

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA**

SUIT NO: FCT/HC/CV/2279/2020

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

**1. JAMES EREBUOYE
2. EMONE AJE OKUNE
3. FATIMA S. ALHASSAN
4. OGAR OKUNE** }**APPLICANTS**

AND

**INDEPENDENT CORRUPT PRACTICES
AND OTHER RELATED OFFENCES COMMISSION.....DEFENDANT**

JUDGMENT

There are four originating motions as follows:

1. Between Fatima S. Alhassan
And Independent Corrupt Practices And Other Related Offences
Commission with No. CV/2277/2020;
2. Emone Aje Okune And Independent Corrupt Practices And
Other Related Offences Commission with No. CV/2278/2020;
3. James Erebuoye And Independent Corrupt Practices And Other
Related Offences Commission with No. CV/2279/2020; and
4. Ogar Okune And Independent Corrupt Practices And Other
Related Offences Commission with No. CV/2280/2020;

The originating motions with Nos. CV/2277/2020, CV/2278/2020 and CV/2279/2020 were dated the 23rd day of July, 2020, while the motion with No. CV/2280/2020 was dated the 24th day of July, 2020 and filed the same day.

Thus, the counsel to the applicants applied to this court to consolidate the four applications on the ground that they arose from the same cause of transaction, and for expediency and convenience such that they have common characteristics of law and facts or are stem from a common transaction, and also to avoid multiplicity of same and to also economise time and cost. This was not objected to by the counsel to the respondent, and the court relying on the case of **Eye V. F.R.N. (2018) LPELR – 43595 (SC)** granted the application, however, that

each and every application will be dealt with on its individual or distinct identity.

It is pertinent to observe that while looking into all the processes in the case file, I have found motions with Nos. M/9468/2020 and M/9473/2020 which the applicants sought to amend the originating motions and other accompanying processes and reflecting the names of Dorason Global Contraction Ltd, Polaris Bank, Olosh & Associates Ltd, and I have also found notices of withdrawal of the said motions by the applicants, all made the 7th day of September, 2020. This shows that the motions on notice filed with Nos. M/9468/2020 and M/9473/2020 are deemed withdrawn, and therefore, the court will restrict itself to the originating motions with their numbers stated above.

The applicant in the originating motion with No. M/2277/2020 prays the court for the following:

- A) A declaration that the respondent's unlawful arrest and detention of the applicant on the 7th July, 2020 is an infringement of the applicants rights and a breach of her Fundamental Rights enshrined in sections 34(a), 35 (I) (4) & (5), 37 and 46 of the 1999 Constitution of the Federal Republic of Nigeria.
- B) A declaration that the respondent's false imprisonment of the liberty, safety, peace and security of the applicant on the 7th July, 2020 is a breach and a violation of her Fundamental Rights enshrined in sections 34(a), 35 (I) (4) & (5), 37 and 46 of the 1999 Constitution of the Federal Republic of Nigeria.
- C) An order of perpetual injunction restraining the respondent, by themselves, agents, privies, or anybody deriving authority from them by whatever name called from harassing, intimidating, arresting, abducting or detaining the applicant.
- D) An order compelling the respondent to tender an unreserved public apology to the applicant for the infringement of her fundamental rights pursuant to section 35(6) of the 1999 constitution of the Federal Republic of Nigeria.
- E) An order of injunction restraining the respondent, their privies or agents from inviting, detaining or arresting the applicant for any reason without following the appropriate due process of the law.
- F) An order that the respondent pay the sum of N40,000.000.00 (Forty Million Naira) as damages for the unlawful arrest and

detention of the applicant on the 7th July, 2020 pursuant to section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria.

G) And such further orders this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application is filed are as follows:

- a) Under section 35, 37, 41 and 43 of the Constitution of the Federal Republic of Nigeria 1999 as amended of the Federal Republic of Nigeria, the applicant's fundamental rights to personal liberty, private and family life, freedom of movement, acquire and own immovable property are guaranteed.
- b) The applicant has been unlawfully arrested, detained and her accounts frozen by the respondent.
- c) The respondent's actions have violated the rights of the applicants as stated in paragraph (a) above.
- d) By the provisions of section 46 of the Constitution of the Federal Republic of Nigerian, any Nigerians who alleges that any of their rights as guaranteed in the Constitution is being or likely to be contravened in any state by any person or authority may apply to the Federal High Court for redress.

The application is supported by twenty nine paragraphed verifying affidavit deposed to by one Chidiebere Uduma, the personal assistant to the applicant, and same is relied upon by the applicant.

Attached to the verifying affidavit are two documents:

- a) Bureau de change receipt dated the 5th day of June, 2020 issued to one Madam Emon and her husband; and
- b) Excuse Duty Certificate issued by Centrum Medical Centre to the applicant dated the 12th day of July, 2020.

The counsel to the applicant proffered and filed a written address which he adopts as his oral argument.

The deponent deposed to in paragraph 13, 14, 15, 16 of the verifying affidavit that the respondent invited the applicant to its office for an interview on the 6th day of June, 2020, and the applicant honoured the invitation as a law abiding citizen and went to the office of the respondent on the 7th of June, 2020.

It is stated that the respondent asked the applicant as to what the applicant did for a living and as to how she came about the sum of

N170,000,000.00 (One Hundred and Seventy Million Naira), and why she sent the money to her brother by name James Erebuoye, and in which the applicant told them that she is a US based pharmacist. The African Women leader in the US, and owns a farm of over 5000 birds and 2000 pigs amongst others, and that was how she came about the money.

It is further stated that the respondent arrested and detained the applicant on the 7th July, 2020 for failure to procure three permanent secretaries as sureties each, and she was detained under very deplorable conditions for two days.

It is in the verifying affidavit in support of this application that the respondent did not inform the applicant of the facts and grounds warranting her unlawful arrest and detention, and during the arrest and detention, she was never brought before any court of law within a reasonable time.

It is stated that the applicant has been made to undergo pensive mental torture and social dislocation as a result of this unwarranted unlawful arrest and detention by the respondent, and that the applicant has been stripped and deprived of her fundamental human rights to personal liberty, private and family life, freedom of movement, acquire and own immovable property as enshrined in sections 35, 37, 41 and 43 of the 1999 Constitution.

