

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA**

SUIT NO: CV/3239/2024

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

MR. ONYEKACHI UKA _____ CLAIMANT

AND

**1. NIGERIAN POLICE FORCE (NPF)
2. INSPECTOR GENERAL OF POLICE (IGP)
3. COMMISSIONER OF POLICE, FCID
4. DR. MUSA ABUBAKAR USMAN
5. OTUNBA KAYODE OKE** } **DEFENDANTS**

JUDGMENT

By the originating motion with No. CV/3239/2024, the applicant seeks for the following reliefs:

1. An order of perpetual injunction restraining the respondents, their agents, officers and/or any person(s) acting on the orders and instructions of the respondents from arresting and detaining the applicant in lieu of another contrary to section 36 of the Police Act which prohibits the arrest of a private citizen of Nigeria in lieu of another crimes allegedly committed by a third party.
2. An order of perpetual injunction restraining the respondents, their agents, officers and/or any person(s) acting under the orders, instructions and directives of the respondents instigated by the false and misleading complaint and/or report of the 4th respondent and in collaboration with the 5th respondent from further harassing, intimidating,

- threatening and embarrassing the applicant or disturbing the private life and business of the applicant or any member(s) of his family.
3. An order of declaration that the harassment, intimidation, threats and embarrassment of the applicant or disturbing the private life and business of the applicant by officers of the 1st – 3rd respondents and instigated by the 4th and 5th respondents as amounting to threatened, breached and continuing breach of the applicant's Fundamental Rights to life, dignity and freedom of movement constitutionally guaranteed under sections 33, 34, 35, 36 and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria (DFRN) as (amended) and Articles 3, 4, 5, 6, 7 and 12 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.
 4. An order of this Honourable Court directing the 1st – 3rd respondents to observe and respect the Fundamental Human Rights to life, dignity of Human person, personal liberty, fair hearing, private and family life and freedom of movement of the applicant constitutionally guaranteed under sections 33, 34, 35, 36 and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) (as amended) and Articles 3, 4 5, 6, 7 and 12 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to perform their statutory duties within the binds of the law set forth under Police Act 2020 or any other law in force in Nigeria.
 5. An order of this Honourable Court awarding the total sum of N20,000,000 (Twenty Million Naira) only as general damages against the respondents for the harassment, intimidation, threatening and

embarrassment of the applicant or any member(s) of his family by denying the applicant the several business opportunities and investment during the period of his prosecution by officers of the 1st – 3rd respondents instigated by the 4th respondent's false complaint and/or report in collaboration with the 5th respondent which acts amount to threatened, actual and continuing the breach of the applicant's fundamental right under sections 33, 34, 35, 36 and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) (as amended) and Articles 3, 4, 5, 6, 7 and 12 of the African Charter and Peoples' Rights (Ratification and Enforcement) Act,

6. And for such further order or orders that this Honourable Court deems fit to make in the circumstances of this case.

The grounds upon the application is filed are as contained at pages 3-5 of the motion papers; and is filed together with statement of facts describing the name of the applicant, his reliefs sought, the grounds upon which the application is brought and the facts about the violation of the applicant's rights. The application is supported by an affidavit of nine paragraphs deposed to by the applicant himself and attached to the affidavit are some documents labeled as EXH. 'UKA 2', 'UKA 3' and is also accompanied by a written address of counsel.

It is in the affidavit in support of this application that the applicant being a Nigerian and international business man is entitled to fundamental rights enshrined in sections 33, 34, 35, 36, 41 and 46(1) of the 1999 constitution and that sometimes in December, 2023, the applicant was served with a letter of invitation by the 1st – 3rd respondents dated 19th December, 2023 to attend an interview at the force

criminal investigation department (FCID) Area 10 Garki, Abuja on the alleged offences of criminal trespass, mischief, willful malicious damage to property and act of fraud and which invitation was compelled by section 53 (2) (a) of Criminal Justice Act, 2015, and the said applicant attended wherein he was informed of a complaint made against his person pertaining to a land transaction disclosed to the applicant and described as plot 109 Sector Centre District Cadastral Zone B15, Abuja and without any connection to the applicant. That at the meeting, the officers of the 1st – 3rd respondents, the applicant found out that the alleged petition was made by the 4th respondent, which is an unknown person to the applicant and whose petition did not mention the name of the applicant as the vendor or assignee or original allottee of the land in dispute.

It is stated that the applicant also found out that the said land was allotted by the Minister FCT to a company registered as M.S. Abbabo (Nig) Ltd, a company that the applicant is not connected to as an officer or registered shareholders, and that the first date the applicant attended the meeting with the officers of 1st – 3rd respondents, he made statement under a condition that can reasonably be referred to as stage managed and the applicant was granted administrative bail upon self cognisance.

