IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 17TH DAY OF SEPTEMBER 2024
BEFORE HIS LORDSHIP: HON JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/2976/2023

IN THE MATTER OF THE ENFORCEMENT OF THE FUNDAMENTAL RIGHTS OF THE APPLICANT

IN THE MATTER OF:

EMEKA ANANWULI — **APPLICANT**

AND

1. **THE NIGERIA POLICE FORCE**
2. **INSPECTOR GENERAL OF POLICE**
3. **DEPUTY INSPECTOR-GENERAL OF POLICE, FORCE CID**
4. **TITUS SAMUEL**
5. **ADAMU ISHAKU**
6. **IFEOMA OKONKWO**
7. **ARINZE OKONKWO**
8. **IFEANYI OKONKWO**
9. **OBIAGELI OKONKWO**
10. **OBIANUJU OKONKWO**

— **RESPONDENTS**

JUDGMENT

This Judgment is on the originating application for the enforcement of the fundamental rights of the Applicant which he alleged the Respondents breached.

On the 6th of April, 2023, the Applicant *vide* an originating Motion on Notice dated the same day commenced this suit for the enforcement of his fundamental rights against all the Respondents. In the originating application for the enforcement of his fundamental rights, the Applicant seeks the following reliefs from this HonourableCourt:-

1. *A Declaration that the continued harassment, molestation, intimidation and incarceration of the Applicant at the Force CID detention cell, Abuja, under the directive or instruction of the 3rd – 5th Respondents, from the 28th of March, 2023 till date in flagrant neglect of his fundamental rights is unconstitutional, illegal and constitutes a violation of the Applicant's fundamental rights to personal liberty, and freedom of movement as respectively guaranteed by sections 35 and 41 of the 1999 Constitution and Articles 6, 7, 9, 11 and 12 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, and same has resulted in personal injury to the Applicant.*

2. *A Declaration that the Applicant is entitled to adequate compensation and apology from the Respondents as provided for under section 35(6) of the Constitution of the Federal Republic of Nigeria, 1999, the Respondents having failed, neglected and or refused to charge him to*

Court of competent jurisdiction if there is any offence or release him on bail, but have continuously kept him incarcerated till date.

3. *An Order directing the Respondents jointly and/or severally to pay the sum of ₦20,000,000.00 (Twenty Million Naira) as compensation for the illegal and unlawful detention of the Applicant by the Respondents from the 28th of March, 2023 till date, without charging him to Court or releasing him on bail.*

4. *An Injunction restraining the Respondents from further arresting or re-arresting the Applicant in relation to the burial of Dr Okonkwo Ikenna, the Applicant's cousin.*

There are four grounds upon which the reliefs are founded. These are that the Applicant was a responsible Nigeria, a businessman resident in Anambra State; that the 6th – 10th Respondents maltreated their deceased brother, disclosed in the affidavit in support of the application as DrIkenna Okonkwo, till he died, and prevented his wife and children from accessing him during his illness; that the Applicant was a relation of the deceased and challenged the 6th – 10th Respondents over their unkind treatment of the deceased's wife and children when they locked the deceased's wife and children out of the family house during the burial, thereby preventing them from paying their last

respects to the deceased; and that the 6th – 10th Respondents swore that they would never allow the deceased wife and children to attend the burial of their deceased husband and father, even after the Council of Chiefs had intervened.

The parties were served with the originating processes of the Applicant. The 1st – 5th Respondents were served on the 4th October, 2023. The 6th–10thRespondents, on the other hand, were served on the 30th January, 2024 through their Counsel, Dickson Sofiyeghe, Esq.. On the 29th day of April, 2024, the 1st – 5th Respondents filed their Counter-Affidavit to the originating application for the enforcement of the fundamental rights of the Applicant. The 6th – 10th Respondents, on the other hand, filed their Counter-Affidavit on the 21st day of February, 2024. Exercising his right of reply, the Applicant filed a Further Affidavit and a Reply on Point of Law to the Counter-Affidavit of the 1st – 5th Respondents on the 8th of July, 2024 while he also filed a Further Affidavit and a Reply on Point of Law to the Counter-Affidavit of the 6th – 10th Respondents on the 4th of March, 2024 and the 29th of April, 2024.

The application came up for the first time in this Court on the 19th of October, 2023. On that day, learned Counsel for the Applicant, A. N. Zephaniah Esq., informed this Court that they were unable to serve the 6th, 7th, 8th, 9th and 10th

Respondents. The matter was accordingly adjourned to 7th of November, 2023 for hearing.

This suit did not come up again until the 2nd of May, 2024. On that day, J. O. Ozioko Esq. appeared for the Applicant, Wisdom Madaki Esq. for the 1st, 2nd, 3rd, 4th and 5th Respondents and Dickson Sofiyegha Esq. appeared for the 6th, 7th, 8th, 9th and 10th Respondents. Counsel for the Applicant applied for a short date to enable him respond to the Notice of Preliminary Objection of the 1st – 5th Respondents. The Counsel for the 1st – 5th Respondents, on the other hand, applied to move his application to regularize his processes before this Honourable Court. The application, which was made *vide* a Motion on Notice with Motion Number M7196/2024 dated and filed on the 29th of April, 2024 was accordingly moved and the prayers contained therein granted by this Honourable Court. The Court thereafter adjourned the originating application to the 9th of July, 2024 for hearing.

On the 9th of July, 2024, all the parties were represented by their Counsel. Counsel for the Applicant applied to move his application to regularize his processes before this Honourable Court. The application, with Motion Number M/18643/2024 dated the 29th of June, but filed on the 8th of July, 2024 was moved and the prayers contained therein granted by the Court.

Thereafter, learned Counsel for the Applicant adopted the originating application. In response, learned Counsel for the 1st – 5th Respondents moved the Notice of Preliminary Objection on behalf of the 1st – 5th Respondents. Learned Counsel for the Applicant adopted the Applicant's Counter-Affidavit in opposition to the Notice of Preliminary Objection. Learned Counsel for the 1st – 5th Respondents and learned Counsel for the 6th – 10th Respondents also adopted their Counter-Affidavits in opposition to the originating application for the enforcement of the fundamental rights of the Applicant. Following the adoption of all the processes in this suit by the Counsel for the parties, this Court adjourned for Ruling on the Notice of Preliminary Objection as well as for Judgment in the substantive suit. I have already delivered the Ruling in the Notice of Preliminary Objection. I shall proceed to the Judgment in the substantive suit.

The case of the Applicant is as stated in the Affidavit in support of the Originating Application as well as in the Further Affidavits that were filed in answer to the Counter-Affidavits of the 1st – 5th Respondents and the 6th – 10th Respondents. In the affidavit in support of the originating application, the deponent, MrsChigoziem Okonkwo, the widow of the deceased DrIkenna Okonkwo, swore that the plight of the Applicant began when he stood by her to challenge the unkind and cruel treatment the 6th – 10th Respondents meted

on her and her children. In what was obviously a family dispute, she narrated how the 6th – 10th Respondents interfered in her marriage after the death of her only son, by attempting to procure another wife for her deceased husband to, ostensibly, give birth to a baby boy for him.

