on point of law in Response to the address of the Respondent . to this end this Honorable Court shall consider the address filled by the Applicant in response to the Respondents Address only to extent that it constitutes a reply on points of law.

The summation of the case of the Applicant as contained in the supporting affidavit as well as facts contained in the accompanying statement is that the Applicant, was at his building site at AngwaGboko, Sabon Lugbe 2, Behind Aso Estate, Along Airport Road, Lugbe Abuja, that his workers were working for him on the 17th of December, 2020. that around 8am, some thugs who later identified themselves as agents of the 1st Respondent invaded his sitewithdangerous weaponswhich include cutlasses,machets,longsticksaxes etc, and forcefully arrested and abducted him and took him to KYC estate

where the 2<sup>nd</sup> Respondent Manages. That he called the DPO of trade Moore police station on phone who asked him to go with the thugs and hoodlums without resistance to avoid the thugs or hoodlums inflicting bodily harm on him.

During the said arrest and abduction of the Applicant, his wife by name Mrs Mercy Igwe recorded some part of the episode at the Applicant's site with her camera phone.

That the said thugs came to take the Applicant forcefully to the KYC Estate a distance of about 400metres from the Applicant's building site but on the advice of the DPO whom the Applicant called on phone he chose to go with the said thugs without putting up any resistance.

That upon the Applicant entry into the KYC Estate the said thugs attempted to lock him up in one of the Respondent's detention room to which the Applicant resisted prompting his abductors to start beating the Applicant in an attempt to forcefully lock him in the detention room.

That the 2<sup>nd</sup> Respondent upon hearing the noise came out from his office and ordered his men to stop

assaulting the Applicant. The 2<sup>nd</sup> Respondent notified the Applicant why he was invited to the office of the 1<sup>st</sup> Respondent and referred to the Applicant as a charge and bail lawyer who behaves like a mad man, that the Applicant was released by the thugs on the instruction of the 2<sup>nd</sup> Respondent.

On their part, it is the case of the Respondent in a nutshell that the Applicant is currently occupying a part of the 1<sup>st</sup> Respondent Estate at KYC Estate at Sabon lugbe. That the Gboko Community where the Applicant lives are aware that the land occupied by the community belongs to the Respondents, as shown in exhibits E.O.1, E.O.2 and E.O.3 respectively. That there was an understanding between the community leaders and the Respondents against selling any part of the land occupied by them to a third party.

That the Applicant, despite the understanding reached between the community leaders and the Respondents went on to construct structures on the said land.

The 1<sup>st</sup> Respondent then got his security personnel to stop the Applicant from further construction the 1<sup>st</sup> Respondents having paid for and purchased the land in question from the original allottees.

That the local community were compensated for their economic trees. The Respondents were emphatic in their

denial of abducting, manhandling or assaulting the Applicant using tugs, their case is that the security men attached to the 1st Respondent's company as well as the leaders of the AngwanGboko community stopped the Applicant from further constructing any structure on the land.

The Respondents stated that a direct criminal complaint had earlier been filed against the persons attempting to grab parts of the 1st Respondent's land, of which one of those complained against happens to be the Applicant the said matter is pending before the Grade 1, Area Court Aco.

The affidavit evidence reasonably encapsulates the disagreement that erupted between the parties and which led to the proceedings initiated by the Applicant in compliance with the Enforcement of The Fundamental Rights Procedure Rules.

This court has resisted and is still resisting the temptation of touching on the facts in the affidavit which relates to the ownership of the land or the grabbing of same and the exhibits related thereto so as not to make a finding on those facts which falls outside the purview of chapter 4 (iv) of the 1999 constitution

and which are not the issue before this honorable court for determination.

It is my firm view that fundamentally the main issue begging for determination in this application is whether any of the rights contained in Chapter IV of the 1999 Constitution have been infringed upon.

Section 46 of the 1999 Constitution requires that a person who wishes to enforce his rights that he is entitled to under the fundamental rights procedure should satisfy the following:

- a) Must allege that any provision of the fundamental rights under Chapter IV has been contravened or
- b) Is likely to be contravened, and
- c) The contravention is in relation to him.

