



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDING AT MAITAMA**  
**BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



**SUIT NO: FCT/HC/CV/2022/2020**

**BETWEEN:**

- 1. CLIFFORD NWAYOBUIJE ENE )
- 2. CHIGOZIE ENE )
- 3. CHUKWUKA ENE )
- 4. BENIGNUS OBIORA ).....APPLICANTS

**AND**

- 1. INSPECTOR GENERAL OF POLICE )
- 2. ATTORNEY GENERAL OF THE FEDERATION ).....RESPONDENTS

**JUDGMENT**

By an *Amended Originating Motion* brought pursuant to Orders 2(1), 4(3) and (4) of the Fundamental Rights (Enforcement Procedure) Rules, 2009, Sections 34, 35, 36, 41 and 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Articles 6 and 13 (1) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and under the inherent power and jurisdiction of this Court, the Applicants are seeking the following reliefs against the Respondents:

- a. A DECLARATION that the harassment, arrest, intermittent and continuous detention of the Applicants by the 1<sup>st</sup> & 2<sup>nd</sup> Respondents is unwarranted, unconstitutional, illegal, ultra vires and constitutes a flagrant violation of the Applicant's Fundamental Right.**
- b. A DECLARATION that the Applicants as free citizens of the Federal Republic of Nigeria, pursuant to Sections 34 (1) (a) and 35 of the 1999 Constitution of the Federal Republic of Nigeria and Articles 2, 5, 6 and 16(1) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, is entitled to respect for his human dignity right to his personal liberty, freedom from arbitrary arrest, prolonged and unlawful detention at the whims and caprices of the 1<sup>st</sup> & 2<sup>nd</sup> Respondents without any formal criminal charge in any Court of Law.**
- c. AN ORDER of this Honourable Court directing the immediate and unconditional release of the 1<sup>st</sup> Applicant forthwith from the custody of the Respondents.**
- d. AN ORDER of Perpetual Injunction restraining the Respondents whether by themselves or through their servants, allies, agents and privies howsoever described from further inviting for possible arrest, or arresting,**

**detaining, harassing and or in any manner violating the Applicant's right to personal liberty.**

- e. The sum of ₦10,000,000.00 (Ten Million Naira) only as compensation against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for, intimidating, harassing, embarrassing and detaining the Applicant unlawfully and in violation of his Fundamental Human Rights.**

**IN THE ALTERNATIVE TO RELIEF "C";**

- f. AN ORDER of Court admitting the Applicant to bail on liberal terms pending any criminal charge the Respondents may file against the Applicant in Court.**

There is an Affidavit of 14 paragraphs in support of the application deposed by one Alfred N. Agu, a relative of the Applicants to which Exhibits "A" and "B" were annexed. Exhibit "A" is photocopy of *Originating Process* in suit No. E/321/2016 between Chief Clifford Eze & 15 Others. and Afamefuna Chibuoke & 10 Others pending before the Enugu Judicial Division of the High Court of Enugu State. Exhibit "B" is Solicitor's letter to the Commissioner of Police, Enugu State dated 24<sup>th</sup> September, 2019. Mr. Alfred N. Agu Esq. of Counsel to the Applicants also filed a

Written Address in obedience to the Fundamental Right (Enforcement Procedure) Rules, 2009.

The Applicants also filed a Statement showing their name description, reliefs sought and the ground upon which the reliefs are sought.

The Respondents were duly served with the Originating Motion on Notice. For avoidance of doubt, the 1<sup>st</sup> Respondent was served on 5<sup>th</sup> September, 2020 while the 2<sup>nd</sup> Respondent was served on 15<sup>th</sup> September, 2020. However, the 1<sup>st</sup> Respondent did not file any process in opposition to Applicants' claims. The 2<sup>nd</sup> Respondent with leave of Court filed a Counter Affidavit of 5 paragraphs deposed to by one Ilop Lawrence, a Litigation officer in the Civil Litigation Department under the 2<sup>nd</sup> Respondent.

