

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU - ABUJA**  
**ON TUESDAY THE 14<sup>TH</sup> DAY OF MAY, 2020.**  
**BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI**  
**SUIT NO. CV/2822/2019**

**IN THE MATTER OF FUNDAMENTAL RIGHTS RULES 2009**

**BETWEEN**

**ENGR. ANYANWU DAVID IFEANYI-----APPLICANT**

**AND**

- 1. INSPECTOR GENERAL OF POLICE**
- 2. COMMISSIONER OF POLICE, FCT -----RESPONDENTS**
- 3. LUGBE DIVISIONAL POLICE FORCE**
- 4. BAZE UNIVERSITY OF NIGERIA**

**JUDGMENT**

This is a rights enforcement action brought via Originating motion filed on the 29<sup>th</sup> of November, 2019, seeking to enforce, among others their respective rights to personal liberty. By motion on notice filed on the 15/01/2020 and argued before this court on the 6<sup>th</sup> of February, 2020, 4<sup>th</sup> Respondent/Applicant raised a preliminary objection to the hearing of the suit as constituted, in that;

- a. An order of this Honourable court dismissing this suit for lack of jurisdiction, or in the alternative;
- b. An order of this Honourable Court striking out the name of the 4<sup>th</sup> Respondent from this suit, and
- c. Any other or further orders as this Honourable Court may deem fit to make in this circumstance.

In support of this motion is a 4 paragraph affidavit and a written address, wherein the 4<sup>th</sup> Respondent/Applicant raised three (3) issues for determination to wit:-

1. Whether this suit is properly constituted in representative capacity as filed before this Honourable Court.
2. Whether there is any reasonable cause of Action against the 4<sup>th</sup> Respondent in this suit.
3. Whether the 4<sup>th</sup> Respondent is a necessary party to this suit.

On issue one (1), counsel submitted that for an action to be competently instituted in Representative capacity, those on whose behalf the suit was brought must be identifiable and verifiable. On issue two (2), counsel submitted that this action as presently constituted does not disclose any reasonable cause of action against the 4<sup>th</sup> Respondent and on issue three (3), counsel submitted that assuming without conceding that the Applicant succeeds in his claim for unlawful arrest and detention, the 4<sup>th</sup> Respondent is not an authority or person specified by law to be held responsible in the circumstances. He urged the court to hold that the 4<sup>th</sup> Respondent is not a necessary party and order cost against the Applicant to pay in favour of the Respondent N2,500,000.00. In support of the above submissions learned counsel relied on this authorities amongst others;

1. **ELF PETROLUEM V. UMAH & ORS (2018) LPELR-43600 (SC)**
2. **WOHEREM V. EMEREUWA (2004) 13 NWLR (PT. 890) 398 AT 415, G**
3. **RINCO CONSTRUCTION COMPANY LIMITED V. VEEPEE INDUSTRIES LIMITED & ANOR (2005) LPELR-2949 (SC)**

#### **4. SECTION 25 (6) 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED)**

The Applicant/Respondent filed a counter affidavit of 13 paragraphs on the 21/01/2020. Annexed are three (3) exhibits which are certificate of incorporation of “IE-POWERTECHS & FIELD SERVICES LTD”, Form CAC 7 “PARTICULARS OF PERSONS WHO ARE FIRST DIRECTORS OF THE COMPANY” and The Nigeria Police Statement of Witness. Attached also is a written address, learned counsel in reply to the issues for determination raised by the Respondent/Applicant submitted that the paragraph 3 (e) of the preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009 is a departure from the 1979 Fundamental Rights Enforcement Procedure Rules which was restrictive as it only recognised the locus standi of the victims. Counsel submitted that it is elementary law that either the Applicant or his legal practitioner can prepare and sign the motion/application. Counsel further submitted that the Applicant/Respondent is the CEO/DIRECTOR OF IE-POWER TECHS & FIELD SERVICES LTD (the company), i.e one of the directors and should not be considered as an employee of the said company. Counsel also submitted that it is not the law that arrest shall be effected before scooping for evidence that will implicate the Applicant/Respondent. Counsel submitted that the 4<sup>th</sup> Respondent/Applicant is a necessary and desirable party in this suit who is also liable for the infringement of the Applicant/Respondent’s fundamental rights. He urged the court to dismiss the 4<sup>th</sup> Respondent/Applicant’s application in totality and enter judgment in

favour of the Applicant/Respondent. He relied on the following authorities amongst others;

