

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA  
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS  
COURT NUMBER: HIGH COURT TWO (2)  
CASE NUMBER: FCT/HC/CV/30/2019  
DATE: 3<sup>RD</sup> MARCH, 2020**

**BETWEEN:**

**1. PASCAL JIWUAKU - APPLICANTS  
2. HENRY U. OPUTA**

**AND**

**1. THE INSPECTOR GENERAL OF POLICE  
2. ASSISTANT INSPECTOR OF POLICE,  
ZONE 7, WUSE, ABUJA  
3. SP OGBONNAYA (P.A. TO THE A.I.G.  
ZONE 7)  
4. PETER UMAR** } **RESPONDENTS**

Parties absent and not represented.

Court – The matter is for ruling and this is the decision.

## **R U L I N G**

This is an originating Motion on Notice dated 15/10/2019 in the matter of the Fundamental Rights (Enforcement Procedure) Rules 2009 pursuant to Section 46(3) of the 1999 Constitution of Federal Republic of Nigeria (as amended).

The application seeks for the following reliefs:

1. A Declaration that the summoning, intimidation, threat to arrest of the 1<sup>st</sup> Applicant by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents is unconstitutional, illegal and flagrant violation of the Applicant's Fundamental Human Rights as provided under

Section 35(1) & (4) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

2. A Declaration that the harassment, unwarranted intimidation, arrest and detention of the 2<sup>nd</sup> Applicant by men of the Respondents headed by the 3<sup>rd</sup> Respondent and 4<sup>th</sup> Respondent and treated in a manner highly undignifying, stripping him of his clothes and forcing him to sleep on the bare floor by the Respondents under the collaboration of I.P.O. Peter Umar (08052279998) is a gross violation of his right for the dignity of the human person under Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under Article 5 of the African Charter on Human and Peoples Right.
3. A Declaration that, it is not the statutory duty of the police to recover debt.
4. A Declaration that it is not the statutory duty of the police to enforce a civil contract between parties.
5. A Declaration of this Honourable Court nullifying the undertaking written by the 2<sup>nd</sup> Applicant on the 11<sup>th</sup> of October, 2019 at about 11a.m. as illegal and of no effect as same was obtained under duress.
6. An Order of Injunction restraining the Respondents either by themselves, its assigns or agents from further arresting or detaining the Applicants.
7. An Order commanding the Respondents to pay the sum of N700,000,000.00 (Seven Hundred Million Naira) only to the Applicants as punitive and exemplary damages.

8. A Declaration that the incessant harassment and threat to arrest the 1<sup>st</sup> Applicant, a legal practitioner who merely went to A.I.G Zone Office to render his professional service to his client who was arrested there by the orders of SP Ogbonnaya (P.A. to the A.I.G. Zone 7) is illegal and unlawful, being contrary to Section 35(1) (4) of the 1999 Constitution.
9. A Declaration that the 1<sup>st</sup> Applicant never took his client on bail, and so cannot be mandated to produce him, as mere rendering professional service to a client does not amount to be a surety to that client.
10. A Declaration that the arrest and detention of the 2<sup>nd</sup> Applicant on the 10<sup>th</sup> of October to 11<sup>th</sup> of October 2019 by the 4<sup>th</sup> Respondent on the orders of the 3<sup>rd</sup> Respondent in the cell room of the 2<sup>nd</sup> Respondent is illegal and unlawful, being contrary to Section 35 of the 1999 Constitution.
11. A Declaration that the 1<sup>st</sup> Applicant never took his client on bail, as he never filed any bail bond which is a compulsory requisite for granting bail.
12. That the undertaking written by the 2<sup>nd</sup> Applicant to the effect that the 2<sup>nd</sup> Applicant willing brought the N198,000.00 (One Hundred and Ninety-Eight Thousand Naira) only in respect to the debt owed by their client by the orders of the 3<sup>rd</sup> and 4<sup>th</sup> Respondent is illegal, null and void as the money belongs to the 2<sup>nd</sup> Respondent and more so the police is not a debt recovering agency.
13. An Order commanding the 3<sup>rd</sup> and 4<sup>th</sup> Respondents to return the sum of N198,000.00 (One Hundred and Ninety-Eight

Thousand Naira) only forcefully collected from the 2<sup>nd</sup> Applicant by them (3<sup>rd</sup> and 4<sup>th</sup> Respondent).

