IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS:	**JAMILA OMEKE & ORS**
COURT NUMBER:	**HIGH COURT NO. 32**
CASE NUMBER:	**SUIT NO. FCT/HC/CV/2393/19**
DATE:	**28TH SEPTEMBER, 2020**

BETWEEN:

OSIMIBIBRA WARMATE…….....APPLICANT

AND

SENATOR ELISHA ISHAKU ABBO…….RESPONDENT

APPEARANCE
Ademola Adeboye Esq with Ibinabo Warmate Esq for the Applicant.
Applicant in court.
A. C. Ozioko Esq for the Respondent.

RULING

The Applicant approached this Honourable Court through her counsel by way of originating Motion for the Enforcement of the Applicant's Fundamental Right to dignity of the human person pursuant to our extant laws.

The Application was brought pursuant to order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) rules, 2009 and Section 34 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

In line with the Rules and Procedure, a statement in Support of the Application, and grounds predicating the application were equally filed. The application is supported by a 30 paragraphed affidavit duly deposed to by Osimibibra Warmate, the Applicant in this matter.

The applicant herein seeks the following Reliefs:-

1. A Declaration that the Respondent's violent assault on the Applicant on May,11, 2019 at New Banex Plaza, Wuse II, Abuja amounts to inhuman and degrading treatment and constitutes a breach of the Applicant's Fundamental Right to the dignity of her person guaranteed under Section 34 of the constitution of the Federal Republic of Nigeria 1999 (as amended).
2. An Order Directing the Respondent to pay the Applicant the Sum of ₦250,000,000.00 (Two Hundred and Fifty Million Naira) as general damages for infringing and violating the Applicant's Fundamental Right to the dignity of her person when he assaulted the Applicant on May, 11, 2019 at New Banex Plaza, Wuse II, Abuja.
3. An order directing the Respondent to pay the Applicant the Sum of ₦50,000.000.00 (Fifty Million Naira) as punitive/exemplary damages for his unconscionable infringement and violation of the Applicant's Fundamental Right to the dignity of her person when he violently assaulted the Applicant on May, 11, 2019 at New Banex Plaza Wuse II Abuja.
4. An order directing the Respondent to publish an unreserved public apology to the Applicant in a national daily newspaper.

And for such other order(s) as this Honourable Court may deem fit to make.

Attached to the supporting Affidavit are annextures marked as Exhibit B1, B2, B3, B4, B5, and B6 respectively. Equally filed is a written address in support of the application dated 8th day of July, 2019.

On the otherhand, the Respondent upon being served with the originating processes filed a motion for extention of time, notice of Preliminary Objection and Counter Affidavit to the Originating Motion.

I will consider the notice of Preliminary Objection first because it touches on the jurisdiction of this Honourable Court.

The notice of Preliminary Objection is dated 19th day of March, 2020 and filed on 23rd March, 2020.

The grounds for the Objection are as follows:-

1. The case disclosed in the suit is not cognizable under Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and the Fundamental Rights Enforcement Procedure.
2. This suit was commenced by originating motion in violation of the mandatory Provisions of order 2 Rule (1) of the High Court of the FCT Civil Procedure Rules 2018.
3. The facts of the case are contentions and not one that can be determined via affidavit evidence.

Filed in support of the Preliminary Objection is a written address dated 19th day of March, 2019.

In the said written address, counsel to the Respondent A.C Ozioke, Esq formulated a lone issue for determination which is whether this Honourable Court has jurisdiction to hear and determine this suit as constituted.

In arguing the issue, counsel stated that it is the plaintiff's claim that determines the jurisdiction of the court. Reference was made to the case of AKPAMGBO OKADIGBO & ORS VS CHIDI & ORS (2) (2015) LPELR- 24515 (SC); OR (2015) 10 NWLR (PT. 1466) Page 124.

The learned counsel submitted that the plaintiff's Claim as constituted has robbed this Honourable Court of Jurisdiction to proceed because going through the affidavit evidence of the Applicant and the claim, it is incontrovertible that the main Claim before the court is a tortuous claim for assault and the said cause of action being founded on the tort of assault, is not cognizable under Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).

In his further submission, counsel stated that the affidavit evidence of the Applicant does not disclose that she is or was under detention by the Respondent or was tortured by him or any inhuman treatment meted out to her. The learned counsel stated moreso that the relief the Applicant is seeking is simply in damages for assault and there is no prayer that shows that her fundamental Rights as enshrined in Chapter iv of the Constitution is at stake.

