

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU
SUIT NO: FCT/HC/CV/5347/2024
DELIVERED ON THE 06/11/2025**

BETWEEN:

1. OMOTADE ADEBISI
2. JOHN EJIMMA }APPLICANTS

AND

1. INSPECTOR GENERAL OF POLICE
2. DIG, FORCE CRIMINAL INVESTIGATION DEPARTMENT
3. COMMISSIONER OF POLICE, SEB, FCID
4. SP. JEREMIAH NEHEMIAH
5. INSPECTOR DENNIS
6. INSPECTOR OSUME ADEBAYO
7. INSPECTOR KYARI
8. SUNI OSORUN }RESPONDENTS

JUDGMENT

By an Application for the enforcement of fundamental rights filed on 05/12/2024 with (i) a 40-paragraph affidavit in support of the application and Exhibits A1 - A10 attached therewith; (ii) Statement setting out the name and description of the Applicant, the reliefs sought and the grounds upon which the reliefs are sought; (iii) written address of Olugbami Victor, Esq.; (iv) the Applicant's 39-paragraph further affidavit filed on 19/02/2025; and (v) reply on points of law of Olugbami Victor, Esq. filed on 19/02/2025, the Applicant seeks the following reliefs against the Respondents:

- a. A declaration that the Applicants have right to enjoy freedom of movement anywhere in Nigeria.*
- b. A declaration that the Applicants have right to enjoy their liberty anywhere in Nigeria.*

- c. **A declaration** that the Applicants have right to their private and family life.
- d. A declaration that the Applicants have right to the dignity of human person.
- e. **A declaration** that the act of arresting, detaining, constantly harassing and intimidating the Applicants is illegal, unlawful, unconstitutional, null and void.
- f. **A declaration** that the act of subjecting the Applicants to make admission to offences they did not commit, forcefully recover money from them and hand same to the 8th respondent is wrong and unconstitutional.
- g. **A declaration** of the Honourable Court that the continued harassment, arrest, threat of arrest, detention, constant besiegement of the Applicants' office and residence and threat of further detention and intimidation of the Applicants by the 4th – 7th Respondents and other officers in the 2nd and 3rd Respondents' office upon the instigation of the 8th Respondent constitute fragrance infringement of the Applicants' constitutional rights to personal liberty, fair hearing, freedom of movement, right to private and family life and equal protection of the law as guaranteed and preserved under sections 35,36, 37 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 2,3,4,5,6,7 & 12 of the African Charter on Human and People's Rights, Cap A9 LFN 2004 and to that extent is unconstitutional, illegal, null and void, and of no legal effect whatsoever.
- h. **A declaration** n of the Honourable Court that the arrest, detention and threat of further arrest and detention of the Applicants based on the facts and circumstances enumerated in the affidavit is illegal, unlawful, unconstitutional and constitutes an infringement of Applicant's fundamental rights to personal liberty, freedom of movement, equal protection of the law as guaranteed under sections35,36, 37 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and

Articles 2,3,4,5,6,7 & 12 of the African Charter on Human and People's Rights, Cap A9 LFN 2004 and to that extent is null, void, illegal, and of no legal effect whatsoever.

- i. An order of injunction restraining the Respondents whether by themselves, agents, servants howsoever described from further demanding, requesting, asking and/or compelling the Applicant to confess to crimes they did not commit and refund money to the 8th respondent through the office of the 2nd respondent.*
- j. An order of injunction restraining in particular the 4th – 7th Respondents by themselves or through their agents, servants howsoever described from further arresting, harassing, torturing, detaining and compelling the Applicants to refund money to the 8th respondent in connection with the subject of this suit which is purely civil in nature.*
- k. The award of ₦100,000,000.00 (One Hundred Million Naira Only) damages against the Respondents jointly and severally for unlawful arrest, detention, threat of further arrest and detention on matter whose ingredient is purely contractual and civil in nature.*

In opposition to the application for enforcement of fundamental rights, the 8th respondent filed his counter affidavit of 61 paragraphs on 14/02/2025; attached therewith are **Exhibits C4 & C6, C1 – C3, C5 and C7**; and a written address of Kenneth Ikpechukwu, Esq.

At the hearing of the application on 19/02/2025, the learned counsel for the parties adopted their respective processes.

