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

BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE

COURT CLERKS:	**JAMILA OMEKE & ORS**
COURT NUMBER:	**HIGH COURT NO. 32**
CASE NUMBER:	**SUIT NO. FCT/HC/CV/947/20**
DATE:	**10TH MARCH, 2021**

BETWEEN:

MR. EMMANUEL NWATU.....APPLICANT

AND

(1). INSPECTOR GENERAL OF POLICE
(2). CHIDI IBEH
(3). MOSES ALEXANDER
(4). EMMANUEL OKEKE
.....RESPONDENTS

APPEARANCES:
Akogu Egene Esq holding brief of Wisdom Madaki Esq for the 1st Respondent.

I. B. Njoku Esq for the Applicant.

RULING

By Motion on Notice with No: CV/947/2020, the Applicant Mr. Emmanuel Nwatu, through his Counsel Ikechukwu Njoku Esq, prayed the Court for the following:

> ***"(a). AN ORDER, enforcing or securing the enforcement of the Applicant's Fundamental Right to the Dignity of the***

Human person, personal liberty and Freedom of movement as guaranteed and protected under Sections 34, 35, & 41 of the Constitution of Federal Republic of Nigeria, 1999 and Articles 5,6 and 7 of the African Charter on Human Peoples Right, (Enforcement and Ratification Act,) in the terms of the reliefs sought in the statement accompanying this application.

2. And for such Order(s) as this Honourable Court may deem fit to make in the circumstances."

The application which is brought pursuant to Section 46(2); Section 6(6); Section 35(1) of the 1999 CFRN (as amended); Order 2 Rules 2(1)(2)(3)(4) of the Fundamental Rights (Enforcement Procedure) Rules 2009, and Articles 6, 7, (B) & (C) of the Charter on Human and Peoples Rights Cap 10 Laws of the Federation 1990, is supported by an affidavit of 47 paragraphs deposed to by the Applicant himself; some annexures marked Exhibits A, B1, B2 and C respectively as well as a Written Address in support of the application dated 27th of January 2020.

In response to this application, the 1st Respondent (Inspector General of Police) filed a Counter Affidavit of 22 paragraphs deposed to by one Inspector Joshua Yohanna a Police officer attached to the FCID Legal Section, Abuja; some unmarked annexures as well as a Written Address in support of the Counter Affidavit. The said Written Address was filed on 6th October 2020.

Meanwhile, in response to this application, the 2nd to 4th Respondents (Chidi Ibeh, Moses Alexander and Emmanuel Okeke) all filed a Joint Counter Affidavit of 21 paragraphs deposed to by Ihenesekein Samuel Jnr, a litigation lawyer to the 2nd to 4th Respondents, an annexure marked Exhibit A as well as a Written Address dated 29th September 2020.

In Further Response, to the Counter Affidavits of the 1st and 2nd to 4th Respondents, the Applicant filed two Further Affidavits dated 1st November 2020.

The Further Affidavit in response to the 1st Respondent's Counter Affidavit is comprised of 18 paragraphs deposed to by the Applicant himself; an annexure marked Exhibit A as well as a Written Address.

While, the Further Affidavit of the Applicant in response to the Counter Affidavit of the 2nd to 4th Respondents is comprised of 19 paragraphs

deposed to by the Applicant himself; an annexure marked Exhibit D as well as a Written Address.

In the Applicant's Statement of Facts, containing the name and description of the Applicant, the Applicant seeks for the following reliefs:

"a. A Declaration that the detention of the Applicant by the 1st Respondent at the instigation of the 2nd, 3rd and 4th Respondents for more than 24 hours is unlawful, unconstitutional, illegal and a violation of the Applicant's fundamental human rights as guaranteed under Section 35(4) of the Constitution of Nigeria 1999 (as amended).

b. A Declaration that the inhumane and degrading treatment meted to the Applicant by the Respondents is a violation of the Applicant's right to dignity and offends the Applicant's fundamental rights as guaranteed by Section 34 of the 1999 Constitution of the FRN (as amended).

c. A declaration that the detention of the Applicant for two days by the 1st Respondent is a flagrant violation of the Applicant's fundamental right as guaranteed by the 1999 FRN (as amended) and the African Charter on Human and People's Right Cap 10 LFN 1990.

d. A Declaration that the 1st Respondent has no right whatsoever to curtail the Fundamental Human Rights of the Applicant same by the procedure permitted by law.

e. A Declaration that the 1st Respondent cannot be used to recover premises in a landlord-tenancy relationship.

f. An Injunction restraining the Respondents whether by themselves, assigns, privies, agents or whatsoever purporting to act on their behalf from violating or further violating the Fundamental Rights of the Applicant as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as amended).

g. The sum of 100 Million Naira aggravated damages for the infraction of the Applicant's fundamental rights.

