

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE GWAGWALADA DIVISION
HOLDEN AT COURT 12, JABI
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 13TH DAY OF NOVEMBER, 2024**

SUIT NO: FCT/HC/GWD/CV/210/2023

BETWEEN:

MR. BABA RASHEED----- APPLICANTS

AND

**1. ECONOMIC AND FINANCIAL CRIMES
COMMISSION (EFCC)
2. STERLING BANK PLC** }----- **RESPONDENTS**

S. M. ATTAH for the Applicant.

M. I. BUBA for the 1st Respondent.

H. O. AKINTOLA for the 2nd Respondent.

JUDGEMENT

This is an application for the enforcement of Fundamental Right of the Applicant to wit: right to life and personal liberty pursuant to section 33(1), 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, Articles 4, 5, and 6 of the African Charter on Human and People's Rights, and under the inherent jurisdiction of this court, and also Section 6(6) of the Constitution of the Federal Republic of Nigeria 1999 as amended, seeking the following reliefs:

- a. A declaration that the invitation and/or arrest and threat to the Applicant by the 1st Respondent, propelled by the 2nd

Respondent, who reported the Applicant to the 1st Respondents by compelling and instigating the 2nd Respondent through their Counsel, wherein the Applicant was invited, arrested, and threatened, and detained at Wuse Zone 6 Abuja on the 23rd day of October, 2023, amount to an infringement or violation of the Applicant's fundamental rights to personal liberty and right to life as enshrined under Section 33, 34, and 35 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, and under Article 6 of the African Charter on Human and People's Rights, preserved under the African Charter on Human and People's Rights ratification and enforcement acts, Cap A-9, Laws of the Federation of Nigeria 2004.

- b. An order of injunction restraining the Respondents, their agents, servants, officers, privies or whosoever under working directly or indirectly with or for the Respondents from further arresting, inviting, intimidating, harassing or infringing on the fundamental rights of the Applicant as guaranteed under Chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.
- c. A claim of the sum of **N200,000,000 (Two Hundred Million Naira)** jointly and severally against the Respondents, being general and aggravated damages for the unlawful violation of the Applicant's fundamental rights as entrenched and guaranteed under Chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

d. And for such further order or orders as this honorable Court may deem free to make in the circumstances.

The grounds upon which the Applicant is seeking the reliefs are:

1. That the plans, efforts, and actions of the Respondent to arrest and detain the Applicant without due legal process on account of the civil contract transacted by the Applicant and the 2nd Respondent and the simple contract loan having been criminalized and turned into the 1st Respondent arresting and detaining the Applicant which have been propelled and persuaded by the 2nd Respondent's Counsel.
2. That the detention of the Applicant in the office of the 1st Respondent from 8 a.m. till 6.30 p.m. infringed his right to personal liberty, freedom of movement and right to dignity of human person, as well as taking the laws into their hands.
3. That the threat to life of the Applicant by the 1st Respondent infringed upon the Applicant's right to life and respect for the dignity of his person.

The Applicant was said to have applied for a loan of **N50,000,000 Fifty Million Naira**) from the 2nd Respondent, sometimes in the year 2022, to finance the production of Soya beans. And upon the approval of the credit facility both the Applicant and the 2nd Respondents endorse the facility agreements that the Soya beans produced by the Applicant should be sold to the Crown Flour Mills Limited, Olam Group Company. The

companies with the Applicant and the 2nd Respondent entered into a domiciliation process agreements that the Applicant irrevocably and unconditionally assigned all the proceeds or receivables dues from Crown Farm Flower Mills, Olam Group to the 2nd Respondent. That the Applicant, instead of paying back the credit facilities from the funds paid to him by the Crown Farm Flower Mills Limited, Olam Group Company, after he was fully paid by the latter, diverted the funds to another business. And the representative of the 2nd Respondent was said to have consistently engaged the Applicant regarding the breach of agreement having persuaded him to fund his account so that the bank can realize the credit facility advance to him, but this was to no avail. The letters of demand dated 11/4/2022 and 13/3/2022 and 9/5/22 were exhibited as exhibit D, E and F respectively. The Applicant was said to have made some refunds of **N21,222,000 (Twenty One Million Two Hundred and Twenty Two Naira)** only, and cash collateral of **N15,000,000 (Fifteen Million Naira)** was also collapsed to further reduce the indebtedness of the Applicant. Now, when it became clear that the Applicant is willing to repay the outstanding debts, the 2nd Respondent filed a petition to the 1st Respondent reporting the Applicant's criminal breach of trust and illegal diversion of funds.