In another submission counsel stated that the facts disclosed in this case via affidavit evidence and the nature of the relief claimed are such that require the suit to be commenced by writ and not to be determined by affidavit evidence. Reliance was placed on order 2 Rule (2) (1) (a) of the High Court of the FCT Civil Procedure Rules, 2018.

Furthermore, counsel submitted that it is the law that for a court to have or assume jurisdiction to hear a case, it must be properly constituted as regards numbers and qualification of the members and the bench and that no member for any reason is disqualified. Secondly that the subject matter of the case must be within its jurisdiction and there is no feature of the case which prevents the court from exercise of its jurisdiction and thirdly, the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. He cited in support the cases of YARADUA & ORS VS YANDOMA & ORS (2014) LPELR-24217 (SC); OR (2015) 4 NWLR (PT. 1448) 128; MADUKOLU & ORS VS NKEMDILIM (1962) 2 SCNLR. Page 341.

Consequently, the learned counsel submitted that a case of this nature cannot be ventilated under the Fundamental Rights Enforcement Rules. Reliance was placed on the case of EMEKA VS OKOROAFOR & ORS (2017) LPELR-41738(SC); PETERSIDE VS I. M. B (1993) 2 NWLR (PT. 278) Page 712 at 718-719.

Finally, counsel urged the court to strike out this suit with substantial costs.

In opposition to the preliminary objection, the Applicant filed a written address dated 29th day of May, 2020 and filed same day. In the said written address, learned counsel to the Applicant raised a lone issue for determination which is whether or not the preliminary objection raised by the Respondent is

meritorious and the Honourable Court ought to non-suit or strike out this suit for want of jurisdiction as prayed by the Respondent.

In arguing the issue, counsel submitted that the Applicant's case as set up in the instant suit is premised on an allegation of infringement on her constitutionally-guaranteed right as entrenched in Section 34 (1) (a) of the Constitution of the Federal Republic of Nigeria 1999, by the Respondent.

As such, counsel stated that the contemplation of the provision of our Grundnorm is that the personal dignity of the Applicant must be represented by all persons and that any incidence of torture or inhuman treatment and/or degrading treatment on the Applicant will amount to a violation of the Constitutionally provided right. So that the Applicant is enabled to properly commence on action to enforce her constitutional right under the fundamental rights enforcement procedure. He urged the court to so hold.

On the meaning of torture, inhuman and degrading treatment counsel cited the cases of NIGERIA CUSTOMS SERVICE BOARD VS MOHAMMED (2015) LPELR-25938 (CA); ODIONG VS ASST. IGP (2013) LPELR-20698. (CA).

Therefore, the learned counsel referred the court to paragraphs 17, 18, 19 and 20 of the supporting affidavit to the substantive application and submitted that the assertion of the Respondent that the Applicant's Claim is founded on tort of assault and that same did not touch on the violation of any of the Fundamental Rights guaranteed under Section 4 of the 1999 Constitution is erroneous, mischievous and misconceived and urged the court to so hold.

In his further submission, counsel stated that the case set up by the Applicant against the Respondent in the instant suit and the allegations against the latter therein, competently fall within the contemplation of Section 34 of the Constitution and the case is thus cognizable by the said Section of the Grundnorm and urged the court to so hold.

Moreso, counsel referred the court to order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure) 2009 and submitted that this Honourable Court is

competently vested with the requisite jurisdiction to determine the instant suit and urged the court to so hold.

On the submission of the learned counsel to the Respondent that the instant action was not commenced by a proper originating process as provided by the Federal Capital Territory, Abuja (Civil Procedure) Rules, the learned Applicant's counsel submitted that the Application was properly commenced and that enforcement of Fundamental Rights Proceedings is sui generis, hence same is regulated by a special set of rules-the Fundamental Rights (Enforcement Procedure) Rules 2009 which Rules is different from the usual High Court Rules. Reference was made to order 11 Rule 2, 3, & 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and order 2 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.

In the circumstances counsel stated that the Applicant commenced this suit by way of originating motion, which is one of the modes of commencement of suits prescribed by the Rules of this Honourable Court. As such, counsel submitted that the contention of the Respondent's counsel that this action ought to have commenced by way of a writ is erroneous, baseless and misconceived.

In his final submission, counsel stated that the Respondent misconstrued and misapplied the ratio in the case of PETERSIDE VS I. M. B (1993) 2 NWLR (pt. 278) page 712 at 718 per NIKI TOBI JCA (as he then was) restated in EMEKA VS OKOROAFOR & ORS (2017)LPELR-41738 (SC) per KEKERE-EKUN JSC. (PP.78-89, paragraph B-E), that the facts are not the same as the facts in the instant case.