2. An Order that the Order so granted shall operate as a stay of all actions, matter or issues ancillary to or pertaining to or connected with this matter pending the hearing and determination of this matter".

The grounds predicating this application are as stated in the Motion on Notice.

In the Written Address filed in support of this application, four issues for determination were formulated by learned Applicant's Counsel to wit: -

"1. Whether the rights of the Applicant can be infringed upon without due process of law or by a procedure permitted by law?

2. Whether the Applicant can be arrested and detained for more than 24 hours without being arraigned before a Court of law?

3. Whether the right of the Applicant in a Country operating a written Constitution can be trampled upon without due process of law?

4. Is the 1st Respondent statutorily charged with the responsibility of handling civil matters?"

In arguing issue one learned Counsel submitted that two categories of people will emerge who are entitled to benefit under Section 46 of 1999 CFRN (as amended) namely: -

(a). Someone whose right has been infringed on.

(b). Someone whose right is likely to be infringed on.

That the Applicant is coming under the extant provisions of Section 46 of the 1999 Constitution (supra).

That the word "shall" used in Chapter IV of the 1999 Constitution (supra) connotes that the provision is mandatory and affords no discretion. Reliance was placed in the case of ***REV. JOSHUA ELSON KALLAMU V NUHU BOBOGURIN & 20 ORS (2003) 16 NWLR (Pt. 847).***

Learned Counsel also made reference to the Applicant's supporting Affidavit in paragraph 5.8 of the Address.

Learned Counsel submitted inter alia that it is an issue which is not in contention is that the Police under the Police Act have the powers to arrest someone on reasonable suspicion of having committed a crime. But that such power does not translate nor confer on the Police the right to detain the arrested person beyond the period provided by law i.e. 24 hours or 48 hours as the case may be. Reliance was placed on Section 35(4) of the 1999 Constitution (supra) as well as the case of ***AUGUSTINE EDA V THE STATE (1982) 3 NCLR 219.***

That in the instant case the Applicant was maliciously detained for more than 24 hours at the pleasure of the 2nd to 4th Respondents on issue that borders squarely on tenancy which the 1st Respondent has no statutory power to wade into as same constitutes a civil matter. The Court is urged to so hold.

Finally, Counsel submitted on this issue that the Applicant should not have been kept for more than 24 hours without being admitted to bail or being charged to Court and urged the Court to so hold and resolve the first issue in favour of the Applicant.

On issue two, learned Counsel submitted that Section 35 of the Constitution (supra) deals with liberty of a citizen. That a cursory look at the said provision and the word "shall" contained therein connotes strict compliance. Reliance was placed on the cases of ***REV. JOSHUA ELSON KALLAM V. NUHU BOBO GUNRIN (supra); AKUN V MANGER LG COUNCIL (supra) NIG LNG V ADIC LTD (supra).***

That the definition of reasonable time shows that the depriving authority must act within the parameters of the law or the time frame fixed by the Constitution.

Learned Counsel urged the Court to hold that the Applicant cannot be detained for more than 24 hours without being charged before a Court of law or admitted to bail. The Court is also urged to resolve issue two in favour of the Applicant.

Our issue three, on essence of Chapter IV of the Constitution, is essentially to safeguard the rights of citizens of Nigeria and strict adherence to the rule of law. The Court is urged to so hold.

Finally on issue four which is whether 1st Respondent is statutorily charged with the responsibility of handling civil matters?, the learned Counsel submitted that the 1st Respondent cannot go outside the powers donated to them by the enabling statutes. And that handling tenancy which is a civil matter is not one of the duties of the Police under the Police Act or any other Statute.