1. **DILLY V. IGP & ORS (2016) LPLER-41452 (CA)**
2. **FAWEHINMI V. IGP (2002) 7 NWLR (Pt. 767) 606 at Pp. 670-671**
3. **MCLAREN V. JENNINGS (2003) 2 NWLR (Pt. 808) 470**
4. **BASSEY V. AFIA (2010) ALL FWLR (Pt. 531) 1477**

On the amended Originating Motion filed 29<sup>th</sup> November, 2019 the Applicant brought this application pursuant to Sections 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Article 6 and 12 of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act, Order 11 Rules 1, 2, 3, 4 and 5 of the Enforcement of Rights (Enforcement Procedure) Rules, 2009 and under the inherent jurisdiction of this Honourable Court.

The reliefs sought as contained in the Originating Motion are as follows:

1. A DECLARATION that the arrest and detention of the Applicant and his employees from 19<sup>th</sup> July, 2019 to 20<sup>th</sup> July, 2019 and the subsequent re-arrest and detention of the Applicant's manager on the 21<sup>st</sup> July, 2019 from 8.30am to 7.30pm by the agents of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in order to collect money paid for a civil contract entered into with the 4<sup>th</sup> Respondent, is unconstitutional, unlawful and infringement of the Applicant's right to dignity of human person, right to personal liberty, right to fair hearing as well as freedom of movement.
2. An order of perpetual injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents jointly and severally or through their agents from

further arresting and/or detaining the Applicant and his employees in respect of this civil contract.

3. An order of this court awarding the sum of N5, 000,000.00 (Five Million Naira) as general and exemplary damages in favour of the Applicant and his employees in respect of the civil contract.
4. An order of this court directing the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to release the Applicant's technician tool box and tender public apology to the Applicant in two (2) national dailies, having violated the Applicant's and his employees' rights to dignity of human person, personal liberty, fair hearing and freedom of movement in respect of this civil contract.
5. Any other order(s) as this Court deem fit to make in the interest of justice.

Accompanying the motion is a 19 paragraph amended affidavit in support, 16 documents marked Exhibits A – Exhibit J2A and a written address. A brief summary of fact as contained in the affidavit in support of this application is based on a civil contract between the Applicant and the 4<sup>th</sup> Respondent in respect of repairs of 1000KVA Cummins Generator. That when the manager and the head of technicians went to the 4<sup>th</sup> Respondent's premises to start the generator after working on it and it failed to start their technician's tool box was seized and they were detained in the premises of 4<sup>th</sup> Respondent and on the orders of 4<sup>th</sup> Respondent were arrested by Police officers from Lugbe Police Station till the next day without informing them of their offences. That subsequently the manager was re-arrested on the 21<sup>st</sup> of July, 2019 by the Investigating Police Officer (IPO) from 3.30am to 7.00pm despite

the bail granted to him. That the agents of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have been harassing and intimidating him and his employees with threat of further arrest and detention in breach of his fundamental rights to dignity of human person, personal liberty, fair hearing and freedom of movement as well as that of his employees due to the said civil contract.