14. An Order of this Honourable Court commanding the Respondents most especially the 3<sup>rd</sup> and 4<sup>th</sup> Respondent to pay the 1<sup>st</sup> Applicant the sum of N200,000,000.00 (Two Hundred Million Naira) only as exemplary and punitive measure.
15. An Order of this Honourable Court commanding the Respondents most especially the 3<sup>rd</sup> and 4<sup>th</sup> Respondent to pay the 2<sup>nd</sup> Applicant the sum of N500,000,000.00 (Five Hundred Million Naira) only as exemplary, damages, health hazard and punitive measure for his unlawful arrest, detention and hardship caused to him by their actions.
16. An Order commanding the Respondents to further desists from harassing, molesting and threatening the arrest of the 1<sup>st</sup> Applicant.
17. And for such other order(s) as the Honourable Court may deem fit to make in the circumstances of the case.

In compliance with the Fundamental Right (Enforcement Procedure Rules), the Applicant filed statement under Order 2 Rule 1 and Order 3 Rules 5 of the said Rules and under the inherent jurisdiction of this Honourable Court.

The grounds upon which the application is brought are as follows:

1. The 1<sup>st</sup> Applicant has been under a barrage of threats of arrest and violation of his human dignity by the Respondents most especially from the 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

2. The 2<sup>nd</sup> Applicant was arrested and detained from the 10<sup>th</sup> of October to the 11<sup>th</sup> October, stripped of his clothes and made to sleep on a cold floor on a cold night by the Respondents particularly the 3<sup>rd</sup> and 4<sup>th</sup> Respondents just merely because he went on errand to the office of the 2<sup>nd</sup> Respondent by the 4<sup>th</sup> Respondent on the orders of the 3<sup>rd</sup> Respondent.
3. That an attempt and/or interference of the Applicants liberty by the Respondents in the manner aforesaid constitutes an infringement of the Applicant's fundamental rights, protected under the 1999 Constitution.
4. That the 2<sup>nd</sup> Applicant's N198,000.00 (One Hundred and Ninety-Eight Thousand Naira) only with him was forcefully collected from him by the 4<sup>th</sup> Respondent on the orders of the 3<sup>rd</sup> Respondent in the presence of Kizito Muomah Esq.

In support of this application are 2 supporting affidavits both dated 15/10/2019.

The 1<sup>st</sup> affidavit is deposed to by the 1<sup>st</sup> Applicant (Pascal Jiwuaku) and it is of 12-paragraphs while the 2<sup>nd</sup> affidavit is deposed to by the 2<sup>nd</sup> Applicant Henry U. Oputa and is of 14-paragraph.

Learned counsel to the Applicants filed 7-page written address dated 15/10/2019 wherein counsel distilled 4 issues for determination to wit:

1. ***“Whether the right of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents is unlimited”.***

2. ***Whether in the light of the facts of the case and the affidavit evidence of the Applicants, the Applicant's Right have been threatened or/and violated hence is entitled to protection under the Fundamental Right Enforcement Law.***
3. ***Whether the police is a debt recovery agency.***
4. ***Whether the Applicant is entitled to his personal liberty, dignity of his human person and such damages for the consequential breach."***

On Issue 1, it is the submission that the Respondent's right to arrest under Section 20 of the Police Act is not unfettered. Their right to arrest under the Act does not include the arrest of a person unlawfully. Learned counsel refer to the cases of EDO v C.O.P. (1962) 1 All NLK 192.

On Issue 2, it is the submission that from a judicial and judicious appraisal of the facts of this case, it will be clear that the subject matter of the complaint by the complainant to the Respondents is purely civil, which is the issue of ownership of title to property.

More so, the attempt by the Respondents to arrest the 1<sup>st</sup> Applicant is premature and the subsequent arrest and detention of the 2<sup>nd</sup> Applicant is illegal more so Section 7 of the Administration of Criminal Justice Act 2015 has frown against arrest of someone in lieu of another.

On Issue 3, it is the submission that it is a well determined issue in plethora of judicial authorities wherein the courts have conclusively held up to the Supreme Court that the statutory powers of the police as provided by the law does not include meddling into civil matters and being used as an agency for the

recovery of debt and personal vendetta and there is no basis for seizing and forfeiting the 2<sup>nd</sup> Applicant's money. See the cases of OGBONNA v OGBONNA (2014) LPELR- 22308 CA; ANOGWIE & ORS v ODOM 2016 LPELR – 40214 CA.