Finally counsel referred the court to the case of OKAFOR VS NNAIFE (1987) 4 NWLR (PT. 64) 129 at 137 and submitted that this preliminary objection is baseless and liable to be dismissed and urged the court to so hold.

I have gone through the notice of preliminary objection, grounds upon which same was predicated and the written address in support. I have equally perused the written address in opposition to the preliminary objection. It is therefore my humble view that the centre point of this preliminary objection is whether the Applicant herein can approach this Honourable Court via Fundamental Rights

Enforcement Procedure Rules in view of the surrounding circumstances of this case.

It is worthy of note to begin by saying that proceedings for Fundamental Rights are governed by the Fundamental Rights Enforcement Procedure Rules 2009 (as amended)

Having said that, it is trite law that in determining whether a cause of action comes under fundamental Rights Enforcement Procedure Rules, the court is to closely examine the reliefs sought by the Applicant as well as the grounds for seeking such reliefs and the facts predicating same. In this respect, see the case of JACOB VS COMMISSIONER MINISTRY OF ENVIRONMENT AND MINERAL RESOURCES AKWA IBOM STATE & ANOR (2018) LPELR-45182 (CA) where it was held that:-

"…….For any claim to qualify as falling under the fundamental rights it must be clear that the principal relief claimed is for the Enforcement of a Fundamental Right as known under chapter iv of the constitution and not to redress any grievance that is ancillary to the principal relief."

Similarly, it was held in the case of A. T. A POLY VS MAINA (2005) 10 NWLR (PT. 934) 487 at 502 paragraph E-G that:-

"……It is trite law however, that in order to determine whether a cause could come under the fundamental Rights (Enforcement procedure) Rules of 1979, the proper approach is to closely examine the reliefs sought by the applicant, the grounds for such reliefs and the facts relied upon. If such facts disclose that a breach of fundamental Right is the main Plank, then redress may be sought through the Rules…."

See also the following cases:-

FAJEMIROKUN VS COMMERCIAL BANK (NIG) LTD & ANOR (2009) LPELR-1231 (SC); PETERSIDE VS I. M. B (1993) 2 NWLR (PT. 278) 712, 718-719; EGBE VS BELGORE (2004) 8 NWLR (PT. 875) 336; SEA TRUCKS NIGERIA LTD VS ANIGBORO (2001) 2 NWLR (PT. 696) 159.

Therefore, in the instant case, the facts as deposed in the supporting affidavit to the originating motion are inter alia that the Applicant was brutally slapped on the face by the Respondent, that the Respondent pulled the Applicant by her hair and dragged her out of a shop at new Banex Plaza, Wuse 2 Abuja with the aid of a Policeman and a plain clothes man to a waiting vehicle in a bid to force the Applicant into the vehicle despite several pleas for mercy from sympathetic bystanders.

Consequently, the Applicant herein alleged that this attack on her by the Respondent constitutes infringement of her constitutionally guaranteed right to human dignity as entrenched in Section 34 (1) (a) of the Constitution of the Federal republic of Nigeria 1999 (as amended).

At this juncture, I must make it clear that I do not intend to dwell on the substantive application at this stage but to say the least the alleged act of the Respondent vis-à-vis the claims before the court suggests breach of Section 34 (1) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). I so hold.

Furthermore, the provision of order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009 specifically states thus:-

> ***"Any person who alleges that any of the fundamental Rights provided for in the Constitution or African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being or is likely to be infringed, may apply to the Court in the state where the infringement occurs or is likely to occur, for redress".***

This is in consonance with Section 46 (1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) which also provides that any person who alleges that any of the provision of Chapter iv of the Constitution has been, is being or likely to be contravened in any state in relation to him may apply to the High Court in that state for redress.

It is based on these provisions of law that enable an applicant to seek for redress under Section 34 (1) which specifically deals with Right to dignity of the Human Person.

In view of the above, it is my firm view that the surrounding circumstances of this case vis-à-vis the facts deposed in the supporting affidavit to the originating motion, the alleged breach of the Fundamental Right by the Respondent is the main issue or complaint which enables the Applicant to seek redress through Fundamental Rights Enforcement Procedure Rules. I so hold.

To this end, I would very strongly hold that the Applicant's suit as presently constituted is properly brought via fundamental Rights Enforcement Procedure Rules 2009 (as amended).

Before I conclude, it should be reinstated for emphasis that the procedure for filing an action via Fundamental Rights Enforcement Procedure Rules, 2009 (as amended) is clearly spelt out under order II Rules 2, 3, & 5 of the Fundamental Rights Enforcement Procedure Rules. I will not belabor myself on reproducing the wordings of the said Rules here because I believe they are elementary. However to put it simply, Enforcement of Fundamental Rights matters is usually begun vide motion on notice with affidavit stating grounds in support and written address. Needless to mention, it is sought and won on the paragraphs of affidavit and written address.