It is stated further that the applicant is going through deep physical, psychological and mental trauma as a result of the respondent's gross violation of her fundamental rights, and that her travails in the hands of the respondent have denigrated her person, exposed her to psychological trauma and life threatening, mental torture which eventually led to her hospitalisation at Centrum Medical Centre and the subsequent issuance of an Excuse Duty Certificate dated the 12th day of July, 2020.

It is stated by the deponent that the applicant has been informed by the respondent that she is involved in money laundering, and that the applicant is a law abiding and has never engaged in any act of money laundering. That the applicant elected to save her money in her house safe as a result of the incident that struck Savannah Bank which swept away her millions in the bank.

In his written address, the counsel to the applicant formulated one issue for determination, to wit:

Whether or not the applicant's fundamental rights have been breached and therefore entitled to the reliefs sought?

The counsel submitted that fundamental rights are generally regarded as those aspects of human rights which have been recognised by the constitution and which are specifically provided for to enhance human dignity and liberty in every modern state, and he referred to the case of **E.F.C.C. V. Akingbola (2015) 11 NWLR (pt 1470) p. 249 at 290**. He also cited the case of **Odogu V. A.G., Federation (1999) 6 NWLR (pt 456) p. 508 at 552** to the effect that for an applicant to successfully institute an action under the Fundamental Rights (Enforcement Procedure) Rules, the claim must fall within sections 33-44 of the 1999 constitution. The counsel further cited the case of **skye Bank v. Njoku andors (2016) LPELR-40447 CA** to the effect that an action founded on fundamental rights is sui generis, being specially and specifically designed with its own unique rules by the constitution, to address issues of fundamental rights of persons protected under the constitution; and he cited the case of **Agbaso V. Iwunze & Ors (2014) LPELR – 24108 (CA)**, and further submitted that in the case of **Enukeme V. Mazi**, the overall objective of the 2009 Rules was emphasized to the effect that:

- (a) The constitution, especially chapter iv, as well as the African Charter shall be expensively, and purposely interpreted and applied with a view to advancing and realizing the rights, freedom contained in them and alluding the protections intended by them;
- (b)
- (c) for the purpose of advancing but never for the purpose of restricting the applicant's rights and freedom, the court may make consequential order as may be just and expedient; and
- (d) the court shall proactively pursue enhancement access to justice for all classes of litigants especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and the unrepresented.

The counsel cited the case of **Uzoukwu & Ors V. Ezenu II & Ors (1991) 6 NWLR (pt 1200) p. 708 at 761** to the effect that fundamental rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country,

that is the constitution. To him, this is the position of the Court of Appeal in the case of **N.U.T. V. Cosst (2006) 5 NWLR (pt 974) p. 590 at 611** to the effect that where the right of a person is infringed he may initiate an ordinary civil claim under the relevant rules of court or may invoke the constitutional procedure under the Fundamental Rights (Enforcement Procedure) Rules.

The counsel submitted that the unlawful arrest, detention vented on the applicant by the respondent, is not only a violation of fundamental right but a breach to her security and freedom, and he cited the case of **Iwusa V. The State (192) 4 SC 41 at pp. 69 – 70** to the effect that unless an offender is found guilty and convicted, he is entitled to walk about our street and tread the Nigerian soil and breath the Nigerian air as free and innocent.

The counsel submitted that the rights as entrenched in the constitution is sacrosanct and must not or never be infringed unless in accordance with any written law, and to him the applicant's right have been infringed, and he cited the case of **Ogbonna V. Ogbonna (2014) LPELR-22308 (CA)** to the effect that the public officer or law enforcement agency that allows himself to be used by any member of the public to commit illegality that results in damages and liability to the agency or government should be made to pay such cost or damages personally either in part or in whole, if this can serve to warn such officer to act within the rules and scope of his office.

He further submitted that the respondent's arrest, detention to humiliate dehumanise and oppress the applicant is unconstitutional and amounts to breach of her fundamental right to dignity of person, personal liberty and freedom of movement and therefore urged the court to grant the applicant's application against the respondent.

The respondent in opposition to this application filed a counter affidavit of eight paragraphs dated the 24th day of August, 2020. The respondent initially filed this counter affidavit in response to the supporting affidavit of the applicant with the originating motion with No. CV/2279/2020, however, he adopted same as his counter affidavit in this application too.

It is in paragraph 6(a) of the counter affidavit that the respondent is investigating the applicant for her involvement in laundering the money removed from the account of Mrs. Egbuha domiciled with GTB. Also by

paragraph 6(o), it is averred that the investigation revealed that the applicant went to Mallam Bashir BDC on the 26th June, 2020 and was introduced to the later as someone from America, and by paragraph 6(p) that Mallam Bashir was told to claim that the applicant (Fatima S. Alhassan) is the one that provided the sum of \$382,900, if anyone asks him anything about the transaction.

It is stated in paragraph 6(v) and (w) of the counter affidavit that the applicant was promptly granted bail on the same day was arrested but could not perfect the bail conditions, and she had to apply for variation and was approved and upon fulfillment of same she was released accordingly. That the applicant was handled with utmost care.

In his written address, the counsel to the respondent raised two issues for determination to wit:

1. **Whether the applicant's rights were violated by the respondent as alleged?**
2. **Whether the applicant is entitled to award of damages and apologies?**

The counsel submitted that the keeping of the applicant till the perfection of his bail terms before she was released does not amount to the violation of his fundamental human rights, and he cited the case of **E.F.C.C. & Ors V. Chukwurah (2018) LPELR-43972 (CA)**, and he also persuaded the court when he cited the case of **Aliyu Sanda V. I.C.P.C.** delivered by a brother judge dated the 30th day of June, 2020.

The counsel submitted that in an action for unlawful arrest and detention, the onus is on the arresting authority to establish that the arrest and/or detention was justifiable on reasonable grounds, and he cited the cases of **Sky Power Airways Ltd V. Olima (2005) 18 NWLR (pt 957) 224**, **Ejiofor V. Okeke (2000) 7 NWLR (pt 665) 365 at 379**, **Igwe V. Ezenochie (2010) 7 NWLR (pt 1192) 61** and **Commissioner of Police, Ondo State & Anor. V. Obolo (1998) 5 NWLR (pt 120) 130 at 131**.