It is stated that the applicant went home and searched his records and found out that he has never in his life conducted any business dealings with the said company and/or the petitioner/complainant. The 4th respondent and upon the second scheduled meeting with the officers of the 1st – 3rd respondents, the applicant made a second statement, and he was released on bail by a single surety based on other additional allegations without any

conclusive evidence against the applicant or any of his companies.

It is stated that after the release of the applicant, the officers of the 1st – 3rd respondents have remained in the neck of the applicant and threatened the life and business of the applicant to the extent that the applicant fearing for his life and safety as well as lack of fairing by the officers wrote a letter through his solicitors to the 2nd respondent requesting for the transfer of the case and investigation to the Force Headquarters of the 1st respondent for just and fair investigation.

It is deposed to the fact that the allegations in the petition of the 4th respondent did not name the applicant as a person of interest on the alleged crime, nevertheless the 5th respondent, in a bid to throw the officers of the FCID off the track in their investigation, mentioned the applicant as his own vendor and the officers of the FCID believed the false claims and unproven allegations without concluding the investigation into the alleged crime, and therefore making the applicant fear of threat to his life and bias and prejudice against his person and character, and error since the applicant fear a case of arrest in lieu of another for offences committed by another.

It is stated that as at the time of filing this suit, the applicant has abandoned his personal residence and sought shelter in different hotels across FCT incurring huge expenses due to incessant threatening calls from some unknown officers of 1st – 3rd respondents who have vowed by the use of the resources at their disposal to deal ruthlessly with the applicant should he ever be found anywhere in the public in the FCT. The action of the officers were instigated by the false complaint and report of the 4th respondent in collaboration with the 5th respondent.

It is stated that the actions of the respondents particularly officers under the 3rd respondent and orchestrated by the 4th and 5th respondent in the circumstances of this case are unlawful and constitute an infringement of the applicant's fundamental rights as protected under sections 33, 34, 35, 36 and 46(1) of the 1999 constitution (as amended) and Articles 3, 4, 5, 6, 7 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

It is also deposed to the fact that the calculated plan to investigate and unlawfully arrest and detain the applicant without any justification is unlawful, unjustifiable, unconstitutional and constitute a gross violation of the applicant's right to life, dignity of human, person, personal liberty, fair hearing and freedom of movement as contained in sections 33, 34, 35, 36, 41 and 46(1) of the Constitution 1999 (as amended).

It is stated that at the last meeting with the officers of the 1st – 3rd respondents at the FCID, some unknown persons claiming to be officers of the 3rd respondent have been making threats through hourly phone calls and insisting that the applicant is a common criminal and should be behind bars without having any tangible evidence against the person and character of the applicant and or any of his companies.

It is stated that the applicant cannot live his personal life and attend his businesses without fear of molestation, harassment, embarrassment and arrest in lieu of another and the likelihood of bias and prejudice by the officers of the 1st – 3rd respondents instigated by the 4th and 5th respondents.

That sections 33, 34, 35, 36, 41 of the 1999 constitution guarantees that every individual is entitled to right to life,

respect for dignity of his person, personal liberty, right to fair hearing and natural justice for every citizen, respect for his private and family life and freedom of movement.

It is stated that the applicant believes that if this court does not come to his aid to protect and enforce his rights guaranteed by the constitution, the 1st – 3rd respondents acting on the behest of the petition of the 4th respondent on the information provided by the 5th respondent, would cause to illegally arrest and detain the applicant and thereby expose him to torture and threat to life. That section 46(1) of the constitution provides for the rights of any person who alleges that any of his fundamental right has been violated or likely to be violated to approach the court for redress, and the court can invoke its powers to hear and determine in the interest of justice, the questions and reliefs sought in this suit.

The applicant make an undertaking as to damages in the event that this suit turns out to be frivolous and no case made against the respondents.

In this application, the applicant submit a sole issue for determination to wit:

Whether from the averments contained in the applicant's affidavit in support, the applicant has established a case of threatened, actual and continuing breach of his fundamental rights under sections 33, 34, 35, 36, and 46(1) of the 1999 constitution of the Federal Republic of Nigeria (as amended) and Articles 3, 4, 5, 6, 7 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and is therefore entitled to the reliefs, against the respondents?

