

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT 57 KUJE ABUJA**  
**THIS 14<sup>TH</sup> DAY OF JULY 2025**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ODUNAYO O. BAMODU, mni**

**SUIT NO. FCT/HC/CV/115/2025**

**BETWEEN**

ABRAHAM DESMOND AMEH.....APPLICANT

**AND**

1. COMMISSIONER OF POLICE, )  
(FCT POLICE COMMAND) )  
2. THE AREA COMMANDER )  
(MAITAMA AREA COMMAND) )  
3. MR. MARCUS ).....RESPONDENTS

**REPRESENTATION**

A. O. Amagwula Esq, with V. O. Iyo Esq, and E. R. Ekpeyong Esq, for the 1<sup>st</sup> & 2<sup>nd</sup> Respondent.  
M. M. Isa Esq, for the Applicant.  
Rudolph Ekwevie Esq, for the 3<sup>rd</sup> Respondent.

**JUDGMENT**

**INTRODUCTION**

The Applicant by Motion on Notice dated 6<sup>th</sup> May 2025 and filed on the 7<sup>th</sup> May 2025 sought the following orders:

1. A Declaration of this Honourable Court that the arrest and detention of the Applicant is unlawful and contrary to Sections 35, 36 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
2. An order directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents either by themselves, agents, representatives and /or privies not to further arrest and detain the Applicant.
3. An order compelling the Respondents to tender an unreserved public apology to the Applicant for the infringement on his fundamental rights.

4. An order mandating the Respondents jointly and severally to pay to the Applicant general damages of N10,000,000.00 (Ten Million Naira) only for arrest, harassment, intimidation and unlawful detention of the Applicant.
5. And for such further order(s) as this Honourable court may deem fit to make in the circumstances.

The Applicant also filed an accompanying Statement wherein the grounds for his application were stated; a 19 paragraph affidavit deposed to by the Applicant; and a Written Address.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not file any process although on the 27<sup>th</sup> of May 2025 when the case was called for hearing, one A.V. Iwu of counsel appeared for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

The 3<sup>rd</sup> Respondent filed, on the 26<sup>th</sup> of May 2025, a counter affidavit dated the same day, containing 21 paragraphs and deposed to by the 3<sup>rd</sup> Respondent.

The Applicant subsequently filed, on the 30<sup>th</sup> of May 2025, a Further and Better Affidavit in response to the 3<sup>rd</sup> Respondent's counter affidavit.

The matter was heard on the 23<sup>rd</sup> day of June 2025 and adjourned to the 14<sup>th</sup> of July 2025 for judgment. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents afterwards on the same day, after the hearing of the matter brought to the Registrar for filing in the court's record the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' counter affidavit dated 20<sup>th</sup> June 2025.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' counter affidavit dated 20<sup>th</sup> day of June 2025 is hereby struck out for the following reasons.

Order II R.6 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 (FREPR) provides that: ***"Where the respondent intends to oppose the application, he shall file his written address within 5 days of the service on him of such application and may accompany it with a counter affidavit."***

The Motion on Notice was served on the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on the 20<sup>th</sup> of May 2025. The time between service of the application on the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and filing of their counter affidavit is a period of 31 days, clearly out of the 5 days allowed by the rules.

No attempt to cure the incompetence of the process was made by seeking the leave of court to file the said counter affidavit out of time.

I am well aware of the holden of the Supreme Court in the case of **LATEEF ADEGBITE & ANOR. v. AMINU AMOSU (2016) LPELR-40655 (SC)** at pp.26-27 F-A, that ***“Rules of practice are meant to be respected and obeyed... Be that as it may the rules are handmaids of law to aid in the due administration of justice and where the strict application of any rule will result to a technicali shackling, instead of enhancing the due administration of justice, the Court should exhibit some creativity and get around such rule to do substantial justice to the parties.”***

I have considered the above through the prism of clause 3 (f) of the Preamble to the FREPR, which provides that: ***“The court shall in a manner calculated to advance Nigerian democracy, good governance, human rights and culture, pursue the speedy and efficient enforcement and realisation of human rights.”***

It is in these circumstances that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents’ counter affidavit dated 20<sup>th</sup> day of June 2025 is struck out.

