

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT 57 KUJE ABUJA**  
**THIS 10<sup>TH</sup> DAY OF JUNE 2025**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ODUNAYO O. BAMODU, mni**

**SUIT NO. FCT/HC/CV/56/2025**

**BETWEEN**

DR. OSONDU GODWIN ATAGBUZIA.....APPLICANT

**AND**

1. THE NIGERIAN POLICE FORCE )  
2. INSPECTOR GENERAL OF POLICE )  
3. OFFICER-IN-CHARGE (INTELLIGENCE )  
AND INVESTIGATION UNIT, ABUJA GEOGRAPHIC )  
INFORMATION SYSTEM POLICE STATION) )  
4. SERGEANT OTHRAN ISHAKU )  
5. NURUDEEN USMAN ).....RESPONDENTS

**REPRESENTATION**

E. C. Ordu Esq. for the Applicant.

**JUDGMENT**

**INTRODUCTION**

The Applicant by an Originating Motion dated 18<sup>th</sup> December 2024 and filed on the 8<sup>th</sup> day of January 2025 sought the following orders:

1. A Declaration that the arrest, detention and bail of the applicant by the 1st to 4th respondents acting on the direct instruction/instigation of the 5th respondent for a civil dispute involving the determination of title to land is unwarranted, oppressive, unconstitutional and same constitutes a flagrant breach of the applicant's right to personal liberty and dignity of human person, as enshrined under the Constitution of the Federal Republic of Nigeria, 1999 and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act is therefore unconstitutional and illegal.

2. A Declaration that the continuous invitation from the 4th respondent for further investigation on a civil dispute with the aim of determining ownership of title of the land in question is unlawful, wrongful, unconstitutional and constitutes a violation of the Applicant's Fundamental Rights to personal liberty, and freedom of movement and right to fair hearing guaranteed by the Constitution of the Federal Republic of Nigeria 1999 and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria.
3. A Declaration that the continuous interference of the 3rd and 4th respondent (sic) on a civil matter involving determination of title to land in connivance with the 5th Respondent is unlawful and constitutes a violation to the applicant's fundamental right as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 as amended.
4. An order of perpetual injunction restraining the 1st to 5th Respondents, their servants, agents and or privies from further intimidating, harassing the Applicant or doing anything inconsistent with the Fundamental Rights of the Applicant as enshrined in the Constitution of the Federal Republic of Nigeria 1999.
5. An Order of perpetual injunction restraining the 5th respondent from using or attempting to use the 1st to 4th respondents or any other police formation from attempting to arrest, arresting and or detaining the applicant over a purely civil dispute or for no justifiable cause.
6. An Order for the 3rd and 4th Respondent (sic) to return with immediate effect the original Offer of Terms of Grant/Conveyance of Approval of Grant of Right of Occupancy of the Applicant in their possession.
7. The sum of N20,000,000.00 (Twenty Million Naira) only as general and exemplary damages against the Respondents jointly and/or severally for the violation of the applicant's fundamental rights.
8. And for such further or 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 20 paragraph affidavit with three exhibits A, B, and C; and a Written Address.

The 1<sup>st</sup> to 4<sup>th</sup> Respondents together filed a counter affidavit on the 18<sup>th</sup> of February 2025, while the 5<sup>th</sup> Respondent filed a conditional appearance on the 10<sup>th</sup> of February 2025, and later a counter affidavit on 18<sup>th</sup> February 2025.

The Applicant subsequently filed, on the 6<sup>th</sup> of March 2025, a Further Affidavit in response to the Respondents counter affidavits.