The counsel submitted that section 46(1) of the 1999 Constitution CFRN (supras emponders) this Honourable Court to hear and determine the sole issue submitted by the applicant and resolve in favour of the applicant on the strength of the averments contained in the applicant's affidavit in support and the exhibits UKA 1-3 as attached, and that the right to personal dignity, right to liberty, fair hearing and freedom of movement are constitutionally recognised rights which are enforceable by an aggrieved person upon an application to the court of law in line with Order II Rule I of the Fundamental Rights Enforcement Procedure Rules 2009 in the event of breach of such rights by an individual and/or the government and its agencies, and he quoted Order II rule I of the said rules.

The counsel submitted that on the principle governing grant of declaratory reliefs, the Supreme court in the case of **CBN V. AMAO (2010) 16 NWLR (pt 1219) 271** that in effect the claim must be substantial and the plaintiff must be entitled to the reliefs.

On the principle guiding grant or refusal of declaratory relief, the counsel cited the case of **Bismillahi V. Yauba-East Local Government & Ors (2003) 4 NWLR (pt 810) p. 329** to the effect that the declaration is granted only where an applicant is able to show that he has a legal right which should be protected by the declaration, and he cited the principles in paragraphs (a) to (f)

The counsel submitted that in view of the above argument, the applicant has placed sufficient materials before this Honourable court to warrant the grant of this application given that he has been able to show that the actions of the respondents if this court does not intervene is established threatened, actual and continuing violation of

the applicant's rights and the applicant by section 46(1) of the constitution is allowed to seek redress in this Honourable Court, and he quoted the provisions of section 46(1) of the 1999 Constitution (as amended). The counsel also commended the averments contained in the affidavit in support of the originating motion in urging the court to hold that the respondents are in breach of the rights of the applicant under sections 33, 34, 35, 36 and 46(1) of the 1999 Constitutions and Articles, 3, 4, 5, 6, 7 and 12 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act to enforce his fundamental rights against the respondents.

On the perpetual injunction and mandatory orders and basis of grant of the court in the case of **E.S.C.S.C. V. Geoffrey (2000) 18 NWLR (pt 1011) 293** held to the effect that the grant of perpetual injunction and mandatory orders are consequential orders, which should naturally flow from the declaratory orders sought and granted by this court.

On the object of order of perpetual injunction, the Supreme court on the case of **Gold mark (Nig.) LTD V. Ibafor Co. Ltd (2012) 10 NWLR (pt 1308) 291** held that the grant of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by the court. The counsel cited the case of **Obeya Memorial Hospital V. A.G., Federation & Anor (1987) 7 SC (pt 1) 52** where the Supreme Court enumerated the principles for the grant of an injunction to include existence of a legal right, a substantial issue to be tried, balance of convenience, irreparable damage or injury, conduct of the parties (such as the respondents in this case) and undertaking as to damages.

The counsel submitted that where the fundamental right of a person has been adjudged to be infringed by the

respondents, the applicant is entitled to compensation as damages, and he cited the case of **State Security Service & Ors V. The Incorporated Trustees of the Peace Corps of Nigeria (2019) LPELR – 42274 (CA)**. The counsel also cited the case of **First Bank of Nigeria Plc & Ors V. A.G., Federation & 4 Ors (2018) 7 NWLR (pt 1617)** to the effect that the Supreme Court in interpreting the provisions of section 35(6) of the 1999 constitution held that the fundamental rights matters are placed on a higher pedestal than the ordinary civil matters which claims for damages resulting from proven injury has to be made specifically and proved, and the counsel urged the court to resolve the issue in the interest of justice.

In the counter affidavit of the 4th respondent, it is stated that plot 109 sector Central 'A' District Cadastral Zone B15 Abuja FCT was allocated to the company of the applicant M.S. Abbabo Nigeria Limited, as admitted by him in paragraph 3(e) of the affidavit in support, hence the applicant is the lawful owner of the said plot to the exclusion of any other person. That the applicant noticed the trespass upon his plot of land by people unknown and got the names of Engr. Adams and Chief Otumba as the people trespassing on his plot, the applicant petitioned the Nigerian Police mentioning the names of Engr. Adams and Chief Otumba as correctly stated in EXH. 'UKA 3' before the court as trespassers without mentioning the name of the applicant in his said petition, and the police in the course of their investigation of his petition which he has no control of, invited the persons mentioned in his petition and as rightly stated by the applicant in his EXH. 'UKA 3' of the affidavit in support, it was the 5th respondent who trespassed into the applicant's land and who was invited by the police based on his petition that mentioned the applicant's name as the

person who sold his (4th respondent) said plot 109 to him (5th respondent) and the applicant till date is unknown to him (4th respondent).

It is stated that contrary to the assertions of the applicant in paragraph 3(k) (n) and 5 of his affidavit in support of his application he (the 4th respondent) does not know the applicant nor did he ever mentioned his name in his petition for him (the 4th respondent) to instigate the respondent against the applicant as he (5th respondent) was the person with Engr. Adams that he petitioned to the police for trespassing into his said plot.

