

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

**ON THURSDAY THE 20<sup>th</sup> DAY OF SEPTEMBER 2021  
BEFORE HIS LORDSHIP:**

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

**SUIT.NO. FCT/ HC/M/437/2020  
BETWEEN**

**MR AKOR PETER UKPHUOJO----- APPLICANT**

**AND**

**HASAL MICROFINANCE BANK LIMITED----- RESPONDENT**

## **[JUDGMENT.]**

By an Originating Motion dated the 15<sup>th</sup> day of February 2021, the Applicant seeks to enforce his fundamental human right protected under section 34,35,41 and 46 of the 1999 Constitution of the Federal Republic of Nigeria as amended and under Articles 4,5,6 and 12 of the African Charter on Human and Peoples RightAct.

The case of the Applicant briefly is that, a staff of the Respondent stopped him under the guise that he was going to the Applicant's direction. Seated on the front seat of the Applicant's Vehicle, the said Respondent's staff demanded that the Applicant should follow him to Respondent's office, when he declined by reason of having passengers in his vehicle, the said staff insisted and held the steering of the Applicant's taxi insisting that he had instructions from the Respondent to bring the Applicant to Respondent's office once sighted.

That due to the way the said staff harassed him, the passengers dropped off and he was forced to follow the said staff to the Respondent's office at Abaji, where he was confined, arrested, detained and rendered incommunicado, that the officers of the Respondent intimidated, arrested and detained him on the 7<sup>th</sup> day of September, 2020 at 9.00am till the close of work for that day.

The originating motion is supported by a 22-paragraph affidavit deposed to on the 15<sup>th</sup> day of February 2021 by the Applicant, Akor Peter Ukphuojo. Annexed to the affidavit are three (3) exhibits marked as Exhibit A, B, and C.

In the statement accompanying this Originating Motion made pursuant to Order 11 Rule 3 of the Fundamental Rights Enforcement Procedure Rules, 2009 the following reliefs are being sought by the Applicant namely: -

1. A declaration that the arrest and detention of the Applicant on the 7th day of September, 2020 was a breach of his fundamental rights as protected in sections 34, 35 and 41 of the 1999 Constitution as amended.
2. A declaration that the arrest and detention of the Applicant on the 7th day of September, 2020 was wrongful, illegal, unlawful and unconstitutional and an infringement of the Fundamental Rights of the Applicant.
3. A declaration that the Fundamental Rights of the Applicant has been infringed upon by the Respondent.
4. A declaration that the fundamental rights of the Applicant are likely to be further infringed upon by the Respondent having regard to the circumstances of this case.
5. An Order of Court enforcing the fundamental rights of the Applicant forthwith.
6. An order of compensation, exemplary and general damages in favour of the Applicant and against the Respondent in the sum of ₦20,000,000.00 (Twenty

million naira) only and a written apology for the violation of the Applicant's Fundamental Rights.

7. An Order of perpetual injunction restraining the Respondent by itself or its officers from further infringement of the Applicant's fundamental rights.

8. And for such further Order or Orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which these reliefs are predicated are outlined in the mandatory statement attached to this application.

Also attached to this originating motion is Applicant's written address dated 15<sup>th</sup> February 2021 in support of thereto, settled by A. A. Akor Esq.

In response to this application the Respondent filed a Counter affidavit of 21 paragraphs deposed to by one Omerke Chijioke, on the 24th day of June 2021, with three annexures marked as exhibits A&C 1, A&C 2 and A&C 4. Annexed to the Respondent's Counter affidavit are a written address in opposition to Applicant's originating motion, settled by Prince Adebisi Adetosoye Esq.

A Further Affidavit of 9 paragraphs in response to the Respondent's Counter affidavit was deposed to by one Henry A. Agu on the 5<sup>th</sup> of July 2021 with exhibits AP1, AP2 and AP3 annexed thereto and reply on point of law dated the 5<sup>th</sup> day of July 2021 and settled by Onuh Daniel Esq .When the need arises, I shall refer to the exhibits.

On his part the Respondent denied the facts as alleged by the Applicants stating that all staff at the Abaji branch of the Respondent's office were interviewed and they all denied and stated that no staff of the Respondent harassed ,embarrassed, confined , arrested, detained or rendered the Applicant incommunicado.