In the circumstances, therefore, I have taken judicial notice of the processes filed by the Applicant in this suit, I do not see where the Applicant has breached and/or failed to comply with the laid down procedure required for filing, this suit. Consequently, I hold very strongly that the Applicant herein has complied with the procedure laid down by the Fundamental Rights Enforcement Procedure Rules 2009 in filing this suit.

In view of the foregoing and without further ado, the preliminary objection lacks merit and same is hereby overruled and accordingly dismissed in its entirety. On that note, I hold that this Honourable Court has unfettered jurisdiction to hear and determine this suit on its merit. I make no order as to cost.

That takes me to consider the main application on its merit.

In the written address in support of the Application, learned counsel to the Applicant formulated a lone issue for determination which is whether from the facts of this case, and affidavit (including the Exhibits annexed there to) adduced in support of same, the applicant has established that the Respondent breached her Fundamental Right to dignity of the Human person guaranteed by Section 34 of the Constitution of the Federal republic of Nigeria, 1999 (as amended) and is therefore entitled to the reliefs sought in this Application.

In arguing the issue counsel submitted that from the totality of the affidavit evidence in support of this application, the Applicant has established that her Constitutionally guaranteed fundamental Human Right to Dignity of the Human Person was brazenly and unconscionably breached by the Respondent. Reliance was placed on Section 34 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

In another submission counsel stated that it is settled law that in order to succeed in an Application for the Enforcement of a person's Fundamental Human Rights, all the Applicant needs to do is to show by Credible oral or affidavit evidence, facts disclosing the act done or omission made by the Respondent which constituted the breach of the Applicant's Right. In this respect counsel cited the case of OKAFOR VS LAGOS STATE GOVERNMENT (2017) 4 NWLR (PT. 1556) 404 at 433, paragraph H. also counsel referred the court to paragraphs 16, 17, 18, 19 and 24 of the affidavit in support of this application and Exhibits B1 and B4 respectively.

On the definition of document, counsel referred the court to Section 258 of the Evidence Act (2011) and stated that documentary evidence is the best form of evidence capable of irresistibly establishing the existence of the facts sought to be proved by it. Reliance was placed on the cases of A.G BENDEL VS U. B. A (1986) 4 NWLR (PT. 37) 547 at 563 OJOH VS KAMALU (2005) 18 NWLR (PT. 958) 523 at 580 paragraphs C0D; OKAFOR VS I.N.E.C (2010) 3 NWLR (PT. 1180) 1 at 53.

In his further submission, counsel stated that it is settled law that the standard of proof in a civil case, such as the instant case Fundamental Rights Enforcement suit, is one discharged on the balance of probabilities or preponderance of evidence and that the Applicant has via the affidavit evidence in support of this application and Exhibits B1 and B4 annexed thereto, clearly established that the Respondent physically assaulted her Person thereby subjecting her to inhuman and degrading treatment and breaching her Right to dignity of human person.

In addition, counsel submitted that the Applicant has sufficiently discharged the burden of proving that her Right to dignity of the Human Person was breached by the Respondent. Reliance was placed on the case of INTERDRILL (NIG) LTD VS U.B.A PLC (2017) 13 NWLR (PT. 1581) 52 at 75 Sections 121 (a) and 134 of the Evidence Act, 2011 (as amended).

Consequently, learned counsel submitted moreso that the Applicant having established that her Right to dignity of the Human Person was brazenly breached by the Respondent, the Applicant is entitled to all the reliefs sought in this application as redress for the breach of her Fundamental Human Right by the Respondent. Counsel cited in support order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 and the case of FIRST BANK OF NIGERIA PLC & ORS VS ATTORNEY-GENERAL OF THE FEDERATION &ORS (2018) LPELR-46084 (SC).

In similar submission, learned counsel stated that the Right of a Person whose Fundamental Right has been infringed upon is entitled to an award of monetary compensation or otherwise is sacrosanct that even where such a person does not claim compensation specifically, the Court has an immutable duty to award same. And that it is also the position of law that exemplary, punitive or aggravated damages should be awarded whenever the defendant's conduct is sufficiently outrageous to merit punishment as where, for instance, it discloses malice, fraud cruelty, insolence or flagrant disregard of the law and the like. Counsel referred the court to the cases of JIM-JAJA VS C. O. P RIVER STATE (2013) 6 NWLR (PT. 1350) 225 G. K. F. J (NIG) LTD VS NITEL PLC (2009) 15 NWLR

(PT. 1164) 344 at 377; SUN PUBLISHING LTD VS ALADINMA MEDICARE LTD (2016) 9 NWLR (PT. 1518) 557 at 606, paragraph G-H. Also, counsel referred the court to paragraphs 20, 22, 26, 27 and 28 of the affidavit in support of this Application and Exhibits B1 and B4 respectively.