In the affidavit in support of the application for enforcement of fundamental rights, it is deposed as follows:

- 1. That I am the 1st Applicant in the application and by simple virtue of which I have knowledge of the full facts and therefore in the position to deposed to this affidavit.*
- 2. That all the facts herein deposed are within my personal knowledge save where otherwise expressly stated.*

3. *That the 2nd Applicant is the Managing Director of Ejimma Groupe Ltd, the developer of the estate where plot 14 (the originating nucleus of the spurious allegations) is situate.*
4. *That I am a private citizen and businessman with specialization in building construction supervision, commission agency, rents and services.*
5. *That sometime in June 2024, my half sister (Jana Cloud-Barnes) who is resident in the United States of America called to inform me about her real estate investment in Nigeria.*
6. *She specifically informed that sometime in 2021, she purchased a three-bedroom bungalow (carcass) in Abuja through the 8th respondent at the agreed purchased price of fifty thousand dollars (\$50,000). The contract of sale of property is herewith attached and marked Exhibit A1.*
7. *That upon completion of payment for the three-bedroom bungalow, she further sent twenty-seven thousand, five hundred dollars (\$27,500) to the 8th respondent for structural overhaul and/or improvement of the building to an aesthetically-appealing and habitable state.*
8. *That despite the volume of money, all totalling seventy-seven thousand, five hundred dollars sent to the 8th respondent, the building had remained in the same state since the day of purchase hence the need for thorough investigation and onsite inspection. The picture photographs of both the old and new state of the building are herewith attached and marked as Exhibits A2 and A3 respectively.*
9. *The 8th respondent also collected the total sum of five million, five hundred thousand naira as infrastructure and service charge ostensibly on behalf of the developer but same was never remitted to the developer till date. The 8th respondent's requests for infrastructural fees and service charge in the name of G.I. Internation Ltd which he claimed was payable*

- twice a year are herewith attached and marked as Exhibits A4 and A5 respectively.*
- 10. That the facts stated in paragraphs 5 – 9 necessitated the engagement of the law firm of Noble Height Attorneys to conduct a thorough investigation into the allegation.*
 - 11. That the 8th respondent also generated an invoice using his company name (BWS) wherein all the monies paid by my sister is captured. The invoice dated 14th January 2022 is herewith attached and marked Exhibit A6.*
 - 12. That on the 25th day of July 2024, at about 10am in suite 20C, Anon Plaza, Gudu District, Abuja, V.O. Olugbami of counsel informed me of the outcome of his visit to the property in company of the 8th respondent and I verily believed him as follows:*
 - i. That the building has remained in the same state it was since the day of purchase in 2021.*
 - ii. That all the monies collected by the 8th respondent for floor tiles, wall tiles, electrical conduit for the whole house was not expended for the purpose.*
 - 13. That upon receiving the allocation letter from the 2nd Applicant and on the instruction of my sister, i proceeded to install gate on the perimeter fence of the property in company of the 2nd Applicant. The picture photograph of the gate is herewith attached and marked Exhibit A7.*
 - 14. That after the installation of the gate, the 8th respondent petitioned the 2nd respondent with spurious of threat to his life.*
 - 15. That upon the invitation of the 3rd respondent's invitation sent through our WhatsApp numbers, the 2nd Applicant honoured the invitation and instead of questioning us on the substance of the allegation, the 4th – 7th: Respondents arrested, detained us from morning till 6pm and it took the stern intervention of our lawyer to secure our bail.*
 - 16. That since the day we were granted administrative bail, the 4th – 7th Respondents have subjected us to constant harassment*

- and threat of arrest and detention upon the active instigation of the 8th respondent.*
- 17. That the 4th – 7th Respondents have compelled us to regularly come to their office in the guise of having interview with the 3rd respondent, an interview that never occurred.*
 - 18. That sometime in October 2024, after frequenting the 2nd respondent's office, an interview was scheduled with the Assistant Commissioner with all the parties including the 4th, 6th and 8th Respondents in attendance.*
 - 19. That during the interview, the Assistant Commissioner of Police asked the 8th respondent pungent questions relating to the allegation of thereat of which he could not substantiate. The 8th respondent relied on hearsay and/or reported information from some unknown persons.*
 - 20. That the Assistant Commissioner of Police discharged us albeit on the admonition that my sister be afforded the opportunity to give her own side of the story whenever she comes to Nigeria.*
 - 21. That sometime in November 2024, my sister came to Nigeria for an assignment and took the liberty to visit her property in Abuja. On getting to the property, she expressed utter disappointment at the stage of the property and left for Lagos immediately.*
 - 22. That the 8th respondent further instigated the 4th – 7th Respondents to and threaten, arrest and detain me for a period of three days and all concerted efforts made by my lawyer to secure my bail was deliberately hampered by the 4th – 8th Respondents.*
 - 23. That my surety was severally harassed and intimidated to withdraw thus providing ample opportunity for the 4th – 7th Respondents to further arrest and detain me in their cell from 27th day of November to 29th day of November 2024.*
 - 24. That before my release from the 2nd respondent's cell, the 4th - 7th Respondents demanded the sum of two hundred and twenty-*