### **CASE OF THE PARTIES**

The Applicant's case is that he is a retiree resident at No. 136 Wonderland Estate, Kukwaba District, Abuja. On the 6<sup>th</sup> of December 2024 the Abuja Geographic Information System (AGIS) Police Unit invited Mr. Christian Adeyemi, a staff of Wasserburg Construction Company Limited for investigation in respect of a legal search he had initiated on behalf of his company on the Applicant's land at Plot 367 Kaura District, B11 Cadastral Zone, Abuja. The Applicant learned from his attorney, on the 9<sup>th</sup> of December 2024, that Mr. Christian Adeyemi had been detained and would only be released if the Applicant's attorney came to the police unit. The Applicant volunteered to accompany his attorney to the police unit where he was interrogated by the 4<sup>th</sup> Respondent regarding title to his aforementioned plot of land, and upon the complaint of the 5<sup>th</sup> Respondent that someone was carrying out a search on the 5<sup>th</sup> Respondent's property. The Applicant informed the Officer-in-Charge that he bought the property from Mrs Grace Aniebo and presented his proof of ownership, namely Offer of Terms of Grant/Conveyance of Approval of Grant of Right of Occupancy (RofO), which was confirmed at AGIS as being authentic. The RofO was retained by the police for further investigation and not returned to the Applicant. A land surveyor, Mr. Inusa Tsenba, was invited by the 4<sup>th</sup> Respondent to identify the land, and the Applicant was asked to pay N25,000.00 to the surveyor (receipt of payment as Exhibit A). After the inspection, the Applicant was made to write a statement, detained and eventually granted bail on self-recognisance. The Applicant subsequently wrote a letter (Exhibit B) through his attorney to the 3<sup>rd</sup> Respondent to stop interfering in a civil matter relating to ownership of the aforementioned plot of land. The Respondents did not stop,

so the Applicant paid N500,000.00 to his attorney to institute this action (receipt as Exhibit C).

The 1<sup>st</sup> to 4<sup>th</sup> Respondents case is that on the 5<sup>th</sup> of December 2024 the 3<sup>rd</sup> Respondent received a complaint from the 5<sup>th</sup> Respondent of the theft of Right of Occupancy, fraud, and criminal misrepresentation against Adeyemi Christian (Exhibit NPF1), which prompted an investigation. On the 6<sup>th</sup> of December 2024 the 1<sup>st</sup> to 4<sup>th</sup> Respondents invited the Complainant and took his statement (Exhibit NPF2). On the 21<sup>st</sup> of December 2023 (sic), the 1<sup>st</sup> to 3<sup>rd</sup> Respondents invited the Applicant but released him on the condition that he should be ready to come back until the conclusion of investigation (Exhibit NPF3). In the course of investigation, a prima facie case of conspiracy, criminal fraud, theft of title documents and criminal misappropriation was established against the Applicant (Exhibit NPF4). That the legal search report (Exhibit NPF5) indicated that the Applicant had no good title to the aforementioned plot of land; and the original allottee denied knowing the Applicant through her statement (Exhibit NPF6). The original allottee had earlier reported that her Right of Occupancy was missing and had deposed to an affidavit of the missing document in court (Exhibit NPF7a & 7b); and had also applied for a certified true copy of the same to the Director of Land with a letter of authority to the 5<sup>th</sup> Respondent to receive same on her behalf (Exhibit NPF8a & 8b).

The 1<sup>st</sup> to 4<sup>th</sup> Respondents denied knowing Mr. Innusa Tsenba Mallo or being aware of any payment to him. The 1<sup>st</sup> to 4<sup>th</sup> Respondents averred that the Applicant was not forced but voluntarily made a statement during the investigation, did not give any undertaking and was not detained.

The 5<sup>th</sup> Respondent's case is that he is a staff of the Abuja Geographic Information System (AGIS). He is the first son of Alhaji Usman Ahmed Biri, the owner of the aforementioned plot of land, who informed him sometime in December 2024 that he purchased the said plot from Mrs. Grace Nwakego Aniebo. Mrs Aniebo informed his father that the Statutory Right of Occupancy (R of O) was missing, and she had deposed to an affidavit (Exhibit A1), and reported the loss at the police station (Exhibit A2), as well as procured newspaper publication for the same (Exhibit A3). The 5<sup>th</sup> Respondent and his father thereafter lodged a complaint about the missing document at the AGIS police outpost. The missing R of O was found in the

possession of a third party on the 5<sup>th</sup> of December 2024 when he came to conduct a search at the AGIS, on behalf of his company, in contemplation of buying the said plot from the Applicant. The 5<sup>th</sup> Respondent also averred that the Applicant did not honour police invitation for investigation until the third invitation. That he reported the offence of theft of Statutory Right of Occupancy and not title to land to the police upon which the Applicant was interrogated and allowed to go.

## **SUBMISSION OF PARTIES**

The Applicant raised two issues for determination, namely:

1. Whether from the facts and circumstances of this case, it is not in the interest substantial (sic) justice to grant the reliefs being sought by the applicant in this application.
2. Whether the Applicant is entitled to award of damages.