Reliance was placed on the cases of ***MCLAREN V JENNINGS (2002) FWLR (Pt. 154) P. 537 – 538, per AYO SALAMI J.C.A; AFRIBANK (NIG) PLC V. ONYEMA & ANOR (2004) NWLR (Pt. 858) 680. Per NZEAKO, J.C.A; ABDULAHI V BUHARI (2004) 17 NWLR (Pt. 902) Pg. 278 at 303 per JEGA, J.C.A.***

Therefore, Counsel submitted that the 1st Respondent's function does not include handling civil matters and urged the Court to so hold and to grant all the reliefs sought.

Meanwhile, in the 1st Respondent's Written Address in support of their Counter Affidavit, three issues were formulated for the Court's determination namely: -

> ***"(a). Whether the Applicant has made out a case under the Fundamental Rights Enforcement Procedure Rules that will entitle him to the reliefs sought in his application.***
>
> ***(b). Whether the investigation of the Applicant for criminal intimidation and threat to set ablaze constitute a violation of his fundamental right.***
>
> ***(c). Whether this Honourable Court can restrain the 1st Respondent from the performance of his statutory duties.***

The learned Counsel submitted on issue one that for the Applicant to succeed in this case, he must place sufficient material facts regarding such infraction of his fundamental rights upon which the Court may find the alleged breach.

Reference was placed in the case of ***FAJEMI ROKUN V C.B (C.T) NIG LTD (2002) 10 NWLR (Pt. 774) P.95 at 110 paras F – G.***

That in the instant case, the Applicant was investigated for criminal intimidation and threat to set ablaze a Plaza which has been established against the Applicant. That in the circumstance, this application ought to be struck out for being meritless as was held in ***FAJEMI ROKUN V C.B (C.T) NIG LTD (supra) at 112 E – F.***

Learned Counsel further submitted that any person who is alleged to have committed a criminal offence as in the instant case, should submit himself or herself to the Police for investigation and when he is granted bail, he should report to them any time his attention is needed.

That by the provisions of Sections 4, 23, 24, 27 and 29 of the Police Act, the Police is empowered to investigate any person suspected of having committed a criminal offence. And that the performance of such duties cannot amount to violation of the Applicant's fundamental rights.

Reliance was placed on the cases of ***MCLAREN V JENNINGS (2003) NWLR (Pt. 808) 470; JIM JAJA V C.O.P (2012) NWLR (Pt. 1231) 375 at 390, Paras B – C.***

It is submitted moreso that the right to personal liberty under the 1999 Constitution, (as amended) may be temporarily curtailed to prevent a person from committing an offence or on reasonable suspicious that he may commit an offence, as in the instant case.

Reliance was placed on the cases of ***EKWENUGU V FRN (2001) 6 NWLR (Pt. 708) 171 at 177; IKEM V NWOGWUGWU (1999) 13 NWLR (Pt. 633) 140 at 149 – 150, paras G – H, and Section 35(1)(c) and 41(2)(a) of the 1999 Constitution as amended; OKANU V IMO STATE COMMISSIONER OF POLICE (2001) 1 CHR P. 407 at 411.***

That in the instant case the Applicant's rights have not been breached by the 1st Respondent as mischievously claimed by the Applicant and urged the Court to resolve this issue in favour of the 1st Respondent.

On issue two, the learned Counsel submitted that in the instant case, 1st Respondent acted on the strength of a petition and later invited the Applicant for investigation purposes.

Reference was made to the case of ***OKANU V C.O.P IMO STATE (2001) 1 CHR (cases on Human Rights) 407 at 408.***

The learned Counsel further submitted that a citizen's right to liberty, fair hearing and ownership of property are not absolute.

On this Counsel relied on Section 45(1) of the CFRN 1999 (as amended) and the cases of ***BADEJO V MINISTER OF EDUCATION (1996) 8 NWLR (Pt. 464) 15 at 19 Ratio 2; NEW PATRIOTIC PARTY V IGP ACCRA (2002) HR, 1 RA 1 at 29.***

Learned Counsel submitted moreso that under Section 35(1) of the 1999 CFRN (as amended), the Applicant's right to liberty can be interfered with, for the purpose of bringing him before a Court in execution of an order of Court or upon reasonable suspicion that he committed a criminal offence or when it is reasonably necessary to prevent him from committing an offence.