- five thousand Naira (N225,000) as the condition and same was paid to them through a designated point o sale (POS) account. The bank transfer receipt from my lawyer's Bank account to the POS account is herewith attached and marked Exhibit A8.*
- 25. That on the day of my release, the 4th – 7th Respondents still demanded the sum of fifty thousand naira (₦50,000) from me and took me to the POS operator to withdraw and hand over the cash to the 5th respondent. The receipt of payment generated by the POS operator is herewith attached and marked Exhibit A9.*
- 26. That part of the condition for my release is that my sister refunds to the 8th respondent the sum of sixteen thousand dollars (\$16,000).*
- 27. That while at the 3rd respondent's office, 4th – 8th Respondents engaged in profuse analysis of the 8th respondent's bank account statement vis a vis the monies sent by my sister and received by him. They concluded the analysis with the statement that my sister is indebted to the 8th respondent to the tune of sixteen thousand dollars and same must be fully defrayed otherwise they will continue to harass, arrest and detain me and the 2nd Applicant.*
- 28. That since my release from the 2nd respondent's cell, the 4th – 7th Respondents upon the instigation of the 8th respondent have continued to call me and my sister in the United States telling her to pay money otherwise risk arrest and detention.*
- 29. I know that there is no petition against my sister to warrant the calls, invitations and harassment to her.*
- 30. That i was utterly shocked to watch the 4th – 8th Respondents discuss the issue of refund of money to the 8th respondent in the presence of the 3rd respondent.*
- 31. That as an informed Nigerian, I know that the Nigeria Police Force is not a debt recovery institution hence my absolute surprise when same was bandied and made a condition for my release.*

32. *I know that my sister has a valid allocation issued by the 2nd Applicant in respect of plot 14 Abu Obe's Estate, New Kyami Layout, Abuja. The said letter of allocation is herewith attached and marked Exhibit A10.*
33. *That the 3rd – 7th Respondents reluctantly admitted me to administrative bail on the condition that I make an undertaking that my sister will refund the said sum of sixteen thousand dollars to the 8th respondent, an undertaking I told them I was not in the position to make or fulfil.*
34. *The 4th – 7th Respondents have continued to harass, publicly embarrass and threaten to further arrest and detain me and the 2nd Applicant should my sister fail to refund the sum of sixteen thousand dollars to the 8th respondent.*
35. *I know that the 1st respondent's office is not established to interfere in the commercial transaction of private citizens but the 3rd – 7th Respondents will stop at nothing to make me admit to a criminal allegation and compel my sister to refund money to the 8th respondent.*
36. *I know that unless restrained by the Honourable Court, the 3rd – 7th respondent and other officers of the 1st and 2nd Respondents will not relent in their desperate attempt and mischievous scheme to forcefully procure admissions recover money from me with a view to recovering money from my sister.*
37. *That as a result of the constant harassment, threat of further arrest and detention, I cannot move freely in any part of Abuja because of fear of being bounded by the 4th – 7th Respondents or any member of their team.*
38. *I have suffered incalculable emotional, psychological trauma and economic loss as a result of the constant harassment, intimidation, arrest, detention, threat of further arrest and detention over a pure civil matter hinged on property ownership.*

39. That unless this Honourable Court intervenes timeously, my fundamental rights to freedom of movement, personal liberty and dignity of human person will continue to be grossly violated by the Respondents.

40. That I swear to this affidavit solemnly and conscientiously believing its contents to be true and correct and in accordance with the Oaths Act.

In his counter affidavit, Suni Osorun deposed, inter alia, as follows:

1. That I am the 8th respondent and by virtue of my position, I am conversant with the facts of this case.

2.

