

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT MAITAMA, ABUJA**

**ON WEDNESDAY, 23<sup>RD</sup> DAY OF MARCH, 2022**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/M/9492/2020**

**BETWEEN**

- 1. MR. OLUWOLE DOSUNMU**
- 2. HAJIA HALIMA ATTAH**

} **APPLICANTS**

**AND**

- 1. THE INSPECTOR GENEERAL OF POLICE**
- 2. INSPECTOR AMBI AYUBA**
- 3. BAOBAB MICRO FINANCE BANK**

} **RESPONDENTS**

**RULING**

The applicants commenced this action on 3/9/2020 vide Originating Motion for the enforcement of their fundamental rights. In support of the suit are: [i] Statement setting out the names and descriptions of the applicants, the reliefs sought and the grounds upon which the reliefs are sought; [ii] 1<sup>st</sup> applicant's 15-paragraph affidavit and Exhibits A1, B2, C3 & E4, attached therewith; [iii] the 2<sup>nd</sup> applicant's 14-paragraph affidavit; and [iv] written address of SamuelSamulkpagomEsq. The applicants' reliefs in the Originating Motion are:

1. A declaration that the act of the respondents harassing, threatening, intimidating and arresting of the applicants over a civil transaction between them and the 3<sup>rd</sup> respondent is unconstitutional and a gross violation of the applicants' fundamental rights.
2. A declaration that the act of the 1<sup>st</sup> and 2<sup>nd</sup> respondents getting involved in a civil transaction is unconstitutional.
3. An order of this Honourable Court directing the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> respondents to tender public apology to the applicants for the breach of applicants' fundamental rights.
4. An order of this Honourable Court directing the respondents to desist forthwith from further harassing, threatening, intimidating and to stop further arrest on the applicants over a civil transaction without further delay.
5. An order of this Honourable Court directing the respondents jointly and severally to pay Ten Million Naira [N10,000,000.00] only to the applicants for the unlawful detention and infringement on their fundamental rights.

In opposition, ShammahNdaka, a branch manager in the 3<sup>rd</sup> respondent's office, filed a 7-paragraph counter affidavit on 30/9/2020; attached therewith are Exhibits 1-6. Kelvin A. MejuluEsq. filed a written address with the counter affidavit. On 12/1/2021, 3<sup>rd</sup> respondent filed motion *No.*

*M/154/2021* for leave of the Court to amend its written address in support of the counter affidavit. The application was granted on 22/11/2021. The Court deemed the amended written address of B. O. Akinseye-George Esq. on behalf of the 3<sup>rd</sup> respondent filed on 12/1/2021 as properly filed and served.

On the same date [i.e. 30/9/2020], 3<sup>rd</sup> respondent filed a preliminary objection to challenge the competence of the Originating Motion. On 22/11/2021, the Court also granted leave to the 3<sup>rd</sup> respondent [vide motion *No. M/154/2021*] to amend its written address in support of the preliminary objection. The Court deemed the amended preliminary objection of the 3<sup>rd</sup> respondent filed on 12/1/2021 as properly filed and served.

For their part, 1<sup>st</sup> & 2<sup>nd</sup> respondents filed a preliminary objection on 5/11/2021 with motion *No. M/7577/2021* to challenge the competence of the suit. On 8/11/2021, the 2<sup>nd</sup> respondent filed a counter affidavit of 9 paragraphs in opposition to the Originating Motion; attached therewith are Exhibits A-E. John Ijagbemi Esq. filed a written address with the counter affidavit.

In response to the preliminary objection of the 1<sup>st</sup> & 2<sup>nd</sup> respondents and that of the 3<sup>rd</sup> respondent, Samuel Samulokpagom Esq. filed a written address on 19/11/2021.

By order of the Court, the preliminary objections of the respondents and the applicants' Originating Motion were heard together on 13/1/2022. The Court

will first deliver its Ruling on the respondents' preliminary objections. If the preliminary objections succeed, the suit will be struck out. If the preliminary objections are dismissed, the Court will then proceed to deliver its Judgment on the Originating Motion.

