

**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 25TH DAY OF NOVEMBER, 2024**

SUIT NO: FCT/HC/GAR/CV/498/2023

BETWEEN:

MR. EMMANUEL OBIRE ----- APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE
2. SP EDWIN OREWA
3. MR. ISSAC OGHAE } ----- **RESPONDENTS**

R. O. ADAKOLE appears with U. P. OGO for the Applicant.

AHMED MUHAMMED holding the brief of GARBA AUDU for the 1st and 2nd Respondents

JUDGEMENT

This is an application for enforcement of the Fundamental Human Rights of personal liberty and dignity of the applicant pursuant to Sections 34, 35, 36 and 41 of the 1999 Constitution of the Federal Republic of Nigeria as amended, seeking for the following reliefs:

1. A DECLARATION that the invitation of the applicant on the 31 July 2023 by the Officers of the 1st Respondent at the behest of 3rd Respondent over a civil transaction entered into by the Applicant and the 3rd Respondent amounts to a breach of the Applicant's

fundamental rights as enshrined under sections 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

2. A DECLARATION that the conduct of the 2nd Respondent in dabbling into a civil matter between the Applicant and the 3rd Respondent amounts to a breach and abuse of the fundamental rights of the applicant as provided for under sections 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
3. A DECLARATION that the continuous acts of dabbling by the 1st and 2nd Respondents in a civil matter between the Applicant and the 3rd Respondent which matter is currently pending before Courts of competent jurisdiction in Suit **LD/2320GCM/18** and Appeal No. **CA/LAG/PRE/ROA/CV/889M1/2023** despite the existence of the doctrine of Lis Pendis is unconstitutional and a breach of the fundamental rights of the applicant enshrined in sections 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
4. AN ORDER of perpetual injunction restraining the Respondents either by themselves, agents, privies and any other persons by whomsoever or however constituted from further inviting, harassing, intimidating and/or compelling the Applicant to appear before the Respondents pending the hearing and final determination of **CA/LAG/PRE/ROA/CV/889M1/2023** at the Court of Appeal, Lagos or any appeal arising therefrom.

5. AN ORDER awarding the sum of **N50,000,000:00k (Fifty Million Naira Only)** to the applicant against the Respondents jointly and severally as compensation for physical and psychological trauma caused the applicant.
6. AN ORDER directing the Respondents jointly and severally to pay the Applicant the Sum of **N8,000,000.00 (Eight Million Naira)** being the cost of this suit.
7. 24% on the judgement sum till same is liquidated.
8. AND for such order or further order(s) as the Honourable Court may deem fit to make in the circumstance.

The applicant an engineer and the Managing Director of Multi-purpose Infrastructural Development Construction Limited averred in his 17 paragraph affidavit that the 3rd Respondent is an interested party and a joint business partner of the applicant. The applicant's company entered into a joint venture agreement with the 3rd Respondent which spelt out the rights and obligation of the parties. The joint venture agreement is attached to the affidavit as Exhibit A. That on the 31st July 2023, the 2nd Respondent and officers of the 1st Respondent invited him in respect of that they called criminal conspiracy and threat to life in respect of matters arising from the performance of the joint venture development agreement entered into with the 3rd Respondent and his company. The invitation letter was marked as Exhibit A2. And upon receiving the said invitation he caused a letter to be written to the 1st Respondent by his legal Counselors Messer Raphael

Adakole & Co informing the 1st and 2nd Respondents of the pendency of the subject matter in dispute between the 1st Respondent and the 3rd Respondent in Court. The acknowledged letter was marked as Exhibit B. And that despite the letter to the 1st Respondent, the officers of the 1st Respondent are still threatening to arrest and detain him indefinitely. That his lawyers have begun the appeal process against the judgement of the Lagos State High Court with Certified True Copy of the documents evincing same as Exhibit C. And that as a result of the action of the Respondent he paid his lawyers the sum of **N8,000,000 (Eight Million Naira)** as professional fees for this suit. Attached are receipts for payment of the said professional fees marked as Exhibit D,

In response to the application, the 1st and 2nd Respondents files a notice of preliminary objection dated 18th April 2024, seeking to strike out the suit or set aside the proceedings for want of jurisdiction and for such further order or other orders as this Honourable Court may deem fit to make in the circumstance. The grounds upon which the application stands are as follows:

- i. That the Nigeria Police Force being the Principal and the Employer of the 1st and 2nd Respondents was not joined as a necessary party in this Suit and as such the non-joinder of the Nigeria Police Force as a necessary party renders this suit incompetent.

- ii. That the Applicants have not disclosed reasonable cause of action that warrants the enforcement of fundamental action as in the instant Suit and as such the non-disclosure of reasonable cause of action renders this suit incompetent.
- iii. That this suit being incompetent robs this Honourable Court of the requisite jurisdiction to entertain this suit and as such cannot make a binding order where it lacks jurisdiction to do so.