On the first issue, learned counsel submits that Section 46 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (1999 Constitution) provides that “Any person who alleges that any of the provisions of the 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.” And cites the case of JACK v. UNIVERSITY OF AGRICULTURE MARKURDI (2004) ALL FWLR Pt.200, 1506 at 1521 F.

Learned counsel also submits that Section 35 (1) of the 1999 Constitution guarantees the right of the Applicant to the dignity of his person, personal liberty, and freedom of movement. And further that mere wrongs or violation of certain rights, policies or instructions cannot ipso facto constitute an offence, and neither is the police allowed to interfere in civil matters contrary to Section 4 of the Police Act 2020. Counsel submits that violation of these constitute a breach of the Applicant’s fundamental rights and that the Applicant has disclosed sufficient facts to sustain the reliefs sought.

On the second issue, learned counsel submits that the Applicant is entitled to damages as the Supreme Court has held in OKONKWO v. OGBOGU (1996) 37 LRCN 580 that any trespass to a person, however slight, gives right to recovery of nominal damages.

Learned counsel further submits that the Applicant has been deprived of peaceful night rest which he previously enjoyed and that because the Respondents do not have any justification for their conduct, the Applicant is entitled to exemplary damages in accordance with *ODOGU v. A.G FEDERATION*, (1996) 6 NWLR Pt.456, 508, at 519 F and 521 H.

The Applicant concludes that the court is constitutionally empowered to grant all the reliefs sought, citing Section 35 (6) of the 1999 Constitution; Order IV Rules 3, 4 (c), (iv) and (v), and Order XI of the Fundamental Rights (Enforcement Procedure) Rules 2009; and the case of *COMPTRROLLER OF NIGERIA PRISONS SERVICE v. ADEKANYE* (1999) 6 NWLR Pt.607, 381 at 388 G.

The 1<sup>st</sup> to 4<sup>th</sup> Respondents on their part raised one issue for determination as follows: Whether having regard to the affidavit evidence before this honourable court, the Applicant has met the requirement for his application to be entertained under the Fundamental Right (sic) Enforcement Procedure Rules.

Learned counsel submits that acts done by the police by virtue of Section 4 of the Police Act are not unconstitutional or neither could be a breach of fundamental rights, particularly where a citizen is arrested on a reasonable suspicion of having committed an offence, as held in *EZE v. I.G.P* (2017) 4 NWLR Pt.1554, 44 at pp.74-75 G-B.

Counsel further submits that by virtue of the 1999 Constitution, Section 4 of the Police Act, and the warrant of arrest issued by the court, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents invited the Applicant and other suspects for investigation of allegations of fraud, theft of Right of Occupancy, and misrepresentation.

Learned counsel submits also that the Applicant's application is an attempt to prevent the 1<sup>st</sup> to 4<sup>th</sup> Respondents from carrying out their constitutional duties of concluding investigation and filing a charge in court. That the Applicant has not established that he was unlawfully arrested and detained by the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

The 1<sup>st</sup> to 4<sup>th</sup> Respondents submit finally that the Applicant cannot misuse Chapter IV of the 1999 Constitution as a shield against investigation and prosecution, as held in *HASSAN v. EFCC* (2004) 1 NWLR Pt.1389, 607 at 626.

The 5<sup>th</sup> Respondent also raised a lone issue for determination, thus: Having regards to 35 (1), 36 (1), 41 (1) and 44 (1) (sic) of the 1999 Constitution of the Federal Republic of Nigeria as amend (sic) and in light of the facts of this case as presented, whether the Applicant is entitled to his claim.

Learned counsel submits that various clauses of statute must be read and interpreted harmoniously as held in *PPA v. SARAHI* (2007) 17 NWLR Pt.1064, 453 at 511, and *LAMI KORO OJOKOLOBO & ORS v. LAPADE ALAMU & ANOR* (1987) 3 NWLR Pt.61, 377. That while Section 35 (1) of the 1999 Constitution provides entitlement to personal liberty to every person, it also provides exceptions in subsection (1) (c) that the right can be derogated for the purpose of the execution of the order of a court, or upon reasonable suspicion of the commission of, or prevention as reasonably necessary, of a criminal offence.

Learned counsel submits that the facts presented to the court show that the case relates to theft, fraud, criminal misrepresentation and possible forgery, rather than ownership of or title to land.