**RULING ON 1<sup>ST</sup>& 2<sup>ND</sup> RESPONDENTS' PRELIMINARY OBJECTION AND ON THE 3<sup>RD</sup> RESPONDENT'S PRELIMINARY OBJECTION**

The grounds of the 1<sup>st</sup>& 2<sup>nd</sup> respondents' preliminary objection are:

1. That the applicants are two in number which is in contravention to the provisions and intendment of section 46[1] of the 1999 Constitution of the Federal Republic of Nigeria as amended.
2. That the joint action by the two applicants also negates Order 2 rule 1 of Fundamental Rights [Enforcement Procedure] Rules, 2009 and therefore makes the suit incurably incompetent.
3. That having been made incompetent by virtue of a joint action by two applicants, the Honourable Court lacks jurisdiction to entertain and determine same.

The ground of the 3<sup>rd</sup> respondent's preliminary objection is that the suit is incompetent as the claim in the suit does not fall within Chapter Four of the 1999 Constitution of the Federal Republic of Nigeria thereby robbing the Honourable Court jurisdiction to try and determine same.

The particulars of the preliminary objection are:

1. The applicants by their principal reliefs contained in this suit are seeking the Court to declare that the 1<sup>st</sup> and 2<sup>nd</sup> respondents do not have the powers to interfere in civil transactions.
2. The propriety or otherwise of law enforcement agencies involving in civil transactions is not a matter enforceable under the Fundamental Rights Enforcement Procedure Rules.

From the grounds of the respective preliminary objections of the respondents and the submissions of all the learned counsel, the Court is of the opinion that there are two issues for determination. These are:

1. Whether the applicants' cause of action in this case is maintainable under the Fundamental Rights [Enforcement Procedure] Rules, 2009.
2. Whether an action can be filed by more than one person to enforce a fundamental right under the Fundamental Rights [Enforcement Procedure] Rules, 2009.

## **ISSUE 1**

*Whether the applicants' cause of action in this case is maintainable under the Fundamental Rights [Enforcement Procedure] Rules, 2009.*

The submission of the 3<sup>rd</sup> respondent's counsel is that from the provision of section 46 of the 1999 Constitution [as amended], the reliefs which may be

claimed by means of the procedure in the Fundamental Rights [Enforcement Procedure] Rules are limited and confined to any of the rights in Chapter IV of the said Constitution. When a suit is brought under the Fundamental Rights [Enforcement Procedure] Rules, 2009, a condition precedent to the exercise of the court's jurisdiction is that enforcement of a fundamental right or securing of the enforcement thereof should be the main or principal claim not an ancillary or accessory claim. The cases of **Adefila v. Popoola [2015] 8 NWLR [Pt. 1460] 186, University of Ilorin & Anor. v. Idowu Oluwadare [2006] LPELR-3417 [SC]** and **Hassan v. EFCC [2014] 1 NWLR [Pt. 1389] 607,** among others were cited in support.

In paragraphs 3.6 to 3.31 of the 3<sup>rd</sup> respondent's written address, B. O. Akinseye-George Esq. cited the case of **Onifade v. Fatodu [2008] All FWLR [Pt. 401] 917** for the meaning of cause of action; and argued that from the applicants' statement and affidavits in support of the Originating Motion, there is no deposition to show that any of their fundamental rights has been breached or threatened to be breached by the respondents. The applicants' reliefs reveal that their complaints are that by virtue of the 1999 Constitution [as amended], the 1<sup>st</sup> & 2<sup>nd</sup> respondents have no power to involve in civil transactions. It was submitted that this complaint is not within the purview of Chapter IV of the 1999 Constitution and therefore not enforceable under the Fundamental Rights [Enforcement Procedure] Rules, 2009. Learned counsel for the 3<sup>rd</sup> respondent urged the Court to strike out the applicants' suit as it is not a fundamental human rights action and therefore incompetent.

On the other hand, the applicants' counsel posited that the applicants' prayer 1 borders on harassment, threat and intimidation contrary to section 34[1] of the 1999 Constitution [as amended], which provides that every individual is entitled to respect for dignity of his person, and no person shall be subjected to torture or to inhuman or degrading treatment. Also, the applicants' relief 5 prays the Court for the sum of N10,000,000 as compensation for unlawful detention contrary to section 35[1] of the said Constitution, which guarantees the right to personal liberty.