It is not every right of an Applicant, which is involved here. It is only the rights, which falls within the provisions of Chapter IV of the Constitution no right outside the provisions of Chapter IV can found an action under the Jurisdiction of the court provided by Section 46 of the Constitution. Clear, unambiguous and serious as the right infringed may be, the court cannot raise its

status to be that of a fundamental right if in fact it cannot be spelt out of Chapter IV. The applicant must look for his rights elsewhere under the common law or statute law. See **UZOUKWU VS EZEONU II (1991) 6 NWLR PART 200, PAGE 708 AT 762.**

*“A person seeking redress under violation of fundamental rights must additionally pinpoint the relevant section of the Constitution wherein the violation of right is expressly or impliedly guaranteed, otherwise, the alleged act of violation cannot be sustained nor protected constitutionally. The applicant has pin-pointed section 40 as the relevant section of the Constitution wherein the violation of right is expressly or impliedly guaranteed. By its very nature, a constitution must always be construed in such a way that it protects what it sets out to protect or guide what it sets out to guide. The Constitution therefore must by necessity be interpreted broadly in order not to defeat the clear intention of its framers.”* See **AQUA LIMITED VS ONDO STATE SPORTS COUNCIL (1988) 4 NWLR (PART 91) 622 AT 639.****UKAEGBU VS A.G OF IMO STATE (1983) 1 SCNLR 212 AT 235.**

Learned Applicant in his written Address distilled two issues for determination by this honourable court which are;

1. *Whether the arrest and assault of the Applicant, from his building site up to his detention at the estate of the Respondents, using thugs and hoodlums, wielding dangerous weapons without any just cause and Court order amounts to a violation of the fundamental right of the Applicant to human dignity, personal liberty, fair hearing and freedom of movement as provided and guaranteed by section 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria, 1999.*

2. *Whether the violent and reprehensible conducts of the Respondents in violating the Applicant's Fundamental Rights in the instant case entitles the Applicant to general and exemplary damages against the Respondents.*

Learned Counsel for the Respondents on his part distilled a lone issue for resolution which is;

*"Whether the Applicant is entitled to the relief sought".*

On issue 1, the Learned Applicant stated that, the law is trite that every person is entitled to his human dignity as guaranteed under section 34(1) of the Constitution of the Federal Republic of Nigeria, 1999.

Counsel argued that the action of the 1st and 2nd Respondents which is the arrest, assault and public

embarrassment of the Applicant for no just cause is a clear violation of the constitutionally guaranteed right of the Applicant. Learned Applicant relied on the case of **EZE V. I.G.P. (2017) NWLR (PT 1554) 44 CA @51 RATIO 4 AND OKAFOR V LAGOS STATE GOVERNMENT(2017) NWLR (PT. 1556l) among others.**

Learned Counsel further cites the case **of DIAMOND BANK PLC V. OPARA (2018) NWLR (PT. 1617) 92 SC AT 98 RATIO 6** and submits therefore that the scenario where the Applicant was unlawfully, arrested conscripted, and abducted by the Respondents thugs and hoodlums with dangerous weapons and under the threat of harm and moved to Respondent's estates about 400 metres away without any just cause and without a court order is a gross violation of the Applicant's right to personal liberty and freedom of movement.

Arguing issue two learned Applicant submits that from the evidence available before this honourable Court the Respondent actually unlawfully arrested and detained the Applicant and violated his Fundamental rights enshrined in the constitution therefore the Applicant is entitled to exemplary damages due to the violent, outrageous and reckless conduct of the Respondent. Learned Counsel for the Applicant cited the cases of

**F.B.N PLC V. A.G. FEDERATION (2018) NWLR (PT. 1617) 121 SC 128-129 RATIO 4 AND G.F.K.I.(NIG) LTD V NITEL PLC (2009) NWLR (PT. 1164) 344, SC ,@377 PARAS. C-D .ETC.** stating that the act of the Respondents is the height of lawlessness and self-help which should be reprimanded and therefore urged this honourable Court to uphold issue two formulated and award the exemplary damages against the Respondents as claimed.

In a nutshell Learned Counsel for the Applicant submits that the Respondents failed to justify the arrest ,detention and manhandling of the Applicant and therefore urge this Honourable Court to enter judgment for the Applicant further award exemplary damages against the Respondents .

The Learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on his part submits that an Applicant seeking reliefs of this nature has a duty to place sufficient facts before the Court that will warrant the Court to exercise its discretion in favour of the Applicant. He submits that the Applicant alleging the breach of his fundamental rights has a duty of placing sufficient and credible evidence regarding the alleged infringements before the Court, this duty he submits was not discharged, therefore Learned Counsel for the Respondents urges this Honourable Court to hold that the Respondents acted in

accordance to the law and have not violated the rights of the Applicant .