Learned counsel also argues that with respect to Section 36 (1) of the 1999 Constitution on whether the Applicant's right of fair hearing was breached; that the Applicant was given opportunity to join issues with the respondents; and cites the cases of *ANAZODO v. P.I.T (NIG)* (2008) 6 NWLR Pt.1084, 529; and *GOV. OYO STATE v. FOLAYAN* (1995) 8 NWLR Pt.413, 292.

Learned counsel submits further that right to move freely throughout Nigeria under Section 41 of the 1999 Constitution is curtailed by the proviso to Section 41 (2) regarding any law reasonably justifiable in a democratic society, 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. And argues that the Applicant has not established that his freedom of movement was curtailed.

Learned counsel also submits that Section 44 (2) (k) of the 1999 Constitution allows the temporary seizure of property for the purpose of any examination, investigation or enquiry and that this justifies the seizure of the stolen Right of Occupancy for purposes of investigation. Counsel submits further that the Applicant failed to establish that the investigation by the police relates to a civil dispute rather than the allegation of a stolen Right of Occupancy. And

that theft is not just a mere wrong but a criminal offence under the penal code law; therefore, a person who files a criminal complaint against another cannot be guilty of infringement of fundamental rights, by the authority of SKYFIELD PROPERTY DEVELOPMENT LTD v. NWACHUKWU (2021) LPELR-55028 (CA).

Learned counsel urges the court to dismiss the Applicant's claim with cost as the Applicant wants to use the court to shield himself from criminal prosecution.

## **DECISION**

While adopting his written address, learned counsel to the 5<sup>th</sup> Respondent raised two preliminary issues, the first of which was that the jurisdiction of the court was impeached by the composition of parties in this case. That the claim being a civil dispute over title to land, the party from whom the Applicant got his title, and who will also be affected by the court's decision, should have been made a party to this suit. And furthermore, that the 5<sup>th</sup> respondent's name should be expunged as he was wrongly joined as a party because he was not a purchaser for value. Learned counsel cites the case of CBN v. S.A.P NIG LTD (2005) 3 NWLR Pt.911, 152 at ratio 2 (sic) to the effect that jurisdiction is determined by four factors, namely (1) proper parties, (2) the subject matter, (3) the composition of the tribunal, and (4) commencement of proceedings by due process of law.

Responding, learned counsel for the Applicant submits that paragraphs 2 and 3 of the Preamble in the Fundamental Rights (Enforcement Procedure) Rules, 2009 (FREPR); and Sections 44 and 46 of the 1999 Constitution allow a person whose right has been, is being or is likely to be infringed by any person to bring an action for the enforcement of this right against such person. Learned counsel contends that the 5<sup>th</sup> Respondent was the complainant in the subject matter of the issue before the court, and so is a proper party.

As there are two issues raised preliminarily by learned counsel to the 5<sup>th</sup> respondent, I shall take the first one on the issue of jurisdiction; and thereafter take the second issue on the competence of the Further Affidavit filed by the Applicant.

On the first issue, it is trite that the subject matter of a claim is determined by the endorsement on the writ of summons, or as in this case the reliefs sought by the Applicant. See the case of **GLOBAL GAS AND REFINING LTD v. VITOL S.A & ORS. (2015) LPELR-50444 (CA)** at p.19 E.

Furthermore, the Court of Appeal in the case of **DR. THOMPSON NDUBUISI OBAREZI v. CHIEF OSITA ILOZOR & ANOR. (2010) LPELR-4667 (CA)** held at p.8 C that “*A necessary party to an action is one in whose absence the question submitted for determination cannot be completely and effectively settled. A necessary party is one who is bound by the decision in the matter, same one whose presence is necessary as a party.*”

Looking at the reliefs sought by the Applicant, the 5<sup>th</sup> Respondent is a necessary party as the prayer in Relief Number IV, particularly, seeks an injunction to restrain all the Respondents in this case from further acts of breach of the Applicant’s fundamental rights.

In the main, however, the claim of the Applicant is the enforcement of his fundamental rights against the breach of same by the Respondents for his alleged arrest, detention and continuous interference in a civil matter involving the determination of title to land. The court, in my view, is not called to determine any issues relating to title to land.