The Applicant claimed that the 1st Respondent started calling him on phone persistently and threatening that if he failed to report to their office at Wuse Zone 6, within three (3) days of the day of the call, he will

be declared wanted and even arrested by any security agent, he will be killed, immediately he is arrested. That he pleaded with the 1st Respondent that he does not know anybody in Abuja to take him out on bail if he reported himself. And the said staff of the 1st Respondent promised that it was going to arrange a surety and a lawyer for him, but shall pay the sum of **N300,000 (Three Hundred Thousand Naira)** for that.

Applicant said he came to Abuja from Makurdi and went to one of his cousins who arranged a lawyer for him. However, when he came to the 1st Respondent's office, they insisted that the bail money of **N300,000 (Three Hundred Thousand Naira)** must be paid, whether he has a lawyer or not. He exhibited his statement of account as evidence of payments to the lawyer and the surety. That at the office of the 1st Respondent, he wrote his statement about the old transaction, about how the old transaction started, and the surety provided by the 1st Respondent signed his bail bond. That he was detained from 8am on 23/10/2023, when he reported himself till 6:30pm when the bail bond was prepared and signed by all the parties, without the conditions attached there to. That he was forced to include an undertaking that he shall pay the 2nd Respondent her money in two installments. And that the first installment shall be made on the 30th of November, 2023, while the remaining balance shall be paid on the 31st of December, 2023. That he was also sternly warned that if he fails to pay, his life will be in danger. That since he left

the office of the 1st Respondent, he has been living in fear, having disclosed his residence in Oturkpo to the 1st Respondent.

Now, contrary to the claim of the Applicant, the 1st Respondents in the counter-affidavit of one **Ezire Ufoma** stated that it received a petition from the 2nd Respondent complaining about alleged criminal diversion of funds and misappropriation against the Applicant. See the attached exhibits EFCC A. That the petition was assigned to the Tax Fraud Section and eventually to his team for investigation. That the preliminary investigation revealed a prima facie case of criminal breach of trust, misappropriation against the Applicant, and he was invited to respond to the allegation. That the 1st Respondent deny extortion of money for bail and detaining the Applicant from 8 am - 6 30pm on 23/10/2023.

In the same vein, the 2nd Respondent also filed a 5 paragraph counter-affidavit in rebuttal of the Applicant's claim. The deponent, **Aremu Shola Hanna** averred in paragraph 4f, that the Applicant, instead of paying back the credit facility from the funds paid to him by Crown Floor Mills Limited, Olam Group Company, diverted the funds to another business, instead of paying into his account with the 2nd Respondent as was agreed in Exhibit C. That the deposition of the Applicant that he attempted to make a repayment of the facility on the 22nd of September 2022, but was advised by 2nd Respondent to wait until the repayment cycle of three months is completely false and ask that the Applicant provide proof. That

the record of the 2nd Respondent as at 10th of January 2022 shows that the Applicant's indebtedness to the 2nd Respondents stands at **N26,126,114, 90K (Twenty Six Million One Hundred and Twenty Six Thousand One Hundred and Fourteen Naira Ninety Kobo)** only. That the Applicant's case is gold-digging and vexatious. She urged the court to dismiss same as an abuse of judicial process.