It is deposed to the fact that the applicant has no cause of action against him as the applicant is unknown to him, and he did not petition the applicant to the police as clearly admitted by the applicant himself in paragraph 3(i) of the affidavit in support and in his EXH. 'UKA 3' where the applicant stated that it was the 5th respondent that mentioned his name to the police, hence the applicant cannot validly claim anyway against him (4th respondent).

That the applicant is not entitled to the relief against him as he did not petition the applicant to the police to warrant any claim against him by the applicant. And that he is not a proper party in the present suit of the applicant before the court as the applicant is unknown to him nor has he in any way breached any of the applicant's fundamental right to be sued.

It is stated that he cannot be held responsible for the police carrying out their lawful duty in the face of the applicant clear admission before them that he (the applicant) unlawfully sold his (4th respondent) plot to the 5th respondent upon the applicant's invitation based upon the information about the applicant supplied to the police by the 5th respondent upon his (4th respondent) petition against

the 5th respondent as the trespasser on the said plot, and the applicant having admitted to have unlawfully sold his (4th respondent) plot to the 5th respondent even though purportedly retracting his admission, the applicant should allow the police to conclude their investigation if he (applicant) has nothing to hide or has no skeleton in his cupboard before rushing to this Honourable Court.

In his written address, the counsel for the 4th respondent formulated lone issue for determination, to wit:

Whether from the facts and circumstances of evidence before this court, the applicant is entitled to any reliefs sought in this suit?

The counsel submitted that the applicant has the onus proving of showing that the reliefs or claims comes within the perview of the breach of any of his fundamental rights as provided in sections 33 and 45 of the 1999 Constitution, and it is incumbent for an applicant to succinctly set out these breaches in an affidavit in support of his application as it is only the facts stated in the affidavit supported by evidence that the court is enjoined to consider not the address or submission of the counsel, and he cited the case of **Mbang V. Janet (2015) All FWLR (pt 769) p. 784, para. E** to the effect that fundamental right enforcement cases are determined based upon an affidavit evidence.

The counsel submitted that a close perusal of the entire paragraphs of the affidavit of the applicant is where it disclose how and where any of the applicant's fundamental rights were breached.

The counsel submitted that according to section 35(5) (a) (b) of the 1999 Constitution the 1st – 3rd respondents have the Constitutional powers to detain any suspect for a period of two days, and nowhere in the paragraphs of the affidavit did the applicant alleged that he was ever detained, not to

talk of being detained for a period of two days, and that there is no proof whatsoever placed before this court that he was invited by the officers of the 1st – 3rd respondents because the 5th respondent mentioned his name in his statement to them, and was asked upon his invitation to produced another person that the applicant himself mentioned to the police as the person that sold the 4th respondent's plot, and it can be gleaned from the counter affidavit of the 4th respondent that any invitation of the applicant is consequent upon the response of the 5th respondent to the petition revealed that the same applicant as the person that sold the 4th respondent's plot.

The counsel submitted contended that the applicant can validly be invited by the officers of the 1st – 3rd respondents and he cited the case of **Fawehinmi V. I.G.P. (2000) FWLR (pt 12) at 2031** to the effect that in the exercise of the power conferred on him under section 4 of the Police Act, the police is entitled to question anybody in making an inquiry or an investigation.

The counsel submitted that if the 4th respondent has directly petitioned the applicant, it is still within his right to do so in view of the trespass unto his land, and it is incumbent and proper for the officers of the 1st – 3rd respondents to invite the applicant based upon the legitimate complaints of the 4th respondent, and he cited the case of **Udo V. Essien (2014) All FWLR (pt 749) p. 1202** to the effect that a citizen who is arrested by the police in the legitimate suspicion of having committed an offence cannot sue the police in court of breach of his fundamental rights. He submitted that the applicant cannot even sue any of the respondents upon his proper arrest, and he cited the case of **Mbang V. Janet (supra)** to the effect that the citizens cannot be held culpable for doing their civil duty, and that

there is no evidence as to when the 1st and 3rd respondent ever detained the applicant beyond the constitutional time frame provided, and the failure of the applicant to state in his affidavit facts of the alleged breach of any of his fundamental rights by any of the respondents deprived him of any right to get of the reliefs claimed as it was held in the case of **Attah V. I.G.P. (2015) All FWLR (pt 805) p. 149, paras. B-C** to the effect that the affidavit must set out facts upon which the application is made.