Matters filed under the Fundamental Rights (Enforcement Procedure) Rules are necessarily sui generis for the enforcement of fundamental rights guaranteed under the 1999 Constitution and the African Charter on Human and People’s Rights (Ratification and Enforcement) Act. There is nothing in the reliefs claimed by the Applicant that suggests a claim of determination of ownership of land. The issue of a necessary party from whom title is derived will, therefore, not arise as the claim before the court is not a dispute over title to land. The presence of the person from whom titled to the alleged land is derived is not necessary for the determination of the question submitted before this court. I hold therefore, that the court has jurisdiction to hear the claim as presently constituted.

Now, to the second preliminary issue. Learned counsel urged the court to strike out the Applicant’s Further Affidavit as the same is not a response on points of law in line with Order II Rule 7 of the FREPR.

Learned counsel for the Applicant replies that by virtue of Order IX Rule 1 of the FREPR, and Order 7 Rules 1, 2 and 3 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025, the court has discretionary powers to give proper directions where a process before it is defective. That it is a typographical error, with no intention of counsel to mislead the court.

For one, I do not understand the Applicant's counsel's contention of reference to typographical error and counsel's intention not to mislead the court. The meat of the 5<sup>th</sup> Respondent's objection to the Applicant's further affidavit has nothing to do with the form of the further affidavit but with its substance.

Order II Rule 7 of the FREPR, 2009, which learned counsel to the 5<sup>th</sup> Respondent referred to as supporting his objection, provides that ***"The Applicant may on being served with the Respondent's Written Address, file and serve an address on points of law within 5 days of being served, and may accompany it with a further affidavit."***

In the first instance, a further affidavit is required to respond to new issues that are introduced to a case or that might not, with reasonable diligence, have been contemplated, emanating from a counter affidavit. All the averments in the Applicant's further affidavit are averments of facts he had already entertained in his affidavit in support of the application.

To prove otherwise, the Applicant, in paragraphs 13 and 25 of the Further Affidavit, averred that he only became aware, from the Respondents' counter affidavits, that he was been investigated on the allegation of criminal conspiracy and theft.

If this was true, this might well be a new matter for which the Applicant is entitled to respond, if he so wished, by a further affidavit. However, I do not believe this to be true upon the consideration of paragraph 16 of the Applicant's affidavit in support of his application. Therein, the Applicant averred that his lawyer wrote a letter to the 3<sup>rd</sup> Respondent to stop the investigation of an issue touching on ownership of land. The letter is dated 16<sup>th</sup> December 2024 and attached as Exhibit "B" to the Applicant's Affidavit.

Exhibit B belies the averment of the Applicant in paragraphs 13 and 25 of the Applicant's further affidavit. Exhibit B, in paragraph 2 showed the awareness of the Applicant to the charge of conspiracy to steal and theft; therefore, the

Applicant cannot claim he only just became aware of this through the Respondents' counter affidavits.

The relevant paragraph of Exhibit B is reproduced as follows:

***"...On his arrival at the police station, our client was made to write a statement on oath on charges of conspiracy to steal and theft, thereafter, he was required to be granted bail and given an appointment to provide witnesses to his claimed sales transaction to the above-mentioned land and his original offer of terms of Grant/Conveyance of Approval of grant of right of occupancy and data page was withheld in guise of investigation of ownership of the said land in dispute."***

In the case of **MR. CAJETAN NNUBIA v. MRS. TINA ILODUBA & ORS. (2024) LPELR-61762 (CA)**, the Court of Appeal held at pp32-33 B-A. that ***"The purpose to which a Further Affidavit serves is that it addresses new facts that have been set out in a Counter Affidavit. Thus, new facts or issues raised in a Counter-Affidavit are deemed admitted in the absence of a Further Affidavit... A further and Better Affidavit provides information not readily available in the main Affidavit and seeks to provide a Reply to any Counter-Affidavit filed."***

I have perused all the paragraphs of the Applicant's further affidavit, and I cannot see any that is a response on points of law or that is addressing a new matter brought up by the Respondents. Furthermore, the Written Address in support of the Further Affidavit alluded to a challenge by the Respondents on the jurisdiction of this court to entertain the Applicant's application. Save for the oral argument canvassed by the parties on the issue of jurisdiction at the hearing of the application, there is nowhere in the processes before the court where the issue of the court's jurisdiction was raised let alone in the Respondents' counter affidavits or written addresses as the Applicant's counsel claimed.

In view of the above, the Applicant's further affidavit sworn to on the 6<sup>th</sup> day of March 2025, with the Written Address, is hereby struck out.

Having dealt with the preliminary issues, I now return to consider the case and the issues raised by the parties in the substantive matter.