According to the deponent, the animus was so intense that when her husband fell sick, the 6th – 10th Respondents prevented her from visiting her husband right up to the moment he died on the 21st of October, 2021. Because they did not want her and her children to participate in the funeral ceremony for her deceased husband, the 6th – 10th Respondents kept her deceased husband in the mortuary for fifteen months. On the 13th of January, 2023, the 6th – 10th Respondents hurriedly buried her deceased husband in an unholy hour. When she attempted to enter the family house, the 6th – 10th Respondents prevented her and her daughters from gaining entrance into the family compound. Because the 6th – 10th Respondents were determined to keep her away from the internment ceremonies for her deceased husband and perpetually from the family house of her late husband which was hers and her children's by virtue of the subsistence of her marriage to the deceased, she applied to the Assistant Inspector-General of Police in charge of Zone 13 Headquarters of the 1st Respondent for police protection. She added that it took the combined intervention of the officers and men of the

Nigerian Police and Nigerian Army for her and her children to gain entrance into the family.

She further swore that the actions of the 6th – 10th Respondents were against the orders of the traditional council of their community wherein the 6th – 10th Respondents were ordered to allow the widow of the deceased and her children to participate in the funeral activities for the deceased.

She narrated how the Applicant who had stood by her throughout the period of her trauma and heartache caused by the 6th – 10th Respondents was framed up by the 6th – 10th Respondents in a petition written to the 2ndRespondent wherein they alleged that the Applicant stole some items in the sitting room of the deceased during the interment of the deceased. She averred that the Applicant was arrested on the 28th of March, 2023, placed in chains and conveyed to the Force Criminal Investigation Department, Abuja where he was detained right up to the time of filing this originating application on the 6th of April, 2023. She added that the Applicant was neither arraigned nor charged with any offence. She further swore that the continued detention of the Applicant had occasioned him serious harm and impairment in terms of his health and his source of livelihood.

In support of her averments, she attached a number of documentary exhibits to the affidavit in support of the originating application and the Further Affidavits in opposition to the Counter-Affidavits of the 1st – 5th Respondents and the 6th – 10th Respondents.

Responding to the facts disclosed in the affidavit in support of the originating application for the enforcement of the fundamental rights of the Applicant, the 1st – 5th Respondents averred through the deponent, one Mohammed Idris, who described himself as a litigation clerk in the office of the 3rd Respondent, that the 1st – 5th Respondents merely acted on the strength of the petition that was written to the office of the 2nd Respondent, adding that the 2nd Respondent through a signal forwarded the petition to the 3rd Respondent to act on. It was the defence of the 1st – 5th Respondents that they merely acted as a law enforcement agency in investigating the allegations of criminal conspiracy, threat to life, criminal trespass, unlawful invasion, unlawful exhumation of the remains of late DrIkenna Okonkwo, unlawful performance of ritual rites/usage of charms and unsolicited libation on the remains of late DrIkenna Okonkwo, armed robbery/theft of personal properties and belongings, gangsterism, stealing, house breaking and conduct likely to cause the breach of the peace contained in the petition of one Dr Dele Alufe, a legal practitioner who claimed he acted on behalf of his clients named as

DrIfeanyi Okonkwo, MrsIfeoma Okonkwo, MrsOby Osakwe and other members of the Okonkwo family. The specifically named persons are the 8th, 6th and either the 9th or 10th Respondents in this suit.

The deponent on behalf of the 1st – 5th Respondents swore that the Applicant procured the services of thugs to disrupt the funeral ceremony for the late DrIkenna Okonkwo, adding that those thugs invaded the family compound and stole money and items from the house.

The deponent further denied that the Applicant was detained illegally. He averred that the Applicant was simply invited and he honoured the invitation and made his extrajudicial statement voluntarily. He also swore that the Applicant was granted administrative bail but he could not fulfil the terms of the bail and, as a result, was detained on the orders of a Court. He insisted that the detention of the Applicant was on the order of a Court and not at the instance of the 1st – 5th Respondents.

The 1st – 5th Respondents attached a number of documentary exhibits to their Counter-Affidavit in support of their averments.

On the part of the 6th – 10th Respondents, the deponent of their 39-paragraph Counter-Affidavit, DrIfeanyi Okonkwo, who is also the 8th Respondent in this suit, denied paragraphs 1, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,

27, 28, 29(a) – (p), 30, and 31 of the affidavit in support of the originating applications. He went on to swear that the wife of the deceased left her matrimonial home and was engaged in acts of infidelity while the deceased was still alive. He added that the family had a meeting whereat they excommunicated the wife of the deceased, the Applicant and certain persons from participating in the funeral of the deceased on the grounds that they were suspects in the death of the deceased.

The deponent further averred that the widow of the deceased and the Applicant procured some miscreants whose names were mentioned in paragraph 5(v) of the Counter-Affidavit to disrupt the internment activities and to inflict mayhem on the 6th – 10th Respondents, the guests, the caterers, the master of ceremonies and other entertainers whose services were retained for the programme. He accused the Applicant and the widow of the deceased of procuring the services of a native doctor who exhumed the corpse of the deceased and performed some rituals on it.

It was also the defence of the 6th – 10th Respondents that the thugs which the widow of the deceased and the Applicant procured stole items and money from the family compound of the deceased after they had gain access to the family compound through pulling down the gates. He denied that the Applicant was a cousin of the deceased, adding that the report of the

traditional council of the community was biased, as the uncle of the widow was a friend of the King of the community. He further swore that the deceased never had intentions of relocating to another property, as he was building his own house as at the time he died, contrary to the claim of the Applicant that the widow advised him that the family should relocate to a safer location. He also denied that the widow gained access to the family compound with policemen, insisting that she used thugs to access the family compound.

In the Written Address in support of the originating application for the enforcement of the fundamental rights of the Applicant, learned Counsel formulated the following sole issue: "*Whether the continuous illegal, unlawful and unwarranted detention of the Applicant, from the 28/3/2023 till date does not amount to a flagrant abuse of the Applicant's constitutional right as guaranteed under sections 34(1) and 35(1) of the Constitution of the Federal Republic of Nigeria, 1999 and Articles 4, 5, 6 and 7(1) (b) of the African Charter on Human and People's Rights (Ratification and Enforcement) Act which could entitle the Applicant to adequate compensation as provided for under section 35(6) of the Constitution of the Federal Republic of Nigeria, 1999?*"

In his submission on the sole issue he has formulated, learned Counsel referred to the provisions of the Constitution and the African Charter on Human and People's Rights (Ratification and Enforcement) Act under which the application was brought and contended that the actions of the Respondent were a gross breach of the rights of the Applicant which entitled the Applicant to compensation and apology. She cited the cases of ***Nemi v. AG, Lagos State (1996) 6 NWLR (Pt. 452) 42 at 55, Amao v. Oniro (1964) NRLR 130, Minister of Internal Affairs v. ShugabaAbdulrahamanDarman (1982) 3 NCLR, Ransome-Kuti v. Attorney-General of Federation &Ors (1985) 2 NWLR (Pt. 6) 211, Odogu v. A.G. Federation (1996) 6 NWLR (Pt. 456) 508 at 522***.