In the written address in support of the preliminary objection the Counsel for the 1st and 2nd Respondents contended that non-joinder of the Nigerian Police Force being the principal of the 1st and 2nd Respondents renders this suit incompetent. He cited the authorities of **COP KADUNA STATE COMMAND & ANOR V DAUDA & ORS (2020) LPELR 51412 CA**. Learned Counsel argued that every action affecting the agents of the Nigerian Police Force, the Nigerian Police Force must be made a party. That an agent cannot be proceeded against when the principal is known. He also relied on the case of **SAMPSON V UWAKS (2017) 10 NWLR (PT. 1574) 491 @ 504 PAR F-H**.

He further argued that this Court lacks the requisite jurisdiction to make a binding order as the issue of non-joinder of a necessary party robs it the jurisdiction to entertain the matter. On meaning of jurisdiction Counsel relied on the following authorities; **UTI V ONOYIWE (1991) 1 SCJN 25 @ 49**

Per Bello CJN, OKOLI V UBN LTD (2004) 3 NWLR (PT. 859) @ 108 Per Niki Tobi JSC, KABO AIR LTD V OLADIPO (1999) 10 NWLR (PT. 632) 717 CA.

Counsel submitted that where the Court lacks jurisdiction to entertain a suit, the consequence is that any decision made shall be nullified on appeal. He placed reliance on the authorities of **RAMONDS DONFTOE V CIVIL SERVICE COMMISSION NSCQLR VOLUME 6 (2001) PG 328 RT 1, 2513**. He further posited that issue of jurisdiction can be raised at any time relying on the case of **ALHAJI TSOHO DAN MALE V SOKOTO LOCAL GOVERNMENT & 2ORS NSCQR VOLUME 19 (2012) PG 1275 @ 1296 RT. 7 Per Fabiyi JSC**.

In addition the 1st and 2nd Respondents also filed an 18 paragraph counter-affidavit of one **Inspector Yohanna Joshua** wherein the deponent averred that the 1st and 2nd Respondents in the course of investigation of the alleged offence of Criminal Conspiracy and threat to life, issued an invitation letter to the Applicant dated 27th day of July 2023. That the Applicant knew he had a case to answer, and declined honouring the invitation, and chose to have a letter written to the Respondents to evade investigation and escape from justice. In the supporting written address, the Learned Counsel submitted three issues for determination to wit:

- 1. Whether the letter of invitation served on the Applicant thereto amount to an infringement of his Fundamental Right having regard to Section 24 of the Police Act and Section 35(1) of the 1999 Constitution of the Federal republic of Nigeria as amended.*

2. *Whether the Police are under legal duty to investigate Criminal Complaint made against the applicant.*
3. *Whether the Applicant have placed enough evidence before this Court to warrant the grant of the reliefs the Applicant sought.*

In arguing issues 1 and 2 together the Respondents' Counsel relied on the provision of Section 24 of the Police Act Cap P19 LFN 2004, stating that the police has the statutory duty to investigate the complaint of criminal conspiracy and threat to life reported against the Applicant by one Isaac Ikede the complainant to the crime. Counsel relied on the case of **HASSAN V EFCC (2014) 1 NWLR (PT. 1389) 607 @ 630**. He submitted that the Applicant failed woefully to show/establish that the 1st and 2nd Respondents breached his fundamental rights. That all the Counsel and the Applicant did is to speculate that the fundamental right was breached. That it is settled principle of law that it is not enough for a party to merely state that an act is illegal but must go ahead to show that rights and obligations are being breached or threatened. He relied on the case of **UDO V ESSIEN (2014) LPELR 22684**. That the burden is on the Applicant to show that his right has been breached. And that any citizen of the country is entitled to lodge a complaint with the police who are under a duty to investigate. Counsel relied on the case of **MUMINI V SHEREFAT (2011) AFWLR (PT. 604) 129 @ 158 – 159**. That there is no Section under the fundamental right or the Constitution that guarantee the right against police investigation and thus no order of injunction can be granted by the court in whatever guise

retraining the police from performing their statutory and constitutional duty of investigating an alleged infraction of the law. Counsel relied on the case of **ATTORNEY GENERAL ANAMBRA STATE V UBA & ORS (2005) AFWLR (PT. 277) 909 @ 925 PAR D-E, MALLAM ABDULSALAM HASAN V EFCC (UNREPORTED) APPEAL NO. CA/K/273/209, FAWEHIMI V IGP (2002) FWLR (PT. 12) 2015 @ 2034 PAR. F.**

The Counsel argued that what the Police sought to do by way of investigation on the complaints against the Applicant is to protect the interest of the public, and that Applicant's right cannot override the general public interest. And that there is no cogent and compelling facts disclosed before this Honourable Court that the Applicant's fundamental right has been or likely to be infringed by the Respondents and urged the Court to so hold.