In simple terms, I believe the issues raised by the parties turn on the question whether the Applicant was allegedly arrested by the police on a civil transaction? What is borne out of the facts is that on the 5<sup>th</sup> of December 2024, the 5<sup>th</sup> Respondent reported to the police vide Exh. NPF1 that a previously declared missing Right of Occupancy was found in the possession of someone who had gone to conduct a legal search on the property known as plot 367 Kaura District, Cadastral Zone B11, Abuja. That person was Mr. Christian Adeyemi who had gone to the Abuja Geographic Information System on behalf of his company, Wasserburg Construction Company Limited, that wanted to buy the said land from the Applicant.

It is of no particular importance to the claim of the Applicant whether he was personally invited by the police or that he went to the police station voluntarily. However, what is deducible from the depositions of the parties with particular reference to Exh. NPF3, the statement of the Applicant, which I hereby find and hold, is that in the course of investigation of the document found with Mr. Christian Adeyemi, the police invited the Applicant's lawyer through whom Mr. Adeyemi's company obtained the documents in question, and the Applicant went with his lawyer.

The Applicant wrote a statement where he stated how he bought the land in question from one Mrs. Aniebo, the original allottee of the land, who gave him an irrevocable power of attorney; original allocation letter; and Right of Occupancy. The original Right of Occupancy was collected by the 1<sup>st</sup> to 4<sup>th</sup> Respondents and not returned to the Applicant.

In the circumstances where the statement of the Applicant was taken on the 9<sup>th</sup> of December 2024 while investigation was ongoing, it is more probable that the payment of N25,000.00 to Inusa Tsenba Mallo on the same date was as stated by the Applicant. I therefore do not believe the 1<sup>st</sup> to 4<sup>th</sup> Respondents' denial of being aware of the transaction, more so, they did not controvert that physical inspection was conducted on the property in question on the same date. As a matter of fact, Exhibit NPF4 corroborated the assertion that "the scene of the land location was visited on inquiry."

However, I do not see how the payment, or awareness of payment to Inusa Tsenba materially affects the question submitted to the court for determination. If the purpose was to show that the Applicant was coerced to make the payment, the Applicant has not so established that before the court.

In his deposition at paragraph 14 of his Affidavit the Applicant averred that he was asked to pay the sum of N25,000.00 to the surveyor, Mr. Inusa Tsenba Mallo. The Applicant has not stated nor provided any other facts from which it can be inferred that he was forced to do so. The court is not at liberty to make a case which a party has not made or to speculate and provide facts to fill gaps in a party's case.

After the Applicant's statement, he was granted bail on self-recognition the same day.

On a later date, 16<sup>th</sup> of December 2024, the Applicant's lawyer wrote to the Respondents to stop interfering in a purely civil matter vide Exh. B.

The issue raised by the Applicant for determination is better understood from the perspective of the ground upon which his application is brought. The ground reads: ***"The Respondents knew or ought to have known that the arrest of the applicant arising from the 5<sup>th</sup> Respondent on a purely civil matter in order to intimidate the applicant and also prevent the applicant from being heard by the appropriate authority and to compulsorily aid the 5<sup>th</sup> respondent to falsely acquire the land of the Applicant is unlawful, illegal, unconstitutional and constitutes a likelihood of violating the Applicant's fundamental rights guaranteed under Sections 35(1), 36(1), 41(1) and 44(1) of the 1999 Constitution and Articles 2,3,6,7 and 14(a) of the African Charter On Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A9 Laws of the Federation of Nigeria, 2004."***

The Applicant appears to choose to ignore the basis upon which the whole issue in this matter revolves.

Now, combining the above with the lone issues raised by the 1<sup>st</sup> to 4<sup>th</sup> Respondent, and the 5<sup>th</sup> Respondent, has the Applicant established his case to entitle him to the reliefs sought?

To my mind, the basis of this question goes back to the issue being investigated by the 1<sup>st</sup> to 4<sup>th</sup> Respondents and for which the Applicant claimed he was unlawfully arrested, detained and harassed by the Respondents. The only party before the court who chose to be confused about this is the Applicant; and I say this for the following reasons.

There is no doubt that the ownership of plot 367 Kaura District, B11 Cadastral Zone, Abuja was in dispute between the Applicant and the 5<sup>th</sup> Respondent. However, a careful perusal of the evidence before the court shows that this was not the subject matter of the police investigation that led to this suit.