Reliance was placed on ***JIM JAJA V C.O.P (supra) 375 at 379. Ratio 1; OKANU V C.O.P IMO STATE (supra); MAYA V STATE (2007) 16 NWLR (Pt. 1061) 483 at 487 – 488 Ratio 3.***

Consequently, learned Counsel enjoined this Honourable Court to look at the case against the Applicant in order to see whether there were reasonable grounds for proceeding against him.

Reliance was placed on the case of ***NNAMDI AZIKIWE UNIVERSITY V NWAFOR (1999) 1 NWLR (Pt. 585) 116 at 136, per SALAMI, J.C.A (as he then was).***

The Court is also urged to look at Exhibit NPF 1 attached to their Counter Affidavit. The Court is then urged to resolve issue no. 2 in favour of the 1st Respondent.

On issue three, the learned Counsel submitted that the Police are empowered to receive complaint and information relating to the commission of a crime from the members of the public.

That consequent upon a complaint made against the Applicant, an investigation was conducted and investigations so far revealed that the Applicant committed the alleged offence, that the Applicant merely brought this application in order to evade justice.

On this, Counsel relied on the cases of ***A.G. ANAMBRA STATE V UBA (2005) NWLR (Pt. 947) 44 at 67, paras F – G; DOKUBO ASARI V FRN (2007) 152 LRCN, per Muhammed JSC at paras F- K.***

That there's no compelling cogent/exhibit annexed to the Applicant's application before this Court to show that his rights have been breached. It is submitted that a careful perusal into the Applicant's affidavit will show that the facts averred were concocted with a view to mislead the Court and are not credible in any way.

Reliance was placed on the cases of ***ONAH V OKENWA (2010) 7 NWLR (Pt. 119) P. 512; A.G FEDERATION (2005) 9 NWLR (Pt. 981) 572 (SC).***

Learned Counsel them submitted on this premise, that the facts averred in the Applicant's affidavit are not cogent and substantial to even justify the reliefs claimed that will make this Court grant this application.

In conclusion, learned Counsel urged the Court to dismiss this application with substantial costs against the Applicant as same is baseless, meritless, frivolous and vexatious and to rule in favour of the 1st Respondent.

Likewise, in the Written Address in support of the Joint Counter Affidavit of the 2nd to 4th Respondents, a sole issue for determination was formulated thus: -

> ***"Whether the Applicant has made out a case under the provisions of the Fundamental Rights (Enforcement Procedure) Rules 2009 to enable this Honourable Court grant the reliefs sought by the Applicant."***

Learned Counsel submitted that it is trite law that the onus is on the Applicant who asserts that he was unlawfully arrested, detained by the Police upon a complaint made, to show that his arrest and detention was unlawful.

Reliance was placed in Section 131(1) of the Evidence Act 2011; ***ONAH V OKENWA (2010) 7 NWLR (Pt. 1194) 535 – Paras H – A, per MISHELIA, J.C.A; ATAKPA V EBETOR (2015) 3 NWLR (Pt. 144) 549 at 575 – 576, paras H – A, per OTISI J.C.A; MOKWE C EZEUKO (2000) 14 NWLR (Pt. 686) 143; EGBUVONU V BORNO RADIO TELEVISION CORPORATION (1997) 12 NWLR (Pt. 531) 129 (SC) per Kutigi, JSC (as he then was); EFFIONG V EBONG (2007) VOL 28 WRN 71, 90 lines 30 – 45 (CA).***

Learned Counsel then submitted that the position of the law is that for a claim to qualify as falling under fundamental rights, it must be clear that the principal relief sought is for the enforcement or for securing the enforcement of a fundamental right and not from the nature of the claim to redress grievance that is ancillary to the principal relief which in itself is not ipso facto a claim for enforcement of fundamental right.