Samuel SamuIkpagonEsq. submitted that from the applicants' affidavits, they have stated how they were held in the custody of 1<sup>st</sup>& 2<sup>nd</sup> respondents. He noted that while other citizens were sleeping in the comfort of their rooms, the applicants were in constant psychological torture, dehumanized, battered and deprived of their sleep. He referred to the case of **Agbakoba v. Director SSS [1994] 6 NWLR [Pt. 351] 475** to support the principle that where a person has been arrested and detained without justification in law, the right to personal liberty has been trampled upon by the invaders. He urged the Court to dismiss the preliminary objection.

Now, as rightly stated by B. O. Akinseye-George Esq., it is trite law that when a suit is brought under the Fundamental Rights [Enforcement Procedure] Rules, 2009, a condition precedent to the exercise of the court's jurisdiction is that enforcement of a fundamental right or securing of the enforcement thereof should be the main or principal claim not an ancillary claim. In the

case of **Igwe v. Ezeanochie [2009] LPELR-11885 [CA] @ pages 19-21, B-A.** His Lordship, Olukayode Ariwoola, JCA [as he then was] held:

*“Whenever the Court is confronted with an application brought under the Fundamental Rights [Enforcement Procedure] Rules, it is imperative that the Court should critically examine the reliefs sought by the Applicant, the grounds for seeking the reliefs and the facts contained in the Statement accompanying the application and relied on for the reliefs sought. Where the facts relied on disclose infringement of the fundamental right of the applicant as the main or basis of the claim, then it is a clear case for the enforcement of such rights through the Fundamental Rights [Enforcement Procedure] Rules. In Tukur Vs. Government of Taraba State [1997] 6 NWLR [Pt.510] 549 at 574-575 the Supreme Court held as follows:- “When an application is brought under the Fundamental Rights [Enforcement Procedure] Rules, 1979, a condition precedent to the exercise of the Court’s jurisdiction is that the enforcement of fundamental rights or the security of the enforcement thereof should be the main claim and not an accessory claim. ...”*

As rightly stated by the applicants’ counsel, in relief 1, applicants complain that the respondents’ acts of harassment, threat, intimidation and arrest over a civil transaction between them and the 3<sup>rd</sup> respondent is unconstitutional and a gross violation of their fundamental rights. In relief 4, the applicants seek an order of the Court directing the respondents to desist from further arresting, threatening and intimidating them; and to stop further arrest of the



applicants over a civil transaction. In relief 5, the applicants claim the sum of N10,000,000 from the respondents for their unlawful detention and the infringement of their fundamental rights.

In the statement in support of the application and the applicants' affidavits, they stated that their company [Modeo Nigeria Limited] obtained a credit facility of N3,000,000 from the 3<sup>rd</sup> respondent [Baobab Micro Finance Bank] out of which N1,943,600 has been repaid. The 3<sup>rd</sup> respondent, instead of instituting a civil suit to recover the unpaid amount where necessary, have rather reported the matter to the FCT Police Command. The 2<sup>nd</sup> applicant was unlawfully detained for 7 days from 23/3/2020 and released on 30/3/2020 while the 1<sup>st</sup> applicant was unlawfully arrested and detained on 17/6/2020 and released on 18/6/2020. After their unlawful arrest and detention, they have been receiving calls of threat and unusual invitation to the FCT Police Command for the repayment of unpaid balance of the loan.

From the applicants' reliefs referred to above and the facts relied upon for the reliefs, I am of the considered opinion that the applicants have disclosed a case of violation or infringement of their fundamental right as the main claim or basis of the claim. Thus, in line with the decision in **Igwe v. Ezeanochie** [**supra**], I hold that the applicants' suit was properly commenced under the Fundamental Rights [Enforcement Procedure] Rules, 2009. Therefore, Issue 1 is resolved against the 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent's preliminary objection is dismissed.