### **CASE OF THE PARTIES**

The Applicant’s case is that the 3<sup>rd</sup> Respondent lodged a complaint against him at the 2<sup>nd</sup> Respondent’s Area Command Office, Maitama FCT of sale of a faulty GL450 Mercedes Benz 2007 model in the sum of N6,700,000; demanding refund of his money. The vehicle was purchased from the Applicant by one Mr. Ifeanyi after inspection and certification of the vehicle by a mechanic he brought. Sometime after, Mr. Ifeanyi sent the car through Mr. Malik back to the Applicant who spent N940,000 to repair the key starter. No other complaint was heard from Mr. Ifeanyi until the Applicant was invited by the 2<sup>nd</sup> Respondent on the 11<sup>th</sup> of April 2025. The Applicant told the 2<sup>nd</sup> Respondent that he sold the car to Mr. Ifeanyi and not the 3<sup>rd</sup> Respondent whom he did not know and had never met. The 3<sup>rd</sup> Respondent insisted he bought the vehicle through Mr. Ifeanyi and wanted his money back. The Applicant was detained for about 8 hours by the 2<sup>nd</sup> Respondent until he was forced to write an undertaking to provide another vehicle and released on bail after paying N45,000 to the IPO. When the Applicant could not provide another vehicle as undertaken, he was forced to write another

to make a refund of N6,700,000 within one week. Since then, the 2<sup>nd</sup> Respondent, through the IPO and the 3<sup>rd</sup> Respondent have been calling to harass and intimidate the Applicant.

The 3<sup>rd</sup> Respondent's case is that sometime late 2024 he purchased a Mercedes Benz GLE (2007 Model) for N6,700,000.00 from the Applicant through a middleman, Mr. Ifeanyi. After inspection by a mechanic introduced by Mr Ifeanyi the 3<sup>rd</sup> Respondent took possession of the car from the Applicant. Shortly after the vehicle started developing serious mechanical and electrical issues and the 3<sup>rd</sup> respondent spent over N1,500,000.00 to fix the car. All efforts were fruitless and the fact, which was not disclosed to him by the Applicant, was discovered after further investigation that the engine of the vehicle had been tampered with before the sale. The 3<sup>rd</sup> Respondent thereafter made several efforts to contact Mr Ifeanyi and the Applicant to get back the money paid for the car as the cost of replacement of the engine was valued at about N1,500,000.00. The Applicant refused and neglected to refund the money nor offered any redress for the car that had been returned to him and which he had likely sold off, so the 3<sup>rd</sup> Respondent lodged a complaint of fraudulent transaction to the police at Area Command, Maitama sometime in February 2025. The 3<sup>rd</sup> Respondent was present at the station when the Applicant voluntarily reported in response to police invitation, and he was not arrested, assaulted, harassed or detained.

### **SUBMISSION OF PARTIES**

The Applicant raised two issues for determination, namely:

1. Whether or not the applicant's fundamental rights has (sic) been breached by the Respondents and therefore entitled to the reliefs sought.
2. Whether the Applicant is entitled to damages for the breach of his fundamental rights from the Respondents.

On the first issue, M.M Isa Esq. submits that Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria, and Order 11 R.1 of the FREPR grants authority to a person, as the Applicant, whose fundamental rights have been, is being or likely to be contravened, to apply to a high court in the state to protect his rights.

On the second issue, learned counsel submits that it is trite principle that damages naturally flows from the breach of fundamental rights, and that S. 35 (6) of the 1999 Constitution commands compensation and public apology to a person unlawfully arrested or detained. Counsel respectively cites in support the cases of **ABIOLA v. ABACHA (1996) 1 H.R.L.R.A 447 at 454; and ISENALUMNE v. JOYCE AMADIN (2001) 1 CHR 458, including ABASIN BAND & ORS. v. GUNARATNET& 3 ORS. (2005) CHR 291 at 294.**

The 3<sup>rd</sup> Respondent on his part raised three issues for determination as follows:

1. Whether the Applicant's fundamental rights under Sections 35, 36 and 41 of the 1999 Constitution (as amended) were breached by the 3<sup>rd</sup> Respondent.
2. Whether the institution of this action is a proper invocation of the Fundamental Rights (Enforcement Procedure) Rules 2009.
3. Whether the Applicant is entitled to the reliefs sought in this application.

