

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

SUIT NO. FCT/HC/CV/1063/2025

BETWEEN

KELECHI THANKGOD ONYEDINEFU.....APPLICANT

AND

| | |
|---|-------------------|
| 1. DEPARTMENT OF STATE SECURITY SERVICE |) |
| 2. DIRECTOR, DEPARTMENT OF STATE SECURITY SERVICE FCT ABUJA |) |
| 3. AHMED BASHIR (a.k.a RAMAT OF DSS OFFICE ASOKORO ABUJA) |) |
| 4. FIDELIS IBESE (a.k.a IGBO BENZ) |).....RESPONDENTS |

REPRESENTATION

Abdul Abdulkarim Esq, for the Applicant.

JUDGMENT

INTRODUCTION

The Applicant by Motion on Notice dated 17th March 2025 and filed on 18th March 2025 sought to enforce his fundamental rights as follows:

1. An order for the enforcement of the Applicant's fundamental rights to personal liberty, private and family life and freedom of movement.
2. A Declaration that the invitation of the Applicant and the continuation of harassment of the Applicant by operatives of the 1st and 2nd Respondents, particularly the 3rd Respondent, at the behest and instigation of the 4th Respondent on an entirely commercial transaction between the Applicant and the 4th Respondent which is civil in nature, is unlawful and a violation of his fundamental right to liberty and dignity of his person.
3. A Declaration that the 1st, 2nd and 3rd Respondents by the enabling Act establishing them lacks (sic) the statutory power to function as a debt

collector on behalf of the 4th Respondent or anybody for that matter in matters that are civil in nature.

4. A declaratory order that the continuous threats of arrest and detention, harassment, intimidation of the Applicant by agents of the 1st and 2nd Respondents, particularly the 3rd Respondent, at the behest, instigation and insistence of the 4th Respondent, on an entirely commercial transaction between the Applicant and the 4th Respondent, which is civil in nature, is illegal, oppressive, unconstitutional, null and void as it violates the Applicant's fundamental rights as enshrined under Sections 33, 34 and 36 of the 1999 Constitution of the Federal Republic of Nigeria.
5. An Order of court restraining the 1st, 2nd and 3rd Respondents, particularly the 3rd Respondent, whether by themselves or by their agents, servants, officers, privies or otherwise however from disturbing or interfering with the right to liberty of the Applicant through further threat of invitation, arrest, detention in connection with this matter.
6. Exemplary damages as may be assessed by the court against the Respondents, jointly and severally, for the oppressive, cruel, unlawful, illegal and unconstitutional threat of arrest and detention of the Applicant by the Respondents on an entirely commercial transaction which is civil in nature.
7. General damages as may be assessed by the court against the Respondents.
8. And for such further orders 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 25-paragraph affidavit, and a Written Address.

CASE OF THE PARTIES

The case of the Applicant is that he is a Mercedes automobile spare parts dealer trading under the name and style of K.C. Benz Enterprises Limited with office at Apo Mercedes Line, Lagos line, Apo, Abuja FCT. That the 1st, 2nd

and 3rd Respondents are trailing and threatening to arrest him at the behest and instigation of the 4th Respondent over the sale of a Mercedes automobile spare parts, a legitimate and entirely commercial transaction. That the 3rd Respondent, who is directly trailing him, is an operative of the 1st and 2nd Respondents. That the 3rd Respondent is believed to be the right hand man and an intimate friend of the 4th Respondent, also known as Igbo Benz, who does the same business as the Applicant at Apo, Abuja. That sometime in 2024 the 4th Respondent bought the engine of a Mercedes saloon car from him, and took the same away after payment. That two weeks guarantee is conventionally given for the return of any engine bought at the said spare parts market, for replacement or refund, if same is found faulty after installation in a car; otherwise the buyer loses the right to return the engine. That the engines sold at the market are Belgium engines and the convention is known to all operators in the market. That sometime in 2025, more than three months after the 4th Respondent bought the engine, the 4th Respondent complained to him that the engine was faulty and requested for a refund of his money. That he refused because the complaint was more than three months outside the two weeks guaranty period. That the 4th Respondent then told him that he would hear from his DSS friend. That some days later the operatives of the 1st and 2nd Respondents, led by the 3rd Respondent called him on the phone and asked him to come to their office in Asokoro. That he went and the 3rd Respondent took him aside and demanded he refunded the 4th Respondent, otherwise he would use his office to lock him up and no lawyer would be able to get him out. That the 3rd Respondent only allowed him to go after making an undertaking to make a refund. That the 3rd Respondent instructed him to start immediate repayment and threatened him with indefinite arrest, molestation, brutalization and detention. That since he was not able to immediately raise the money for repayment he has been under immense threat of re-arrest and detention by the 3rd Respondent. That since then and till date, officers of the 1st and 2nd Respondents, particularly the 3rd Respondent have seriously curtailed his right to move freely in Nigeria and do his lawful business. That the Department of State Security Services (DSS) is not a debt recovery agency and cannot recover debts on behalf of the 4th Respondent.