## ISSUE 2

*Whether an action can be filed by more than one person to enforce a fundamental right under the Fundamental Rights [Enforcement Procedure] Rules, 2009.*

Learned counsel for 1<sup>st</sup>& 2<sup>nd</sup> respondents submitted that the Fundamental Rights [Enforcement Procedure] Rules, 2009 is a unique way of ventilating grievances on the infringement of fundamental rights as provided in Chapter IV of the 1999 Constitution [as amended]; it is *sui generis*. He referred to Order 1 rule 2 of the Fundamental Rights [Enforcement Procedure] Rules, 2009 and section 46[1] of the 1999 Constitution [as amended]; and contended that there is no place where reference was made to two persons as applicants.

John Ijagbemi Esq. cited Abuja Electricity Distribution Company &Ors. v. Akaliro&Ors. [2021] LPELR-54212 [CA], Chief of Naval Staff Abuja &Ors. v. Archibong&Anor. [2020] LPELR-51845 [CA] and Ayinde v. Akanji [1985] 1 NWLR [Pt. 66] 80 to support the submission that joint application filed by applicants is incompetent. He concluded that this action jointly filed by the two applicants is incurably incompetent and should be dismissed.

For his part, learned counsel for the applicants referred to section 46[1] of the 1999 Constitution [as amended], which provides that: “*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.*”

Samuel SamuIkpagonEsq.then submitted:

*“The provision of the above section is clear and unambiguous, its illustration hampers on the right of an individual to seek for redress where his right is trampled upon and not for two persons who are jointly sued.*

*In AinaVs. Jinadu [1992] 4 NWLR [Pt. 233] 91, the Court held that “A principle of Equity should never allow a cunning or crafty application to lord over an application not sought mala fide, at the detriment of the adverse party. In order to ensure that justice is done to the parties, the Court should open its eyes wide and with a meticulous and searching mind, comb through the entire application”. Per Niki Tobi, JCA - as he then was.*

*The 1<sup>st</sup> and 2<sup>nd</sup> respondents’ application is brought in bad faith. It is tantamount to putting a cat before a horse and same should be discountenanced in the interest of justice.”*

Now, in order to resolve the issue under consideration i.e. whether a suit can be filed under the Fundamental Rights [Enforcement Procedure] Rules, 2009 by more than one person to enforce a fundamental right, I will refer to some decisions which I was privileged to read in the course of writing this Ruling.

**InMr. Solomon Kporharor&Anor.v. Mr. Michael Yedi&Ors. [2017] LPELR-42418 [CA]** decided on 4/5/2017, Benin Division of the Court of Appeal considered this issue and held:

*"An action under the Fundamental Enforcement Procedure Rules is a peculiar action. It is a kind of action which may be considered as "Sui Generis" i.e. it is a claim in a class of its own though with a closer affinity to a civil action than a criminal action. ...*

*In this appeal under consideration, the application was brought by two separate Applicants [1] Mr. Michael Yedi and [2] OnodjeYedi Nig. Ltd. The words used under Section 46[1] of the Constitution set out above are very clear. The same provision is made in Order 1 Rule 2[1] of the Fundamental Rights [Enforcement Procedure] Rules, 1979.*

*The adjective used in both provisions in qualifying who can apply to a Court to enforce a Right is "any" which denotes singular and does not admit pluralities in any form. It is individual right and not collective rights that is being talked about.*

*In my humble view, any application filed by more than one person to enforce a right under the Fundamental Rights [Enforcement Procedure] Rules is incompetent and liable to be struck out. ..."*

In the case of **Mr. Archibong Tom Udo v. Ibanga Udo Robson & Ors. [2018] LPELR-45183 [CA]** delivered on 20/7/2018, the Calabar Division of the Court of Appeal adopted the above decision and concluded thus:

*"The decision of this Court in KPORHAROR case [supra] is the current decision of this Court. By the doctrine of stare decisis I am bound by the earlier*

*decision of this Court. I cannot in anyway deviate from it. I hold in the circumstance that it is not proper to join several Applicants in one application for the purpose of securing the enforcement of their fundamental rights. This issue is resolved in favour of the Appellant."*