The counsel cited the case of **CBN V. Okojie (2015) All FWLR (pt 807) 508 paras. D-E** to the effect that no matter alluring can never take the place of credible evidence and legal proof; and to efforts of the applicant to obtain a judicial fiat to prevent the 1st – 3rd respondents from exercising their constitutional power must be refused and he cited the case of **A.G. Anambra State V. UBA (2005) 15 NWLR (pt 947)** to the effect that a person cannot expect a judicial fiat to preventing a law officer in the exercise of his constitutional power.

The counsel cited the case of **Kalu V. FRN (2016) 9 NWLR (pt 1516) 19, paras. B-C** to the effect that for a person to rush to court to place a clog or shield against criminal investigation and prosecution is a clear interference with the powers quoted by law and the constitution to the EFCC in the conduct of criminal investigation and prosecution and this is a clear abuse of due process of the law; and he also cited the case of **Ozah V. EFCC (2018) All FWLR (pt 953) at pp. 252 – 253 para. B-B**, and he urged the court to hold that the sole issue is in favour of the respondents.

The 1st – 3rd respondents filed the counter affidavit and deposed to the fact that they are members of the Nigeria Police Force with statutory powers to detect, arrest, investigate and prosecute offenders and in the course of

performing their duties, they often receive complaints/petitions from members of the public, and that the office of the Deputy Inspection General of Police received a petition from the 4th respondent Dr. Musa Abubakar Usman against the applicant, Engr. Adams and the 5th respondent alleging criminal conspiracy, Forgery, using forged document as genuine, criminal trespass, mischief willful malicious damage to property and fraud, and the petition was referred to the Commissioner of Police, General Investigation for investigation.

It is stated that upon receipt of the petition, the 4th respondent was called upon to adopt his petition, and that the 4th respondent alleged that, he acquired a land situate at Plot 109 Sector A District, Cadastral Zone B15, Mabushi, Abuja from the 5th respondent who purported to derived his title from the applicant. That the 4th respondent alleged that the said Engr. Adams in concert with others including the applicant used heavy earth equipment to demolished his structures on the land cum fence, hence the complaint.

It is deposed to the fact that that finding revealed that the applicant and the 5th respondent conspired to forged the title documents delivered to him as original documents when he purchased the property from the 5th respondent and upon presentation of the said document at the office of the issuing authority, it turned out to be fake, hence the complaint.

It is stated that paragraphs 3A, 3K, 3L, 4, and 6 are incompetent, and that paragraph 3B is true to the extent the applicant was invited by the officers of the 3rd respondent to come over to shed light over his involvement of an alleged criminal trespass and mischief and other sundry offences, the applicant vehemently refused to

honour, the said invitation and was arrested through intelligence on the 22nd June, 2024.

It is stated that paragraphs 3C, D, F, G, H, I, M and N are false, misleading and aimed at concealing the real fact from this Honourable Court that the applicant and cohort were invited to interview the 3rd respondent on the 28th December, 2023 over an allegation of conspiracy, Forgery, using Forged documents as genuine, criminal trespass, mischief, willful malicious damage to property and fraud, and that sequel to the applicant's refusal to honour the police invitation extended to him having acknowledged same in his paragraph 3B of the supporting affidavit.

It is stated that the applicant through intelligence was apprehended on the 22nd day of June, 2024 wherein he admits to have sold the said land been subject of investigation to the 4th respondent and undertook to report back to the station on the 25th June, 2024. That upon the applicant's statement above, he was immediately released unconditional on self-recognition, and consequent upon paragraph 11(iv) above, the applicant refused to report back rather wrote a counter-petition to the office of the Inspector General of Police and filed this suit against the 1st – 5th respondents.

It is stated that the applicant further admitted to the said allegation on his counter petition above but alluded his admission in error, loss of memory and undue pressure which are false and an afterthought, and that the applicant was never detained even for a day as he was immediately released on self-cognition on the same day and had failed to report to the office of the 3rd respondent till date, and the applicant is put to the strictest proof, that the blatant falsehood for the applicant to allude of receiving threatening calls hourly, harassed and molested by office of

the 3rd respondent. It is stated that the applicant brought the suit to shield himself from being prosecuted by the officer of the 1st – 3rd respondents, and has not place any material evidence for the grant of the reliefs as the application is brought in bad faith.

In his address, the counsel for the 1st – 3rd respondents formulated three issues for determination, thus:

- (1) Whether the applicant have made out a case under the Fundamental Rights Enforcement Procedure Rules that will entitle him to the reliefs sought in his application?**
- (2) Whether in the circumstances of this case, the 1st and 3rd respondents acted in accordance with the statutory provisions in investigating a criminal petition submitted to the office of the 3rd respondent against the applicant?**
- (3) Whether this Honourable court can restrain the 1st – 3rd respondents from the performance of their statutory duties?**

On the issue No. 1, the counsel for the 1st – 3rd respondents posed this question:

Whether there is any alleged infraction of the applicant's fundamental rights in the light of the facts contained in the applicant's affidavit vis-à-vis the 1st respondent's counter affidavit?