It is also the learned counsel's submission that since it is clear that the Respondent's unprovoked physical assault on the Applicant has caused her severe pain and suffering physically, mentally and psychologically, and that same has exposed her to indescribable public embarrassment and intrusive media exposure, the Applicant ought to be duly compensated by this court by the award of all damages sought in this application. He further submitted that in the interest of justice, this Honourable Court should direct the Respondent to publicly apologize unreservedly to the Applicant to salvage whatever is left of the Applicant's dignity which has been cruelly violated by the Respondent.

Finally, counsel urged the court to hold that this Application is meritorious and grant all the reliefs sought by the Applicant.

On the other hand, in opposing the application the Respondent filed a 17 paragraphed counter affidavit deposed to by Elisha Ishaku Abbo, the Respondent in this suit. Also filed in opposition is a written address dated 19th day of March, 2020.

In the said written address, learned counsel to the Respondent submitted, that civil cases are decided on the preponderance of evidence adduced by parties in the case. Reliance was placed on the case of OGBONNA VS OGBONNA (2014) (CA) page 72 paragraph B.

It is the contention of the counsel to the Respondent that the affidavit evidence before the court has not established the claim of the Applicant. Therefore, he submitted that the two competing affidavits are irreconcilable and the documentary evidence attached to the Applicant's Affidavit before the court has been disputed.

Finally, counsel submitted that the affidavit evidence of the Applicant has been controverted and this Honourable court cannot simply believe one and

disbelieve the other without more, the issues raised being one that cannot be settled by affidavit evidence.

Consequently, counsel urged the court to dismiss this suit.

The applicant herein again filed a further affidavit of 7 paragraphs in response to the Respondent's counter affidavit to the originating motion. Attached to the further affidavit are annextures marked as Exhibits OW1, OW2, and OW3 respectively. Equally filed in opposition to the Respondent's counter affidavit to originating motion is a reply on points of law dated 29th May, 2020.

In the said reply on points of law, counsel argued that the Applicant in the light of the Evidence adduced has discharged the obligation of proving her case against the Respondent by preponderance of evidence. Reference was made to the case of CHROME INSURANCE BROKERS LTD & ORS VS EFCC & ORS (2018) LPELR- 44818(CA); I.G.P VS EZEANYA (2016) ALL FWLR (PT. 830) 1349 at 1373,paragraph A-C; ONAH VS OKENWA (2010) 7 NWLR (PT. 1194)512 at 535-536.

In response to the Respondent's contention that this suit cannot be determined by affidavit evidence, counsel submitted that an action founded on fundamental Rights Enforcement Procedure Rules, as in this instance, is sui generis and as such, it is governed by specific and special Rules of Procedure. In this respect, counsel referred the Court to the following cases:- LEAGUE MANAGEMENT CO. LTD & ANOR VS ABUBAKAR & ANOR (2017) LPELR 43426 (CA) ; ENLIKEME VS MAZI (2014) LPELR-23540 (CA); CHIAN VS FBN & ANOR (2017) LPELR-43652 (CA).

Therefore, counsel submitted that both the originating process and the accompanying affidavit-based processes filed by the applicant in the instant suit are in line with the relevant provisions of the Fundamental Rights (Enforcement Procedure) Rules 2019 and that same can be competently determined by reference to the said process and the respondent's counter affidavit.

In his further reply on points of law, counsel submitted that it is trite law that where there is a conflict of affidavit evidence adduced by the parties, documentary evidence (Where placed before the court) is a veritable tool for the

court to effectively test the veracity of the respective affidavit evidence. As such, counsel urged the court to test the veracity of the parties respective affidavit evidence on the strength of the credible documentary evidence/exhibits placed before this court. Reliance was placed on the cases of BUNGE VS GOVT. RIVERS STATE (2006) LPELR-816 (SC) GBILEVE & ANOR VS ADDINGI & ANOR (2012) LPELR-14281 (CA); OGUNDIPE VS THE MINISTER, OF FCT 7 ORS (2014) LPELR (CA); OKADA AIRLINES LTD VS FAAN (2015) 1 NWLR (PT. 1439) 1 at 22; U.B. A PLC VS AINMAR PROPERTIES LTD (2018) 10 NWLR (PT. 1626) 64 at 92-93 paragraph G-D.