The counsel submitted that there was a reasonable ground for arresting the applicant who is allegedly involved in the laundering of the funds suspected to be proceeds of crime and which is subject to investigation. To him, the applicant has failed to present facts disclosing that their fundamental right have been contravened by the respondent.

The counsel cited the case of **Attorney General of Anambra State V. Chris Uba (2005) 15 NWLR (pt 947) 44 at 67** to the effect that for a

person to go to court to be shielded against criminal investigation and prosecution is an interference of powers given by the constitution to law officers in the control of criminal investigation. He cited also the case of **Okanu V. Commissioner of Police (2001) 1 CHR 7** to the effect that police cannot be sued in court for breach of fundamental rights.

On the issue of payment of damages, the Counsel submitted that where there is no cause, there will be no damages, and he cited the case of **Obinwa V. C.O.P. (2007) 11 NWLR (pt 1045) 411 at 426**. He cited the case of **Effiong V. Ataisi Supplies & Services Ltd & Anor (2010) LPELR – 4077** to the effect that an award of damages either special or general, is given on sound legal principles and on legal evidence of the probative value, and therefore, submitted that the applicant is not entitled to damages, as no legal evidence has been put before the court, and he cited the cases of **Newbreed Organisation Ltd V. J.E-Erhomosele (2006) 5 NWLR (pt 974)**, **Okoro V. Dakolo (2006) NSCQLR 27 p. 264**, and to him, the applicant failed to adduce evidence in the affidavit in support that her right to dignity and person or any other right in the 1999 constitution have been or are likely to be violated by the respondent, and therefore, urged the court to hold that the applicant is not entitled to the reliefs sought.

The counsel to the applicants filed a reply on points of law to the respondent's counter affidavit and written address, and then he submitted that the extant issue for this court to determine is whether the applicant's fundamental rights have been violated by the respondent. To him an invitation to assist in investigation suddenly became an arrest, the end result being bail and the applicant stated that she was unlawfully arrested by the respondent without probable cause, and he cited the case of **Ayabam V. C.O.P. Benue State (2019) LPELR-47283 (CA)**.

The counsel further submitted that contrary to the facts deposed by the respondent, the applicant was unlawfully arrested and detained and failed to charge the applicant within the time frame specified by section 35(5) of the Constitution. He submitted that the applicant's claim for damages against the respondent is proper in law and enough compensation for the unlawful and unconstitutional arrest and/or detention, and he referred to the case of **First Bank of Nigeria Plc & Ors V. Attorney Gen. of the Federation & Ors** to the effect that a person who

has established that he was unlawfully detained, does not have to pray for compensation before he is awarded one. He is entitled to compensation automatically, and he also relied on the cases of **Dasuki V. Director General State Security & Ors (2019) LPELR – 48113 (CA)**, and **Anogwie & Ors. V. Odom and Ors Unreported CA/ODM/337/2014**, and he urged the court to discountenance the respondent's counter affidavit and written address and to grant the applicant's reliefs.

It is in the further and better affidavit of the applicant that the applicant was never introduced as someone from America to Mallam Bashiru BDC, and that the applicant is a hardworking Nigerian who makes money from her legitimate businesses and as such had no dealing with the owners of the N340,000,000.00 , and that the \$382,900= advanced by her is unconnected with the dealings with the monies allegedly belonging to Emeka Okafor.

It is also stated that the applicant was never treated with utmost care.

In this application, I found the issue formulated by the counsel to the applicant suitable, and I therefore adopt same, that is to say:

Whether or not the applicant's rights have been breached and therefore entitled to the reliefs sought?

Thus, any person who alleges that any of his rights guaranteed under the constitution is being or is likely to be contravened in any state by any person or authority may apply to the court in that state for redress, and this is the purport of section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The applicant herein alleged that she has been unlawfully arrested and detained, and her account frozen by the respondent while it is the contention of the respondent that the applicant was granted bail by the respondent on the same day she was arrested, however, due to her inability to fulfill bail conditions, she applied for variation and same was varied after which she was subsequently released on bail. He further contents that the keeping of the applicant till the perfection of her bail terms before she was released does not amount to the violation of her fundamental rights. It is further contended by the respondent that the applicant was arrested because of her involvement in the money laundering of the sum of \$382,900.

Now in determining whether there was a breach of the right of the applicant or not in this case recourse has to be had to the averments in the affidavits of both parties. See the case of **I.G.P. V. Ezeanya (2016) All FWLR (pt 830) p. 1361 at 1373 paras. A-C** where the Court of Appeal, Benin Division held that the question of infringement of fundamental rights is largely a question of fact and does not so much depend on the dexterous submission from the fronsic arsenal of counsel on the law. So, the facts of the matter as disclosed by the affidavits filed are the determining factor in whether the fundamental rights of an individual have been eviscerated or otherwise dealt with in a manner that is contrary to the constitutional and other provisions on the fundamental rights of an individual. In the instant case, it is on the above premise that I have to look at the affidavits of both parties.

It is in the affidavit of the applicant that she was invited by the respondent for an interview, and she honoured the invitation on the 7th day of June, 2020, and that despite the applicant's honest and candid explanations, the respondent unlawfully arrested and detained her on the 7th July, 2020 for failure to procure three permanent secretaries as sureties, and she was detained for two days.

It is in the affidavit of the applicant that she was not brought before the court within a reasonable time, and she was made to undergo mental torture and social dislocation as a result of this unwarranted and unlawful arrest and detention by the respondent, and to this she was deprived of her fundamental rights to personal liberty private and family life, freedom of movement acquire and own immovable property, and that she is going through deep physical, psychological trauma as a result of the respondent's action, and that she was informed by the respondent that she is involved in money laundering.

It is in the counter affidavit of the respondent that it acted within the confines of law, and that the applicant (Fatima S. Alhassan) according to the investigation, it is revealed that the sum of \$382,900= was borrowed from her for the execution of the contract which lapsed on the 8th day of June, 2019. That this money was converted into N170,00,000.00 (One Hundred and Seventy Million Naira) and was distributed into several accounts, and based upon the fact that the money being subject of investigation, the accounts were frozen.