3. That I am the owner of the property; three (3) bedroom detached bungalow, situate at House 11 Ambassador Abu Obe Estate, Kyami Cadastral Zone E23, FCT Abuja. The title documents to wit: allocation letter, power of attorney, deed of assignment, are attached and marked Exhibit C1-C3.

4.

5.

6.

7. That sometimes in 2021 with the intention to travel out of Nigeria, I decided to sell my property the three (3) bedrooms detached bungalow situate at House 11 Abu Obe Estate situate at Kyami Cadastral Zone E23 FCT even though I had not perfected my transfer/title documents with Mr. Adeniji at the time. A memorandum of understanding of the said property was executed wherein Mr. Jubril Adeniji stood as the vendor with Adeife Omotade, Jana Cloud-Barnes and Eric Barnes and witnessed by me. A copy of the memorandum of understanding is herewith attached and marked Exhibit C5.

8.

9. That out of the fifty thousand US Dollars, the purchasers have only paid the sum of thirty-seven thousand dollars

(\$37,000.00) leaving a balance of thirteen thousand US dollars unpaid till date.

- 10.*
- 11. That sometimes in the 2024, I travelled to the United Kingdom for a business trip and when I returned, I discovered that someone has trespassed on my property the subject matter of this suit and installed a gate at the entrance of my property without my knowledge or consent.*
- 12. That on making enquiry I discovered that the 1st & 2nd Applicants were the ones that in fact committed the trespass and installed the gate in front of my property without first consulting me with the reason that the 1st Applicant's step sister, Jana Cloud-Barnes, one of the purchasers, has already paid for the property.*
- 13. That I approached the Applicants to find out the reasons for their actions but they threatened to deal with me and even eliminate me if I continue asking or claiming for the said land, that they have taken possession and there is nothing I can do about it.*
- 14. That consequent about the facts in paragraphs 12 to 14, as a law-abiding citizen, I wrote a petition against the Applicants to the Deputy Inspector General of Police, for threat to my life, criminal trespass and unlawful conversion of my property. A copy of the Petition dated 6th August, 2024 is herewith attached and marked Exhibit C7.*
- 15. That I did not do any other thing or instruct the police on what to do apart from reporting the threat to my life and trespass to my property to the police.*
- 16.*
- 17.*
- 18.*
- 19.*
- 20. That upon police invitation, the Applicants refused to honour the police further invitations after they were granted bail on*

their first visit, rather they filed this suit alleging breach of fundamental rights in order to frustrate the investigation of the police over the crime they have committed.

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31. *That the 8th respondent denies paragraphs 15,16,17,18,19, 20 and 21 of the affidavit in support and avers that he only made a formal complaint against the Applicants for threat to his life, criminal trespass and unlawful conversion of his property to the 2nd respondent and the matter is still under investigation by the police.*

32. *That I am aware that the Applicants were invited by the police and after interrogations, asked to write statements and were released on bail without any difficulties.*

33. *That it is untrue that the Applicants were subjected to any constant harassment and treat of arrest.*

34.

35. *That even when the so-called sister came to Nigeria in November, 2024, she refused to come to the police to establish or corroborate their claims and severally the Applicants have been invited to come and answer to the complaint made against them after their bail but they refused to honour the invitation.*

36. *That contrary to paragraphs 22 & 23 of the affidavit in support of the Application, I did not instigate the police to do*

anything against the Applicant but only petitioned the police over genuine concerns of my life.

37. That I am just an ordinary Nigerian and do not have the capacity to instigate the police against anyone nor teach the police how to do their duties.

38. That I am aware that the Applicants refused to honour further police invitation after they were granted bail and the police had to invite their sureties to produce them as they undertook to do after there was no complaint against the sureties.

39.

40. That at no time had I ever asked the police to recover money for me from the Applicants because I did not do any transaction with them but my complaint against them was for threat to my life, criminal trespass and criminal conversion over my property.

41.

42.

43.

44. I further aver that at no time did I asked the Nigeria Police to recover any debt for me as I know the right channel to recover my balance, but they were invited only to investigate my criminal complaints.

45.

46.

47.

48. That contrary to paragraphs 33 and 34 of the affidavit in support of the application, I am not aware of the allegation made by the Applicant, but will put them to the strictest proof of same because it was not about money but threat to my life and criminal trespass and conversion to my property.

49. That contrary to paragraphs 35 & 36 of the affidavit in support of the application, the 8th respondent avers that there is no commercial transaction about his complaints to the

police but that the Applicants went to his property and broke through same, damaging all the door therein and installing a gate without his consent, also threatening to deal with him if he complains about it.