The Counsel for the parties also filed their respective written submissions which were adopted as their oral arguments in court. Counsel for the Applicant formulated three issues for determination to wit:

- i. Whether the Applicant's fundamental rights as guaranteed under the Chapter V of the Constitution of the Federal Republic of Nigeria 1999 as amended has been, is being or likely to be breached by the Respondents.*
- ii. Whether the Applicants is entitled to the injunctive reliefs to forestall further violation of fundamental rights of the Applicant by the Respondents.*
- iii. Whether the Applicant is entitled to damages for violation of his fundamental rights.*

The 1st Respondent on the other hand, formulated a sole issue for determination by the court to wit:

Whether the 1st Respondent is in breach of the Applicant's fundamental rights to entitle him to the relief sought.

While the 2nd Respondent formulated five issues for determination to wit:

- i. Does the 2nd Respondent have the right to report the commission of a crime to the Economic and Financial Crimes Commission or the police?*
- ii. What is the Economic and Financial Crimes Commission enjoined to do if an allegation of crime is reported to them?*
- iii. Does the 2nd Respondent have the power or rights to direct the Economic and Financial Crimes Commission on its functions or determining how the Economic and Financial Crimes Commission carries out its duties?*
- iv. Was there indeed a breach of the Applicant's fundamental rights occasioned by the report made by the 2nd Respondent to the 1st Respondent, consequence upon which the claim of the Applicant can be granted against the 2nd Respondent?*
- v. What is the Court enjoined to do to do in case the claims of the Applicant has not been properly proved according to law?*

The arguments of the respective Counsel in respect of the issues formulated are as contained in their written addresses submitted and adopted by them for the parties. There is therefore needless repeating all the arguments because they already form parts of the record of the court.

However, the issue that I could distill from the entire facts before me is:

Whether the Applicant has proved a breach of his fundamental rights based on the evidence before the court?

I have keenly considered the facts contained in the affidavit of the Applicant and the counter-affidavits of the Respondents, the written submission of their respective Counsel, and also the Exhibits tendered. It is said to that in an application for the enforcement of fundamental rights, the burden of proving the violation of such rights lies on the Applicant who must establish the breach by adducing credible, cogent and convincing evidence. See the case of **PROJECT ARCADE LTD & ANOR V THE INSPECTOR GENERAL OF POLICE (2022) LPELR 59127 CA – Per Sirajo JCA** held:

“Unless the Applicant discharges the burden of proof on the balance of probabilities, the burden does not shift to the Respondent.”

That the Claimant succeeds on the strength of his own case and not on the weakness of the Respondent. See also the case of **OMAME V NPF & ORS** where the Court held thus:

“When one alleges that his or her fundamental right to dignity is breached or likely to be breached, it must solidly put before the court evidence to prove his allegation of such an infraction or likely infraction from the affidavit before the Court. The evidential burden of proof in civil cases shifts or oscillates consistently as the scale of evidence

preponderates. The primary onus of proof in a civil case such as the present one lies on the plaintiff who happens to be the appellant before the court. The evidential burden of proof in civil case shifts or oscillates consistently as the scale of evidence preponderates. The primary onus of proof in a civil case such as the present one lies on the Plaintiff who happens to be the now appellant.”

See also the provision of Section 131(1) of the Evidence Act 2011 on the burden of proof in civil matters. The Section provides that:

“Whoever deserves any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist.”

The undisputed facts that emerge from the affidavit and counter-affidavit of the parties is that the Applicant took a loan of **N50,000,000 (Fifty Million Naira)** from the 2nd Respondent and failed to repay the loan in accordance with the agreement of the parties. It was as a result of this failure that propelled the 2nd Respondent into complaining to the 1st Respondent alleging criminal breach of trust and misappropriation of the funds. The 1st Respondent in the counter-affidavit of one Ezire Ufuoma stated that upon the assignment of the petition to the Tax Fraud Section for investigation, one Emmanuel Terparse Oroam the branch Manager of the 2nd Respondent reported upon their invitation and adopted the petition by making a statement which is attached as Exhibit EFCC B. The deponent went