SUBMISSION OF PARTIES

The Applicant raised two issues for determination, namely:

1. Whether the continuous threat of arrest of the Applicant by the Respondents over a civil transaction and without committing any offence is justified in law.
2. Whether the Applicant is entitled to compensation and damages.

On the first issue, counsel submits that the transaction between the Applicant and the 4th Respondent was purely contractual upon which the Respondents cannot continuously threaten to arrest the Applicant. Counsel refers to Section 8 (2) of the Administration of Criminal Justice Act, 2018 which provides that: "A suspect shall not be arrested merely on a civil wrong or breach of contract."

Counsel further submits that fundamental rights inhere in every human and cannot be breached unjustly, citing the cases of **CHIEF (MRS) OLUFUNMILAYO RANSOME-KUTI & ORS v. ATTORNEY-GENERAL OF THE FEDERATION (1985) 2 NWLR Pt.6, 211 at 229 H-B; and SUNDAY AWOYERA v. IGP & ANOR. (2009) CHR, Page Ratio 2 (sic)**. And further that it is the duty of courts to safeguard the fundamental rights of persons living within Nigeria, and cited the case of **NAWA v. ATTORNEY GENERAL CROSS RIVER STATE (2008) ALL FWLR Pt.401, 807 at 840**

Counsel also cited the case of **CHRISTIAN OKOTIE & ANOR v. THE COMMISSIONER OF POLICE FCT POLICE COMMAND**, reported in the book: *A Peep Into The FCT Judiciary*, 2008 at pp.233-240 and submits that the 1st, 2nd and 3rd Respondents have acted beyond their legal powers by dabbling in a civil transaction. And the cases of **OBIEGUE v. ATTORNEY GENERAL OF THE FEDERATION (2014) 5 NWLR Pt.1399, 171 at 217-219; IBIYEYE & ANOR v. GOLD & ORS (unreported, Appeal No. CA/IL/M.95/2010; OSIL v. BALOGUN (2015) 1 NHRLR, 224 at 230; and YUSUF UMAR v. A.A SALAM & ORS (2001) 1CHR 413.**

Counsel also submits that the Applicant's rights guaranteed under Chapter IV of the 1999 Constitution, particularly Sections 43 and 44, is being or likely to be breached by the Respondents without any justification. That the Applicant has established the indiscriminate and continuous threat of arrest

and detention, harassment and intimidation by the agents of the 1st and 2nd Respondents, particularly the 3rd Respondent.

Counsel reiterates that the court has a duty to protect breach of fundamental rights and cites the cases of **FEDERAL REPUBLIC OF NIGERIA v. IFEGWU (2003) 43 WRN 27; IGWE v. EZEANACHIE (2015) 1 NHRLR, 125 at 135, Ratio 12; and OLUTIDE & ORS v. HAMZAT & ORS (2016) LPELR-26047 (CA), 11 B-E.**

On the second issue, learned counsel submits that the Applicant has established continuous threat of arrest and detention, intimidation and harassment which entitles him to compensation and apology. Counsel cites in support the cases of **LEDUM MITTEE v. ATTORNEY-GENERAL OF THE FEDERATION & ORS, supra (sic); and OKONKWO v. OGBOGU (1996) 37 NWLR 580 (sic).**

Counsel submits also that by virtue of Section 35 (6) of the 1999 Constitution, compensation naturally flows from a breach of fundamental rights, citing **SECURITIES INTERNATIONAL LTD. v. BALOGUN & ORS (2012) LPELR-9218; (2013) ALL FWLR Pt.677, 653.**

Counsel submits finally that the grant of the application will not prejudice any of the Respondents.