Learned counsel raised three (3) issues for determination as follows;

1. Whether the arrest and detention of the Applicant's employees from the 19<sup>th</sup> July, 2019 to 20<sup>th</sup> July, 2019 without committing offence(s) and the subsequent re-arrest and restriction of the Applicant's manager on the 21<sup>st</sup> July, 2019 from 8.30am to 7.00pm by the IPO (the agent of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents) despite the grant of his bail and also the arrest and detention of the Applicant on the 22<sup>nd</sup> July, 2019 based on civil contract by the men and officers of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are not in breach of the Applicant's and his employees' fundamental rights as enshrined in the 1999 Constitution.
2. Whether the transaction in issue between the Applicant and the 4<sup>th</sup> Respondent is not civil contract? If yes, is the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents allowed in law to arrest any citizen in respect of a contractual obligation, as in the instant case between the Applicant and the 4<sup>th</sup> Respondent.
3. Whether from the circumstance of this case the Applicant is entitled to the reliefs sought.

On issues 1 and 2 learned counsel submitted that as per the circumstances of this case, the relationship/tussle between the

Applicant and the 4<sup>th</sup> Respondent is purely civil and contractual in nature devoid of any element of criminality. He urged the court to resolve both issues in favour of the Applicant. On the 3<sup>rd</sup> issue, counsel submitted that an Applicant seeking redress for the infringement of his fundamental right is in addition to a declaratory and injunctive reliefs also entitled to award of damages. He urged the court to exercise its powers as enshrined in the 1999 Constitution and Fundamental Rights (Enforcement Procedure) Rules 2009 and other relevant laws to grant all the reliefs sought by the Applicant. In support of these contentions he cited the following authorities:

1. **MACLAREN V. JENNINGS (2003) FWLR (Pt.154) 528**
2. **C.O.P. ONDO STATE V. OBOLO (1989) 5 NWLR (Pt. 120) 138**
3. **ABDULLAHI V. BUHARI (2004) 17 NWLR (Pt. 902) 278**
4. **WAEC V. ADEYANJU (2008) MJSC Vol. 6 Pg. 1 at 23**
5. **JACK V. UNIVERSITY OF MAKURDI (2004) ALL FWLR (Pt. 200) 1506 @ 1512**
6. **FEDERAL REPUBLIC OF NIGERIA V. IFEGWU (2003) FWLR (Pt. 167) 703 at pp. 778 and 779**
7. **ONOKERHORAYE V. IGBILOVE (2001) ALL FWLR (Pt. 73) 155 at p. 156**
8. **DARMA SHUGABA V. FEDERAL MINISTER OF INTERNAL AFFAIRS & 3ORS (1981) NCLR 459.**

In opposition, the 1<sup>st</sup> to 3<sup>rd</sup> Respondent filed a counter-affidavit of 14 paragraphs with 7 annexure marked as Exhibit NPF 1 to NPF 5. 1<sup>st</sup> to 3<sup>rd</sup> Respondent were neither represented nor attended court but merely

dumped their counter affidavit in the court's file. On application of the Applicant counsel same was struck out.

The 4<sup>th</sup> Respondent did not file any counter affidavit in response to the Originating motion.

I will adopt issues raised by the 4<sup>th</sup> Respondent in his motion on notice No. M/4234/2020 dated 14<sup>th</sup> January, 2020.

1. Whether this suit is properly constituted in a representative capacity as filed before this Honourable Court.
2. Whether there is any reasonable cause of action.
3. Whether the 4<sup>th</sup> Respondent is a necessary party to this suit.

As regard the 1<sup>st</sup> issue “whether this suit is properly constituted in a representative capacity as filed before this honourable court”. Originating processes filed by Applicant states the name of the Applicant suing on behalf of himself & on behalf of his employees. The 4<sup>th</sup> Respondent is contending that Applicant failed to state the names and particulars of his employees on the face of the originating motion neither did Applicant sign the originating motion which was rather signed by the Applicant's counsel. In commencing an action for enforcement of fundamental rights, the Applicant must file (4) distinct documents namely:-

- (a) The originating application
- (b) The statement in support of the application
- (c) An affidavit in support of the application
- (d) Written address.