Finally Learned Counsel for the Respondents urge this Court to strike out this application as the Applicant did not prove that he is entitled to reliefs sought.

As stated earlier in this judgment the pertinent question seeking determination is whether or not it can be distilled from the facts presented to this court that the Applicant's rights as guaranteed in sections 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 were infringed upon.

In resolving this main issue, I shall juxtapose the facts proved and the rights allegedly violated to ascertain if in fact the said rights were breached or contravened as alleged. This should adequately resolve both questions posed in the originating summons and issues formulated for determination by Learned Counsels.

I shall first deal with the practical application of section 34 (supra). Section 34 (1) of the Constitution which deals with Right to Dignity of Human Person Provides:

*“Every individual is entitled to respect for the dignity of his person and accordingly---*

*(a) No person shall be subjected to torture or to inhuman or degrading treatment.*

- (b) No person shall be held in slavery or servitude, and*
- (c) No person shall be required to perform forced or compulsory labour”*

Subsection (2) deals with matters excluded from the operation of subsection (1). It is not relevant in this application so I shall not consider it. Subsection (1) therefore applies to an individual in respect of the dignity of his person. This dignity of his person is however limited to:

- (a) Subjugation to torture or to inhuman or degrading treatment.*
- (b) Slavery or servitude.*
- (c) Forced or compulsory labour.*

Sections 34(1) (b) and (c) dealing with Slavery or servitude and forced or compulsory labour are not the issues in contention in this suit, so no time would be spent in defining the import of those subsections.

It is not every action or utterance that may amount to torture or inhuman or degrading treatment. It is a matter of utmost importance to have a clear understanding of the key words in this subsection; which are ‘dignity’, ‘torture’, ‘inhuman’ and ‘degrading treatment’.

Since section 34 (1) has specifically mentioned acts which will be regarded as a violation of the human person, a court of law has no jurisdiction to go outside the clearly enumerated acts in search for more violatory acts.

The jurisdiction of the court to give broad and liberal interpretation to the constitution particularly when the rights of the individual involved do not extend to such unguarded voyage on the part of the court *Suo motu* for what is not provided for in the constitution. See **Ukaegbu Vs A.G Imo State (Supra)**.

The word torture etymologically means to put a person to some form of pain that could be extreme. It also means to put a person to some form of anguish or excessive pain. The 'torture' under the subsection could be a physical brutalization of the human person. It could also be a mental torture in the sense of mental agony or mental worry. The word 'inhuman' is the opposite of 'human'. It follows therefore that an inhuman treatment is a barbarous, uncouthly and cruel treatment.

Thus it was held By **ADEFARASINC.J IN ALHAJA A. MOGAJI AND ORS VS BOARD OF CUSTOMS & EXCISE & ANOR (1982) 2 NCLR 552 AT 560**. That the action of the

official of the Board of Customs and Excise aided by Police Officers and Soldiers to descend on market women with guns and horse whips and to seize goods arbitrarily in an atmosphere of gun shots and horse whipping is out of step with the law and offends section 31 (1) (a) of the Constitution ( the said section 31 (1) (a) *is impari material* with 34 (1) (a) of the 1999 Constitution) as being inhuman and degrading treatment.

The Applicant herein alleges that he was beaten by thugs he claims are agents of the 1<sup>st</sup> Respondent. The Applicant also allege that the 2<sup>nd</sup> Respondent called him a “charge and bail lawyer” as well as used other degrading words on him i.e., that his behaviour was like a mad man. It is the argument of the Applicant that the assault and public embarrassment he received from the thugs whom he claims are agents of the 1<sup>st</sup> Respondent and the verbal insult poured on him by the 2<sup>nd</sup> Respondents for no just cause is a clear violation of his constitutionally guaranteed right.

The Respondents deny sending any thugs to the Applicant. The Respondents also deny the fact that the Applicant was beaten up by thugs on their premises. Their case as can be gleaned from their affidavit evidence is that the Applicant was invited to their office

for the sole purpose to get him to stop construction on their land.

Learned counsel to the Respondent argued that an Applicant seeking reliefs of this nature has a duty to place sufficient facts before the Court that will warrant the Court to exercise its discretion in favour of the Applicant. He submits that the Applicant alleging the breach of his fundamental rights has a duty of placing sufficient and credible evidence regarding the alleged infringements before the Court, this duty he submits was not discharged, therefore Learned Counsel for the Respondents urges this Honourable Court to hold that the Respondents acted in accordance to the law and have not violated the rights of the Applicant.