For the applicant to succeed, said the counsel, he must place sufficient material facts regarding such infraction of this fundamental rights upon which the court find the alleged breach, and he relied on the case of **Fajemirokun V. C.B. (C.T.) Nig. Ltd (2002) 10 NWLR (pt 774) 95 at 110, paras. F-G** to the effect that the applicant in this case was arrested by The 4th respondent for the purposes of investigation, and the application has to be struck out for

being meritless as was held in the above case cited, and the applicant failed woefully to depose to facts which show how their rights have been, are being, or likely to be breached by the respondents.

The counsel submitted that they have deposed in the counter affidavit that the applicant is been investigated offences mentioned above, and therefore submitted that any person, who is alleged to have committed a criminal offence, as in the instant case, should submit himself or herself to the police for investigation and when he is granted bail, he should report to them any time his attention is needed.

The counsel submitted that the provisions of sections 4, 23, 27 and 29 of the police Act 2020 is relevant the combined which empowered the police to investigate any person suspected of having committed a criminal offence. It is also submitted that were a policeman acts in accordance with the powers conferred upon him by law and he makes attempts to make an investigation and prosecute, same cannot amount to a violation of the applicant's fundamental rights, and he cited the case of **Mclfren V. Jennings (2003) NWLR (pt 808) p. 470 and Jim Jaja V. C.O.P.(2012) 2 NWLR (pt 1231) 375 at 390, paras. B-C.**

The counsel submitted that it is the law that right to personal liberty and freedom of movement are not absolute, they may be impaired temporarily in order to prevent any person from committing an offence, and he relied on the cases of **Ekwengo V. F.R.N. (2001) 6 NWLR (pt 708) 171 at 177;** and **Ikem V. Nwogwugwu (1999) 13 NWLR (pt 633) p. 140 at 149, paras. G-H,** and section 35 (1) (c) and 41 (2) of the 1999 constitution (as amended). The counsel cited the case of **Okanu V. State Commissioner of Policce (2001) 1 CHR, Priot at 411** where the court held that a citizen

who is invited by the police in the legitimate exercise of their lawful duties cannot sue the police in court, and therefore submitted that the fundamental rights of the applicant was not breached and/or likely to be breached by the 1st – 3rd respondents and to hold that the arrest of the applicant is lawful and not in violation of his fundamental rights.

On the issue No. 2, the counsel submitted that the answer to number 1 issue is in the positive, and submitted that the applicant has not placed anything before the court evidencing infringement of his fundamental right by the respondent, and it is the law that for the applicant to succeed, he must place sufficient material facts regarding such infraction of his fundamental right before the court, and he cited the case of **Fajemirokun V. C.B. (C.T.) (Nig) Ltd (supra)**.

The counsel submitted that it is only a ploy by the applicant to intimidate the respondents, shield themselves from prosecution of the alleged offences committed.

The counsel quoted the provision of section 88(1) of ACJA 2015 to the effect that a person may make a complaint against any person alleged to have committed or to be committing an offence.

The counsel also cited the provision of section 4 of the Police Act 2020 which empowers the police to investigate every allegation against members of the public including the applicant, he cited the cases of **Onyekwere V. State (1973) NSCL 250 (pt 255)**; and **Olatinwo V. The state (2013) 8 NWLR (pt 1355) 126** wherein he quoted the dictum of **Akaahs JSC** to the effect that criminal investigations are carried out by the police. The counsel also place reliance on the case of **Hassan V. EFCC (2014) 1 NWLR (pt 1389) 607 at 360** to the effect that no court has the power to stop the investigative powers of the police or EFCC or any agency

established under law to investigate crime where there is reasonable suspicion of commission of a crime, and the 1st – 3rd respondents acted within the law.

On the issue No. 3, the counsel submitted that the police has the power to investigate upon receiving a complaint or an information relating to the commission of a crime from the members of the public, and the power is derived from sections 4, 23, 27 and 29 of the Police Act, and that where complaint is made to the police which shows that there is reasonable ground to believe that a crime has been committed as in the instant case; the police become bound to detect the crime by way of investigation, which is a process that involves invitation of the suspect, arrest and detention where the situation warrant.