Order IX of the Fundamental Rights Enforcement Procedure (FREP) Rules provides that “*where at any stage in the course of or in connection with any proceedings there has by any reason of anything done or left undone, been failure to comply with the requirement as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify such proceedings except as they relate to -*

*(i) Mode of commencement of the application;*

*(ii) The subject matter is not within chapter IV of the African Charter on Human & Peoples Rights (Ratification Enforcement) Act”*

From processes filed before this court, Applicant has substantially complied with the mode of commencement of this application as Applicant filed all necessary processes required. The question that arises is whether Applicant failure to sign the said originating motion seeking to enforce his fundamental human right and whether Applicant not stating the names and particulars of his employees on the face of the motion vitiates the proceedings?

First and foremost, the enforcement of fundamental rights in our society encapsulates a special procedure prescribed by the Fundamental Rights Enforcement Procedure Rules 2009, Order 11 Rule 3 Fundamental Rights Enforcement Procedure Rules states that an application shall be supported by a statement setting out the name and description of the applicant, the relief sought, the ground upon which the reliefs are sought and supported by an affidavit setting out the facts upon which application is made. It has been held in the case of

**BAKARE VS. FORTUNE INTERNATIONAL BANK PLC (2003) 2 FHCLR 407** that a statement should be attached to the motion for Enforcement of Fundamental Human Right and it could be signed by the Applicant or their legal representatives. Likewise nowhere in the Fundamental Rights Enforcement Procedure Rules does it make it mandatory that the applicant “SHALL” sign the process filed. It is therefore sufficient if the Applicant or his legal practitioner signs the motion. It would have been a different scenario if the deponent/Applicant did not sign the affidavit attached but the reverse is the case in this suit as the Applicant who deposed signed same. The essence and peculiarity of the Fundamental Rights Enforcement Procedure Rules is that an Applicant whose fundamental right has been infringed upon may approach the court to enforce same. The intention of the rule is to remove all manner of difficulties which may clog a claim from seeing the light of the day hence the facts of the case is to be set out in the supporting affidavit unlike the strict procedure required in the 1979 Fundamental Rights Enforcement Procedure Rules, consequently the opposite is the case presently as failure to state the material particulars would not vitiate the proceedings in the 2009 Fundamental Rights Enforcement Procedure Rules.

Hence where there is substantial compliance in the processes filed as in this case, the signing of the summons by the legal practitioner does not in any way vitiate the proceedings.

It is pertinent to state that although Applicant did not state names & particulars of the parties he is suing in a representative action

(employees) on the face of the motion, the names of the said employees were stated in paragraphs 5 and 11 of the Applicant's supporting affidavit to wit ".....Isiah Adinna who is my employee" and "...my manager Richard Epeller who is also my employee" but a detailed perusal of the affidavit in support of motion only establishes that Richard Epelle is the only employee who was arrested and detained by the police.

At this junction it is necessary for me to bring up the major contrast between the 1979 Fundamental Rights Enforcement Procedure Rules and the 2009 Rules. Unlike the 1979 Rules, the 2009 Rules does not require the Applicant to furnish the material particulars which relates to the fact of the case in the attached statement in support, rather the facts of the case is to be set out in the supporting affidavit therefore failure to state material facts in the statement as was required under the 1979 Fundamental Rights Enforcement Procedure Rules would not vitiate the proceedings in the current 2009 Fundamental Rights Enforcement Procedure Rules once the Applicant as in the present case has included all the 4 conditions precedent to wit:- the originating motion/motion on notice; statement in support of the application; affidavit in support of the application and a written address. It is therefore sufficient that Applicant in this suit has fully stated the names of his employees in his affidavit, thus by insisting that the names & details of the employees not having been displayed on the motion should vitiate the suit is hinging this suit on technicality. It is trite that the Courts have moved away from the law of technicality to

substantial justice as held in **NISHIZAWZA LTD VS STRICHAND JETAWANI (1984) 12 SC 234 @ 285-286** where OPUTA JSC held (a)