However, in **Alhaji Ali Ahmad Maitagaran&Anor.v. HajiyaRakiyaSaiduDankoli&Anor. [2020] LPELR-52025 [CA]** delivered by the Kano Division of the Court of Appeal on 27/10/2020, the Court took a different position thus:

*"... the complaint of the Appellants before the lower Court was that the action filed before the lower Court was bad for joinder of the causes of action of the Respondents for the breach of their fundamental rights. ... There is no express provision in the Fundamental Rights [Enforcement Procedure] Rules 2009 permitting or forbidding such joinder of causes of action. Order XV Rule 4 of the Rules provides that where in the course of any Fundamental Rights proceedings, any situation arises for which there is or appears to be no adequate provision in the Rules, the Civil Procedure Rules of the Court for the time being in force shall apply. The lower Court here is the Federal High Court."*

The Court of Appeal referred to the provision of Order 9 Rule 1 of the Federal High Court [Civil Procedure] Rules 2009 and continued:

*"... Dovetailing from the above position of the law, it has been held that a joint action filed by more than one person to ventilate breach of their fundamental*

*rights arising from one and same action of a defendant or defendants is competent - UzoukwuVsEzeonu II [1991] 6 NWLR [Pt. 200] 708 at 761, ...UbochiVsEkpo [2014] LPELR 23523[CA], OrkaterVsEkpo (2014) LPELR 23525[CA]. A read through the case of the Respondents on the affidavit in support of their application shows that the rights they sought to ventilate arose from a common cause. The finding of the lower Court that the action of the Respondents was competent cannot thus be faulted."*

The most recent decision that I was privileged to read on the issue under focus is the case of **Chief of Naval Staff Abuja &Ors. v. Archibong&Anor.** **[supra]** delivered on 4/12/2020 by the Calabar Division of the Court of Appeal where it was held as follows:

*"It was also contended by the appellants that there is no room for joint or group enforcement of fundamental right in a single application. Before determining whether or not the fundamental rights [Enforcement Procedure] Rules 2009 contemplates a joint or group application let me quickly state that the applicants at the trial Court are husband and wife and therefore brought a single application for the enforcement of their Fundamental rights. ...*

*Neither the 1999 Constitution nor the Fundamental Rights [Enforcement Procedure] Rules 2009 defines the word 'person' but in the context of Section 46 [1] of the Constitution and Order 1 Rule 2 [1] of the extant Fundamental Rights [Enforcement Procedure] Rules it refers to an individual. The adjective used in both provisions in qualifying who can apply to a Court to enforce a*

*right is "any" which also denotes to singular and does not admit pluralities in any form. ...*

*I cannot therefore deviate from the previous decision which prohibits joint and or group application for the enforcement of fundamental rights."*

By the immutable or inflexible doctrine of *stare decisis* [or judicial precedent], this Court is bound to follow the decision of the Court of Appeal. It is also the law that when a lower court is faced with two conflicting decisions of a superior Court on an issue, as in the instant case, the proper procedure or approach is to follow the most recent decision on the issue or subject. See the cases of **Isaac Obiuweubi v. CBN [2011] 3 SCNJ 166** and **Mujakperuo&Ors. v. Ajobena&Ors. [2014] LPELR-23264 [CA]**. Thus, this Court will follow the decision in **Chief of Naval Staff Abuja &Ors. v. EyoArchibong&Anor.**

In the circumstance, the decision of the Court is that the joint action by the applicants for the enforcement of their fundamental rights is incompetent. In the light of this decision, it will not serve any useful purpose to consider the merit of the Originating Motion. The preliminary objection of the 1<sup>st</sup>& 2<sup>nd</sup> respondents has merit and is granted. The applicants' suit is struck out.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of Counsel:*

1. Nnanyelugo M. EzeEsq. for the applicants.
2. John IjagbemiEsq. for the 1<sup>st</sup>& 2<sup>nd</sup> respondents.
3. B. O. Akinseye George Esq. for the 3<sup>rd</sup> respondent; with J. R. OlusolaEsq.