That in the instant case, this action initiated under Fundamental Rights (Enforcement Procedure) Rules is incompetent and therefore liable to be struck out. That if however, if the Court finds that the Applicant's action is properly brought, it is submitted that the Applicant has not made out any case for the 2nd to 4th Respondents to answer to necessitate the Court granting the reliefs. Reliance was placed on the cases of ***ATAKPA V EBETOR (supra) at 573, paras C – D, ONAH V OKENWA (supra) 536 – 537; GBAJOR V OGUNBUREGUI (1961) 1 ALL NLR 853 at 855; OWOMERO V FLOOR MILLS (NIG) LTD (1995) 9 NWLR (Pt. 421) 622 at 629; SECTION 4 POLICE ACT, ACJA 2015, SECTIONS 3 – 34 , ACJA 2015, SECTION 35(1)(C) 1999 CFRN (as amended)***, on powers of the Police to arrest and prosecute offenders and can therefore not be sued successfully in the exercise of their legitimate duties. Reliance was placed on ***ONAH V OKENWA (supra) 574, paras F – G, D – H, 535 paras A – B; TOTOR V AMEH (2000) 2 NWLR (Pt. 644) 309.***

Learned Counsel submitted on this premise that in the instant case, there is no legitimate claim of any breach of fundamental rights of the Applicant. And that looking at the 2nd to 4th Respondents who merely made a complaint against the Applicant's union and not 2nd to 4th Respondents who merely made a complaint against the Applicant to the Utako Police Station and not to the IGP of Nigeria Police Force and eventual arraignment of the Applicant before the F.C.T Area Court in that regard, which cannot be a breach of fundamental rights of Applicant.

It is also submitted the 1st – 4th Respondents are not proper parties in this case, since the complaint is against the office and officers of UTAKO POLICE DIVISION, and none of them and or I.P.O or the Divisional Police Officers under the FCT Police Command are joined in this case, hence the case of the Applicant must fail as he has clearly brought the wrong people to this Court. He cited ***PETRO JESSICA ENT. LTD V LEVENTIS TECHNICAL LTD (1992) LPELR – C 2915, 1 at 23 – 24; OLUTOLA V UNILORIN (2004) LPELR – 26632) 1 at 10; ELABONJO V DAWODU (2006) 5 NWLR (Pt. 1001) 76.***

Finally, learned Counsel urged the Court to dismiss the case of the Applicant as same is baseless and without an iota of truth and filed in bad faith.

Now, I have carefully considered this Motion on Notice for the enforcement of the Applicant's fundamental rights, the statement of facts, the Reliefs sought, the grounds upon which the Reliefs are sought, the supporting Affidavit of the Applicant, the Exhibits annexed to the application, as well as the Written Address filed in support of same.

In the same vein, I have also considered the Counter Affidavit of the 1st Respondent, as well as the Joint Counter Affidavit of the 2nd to 4th Respondents, the exhibits annexed to the two Counter Affidavits and their respective Written Addresses filed in support.

I have also given due consideration to the two Further Affidavits of the Applicant in response to the two Counter Affidavits i.e of the 1st Respondent as well as that of the 2nd to 4th Respondents.

I adopt the sole issue for determination formulated in the Written Address of the 2nd to 4th Respondents to wit:

> ***"Whether the Applicant has made out a case under the provisions of the Fundamental Rights (Enforcement Procedure) Rules 2009 to enable this Honourable Court grant the reliefs sought by the Applicant."***

Section 46(1) of the 1999 C FRN 1999 as amended provides: -

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

From the facts as distilled in the Applicant's Affidavit, the genesis of the dispute between the Applicant and 2nd to 4th Respondents is well captured therein particularly paragraph 8 – 30 of the said Affidavit.

It is the contention of the Applicant that by the instigation of the 2nd to 4th Respondents, arising from a tenancy which is a purely civil matter, the men of the 1st Respondent detained him at the Utako Police Station, harassed, intimidated him, treated him like a common criminal.

It is averred in paragraphs 26 – 33 of the supporting affidavit, amongst other things, that the Applicant was invited by men of the 1st Respondent at the Utako Police Station on false allegation made by the 2nd, 3rd and 4th Respondents that he had threatened to burn down the Plaza where his shop was located.

According to the Applicant he was astonished by this allegation since he had never had any altercation with owner of the Plaza or the management let alone making such utterances.

That the pseudo allegation against him was a calculated and malicious strategy by the 2nd – 4th Respondents in connivance with the men of the 1st Respondent in order to harass and intimidate him into vacating the said shop.

That this became manifestly clear when he requested for bail the same day but was told by the 3rd Respondent and men of the 1st Respondent in charge of the matter that the only way he could secure bail that day was to write an undertaking to vacate from the said shop on the following day.