On Issue 4, it is the submissions that the Applicants are entitled to their right to personal liberty as enshrined by Section 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the African Charter on Human and Peoples Right Articles 5 and 6. Further submits that on the issue of the consequential damage arising from the breach, the court held in SHUGABA v THE MINISTER OF INTERNAL AFFAIRS & 3 ORS (1981) NCLR 459 – A person whose fundamental rights are violated has the right to seek for redress in the High Court and also sue for damages in form of monetary award. In this case, the court awarded the damages for General/Aggravated/Compulsory and Exemplary damages. Submits that the provision of Section 35(6) of the Constitution makes it mandatory that any person who is unlawfully arrested or detained is entitled to damages and/or public apology from the appropriate authority or person.

In conclusion, learned counsel urge the court to hold in favour of the Applicants by granting this application for the entrancement of fundamental right.

In opposition to this application, the Respondents filed 2 counter affidavits both dated 7/11/2019 against the 1<sup>st</sup> and 2<sup>nd</sup> Applicant. The counter affidavit filed against the 1<sup>st</sup> Applicant is of 7-paragraph deposed to by Peter Umar, a member of the team of

Police Detectives who investigated this case. Attached thereto are documents marked as Exhibits A, B, C, D and E respectively.

The counter affidavit against the 2<sup>nd</sup> Applicant is of 5-paragraph and also deposed to by Peter Umar, a member of the team of Police Detectives who investigated the case.

Learned counsel to the Respondents filed 6-page written address wherein counsel formulated 2 issues for determination to wit:

1. ***“Whether the Respondents have in any way exceeded their mandate by merely acting on a petition by an aggrieved citizen of Nigeria”***
2. ***Whether the Applicants are entitled to damages”***

On Issue One, it is the submission that, the constitution of the Federal Republic of Nigeria 1999 (as amended) in Section 35(1) (c) confers powers on the Respondent to do arrest in furtherance of their mandate and also Section 4 of the Police Act CAP P19 LFN 2004 confers power to investigation, detention, and arrest on the Respondents. Submits that the action of the Applicants is tantamount to obstructing the Respondent from performing their lawful duties. The courts have in a plethora of cases condemned this attitude. Learned counsel refer to the case of I.G.P. v UBAH (2014) LPELR – 23968, ATTORNEY GENERAL ANAMBRA STATE v CHIEF CHRIS UBA (2005) NWLR Pt 94 at 744.

On Issue Two, it is the submission that the Applicants having failed to deceive this Honourable Court are not entitled to damages, this is because “you cannot put something on nothing and expect it to stand”. It was the considered decision of the Defendant – Kelvin Nnamani to settle his case by peacefully refunding what he



unlawfully took from the nominal complainant. The Respondent have the power to settle parties. Submits that the Applicants surprisingly are averse to such amicable settlement; they want the case to continue *ad-indefinitum*.

In conclusion, learned counsel to the Respondent urge this Honourable Court to discountenance this application and throw it away.

In response to the counter affidavit, the Applicants filed 2 Further and Better Affidavit dated 27/12/19 and 9/1/2020. The Further and Better Affidavit dated 27/12/19 is of 22-paragraph deposed to by Kizito Muomah, a Legal practitioner at the National Assembly. Attached thereto is one document marked as Exhibit P; while the Further and Better Affidavit dated 9/1/2020 is deposed to by Kelvin Nnamani and it is of 27-paragraph. Attached thereto are 2 documents marked as Exhibits K1 and K2 respectively.

I have carefully considered the process filed and the submissions of learned counsel on both sides, I am in one with the 2 issues as formulated by the Respondent counsel to wit:

- (a) Whether the Respondent have in any way exceeded their mandate by merely acting on a petition by an aggrieved citizen of Nigeria.
- (b) Whether the Applicants are entitled to damages.

It is doubtless to say that Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) guaranteed certain fundamental rights. However, these rights are subject to legal and express limitation as can be found under Section 35(c) of the same constitution.

It is of note that the constitution that provided for observance of human right also set up the Nigeria Police to investigate and prosecute any person found wanting criminally as they are to protect life and property. See Section 4 and 23 of the Police Act. It is trite law that investigation of a criminal complaint by the Police is a preliminary course which may or may not result in criminal prosecution. See Section 4 of the Police Act and the case of *FAWEHINMI v I.G.P.*(2002) 7 NWLR (Pt 767) 606.

It is the duty of the Nigeria Police to investigate crime especially when there is a formal complaint or report by a citizen. In the instant case there is no any formal complaint against the Applicants. What gave rise to this application under consideration was that the 1<sup>st</sup> Applicant Pascal Jiwuaku Esq. was called by his client that he is being detained by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent over a debt. That the 1<sup>st</sup> Applicant never took his client on bail but has been under a barge of threat to arrest by the Respondents particularly the 4 Respondents.