Finally, counsel urged the court to grant all the reliefs sought by the Applicant as per her originating motion.

I have carefully perused the originating motion, the reliefs sought, the statement in support, the grounds upon which same is predicated, the supporting affidavit, the annextures attached therewith and the written address in support. I have gone through the counter affidavit in opposition to the Application and the written address filed alongside.

In the same vein, I have studied the further affidavit filed in response to the counter affidavit and the reply on points of law.

Having painstakingly done all these, it is my humble view that the issue for determination is whether the Applicant has proved her case as required by law to be entitled to the reliefs sought before this Honourable court.

To begin with, the Applicant herein alleged that her Fundamental Right to dignity of her Person guaranteed under Section 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) was breached by the Respondent. Therefore, the law is trite, that he who assets must prove with credible and admissible evidence. See Section 131 (1) of the Evidence Act, 2011 which provides thus:-

> ***"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he assets must prove that those facts exist."***

Now, the case of the Applicant as distilled from the affidavit in support is that on May, 11 2019, the Applicant visited her friend's shop, Ms Oluwakemi Erubami located at New Banex Plaza wuse II Abuja where the Applicant has an office too. That not long after the applicant had arrived there, the Respondent accompanied by three (3) ladies, walked into the shop.

That the Applicant upon conducting the purpose of her visit, left the shop but on realizing that she forget her hand bag at the shop, she went back to the shop and got it.

That the Respondent and her friend Ms. ERUBAMI got involved in a heated argument as a result of one of the ladies that accompanied the Respondent vomiting in the shop and in the course of the argument, the Respondent advanced aggressively towards MS. Erubami.

That in a bid to douse the tension and avoid an escalation of the situation, the Applicant appealed to the Respondent to calm down in the following exact words "oga clam down, take it easy, she is a lady and somebody's wife".

That in response to the Applicant's plea, the Respondent unleashed a barrage of brutal slaps on the Applicant's face without any provocation whilst calling the Applicant a stupid person and asking whether the Applicant was the one involved that she interfered.

That in addition, the Respondent pulled the Applicant by her hair and dragged her out of the shop with the aid of the two men he had earlier invited and ordered the policeman to arrest her threatening that he was going to make an example out of the Applicant.

That as the Respondent, the policemen and the man in plain clothes continued to drag the Applicant towards a waiting vehicle, a few bystanders including the Applicant's mother who had by now arrived at the scene and witnessed the Respondent's violent assault on the Applicant, came to the Applicant's rescue and resisted the respondent.

That as a result of the violent attack on the Applicant, she suffered aggrieved eye trauma injury to her face, a black eye, excruciating body pains migraine, psychological trauma and shock.

That as a result of which the Applicant attached mega sight eye clinic Hospital for treatment.

That the diagnosis revealed that the Applicant had developed severe Iritis in her right eye caused by the blunt force trauma to the eye resulting from the several brutal slaps the Respondent had delivered to the Applicant's face.

At this juncture, it is instructive to point out that our Fundamental Human Rights are carefully captured and entrenched under Chapter iv of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Therefore, Section 46 (1) of the Constitution (Supra) provides thus:-

> ***"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".***

Consequently, from the wordings of Section 46 (1) of the Constitution, it is germane that the allegation must be that a right under Chapter iv of the Constitution has been, is being or likely to be contravened.

In other words, the alleged breach or violation must be shown to have occurred, is occuring or is likely to occur in the future.

In the instant case, as stated earlier, the Applicant alleged that the Respondent has breached her right to dignity of the human person as guaranteed under Section 34 (1) of the Constitution by slapping her on her face brutally and dragging her by her hair out of the shop.

Section 34 (1) of the Constitution (Supra) provides thus:-

> ***"Every individual is entitled to respect for the dignity of his person."***

Also Section34 (1) (a) further provides that:-

"No person shall be subjected to torture or to inhuman or degrading treatment".

Therefore, it is settled law that where an applicant alleges that any of the provision of Chapter iv of the Constitution is breached or has been breached or likely to be breached, the burden is on that applicant to prove such allegation. This is usually done by proving same in the supporting affidavit. In this respect, I refer to the case of WILIAMS & ANOR VS USEN & ORS (2018) LPELR-46163 (CA) T PAGE 12 paragraphs E-F where it was held thus:-

"…….Notably, the burden of proof (Onus probandi) of the breach of Fundamental Rights of a Citizen resides in an applicant, id est, the Respondents in this appeal ……..The standard of proof is on the balance of probability or preponderance of evidence."