On issue 3, the Counsel answered it in the negative and further submitted that the reliefs claimed by the Applicant has not been established having not placed any material facts before the Court that the investigation of the Applicant by the Police is not within the ambit of the law, regard being had to Section 24 of the Police Act and 35(1)(c) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

The 3rd Respondent, **Mr. Isaac Ikede** equally filed an 18 paragraphed counter-affidavit wherein he dwelt on what transpired between him and the Applicant thus:

That the applicant wrote a petition against him to the Assistant Inspector General of Police, [Criminal Investigation and Intelligence Department CIID] on the 15th day of JULY, 2022, alleging threat, violence, malicious damage, and conduct likely to cause breach of peace. And after investigation, he was exculpated of any wrong doing. He attached the report as Exhibit A. That thereafter he received an anonymous letter warning him of a serious plan by the Applicant to eliminate him. That he also received constant threats from calls from one **Innocent Onoja**, and one **Mr. Joseph Ummunah** whom he referred to as brigades. Following letter of warnings and threats he petitioned the Deputy Inspector General of Police, at the Force CID, Area 10, Abuja hat there is a joint venture agreement between him and the Applicant herein. That the Applicant was invited based on allegation levied against him and not on joint venture agreement.

His Counsel also in his written address relied on the provision of Section 214 (2) of the 1999 Constitution as amended which provides that the member of the Nigerian Police Force shall have such powers and duties as may be conferred upon them in law. And he submitted that the 1st and 2nd Respondents were duly acting under the Police Act and in particular Section 4(9) of the Act which provides thus:

“The Police Force shall prevent and detect crimes, protect the rights, freedom of every person in Nigeria as provided in the Constitution and the African Charter on Human and Peoples Right any other law, maintain public safety, law and order.”

He submitted that the complaint of the Applicant is not that he was unjustifiably detained, arrested or that he was detained longer than the Constitution provides, but rather that the police should not investigate a criminal complaint leveled against him. That the Applicant did not accept the invitation by a body constitutionally empowered to do so, and cannot invoke the jurisdictional competence of the Court to entertain his claim.

Counsel relied on the Cases of the **A – G ANAMBRA STATE V CHIEF CHRIS OBA & 3 ORS (2003) 33 WRN 191 @ 213 – 214 LONE 40 – 3 - Per Zainab Adamu Bulkachuwa JCA**, and **PRINCE CHRISTOPHER ENWEREMADU V MR. STANLEY OHAJURUKAS & ORS (2001) 13 WRN 53 - Per Ikonsbeh JCA**. He concluded that the Applicant has not sworn any prejudice he has suffered or would suffer if he answers the Police invitation.

Before delving into the merit of the Applicant's application it is important to consider the Preliminary Objection raised by the 1st and 2nd Respondents. To support the content of the 1st and 2nd Respondents, they both called in aid the case of **C. O. P KADUNA STATE COMMAND & ORS V DAUDA & ORS SUPRA**, while the Applicant relied on the case of **ANYAWOKO V OKOYE SUPRA** and the Provision of Order 13 Rule 8 (1) (2) of the Rules of this Court which the Applicant's Counsel in his address erroneously referent to as order 18 Rule (1) (2) FCT High Court Civil Procedure Rule 2018 which expressly states that:

“No proceeding shall be defected by reason of misjoinder of persons and the Court may deal with the matter in controversy so far as regards the rights and interest of the parties actually before him. The Court may at any state of the proceedings either upon or without the application of either party and in such terms as may appear to the Court be just, order that the names of any party improperly joined be struck out”. (3) The Court may order that the names of any party who ought to have been joined or whose presence before the Court is necessary to –effectively and completely adjudicate upon and settle of the question involved in the proceedings be added.”

I have gone through the authorities cited by both parties, it is evident that in the case of **C. O. P KADUNA COMMAND V. DAUDA SUPRA** where the Court of Appeal relying on the authority of **SAMPSON V UWAKS 2017) 10 NWLR (PT. 1874) 491 @ 504 PAR K – H** emanated from the case borders on enforcement of fundamental right while the case of **ANYAWOKO V OKOYE SUPRA** borders on administration of estates of a deceased. The Court of Appeal per **Hussaini Muktar JCA** of blessed Memories held:

“In SAMPSON V UWAKS the Court held thus; By virtue of Section 214 and 213 of the Constitution of the Federal Republic of Nigeria 1999 as amended and Section 3 and 4 Police Act, there is a clear distinction between the Nigerian Police Force as an entity and its functions. Accordingly where the intention is to hold the Nigeria Police Force vicariously responsible for its operative action, it’s not negotiable that it must be made a party to the action.”