Learned Counsel further submitted that the 1st – 5th Respondents having failed to arraign the Applicant within the constitutional time limit after he was arrested on the 28th of March, 2023, they were liable to the Applicant as *per* the provisions of section 35(5) of the Constitution. He referred to ***Shola Abu & 349 Others v. COP Lagos State & Others (2006) CHR 1*** in this regard. She contended that the provisions of section 35(5) of the Constitution were so sacrosanct that even if the Applicant was eventually arraigned, the Respondents would still be liable if the arraignment was not done within the time stipulated by the Constitution. She relied on ***Alaboh v. Boyles (1984) 4***

NCLR 830 at 834 para 4, Nwangwu v. Duru (2002) 2 NWLR (Pt. 751) at 279, paras E-G, Shola Abu & 349 Others v. COP Lagos State & Others (supra). Learned Counsel therefore urged the Court to find in favour of the Applicant.

In the Written Address in support of their Counter-Affidavit, learned Counsel for the 1st, 2nd, 3rd, 4th and 5th Respondents formulated three issues for determination. These are: "*(1) Whether the Applicant has made out a case under the Fundamental Rights Enforcement Procedure Rules that will entitle him to the reliefs sought in his application; (2) Whether the investigation of the Applicant for conspiracy, threat to life, misconduct with regards to the corpse of late DrIkenna Okonkwo and conduct likely to cause breach of public peace constitute a violation of his fundamental right; and (3) Whether this Honourable Court can restrain the 1st – 5th Respondents from the performance of their statutory duties*."

In his submissions on the first issue, learned Counsel for the 1st – 5th Respondents argued that the law enables the police to investigate and prosecute suspects of crimes. He added that the police could not be held liable for the breach of any person's fundamental rights where they act within the confines of their statutory duties. He cited the cases of ***Fajemirokun v. C.B. (C.T.) Nig. Ltd. (2002) 10 NWLR (Pt. 774) 95 at 110, paras F-G,***

Mclaren v. Jennings (2003) NWLR (Pt. 808) 470, Jim Aja v. COP (2012) 2 NWLR (Pt. 1231) 375 at 390, paras B-C, Ekwenugo v. FRN (2001) 6 NWLR (Pt. 708) 171 at 177, Ikem v. Nwogwugwu (1999) 13 NWLR (Pt. 633) 140 at 149 – 150, paras G-H, Okanu v. State Commissioner of Police (2001) 1 CHR 407 at 411 and the provisions of sections 4, 23, 24, 27 and 29 of the Police Act, 2020 and sections 35(1) (c) and 41(2)(a) of the Constitution. He therefore urged the Court to resolve the first issue in favour of the 1st – 5th Respondents.

Arguing the second issue, learned Counsel submitted that the 1st – 5th Respondents merely acted on the strength of the petition they received which petition disclosed the alleged commission of crimes, adding that the law enables them to investigate the said petition. He further contended that the rights of a citizen to liberty, fair hearing and ownership of property were not absolute and could be derogated from under the circumstances recognized by the Constitution. He relied on the cases of ***Fajemirokun v. C.B. (C.L.) Nig. Ltd (2002) supra, Okanu v. COP Imo State (2001) supra, Badejo v. Minister of Education (1996) 8 NWLR (Pt. 464) 15 at 19 Ratio 2, New Patriotic Party v. IGP Accra (2002) 2 HR IRA 1 at 29, Jim-Jaja v. COP (2011) supra, Maya v. State (2007) 16 NWLR (Pt. 1061) 483 at 487-488 Ratio 3, NnamdiAzikiwe University v. Nwafor (1999) 1 NWLR (Pt. 585)***

1616 at 1636 in urging this Court to resolve the second issue in favour of the 1st – 5th Respondents.

On the third issue, learned Counsel for the 1st – 5th Respondents maintained that there were reasonable grounds for the police to invite the Applicant for questioning. They added that their investigations disclosed that the Applicant committed the offences alleged. He submitted that the Court should not give heed to a person who rushed to Court, using the fundamental rights enforcement proceedings as a shield against criminal prosecution. He relied on ***A.G. Anambra State v. Uba (2005) 15 (Pat. 947) 44 at paras F-G, DokuboAsari v. FRN (2007) V. 152 LRCN, paras F-K, Onah v. Okenwa (2010) 7 NWLR (Pt. 119) 512, A.G. Anambra State v. A.G. Federation (2005) 9 NWLR (Pt. 981) 572*** in urging the Court to resolve the third issue in favour of the 1st – 5th Respondents.

On their behalf, learned Counsel for the 6th – 10th Respondents formulated two issues for determination, to wit: "*(1) Whether the Applicant has disclosed a reasonable cause of action against the 6th – 10th Respondents; and (2) Whether the Applicant is entitled to the reliefs sought*."

In his submissions on the first issue, learned Counsel for the 6th – 10th Respondents submitted that the cause of action as disclosed in the affidavit in

support of the originating application was against the 1st – 5th Respondents and not against the 6th – 10th Respondents. He added that the 6th – 10th Respondents merely reported the allegation of commission of crimes to the police, and that it was left for the police to investigate the allegation and do the needful. He relied on the case of ***Atibalyalamu Savings & Loans Ltd v. Suberu (2019) All FWLR (Pt. 1008) 949 at 986, paras B-D***.

In his submissions on the second issue, learned Counsel argued that the Applicant had not shown that he was entitled to the reliefs he sought in the originating application. This, he maintained, was because the 6th – 10thRespondents had the civic duty to report all suspected crimes to the police, adding that it was the duty of the police to take up the case after the complaint had been made. He cited the cases of ***Pharmabase (Nig.) Ltd v. Olatokunbo (2020) 10 NWLR (Pt. 1732) 379 at 403, paras G-H, Afribank (Nig.) Plc v. Onyima (2004) 2 NWLR (Pt. 858) 654 (Pt. 679, paras E-F, Keyamo v. Director-General, S.S.S. (2020) 14 NWLR (Pt. 1744) 306 and Sambo v. Nig. Army Council (2017) 7 NWLR (Pt. 1565) 400 at 430, paras C-F***. He concluded that no cause of action has been made out against the 6th – 10th Respondents in the originating application of the Applicant for the enforcement of his fundamental rights. He therefore urged the Court to dismiss the case of the Applicant.

The Applicant, I must note, canvassed several points in his reply on point of law to the Counter-Affidavit of the 1st – 5th Respondents as well as to the Counter-Affidavit of the 6th – 10th Respondents.

In view of the foregoing, therefore, this Honourable Court hereby identifies two clear issues for determination. These are: "***(1) Whether the Applicant has not made out a case of infringement of his fundamental rights as alleged against the Respondents herein; and (2) If Issue One is resolved in favour of the Applicant, whether he is not entitled to the reliefs sought herein including the consequential reliefs of public apology and compensation***."

The first issue is "***Whether the Applicant has not made out a case of infringement of his fundamental rights as alleged against the Respondents herein***".

The Applicant in presenting this application for the enforcement of his fundamental rights is alleging that his right to personal liberty and right to freedom of movement were abridged by the Respondents. In determining whether these rights of the Applicant were indeed breached, this Court would of necessity proceed from the jurisprudential explication of the two rights and what constitutes the breach of those rights. The right to personal liberty is

provided for and protected under section 35 of the Constitution of the Federal Republic of Nigeria, 1999. Subsection (1) of the section provides that "***Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law…***"

On the other hand, section 41 of the Constitution of the Federal Republic of Nigeria, 1999 provides for the right to freedom of movement. Subsection (1) ofthe said section provides that "***Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom***".