Similarly, it was held in MEZUE & ANOR VS OKOLO & ORS (2019) LPELR-47666 (CA) inter alia that:-

"……..The burden of proof lies on an applicant who applied for the enforcement of their Fundamental Rights to establish by credible evidence that their Fundamental Right was breached. It is the duty of an Applicant alleging breach of his fundamental Rights to place sufficient evidence before the court……."

See also the case of IBANGA & ORS VS AKPAN & ORS (2018) LPELR-46167 (CA); JIM-JAJA VS C. O. P REVERS STATE (2011) 2 NWLR (PT. 1231) 392.

In the instant case, as pointed out Supra, the Applicant deposed in the supporting affidavit that the Respondent unlesased a barrage of brutal slaps on her face without any provocation and also pulled her by her hair and dragged her out of the shop. As a result of which made the Applicant to suffer aggravated eye trauma, injury to her face, a black eye, excruciating body pains, magraines, psychological trauma and shock that resulted in the Applicant visiting mega eye sight eye Clinic Hospital for treatment. In addition to the depositions in the supporting affidavit, the Applicant annexed Exhibits B2, B3 and B4 in proof of her case.

I have taken my time and watched very carefully Exhibits B2 & B4 which are C.D ROMs and I have observed therein that the Respondent did slap the Applicant as deposed in the supporting affidavit. I have also studied Exhibit B3 carefully being a medical report from Mega Sight Eye Clinic Hospital.

For the purpose of clarity I hereby reproduce the 1st and 3rd paragraphs of Exhibit B3 dated 14/05/2019 and signed by one Dr. Ambrose Igbebule which provides thus:-

> ***"RE: WARMATE OSIMIBIBRA***
>
> ***Above named reported to clinic this morning with complaints of severe photophobia and poor vision affecting the right eye. This according to her started after she was repeatedly hit in the right eye with clenched fists two days earlier…….. slit lamp examination revealed severe iritis in the right eye which we believe is caused by the blunt force trauma to that eye."***

To say the least, the document speaks for itself. On this premise, I refer to the case of AIKI VS IDOWU (2006) 9 NWLR (PT. 984) 47 at 65, paragraph A-C where court of Appeal held that:-

> **"Documents where tendered and admitted in court are like words uttered and do speak for themselves…."**

In the light of the above, it is my considered opinion that the Applicant has discharged the Onus placed on her to prove her case. I so hold.

Consequently, it is settled law that the burden of proof in civil cases is not static, it shifts from side to side depending on the evidence adduced by parties. In support of this, see the case of SPDC (NIG) VS EMELURU (2007) 5 NWLR (PT. 1027) 347 at 372-373 paragraph D-B where it was held that:-

> ***"It must be stressed here that in civil cases unlike in criminal matters, the burden of proof is not static, it does shift……."***

See also the case of ASIKA VS ATUANYA (2018) 17 NWLR (PT. 1117) 484 at 518-519, paragraph F-B where it was held that:-

> ***"…….While the first burden is on the party who alleges the affirmative in the pleadings, the second burden, the evidential burden lies on the adverse party to prove the negative……"***

At this point I believe the burden of proof has shifted from the Applicant to the Respondent to prove otherwise. I shall now examine the depositions in the counter affidavit. As pointed out earlier, the Respondent filed a counter affidavit in opposition to this application wherein the Respondent deposed particularly at paragraphs 4, 7, 8, 10 and 11 as follows:-

> ***"That I did not assault or deliver slaps nor did I violently attack the Applicant as she claimed in paragraphs 16-28 of the Applicant's affidavit in support of the originating motion."***

Paragraph 7 reads:-

> ***"That her said action did not go down well with some persons in the crowd and she generated confusion and chaos in the place to the extent that the applicant assaulted me, called me 'Boko Haram' and instructed one of the boys who gathered at the place at her behest to further assault me, and the boy physically assaulted me"***

Paragraph 8 reads:-

> ***"That I did not slap or instruct any boy to slap the Applicant and therefore not responsible for any slap or assault on the person of the Applicant if at all she was slapped on that day as she alleges."***

Paragraph 10 reads:-

> ***"That I did not admit or confess that I assaulted the Applicant as she is claiming in this suit but I know as a fact that when subsequently I became a Senator, the Applicant, in order to blackmail me, concerted and***

doctored a video on the internet which she caused to go viral on the social media and that really embarrassed me, and tarnished my image".

Paragraph 11 reads:-

"That I know as a fact that at no time did I subject or cause the Applicant to be subjected to any torture inhuman or degrading treatment".