Now the facts of this case are that sometimes in 2019 the Police upon the instigation of one Pastor Chris Emeka arrested the 3<sup>rd</sup> Applicant and threatened to kill him if he refused to vacate a portion of land situate at **OKOTO NKWOAGU, AMOKWE in Udi** Local Government Area of Enugu State. The 4<sup>th</sup> Applicant who is the landlord of the 1<sup>st</sup> Applicant claimed that he inherited the land and that the 1<sup>st</sup> Applicant has been farming on the land at his instance for about 20 years without any interference from any quarter. The 3<sup>rd</sup> Applicant is the son of the 1<sup>st</sup> Applicant. On the

other hand, Pastor Chris Emeka claimed to have bought the land from a neighbouring village. Pastor Emeka engaged the 4<sup>th</sup> Applicant in a battle of supremacy over the land with the active support of the Police. That sometimes in June, 2019, the Police raided the home and business premises of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants and detained 4<sup>th</sup> Applicant with the sole aim of helping Pastor Emeka to take effective possession of the disputed land. At the time of filing this application, the 1<sup>st</sup> Applicant was still languishing in detention. The Affidavit of the Applicants tells their story with clarity. Accordingly, I take the liberty to reproduce paragraphs 7(a) – (q) which captured the totality of the facts in support of this application, to wit:

- a. That the 4<sup>th</sup> Applicant by Customary inheritance is the customary owner of the piece of land located at Okoto Nkwoagu, Amokwe in Udi LGA of Enugu State.**
- b. That the 4<sup>th</sup> Applicant gave out a portion of the land to the 1<sup>st</sup> Applicant his in-law to use for farming which he has been using for over 20 years now.**
- c. That the 4<sup>th</sup> Applicant over the years equally rented out a portion of the land to the 3<sup>rd</sup> Applicant who incidentally is the son of the 1<sup>st</sup> Applicant who used same to set up his block molding factory.**

- d. Sometime in 2017 a group of people who claimed that they were members of Charismatic Renewal of Nigeria came and started to clear the land but they were stopped by the Applicants for trespass.**
- e. A Pastor from the Church also claimed that they bought the land from the neighboring village and they had genuine claims to the said piece of land.**
- f. The matter was later taken to Court and all the parties involved were sued and served with the Court processes. A copy of the Motion on Notice dated 2/11/2019 is hereby attached and marked as Exhibit A.**
- g. That even though the matter was taken to Court, the trespassers have used officers of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to continuously harass, intimidate, arrest and unlawfully detain the Applicants in the guise of carrying out investigation on complaints written by the trespassers to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.**
- h. That the Applicants through their Lawyers have written several letters to the Commissioner of Police Enugu, an agent of the 1<sup>st</sup> Respondent, informing them that the matter at hand was a matter relating to land dispute.**

**The letters dated 24<sup>th</sup> September, 2019 and 17<sup>th</sup> December, 2019 are hereby attached here as Exhibit B & C.**

- i. Sometime in November, 2019, the shop of the 3<sup>rd</sup> Applicant was raided by men from the Federal Special Anti Robbery Squad upon a complaint written by the trespassers to the 4<sup>th</sup> Applicant's land, all the workers of the 3<sup>rd</sup> Applicant, the tenants of the 4<sup>th</sup> Applicant were arrested and taken to the Special Anti Robbery Squad Office in Enugu state from where they were transferred to the office of the 2<sup>nd</sup> Respondent and detained for several days before they were released on bail.**
- j. That despite all the letters written by the Applicants' Solicitors to the Police, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have continue to harass, intimidate, unlawfully arrest, and detain the Applicants in the guise of investigating, frivolous and bogus petitions written against the Applicants.**
- k. That on the 15<sup>th</sup> of June, 2019 the 2<sup>nd</sup> Respondent raided the home and business premises of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Applicants at around 12:04 am in the dead of the night and in the absence of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicant, arrested**