It is stated that the applicant was granted bail on the same day of the arrest, but due to her inability to fulfill bail conditions, the applicant applied for variation and same was varied and was subsequently released on bail.

Thus, I agree with the submission of the respondent's counsel that the respondent has the right to effect an arrest of any person who is suspected of having committed any offence. See section 35(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to the effect that 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 and the exception is given in paragraph (c) of subsection (1) of the said section, that is to say, for the purpose of bringing that person before a court upon reasonable suspicion of his having committed a criminal offence. By the above section it could be inferred that the right to have personal liberty by every person is not absolute. See the case of **I.G.P. V. Ezeanya (supra)** where the court held that the right to personal liberty enshrined in section 35 of the constitution is not an absolute one, as such a person can be deprived of his liberty upon reasonable suspicion of him having committed an offence where such person is arrested or detained shall be brought to court within a reasonable time which is within the meaning of section 35(5) of the constitution. See also the case of **Obla V. E.F.C.C. (2019) All FWLR (pt 991) p. 44 at 57 paras. E-G.**

In the instant case, it is evident that the applicant is linked to the commission of the offence of money laundering of the sum of \$382,900, and therefore, the invitation by the respondent was in order. See the case of **Ozah V. E.F.C.C. (2018) All FWLR (pt 953) p. 225 at 252 paras. E-G** where the Court of Appeal, Benin Division held that the security agencies have wide powers with respect to criminal investigations though within the ambit of the law. This position was given judicial recognition by the Supreme Court in the case of **Onyekwere V. State (1973) 5 SC I** where it held that if a complaint is made to the police that an offence has been committed it is their duty to investigate the case not only arrest the person about whom the complaint has been made, but also against any other person who may have taken part in the commission of the offence. In the instant case, the applicant (Fatima S. Alhassan) is alleged to have been involved in the offence of money

laundering hence the arrest or invitation by the respondent is in order. See the case of **Aleshe V. F.R.N. (2018) All FWLR (pt 952) p. 52 at pp. 85-87 paras. G-B.**

In so far as, the security agencies have the right to arrest and investigate and even detain an individual where such individual is reasonably suspected of having committed any offence, such power must not be abused. See the case of **Obla V. E.F.C.C. (supra)** where the court held that law enforcement agents or agencies which interact with the ordinary citizens on a daily basis have the ineffable and sacrosanct duty to ensure the protection of the rights of the citizens as guaranteed by law. See section 35 (4) & (5) of the 1999 constitution which provides:

“(4) Any person who is arrested or detained in accordance with subsection (1)(c) of this section shall be brought before a court of law within a reasonable time...”

“(5) In subsection (4) of this section, the expression “a reasonable time” means:

(a) In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day; and

(b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.”

By the above quoted provisions, it could be inferred that any person who is reasonably suspected of committing any offence and is being arrested or detained must be brought before a court within one day, and in other cases within two days.

Thus, the respondent having the power to arrest or detain the applicant it was incumbent upon it to have taken the applicant to court within a day in obedience to the constitutional provisions of section 35 (4) and (5) of the 1999 Constitution. See the case of **Gusau V. Umezurike (2012) All FWLR (pt 655) p. 295 at 318 paras. C-D** where the Court of Appeal, Ilorin Division held that the fact of detention and the duration thereof is on the person alleging the detention to prove both. In the instant case, it is in the affidavit of the applicant that she was arrested and detained on the 7th July, 2020 for failure to procure three permanent secretaries as sureties, and this was confirmed by the respondent in his

counter affidavit more particularly paragraph 6 (v) & (w). It is also in the affidavit of the applicant that she was detained for two days, but the respondent deposed to the fact that she was granted bail, and could not perfect the bail conditions until when the applicant applied for variation and was approved and upon fulfillment of same, she was released. The respondent relied on EXH. I.C.P.C. 13. EXH. I.C.P.C. 13 is a letter written to the chairman of the respondent by the counsel to the applicant appealing for the variation of the bail terms, and the letter was dated the 8th day of July, 2020, and same was approved on the 9th July, 2020.

The counsel to the respondent in his address relied upon the case of **E.F.C.C. V. Chukwurah (2018) LPELR – 43972 (CA)** and submitted that the keeping of the applicant till the perfection of her bail terms before she was released does not amount to violation of her fundamental right. Thus, EXH. "I.C.P.C. 13" which the respondent is relying, it could be inferred that applicant was detained on the 7th day of July, 2020, however was released on bail on the 9th day of July, 2020, this is when her application was approved for the variation of the bail terms by the respondent. In this circumstance of this case, I have no option than to follow the decision of the Court of Appeal, Abuja Division in the case of **E.F.C.C. & Ors. V. Chukwurah (supra)** where it was held that the appellants could not have been held to violate the respondent's right to liberty, when the respondent was in fact granted administrative bail by the appellants 1st December, 2015 when he was first invited by the appellants but failed to meet the bail conditions until 3rd day of December, 2015. See also the case of **Augustine Eda V. C.O.P. Bendel (1982) N.C.L.R 19** where it was held that in appropriate cases once the police have offered bail to an arrested or detained person any further stay in the custody by that person until he satisfies the conditions for bail and is taken up by someone on bail cannot properly be regarded as unlawful detention under the constitution. In the instant case EXH. "I.C.P.C. 13" is the application for the variation of the terms of bail earlier granted by the respondent, and this was approved on the 9th July, 2020 and the applicant was released upon fulfillment of the new bail terms, to this, it cannot be held that the applicant's right to liberty has been infringed, and to this, I so hold. So, the arrest and detention of the

applicant was done within the confines of the law, and is therefore, lawful and legal.

On the whole, the reliefs in paragraphs (A), (B), (D), (F) of the claims are hereby refused.

Also the relief in paragraph (C) of the claims is also refused. See the case of **Ozah V. E.F.C.C. (2018) All FWLR (pt 953) p. 236 at 258 paras. A-F. Per Bada JCA.** In the instant case, and in line with the decision in the above quoted case, I will not be inclined to grant relief on paragraph (c) of the claims as there is not justifiable legal reason to do so. However, I grant the relief in paragraph (E) that the respondent is restrain from arresting and detaining the applicant, in this case and for any reason, without due process of law.