on to state that preliminary investigation revealed a prima facie case of criminal breach of trust and misappropriation against the Applicant and that the Applicant was invited to also respond to the allegation. The Applicant claimed that upon honoring the invitation of the 1st Respondent, he was detained from 8 am - 6.30 pm when his bail bond was prepared and signed by all the parties concerned. It is imperative to state at this stage that every citizen has a right and responsibility to report the commission of a crime or alleged commission of crime to the police and other investigative agencies for the purpose of invitation, investigation, and even prosecution if the situation warrants at the conclusion of the investigation. However, this power of the police and other agencies is circumscribed or regulated by the provision of the Act establishing the agency as well as Sections 33 to 44 of the 1999 Constitution as amended, which serve as signposts in checkmating the arbitrariness or reckless use of powers by the agency.

The Learned Counsel for the 1st Respondent have alluded to this in his written submission when he referred to Section 7(1)(a) of the Economic and Financial Crimes Commission Establishment Act 2004 which confers on the Commission the power to cause investigation to be conducted as to whether any person, corporate body or organization has committed an offense under the Act or any law relating to Revenue, economic and financial crimes. He posits that investigation of offenses against the Applicant is not an interference with his fundamental rights and that the Applicant cannot ask the court to stop them from carrying out their

statutory responsibility. He cited the cases of **IGBO & ORS V DUMNEKE & ORS (2014) LPELR 22816 CA, OGUEJIOFOR & ORS V IBEABUCHI (2017) LPELR 43590 CA** in addition to the provisions of Section 7(1)(a) of the EFCC Act cited by the 1st Respondent's Counsel, Section 3 of the Administration of Criminal Justice Act 2015 which provides:

“A suspect or defendant alleged or charged with commission of an offense established by an act of the National Assembly shall be arrested, investigated, inquired into, or tried, or dealt with according to the provision of the Act.”

The provision of Section 35 of the 1999 Constitution as amended is sacrosanct and prohibits the deprivation of a citizen's liberty or right to liberty without a just cause. Section 35(1)(c) provides that:

“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty saved in the following cases and in accordance with the procedure permitted by the law. For the purpose of bringing him before a court in execution of the order of the court or upon a reasonable suspicion of having committed a criminal offense or to such extent as may be reasonably necessary to prevent his committing a criminal offense.”

It follows therefore that before a citizen is invited, arrested or detained on an allegation of crime, there must have been established a reasonable suspicion of having committed an offense which must be borne out of preliminary investigation by the police or the agency in question. This

position was given impetus in the case of **AMOS & ANOR V DANIEL & ORS (2023) LPELR 60454 CA** where the Court held:

*“I think I need to reiterate, in law every citizen has a duty to report a suspected criminal offense to the police for investigation and prosecution if the police so decide at the conclusion of the investigation. It is also very important to note that arrests are not detention by the police. It is part and parcel of the investigation processes. However the only caveat, and which the courts always insist on is that before an arrest or detention is carried out, there should be some form of discreet or preliminary investigation or processing to see if they have some sort of prima facie evidence of commission of the alleged offense. This will obviate the practice whereby citizens are arrested first, even before there is any evidence suggesting at least prima facie, the commission of the alleged offense, save where the person is caught in action, real time while committing the alleged offense, see **CHIEF SUNDAY EFFIONG V ESIEN & ORS (2015) 5 NWLR (PT. 1431) 8.**”*

The petition against the Applicants in this case was received by the 1st Respondent on the 3rd of May, 2023 and the Applicant was invited and he reported on 23rd of October, 2023, which was about six months for the 1st Respondent to have carried out any preliminary investigation before the Applicant honored the invitation. The 1st Respondent have failed to explain to my satisfaction at what point the act of criminality sets in, to warrant the 1st Respondent inviting the Applicant. The Applicant did not

deny taking loan from the 2nd Respondent. While the 2nd Respondent also admitted that the Applicant have started repayment and had the sum of **N26,126,114.90K (Twenty Six Million One Hundred and Twenty Six Thousand One Hundred and Fourteen Naira Ninety Kobo)** as his indebtedness to the 2nd Respondent.