- their 60 years old father the 1<sup>st</sup> Applicant and whisked him to Abuja where he has been in detention since then.**
- l. That the 1<sup>st</sup> Applicant apart from being an old man, is equally hypertensive and at the point of his detention (sic). The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have denied him access to his medical drugs and this can lead to severe lapse in health and even death.**
  - m. That no matter how the Police and the Respondents want to twist this case, the bone of contention is a parcel of land which belongs to the 4<sup>th</sup> Applicant.**
  - n. That the 1<sup>st</sup> Applicant informed me when I visited him at the detention facility of the 2<sup>nd</sup> Respondent that the 2<sup>nd</sup> Respondent have refused to grant him bail unless he makes an undertaken that he will leave the said land for the trespassers who wrote the petition to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.**
  - o. The Applicant also informed me that all these while that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have been arresting the Applicants, the Respondents have not filed any Criminal complaint against any of the Applicants in a Law Court.**



- p. That since the arrest of the 1<sup>st</sup> Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the 1<sup>st</sup> Applicant a business man has lost the source of his income as his business has been left unattended, he has also been deprived of his family and has suffered psychological trauma as a result of same.**
- q. That the 2<sup>nd</sup> Respondents have been making frantic efforts to arrest the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants and have mandated the 1<sup>st</sup> Applicant to produce the other Applicants for them before he will be released on bail.**

The 1<sup>st</sup> Respondent as stated earlier did not file any process in opposition to the claim of the Applicants. However, the 2<sup>nd</sup> Respondent with leave of Court filed a Counter Affidavit of 5-paragraphs where it was contended that the 2<sup>nd</sup> Applicant does not involve itself with investigation, arrest and detention of offenders which constitute part of the statutory functions of the 1<sup>st</sup> Respondent. That the 2<sup>nd</sup> Respondent's duty is to advise on case files forwarded to it and prosecute matter that has been diligently investigated by law enforcement agencies. That the Police in this case have not forwarded any case file involving the Applicants for legal advise. That the 2<sup>nd</sup> Respondent having not played any role in the violation of right complained of by the Applicants is not liable to the said Applicants.

When this matter came up for Hearing the Learned Counsel to the Applicants applied to withdraw reliefs “C” and “F” as the said reliefs have been overtaken by events.

Relief “C” which is for an Order for the immediate and unconditional release of the 1<sup>st</sup> Applicant and relief “F” which in the alternative seek an Order admitting 1<sup>st</sup> Applicant to bail were accordingly struck out on the application of Learned Counsel to the Applicants.

I will now deal with the propriety of joining the 2<sup>nd</sup> Respondent as a party in this matter taken into account the submission of the learned Counsel to the 2<sup>nd</sup> Respondent that the said Respondent did not play any role in the entire facts and circumstances of this case. I agree with him on that point, but that is not the end of the matter. It is now settled Law that the 2<sup>nd</sup> Respondent can be sued as a nominal party in all civil matters in which a claim can properly be made against the Federal Government or any of its authorized agencies, arising from any act or omission complained against. **See A-G, ANAMBRA STATE Vs A-G, FEDERATION (2007) ALL FWLR (PT.379) 1218 AT 1249.**

However, it is trite that Fundamental Right (Enforcement Procedure) Rules are special type of proceedings. They are in a special class of their own unlike the ordinary cases that run through our Courts daily as held over the years on a long line of decided authorities. Consequently, the Applicants would have to show how

the 2<sup>nd</sup> Respondent got involved in the violation of their right in order to maintain this action against the 2<sup>nd</sup> Respondent. Regrettably there is nothing in the Applicants' affidavit to connect the 2<sup>nd</sup> Respondent with the violation of Applicants' fundamental right. What am saying in essence is that the Applicants have not disclosed any reasonable cause of action against the 2<sup>nd</sup> Respondent. If that be the case, the name of the 2<sup>nd</sup> Respondent is hereby struck out of the record thereby leaving the 1<sup>st</sup> Respondent as the sole surviving Respondent in this matter. This now takes me to the claim against the Respondent.

Now the gist of Applicants' grouse against the Respondent is alleged violation of fundamental right. If that be the case, Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides as follows:

**"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"**

The Law is clear that once there is infringement or likely infringement of any of the fundamental right captured under Chapter IV of the Constitution, the affected party is free to approach the Court for redress.