*The duty to do justice is fundamental and substantial, the procedure to attain that desired goal is functional and subsidiary. The question will arise, if somewhere along the line the rules of procedure conflict with the essential duty of the court to do justice by deciding the rights of the parties after hearing both sides, what happen? When this happens, which one will prevail? I agree that courts do not administer abstract justice but justice according to the law including rules of court..... this court has on several occasions insisted that rules of procedure should be obeyed. But all the same, rules should be helpful handmaids and not tyrannical and uncompromising masters. The general view with which I am in complete agreement is that it is undesirable to give effect to rules which enable one party to score a technical victory at the expense of a hearing on the merit.”*

From the above decision of the supreme court, it is evident that the era of technicalities have lapsed in our judicial system and same will not prevail over substantial justice. Applicant in this suit have filed for the enforcement of his Fundamental Human Right and attached all necessary documents; it therefore follows that striking out or dismissing this matter on the ground that applicant failed to disclose particulars of employees on the face of the motion paper but rather stated the said names and particulars of the employees in his affidavit in support will not be entertained by this Court and I hold in like manner.

Learned counsel to the Defendant also raised the following issues:- That Applicant stated in his affidavit that he is the Chief Executive officer of IEPOWER TECHS & FIELD SERVICES LTD hence Applicant having sued in his personal capacity cannot refer to individuals which he is suing in a representative capacity as “his employees” Respondent counsel further stated that Applicant used conflicting names of his company in his processes thus: IEPOWER TECHS & FIELD SERVICES LTD whereas letters were undersigned as IEPOWER TECH FIELD SERVICES LTD, consequently learned counsel submitted that the Applicant cannot prove which of these names are registered with Corporate Affairs Commission (CAC).

First and foremost, the question of legal capacity or corporate entity of Applicant’s company is not before this court, rather what is before this court is a case for the enforcement of the Fundamental Human Right of the Applicant and two of his staff/employees and it is trite that a court is guided by the claim before it. The application before this court has nothing to do with enforcement of fundamental right of companies nor juristic personality of companies rather it is enforcement of fundamental rights of 3 individuals (Applicant and 2 of his staff) in their personal capacity. The issue of the discrepancy in the spelling of the company’s name of the Applicant cannot be lumped together with the enforcement of the Fundamental Human Right neither can it be used as a shield to suppress Applicants suing for enforcement of their fundamental human right. Whether the Applicant wrongly spelt the name of his company thereby bringing up the issue of “legal entity” of the Applicants company is pointless in this circumstances, more so as

the 4<sup>th</sup> respondent has failed to show how such wrong spelling has jeopardized Applicants claim for the infringement and the enforcement of his Fundamental Human Rights nor how the wrong spelling of the name of the Applicant company has jeopardized the 4<sup>th</sup> Respondent. As earlier postulated, days where counsels pick their way to justice through the rules of technicalities is far gone and courts are enjoined to do substantial and not technical justice. The suit before the court is the enforcement of Applicant's Fundamental Human Right and that of his employees (in their personal capacity). The claim of the 4<sup>th</sup> Respondent that employees are not employees of the Applicant in his personal capacity holds no water and I hold same to be a mere technicality which has no place in our law. The infringement of Fundamental Human Rights of any citizen of Nigeria is a serious issue which the rule on technicality cannot downplay.

I will take both the 2<sup>nd</sup> and 3<sup>rd</sup> issue together.

Issue on whether there is any reasonable cause of action against the 4<sup>th</sup> Respondent and if 4<sup>th</sup> Respondent is indeed a necessary party to be joined to this suit.

A cause of action becomes reasonable once it discloses some cause or questions fit to be decided by a judge, a reasonable cause of action becomes one when it poses some chance of success when only the allegation in the pleadings are considered. In determining whether there exists a reasonable cause of action, the court is to confine itself to the writ of summons and statement of claim and not the statement of defence.