Cyril Irorakpor Esq. submits with respect to issue one that the right to personal liberty under S.35 of the 1999 Constitution is not absolute as it can be derogated in accordance with the law. That the Applicant was invited by the police pursuant to the 3<sup>rd</sup> Respondent's complaint of sale of defective vehicle under false pretence and the Applicant was not detained, harassed or intimidated. Counsel cites *ONYEKWERE v. COP (2023) LPELR-60012 (CA)*; *EZEADUKWA v. MADUKA (1997) 8 NWLR Pt.518, 635.*

On issue two, learned counsel submits that the fundamental rights enforcement procedure cannot be used to frustrate or shield against civil or criminal liability as the Applicant attempts to do in this case; and cites *SEA TRUCKS NIG. LTD. v. ANIGBORO (2001) 2 NWLR Pt.696, 159.*

On issue three, learned counsel submits that the Applicant having not established unlawful conduct on the part of the Respondents is not entitled to the reliefs sought, referring to *AGBI v. OGBEH (2006) 11 NWLR Pt.990, 65;* and *OGUGU v. STATE (1994) 9 NWLR Pt.366, 1.*

## DECISION

The material facts relevant to this case are that the 3<sup>rd</sup> Respondent bought a car from the Applicant through one Mr. Ifeanyi. The car turned out to be faulty, so the 3<sup>rd</sup> Respondent demanded his money back, and when this was not forthcoming he reported the matter to the 2<sup>nd</sup> Respondent as a fraudulent transaction. The 3<sup>rd</sup> Respondent's reason was that the Applicant kept the information that the engine of the car had previously been tampered with away from him. The 2<sup>nd</sup> Respondent invited the Applicant who voluntarily honoured the same but under protest that the 3<sup>rd</sup> Respondent was unknown to him. However, he was prevailed upon to make an undertaking to provide another vehicle within a week. He was at the station about 8 hours and was allowed to leave on bail after parting with N45,000 to the IPO.

The fact that an Applicant's averments are not controverted does not ipso facto make the same proved before the court.

In the case of **NWAOGU EZEAKOLAM v. INSPECTOR GENERAL OF POLICE & ORS (2022) LPELR-59073 (CA)** the Court of Appeal, at pp.19-20, E-B, held and reiterated the principle that *"It is quite elementary in law that given the nature of declaratory reliefs, it cannot be given just for the asking, even in default of appearance or pleadings. The court must be satisfied by credible evidence before it makes a declaration of right to a party. This underscores why the grant or refusal of declaratory reliefs is subject to the discretion of the Court. It is trite that in a claim for declaration the onus is on the plaintiff to establish his claim upon the strength of his own case and not upon the weakness of the case of the defendant. The plaintiff must therefore satisfy the court that upon the pleadings and cogent and credible evidence adduced by him that he is entitled to the declaration of right in his favour."*

It is my finding, and I so hold that the applicant has not discharged the onus of proof that he was arrested and detained by the Respondents. I am at a loss as to how the Applicant's averment in paragraph 11 in the following words: **"That I was invited by the 2<sup>nd</sup> Respondent on 11<sup>th</sup> April 2025 and when I got there I was asked if I sold a vehicle to the 3<sup>rd</sup> Respondent and I said no,"** translated to an arrest. The Applicant did not

provide any other particulars relating to his arrest on the said date or any other date.

Similarly, the Applicant averred that he was detained for about 8 hours after which he was released on bail.

For a proper understanding of this point, it is apposite to quote the relevant provisions of Section 35 as follows:

***“(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 –***

***... (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...***

***(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,...***

***(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 kilometers, 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.”***

It is clear from the evidence that the Applicant was released by the police to go after 8 hours and after having written a statement and an undertaking to provide another vehicle.