The counsel submitted that they have deposed in their counter affidavit that a complaint was brought to the Deputy Inspector General of Police FCID, Abuja against the applicant which he directed the police especially the 3rd respondent to investigate, and that there was a reasonable ground to invite the applicant in order to conduct an investigation into the alleged crimes. The counsel relied on the case of **A.G. Anambra State V. UBA (2005) 15 NWLR (pt 947) p..44 at paras. F-G** to the effect that for a person to go to court to be shield against criminal investigation and prosecution is an interference of powers given by the constitution to law officers in the control of investigation to the applicant has no recognisable right to which the court can come to his aid. The counsel cited the case of **Asari v. F.R.N.(2007) 157 LRCN paras. F-K** more especially the dictum of **Muhammad JSC**. The counsel submitted that there is no, in the applicant's affidavit, any credible evidence in any way that the fundamental rights of the applicant have been breached, and he cited the case of **Onah V. Okenwa**

(2010) 7 NWLR (pt 119) p. 512 to the effect that the burden is on the applicant to establish that his fundamental right has been infringed. He also cited the case of **A.G. Anambra V. A.G. Federation (2005) 9 NWLR (pt 981) p. 572** and submitted that fact averred in the applicant's affidavit is not cogent and substantial to even justify the reliefs sought, and he urged the court to dismiss this application with substantial cost.

Let me adopt the issue as already formulated by the counsel for the 4th respondent, thus:

Whether from the facts and circumstances of this case, the applicant is entitled to the reliefs sought in this suit?

The importance of an affidavit in support of a fundamental right enforcement procedure cannot be over-emphasized in that the affidavit must set out facts upon which the application is made; and facts contained in an affidavit, form part of the evidence before the court. See the case of **Attah V. I.G.P. (2015) All FWLR (pt 805) 113 at 149 paras. B-C**. In the instant case, the applicant alleges that his rights under sections 33, 34, 35, 36, and 46 (1) have been trampled, section 33(1) of the 1999 constitution provides:

“(1) Every person has a right to life, and no one shall be deprive intentionally of his life, same in execution of the sentence of court in respect of a criminal offence of which he has been found guilty in Nigeria.”

So, in the affidavit in support, the applicant stated that after his release, the officers of the 1st – 3rd respondents have remained on the neck of the applicant and threatened his life and his business; and the officers believed the false claims and unproven allegation that the applicant was the

vendor for the sale of the land of the 4th respondent, and without concluding that investigation into the alleged crimes and therefore making the applicant fear a threat to his life. In the above statements in the affidavit in support of this application, the applicant did not specifically point out the threat to his life to which he is alleging against the respondents. See the case of **Assistant Inspector General of Police V. Ezeanya (2016) All FWLR (pt 830) p. 1361 at 1373, paras. A-C** where the Court of Appeal held that the question of the infringement of fundamental rights is largely a question of facts and does not so much depend on the dexterous submission from the forensic arsenal of counsel on the law. So, in the instant case the facts deposed to by the applicant did not carry the threats to life against the applicant to which the applicant will seek for the intervention of this court, this is because the facts as a matter as disclosed by the affidavit filed is the determining factor in whether the fundamental rights of an individual/applicant have been eviscerated or otherwise dealt with in a manner that is contrary to the provision of the constitution.

Section 34 (1) of the constitution provides:

“(1) Every individual is entitled to respect for the dignity of his person, and accordingly:

- (a) no person shall be subjected to torture or to inhuman or degrading treatment;**
- (b) no person shall be held in slavery or servitude; and**
- (c) no person shall be required to perform forced or compulsory labour.”**

See the case of **Ahuruonye V. Ikonne (2015) All FWLR (pt 811)** where inhuman and degrading treatment interpreted to mean treatment which is devoid of feelings

for the suffering of others, while degrading treatment means reviling, holding one up to public obloquy, lowering a person in the estimation of the public, exposing him to disgrace, dishonor, contempt and ridicule. In the instant case, the invitation of the applicant to the office of the officers of the 1st – 3rd respondents over an allegation and in the course of investigation does not satisfy the definition of inhuman and degrading treatment, and I so hold. The applicant did not state any fact to which it is shown that he is lowered in the estimation of others or that he was disgraced, dishonoured and ridiculed in his affidavit in support of this application. I therefore do not see anything of such which would warrant the applicant to say that his right to inhuman and degrading treatment has been infringed and I so hold. Section 35(1) of the constitution provides:

“(1) 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”

and the constitution in paragraphs (a) – (f) of subsection (1) of section 35 set down the exceptions. It is in the affidavit in support that in the month of December, 2023, the applicant was served with a letter of invitation by the 1st – 3rd respondents dated 19th December, 2023 to attend an interview at the Force Criminal Investigation Development (FCID) on the offences enshrined in the Penal Code; and the applicant honoured the invitation and he made statement and was granted administrative bail. On the second coming and after he wrote the 2nd statement, the applicant was released on bail.