DECISION

This is a case where the Applicant is seeking to enforce the protection of his fundamental rights as guaranteed by the Constitution of the Federal Republic of Nigeria 1999, and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, LFN 2004.

What are the material facts established by the Applicant to support the grounds upon which this application is brought?

First, the Applicant averred that the 1st, 2nd and 3rd Respondents were trailing and threatening to arrest him. I believe the Applicant ought to establish the specific acts that can positively convince the court that the alleged trailing was not only in the imagination of the Applicant. It is equally not enough for the Applicant to allege threats without the necessary particulars constituting the act. It is my view that the Applicant has not proved or sufficiently satisfied the onus of proving these averments.

The Applicant was either telling half-truths, or wanted by all means to involve the 1st and 2nd Respondents in whatever transpired between him and the 3rd Respondent. I cannot imagine how the operatives of the 1st and 2nd Respondents, led by the 3rd Respondent called the Applicant on the phone to appear at their office in Asokoro. The question is, who actually called the Applicant? If we were to believe the 3rd Respondent did, as I am inclined to find and hold in this case, who were the other operatives of the 1st and 2nd Respondents? Except the court resort to speculation, it would be near impossible to accept that other persons called the Applicant apart from the 3rd Respondent. Otherwise, the Applicant would have to prove how the so-called operatives shared the phone to call the Applicant. This, I believe, is overstressing the facts.

However, when the Applicant went to the DSS office, he met with the 3rd Respondent who threatened to lock the Applicant up perpetually if he did not refund the money for the car engine. He was then allowed to go after making an undertaking.

What seems believable in the accounts of the Applicant is that he sold a Mercedes car engine to the 4th Respondent which the 4th Respondent complained about more than three months later and outside the two weeks return policy convention. The Applicant refused to make a refund, so the 4th Respondent reported the issue to his friend, the 3rd Respondent, who threatened to lock the Applicant up if he failed to make the refund.

I believe the Applicant only tried to whip up sentiments in the other averments to bolster his case, which main motive is to obtain a court declaration that his transaction with the 4th Respondent was civil in nature.

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 of 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.”

In the instant case, the Applicant’s application is brought pursuant to Order II Rules 1, 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009; Sections 41, and 46 (1) and (2) of the 1999 Constitution; Articles 5, 6, and 12 of the African Charter on Human and People’s Rights (Ratification and Enforcement) Act, 2004.

The Applicant has specified the grounds and the specific sections of the 1999 Constitution and the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, for seeking the reliefs in this case.

The grounds are reproduced as follows:

- 1. By virtue of Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 4 and 5 of the African Charter, every Nigerian citizen is entitled to respect for the dignity of his person and accordingly no person shall be subjected to inhuman and degrading treatment.***
- 2. By virtue of Section 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Article 12 of the African Charter every Nigerian citizen is entitled to move freely throughout Nigeria.***
- 3. The Applicant is subjected to constant threat of arrest by the operatives of the 1st and 2nd Respondents, particularly the 3rd Respondent, at the behest, instigation and insistence of the 4th Respondent on an entirely commercial transaction between the Applicant and the 4th Respondent, which is civil in nature.***
- 4. The continuous unlawful, illegal and unconstitutional threat of arrest of the Applicant by the 1st, 2nd and 3rd Respondents at the behest of the 4th Respondent constitutes a flagrant abuse of the Applicant’s fundamental rights as enshrined in the constitution.***

I will start my consideration of the Applicant’s claim with the rights claimed under the 1999 Constitution. The relevant equivalent provisions in the African Charter on Human and Peoples Rights (Ratification and

Enforcement) Act are substantially similar, and are therefore incorporated in the discussion of the provisions of the constitution.

Section 34 (1) provides that: ***“Every individual is entitled to respect for the dignity of his person, and accordingly –***

(a) no person shall be subject 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.”

What is the evidence provided by the Applicant to establish entitlement to this right? The relevant evidence is that operatives of the 1st and 2nd Respondents, led by the 3rd Respondent called him on the phone to report at their office in Asokoro. When he did, the 3rd Respondent took him aside and threatened to use his office to cage him if he did not refund the 4th Respondent’s money. That he had to give an undertaking before he was released to go, with threats of indefinite arrest, molestation, brutalization and detention by the 3rd Respondent. That the 1st to 3rd Respondents are trailing and threatening to arrest him over an entirely commercial transaction.