I agree with Counsel for the Applicant that what existed between the parties is a civil contract of loan and a banker/customer relationship. In paragraph 4e and f of the 2nd Respondent's counter-affidavit the deponent averred that by virtue of Exhibit C, the domiciliation of proceeds agreement, the Applicant was to assign irrevocably and unconditionally all proceeds or receivables due from the Crown Flour Mill under the contract agreement to the 2nd Respondent. That instead of paying back the credit facility from the funds paid to the Applicant by Crown Flour Mill Olam Group after he was fully paid diverted the funds into another business. Now, the allegation of diversion of proceeds, for the “supply of contract to client” into another account of the claimant by the Applicant is a clear breach of the domiciliation agreement which ought to be redressed in a court of competent jurisdiction rather than clothing it the garment of criminality to invoke the powers of the 1st Respondent. The 1st Respondent ought not to have dabbled into a purely civil contract of banker/customer relationship but should have advised the parties to seek redress in the court after a careful scrutiny of the petition and the accompanying documents. See the

case of **EFCC V DIAMOND BANK (2018) LPELR 442 SC** Per **Odili JSC** where the Court held:

“It is important for me to pause and say here that the powers conferred on the appellant, the EFCC are to receive complaints and prevent and or fight the commission of Financial Crimes in Nigeria pursuant to Section 6(b) of the EFCC Act (Supra) does not extend to the investigation and or resolution of dispute arising or resulting from simple contract or civil transaction as in this case. The EFCC has an inherent duty to scrutinize all complaints that it received carefully, no matter how carefully crafted by the complaining party and be bold enough to counsel such complainant to seek appropriate lawful means to resolve their dispute.”

A cursory look at the credit facility agreement in paragraph 10 thereof states; *“Events of default notwithstanding anything before contained the facility or the balance or the facility for the time being outstanding plus interest at aforementioned date shall become immediately payable; (i) if the borrower makes default in the payments of any money due hereunder and continues to so default for a period of 14 days of being required to make payments of the facility on the balance thereof, the outstanding and or... ..”* Nowhere is it stated in the agreement that the police or the 1st Respondent shall be recruited or employed to recover the outstanding debt in case of default by the Applicant.

Furthermore, the argument of the Learning Counsel for the 2nd Respondent and the authority cited that the Applicant was detained from 8am-6:30pm a period of 10 hours, 30 minutes, which is less than 24 hours maximum period permissible by Section 35(5)(a) of the 1999 Constitution as amended, is untenable in the circumstances of this case. The 1st Respondent ought not to have dabbled into a purely civil contract of banker/customer relationship in the first instance. Furthermore, the number of hours of detention is immaterial. I refer to the case of **EFCC V DIAMOND BANK Supra** Where the Court held;

“Therefore when the appellant propelled by the 1st Respondent invited the 3rd Respondent for interrogation in respect of the transaction shown clearly in the affidavit in support and even the counter-affidavit, the fundamental rights of the 2nd and 3rd Respondent have been breached and the appellants cannot call in aid its power under the Police Act Section 4, 5 and 41 of the EFCC Act upon which it only exercises those powers.”

Therefore in the instant case, the invitation of the Applicant by the 1st Respondent is not only wrongful, but it is illegal and ultra-varies to the powers of the 1st Respondent.

Furthermore, the averments of the Applicant that he was asked to as part of his statement to undertake the payments of the debt in two installments on 30th November 2023 and 31st December 2023 is also illegal, unlawful and a complete deviation from the powers of the 1st Respondent. See the case of

ONUCHUKWU V EFCC & ORS (2018) LPELR 50810 CA Per Nimper JCA where the court held:

“...For sake of emphasis, let me reiterate that the 1st Respondent is not debt recovery agency for financial institutions, that would be using scarce public resources wrongly. The practice has become rampant and it must be checked, the apex Court recently had cause to lament the situation where in the case of DIAMOND BANK V OPERA & ORS (2018) LPELR 43907 SC had this to say:

“It is important for me to pause and say here that the powers conferred on the appellant, the EFCC are to receive complaints and prevent and or fight the commission of Financial Crimes in Nigeria pursuant to Section 6(b) of the EFCC Act does not extend to the investigation and or resolution of dispute arising or resulting from simple contract or civil transaction as in this case. The EFCC has an inherent duty to scrutinize all complaints that it received carefully, no matter how carefully crafted by the complaining party and be bold enough to counsel such complainant to seek appropriate lawful means to resolve their dispute. Alas! The EFCC is not a debt recovery agency and should refrain from being used as such...”