Thus, in an application with No. CV/2278/2020 between Emon Aje Okune And Independent Corrupt Practices and Other Related Offences Commission, the applicant seeks for the following:

- A) A declaration that the respondent's unlawful arrest and detention of the applicant from 19th June, 2020-23rd June, 2020 is an infringement of the applicant's right and a breach of fundamental rights as enshrined in sections 34(a), 35(1) (4) and (5), 37 and 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- B) A declaration that the respondent's false imprisonment of the liberty, safety, peace and security of the applicant from 19th June, 2020 – 23rd June, 2020 is a breach and a violation of her fundamental rights enshrined in sections 34(a), 35(1), (4) and (5) of the Constitution of the Federal Republic of Nigeria.
- C) A declaration that the respondent's unlawful freezing of the applicant's accounts 1780039506-Emon Aje Okune – Polaris Bank is a breach and a violation of her fundamental rights enshrined in sections 44(1) and 46 of the constitution of the Federal Republic of Nigeria.
- D) A declaration that it is an unlawful violation of the applicant's human rights to dignity of human person, privacy and family life guaranteed as protected rights under sections 34 and 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Article 17 of the International Covenant on Civil and Political Rights, and Article 12 of the Universal Declaration of

Human Rights and a most egregious violation of the treaty obligations of the respondent under and by virtue of its being a signatory to the above legal instruments, for the respondent's agents, privies, servants to have unlawfully detained the applicant under a de-humanizing condition.

- E) A declaration that the forcefully/unlawfully seizure of the applicant's property located at Block SD1 Woodfield Estate Jabi, Abuja by the respondent, without any lawful order or warrant of a court of competent jurisdiction constitutes a gross violation of the applicant's fundamental rights guaranteed under section 44 of the constitution of the Federal Republic of Nigeria 1999 (as amended), Article 14 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004 and Article 17 of the International Covenant on Civil and Political Rights and a most egregious violation of the treaty obligations of the respondent under and by virtue of its being a signatory to the above listed instruments is therefore illegal and unlawful.
- F) An order of perpetual injunction restraining the respondent, by themselves, agents, privies, or anybody deriving authority from them by whatever name called from harassing, intimidating, arresting, abducting or detaining the applicant.
- G) An order compelling the respondent to tender an unreserved public apology to the applicant for the infringement of her fundamental rights pursuant to section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria.
- H) An order directing the respondent to immediately remove the embargo it placed on the applicant's accounts 1780039506 – Emon Aje Okune – Polaris Bank and 1020079422 – Emon Aje Okune – Polaris Bank.
- I) An order directing the respondent to immediately remove the embargo it placed on the applicant's new residence located at Block SD1 Woodfield Estate Jabi, Abuja.
- J) An order of injunction restraining the respondent, their privies or agents from inviting, detaining or arresting the applicant for any reason without due process of law.

- K) An order that the respondents pay the sum of N30,000,000 (Thirty Million Naira) as damages for the unlawful arrest and detention of the applicant from 19th June 2020 – 23rd June, 2020 pursuant to section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria.
- L) And for such further orders this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application is filed are as the same in the application with No. CV/2277/2020 which are already recorded, and I need not to repeat same in this application.

The application is supported by a Thirty two paragraphed affidavit deposed to by one Patricia Ehiwario Johnson being the sister to the applicant. This is accompanied by a written address, attached to the application are two bundles of documents which are marked as EXH. 'A' and 'B'.

Thus, it is in the affidavit of the applicant that Mrs. Amaka Okafor requested the applicant to exchange the sum of N340,000,000 (Three Hundred and Forty Million Naira) into dollar equivalent, and that the Regional Branch Manager of the applicant, Mr. Adedeji Adefolalu forwarded his Bureau De Change account to the applicant for onward delivery to Mr. Baba Isa, Amaka Okafor's lawyer who was in custody of the sum of N340,000,000.00. That the applicant forwarded the Bureau De Change account to Mr. Baba Isa who then transferred the sum of N340,000,000.00 to the Bureau De Change account.

It is stated that on the 5th day of June, 2020 the applicant and her husband in company of Hajia Fatima S. Alhassan were enroute to exchange the sum of \$382,900 with one Mr. Bashiru, and this money was advanced by Hajia Fatima S. Alhassan to the husband of the applicant to execute a contract awarded to him by the N.D.D.C. that when the applicant got to her office, and Amaka Okafor was already there, but she discovered that Mr. Adedeji Adefolalu was having difficulty sourcing the dollars for Amaka Okafor's N340,000,000.00. That Mr. Bashiru after picking the sum of \$382,900 from the applicant also transferred. The sum of N170,000,000.00 being its naira equivalent to Olosh Company account, a company owned by the elder brother of the applicant by name Ogar Okune.

It is stated that as a result of a delay in sourcing the dollar equivalent of the sum of N340,000,000.00 by Mr. Adedeji Adefolalu, Amaka Okafor demanded for refund of her money, and Mr. Adedeji Adefolalu made the refund of N340,000,000.00 in the following way:

1. Amaka Okafor's account which the applicant helped to open, the sum of N50,000,000.00;
2. An unknown account N50,000,000.00;
3. Another unknown account N100,000,000.00;
4. N140,000,000.00 being an outstanding was handed over to Amaka Okafor in dollar – cash.

It is in the affidavit that Mr. Adedeji Adefolalu was invited by the respondent for an interview and the whereabouts of the sum of N340,000,000.00. That the applicant was informed by Mr. Adedeji Adefolalu that her attention was needed at the respondent's headquarters, and as a law abiding citizen the applicant went to the office of the respondent on the 18th June, 2020, and during the interview the applicant was asked to explain the reason for crediting her account with the sum of N50,000,000.00, and in which she answered that it was earlier personal debt owed her by her branch Regional Co-ordinator, and she was asked to return the next day being 19th June, 2020 with her statement of account which she obliged.

It is stated that when the agents of the respondent perused her statement of account, they discovered credit sum of N22,800,000.00 from Olosh to Associates Company account and she was asked to explain and she explained as follows:

- a) for maintenance for the extended family;
- b) maintenance of the family cocoa farm and other expenditures.