I have earlier made a finding that no other person apart from the 3rd Respondent was involved in the actions alleged by the Applicant. Without speculation it is difficult to understand what the Applicant meant by the 3rd Respondent pulled him aside. Whatever is the case, this further showed that the said conversation was between the Applicant and the 3rd Respondent only.

Are the above facts as presented by the Applicant, even if all were true, sufficient to establish a breach of the Applicant’s fundamental rights under S.34 (1) of the 1999 Constitution? Entitlement to the dignity of the person prohibits torture, inhuman or degrading treatment; slavery or servitude; and compulsory labour.

Note that inhuman and degrading treatment are defined as components of torture under the Anti-Torture Act, 2017, which defines torture as acts by which pain or suffering, whether physical or mental, is intentionally inflicted on a person in the circumstance provided by the Act.

In the case of **REV. POLYCARP MATTHEW ODIONG v. ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 6, CALABAR (2013) LPELR-20698 (CA)** where the Court of Appeal considered S.34 (1) of the 1999 Constitution, the court held at p.21 C, that *“Torture” is the infliction of intense pain to the body or mind to punish, to extract a confession or information or to obtain a sadistic pleasure.*” And further at p.28 E defined *“inhuman treatment” as “physical or mental cruelty so severe that it endangers life or health.”* And for the definition of degrading treatment, the court at p.29 C referred to the Chambers 21st Century Dictionary which defines the word *“degrade” as “1. To disgrace or humiliate someone. 2. To reduce someone or something in rank, status, etc. degrading adj. humiliating; debasing...”*

In **NIGERIA CUSTOMS SERVICE BOARD v. BARRISTER SULEIMAN MOHAMMED (2015) LPELR-25938 (CA)** at p.38-39 D-B the Court of Appeal held that *“The authors of the 5th Edition Black’s Law Dictionary defined the word ‘torture’ as ‘to inflict intense pain to body or mind for the purposes of punishment, or to extract a confession or information, or for sadistic pleasure,’ ‘inhuman treatment’ as ‘such mental or physical cruelty or severity as endangers the life or health of the party to whom it is addressed or creates a well-founded apprehension of such danger’ and ‘degrading treatment’ as ‘reviling; holding one up to public obloquy; lowering a person in the estimation of the public; exposing to disgrace, dishonour or contempt.’ Thus, any action which inflicts intense pain to the body or mind of a person of any act of physical cruelty which endangers the life or health of a person or creates a well-founded apprehension of such danger or an act done in such manner as to bring a person to public ridicule, disgrace, dishonour or contempt comes within the provision of Section 34 (a) of the 1999 Constitution.”*

Also, in **ALIYU IBRAHIM v. THE COMMISSIONER OF POLICE (2007) LPELR-3747 (CA)** the court held at p.21 F, that *“Inhuman treatment means any barbarous or cruel act or acting without feeling for the suffering of others.”*

The circumstance of each case is the determinant of whether a matter can succeed under the enforcement of fundamental rights or not. In the present

case, however, the Applicant has not established circumstances entitling him to the relief claimed under the above stated provision.

On the other hand, Section 41 (1) provides that: ***“Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.”***

What are the facts established by the Applicant to prove his entitlement to this section? With reference to paragraphs 20 and 21 of the Applicant’s affidavit, the averments therein, which were not challenged, are reproduced for purposes of clarity:

“20. That since then and because I was not immediately able to raise the money and give the 4th Respondent as directed by the 3rd Respondent, I have been under immense threat of re-arrest and detention by the 3rd Respondent for failing to liquidate my acclaimed indebtedness to the 4th Respondent for the sale of the engine, the said engine which the 4th Respondent has used far over the guaranteed period limited for him by our market convention.

21. That since then and till date, officers and men of the 1st and 2nd Respondents, particularly the 3rd Respondent, at the behest and instigation of the 4th Respondent have seriously curtailed my right to move freely in Nigeria and to go about my lawful business.”