These rights have been pronounced on by the Courts in a number of decisions. For instance, talking of the right to personal liberty, the Supreme Court explained in ***Ezeigbo v. Asco Inv. Ltd. (2022) 8 NWLR (Pt. 1832) 367 S.C. at 89, paras C-D, F-H*** that "***For the purpose of the provisions of section 35 of the1999 Constitution, put simply, "personal liberty" connotes freedom and autonomy of movement at will without any hindrance or restraint, physical or otherwise; and the right not to be subjected to any wrongful restraint, arrest or any other physical confinement, whether in an enclosure or open space in a manner which***

does not accord with the law or admit any legal justification. It may also mean freedom to do what a person pleases within the ambit of the law without any hindrance or restraint."

On the province of the right to freedom of movement, the Court of Appeal was effulgent in ***Chief Otu Gregory Apph&Ors v. Mr. Mathias Oturie (2019) LPELR-46301(CA) at 14-15, paras. D-B***when it held per Shuaibu, JCA, that "***The provisions of Section 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom. The rights of freedom of movement and residence pursuant to Section 41 of the 1999 Constitution (as amended) guarantee unhindered residence and movement to all citizens all over Nigeria and except on suspicion of commission of a criminal offence. The said rights protect against expulsion of citizen except in pursuance of valid extradition proceedings...***"

However, under certain and clearly defined circumstances, these rights may be derogated from, and the derogation therefrom would not amount to an infringement of the said rights. The circumstances under which the right to

personal liberty can be modified are enumerated under the paragraphs that accompanied subsection (1) of the said section 35. These are:-

"***(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;***

(b) by reason of his failure to comply with the order of a court or in order to secure thefulfilment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;

(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence."

Similarly, section 41 of the Constitution provides the circumstances under which the right to freedom of movement may be derogated from. Subsection (2) thereof provides thus:-

"***(2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society –***

(a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

(b) providing for the removal of any person from Nigeria to any other country to:-

(i) be tried outside Nigeria for any criminal offence, or

(ii) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter."

Considering the facts and circumstances of this case, paragraph (c) of subsection (1) of section 35 of the Constitution is the relevantprovision. The power of the police to arrest and detain on reasonable suspicion that a crime has been committed, or to prevent a crime from being committed, is a constitutional as well as a statutory power which the Courts have recognized.Section 215(3) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 provides that

"***(3) The President or such other Minister of the Government of the Federation as he may authorise in that behalf may give to the Inspector-General of Police such lawful directions with respect to the maintenance and securing of public safety and public order as he may consider necessary, and the Inspector-General of Police shall comply with those directions or cause them to be compiled with.***

(4) Subject to the provisions of this section, the Governor of a state or such Commissioner of the Government of the State as he may authorise in that behalf, may give to the Commissioner of Police of that State such lawful directions with respect to the maintenance and securing of public safety and public order within the state as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with:

Provided that before carrying out any such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such minister of the Government of the Federation as may be authorized in that behalf by the President for his directions."

On the other hand, section 4 of the Police Act, 2020 provides thus:-

"***The Police Force shall –***

(a) prevent and detect crimes, and protect the rights and freedom of every person in Nigeria as provided in the Constitution, the African Charter on Human and Peoples Rights and any other law;

(b) maintain public safety, law and order;

(c) protect the lives and property of all persons in Nigeria;

(d) enforce all laws and regulations without any prejudice to the enabling Acts of other security agencies;

(e) discharge such duties within and outside Nigeria as may be required of it under this Act or any other law;

(f) collaborate with other agencies to take any necessary action and provide the required assistance or support to persons in distress, including victims of road accidents, fire disasters, earthquakes and floods;

(g) facilitate the free passage and movement on highways, roads and streets open to the public;

(h) adopt community partnership in the discharge of its responsibilities under this Act or under any other law; and

(i) ***vet and approve the registration of private detective schools and private investigative outfits.***"

The Courts have accorded judicial recognition to the above provisions. See***Esabunor v. Faweya (2008) 12 NWLR (Pt. 1102) 724 C.A. at 809, paras F-G; Dododo v. E.F.C.C. (2013) 1 NWLR (Pt. 1336) 468 C.A. at 512, paras D-E; A.C. (O.A.O.) Nig. Ltd. v. Umanah (2013) 4 NWLR (Pt. 1344) 323 C.A. ay 350-351, paras H-A; Babatunde v. State (2022) 10 NWLR (Pt.***

1837) 83 C.A. 113-114, paras. H-C; 116, paras. B-D. In **I.G.P. v. Ikpala (2016) 9 NWLR (Pt. 1517) 236 C.A. at 287-288, paras. G-B**, the Court held that "***The purport of the provision of section 4 of the Police Act and the sacrosanct provision of section 214(2)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is that they confer on the Police Force very enormous powers and discretion in the performance of its duties including the powers to arrest and detain or to prevent or detect crimes and the courts are always ready to encourage the police in the due performance of their constitutionally and lawfully guaranteed duties. It is for this reason and many other germane reasons that the courts are very cautious and reluctant not to interfere unjustifiably and unnecessarily with the discharge of its functions except in very clear cases of infringement on the fundamental rights of the citizen as enshrined and constitutionally guaranteed.***"

But these powers are not designed to be exercised arbitrarily. Section 35(4) and (5) of the Constitution of the Federal Republic of Nigeria, 1999 provides that

"***(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of –***

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(5) In subsection (4) of this section, the expression "a reasonable time" means–

(a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and (b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable."

How have these constitutional provisions been applied to the Applicant in this case? In the affidavit supporting the application, the deponent averred in paragraphs 14 and 29(c) that the Applicant was arrested on the 28th of March, 2023 and transferred to Abuja where he had been in detention. As of the time

of filing this application on the 6th of April, 2023, the Applicant was still in detention. That was a period of nine days.

In their defence, the 1st – 5th Respondents claimed at paragraphs 10(i), (ii), (iii), (iv), (v), (vi), and 13 of their Counter-Affidavit that the Applicant was detained at the instance of the Court and not by the Police, adding that they granted him administrative bail the conditions of which he was unable to fulfil. They referred to the attached exhibits. I have taken my time to study the exhibits. There are two Warrants of Commitment to Prison on Remand, also known as Remand Order from the Chief Magistrate Court MararabaGurku of Nasarawa State. The first, marked as **Exhibit NPF 5** was dated the 3rd of April, 2023. It ordered that the Applicant be kept in the custody of the 1st – 5th Respondents until the 18th of April, 2023. The second marked as **Exhibit NPF 4** was dated the 19th of April, 2023. It ordered that the Applicant be kept in the custody of the 1st – 5thRespondents until the 2nd of May, 2023. Then, there is the bail bond. It was marked as **Exhibit NPF 7**. It was dated the 20th of April, 2023. By virtue of this **Exhibit NPF 7**, it follows that the Applicant had been in the custody of the 1st – 5th Respondents from the 28th of March, 2023 to the 20th of April, 2023 – a time frame of twenty-three (23) days. This is beyond the constitutional limit of twenty-four hours as stipulated by section 35(4) and (5) of the Constitution.