What is even more disturbing in recent times is the way and manner the Police and some other security agencies, rather than focus squarely on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used by overzealous and/or unscrupulous

characters for the recovery of debts arising from simple contracts, loans or purely civil transactions. Our security agencies, particularly the police, must know that the citizenry's confidence in them ought to first be ensured by the agencies themselves by jealously guarding the integrity of the uniform and powers conferred on them. The beauty of salt is in the taste. Once salt loses its own taste, its value is irredeemably lost. I say this now and again, our security agencies, particularly the police, are not debt recovery agencies. The agencies themselves need to first come to this realization, shun all entreaties in this regard and they will see confidence gradually restored in them."

It is very disheartening to observe that despite several admonition of the 1st Respondent by the courts and award of damages in deserving cases, the 1st Respondent still persists with this ignoble act of turning themselves into debt recovery agents rather than focusing on the statutory duties imposed on them by the Act that birthed the agency. From the entire facts before this court, therefore, I found that the Applicant have successfully proved that his fundamental rights was breached by the 1st Respondent at the behest of the 2nd Respondents. Consequently, the relief sought by the Applicant in paragraph 22a and b for declarations are granted as prayed.

On award of damages for breach of fundamental rights, all the Applicant needs to prove is a breach of fundamental rights and no more. It needs not prove any injury or inconvenience for the award or damages by way of compensation. Although a proof of injury or inconveniences will only serve

to buffer the claim for damages. This principle was also espoused in the case of **NRC V OJO (2021) LPELR 55971 CA** where the courts also held that:

“The duration of the breach is immaterial; all a victim needs to do is to prove the breach of his right without more. The Latin maxim; ubi jus ubi remedum applies. Once a Court come to the conclusion that the fundamental right of a person has been infringed, he is entitled to compensation in form of damages. In NSDC V MRS. MERCY FILLI (2020) LPELR 50942 CA @ PG 18 the Court per Abiriyo JCA held as follows:

“Any violation of a citizen’s guaranteed fundamental right for however short a time, must attract a penalty under the constitution Damages are awarded to compensate the Applicant for harm done to him, and punish the Respondent for misconduct in inflicting the harm. See FIRST BANK OF NIGERIA PLC & ANOR V AG FEDERATION & ORS (2018) LPELR 56084 SC; SKY BANK PLC V EMERSON NJOKU & ORS (2016) LPELR 40447 SC AND ALABOH V BOYES (1984) 5 NWLR 830. In the instant case, the appellant having unlawfully arrested and detained the Respondent must be penalized in damages under Section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria as amended. The appellant’s protest that the detention was for less than 24 hours must be ignored. It did not matter even if it was for a minute.”

Before I conclude on the award of damages, let me also state that the letter written on behalf of the 2nd Respondent by its Counsel painting the

coloration of criminality is highly condemnable. The writer of the letter goofed by referring a petition to the EFCC after it had written several letters to the Applicant for repayment. It is highly unprofessional, uncivilized and mischievous of the Counsel to have written a petition to the EFCC rather than filing a civil suit for the recovery of the debt in a Court of Competent Jurisdiction. The petition to the 1st Respondent by the 2nd Respondent was clearly meant to intimidate, embarrass, and harass the Applicant into the repayment of the balance of the loan. I found this act of the 2nd Respondent and their Counsel very reprehensible. Consequently, I hereby award the sum of **N5,000,000 (Five Million Naira)** jointly and severally against the 1st and 2nd Respondents as general and aggravated damages.

SIGN

**HON. JUDGE
13/11/2024**