It should be reinstated here that the law is that when an opposing party denies an assertion the issue turns on whether the denial is sufficient to shift the Onus. It should also be noted that it is equally the law that where an assertion is general, a general denial is sufficient. But when an assertion contains certain material particulars, those particulars must be specifically denied. See the cases of NISHIZAWA LTD VS JETHWANI (1984) ALL NLR 470 at 485-5; NINOSU VS I. S. E. S. A (1990) 2 NWLR (PT. 135) 688 at 721; OGUNSOLA VS USMAN (2002) 14 NWLR (PT. 788) 207.

Therefore, in the instant case I am of the considered opinion that for the Respondent to merely depose in the counter affidavit that he did not slap the Applicant or subject or cause the Applicant to be subjected to any torture, inhuman or degrading treatment, is not sufficient denial contemplated by law in view of Exhibits B2, B3 and B4 annexed to the supporting affidavit. I so hold.

Moreso, in my humble view, for the Respondent to discharge the burden or Onus shifted on him, he needs to go beyond deposition in the counter affidavit and tender Exhibits or credible documentary evidence to back up his deposition particularly where he deposed inter alia that the Applicant wants to blackmail him, concocted and doctored a video on the incident which she caused to go viral on the social media. The Respondent placed nothing before this Honourable Court to substantiate or prove this assertion among others.

Be that as it may, it is trite law that a court of law only relies on what is placed before it in arriving at a Judgment or conclusion. In support of this, see the case of M. B. C. I VS ALFIDR (NIG) (1993)4 NWLR (PT. 287) 346 where Court Appeal held that:-

"It is settled law that a court can only act on the basis of the evidence placed before it…."

In view of the foregoing, it is my humble view that based on the evidence adduced by the Applicant both affidavit and documentary, before this Honourable Court, that the Applicant has proved her case on the balance of probability as required by law. Therefore, I hold strongly that the Respondent has breached the Applicant's fundamental Right to dignity of her person guaranteed under Section 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) by slapping her, pulling her by her hair out of the said shop, an act which to say the least is inhuman and/or degrading.

I dare say that the conduct of the Respondent as Exhibited in the instant case, is that which is unbecoming of any responsible member of the society.

The Respondent's conduct had clearly degraded and stripped the Applicant of her dignity as a human being.

On this premise, I refer to the case of NIGERIA CUSTOMS SERVICE BOARD VS MOHAMMED (2015) LPELR-25938 (CA), where the court of Appeal cited the definition of degrading treatment as ***"reviling, holding one up to public obloquy: lowering a person in the estimation of the public, exposing" to disgrace, dishonor or contempt."***

The court went on to say:-

"Any action which inflicts intense pain to the body or mind of a person or 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, dishonor or contempt comes within the provision of Section 34 (a) of the Constitution ……."

In the circumstances therefore, the issue for determination is hereby resolved in favour of the Applicant against the Respondent. To this end, I refer to

the case of ABIOLA VS ABACHA (1998) 1 HRLRA 447 at 486 where it was held that:-

> ***"An applicant seeking redress for the infringement of his rights is in addition to declaratory and injunctive orders also entitled to an award of damages. Therefore, an infringement of Fundamental Rights of a Nigerian citizen must attract compensatory damages and in some cases ought to incite exemplary damages".***

See also the cases of OKONKWO VS OGBODU (1996) 5 NWLR (PT. 449) 420 at 435, paragraphs F-G; MOHAMMED VS I. G. P (2019) 4 NWLR (PT. 1663) 518 at 419.

In the final analysis, the Applicant having proved her case as required by law, I have no difficulty in granting the reliefs sought. On that note and without further ado, reliefs 1and 4 as endorsed on the face of the originating motion are hereby granted, to Wit:-

1. That the Respondent's violent assault on the Applicant on May 11,2019 at New Banex Plaza Wuse II, Abuja amounts to inhuman and degrading treatment and Constitutes a breach of the Applicant's Fundamental Right to the dignity of her person guaranteed under Section 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
2. The Respondent is hereby ordered to publish an unreserved public apology to the Applicant in a national daily newspaper.
3. On the reliefs for damages I have observed that the Applicant seeks both general damages and punitive/exemplary damages. In order to avoid double compensation to the Applicant, I shall lump them together and make a single award. In that respect, the Respondent is hereby ordered to pay the Applicant the sum of Fifty Million Naira (₦50,000,000.00) as damages for violating the Applicant's Fundamental Right to the dignity of her person as guaranteed under Section 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Signed

HON. JUSTICE SAMIRAH UMAR BATURE

28/09/2020

Applicant's counsel: We are most grateful for the well researched and erudite ruling. We are most, grateful.

Respondent's Counsel: I am so sorry for stepping in late. We are grateful for the ruling.