So, now the question that agitates in the mind of this court is:

What did the officers of the 1st – 3rd respondents do that the right of the personal liberty of the applicant was infringed?

By the affidavit in paragraph 3(b)(c) (f) (g) it was only that he was invited and was release on administrative bail on the same say. Thus, in the circumstance in paragraph (c) of subsection (1) of section 35 of the constitution, the personal liberty of the applicant may be deprived in the circumstance in paragraph (c) of subsection to the effect that his liberty may be curtailed upon reasonable suspicious of his having committed a criminal offence. See the case of **Alashe V. FRN (2018) All FWLR (pt 952) pp. 85 .87 pars. G-B per Tsaumani (JCA)** as he then was where he said in essence that in any of such instance as enumerated under section 35(1) of the constitution of the Federal Republic of Nigeria therefore, the authorities have been constitutionally empowered to take away or derogate from such person's right to personal liberty. See also the case of **Ozah V. E.F.C.C. (2018) All FWLR (pt 953)**, the Court of Appeal relying on the case of **Onyekwere V. State (1973) JSC I** where it was held in the essence that if a complaint is made to the police that an offence has been committed, it is their duty to investigate the case not only against the person about whom the complaint has been made but also against other person who may have taken part in the commission of the offence.

In the instant case, the invitation extended to the applicant by the officers of the 1st – 3rd respondents is in order and does not seem to violate the fundamental right of the applicant, and I therefore so hold.

Section 36(1) of the constitution which provides:

“(1) In the determination of his civil rights and obligations, including any question or

determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartially.”

It appears that the above quoted provision does not apply to the invitation extended to the applicant by the officers to 1st – 3rd respondents, as it is a rule of fair hearing.

The matter is not taken to court yet and the applicant should not have complained for infringement of his fundamental right except when the matter is before the court. The section 36 is not relevant here to rely on, and I so hold.

Section 46(1) of the constitution provides:

“(1) Any person who alleged that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress.”

It is on the above quoted provisions that the applicant filed this suit before this court, and as such under the 1999 Constitution (as amended) the rights are preserved by Chapter IV thereof and the right to fundamental right is conferred by section 46(1) and (2) of the constitution (as amended). The section does not cover any infringement of any right rather as a tool upon which a complaint will be made by an individual that his fundamental rights have been infringed, and to this, I so hold. See the case of **Jaiyesimi V. Darlington (2022) All FWLR (pt 1152)** where it was held that by the Supreme Court an action will not succeed against individual who merely gave information to the police, who on their own initiative decided to effect the

arrest of a viable suspect of a crime. In the instant case, the person who set the law into motion is the 4th respondent, and it was the 5th respondent that mentioned the name of the applicant, and the two respondents cannot be sued for infringement of the rights of the applicant, and to this, I so hold. See the case of **Onyekwere V. State (supra)**.

In consideration of the counter affidavit of the 4th respondent and that of the 1st – 3rd respondents to the effect that they all denied infringing the rights of the applicant, I hold the view that the applicant's fundamental rights as enshrined in sections 33, 34, 35, 36 and 46 (c) of the constitution (as mended) have not been infringed. See the case of **Mbang V. Janet (2015) All FWLR (pt 767) p. 770 at pp. 781-782, paras. H-A**.

The relief No. 4 of the application is refused as the court cannot give order to restrain any person or body from the exercise of its lawful duty in accordance with the law. See the case of **Govt. of Kwara State V. I.B.M. Ltd. (2015) All FWLR (pt 967) 1. 794 paras. G-B per Onyenenan JCA**. See also **Odo V. Essen (2014) All FWLR (pt 749) p. 1186 at 1201, paras. A-E**.

Looking at the averments in the affidavit in support of the applicant, same could not point out exactly what the respondents did apart from the calls which he alleged to have been made them, and he did not mention what were the words used by those who called him, but only said that the officers of the 1st – 3rd respondents were on his neck that was why he felt threatened, and by the provisions of section 45(1) of the 1999 constitution, nothing in sections 37 to 41 of the constitution shall invalidate what appears to be reasonably justifiable in a democratic society for the purpose of protecting the rights and freedom of other

persons. See the case of **F.R.N. Daniel (2012) All FWLR (pt 627) p. 693 at 704, paras. A-C.**

In the circumstances of this application, it is hereby refused in its entirety and also dismissed accordingly for lacking in merit.

Hon. Judge
Signed
03/02/2025

Appearances: The applicant absent in court.

Dapenone Akpomudiavie Esq appeared for the applicant.

Godwin Sunday Ogboji Esa appeared for the 4th respondent.