That the Applicant informed the Respondents that he would consent to writing an undertaking if they would oblige him a short time to at least secure a new shop elsewhere before moving out of the shop. But, that the 3rd Respondent blatantly refused and ordered the Police to detain him and he was subsequently detained by the men of the 1st Respondent.

The Applicant further averred in the affidavit that he honoured the invitation by the 1st Respondent as a law abiding citizen believing that there will be impartial investigation into the pseudo allegation made against him by the 2nd, 3rd and 4th Respondents but that unfortunately the reverse was the case. He avers that this action of the Respondents has seriously infringed upon his fundamental rights since he did not commit any crime to justify his detention and treatment like a common criminal by the 1st Respondent.

In paragraph 43 the Applicant avers thus: -

> ***"That I know as fact that any Nigerian citizen cannot be arrested and detained for more than 24 hours without being charged to Court in non-capital offences."***

Now, there's no doubt from the averments contained in the Applicant's supporting Affidavit that the dispute between him and the 2nd, 3rd and 4th Respondents was as a result of some disagreements in relation to tenancy which somehow metamorphosed into a criminal complaint.

In applications of this nature where an Applicant alleges breach of his fundamental rights, an Applicant must place all relevant facts before the Court in proof of his case. See the cases of ***MAINSTRET BANK & ORS V AMOS & ANOR (2014) LPELR, 23361 (CA).***

In the case of ***EBO & ANOR V OKEKE & ORS (2019) LPELR – 48090. The Court of Appeal, per DONGBAN-MENSEM, J.C.A, held at PP: 42-43, paras B – D*** as follows:

> ***"A party must place before the Court facts necessary, explicit, adequate and sufficient to bring his case within the classes of cases in which the Court may act in his favour..."***

In the instant case, the main grouse of the Applicant against the 1st Respondent is that following the instigation of the 2nd, 3rd and 4th Respondents he was detained at Utako Police Station by the men of the 1st Respondent for more than 24 hours without being charged to Court for a non-capital offence. It is on this basis, that the Applicant brought this application (amongst other provisions) pursuant to Section 35(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

However, in the 1st Respondent's Counter Affidavit, it is averred, particularly in paragraph 6 thereof, that it acted by inviting the Applicant based on a complaint by the 3rd Respondent Moses Alexander. That on the same day being 15th January 2020, the matter was investigated and a prima facie case of criminal intimidation was established against the Applicant the next day being 16th January 2020 and he was charged to Court. 1st Respondent has attached the First Information Report containing the date the matter was reported and the date the Applicant was charged to Court, in Exhibit 4 thereof.

That on the 16th January 2020 when the Applicant was charged to Court, he was released on bail.

The 1st Respondent also denied that the Applicant was detained for two days, treated like a common criminal nor harassed as he was treated with civility.

In paragraphs 11 and 12 thereof, it is averred that the Applicant has not placed any material evidence to show that his rights have been breached and that the 1st Respondent has nothing to do with the civil aspect of the case but only acted based on the allegation of threat to set ablaze the Plaza.

In paragraph 16 it is averred that the criminal matter is still pending before the Court.

Moreso, it is averred in paragraph 20 thereof, that the Applicant on the 2nd October 2020 went to the Plaza and beat up the Secretary to the Plaza which investigation is still ongoing now before the same Utako Police Station. And averred in paragraph 21 that it is in the interest of justice, fair hearing and rule of law that this Honourable court dismisses this application.

In the Applicant's Further Affidavit, he still maintained that his fundamental rights were breached and that he was not charged to Court on the 16th January 2020 but rather on the 20th January 2020 as shown in Exhibit D attached thereof.

Indeed, as shown in the Statement of the Applicant annexed to the Counter Affidavit of the 1st Respondent, the Applicant gave his statement to the Police on 15th January 2020.

Now, the question to ask here is whether the Applicant was arraigned before the Court on 16th January 2020 as averred by the 1st Respondent in their Counter Affidavit?

As stated earlier, the Applicant has denied this fact and relies on Exhibit D attached to his Further Affidavit which is the Record of Proceedings before the Lower Court.

I have carefully gone through the said Exhibit D, and there's no doubt that the record of proceedings clearly shows that the plea of the Defendant was taken on the 20th January 2020 and not 16th January 2020 as deposed by 1st Respondent.