In **GRACE JACK Vs UNIVERSITY OF AGRICULTURE, MAKURDI (2004) 5 NWLR (PT.865)208, Katsina–Alu, JSC** had reiterated the provision of Section 46(1) of the Constitution thus:

**"A person whose fundamental right is breached, being breached or about to be breached may therefore, apply to a High Court for redress."**

Now the Affidavit evidence of the Applicants made it abundantly clear that the Police was invited into the dispute by a complainant who is contesting ownership of a landed property which the 4<sup>th</sup> Applicant claimed belonged to him by inheritance. The 4<sup>th</sup> Applicant had given a portion of the land to the 1<sup>st</sup> Applicant who had been farming on the land for the past twenty years. The 2<sup>nd</sup> and 3<sup>rd</sup> Applicants are children of the 1<sup>st</sup> Applicant. The Police was said in the affidavit in support of this application to have raided the home and business premises of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants on 15<sup>th</sup> June, 2019 around midnight and went away with the 1<sup>st</sup> Applicant, who was kept in detention up till the time this Suit was filed on 1<sup>st</sup> July, 2020. The Respondent did not deny the facts set out by the Applicants as afforested. The evidence of Applicants that SARS operatives have mounted pressure on the 1<sup>st</sup> Applicant to produce the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants as a ground for his release has also not been denied. It has also not been denied that the Police at a different

time raided the office of the 3<sup>rd</sup> Applicant and detained him along with his workers for days. The Law is settled that Courts are bound to act on unchallenged evidence except where such evidence is manifestly perverse and unreliable.

See **NZERIBE Vs DAVE ENGINEERING CO. LTD (1994) 8 NWLR (PT.351) 124 AT 137** where Iguh, JSC held as follows:

**“Where evidence given by a party to any proceeding is not challenged, controverted or discredited by the opposite party who had the opportunity to do so, it is open to the Court seized of the matter to act on such unchallenged evidence before it.”**

**See also:**

- 1. AYINKE Vs LAWAL (1994) 7 NWLR (PT 356) 263; and**
- 2. OBEMBE Vs WEMABOARD (1977) 5 S.C 115.**

From the fact that played out in this case, it is clear to me that the intervention of the Police was procured sometime in 2017 by one Pastor Chris Emeka of the Charismatic Renewal of Nigeria who entered upon a portion of land which 4<sup>th</sup> Applicants claimed formed part of his customary inheritance. The dispute over the land was subsequently turned over to the Court as ably demonstrated on the face of Exhibit “A”. Application was made to Court to join one Pastor Joe Chris Emeka as a Co-Defendant in the Suit. The said application

formed part of the documents constituted by Exhibit “A”. It is also instructive to note that the Affidavit in Support of the Motion for joinder (attached to Exhibit “A”) was deposed to by the 4<sup>th</sup> Applicant in the instant Suit who is the 11<sup>th</sup> Defendant in the matter before the High Court of Enugu State. The question to be asked therefore is whether the Police was right in its intervention given the facts and circumstances of this matter.

In the resolution of this question, the point must be made that this Court is mindful of the onerous duties of the Police. As a matter of fact, the law is settled that the Police as a critical Institution of the State have a statutory duty with respect to investigation, arrest and detection and/or prevention of crime. In the process of performing its duties, the Police is at liberty to make arrest where there is reasonable legal justification to do so. Section 4 of the Police Act is clear on this point.

See **IGBO & ORS Vs DURUEKE & ORS (2014) LPELR-22816 (CA)** where Ekpe, JCA has this to say:

**“...suffice it to say that the Nigeria Police Force and its operatives whether at the Federal, State or Zonal Command are empowered by the Police Act, the Constitution and other relevant laws in that regard to investigate crimes or perceived danger which have been**

**reported to them. The police however have absolute discretion as to who to arrest, charge and prosecute and in so doing arrests may be made and invitations extended to persons who they reasonably believe have committed an offence. There is no gainsaying the fact that in the course of their duty they are enjoined to conduct their investigations in line with the principles of the Rule of Law and that they must act judiciously and judicially.”**

Having stated the general position of the Law with regard to the Powers of the Police, I make haste to say that there is nothing before the Court in the instant matter to suggest that the Applicants are under investigation for the commission of any crime by the Police. As a matter of fact, the Respondent did not deem it necessary to file a Counter Affidavit or Written Address on points of Law to explain the circumstances leading to the arrest and detention of the 1<sup>st</sup> Applicant and why the 2<sup>nd</sup> to 4<sup>th</sup> Applicants were threatened with arrest. In my view, the Police have no defence to Applicants' case.