Clearly the crucial issue begging for determination is what happened after the invitation specifically at the premises of the 1st Respondent, on one side of the scale is that he was beaten until the 2<sup>nd</sup> Respondent came out of his office

On the other side of the scale the Respondent presents a cordial atmosphere where the Applicant was told to stop construction and asked to go.

It is trite that the burden of proof in the sense of establishing the case, initially lies on the plaintiff the

proof or rebuttal of issues which arises in the course of proceedings may shift from the plaintiff to the defendant and vice versa as the case progresses. The general rule which is enshrined in the maxim **Ei qui affirmat non ei qui negatincumbitprobatio** is that such party adduces evidence which ought reasonably to satisfy a jury that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced; and so on successively, until all the issues in the pleadings have been dealt with **see OSAWARUV.EZEIRUKA(1978) LPELR-2791(SC)**

This Honorable Court wonders why the Applicant who was in touch with the DPO of trade Moore police station and who went back to the premises of the Respondents for identification parade (as contained in his Affidavit) on the same day of the incidence failed to report the beating that happened earlier on the same date to the police and further attaching the certified true copy of his report to the police to this Application.

I have given submission of counsel due consideration and I do not see how mere calling the Applicant a charge and bail lawyer, even would qualify as torture or inhuman and degrading treatment as envisaged by Section 34 (supra). With regards to the allegation of being beaten up by thugs alleged to be agents of the 1<sup>st</sup> Respondent in the premises of the 1<sup>st</sup> Respondents, the said allegation in my candid view bother on crime. It is trite that when crime is alleged in any matter be it criminal or civil proceeding, the crime must be proved beyond reasonable doubt. **See NIGERIAN LABOUR CONGRESS & ORS V. AJIYAINTEGRATED SERVICES LIMITED &Anor (2020) LPELR-49965(CA)**

There is no evidence before me that Applicant reported the incidence of being beaten up to the police. More so, when he deposed that he had called the police to notify them of the presence of the said thugs. As highlighted by counsel to the Respondents, there is no evidence that he got medical attention after the alleged beating. With due respect to the Applicant, in the face of the denial by the Respondents, he ought to have come with more compelling facts to tilt the scale in his favour. This he clearly failed to do. The Applicant has clearly failed to discharge the burden in proof that his rights as

enshrined in section 34 (supra) was violated by agents of the 1<sup>st</sup> Respondents.

Section 35 of the Constitution on the other hand states that *every person shall be entitled to his personal liberty save in the execution of a sentence or order of court or by reason of his failure to comply with the order of court or in order to secure the fulfilment of an obligation imposed by law or for the purpose of bringing him before a court in execution of the order of court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent him from committing a criminal offence.*

Where a person does not fall within any of the above exceptions to the right to personal liberty, nobody has a right to arrest or detain him. See **ODOGU VS A.G FEDERATION (1996) 6 NWLR (PT 456) 508.**

Of special importance in this section is Arrest and Detention. For this provision of the Constitution to be breached, one or both of the above must occur.

On the Applicant's own showing, he went with the alleged agents of the 1<sup>st</sup> Respondent on the advice of a police officer to the premises of the 1<sup>st</sup> Respondent. On his own showing too, he resisted detention, was allegedly beaten and was allowed to leave after being tongue lashed by the 2<sup>nd</sup> Respondent. The Respondents deposed to the fact, that he was only stopped from carrying out further construction work on the 1<sup>st</sup> Respondent's land. While the Applicant claims arrest, the Respondents claim he was stopped from carrying further construction. Black's Law Dictionary 9<sup>th</sup> edition, page 124 defines arrest as:

"1. A seizure or forcible restraint. 2. The taking or keeping of a person in custody by legal authority, especially in response to a criminal charge; specifically, the apprehension of someone for purpose of securing the administration of the law, especially of bringing that person before a court"

The Applicant's case is that he went to the premises of the 1<sup>st</sup> Defendant without force or restraint on advice of the police. However, it was his evidence as contained in his affidavit that the thugs came armed with offensive weapons. There is nothing in the supporting evidence that this issue of weapon wielding thugs was reported to the police. He resisted detention according to him. I see no

evidence therefore in proof of violation of his right as enshrined in Section 35 (supra).