In the case of ***Lufadeju v. Johnson (2007) 8 NWLR (Pt. 1037) 535 SC at 562, paras F-G***, the Supreme Court explained that "***Remand means to send to prison or send back to prison from a court of law to be tried later after further inquiries have been made; often in the phrase "remanded in custody". It also means to recommit on trial accused to custody after a preliminary examination.***" Explaining the rationale behind an order of remand, the Court went on to hold that "***Section 236(3) of the Criminal Procedure Law is aimed at ensuring judicial control of those arrested by the police on criminal allegations. The power of the police to detain a suspect is restricted by law to a specific number of days. They are therefore required within the period to bring the suspect before a court for the purpose of an order for further remand, if need be. The appropriate court for such requests is the Magistrate's Court. The purpose of bringing the accused to the court at that stage was not for a trial. It was for an order by the court for the suspect to be remanded in custody pending the time the police would be ready to arraign the suspect before the appropriate court or tribunal which has jurisdiction to try the suspect for the indictable offence. The Magistrate would consider whether to grant or refuse the accused bail. Where bail is refused, as in the instant case, the right of the accused to approach a***

High Court for bail is usually available to him. The procedure is totally covered by the provision of section 32(l)(c) of the 1979 Constitution because what was done at that stage was that the court ordered that the respondent be remanded in custody upon an allegation by the police that he (the respondent) was on reasonable suspicion of having committed a criminal offence, to wit: conspiracy to commit treasonable offence and actually committing treasonable offence."

In the case before me, there is no evidence whatsoever that the Applicant was ever brought before the Court which purportedly issued **Exhibits NPF 4 and NPF 5**. I have noted with concern the effort the 1st – 5th Respondents made to clothe their actions with the cloak of legality. Throughout the length of the 1st – 5th Counter-Affidavit, their deponents swore that the Applicant was kept in detention at the instance of the Court. They have attached those exhibits to support those averments. An examination of the exhibits would disclose that the documents were procured in bad faith. Considering that **Exhibit NPF 7** was executed two days after **Exhibit NPF 5** was made and, did indeed, preceded **Exhibit NPF 4**, the question of why the 1st – 5th Respondents did not allow the Nasarawa State Magistrate Court – supposing the Applicant was, indeed, brought before the Court – to admit the Applicant to bail pursuant to the authority of ***Lufadeju v. Johnson (2007),***

supra*becomes* a conundrum the 1st – 5th Respondents have been unable to explain in this proceeding.

In a plethora of judicial authorities, the Courts have upheld the sacrosanctity of the provisions of section 35(4) and (5) of the Constitution. The Court of Appeal in **Augustine Eda v. COPBendel State (1982) 3 NCLR 219 at 227-228**explained that "***Whenever the police arrested or detained a person in connection with an allegation or reasonable suspicion of crime, and are actively pursuing investigation of the matter, their duty is now to offer bail to the suspect and/or bring him to the Court of law within one or two days as the case may be no matter under whatever sections of the Criminal Procedure Act (Cap 43) or Police Act 1967 they may be acting. I must add that whether the Police grant a person under arrest or detention bail or not, it is still their duty to bring such person in their custody before a Court within one or two days as the case may be in compliance with the relevant constitutional provision***."

In ***Mbaeyi v. Economic and Financial Crimes Commission & Others (2022) LCN/17079 (CA)***, the Court of Appeal quoted with approval the decision of the Court of Appeal ***Augustine Eda v. COP Bendel State (1982) supra***. It went on to elaborate on the subject in these effusive words per Affen, JCA thus:

"***As can be gleaned from the foregoing, the celebrated case of AUGUSTINE EDA v. COMMISSIONER OF POLICE, BENDEL STATE (supra) (which is the*** **fons et origo** ***of the decisions relied upon by the majority) did not decide that the Police (and other law enforcing agencies) are spared the obligation of bringing a person arrested and detained upon suspicion of crime before a Court of competent jurisdiction within a reasonable time as prescribed in the Constitution (and therefore absolved from liability for detaining a suspect beyond the constitutional timelines) once bail is offered to him/her. If that were the case, then the Police would simply offer bail to suspects on extremely stringent conditions that are impossible to fulfil and then go to sleep under the pretext of carrying on investigation. Thankfully that is not the law, and cannot be the law. Quite the contrary, the case underscored the bounden duty to bring a person arrested or detained before a Court of competent jurisdiction within one or two days as the case may be irrespective of "whether the Police grant a person under arrest or detention bail or not... The law, as I have always understood it, is that in an action for unlawful arrest or***

detention in breach of a person's constitutional right to personal liberty, the onus is on the arresting/detaining authority to establish that the arrest or detention was justifiable on reasonable grounds. See SKYPOWER AIRWAYS LIMITED v. OLIMA (2005) 18 NWLR (PT. 957) 224 at 232; IYERE v. DURU (1988) 5 NWLR (PT. 44) 665; ABIOLA v. ABACHA (1998) 1 HRLRA 453; EJEOFOR v. OKEKE (2000) 7 NWLR (PT. 665) 365 at 379; IGWE v. EZEANOCHIE (2010) 7 NWLR (PT. 1192) 61 and COMMISSIONER OF POLICE, ONDO STATE & ANOR. v. OBOLO (1989) 5 NWLR (PT. 120) 130 at 131. The arresting or detaining authority must not only show that the arrest and/or detention can be justified, they must actually justify the arrest and/or detention.

See EFCC v. OYUBU & ORS. (2019) LPELR-47555(CA) 1 at 14 - per Ebiowei Tobi, JCA. The Court's preoccupation in an action for enforcement of fundamental right is not to determine whether the Applicant is guilty of the offence(s) alleged against him, which gave rise to the alleged breach. The Court is also not concerned with the nature or gravity of the allegation(s) levelled against him. The combined effect of Ss. 35(4) and 36(5)

CFRN is that the liberty of citizens is guarded jealously and zealously in the scheme of things. The Court's duty is simply to ascertain whether the procedure prescribed by law for handling a person suspected to have committed an offence was complied with by the Police or other arresting/detaining authority."

Though the 1st – 5th Respondents claimed that they granted the Applicant administrative bail immediately his statement was taken, there was nothing in the evidence before this Court to support that assertion. On the contrary, multiple evidence before this Court suggested, and indeed, circumstantially proved that the Applicant was not granted bail at the time the 1st – 5th Respondents claimed they did. The evidence before this Court showed that the Applicant was not brought to Court within the constitutional limit of twenty-four hours or forty-eight hours after his arrest. **Exhibit NPF 3** is the extrajudicial statement of the Applicant. It was made on the 3rd of April, 2023. Recall that **Exhibit NPF 5** was made on the same 3rd of April, 2023. The evidence before this Court points inexorably to the fact that the Applicant was arrested and brought to Abuja on the 28th of March, 2023. Between the 28th of March, 2023 to the 3rd of April, 2023 when his statement was taken and he was purportedly remanded is a period of six days – a period that is five days

longer than the constitutional limit of twenty-four hours seeing that there is not just one court, but multiple courts within a radius of forty kilometers from the place the Applicant was detained. What, then, were the 1st – 5th Respondents doing with the Applicant from the 28th March, 2023 when they arrested him to the 3rd of April, 2023 when they took his statement and purported to have remanded him in their detention on the order of the Nasarawa State Magistrate Court?