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51.

52.

53. *That apart from making a complaint against the Applicants, I did not in any way instigate the 1st to 7th Respondents to arrest or do anything that will prejudice the Applicants.*

54.

55.

56. *That I know as a fact that the 1st to 7th Respondents have not acted in any way above the scope of their duties and at no time have they been used by the 8th respondent against the Applicants as they are only investigating the complaints of the 8th respondent against the Applicants.*

57.

58. *That contrary to paragraph 38 of the affidavit in support of the application, I deny being responsible for the incalculable emotional, psychological trauma and economic losses of the Applicants.*

59.

60.

61.”

The Applicants in their further and better affidavit deposed, *inter alia*, to the following facts:

14. *That contrary to paragraph 14, the petition referred to is not in respect of plot 11 (now renamed plot 14) or any property for that matter to which the 8th respondent can competently lay claims.*

16. *That contrary to paragraph 16, the 2nd - 7th Respondents did not invite the 2nd Applicant and I to their office but rather placed us under arrest and made strenuous efforts to compel us to crimes we know nothing about. I also pointed to the 4th – 7th Respondents that my name is not mentioned in the petition to warrant the arrest and intimidation.*
19. *That contrary to paragraph 20, the 2nd Applicant honoured the 3rd respondent's invitation which later turned out to be an arrest. We were also available at all material times that our presence was required save when I travelled to Lagos and Osogbo and my boarding pass was sent to the 4th – 7th Respondents to justify my absence.*
28. *That contrary to paragraph 31, there is no property belonging to the 8th respondent within Ambassador Abu Obe's estate which I want to convert, trespassed into or in respect of which I and the 2nd Applicant launched a threat to his life.*
29. *That contrary to paragraphs 32 and 33, the invitation turned to arrest, further arrest, detention and constant threat of arrest and detention by the 4th – 7th Respondents.*
32. *That contrary to paragraphs 36 -38, the 8th respondent brags about his connection with top brasses in the Nigerian Police Force as his godfather remains retired DIG Jubrin Adeniji. He is also currently residing in an estate built for every senior police officers including former Inspector Generals of Police hence his capacity to instigate and influence investigation.*
34. *That contrary to paragraph 41, the 2nd Applicant and I responded to the first invitation but same later turned to arrest and I was further arrested and detained in 2nd respondent's custody for three days for a matter that is purely civil in nature.*
36. *That contrary to paragraphs 50 – 57, the instant suit is not instituted to divert attention but to enforce my fundamental human right and the 2nd Applicant which the 3rd –*

7th Respondents are hell-bent on violating unless this Honourable Court intervenes.

37. Contrary to paragraph 58, I have suffered incalculable emotional and psychological trauma flowing from the actions of the 3rd – 7th Respondents upon the active instigation of the 8th respondent.

Olugbami Victor, Esq. counsel for the Applicants distilled three issues for determination by this Honourable Court. The issues are:

- 1. Whether in view of the facts and circumstances stated therein, the actions of the Respondents can stand the scrutiny and requirements of the combined provisions of Sections 34, 35, 37 and 41 of the 1999 Constitution (as amended) as well as Articles 2, 3, 4, 5, 6, 7 and 12 of the African Charter on Human and Peoples' Rights CAP A9 LFN 2004.**
- 2. Whether the 1st – 7th Respondents and their agents are empowered to meddle in commercial transactions or act as debt collection agency and/or agents.**
- 3. Whether the Applicants are entitled to the reliefs sought.**

On his part, Kenneth Ikpechukwu, Esq. counsel for the 8th respondent submitted two issues for determination as follows:

- 1. Whether the Applicants have placed before this Honourable Court credible evidence to show that the 8th respondent was in way responsible for the purported unlawful arrest or threat of arrest and detention of the Applicant, apart from the complaint to the 2nd respondent.**
- 2. Whether the Applicant's fundamental rights have been violated or are likely to be violated.**

From the affidavit evidence of the parties and the submissions of learned counsel, the Court formulates the following issue for determination, *to wit*:

Whether the application for enforcement of the Applicants' fundamental rights is meritorious as to entitle them to the relief sought.