On the 8<sup>th</sup> day July 2021 at the hearing of this suit A. A. Akor Esq. adopted his written address alongside their reply on point of law, while Adebisi Adetosoye Esq adopted his written address.

The said addresses are hereby incorporated into this JudgmentI shall refer to the relevant portions as the need arises.

Learned counsel for the Applicant formulated 3 issues for determination by this honourableCourt which include:

1. Whether this Honourable Court has the jurisdiction to enforce the Applicant's fundamental rights and grant the reliefs sought for in the instant application;
2. Whether having regards to the conduct of the Respondent's officer and the circumstances of this case, the fundamental rights of the Applicant have been infringed, being infringed or likely to be infringed upon by the Respondent.
3. Whether the Applicant is entitled to the reliefs sought.

On his part, Counsel to Respondent distilled one issue to wit;

“Whether the Applicant has proffered credible and compelling evidence before this Honourable Court to entitle him to the reliefs sought?”

Learned Counsel to the Respondent at the hearing of this suit argued that the provisions of order 2 rule 7 of the FREP 2009 does not provide for the Applicant to file a further affidavit in response to the Counter affidavit but is only allowed reply to Respondent's written address. For ease of reference order 2 Rule 6 of the FREP 2009 Provide thus

“Where the respondent intends to oppose the application, he shall file his written address within 5 days of the service on him of such application and may accompany it with a counter affidavit”.

Rule 7 provides 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 ”.

Clearly from the above provisions, the Applicant may file a further affidavit along with his reply on point of law. The objection of Counsel to the further affidavit is of no moment and it is accordingly overruled.

Now on issue one,

Section 46 (1) of the 1999 Constitution provides to the effect that,

(1) 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.

As rightly submitted by learned Counsel to the Applicant while relying on the case of **GRACE JACK V. UNIVERSITY OF AGRICULTURE, MAKURDI (2004) 5 NWLR (PT. 865)**

208 SC, this honourable has jurisdiction to entertain this suit. Issue 1 is therefore resolved in favour of the Applicant.

Now on issue two, Learned Counsel submits that by the averments contained in the affidavit of the Applicant, The Applicant has demonstrably shown that his fundamental right guaranteed by sections 34(1), 35(1) and 41(1) of the 1999 constitution have been infringed upon and contends that the burden of proving the legality or constitutionality of the arrest and detention of a person is on the arresting or detaining authority. Counsel relied on the case of IYERE V. DORU (1988) 5 NWLR (PT. 44) 665; ABIOLA V. ABACHA (1998) 1 HRLRA PAGE 458,

On his part, Learned Counsel to the Respondent relied on section 131 and 134 of the evidence Act 2011 and the case in MUOGBO V. EQUINOX MICROFINANCE BANK LTD (2019) LPELR-47161 (CA); UBA PLC V. YAHUZA (2014) LPELR-23976 (CA), he contends that the Applicant in this instant case has the burden of establishing his claim upon relevant and credible evidence. That the burden of first establishing a prima facie case coupled with credible and compelling evidence is on the Applicant, being the party alleging and seeking relief from this Honourable Court. And that where there is no

prima facie case there is nothing to respond to, resultant of which no burden of proof passes to the Respondent.

A party seeking declaratory reliefs must establish his entitlement to the reliefs upon the strength of his own case I need to state it clearly at this point that since the Applicant claims declaratory reliefs, the law places a legal burden on him to establish his claim.

**IN DUMEZ NIG. LTD. V. NWAKHOBA (2008) 18 NWLR (PT. 119) 361 AT 373-374.** FABIYI, J.S.C. at Pp. 22 paragraph A, stated thus:

‘It was pronounced with force that the burden of proof on the Plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence.”

Section 46 of the 1999 Constitution states as follows:

“The Section requires that a person who wishes to petition that he is entitled to a fundamental right:

- 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”.

The reliefs which therefore an Applicant may seek under the FREP rules are specifically limited to any of the fundamental rights prescribed and embodied in chapter IV of the Constitution. See **RAYMOND S. DONGTOE V. CIVIL SERVICE COMMISSION, PLATEAU STATE& ORS (2001) FWLR PT 50 P 1639.**

Application for enforcement of fundamental rights is granted once the rights of the applicant as provided in chapter iv of the 1999 constitution is shown to have been breached, threatened to or even likely to be breached.