On 10/10/2019, the 3<sup>rd</sup> Respondent persisted with his calls and the 1<sup>st</sup> Applicant told him to check his records properly that he never took his client on bail and the 4 respondent further informed the 1<sup>st</sup> Applicant (via phone) that the 3<sup>rd</sup> Respondent has given orders for him to go to his client's shop and pack his goods. He (1<sup>st</sup> Applicant's counsel) told the 4<sup>th</sup> Respondent that he will sue them (3<sup>rd</sup> and 4<sup>th</sup> Respondent) if they try that and on hearing that the 4<sup>th</sup> Respondent got infiltrated. In view of the infiltration of the 4<sup>th</sup> Respondent the 1<sup>st</sup> Applicant became sceptical that the 3<sup>rd</sup> and 4<sup>th</sup> Respondent were planning to arrest and detain him so he sent

the 2<sup>nd</sup> Applicant to the office of the 2<sup>nd</sup> Respondent to inform the 3<sup>rd</sup> and 4<sup>th</sup> Respondent that he never took his client on bail and they should check their records; but to his greatest shock, he called the 1<sup>st</sup> Applicant from the office of the 2<sup>nd</sup> Respondent that the 4<sup>th</sup> Respondent called the 3<sup>rd</sup> Respondent in his presence and the 3<sup>rd</sup> Respondent ordered the 4<sup>th</sup> Respondent to detain the 2<sup>nd</sup> Applicant. Since he was coming from the 1<sup>st</sup> Applicant, that the 1<sup>st</sup> Applicant had the guts to say he will sue them. That true to their threat the 2<sup>nd</sup> Applicant was detained on 10<sup>th</sup> of October 2019 when another counsel Kizito Muomah was sent to secure his release.

I have gone over and over again through the affidavit in support of the application and the Further and Better Affidavits dated 22/12/2019 and 9/1/2020 and the exhibits attached thereto, there is nothing sufficient to convince this court, that the 2<sup>nd</sup> Applicant was actually detained from 10<sup>th</sup> October – 11<sup>th</sup> October 2019 and the sum of N198,000.00 was collected from him. The exhibits attached to the 2 Further and Better Affidavits are not sufficient enough to show that the 2<sup>nd</sup> Applicant was detained and the sum of N198,000.00 collected from him. However, Section 46(1) of Chapter IV of the Constitution provides thus:

***“that any person who alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in any state in relation to him may apply to a High Court for redress”***

In the light of all stated above, I am of the firm view that the 2<sup>nd</sup> Applicant has failed to prove that any of his fundamental human

rights is breached or threatened to be breached; while I am of the considered view that the 1<sup>st</sup> Applicant have partly made out a case against the Respondents for the grant of reliefs 1, 6, 8, 9 and 16.

Accordingly, this court makes the following orders:

1. That the Respondent are restrained from summoning, intimidation, threat to arrest the 1<sup>st</sup> Applicant.
2. An Order of injunction is hereby granted restraining the Respondent, either by themselves, its assigns or agent from further arresting or detaining the Applicants in connection to the petition written by Mr. Felix Mbazelu dated 8/8/2019 to A.I.G., Nigeria Police Force, Zone 7 Headquarters, Wuse Abuja.
3. I declare that the incessant harassment and threat to arrest the 1<sup>st</sup> Applicant, a legal practitioner, who merely went to A.I.G. Zone 7 Office to render his professional service to his client who was arrested there by S.P. Ogbonnaya (P.A. to A.I.G. Zone 7) is illegal and unlawful, being contrary to Section 35(1) of the 1999 Constitution.
4. I declare that the 1<sup>st</sup> Applicant never took his client on bail and so cannot be mandated to produce him, as mere rendering professional service to a client does not amount to be a surety to that client.
5. I order that the Respondent to desist from harassing, molesting and threatening the arrest the 1<sup>st</sup> Applicant in connection to the petition written by Mr. Felix Mbazelu dated

8/8/2019 to the A.I.G. Nigeria Police Force Zone 7  
Headquarters, Wuse, Abuja.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**03/03/2020**

Godson Usman for the Applicants appearing with Sonny Elias Esq.  
Applicant's Counsel – I am sorry for coming in late. We are  
grateful for the well-considered judgment.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**03/03/2020**