It is the submission of learned counsel for the Applicants that by arresting, detaining and threatening to arrest and detain the Applicants through constant calls, harassments, and intimidation by the 4th – 7th Respondents and other officers in the 2nd respondent's office in order to forcefully incur indictable statement and recover sixteen thousand dollars from the 1st Applicant's sister for the 8th respondent over a property transaction, amounts to a contravention of the provisions of Sections 35, 37, and 41 of the 1999 Constitution (as amended) and Articles 2, 3, 4, 5, 6, 7, and 12 of the African Charter on Human and People's Rights Cap A9, LFN, 2004 and a deprivation and threat of further deprivation of the fundamental rights to liberty, right to private and family life, and freedom of movement of the Applicants by the Respondents on the instigation of the 8th respondent. He referred to the case of **HASSAN V. EFCC (2014) 1 NWLR (Pt. 1389) 607**.

Olugbami Victor, Esq. argued that while the personal liberty of a person may be contravened in the exceptions provided in Section 35(1) (a-f) of the Constitution, the instant case does not fall under the exceptions provided in Section 35(1)(a)-(f) of the 1999 Constitution. He relied on **Odo v. Commissioner of Police (2004) 27 WRN 133**.

Learned counsel for the Applicants further argued, that when there is evidence of arrest and detention of an Applicant which were done or instigated by the respondent, in an action for enforcement of fundamental rights of the Applicant, it is for the respondent to show that the arrest and detention were lawful. He referred to **Onogoruwa v. IGP (1991) 5 NWLR (Pt. 195) 593 and Ochiba v. State (2011) 12 SC (Pt. IV) 79**.

Olugbami Victor, Esq. contended that contrary to Section 4 of the Police Act, it is illegal, wrongful and unconstitutional where the

police abdicate from its primary responsibility, as in this case, by the 3rd – 7th Respondents, in desperate effort to recover money from the 1st Applicant in contravention of the Applicant's constitutionally protected rights. He relied on the case of **Fajemirokun v. Commercial Bank (Credit Lyonnais) Nig. Ltd. (2009) 5 NWLR (Pt. 1135) 588.**

Learned counsel submitted that unless it can be justified, the ordinary improper arrest and detention of a person is a violation of his rights, and no matter the length of detention, attracts liability against the person making the arrest. He relied on **Ikonne v. C.O.P. (1986) 4 NWLR (Pt. 36) 47.**

On his part, Kenneth Ikpechukwu, Esq. submitted that it is the civic duty of the 8th respondent to seek police intervention where there was threat to his life, criminal trespass and criminal conversion of property by submitting a complaint to the 2nd respondent for investigation. What happened after the report is entirely the responsibility of the Police, and the 8th respondent cannot be held culpable for doing his civic duty unless it is shown that it was done *mala fide*. Counsel relied on **Fajemirokun v. Commercial Bank Nig. Ltd. (2009) LER (SC. 336/2002)** and **First Bank of Nig. Plc v. Attorney General of the Federation (2013) LPELR-20152 (p. 27 para. B-D) (CA).**

Learned counsel for the 8th respondent contended further that it is the constitutional and statutory duty of the police to investigate and detect crime once criminal allegation is made against a citizen and decide what action they should take on the report or complaint. He submitted that with a criminal allegation reported against the Applicants by the 8th respondent, the 1st and 2nd Applicants being Nigerian citizens are not immune against police investigation and the Court will not exercise its powers to interfere with powers given by the Constitution to law officers in the control of criminal investigation. He referred the Court to the case of **Attorney General of Anambra State v. Chief Chris Uba (2005) 15 NWLR (pt. 947) 44.**

Kenneth Ikpechukwu, Esq. argued that the question whether the 8th respondent instigated the police against the Applicants has to be established. He opined that there is no credible affidavit evidence in support of the Applicants' claim to show that the 8th respondent, apart from laying a complaint against the Applicants, instigated the police for any unlawful act against the 1st and 2nd Applicants. Counsel relied on the case of **Onah v. Okenwa (2010) 7 NWLR (pt. 1194) 512 (CA)**.

Counsel further stated that by Sections 214 and 216 of the Constitution of the FRN, 1999 (as amended) and Sections 4 and 24 of the Police Act, Cap 359, LFN, 2004 the 1st – 7th: Respondents have discretion upon reasonable suspicion of committing a crime to arrest and detain any person, including the Applicants, and a person who is detained for an offence within the law is subject to a constitutional disability in the instances articulated in paragraphs (a-f) of Section 35 (1)(c) of the 1999 Constitution (as amended). He relied on the case of **Hassan v. EFCC (2014) 1 NWLR (Pt. 1389) 630 – 633**.