Section 36 of the 1999 Constitution of the Federal Republic of Nigeria as Amended deals with issue of fair hearing. The main purpose of the said section is to protect the right of any individual In the determination of his civil rights and obligations, including any question or determination by or against any government or authority. A person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. There is nothing in the supporting affidavit that indicates that the Applicant's right of fair hearing has been infringed within the context of section 36(supra) or that there is a threat to infringe it. The written submission of the Applicant was silent on the alleged breach of the Applicant's right to fair hearing.

Section 41 of the Constitution of the Federal Republic of Nigeria guarantees the right of freedom of movement and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom. I have perused the affidavit evidence of the Applicant and there is nothing contained therein that he his right to freedom has been curtailed

or likely to be curtailed by the Respondent. There is nothing therein, which shows that he has been expelled or that there is a threat to expel him from the country. At the risk of repetition, the Applicant deposed to the fact that he went to the premises of the 1<sup>st</sup> Respondent, he was beaten, tongue lashed and was allowed to go. These facts were denied by the Respondents. I am of candid view that even if in the event that that the deposition of honoring an invitation of the Respondents and subsequently allowed to leave was proved it still would not translate to deprivation of freedom of movement.

From the above, the Applicant clearly decided to go with the said thugs and hoodlums, and was not forced against his guaranteed right to liberty as protected in section 35 of the 1999 constitution of Nigeria as asserted, the Applicant gave evidence that when he refused to enter the detention room in the container at the premises of the Respondents, the staff of the Respondents started beating him and were forcing him into the detention room in the container, that the 2<sup>nd</sup> Respondent came out of his office at this point and ordered his hoodlums and workers( agents) to stop their assault on the Applicant and that the 2<sup>nd</sup> Respondent saw that the Applicant was receiving many calls including

from the police and then ordered his workers to take the Applicant out of his estate

The Respondents in paragraph 8, 11, 12 and 13 of their joint Counter Affidavit deposed to the fact that the Applicant was stopped by the security of the Respondents and elders in the community from trying to construct more buildings and was invited to the Estate office where the 2<sup>nd</sup> Respondent met with him and warned him to avoid any form of construction. The 2<sup>nd</sup> Respondent denied any form of assault, battery or abduction as stated by the Applicant.

The Applicant attached exhibit KYC1 a VCD a video compact disc plate to his affidavit in support of this application, the said Exhibit KYC1 was not played in the open Court for this Court and the Respondents to see the content of the said Exhibit KYC1 in the open.

It would appear that Learned Counsel for Applicant expected this Honourable Court to watch exhibit KYC1 privately in the comfort of his chambers and thereafter reach a finding on the exhibit KYC1, that in my respectful and firm view is not the position of the law. See **DICKSON V SILVA(2017)8 NWLR(PT.1567) 167@PG232-233, PARAS G-A.**

It has been held in plethora of authorities that it is not the duty of the Court or Tribunal to embark upon cloistered justice by making inquiry outside Court, not even by examination of document which was in evidence when the document has not been examined in open Court nor brought out and exposed to test in open court....."*In the case of **OBASI BROTHERS LTD V. MERCHANT BANK OF AFRICA SECURITIES LTD (2005) ALL FWLR (PT. 261) 216**, the court held that the party is under an obligation to tie his documents to the facts or evidence or admitted facts in the open Court and not through Counsel's oral or written address....."*

Again, there are plethora of authorities stating that, it is not the duty of a Court or Tribunal to embark on inquiry outside the Court, not even by examination of documents which are in evidence when the documents had not been examined or analysed as in the instant case by the party who tendered them.

"The law is well settled that in an application for the enforcement of fundamental rights, its determination is premised on the affidavit evidence produced and placed before the Court. That is, it is the affidavit evidence which the Court must meticulously peruse in order to reach a just determination of the application. The Applicant herein took no further step with regards to

the exhibit KYC1 that is the VCD which is akin to dumping of the document on this honourable Court , the Apex Court settled the effect of dumping documents on trial Court by stating that same may just be accepted as an architectural or artistic display of paper. See **UCHA V. ELECHI (2012) 13 NWLR (PT. 1317) 330 AT 360**.thus, exhibit KYC1 is discountenanced.

In view of findings above, this court cannot but answer questions 1, 2, 3 and 4 posed for determination in the originating summons thus:

The Applicant failed to discharge the burden of proof that his rights enshrined in Sections 34, 35, 36 and 41 of the 1999 Constitution of the Federal Republic of Nigeria(as amended) has been breached or is likely to be breached.

Consequently, the Applicant is not entitled to all the reliefs claimed. The suit fails and it is hereby dismissed.