I should first like to make the comment that the fact that applications under the fundamental rights enforcement procedure are proved by affidavit evidence does not relieve or excuse parties from stating necessary and required evidence as required in proof of pleadings. I believe it is even more so necessary that adequate facts are stated in the affidavit which is the evidence to be relied on by parties to persuade the court to find in their favour.

Curtailement suggests the end result of acts or conducts aimed to prevent the Applicant from moving freely. What are the acts or particulars of this curtailement that can be ascribed to the Respondents? The Applicant did not say. I therefore find and hold that the Applicant has not established that the Respondents have seriously curtailed his right to move freely in Nigeria and to go about his lawful business.

Applications under the fundamental rights procedure deserve a solemn and serious consideration by litigants, their counsel, and the court, it is therefore a disservice to the constitution and the solemnity of the process to reduce the process into the frivolity of fitting the facts of a case into as many rights under the constitution as caught the fancy of counsel. No matter how ingenuous a relief is couched, as long as the grounds and facts in support of the relief do not fall within the specific provisions of Chapter IV, the same cannot by the sheer force of will, constitute a breach of fundamental rights. See the case of **REV. PAUL ENANUGA & ORS v. HON. NSEABASI (CORNELIUS) SAMPSON (2012) LPELR-8487 (CA)** where the Court of Appeal held at p.20 C-E that ***“An applicant who founds his cause of action under the provisions of the Fundamental Rights Enforcement Procedure Rules has to show the court which of his fundamental right is being contravened or is likely to be contravened in the state for which he seeks redress under Section 46 (1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered). The fundamental rights that the Constitution seeks to protect and which a remedy or relief is to be granted are set out in Sections 33 to 45 of the 1999 Federal Constitution as altered.”***

I only wish to add that they are also as set out in the African Charter on Human and People’s Rights (Ratification and Enforcement) Act, 1983. In **MR. EMMANUEL OSONDU & ANOR v. ATTORNEY-GENERAL OF ENUGU STATE & ORS (2017) LPELR-43096 (CA)**, p.60 E-F, ***“Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 defines “Fundamental Right” and “Human Right” in the following manner:- “Fundamental Right – means any of the rights provided for in Chapter IV of the Constitution, and includes any of the rights stipulated in the African Charter on Human and People’s Rights (Ratification and Enforcement) Act. Human Rights – includes fundamental rights.”***

Without prejudice to the foregoing, the Applicant would have done himself a world of good and shown a commendable appreciation of the fundamental rights enforcement procedure if he had limited his case to Section 35 of the 1999 Constitution, including the equivalent provision in the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, 1983.

In considering this aspect, I would first like to see whether the conduct of the 3rd Respondent does not simply amount to abuse of office which does not translate to a breach of fundamental rights under the 1999 Constitution.

For abuse to constitute breach of fundamental rights it must encroach on a specific right protected by the special provisions of Chapter 4 of the 1999 Constitution. Where it does not, the Applicant is not left without a recourse. However, the recourse would not be to proceedings under the fundamental rights enforcement procedure, which in my opinion has not come to take over proceedings under the general civil proceedings. This is not the contemplation of law, therefore, application of these rules in the court should not inadvertently or carelessly make it so.

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.

Abuse of power, according to the case of **DR. MATHIAS OKO OFOBOCHE v. OGOJA LOCAL GOVERNMENT & ANOR (2001) LPELR-2265 (SC)** at p.17 D *“...is use of power to achieve ends other than those for which power was granted, for example, for personal gain, to show undue favour to another or to wreak vengeance on an opponent...”*

I believe the authority may be exercised in an unlawful, arbitrary or inordinate manner but they may or may not constitute a breach of fundamental rights in the strict sense even where they are otherwise actionable. In other words, the manner the authority is exercised must not only constitute an abuse of office/power, but it must also be one recognised as a breach of fundamental rights guaranteed under the constitution.

Distinguishing between what is strictly abuse of power and what constitutes breach of fundamental rights may not be clear cut, a court would therefore need to take the cases on their individual facts and circumstances.

The Applicant’s application, as earlier stated, was brought under specific sections of the 1999 Constitution, including S.35. Section 35 (1) provides that *“Every person shall be entitled to his personal liberty and no person shall*

be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law.”

My interest is not in the exceptions as none, from the analysis of the facts of this case, comes into play. It would therefore serve no practical purpose stating them. I therefore refrain from doing so.