In **YUSUF VS AKINDIPE (2000) 8NWLR (Pt.669) 376 @ 386 Paragraph f., OGWUEGBU JSC** held that a reasonable cause of action means a cause of action with some reasonable chance of success when only the allegation in the pleadings (statement of claim) are considered. So long as the statement of claim discloses some cause of action or raises some questions fit to be decided by a judge, reasonable cause of action is disclosed. I have perused the pleadings filed by the Applicant and I find that a certain Ashiru Mohammed Ghali who is an employee of the 4<sup>th</sup> Respondent featured prominently in the transaction leading to the arrest of the Applicant. The incident which culminated into the alleged infringement took place in the premises of the 4<sup>th</sup> Respondent; also 4<sup>th</sup> Respondent through its Ashiru Mohammed Ghali had allegedly ordered the seizure of Applicant's tool box and it should be noted that the 4<sup>th</sup> prayer in the originating summons is for the release of the said tool box and in that wise making 4<sup>th</sup> Respondent who is the principal of Ashiru Mohammed Ghali a necessary party. It should be noted that it is sufficient enough if a cause of action is slim and not likely to succeed. It is not the duty of the court at this stage to look at the chances of success or failure of a cause of action, rather it is reasonable once a cause of action is disclosed to this extent. I therefore hold that a reasonable cause of action has been established against the 4<sup>th</sup> Respondent, consequently 4<sup>th</sup> Respondent is a necessary party to be joined in this suit.

In the light of the above the motion on notice dated 14<sup>th</sup> January, 2020 is consequently struck out.

In respect of the originating motion for enforcement of Applicant's Fundamental Human Rights, same was not only unchallenged but uncontroverted by all the Respondents. Although learned counsel to the 4<sup>th</sup> Respondent file a motion on notice challenging the jurisdiction of this court, counsel failed to file a counter affidavit in line with **Order VIII Rules 2 Fundamental Rights Enforcement Procedure Rules 2009** which provides that a Respondent who wishes to challenge on the jurisdiction of the court shall file a notice of Preliminary Objection together with a counter affidavit, if any.

It is settled law that in a matter constituted by affidavit evidence, failure of the Respondent to file a counter affidavit to controvert the averments in an affidavit leaves the court with no option than to deem the contents of the affidavit in support as true. See **HONDA PLACE LTD VS GLOBE MOTOR HOLDINGS NIG LTD (2005) 14NWLR (Pt 945) 273**; But it is worthy to note that in a case brought on affidavit evidence, the Applicant in order to obtain judgment must prove by affidavit the reliefs sought, otherwise the action would fail. Hence if the facts contained in an affidavit which is presumed to be true when taken together are not sufficient to sustain the prayers of the Applicant, the court would not uphold the averments in the affidavit.

In this case, Applicant in his first prayer has proved that 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents indeed infringed on his Fundamental Human Rights by arresting and detaining Applicant & his employees from 19<sup>th</sup> July, 2019 to 20<sup>th</sup> July, 2019.



The re-arrest and detention of applicants manager on 21<sup>st</sup> July, 2019 from 8:30am to 7pm by the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> respondent does not fall under infringement of Fundamental Human Right as provided under **Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** which safeguards the rights of any citizen arrested for any offence be charged to court within a reasonable time. Consequently arrest and detention by the Nigerian Police from 8:30am to 7pm in the absence of more cogent and compelling facts which Applicant failed to furnish this court, such arrest and detention cannot fall nor be termed an infringement of Fundamental Human Right.

In respect of his 2<sup>nd</sup> prayer for perpetual injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Respondents from arresting or detaining Applicant & his employees in respect of this civil contract; from processes before the court, the 4<sup>th</sup> Respondent has not in any way neither by itself nor through its agents arrested nor detained the Applicant & his employees hence granting order of perpetual injunction as stated in the 2<sup>nd</sup> prayer of the Applicant in his amended originating application is illogical as nowhere in the Applicant's affidavit did it state/prove that 4<sup>th</sup> Respondent arrested or detained Applicant in violation of their Fundamental Human Rights. Rather the 4<sup>th</sup> Respondent had simply invited the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondent to its premises in respect of the unsatisfying work done on the generator of the 4<sup>th</sup> Respondent by the Applicant and his employees. It is within the confines of the law for the 4<sup>th</sup> Respondent to make a report/lodge a complaint/invite the police to its premises in respect of the Applicant & his employees upon a complaint that the Applicant did an unsatisfactory work on its