That leaves the validity and credibility of **Exhibit NPF 4** and **Exhibit NPF 5** in tatters. When the constitution stipulates that a person arrested or detained shall be brought to Court within twenty-four hours or forty-eight hours as the case may be, it does not give the arresting authority the *carte blanche* to procure pre-signed remand orders with which they planned to keep citizens in perpetual detention.**Exhibits NPF 4 and 5** are pre-signed remand orders. There is no evidence that the Chief Magistrate Court of Nasarawa State sitting at MararabaGurku actually sat and issued the order. Even if it is granted that the Court did sit, the Courts that have laid down the procedure that must be followed in remand proceedings. Though not provided for in the Constitution, remand proceedings are not unconstitutional, but are meant to complement the provisions of section 35 of the Constitution while also enabling the arresting authority to continue with its investigations. The whole

idea of a remand proceedings is to ensure that the provisions of section 35(4) and (5) of the Constitution are complied with by the arresting. It is not a tool to detain the suspect in perpetuity under the guise of carrying out investigation. See ***Lufadeju v. Johnson (2007), supra***.

This brings me to the question of whether the entire dispute that precipitated this suit is civil in nature or criminal in nature. I have highlighted, in my summary of evidence, that the death of DrIkenna Okonkwo, the deceased husband of the deponent of the affidavit in support of the originating application for the enforcement of the fundamental rights of the Applicant. I have studied the exhibits attached in support of the originating application for the enforcement of the fundamental rights of the Applicant, especially, the pictorial and video evidence. I shall start my evaluation with the documentary exhibits.

Exhibit A attached to the Affidavit in support of the originating application are the minutes of meetings of the Enugwu-Ukwu Traditional Authority regarding the complaint of Sir John Nkwoji and Hon. Anthony Otuo of UmuatuluAwovu Village regarding the "internment of the deceased DrIkenna Okonkwo of Umualor Village against the norms and practice in Enugwu-Ugwu". From the exhibits, Sir John Nkwoji is the father of the widow of the deceased DrIkenna Okonkwo. At the end of its first deliberation which held on 21st of January,

2023,the Enugwu-Ukwu Traditional Authority found, inter alia at page 5 of the record of proceedings of the Traditional Authority, that the deponent was still the wife of the deceased DrIkenna Okonkwo at the time of his death, since they were not divorced even though they were separated. They also established that the 6th – 10th Respondents excluded the widow of DrIkenna Okonkwo from the internment activities. They further found that the 6th – 10th Respondents contracted outsiders to prepare the grave for the internment of the deceased DrIkenna Okonkwo. They also found that the 6th – 10th Respondents buried the deceased "at an odd time (too early in the morning)". They also found that the 6th – 10th Respondents buried the only son of the deceased in Lagos. These, the Traditional Authority found, were against the customs and traditions of Enugwu-Ukwu. For these breaches, the 6th – 10th Respondents were fined ₦150,000.00 (One Hundred and Fifty Thousand Naira only) as well as one live ram. The Traditional Authority further directed that the assets of the deceased DrIkenna Okonkwo belonged to the widow and the children of the marriage as the deceased was still married to the woman at the time of his death.

In another meeting which held on the 02nd of May, 2023, the traditional ruler of the community remonstrated with the family of the deceased DrIkenna Okonkwo over the manner they handled the burial of their son and the ill-

manner in which they treated his widow. The authority particularly singled out the 6th Respondentfor a scathing reprimand.

The Applicant, indeed, in his Further Affidavit in answer to the Counter-Affidavit of the 1st – 5th Respondents and the Further Affidavit in answer to the Counter-Affidavit of the 6th – 10th Respondents, attached documentary exhibits to support the finding of the Enugwu-Ukwu Traditional Authority that the widow of DrIkenna Okonkwo was married to the deceased as at the time of his demise. This is the marriage certificate between MrsChigozie Okonkwo and DrIkenna Okonkwo. It is marked as **Exhibit A.N. 1**. He also attached an application from the widow of the deceased to the Assistant Inspector-General of Police in charge of Zone 13 headquarters of the 1st Respondent requesting for a deployment of policemen to protect her and her daughters. There are also photographs of the said policemen. Collectively these documents were marked as **Exhibit A.N. 2a-d**. Their purpose is to substantiate the claim of the Applicant that he never recruited thugs to unleash mayhem on the 6th – 10th Respondents.

I have studied these documentary exhibits. The application for a detachment of policemen from the widow of the deceased was received in the office of the Assistant Inspector-General of Police on the 11th of January, 2023 – the same date the letter was dated. I have also studied the photographs attached.

Nothing in the photographs suggested that the Applicant committed any of the acts for which he was arrested and detained.

Conversely, the 6th – 10th Respondents who alleged that the Applicant recruited hooligans who set about burning tires, inflicting injuries on the 8th Respondent, exhuming the corpse of the deceased DrIkenna Okonkwo, inviting a native doctor who perfumed rituals on the carcass of the deceased DrIkenna Okonkwo, destroying the flex obituary banner of DrIkenna Okonkwo and other properties did not provide pictorial or video evidence to support their assertions. They did not also provide evidence "that the thugs and hoodlum hired by Eugene Okonkwo and his cohorts ransacked all the rooms in the compound of the 6th – 10th Respondents and catered (sic) away with phones, jewelries and liquid cash…" as well as the assorted drinks listed out in paragraph 5(xxiii) of the 6th – 10th Respondents. One would expect that people who saw the burial ceremony of their beloved brother as they claimed he was to them would have the presence of mind to capture the disruptions in a more permanent form, especially, since they were convinced the actions were criminal in nature.

Having pondered on the evidence before me, I have no hesitation in arriving at the ineluctable finding that there is nothing in the evidence before me that suggested even remotely that there is any iota of truth in the allegations

contained in **Exhibit NPF 1** attached to the Counter-Affidavit of the 1st – 5thRespondents. **Exhibit NPF 1**, it has to be stated for the sake of clarity and immediacy, is the signal from the office of the Inspector-General of Police to the Deputy Inspector-General of Police, Force Criminal Investigations Department to which was attached the petition written to the Inspector-General of Police by the Solicitor to the 6th – 10th Respondents, Dr. Dele Alufe of Alufe&Alufe. I have ruminated on the contents of **Exhibit NPF 1**. There is nothing in the exhibit that exudes sincerity. On the contrary, the petition of the 6th – 10th Respondents which was attached to the signal and which collectively made up **Exhibit NPF 1** was riddled with allegations which bordered on a desperation to nail the Applicant at all costs. It is this desperation that propelled the 6th – 10thRespondents to enlist the services of the 1st – 5th Respondents to oppress, suppress and persecute the Applicant. Sadly, the 1st – 5th Respondents allowed themselves to be so used. The desperation is quite telling when one considers that in **Exhibit A** attached to the originating application, the Enugwu-Ugwu Traditional Council found the 6th – 10th Respondents liable and even penalized them for their regrettable conduct towards the nuclear family – especially the widow – of the late DrIkenna Okonkwo.