Firstly, there are no facts established to show that the Applicant was arrested.

Secondly, the Applicant claimed he was detained for eight hours. The question is, was he detained or did he interpret the time he spent at the police station as a detention?

My humble view, which accords with the trite principle of law is that once an allegation of the commission of a crime is laid before the police, it is the constitutional and statutory duty of the police to investigate the allegations. In discharge of their duties, the police have the statutory and constitutional power to invite, arrest and detain anyone they suspected of having committed an offence. See **INSPECTOR GENERAL OF POLICE & ORS v. MR. KENNEDY UMOLO & ANOR. (2022) LPELR-57715 (CA)** p.41 D-E.

The Court of Appeal went on to say at pp.47-48 F-A ***“It is not the duty of the court to tell the police that a suspect must be released once his statement does not implicate him. Even if a suspect is not implicated by his statement to the police, it is the sole discretion of the police to decide how to proceed with the investigation. Obtaining statements from a suspect and potential witnesses is just an aspect of police investigation. They may take any action within the ambit of the law they deem fit to take upon investigation. They may arrest, detain, and prosecute an alleged offender.”***

From the facts of this case, it would appear that the Applicant was invited based on an allegation of the commission of a crime, his statement was taken and he was allowed to go. All the above, without more, are within the duties of the police. The Applicant has therefore not established that he was unlawfully detained.

I find further support from the Court of Appeal in the same case at p.51-52 E-A, thus ***“The court should at all times be cautious and reluctant not to interfere unjustifiably and unnecessarily with the discharge of the police functions except in very clear cases of infringement of the fundamental rights of the citizen guaranteed by the Constitution.”***

It is equally important to state that the 3<sup>rd</sup> Respondent in his evidence stated that he reported the matter to the police to investigate what he believed was a fraudulent transaction.

Even if the 3<sup>rd</sup> Respondent’s belief was erroneous it is left to the police, after initial investigation, to make a decision of the proper thing to do. A decision that eventually breaches the Applicant’s fundamental rights will generally not be ascribed to the 3<sup>rd</sup> Respondent unless he actively

controlled and participated in the breach. The Applicant has not provided evidence showing this.

I am well conversant, and have been guided by the Supreme Court decision in **THEOPHILUS KURE v, COMMISSIONER OF POLICE (2020) LPELR-49378 (SC)** at p.33 B-D where the court held that ***“When as in the circumstances of this action, a purely civil matter is reported to the police, such a person cannot go scot-free as the report ought not to have been made at all since it is not within the purview of police duties. It is a report made malafide and he will be equally liable for the action taken by the police irrespective of whether he actively instigated them or not, since he had no business involving the police in a purely civil matter in the first place. Such conduct portrays disregard of the law and is aimed at using the coercive powers of the State to punish a contracting party in a purely civil matter ought to be mulcted in exemplary damages.”***

It is my belief that the decision would not seem to apply to the circumstances of this case, where the 3<sup>rd</sup> Respondent genuinely believe some crime has been committed (considering the controversy surrounding the actual parties or persons involved in the transaction, denial of the 3<sup>rd</sup> Respondent as a party, and the question whether the car was deliberately tampered with or not), although as it would eventually appear, from the facts presented that his belief was erroneous.

Nevertheless, the facts of this case show that whatever issues that might be burning between the Applicant and the 3<sup>rd</sup> Respondent, it is clearly a commercial transaction gone awry. Whatever is the belief of the 3<sup>rd</sup> Respondent his recourse does not lie to the police but to a civil action to seek any reliefs available under contract law. This much is apparent from the entirety of the 3<sup>rd</sup> Respondent’s evidence.