First, I refer to Exhibit B, the letter written on behalf of the Applicant to the 1<sup>st</sup> to 4<sup>th</sup> Respondents to stop further investigation with respect to the said plot. The letter acknowledged the charges of conspiracy to steal and theft raised against the Applicant although upon contest that the matter touches on ownership of the land in question.

Secondly, a combined reading of Exhibits NPF1, NPF2, NPF3, and NPF4 shows that the subject matter of the police investigation was with respect to criminal conspiracy and theft of original copy of Right of Occupancy.

Granted that even in performing their legal duties, the Respondents are not immune from being called to question if they acted in an unlawful way that constitutes a breach of the Applicant's fundamental rights. The question again is, has the Applicant established this?

It is my finding, and I so hold that the applicant has not discharged the onus of proof that the Respondents breached his fundamental rights in any way that would justify his application before the court. As earlier stated, the Applicant was invited in relation to an investigation concerning conspiracy and theft of a Right of Occupancy relating to Plot No.367 B11, Kaura District, Abuja. The Applicant wrote a statement and was granted bail on the same day on the condition that investigation was still in progress. The Applicant has not established that in the course of investigation he was detained in contravention or beyond the limit specified by Section 35 (4) of the 1999 Constitution.

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."***

With regards to Sections 36 (1), and 41 (1) of the Constitution, the Applicant has equally not established how his rights to fair hearing, or movement freely throughout Nigeria or refusal to enter or exit Nigeria, respectively, were breached by the Respondents.

The Applicant also claimed that his right was breached under Section 44 (1) of the 1999 Constitution, which provides that:

***"No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things –***

***(a) requires the prompt payment of compensation therefore and***

***(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria."***

From the facts of this case, the Applicant has established that the original Right of Occupancy, which is the subject of investigation, was seized by the

1<sup>st</sup> to 4<sup>th</sup> Respondents, who still have it in their possession. The purpose for which the document was seized can hardly qualify as compulsory acquisition of property. At any rate, Section 44 (2) (k) provides that:

***“(2) Nothing in subsection (1) of this section shall be construed as affecting any general law - ... (k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry.”***

It is apparent from the facts of this case that the 1<sup>st</sup> to 4<sup>th</sup> Respondents retained the original Right of Occupancy for purposes of investigation. This cannot ground a case for the breach of the Applicant’s fundamental right under Section 44 (1) of the 1999 Constitution.

In the same vein, the Applicant has referred copiously to several sections of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, 1983 as providing entitlement of rights which the Respondents have breached. Apart from the basis of the foregoing facts, the Applicant has not established or proved how the acts or conducts of the Respondents have breached these provisions.

Generally, the rights guaranteed under Chapter IV of the 1999 Constitution, and the African Charter on Human and Peoples’ Right (Ratification and Enforcement) Act, are not absolute as they are subject to exceptions provided by the 1999 Constitution or laws validly made under its purview. See the case of **LIVING MITIN v. THE COMMISSIONER OF POLICE BAYELSA STATE COMMAND YENAGOA & ORS. (2022) LPELR-59029 (SC)** particularly at pp.16-19 E-G, where the Supreme Court considered Sections 35, and 37 to 41 of the 1999 Constitution, and held that by Section 45 of the Constitution, the rights guaranteed under Sections 37 to 41 can be derogated from or limited by an Act of the National Assembly, which in the case is, Section 4 of the Police Act which empowers the police as follows: ***“The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged...”***

Furthermore, at p.20 A-B, the court went on to say that the police are not given a blank cheque to exercise these powers as they will but must have due

regard to provisions guaranteeing fundamental rights. However, the onus remains on the Applicant to establish by credible evidence that his fundamental rights have been violated.

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.

Further to this, I agree with the submission of learned counsel to the 1<sup>st</sup> to 4<sup>th</sup> Respondents that the Applicant cannot misuse Chapter IV of the 1999 Constitution as a shield against investigation and prosecution, as held in **HASSAN v. EFCC (2004) 1 NWLR Pt.1389, 607 at 626.**

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

The cost of N400,000.00 is awarded against the Applicant to the 1<sup>st</sup> to 4<sup>th</sup> Respondents jointly, while the cost of N200,000.00 is awarded against the Applicant to the 5<sup>th</sup> Respondent.

This is the judgment of the court.

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