As stated earlier, the Police has the power to investigate, detect, and effect arrest where the commission of crime is in issue or where there is reasonable believe that a crime is about to be committed. However, where there is no reasonable or legally justifiable ground, the Court will not hesitate to declare such arrest as in this case

illegal and unconstitutional. The case of the Applicants is further fortified by the fact that the Police as stated in the affidavit in support did not file criminal charges against any of the Applicants about two (2) years after coming into the matter.

Fundamental rights as ably submitted by the Learned Counsel to the Applicants are sacred rights which may only be tampered with in line with constitutional stipulations or guidelines. See the case of ***RANSOME KUTI & ORS. Vs A.G.F (1985) 5 NWLR (PT. 10) 211*** cited by the learned Counsel to the Applicants.

In my considered view the conduct of the Police in this case is nothing short of naked abuse of power. What is actually in dispute is title to land and the affected parties have filed relevant action before the High Court of Enugu State. There is nothing to support or justify the harassment, arrest and detention of Applicants simply to satisfy the nominal complainant. Although the Applicants may appear helpless in the face of the onslaught of men of the Federal Special Anti Robbery Squad (FSARS), the Court will intervene to protect the fundamental rights of the Applicants as enshrined in the Constitution. This is because the Fundamental Right to personal liberty enshrined in Section 35 of the Constitution which enure in favour of the Applicants cannot be lightly taken away.



The Applicants having shown to the satisfaction of the Court that their fundamental rights were violated by the Police, the burden now shift to the Police to justify the arrest, detention and threat of arrest which formed the bedrock of Applicants' case. It is however unfortunate that the Police failed to join issue with the Applicants. This attitude of the 1<sup>st</sup> Respondent has further strengthened the case of the Applicants.

On this point of Law, I refer to the case of **OLISA AGBAKOBA Vs DIRECTOR, STATE SECURITY SERVICES & ANOR. (1994) 6 NWLR (PT.351) 475 at 495** where it was stated that:

**“Where the Constitution gives a right and facts have been proved which prima facie show an infringement it is for the person alleged to have infringed that right to justify the infringement and not for the person whose right has been infringed to exclude all circumstances of justification.”**

Also, in **AMASIKE Vs REGISTRAR GENERAL, CAC (2006) 3 NWLR (PT.968) 500 at 501**, the Court re-echoed this point thus:

**“Where a person, body or authority claims to have acted pursuant to power granted by statute,**

**such person, body or authority must justify the act if challenged, by showing that the statute applied in the circumstance and that he/it was empowered to act under it.”**

Arising from the following, I find merit in the case of the Applicants. The declaration sought under reliefs “A” and “B” are accordingly granted. The injunctive relief sought against the Police under relief “D” being an incidental relief is also granted as prayed.

The last relief is for general damages in the sum of ₦10, 000, 000. 00 (Ten Million Naira). The Law is clear that once an Applicant is able to establish an infringement of his fundamental right, the Court has a duty to award damages. On factors that would influence the mind of the Court in the award of damages for violation of human rights, I refer to the case of **ARULOGUN Vs COMMISSIONER OF POLICE, LAGOS STATE (2016) LPELR- 40190** where Augie, JCA (as he then was) had this to say:

**“In fixing an amount for the infringement of fundamental rights, the following factor, inter alia, will be taken into consideration (see AJAYI Vs. A. G., FED (1998) 1 HRLPA 373) (a) the frequency of the type of violation in the recent times; (b) the continually depreciating value of the Naira; (C) the**

**motivation for the violation; (d) the status of the Applicant; and (e) the undeserved embarrassment meted out to the Applicant including pecuniary losses.”**

Taking the above factors into consideration, I award general damages in favour of the Applicants in the sum of ~~₦~~1,000,000.00 (One Million Naira Only) against the Respondents.

**SIGNED  
HON. JUSTICE H.B. YUSUF  
(PRESIDING JUDGE)  
31/03/2021**