In addition, a close and careful look at copy of the First Information Report annexed to the 1st Respondent's Counter Affidavit will reveal that although the said First Information Report is dated 16th January 2020 at the tail end of the page, in particular where it reads Court's Order regarding investigation if any, at the bottom right hand corner, the date

20th January is clearly shown. In addition, I again refer to Exhibit D 1st page of the Record which provides in part: "the Defendant is in Court today 20th January 2020 speaks and understands English."

Although I appreciate 1st Respondent's submissions that it has the power to arrest, detain, investigate and prosecute suspects, same must be done within the ambit of the law.

Section 35(1) of the CFRN 1999 (as amended) provides: -

> ***"Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law..."***

Section 35(1)(c) provides:-

> ***"(C). For the purpose of bringing him before a Court in execution of the Order of a Court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence..."***

See ***DOKUBO ASARI V FRN (2007) LPELR – 958 (SC).***

In the instant case, this Court is not unmindful that there was a criminal complaint made against the Applicant by the 2nd, 3rd and 4th Respondent which led to his invitation by the Police and subsequent detention, and arraignment on a First Information Report of Criminal Intimidation punishable under Section 397 of the Penal Code before the Area Court Karmo 1 Abuja.

Now, Section 35(4) of the Constitution (supra) permits detention of a person reasonably suspected of having committed an offence but it states that such a person shall be brought before a Court of law within a reasonable time. Furthermore, it is instructive to note that, the time permitted for a suspect to be detained shall not exceed 48 hours, as he is to be brought before a Court of competent jurisdiction within the radius of forty kilometres or be released either conditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

Please see Section 35(4) and (5) of the 1999 CFRN (as amended).

In the instant case, as earlier observed the Applicant was not brought before a Court on 16th January 2020 but rather on the 20th January 2020 and he was granted bail same day.

This, therefore clearly refutes the claims of the 1st Respondent that Applicant's right was not breached. I so hold.

On the part of the 2nd – 4th Respondents, it is averred in their Joint Counter Affidavit among other things that in the main, what really happened between the Applicant, 2nd to 4th Respondents and owner of the Plaza was that the Union of the Plaza reported the Applicant to the Utako Police Station on a complaint of criminal intimidation and attempted arson, as the Applicant n the gathering of the occupants of the said Plaza boasted that he was going to burn the occupied Plaza.

It is averred in paragraph 13 thereof, that they have no control over how the Utako Police Division conduct their affairs nor did they instigate, pressurize or could have connived with the Police to assist them in any way in vacating the Applicant from the Plaza.

However, it is averred in the Applicant's Further Affidavit in response to the 2nd – 4th Respondents Counter Affidavit, among other things, particularly in paragraph 12(d) thereof, that while in detention from morning till evening without food and treated like a criminal 2nd to 4th Respondents in connivance with the men of the 1st Respondent made their real intention known to him and in consequence requested that he write an undertaking to vacate the shop the following day or else he would be detained at the Station. That he was detained at the pleasure of the 2nd to 4th Respondents.

I have carefully considered the submissions made for the 2nd to 4th Respondents that they merely laid a complaint with the Police, and as such could not be an infringement of the Applicant's rights.

Well, it is quite settled now, that a private individual has the right to report a crime or a suspected crime to the Police and it is the duty of the Police to investigate allegation of crime.

This position was re-echoed by the Court of Appeal in the case of ***EZEILO & ANOR V EZEONU (2019) LPELR – 48336 (CA), per UMAR, J.C.A, where the Court held at PP. 17 – 18, paras B – A*** as follows:

"However, it is trite that every private individual has the right to report a crime or a suspected crime to the Police..."

Also the Court held in the case of ***ABUGO V AROMUAINO (2018) LPELR – 46142 (CA) at PP. 34-37, paras B – E, per OSeji J.C.A,*** as follows:

"...It must therefore be emphasised that the fundamental rights as enshrined in the constitutional of the Federal Republic of Nigeria 1999 are not absolute or available merely for the asking. Thus, except for the personalities who enjoy constitutional immunity, the Police can invite anybody for the purpose of investigation when an allegation of the commission or attempts to commit an offence is made against such person and this does not automatically make the Complainant liable to a civil action except there is proof of bad faith or that the complaint went beyond merely reporting a matter but actually instigated his persecution..... It follows therefore that before a person like the appellant who makes a report, it must be proved beyond reasonable doubt that his report was actuated by malice and that he had an actual intent to cause that particular harm which is produced or the doing of an act which is intended to cause such harm. There must be clear evidence that his report to the Police had no element of justification..."