The applicant further explained to the respondent that Olosh & Associates Company is own by her brother Ogar Okune.

It is stated that the respondent without due process of law unlawfully arrested and detained her from 19th June, 2020 to 23rd day of June, 2020. That the respondent without due process of law frozen the accounts of the applicant.

It is stated that on the 8th day of July, 2020, the respondent invaded the resident of the applicant at Block SD1 Woodfield Estate, Abuja on the strength of a purported search warrant and made away with her husband's 2 laptops, car manuals, tenancy agreement and Hajia Fatima

S. Alhassan's land survey documents. That the applicant was not informed of the grounds of her arrest and detention and the freezing of her accounts. That the applicant was not brought before any court of law within a reasonable time, and that she was made to undergo pensive mental torture and social dislocation as a result of this unwarranted unlawful arrest and detention by the respondent. That the applicant is a law abiding citizen and has never been engaged in any act of money laundering.

The counsel to the applicant proffered a written address, and formulated the question for determination, to wit:

whether or not the applicant's fundamental rights have breached and therefore entitled to reliefs sought?

The counsel with the aid of judicial authorities explored on the preamble for the making of the Fundamental Rights (Enforcement Procedure) Rules, and further submitted that the applicant in this matter has been unlawfully arrested and detained with her accounts frozen by the respondent which is in violation of her fundamental rights as enshrined in the constitution of the Federal Republic of Nigeria 1999 (as amended), and therefore she is entitled to compensation pursuant to section 35(6) of the same constitution, and urged the court to so hold.

It is in the counter affidavit of the respondent that the respondent was informed by one Kabir Maigari, an investigator with the respondent as to the following facts:

- a. That the respondent is investigating the applicant who is the wife to one of the applicants in this case, and one Fatima S. Alhassan and one Ogar Okune of their involvement in laundering part of the sum of N550,000,000.00 removed from the account of Mrs. Egbuha domiciled with GT Bank, and that several people were invited to assist in the investigation.
- b. That investigation revealed that on the 5th June, 2020 the applicant called her colleague in Polaris Bank one Mr. Adedeji Adefolalu informing him that her customer is expecting the sum of N340,000,000.00 and would like to use same and buy dollars. That Mr. Adedeji Adefolalu made contact and got one Mr. Umar Gajo, a Bureau De Change operator to provide the dollars. That the applicant linked Umar Gajo to F. Baba Isa, and F. Baba Isa then transferred the sum of N340,000,000.00 for the purchase of the

dollars; and the sum of N340,000,000.00 was converted into \$423,163 and handed to the applicant and her husband. That out of \$423,163, the applicant sold the sum of \$382,900 to one Mallam Bashir, a Bureau De Change operator for the purpose of converting same into Naira on the same 5th June, 2020. That Mallam Bashir converted the sum of \$382,900 into its naira equivalent of the sum of N170,000,000.00 and credited same into the account of Olosh & Associates with Access Bank.

It is stated that from the Olosh Account, the sum of N22,800, 000 was credited into the account of the applicant domiciled in Polaris Bank Plc. That the respondent has placed a Post No Debit on the accounts of the applicant to avoid further dissipation of the funds suspected to be the proceeds of crime.

It is stated that the applicant was promptly granted bail on the same day she was arrested but could not perfect the bail conditions, and further applied for the variation of her bail conditions and was approved. That the applicant was handled with care. That the freezing of accounts was done in accordance with the law.

In his address, the counsel to the respondent formulated two issues for determination, to wit:

1. **Whether the applicant's rights were violated by the respondent as alleged?**
2. **Whether the applicant is entitled to award of damages and apologies?**

The counsel submitted that what is being investigated by the respondent is the alleged involvement of the applicant in laundering the sum of N550,000,000.00 from the account of Mrs. Egbuha which is suspected to be a proceed of crime and have been under investigation, and the respondent in discharging its duty pursuant to section 6(a) of the Independent Corrupt Practices and other Related Offences Act 2010 received a report of the alleged laundering of the said sum, and therefore invited the applicant to assist in the investigation. That it was the applicant who facilitated the transfer of the sum of N340,000,000.00 from the account of F. Baba Isa to the account of Umar Gajo for the purpose of laundering and dissipating the sum in naira and dollars, and that the funds is suspected to be proceed of crime, and therefore, the respondent invoked its powers as enshrined in

section 45(1) of the I.C.P.C. Act 2000 and 44(2) (k) of the 1999 Constitution to temporarily seize any movable property under investigation pending the outcome of such investigation, and therefore, the respondent acted within the confines of the law, and as such the freezing of the accounts does not amount to the violation of the rights of the applicants same being subject of investigation.

The counsel further submitted that the keeping of the applicant till the perfection of her bail terms does not amount to the violation of her fundamental rights, and he referred to the case of **E.F.C.C. & Ors V. Chukwurah (supra)** to the effect that the court of Appeal held that failure to perfect bail terms granted administratively does not constitute a violation of fundamental human rights.

With the help of some judicial authorities, the counsel submitted that in an action for unlawful arrest or detention in breach of a person's fundamental right of freedom, the onus is on the arresting authority to establish that the arrest or detention was justifiable, and therefore, to him there was a reasonable ground for arresting the applicant who is allegedly involved in the laundering of the funds, and he cited section 35(1) (c) of the constitution, and to him, further that the applicant has failed to present facts that her fundamental rights have been infringed. Also with the help of judicial authorities the counsel submitted that no court will grant such prayer which is capable of turning the applicant for that matter into an outlaw in a democratic society, and that it is the duty of the police to investigate and arrest citizens are suspected of having committed an offence. On question No. 2, the counsel to the respondent argued that where there is no cause, there is no damages, and therefore, to him, the applicant is not entitled to damages against the respondent as there is no cogent evidence before the court to have established such and therefore urged the court to so hold.

The applicant filed a further and better affidavit in support of applicant's reply on points of law and stated that the applicant had nothing to do with the transfer of the sum of N550,000,000.00 to the account of F. Baba Isah, and is no way involved in the alleged laundering of the sum of N550,000,000.00 allegedly removed from the account of Mrs. Egbuha.