In his reply on points of law, Olugbami Victor, Esq. contended that the counter affidavit of the 8th respondent and the exhibits attached is a circus of contradictions where in one breath the 8th respondent claimed Plot 11 within Ambassador Abu Obe Estate but the attached exhibits C1 – C3 is in respect of Plot 12. He submitted that a party cannot be permitted to approbate and reprobate or allowed to take contradictory position on the same issue. He relied on the case of **A-G, Rivers State v. A-G, Federation (2022) LPELR-57708 (SC)**.

The 1st to 7th: Respondents did not appear before this Court neither did they file any process in defence of the Applicants' application for enforcement of fundamental rights. Having failed or neglected to file any counter process to the application, the case of the Applicant remains unchallenged, uncontroverted and not rebutted by the 1st –

7th Respondents. See **Asafa Sea Food v. Alraine (Nig.) Ltd (2002) NWLR, (Pt. 781) 353.**

It is trite law that a party that failed to challenge or controvert depositions in affidavit of his opponent by filing a counter-affidavit, reply or further affidavit is deemed to have accepted the facts deposed in the affidavit. See **Idung v. The Commissioner of Police (2017) LPELR-42333 (CA).** When an affidavit is unchallenged, the trial Court is at liberty to accept it as true and correct.

However, it is also trite that a plaintiff must establish the case he put forward against the defendant by credible evidence. See **Ogolo v. Fubara (2003) 5 SC 41.** A plaintiff must succeed upon the strength of his case and not on the weakness of the defence. See **Owoyemi v. Prince Oladele Adekoya (2013) 12 SCNJ 131.**

I have carefully considered all the processes filed in this case as well as the exhibits, the submissions of learned counsel on both sides and legal authorities cited.

One of the argument put forward on behalf of the Applicants is that “the Applicants were first arrested and released but the 1st Applicant was subsequently arrested and detained by the 3rd – 7th Respondents on a trumped-up allegation, all in desperate effort to forcefully extract confession and indictable admissions from them and to make them return monies to the 8th respondent for a property transaction which is purely a civil and commercial transaction in nature.”

Let me state, that it is worthy of note that an allegation of crime may arise from a civil transaction like the instant case where the 8th respondent made allegation of crime against the 1st and 2nd Applicants arising from the transaction for the purchase of property. The 1st – 7th Respondents are entitled to investigate the allegation in order to determine whether, prima facie, a criminal offence has been made out against the 1st and 2nd Applicants.

Learned counsel further stated that “the Applicants are haunted by the horrors of the arrest, detention as well as the constant intimidation and threat of further arrest and are in real apprehension that unless restrained by the Honourable Court, the 3rd – 7th Respondents and other officers in the 2nd respondent’s office will perfect the contrivance against them.”

In paragraphs 14, 15, 16 & 17, of the affidavit in support of the application for enforcement of fundamental rights, the 1st Applicant narrated that after he install gate on the perimeter fence of the property in company of the 2nd Applicant, the 8th respondent petitioned the 2nd respondent with spurious allegation of threat to his life. On 2nd Applicant honouring invitation of the 3rd respondent, the 4th – 7th Respondents instead of questioning the 1st and 2nd Applicants on the substance of the allegation, arrested and detained them from morning till 6pm before administrative bail was secured.

In paragraphs 16, 22, 23, 28 and 34 of his affidavit, the 1st Applicant complained of harassment, instigation, threat, embarrassment, arrest and detention by the 4th – 7th Respondents. He stated that his ***“surety was severally harassed and intimidated to withdraw thus providing ample opportunity for the 4th – 7th Respondents to further arrest and detain”*** him in their cell from 27th – 29th of November, 2024. Also, that the 4th – 7th Respondents on the instigation of the 8th Respondent have made numerous phone calls to him and his sister in the United State ***“that she pay money otherwise risk arrest and detention.”***

In paragraph 16 of the further and better affidavit, the 1st Applicant stated as follows:

“16. That contrary to the paragraph 16, the 2nd – 7th Respondents did not invite the 2nd Applicant and I to their office but rather placed us under arrest and made strenuous efforts to compel us to crime we know nothing about. I also pointed out to the 4th – 7th respondent that

my name is not mentioned in the petition to warrant the arrest and intimidation.