The Court went further:

“The action against the appellant in their official as opposed to their private capacities presupposes that the party that ought to be sued is the Nigeria Police Force. This the Nigeria Police Force is an indispensable party to the suit, and the failure to join the Nigeria Police Force renders the action against the appellant a non-starter and incompetent.”

The decision of the Court in effect is that any action commenced against an officer of the Nigeria Police Force in his official capacity must as of necessarily have the Nigeria Police Force, its principal joined as a party ; non-inclusion of the Nigeria Police Force as a party renders the case otiose, incomplete and therefore incompetent.

On the purpose of joinder of parties the Court of Appeal held further in the case of **UWAKS & ORS V SAMPSON SUPRA**:

“A Major consideration for joinder of parties is to enable the said party be bound by the outcome of the litigation; failure to join a party intended to be bound by the outcome as in this case creates a lacunae that cannot be ignored by the Court in any attempt to enforce the outcome of the said action. See AJEUJI VJOLAYEMI (2006) 6 NSCQR 633 AND FIRST BANK OF NIGERIA PLC V OZOKUWORE (2013) 53 NSCQR 503” - per Ojewole JCA.

The arguments of Learned Counsel for the Applicant and his reliance on Order 13 Rule 18 (1) (2) (3) of the Rules of this Court may only be tenable where there is an application for joinder of necessary party before the

determination of the suit. Furthermore in my view where an action is commenced by way of Originating Motion as in the case of Enforcement of Fundamental Right or garnishee proceeding which are fought on affidavit evidence, an application to correct such an anomaly or omission of joining a necessary party may not be possible, once the application is heard.

The issue of non-joinder of necessary party is jurisdictional and the proper order is for the court to have the case struck out for being incompetent. I therefore endorse the submission of Learned Counsel for the 1st and 2nd Respondents that the Applicant ought to have joined the Nigerian Police Force as a necessary party in this action. Failure to join the Nigerian Police Force as a party renders the action incompetent and I so hold. I therefore strike out the application of the Applicant accordingly.

However in an event that this court is wrong on this decision of striking out the action of the Applicant, I take the liberty to consider the merit of the application. The Applicant is quarrelling with or contending his invitation by the 1st and 2nd Respondents. The Applicant and the 3rd Respondent from their affidavit and counter affidavit had a joint venture agreement which went sour. The fallout of which were litigations at various courts, both at the lower court and the Court of Appeal. Copies of which were exhibited by the Applicant. The 3rd Respondent also exhibited a purported anonymous letter of threat to his life by the Applicant, see Exhibit B. He claimed that the purported letter was sneaked into his car in Lagos. The Applicant was invited by the 1st and 2nd Respondents based on the anonymous letter and the

tracking of one **Innocent Onoja**, who he claimed was a cohort of the Applicant. The said **Innocent Onoja** made an undertaking on July 19, 2023 in response to the petition written by the 3rd Respondent.

The petition upon which the Applicant was invited for and the pendency of litigation between the parties are different both in content and context. The argument of Learned Counsel for the Applicant that the invitation of the Applicant by the 1st and 2nd Respondents is unwarranted, frivolous and without justification is not correct. Looking at the content of the purported anonymous letter, it is important that the Applicant be invited for questioning. It is the duty of the 1st and 2nd Respondents to investigate such a damning allegation by inviting all the parties concerned for interrogation. I agree with the 1st and 2nd Respondent that they are clothed with the powers under Section 4 of the Police Act to prevent and detect crime, apprehend offender and preserve law and order. I adopt the case of **MUMINI V SHERFA (2011) AFWLR (PT. 604) 129@ 158-159** cited by the 1st and 2nd Respondents' Counsel in his address. See also the case of **COP KADUNA STATE V DAUDA SUPRA** where the Court held:

***"It is pertinent to note that once the appellants received a complaint of facts constituting prima facie commission of an offence, it should as soon as it is so received be investigated as was done in the instant case... ...
...The duty of the Nigerian Police to investigate criminal allegation is in my view, beyond dispute. To hold otherwise is to create a chaotic situation,***

the administration of which may not be fully appreciated until one goes into the shoes of the appellants.”

The Applicant have not stated any convincing reason why he should not be invited by the police based on the petition written by the 3rd Respondent. It is important to state that where there is a sour business relationship or threat to life is a good ground for being apprehensive thus such a situation should not be taken with levity or treated with a wave of hand. Applicant cannot therefore by way of fundamental rights use the court as a shield to run away from interrogation or investigation by the Police or any other prosecuting agency.

The invitation by the 1st and 2nd Respondent based on the petition of the 3rd Respondent have not in any way infringed on the fundamental rights of the Applicant, and I so hold. And direct that the Applicant should honour the invitation of the 1st and 2nd Respondents by submitting himself to investigation and interrogation on the issues raised in the alleged petition.

SIGN

**HON JUDGE
25/11/2024**