Furthermore, the 3<sup>rd</sup> Respondent’s counsel’s submission captures the essence of the dispute between the Applicant and the 3<sup>rd</sup> Respondent in these words; ***“The subject matter here is clearly a dispute arising from a sale of a vehicle with hidden defects and attempts by the 3<sup>rd</sup> Respondent to recover the consideration paid.”*** This could not have been better captured, I suppose. I commend Mr. Cyril Irorakpor for this exemplary candour, as any counsel is expected to conduct himself, by the way. However, learned counsel missed the point when he attempted,

unsuccessfully in my view, to force this as empowering the police under S.4 of the Police Act and S.214 of the 1999 Constitution to investigate the same as an alleged crime. Civil wrongs and criminal wrongs, in general, are like oil and water; they do not mix.

Contrariwise, is this sufficient to hold the 3<sup>rd</sup> Respondent liable as claimed by the Applicant?

It is my view that in the circumstances of the instant case, liability of the reporting party is not independent of liability for the action taken by the police. Therefore, if the police is guilty of any unlawful action emanating from the report malafide, the guilt translates to the reporting party. Where the police, regardless of the report did not take any unlawful action exposing them to breach of fundamental rights, the reporting party will equally not be liable.

It is worth repeating that it is only when the Applicant has proved that he was unlawfully arrested and detained that an explanation would be required of the person against whom the allegation was made. The Applicant has not established this. Similarly, ***“[g]enerally, it is the duty of citizens of this country to report cases of commission of crime to the Police for their investigation and what happens after such report is entirely the responsibility of the Police. The citizens cannot be held culpable for doing their civic duty unless it is shown that it is done mala fide.”*** See CHIEF (DR.) O. FAJEMIROKUN v. COMMERCIAL BANK NIGERIA LTD & ANOR. (2009) LPELR-1231 (SC).

And again, in HRH EZE (ENGR) PETER C. IHUA-MADUENYI (JP) v. HM, EZE ROBINSON O. ROBINSON JP & ORS (2019) LPELR-47252 (CA) at p.21 C-D the Court of Appeal held that ***“It has to be noted that a mere invitation of a person by the police without more, is within their powers; except where it can be shown that the police misused their powers. Thus, the exercise of the powers of the police to invite and investigate crimes simpliciter cannot amount to a breach of fundamental rights.”***

With regards to Sections 36 (1) of the Constitution, the Applicant has equally not established how his rights to fair hearing was breached by the Respondents. There was indeed no attempt to provide any facts in proof of this.

Having considered the evidence before the court and the submission of learned counsel to all the parties, I hereby hold, from the foregoing reasons, that the Applicant has not established that his fundamental rights were violated by the respondents as claimed.

On the issue of damages, counsel has cited S.35 (6) of the 1999 Constitution as entitling him to damages. S.35 (6) provides that “***Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, ‘the appropriate authority or person’ means an authority or person specified by law.***”

This, without wasting too much breath, is inapplicable simply because the Applicant was neither arrested nor detained.

A question that seems remaining is the averment of the Applicant that he paid N45,000 to the IPO to effect his bail. The question is what is the court to do with this fact? Shorn of speculation, the Applicant has not provided sufficient evidence to indicate the circumstances, purpose, or condition upon which the payment was made. Although the Applicant made the payment for his bail, and the natural inference would seem that he was extorted. However, the payment could also have been made under different circumstances and a variety of reasons including bribe, inducement, extortion, or even remotely bond. Without cogent evidence I am reluctant to make a definitive finding based only on speculation.

More importantly, there are no ancillary reliefs claimed in respect of this. Even if it was, or could be granted under the omnibus prayer, the main reliefs having failed, any other ancillary reliefs not specifically enforceable under the enforcement of fundamental rights procedure will automatically fail.

Fundamental rights are not fundamental or protected just because they constitute a breach of some rights to which a party is entitled. Fundamental rights, as far as the territorial space of Nigeria is concerned, are those specifically recognised as such, and strictly much so, under the 1999 Constitution and to which the Constitution has given a higher degree of protection.

In view of this, therefore, the claim of the Applicant is hereby refused and dismissed in its entirety.

I make no orders regarding cost.

This is the judgment of the Court.

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**HON. JUSTICE O. O. BAMODU, mni**  
**(Presiding Judge)**