In addition to the foregoing exhibits, the Applicant attached **Exhibit B** to the originating application. **Exhibit B** is a video recording of the events that took place at the proper, communally and traditionally sanctioned burial of the late DrIkenna Okonkwo. I have seen the video. Contrary to the allegations contained in **Exhibit NPF 1** that the Applicant was engaged in reprobate fetishisms, and in contradistinction to the claims of the 6th – 10th Respondents that the Applicant procured thugs and visited mayhem on the 6th – 10th Respondents and their properties, there was nothing in the video that supported the claim. In fact, in the video, the widow of the late DrIkenna Okonkwo was led into the vicinity of the burial and into the family compound by the *umuada*, or the women of the clan. Prayers were said over the corpse by a member of the clergy. Cultural and Christian funeral practices were followed right up to the dust to dust ritual. The soldiers and policemen that were on ground maintained absolute decorum, an indication that nothing unlawful, riotous, criminal or conduct likely to cause a breach of the peace took place at the event. Conversely, the 6th – 10th Respondents, especially the 6th, 9th and 10th Respondents standing on the balcony of the first floor of the family house provoked the members of the community who had gathered to pay their last respects to DrIkenna Okonkwo by raining insults on them.

Interestingly, none of the Respondents spoke to the video, which, having being attached to the affidavit in support of the originating application, becomes part of the affidavit. The effect, in law, is that the Respondents are deemed to have admitted the content of the video, that is, **Exhibit B**. See ***Ezechukwu v. Onwuka (2016) 5 NWLR (Pt. 1506) 529 S.C. at 562, para. F; Aondoakaa v. Obot (2022) 5 NWLR (Pt. 1824) 523 S.C. at 578, para. C, 579, paras. B-D;Gusau v. Lawal (2023) 10 NWLR (Pt. 1892) 297 S.C. at 330, para H***. In ***Aondoakaa v. Obot (2022) supra***, the Court held that "***In a matter fought on affidavit evidence, the documentary evidence relied upon is attached to the affidavit and therefore forms part of the evidence adduced in the case before the court. In effect, any objection to any of the documents attached to the supporting affidavit could only be raised at the hearing of the suit. In the instant case, the affidavit of the 1st Respondent and the documents thereto stood unchallenged and uncontroverted and the court was entitled to rely on them.***" Such is the fate that must befall **Exhibit B** in the absence of any objection to its veracity.

I have earlier highlighted and reproduced the provisions of section 215(3) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 and that of section 4 of the Police Act, 2020 which covers the powers of the police. I have provided the judicial exposition on these powers. At what point, then,

can it be said that the operatives of the Nigeria Police Force have crossed the permissible boundaries of their constitutional and statutory duties? Section 35(1)(c) provides the perimeters within which the Nigeria Police Force and, indeed, other law enforcement agencies, may exercise their constitutional and statutory duties in relation to citizens. The paragraph states that "***for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence***", the abridgment of the personal liberty of a person may be permitted by the law. Thus, a community reading of the provisions of section 4 of the Police Act, 2020 and sections 35(1)(c) and 215(3) and (4) of the Constitution of the Federal Republic of Nigeria 1999 is that though the law recognizes the powers of the police with regards among other things the prevention and detection of crime, such powers must be exercise within the perimeters of the law. In ***Living Mitin v. C.O.P., Bayelsa State & Others (2023) 12 NWLR (Pt. 1898) 259 S.C. at 287, para C***, the Court held that "***The police is not given a carte blanche to exercise its powers willy-nilly without due regard to fundamental rights.***"

There is nothing in the evidence before this Court that justified the intervention of the police. On the other hand, evidence abound that the 6th –

10th Respondents subjected the widow of the late Drlkenna Okonkwo to demeaning, degrading, dehumanizing and traumatizingly discriminating treatment in their determined efforts to disinherit her from her late husband's estate.The only offence of the Applicant here is that he stood by the widow of the late Drlkenna Okonkwo and resisted the satanic persecution which the 6th – 10th Respondents visited on the widow of the deceased Drlkenna Okonkwo. Unfortunately, and most reprehensibly, the 1st – 5th Respondents made themselves to be used as instruments of persecution – even in the face of the finding of culpability of the 6th – 10th Respondents by the Enugwu-Ukwu Traditional Authority in their disregard and desecration of the culture and traditions of the community as can be seen from **Exhibit A**.

In ***Mangai v. CP Plateau State &Ors (2021) LPELR-55145(CA)***, the Court held that: "***the law has since been settled, that the Police does not and is not allowed to involve itself in purely civil disputes, especially one touching on land ownership… each time a party's complaint to the Police involves such issues of land dispute… the standing instruction is for the Police to hands off and advise the parties to seek civil resolution of the dispute in a Civil Court***."

There must therefore be a liability that attaches to such heedless actions. In other words, actions must have consequences. In ***Skye Bank Plc v.***

Njoku&Ors (2016) LPELR-40447 (CA) the Court heldthat:"***...a party that employs the Police or any law enforcement agency to violate the fundamental right of a citizen should be ready to face the consequences, either alone or with the misguided agency...***"

It is in view of the foregoing that I resolve the first issue herein in favour of the Applicant and against all the Respondents. The 1st – 5th Respondents, having allowed themselves to be used by the 6th – 10th Respondents are liable, together with the 6th – 10th Respondents for the infringement of the fundamental rights of the Applicant. The Applicant has therefore made out a case of infringement of his fundamental rights against all the Respondents. I shall now turn my attention to the second issue I have formulated in this Judgment.

The second issue is this: "***If Issue One is resolved in favour of the Applicant,whether he is not entitled to the reliefs sought herein including the consequential reliefs of public apology and compensation***".

A perusal of the originating processes of the Applicant shows that the fundamental rights of the Applicant which he claims were breached are his rights to dignity of the human person contrary to the provisions of section 34

of the Constitution of the Federal Republic of Nigeria, 1999, personal liberty contrary to the provisions of section 35 of the said Constitution and freedom of movement contrary to the provisions of section 41 of the same Constitution. While the Courts must always award damages where a breach of any of the fundamental rights guaranteed in Chapter IV of the Constitution has been established, it is important to note that the Court makes an order of public apology only where the right to personal liberty has been breached while an order or award of compensation is made where the right to personal liberty guaranteed under section 35 of the Constitution and the right to acquire and own immovable property preserved under section 44 of the Constitution are violated. In ***Okibe v. NDLEA (2022) LPELR-56995(CA), at pages 18 to 22***, the Court held thus: ***"Once a person who is arrested or detained beyond the time or limit provided in the provisions of the aforesaid Constitution is able to discharge the onus of proof cast upon him he is automatically entitled to compensation as provided for under the Constitution."***

Now, the Courts have pronounced in a plethora of cases on the principles that must guide the Court in granting ancillary reliefs, particularly, damages and injunctive reliefs. Generally, the award of damages by the Court is an equitable relief which the Court bestows on the Claimant who has established

that they suffered some loss, injury or harm as a result of the wrongful acts or inactions of the Defendant.