In the instant case, it is the contention of the Applicant among other things that the 2nd to 4th Respondents wanted to evict him from his shop at Ekeson Plaza which is being managed by the 2nd to 4th Respondents and used the instrumentality of the Police to do so since in their opinion, the Applicant was unyielding.

The 2nd to 4th Respondents have clearly refuted this allegation in paragraphs 3 -9 of their Counter Affidavit and further averred in paragraph 11 that it was the Union of the Plaza who lodged the complaint of criminal intimidation and attempted arson as the Applicant in the gathering of the occupants of the said Plaza boasted that he was going to burn the occupied Plaza.

Now, the 1st Respondent has backed up this assertion in their Counter Affidavit, when they averred in paragraph 6(f) that after investigation, a prima facie case of criminal intimidation was established against the Applicant which led to him being charged to Court.

Therefore, in my humble view, this position as stated by the 1st Respondent clearly absolves 2nd – 4th Respondents of any liability for lodging the criminal complaint, I so hold.

In any event, the criminal matter is still pending in Court and should the Court rule in favour of the Applicant, he is still within his rights to seek redress if he can show that the 2nd – 4th Respondents had acted in bad faith and they were in no way justified in laying the complaint and in fact responsible for setting the law in motion against him.

On this premise, please see the case of ***ARAB CONTRACTORS (O.A.O) NIG LTD V UMANAH (2012) LPELR – 7927 (CA).***

Therefore, in the instant case, having thoroughly considered the facts of this case, as well as the documentary evidence adduced on both sides, and based on the reasons given earlier it is my considered opinion that the 2nd – 4th Respondents cannot be held responsible for merely exercising their right to complain to the Police. I so hold.

However, with regard to the 1st Respondent, it has already been established that the Applicant was no doubt detained from the 15th of January 2020 up to the 20th day of January 2020 when he was eventually charged to Court. Therefore, the said detention exceeds the time limit of 48 hours permitted by law and is therefore, illegal, null, void and unconstitutional. I so hold.

Consequently therefore, I find that the Applicant has established his case against the 1st Respondent to be entitled to the reliefs sought. On this premise therefore, I also hold that he is entitled to the reliefs sought.

On this note, I place reliance on Section 35(6) of the CFRN 1999 (as amended) which provides thus: -

> ***"Any person who is unlawfully arrested or detained <u>shall</u> be entitled to compensation and public apology from the appropriate authority or person and in this subsection, "the appropriate authority, or person", means an authority specified by law."***

In the circumstances therefore, I resolve the sole issue for determination in favour of the Applicant against the 1st Respondent only.

Consequently, it is hereby declared as follows:

(1). The detention of the Applicant by the 1st Respondent from the 15th of January 2020 to the 20th of January 2020 (on the complaint made by the 2nd, 3rd and 4th Respondents) for more than 48 hours is unlawful, unconstitutional, illegal and a violation of the Applicant's fundamental right as guaranteed under Section 35(4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 5, 6, 7 of the African Charter on Human and Peoples Rights (Ratification and Enforcement Act).

(2). The degrading treatment meted to the Applicant by the 1st Respondent and holding him in detention without food or water on the 15th day of January 2020 from the time he honoured the Police invitation till evening of the same day is a violation of the Applicant's right to dignity and offends the provision of Section 34 of the CFRN 1999 (as amended).

(3). Since the criminal case against the Applicant is still pending, this Honourable Court cannot grant him any Injunctive Reliefs against the 1st Respondent. Therefore, Relief F fails and is accordingly dismissed.

(4). The 1st Respondent is directed to issue a public apology to the Applicant for breaching his fundamental rights enshrined and guaranteed under Sections 35(4) and 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

(5). The sum of **N1, 000, 000.00 (One Million Naira)** is hereby awarded as aggravated damages for the infraction of the Applicant's fundamental rights.

Signed:

Hon. Justice Samirah Umar Bature