19. That contrary to paragraph 20, the 2nd Applicant honoured the 3rd respondent's invitation which later turned out to be an arrest. We were also available at all material times that our presence was required save when I travelled to Lagos and Oshogbo and my boarding pass was sent to the 4th – 7th Respondents to justify my absence.”

The 8th respondent's petitioned to the Deputy Inspector General of Police, Criminal Investigation Department, Force Headquarter, Abuja dated 06/08/2024 (**Exhibit C7**) reads in part as follows:

“PETITION: THREAT TO LIFE, CRIMINAL TRESPASS, UNLAWFUL CONVERSION OF PROPERTY OF SUNI OSORUN BY ONE MR. EJIMAH JOHN AND ADEBISI SURNAME UNKNOWN.

We are legal practitioner to Suni Osorun hereinafter referred to as our client and on his behalf and strict instruction, we write to inform you as follows:

That our client owns two properties (building) at Ambassador Abu Obe Estate situated at Kyami Cadastral Zone E23 FCT, Abuja. That our client has been in possession of the said property for so long without interference of anybody as he enjoys ownership.

That our client fenced the said property and travelled to U.K for business.

That our client comes back to Nigeria and find out that the above named person went and gated the property in question without the consent or knowledge of the original owner.

That our client beckon on the culprit, for inquiring as the reason of gating his property against his wish or consent, that they threatened to eliminate him if he ever come close to the property again. Presently, the above mentioned persons are ...”

As I stated above, there is no doubt that by virtue of Section 4 of the Police Act, the 1st – 7th Respondents are statutorily empowered to investigate all allegations of crime. In the course of the investigation, the Respondents can invite, arrest and detain a suspect. However, in the exercise of these powers, the Respondents must act in accordance with the law and not arbitrarily. It is not in dispute, in the instant case, that the 1st and 2nd Applicants were petitioned on allegation of crime and invited for interview with the 3rd respondent in its office.

As I stated earlier, a plaintiff must succeed on the strength of his own case and not on the weakness of the defence. The Applicants have the onus to prove that the 1st and the 2nd Applicants have been subsequently harassed, threatened, arrested and detained by the 4th – 7th Respondents, as a result of the instigation of the 8th respondent. It is trite law that he who asserts must prove his assertion. See **Nsefik v. Muna (2007) LPELR-3934 (CA)**.

The Applicants did not give particulars or evidence of the alleged harassment, threat of further arrest and detention or phone calls. I find paragraphs 16 and 19 of Applicants’ further and better affidavit conflicting with Applicants’ claim of harassment, intimidation and threat of further arrest and detention, when the 1st Applicant deposed that the 1st and 2nd Applicants are *always available anytime their presence is required by the 4th – 7th Respondents*, one wonders why they have not been further arrested.

In paragraphs 23, 24 and 25 of the supporting affidavit, the 1st Applicant stated that he was further arrested and detained from 27th to 29th November, 2024 and the sum of **₦225,000.00** was demanded for his bail which a bank transfer was made and receipted from his lawyer’s bank account (Exhibits A8 and A9). I have carefully

examined Exhibits A8 and A9 which are for one transaction with the following details: *Date:28/11/2024; Narration: money for bail demanded by Sup. Jeremiah; Beneficiary: Elizabeth Iyanu Daniyan; Amount: 225,000.00.* Apart from those details, there is no other detail in the transaction receipt to assist the Court to ascertain the infraction of the Applicant's fundamental rights.

In my humble view, the Applicant's depositions and **Exhibits A8 and A9** does not support his allegation that the 1st – 7th Respondents have violated or are likely to violate their fundamental rights to dignity of human person, personal liberty or freedom of movement. The Exhibits A8 and A9 show that a transfer of **₦225,000.00** was made on 28/11/2024 for bail while the 1st Applicant deposition is that he was further arrested and detained from 27th to 29th November, 2024. The Applicants have also not established by cogent and credible evidence before the Court that the 8th Respondent, other than exercise his civic duty in Exhibit C7, instigated the 4th – 7th Respondents to violate their fundamental rights. I so hold. See **Fajemirokun v. Commercial Bank Nig. Ltd.** (supra).

From all that I have said, I resolve the issue in the negative and in favour of the Respondents against the Applicants. The Applicants suit lacks merit and is hereby dismissed. I make no order as to cost.

SIGNED:
HON. JUDGE
06/11/2025

APPEARANCE:

Egede Ledagha, Esq, for the 8th Respondent/Applicant