In ***EDOSACA v. Osakue (2018) 166 NWLR (Pt. 1645) 199 C.A. at 230, paras D-F***, the Court held that "***The purpose of an award of damages is to compensate the plaintiff for damage, injury or loss suffered. The guiding principle is*** restitutio in intergrum***, where the court is called upon to assess that a party which has been clarified by the act which is in issue must be put in the position in which he would have been if he had not suffered the damage for which is in issue must be put in the position he is being compensated.***" At page 231, paragraph D of the Law Report, the Court held that "***The award of damages is at the discretion of the trial court and it is premised on the pleadings of the parties and the evidence adduced in support and the court being guided by the applicable principles.***"

The principles guiding the award of damages have been settled. See the cases of***Ibeanu v. Ogbeide (1994) 7 NWLR (Pt. 359) 697 C.A. at 714, paras B-D; Akinterinwa v. Oladunjoye (2000) 6 NWLR (Pt. 659) 92 S.C. at 116, para E; Odogwu v. Ilombu (2007) 8 NWLR (Pt. 1037) 488 C.A. at 512, paras E-H; 513, paras B-D; Savannah Bank of Nigeria Plc v. Central Bank of Nigeria & 2 Others (2009) 6 NWLR (Pt. 1137) 237 C.A. at 309,***

paras C-D; Nigerian Bank for Commerce and Industry v. Dauphin (Nig.) Ltd. (2014) 16 NWLR (Pt. 1432) 91 C.A. at P.112, paras. D-H; F.B.N. Plc v. A.-G., Fed. (2018) 7 NWLR (Pt. 1617) 121 S.C. at 162, paras. B-D; 175, paras. A-C.

The grant of damages and injunction is an exercise of the discretionary powers of the Court. This is because those reliefs are equitable reliefs. See ***DHL Intl Nig. Ltd. v. Eze-Uzoamaka (2020) 16 NWLR (Pt. 1751) 445 C.A. at 503, paras F-G*****.** Equitable reliefs are not granted as a matter of course. They are granted upon good course shown by the person seeking the exercise of the Court's discretion in their favour.

In the case of fundamental rights proceedings, damages naturally flow once the Applicant has shown that their fundamental rights have been abridged. In ***F.B.N. Plc v. A.-G., Fed. (2018)supra at 152-153, paras. H-D; 160-161, paras. G-C*** the Supreme Court held that

"***By virtue of Section 35 of the 1999 Constitution (as amended) any person who is unlawfully arrested or detained is entitled to compensation and public apology from the appropriate authority or person; and in the subsection, "the appropriate authority or person" means an authority or person specified by law.***

Fundamental rights matters are placed on a higher pedestal than ordinary civil matters in which a claim for damages resulting from the proven injury has to be made specifically and proved. The onus is on him to show that he was unlawfully arrested and detained that is, that his fundamental right has been violated. If this is proved, by virtue of the provisions of section 35(6) of the Constitution, the complainant is entitled to compensation and apology, where no specific amount is claimed. Where a specific amount is claimed, it is for the court to consider the claim and in its opinion, the amount that would be justified to compensate the victim of the breach. In this respect, the common law principles on the award of damages do not apply to matters brought under the enforcement of fundamental rights procedure. The procedure for the enforcement of the fundamental human rights was specifically promulgated to protect the Nigerians' fundamental rights from abuse and violation by authorities and persons. When a breach of the right is proved, the victim is entitled to compensation, even if no specific amount is claimed."

On why damages in fundamental rights proceedings are not trivialized, the Court citing with approval its decision in ***Odogu v. A-G., Fed. (1996) 6 NWLR (Pt. 456) 508 S.C.***, held ***at page 160, paras A-C of the First Bank of***

Nigeria's case that "***Whatever compensation is awarded it should truly reflect not only the pecuniary loss of the victim, but also the abhorrence of society and the law for such gross violation of human rights, particularly the right to personal liberty, as in the instant case. An unwitting trivialization of a serious matter by an inordinately low award should be avoided. Personal liberty of the individual is a commodity of an inherently high value.***"

A perusal of the originating processes of the Applicant shows that the fundamental rights of the Applicant which he claims were breached are his rights to dignity of the human person contrary to the provisions of section 34 of the Constitution of the Federal Republic of Nigeria, 1999, personal liberty contrary to the provisions of section 35 of the said Constitution and freedom of movement contrary to the provisions of section 41 of the same Constitution. While the Courts must always award damages where a breach of any of the fundamental rights guaranteed in Chapter IV of the Constitution has been established, it is important to note that the Court makes an order of public apology only where the right to personal liberty has been breached while an order or award of compensation is made where the rights to personal liberty and right to acquire and own immovable property are violated.

In view of the foregoing therefore, it is my considered view that the Applicant has made out his entitlement to the grant of the ancillary reliefs of damages, public apology and compensation. Accordingly, Issue two is hereby resolved in favour of the Applicant and against all the Respondents.

In all, I find the originating application for the enforcement of the Applicant's fundamental rights as meritorious. All the reliefs sought in this suit are hereby granted as follows:-

1. **THAT the arrest of the Applicant on the 28th of March, 2023 under the directive and instruction of the 1st – 5th Respondents acting on the petition to them written at the instance of the 6th – 10th Respondents, his conveyance to Abuja and subsequent detention at the Force CID detention facility, in Abuja from the same 28th of March, 2023 tothe date this originating application was filed and long after it was filed is unconstitutional, illegal and constitutes a violation of the Applicant's fundamental right to personal liberty guaranteed under section 35 of the Constitution of the Federal Republic of Nigeria, 1999 and Article 6of the African Charter on Human and People's Rights (Ratification and Enforcement) Act.**

2. **THAT the arrest of the Applicant on the 28th of March, 2023 under the directive and instruction of the 1st – 5th Respondents acting on the petition to them written at the instance of the 6th – 10th Respondents, his conveyance to Abuja and subsequent detention at the Force CID detention facility, in Abuja from the same 28th of March, 2023 to the date this originating application was filed and long after it was filed is unconstitutional, illegal and constitutes a violation of the Applicant's fundamental right to freedom of movement guaranteed under section 41 of the Constitution of the Federal Republic of Nigeria, 1999and Article 12 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, and same has resulted in personal injury to the Applicant.**

3. **THAT the Applicant is entitled to adequate compensation and apology from the all Respondents as provided for under section 35(6) of the Constitution of the Federal Republic of Nigeria, 1999, the Respondents having failed, neglected and or refused to charge him to a Court of competent jurisdiction or release him on bail either conditionally or unconditionally within twenty-four hours of his arrest.**

4. **THAT an Order is hereby made directing the Respondents jointly and/or severally to pay the sum of ₦3,000,000.00 (THREE Million Naira only) as compensation for the constitutional, illegal and unlawful detention of the Applicant by the 1st – 5thRespondents acting at the instance of the 6th – 10th Respondents from the 28th of March, 2023 to the date this originating application was filed and long after it was filed.**

5. **THAT an order of Perpetual Injunction is hereby made restraining the 1st – 5thRespondents acting at the instance of the 6th – 10th Respondents or at the instance of any other person or group of persons for that matter from further arresting or re-arresting the Applicant in relation to the burial of Dr Okonkwo Ikenna, the Applicant's cousin.**

This is the Judgment of this Honourable Court delivered today, the 17th day of September, 2024.

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HON. JUSTICE A. H. MUSA
JUDGE
17/09/2024

APPEARANCES:

For the Applicant:

A.N. Zephaniah, Esq.
J. O. OziokoEsq.

<u>For the 1st – 5th Respondents:</u>
Wisdom Madaki, Esq.
O. Danjuma, Esq.

<u>For the 6th – 10th Respondents:</u>
Dickson Sofiyegha, Esq.