It is equally important to refer to S.46 (1) of the 1999 Constitution, which provides as follows: ***“Any person who alleges 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.”***

The Applicant has established that he was invited by the 3rd Respondent in relation to his transaction with the 4th Respondent. These are facts not controverted, and therefore safe for the court to rely on except for those that are too fantastic to be probable. See **TOTAL EXPLORATION & PRODUCTION NIGERIA LTD v. MR. AZUBUIKE OKWU & ORS. (2024) LPELR-62623 (SC)** at p.56 E, where the Supreme Court held that ***“It is settled law that where credible and believable positive facts in an affidavit are not challenged by contrary positive facts, the facts are deemed true, correct and admitted and should be accepted and acted upon by the Court.”***

I have stated earlier that the facts presented by the Applicant are embellished. Nevertheless, the Applicant’s averments in paragraph 17 of his affidavit are as near as possible to what happened, from all probabilities. The Applicant averred thus: ***“That nevertheless, to err on the side of caution, I went to the DSS office at Asokoro Abuja, FCT to meet with the 3rd Respondent; but the 3rd Respondent took me aside, introduced the issue between me and the 4th Respondent for the sale of the said car engine and ordered me to go and meet the demands of the 4th Respondent in my own interest, failing which he assured me that he will used (sic) his office to pick me up and cage me in perpetuity; and if he does so, no one, not even any lawyer can get me out.”***

It is apparent from the above that it seems clear even to the Applicant that the 3rd Respondent acted alone albeit with the shadow of his office as a force he could resort to, to breach the Applicant’s fundamental rights.

On the basis of this, I hereby find and hold that the 3rd Respondent threatened to arrest and detain the Applicant if he failed to return the money

in question to the 4th Respondent. This to my mind is quite sufficient to entitle the Applicant to seek to stop the 3rd Respondent from infringing upon his right to personal liberty. It is an overkill on the part of the Applicant, to aver threats of molestation, brutalization, curtailment of movement and trailing, which in any case, are not substantiated, to enable the court hold same as having been proved.

I agree with learned counsel's submission and the authorities cited that a suspect shall not be arrested merely on a civil wrong or breach of contract.

For the reasons stated above, the Applicant's claim succeeds in part.

The 3rd Respondent is hereby restrained, whether by himself, or otherwise howsoever, from interfering with the Applicant's right to personal liberty through further threats of invitation, arrest or detention in connection with the civil transaction in this matter.

The Applicant has failed to establish his entitlement to all other reliefs claimed. They are hereby refused and dismissed.

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. The case of **DANIEL OKONKWO v. FRED OGBOGU & ANOR. (1996) 5 NWLR Pt.449, 420**, as other cases cited by learned counsel, is inapplicable as the facts relate to damages for false imprisonment.

In **FELIX ELIJAH NNANNA, ESQ. v. MAHMOUD SA'ID & ANOR (2022) LPELR-57396 (CA)** the Court of Appeal held at pp.48-49 F-A that damages and compensation are limited to breach of right to personal liberty and compulsory acquisition of land.

Also, in **MR. SATI DANSHETU v. NIGERIA POLICE FORCE & ANOR. (2022) LPELR 57720 (CA)** the Court of Appeal held at pp.6 D and 9 C that damages, whether claimed or not, naturally flows from breach of fundamental rights

which may be compensatory or exemplary. And that what in all cases determines the quantum of the damages is mainly the level of the breach of the right of the appellant and the circumstances of the breach. This case, however, is also limited to unlawful arrest or detention under S.35 (6) of the 1999 Constitution.

Furthermore, the Court of Appeal in **THE COMMISSIONER OF POLICE DELTA STATE & ORS v. GIFT OKOLIE OGWU (2024) LPELR-61921 (CA)**, held at p.42 F, “*Exemplary damages will be awarded against a defendant (1) where there is an express authorization by statute. (2) In case of oppressive, arbitrary and unconstitutional action by servants of the government. (3) Where the defendant’s conduct had been calculated by him to make a profit for himself.*”

I hold that the Appellant has not established, in line with statute or decided authorities, his entitlement to damages as claimed.

I however award the sum of N200,000.00 as the cost for this suit against the 3rd and 4th Respondents jointly and severally in favour of the Applicant.

This is the judgment of the court.

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