The law remains trite that he who asserts must prove. Suffice it to put in perspective that the duty of the court whilst entertaining application under fundamental rights enforcement procedure is certainly not to conduct a criminal investigation, inquiry or trial. Neither is it to establish the guilt or innocence of any party to the Application relating to any allegation of crime .Its essence is also not to establish the liability or otherwise of a party with respect to whatever transaction that they may have been involved in.

The focal essence of fundamental right enforcement procedure is simply and strictly for the Court to enforce the protection of citizens` Fundamental Rights guaranteed by chapter iv of the 1999 Constitution and other applicable human right instrument where an

infringement or contravention is established or perceived.

It is for the above reason that this Honourable court has resisted with all its might the temptation to delve into facts relating to the loan transactions between the Applicant and the Respondent. Clearly, the crucial issue begging for determination is what happened on that fateful day being the 7th day of September 2020.

The Applicant disclosed in his affidavit that a staff of the Respondent stopped him under the guise that he was going to the Applicant's direction. Seated on the front seat of the Applicant vehicle, the said staff who is not named struggled with the steering of the Applicants car.

The Argument of Counsel to the Respondent that, it is not enough to simply state that a staff of the Respondent entered his vehicle and forced him to the Respondent office in Abaji. Indeed, it is difficult to if not impossible to believe that one unarmed man single handed took over the vehicle steering, then the same unarmed man allowed the driver park his vehicle to allow other passengers in the said vehicle to alight and then proceeded with the driver of the said vehicle who is the Applicant to the Respondent's office at Abaji where he was confined till the close of work.

Now, did the Applicant know the said staff of the Respondent before the day of the incidence? Did he pick

him up as a passenger or was it just that the Applicant gave him a ride? At the point when the Applicant stopped for the other passengers to disembark from his car, why did the Applicant not get out of the car and raise an alarm.

This court wonders why the Applicant upon his release failed to or refused to report the incidence to the police and the said police report attached to the affidavit in support of this originating motion.

From the exhibits attached to the processes herein it is not in issue that the Applicant and the Respondent had transaction which do not come under rights protected in chapter iv of the 1999 Constitution but which was about loan procured and payment plan for the loan extended.

Similarly, the facts disclosed in the further affidavit deposed to on behalf of the Applicant to the effect that Applicant knew Kauna and Bosse (surnames unknown) as well as other staff of the Respondent does not prove that indeed the staff of the Respondent did arrest the Applicant.

The Applicant had a duty to place sufficient facts before this Honourable Court to show that the unnamed person who intimidated, arrested and detained him on the 7th day of September, 2020 at 9.00am and who embarrassed him in the presence of his passengers and without any explanation took him to the Respondent's office, where he was detained until the close of work for

that day was indeed a staff of the Respondent. This duty was not discharged as there nothing concrete disclosed in the facts before this Court upon which this court can rely to hold that the Respondent herein was responsible for the alleged arrest or that there was actually an arrest before linking same to the Respondent.

"The law is sacrosanct that the burden of proving the arrest and detention of a person is on the party who assert that he was arrested and detained. Once that burden is satisfactorily discharged or the arrest and detention of a person is admitted by the arresting authority, the burden shifts on the arresting authority to prove that the arrest and detention is lawful.' See **OBINEGBO& ORS V. I.G.P& ORS (2020) LPELR-50980(CA)**

Issue two as distilled by Counsel for the Applicant is therefore resolved in the negative. That is the Applicant failed to show that having regards to the conduct of the Respondent's officer and the circumstances of this case, the Fundamental Rights of the Applicant have not been infringed upon or likely to be infringed by the Respondent.

Issue three is in substance the same as the sole issue distilled by the Learned Counsel for the Respondent, its success is hinged on the success of issue two which has already been resolved in the negative, issue three is therefore resolved in the negative.

Having failed to establish that any of the Applicants rights protected in chapter iv of the 1999 constitution was infringed upon by the Respondent as alleged. All reliefs sought in this suit therefore fails and are accordingly dismissed in their entirety.

I make no order as to cost.

***JUSTICE F. E. MESSIRI.***  
***[JUDGE.]***

Appearances.

A.A. Akor Esq for Applicant.

Prince Adebisi Adetosoye with him C. Odeleye & Emmanuel Oluwatosin for Respondent.