It is stated that Mallam Bashir Converted the sum of \$382,900 into its naira equivalent in the sum of N170,000,000.00 and credited such money into Olosh & Associates Ltd account.

It is also stated the law only recognises freezing the applicant's account by an order of court, and the respondent failed to obtain such order. That the applicant was arrested from 19th to 23rd June, 2020, and by this her rights have been infringed having not charged her within a reasonable time.

It is in the reply affidavit that the applicant was never treated with utmost care, and that the respondent refused to remove the unlawful embargo it placed on the applicant's accounts thereby depriving her of paying bills and other basic amenities of life.

In his reply on points of law to the respondent's counter affidavit and written address, the counsel submitted that the applicant has nothing to do with the said sum, the applicant's name was never mentioned in the said exhibit thus the respondent has no prima facie case against the applicant and he cited the case of **Agbanimu V. F.R.N. (2018) LPELR – 43924 (CA)**. And it is the argument of the counsel that the applicant was arrested without probable cause, and he cited the case of **Ayabam V. C.O.P Benue State (2019) LPELR – 47283 (CA)** where unlawful arrest was defined by the court.

It is submitted by the counsel that nowhere in the respondent's counter affidavit where it is stated that the applicant was caught transporting of cash or negotiable instruments in excess of US \$10,000 or its equivalent by individuals in or out of the country, nor was it stated that the applicants made false declaration or failed to declare the possession of cash or negotiable instruments, and the applicant being personal in possession of \$382,900 and converting same is not enough for the respondent to unlawfully arrest and detain the applicant, and he referred to the case of **E.F.C.C. V. Thomas (2018) LPELR – 45547 (CA)**.

The counsel submitted that the act of the respondent grossly infringed and violated the rights of the applicant, and he referred to the case of **Ishenge V. C.O.P. & Anor (2019) LPELR-48390 (CA)**, and the counsel further submitted that the respondent has already infringed the applicant's right to liberty as guaranteed under section 35 of the constitution when it failed to charge her within the time frame specified by section 35(5) (a) of the constitution, and detained her for three days

beyond the period of one day without any evidence, hence she is entitled to the reliefs sought.

The counsel submitted that the applicant's individual claims for damages against the respondent is proper in law and enough compensation for the unlawful and unconstitutional arrest and/or detention of the applicant, and he cited the case of **First Bank of Nigeria & Ors V. A.G. of The Federation & Ors** to the effect that a person who has established that he was unlawfully detained, does not have to pray for compensation before he is awarded one, and he also cited the case of **Dasuki V. D.G. State Security & Ors (2019) LPELR – 48113 (CA)**.

The counsel submitted that before freezing an account of the applicant by the respondent there must be a court order, is in an infringement of the rights of such citizen, and he cited the cases of **Guaranty Trust Bank V. Mr. Akinsiku Adedamola (2019) 5 NWLR at p. 30** to the effect that the respondent has no power to freeze the account of the applicant without an order of court and doing so contravenes the provision of section 44 of the Constitution. He submitted that section 45 of the I.C.P.C. Act which was used to freeze the account of the applicant is a bad law as it is in conflict with section 43 and 44 (1) (a) & (b) of the constitution, and the effect of an Act being in consistent with the constitution has been encapsulated in the case of **Babalola V. Obaoku – Ote & Anor (2004) LPELR – 5229 Ebohon V. A.G. Edo State & Ors (2016) LPELR – 41269 (CA)** and **Saraki V. F.R.N. (2016) LPELR – 400113 (SC)**. The counsel relied so much on the case of **Bose Olagunju V. E.F.C.C. (2019) LPELR-48461 (CA)**, and he argued that section 44 (2) (k) of the constitution does not in any way give the respondent any discretion to freeze the applicant's accounts without a court order, and he cited the case of **Provost Lagos State College of Education & Ors V. Edun & Ors (2004) 6 NWLR (pt 870) 476 at 509** and the counsel urged the court to discountenance the respondent's counter affidavit and written address and to grant the applicant's reliefs sought.

Having summarised the affidavit of the applicant, the counter affidavit and the reply affidavit otherwise known as further and better affidavit, and the addresses of the respective counsel, let me formulate the issues for determination in this application to wit:

- 1. Whether or not the fundamental right to liberty of the applicant has been violated to warrant the grant of the reliefs sought?**

2. Whether or not the right to own property by the applicant has been violated by the respondent?

Thus, the constitution of the Federal Republic of Nigeria 1999 (as amended) is unambiguous, clear and categorical about the right of Nigerian citizens. This includes those who are on the right side of the law and those who are reasonably suspected of being on the wrong side of the law. The limitation does not leave anybody in doubt as to what should be done or as to how a citizen should proceed when it comes to matters of curbing or curtailing a citizen's rights. It does not also leave matters to change or to discretion of individuals who may be inclined to subject such unalienable and immutable rights to abuse. Sections 35 and 36 of the constitution are aimed primarily at protecting individuals from unlawful deprivation of their freedom through abuse of power by law enforcement and security agencies. See the case of **Asst. Inspector General of Police V. Ezenya (supra)**. The yardstick by which all acts relating to such situations must be measured is that the constitution must be obeyed to the letters. The Civil rights contained in the constitution against unjust arrest and detention of a citizen, which is perfected by the enforcement of the fundamental right provision should not be restricted in any way by technicalities, where non is justified by the constitution. See also the case of **Diamond Bank Plc V. Opara (2019) All FWLR (pt 992) p. 321 at 346 paras. B-C** where the Supreme Court held that by the provisions of section 35(1), of the 1999 constitution of the Federal Republic of Nigeria, every person shall be entitled to his personal liberty and no person shall be deprived of such liberty same in accordance with the procedure permitted by law.

It is the contention of the counsel to the applicant that the arrest and detention of the applicant is unconstitutional and amounts to the breach of her fundamental rights to the dignity of person, personal liberty and freedom of movement, while it is the contention of the respondent that the applicant is accused of money laundering and therefore is reasonably suspected of having committed a crime, and therefore the invitation or arrest is lawful and within the confines of the law. It is also the contention of the respondent that the applicant was granted bail on the date she was invited or arrested only that she could not be released until after the bail terms were varied, and she perfected the bail terms.