generating set as done in this case. Rather, it is for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents to investigate, arrest and generally take appropriate steps against the Applicants in line with the provisions of Chapter IV of the Constitution. See **OWOMERO VS FLOUR MILLS (NIG) LTD (1995) 9 NWLR (Pt. 421) 622; EZEADUKA VS MADUKA (1997) 8NWLR (Pt.518) 635** where OTISI JCA held *that a report made to the police does not, without more, amount to instigating the police in any way as the complainant was certainly within his rights in laying a complaint before the police; hence he cannot be faulted for laying such a complaint.*

The case against the 4<sup>th</sup> Respondent is that the 4<sup>th</sup> Respondent instructed its security personnel to seize Applicant's tool box and restrain Applicant from moving out of the 4<sup>th</sup> respondents premises pending when the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents came to effect arrest of the Applicant. It is worthy to note that the security personnel of the 4<sup>th</sup> Respondent have the powers to restrain anybody suspected of any crime pending when such individuals are handed over to the police within the shortest reasonable time. This is a common rule with security personnel all over the world hence their decision to restrain the Applicant and his employees within the premises of the 4<sup>th</sup> Respondent pending when the Applicants and their tool box were handed over to the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents is not out of place and definitely within the ambits function of a private security personnel. This act of the 4<sup>th</sup> Respondent cannot be said to be an infringement of the Fundamental human Rights of the Applicants. A private security officer can effect an arrest as a private person as specified by Section 20 of Administration of Criminal

Justice Act 2015. Also a suspect found committing an offence involving injury to property may be arrested without warrant by the owner of the property or his servant or person authorised by him, likewise, a private person can arrest a suspect who is damaging public property **Section 21 & 22 Administration of Criminal Justice Act 2015**. When such suspect is arrested by a private person without a warrant as in this case the 4<sup>th</sup> Respondent **Section 232 (1) Administration of Criminal Justice Act 2015** provides that such a suspect is handed over to the police officer. The 4<sup>th</sup> Respondent in this case had detained the applicants along with its tool box on the grounds that the Applicants had not fulfilled its obligations in the repair of the 4<sup>th</sup> Respondents property (i.e. the generator) bearing in mind that the Applicant had been paid some money to effect the repair of the generator. 4<sup>th</sup> Respondent had called the police and the police had come to pick the Applicants from the premises of the 4<sup>th</sup> Respondent. Unfortunately applicants did not state the time from which they were “detained” by the 4<sup>th</sup> Respondent in its premises and it is not the duty of the court to fill in the gaps for the Applicant. Consequently a case of infringement of Fundamental Human Right of the Applicants have not been sufficiently made out against the 4<sup>th</sup> respondent and I so hold.

In view of the above, it is hereby ordered as follows:-

- (1) It is hereby declared that the arrest and detention of the Applicant and his employee Richard Epelle from 19<sup>th</sup> July, 2019 to 20<sup>th</sup> July 2019 by the agents of the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents without justification is unconstitutional, unlawful and an

infringement of their rights to dignity of human person, right to personal liberty, right to fair hearing as well as freedom of movement.

(2) An order of perpetual injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents jointly and severally whether personally or through their agents from further arresting and or detaining Applicants and Richard Epelle without legal justification.

(3) An order awarding the sum of ₦5,000,000 (Five Million Naira only) as general and exemplary damages in favour of the Applicant against the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents jointly and severally.

6. An order directing the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents to release the Applicant's technician tool box in their possession and to tender public apology to the Applicant in two (2) national dailies, having violated the Applicant's and his employees' rights to dignity of human person and personal liberty.

**Parties:** Absent

**Appearances:** Abubakar Musa for the Applicant. Haroun Mohammed Eze for the Respondent.

**HON. JUSTICE M. OSHO-ADEBIYI  
JUDGE  
14<sup>TH</sup> MAY, 2020**