Fundamental rights actions are contested by affidavit evidence. See the case of **S.C.C. Nig. Ltd V. George (2019) All FWLR (pt 1022) p. 362 at 374 para. G**. See also the case of **Attah V. I.G.P. (2015) All FWLR (pt 805) p. 113 at 149 paras. C-E** where the Court of Appeal, Lagos Division held that the importance of an affidavit in support of a fundamental Right Enforcement Procedure cannot be over-emphasized in that the affidavit must set out facts upon which the application is made. In the instant case, its on this basis, I have to look at the affidavit of both parties in resolving the issues already formulated.

It is in the affidavit of the applicant that Mr. Adedeji Adefolalu forwarded to the applicant his Bureau De Change account for delivery to Mr. Baba Isa and who was in custody of the sum of N340,000,000.00 and who was mandated to transfer the said money, by Amaka Okafor, to the Bureau De Change account nominated by Mr. Adedeji Adefolalu, and upon forwarding the account to Mr. Baba Isa, then transferred the sum of N340,000,000.00 to the said account. That the sum of \$382,900 was given to the brother of the applicant to execute a contract awarded by N.D.D.C by one Fatima S. Alhassan and the money was meant to be exchanged into naira equivalent from one Mr. Bashiru. That the husband phoned Mr. Bashiru to come to the bank of the applicant and pick up the sum of \$382,900 from the applicant and that the said money was exchanged in the sum of N170,000,000.00 naira equivalent and was transferred to the Olosh & Associates Company Ltd, a company owned by the elder brother to the applicant. That as a result of non exchange of the sum of N340,000,000.00 Amaka Okafor demanded for the refund of her money from the Mr. Adedeji Adefolalu, and who made the refund in the following manner:

- a. Amaka Okafor's account = N50,000,000.00;
- b. Unknown account = N50,000,000.00;
- c. Another unknown account = N100,000,000.00;
- d. N140,000,000.00 was handed to Amaka Okafor in dollars cash.

It is also in the affidavit that the applicant knows as a fact that Mr. Adedeji Adefolalu was invited by the respondent for an interview concerning the source as the whereabouts of the sum of N340,000,000.00.

It is also stated that on the 16th of June, 2020, the applicant was informed by Mr. Adedeji Adefolalu of the following facts:

- a. That during the interview with the respondent, it was revealed that the sum of N340,000,000.00 belonged to one Roseline Amaka Okafor's sister.
- b. That the respondent had earlier frozen the accounts of the said Roseline whilst investigating her financial activities until one Baba Isa obtained a court judgment de-freezing the accounts consequent upon which the said sum was transferred by her lawyers to the dollar account of Mr. Adedeji Adefolalu.
- c. That her attention was needed at respondent's headquarters to provide Amaka's address.

It is stated that, as a law abiding citizen, the applicant went to the office of the respondent, and she was informed by the respondent that during the course of the interview with Mr. Adedeji Adefolalu it was revealed that Mr. Adedeji Adefolalu credited her account with the sum of N50,000,000.00 from his personal account and she was asked to explain the reason for the credit, and in which she informed the respondent that the credit was in payment of an earlier personal debt owed to her by her regional branch co-ordinator, and she was asked to return the next day being 19th June, 2020 with her statement of account which she obliged.

It is stated that when the agents of the respondent perused the applicant's statement of account they discovered the sum of N22,800,000.00 from the Olosh & Associates, a company owned by her elder brother and used by her husband to execute a contract, and that the money was credited into her account for the following purposes:

- a. Family maintenance for the extended family;
- b. Maintenance of the family cocoa farm and other expenditures, and that the respondent arrested and detained the applicant without due process or upholding the rule of law from 19th June, 2020 to 23rd June, 2020.

Thus, going by the affidavit evidence of the applicant, it can be seen that the applicant was invited by the respondent to explain as to the reason behind crediting her account with the sum of N22,800,000.00 which she offered an explanation, and that she was arrested and detained from the 19th day of June, 2020 to the 23rd day of June, 2020, and this is barely four days.

It is also evident that during this period the respondent did not bring the applicant before any court of law within a reasonable time.

On this, the respondent in its counter affidavit stated that the deponent was informed by one Kabiru Maigari, an investigator with the Investigation Department of the respondent of the following facts:

That the respondent is investigating the applicant for her involvement in laundering part of the sum of N550,000,000.00 removed from the account of Roseline Egbuha domiciled with GTB, and that the investigation revealed that on the 5th June, 2020, the applicant called her colleague one Mr. Adedeji Adefolalu that her customer is expecting the sum of N340,000,000.00 which would be used to change dollars. That Mr. Adedeji made contacts and got one Mr. Umar Gajo, a Bureau De Change operator to provide the dollars.

That the applicant, her husband, Mrs. Egbuha, and one Mrs. Amaka Okafor went to Polaris Bank on the 5th June, 2020 for purchase of dollars, and that the applicant linked Umar Gajo, A bureau de change operator to F Baba Isa, who then transferred N340,000,000 from his legal account into the account of BDC Account with Polaris Bank Plc; for purchase of dollars, and same was converted in the sum of \$423,163 and was handed over to the applicant and her husband. That out of the sum of \$423,163 the applicant sold the sum of \$382,900 to one Mallam Bashir, a Bureau De Change operator for the purpose of converting same to naira on the same 5th June, 2020. That Mallam Bashir converted the sum of \$382,900 into naira equivalent being the sum of N170,000,000.00, and then was credited into the account with Access bank, that from the Olosh & Associates account, the sum of N24,000,000.00 was moved to the account of the applicant's husband with Sterling Bank and another sum of N22,800,000.00 to the account of the applicant. That the respondent has placed a Post No Debit on the accounts of the applicant to avoid further dissipation of the funds suspected to be proceeds of crime.

It is further stated that it was the applicant and her husband that went back to Mallam Bashir on the 26th June, 2020 with Fatima S. Alhassan and introduced her later to Mallam Bashir that Fatima S. Alhassan as someone from America and is the one that provided the sum of \$382,900 and that if anyone asks her anything about the transaction.

It is stated that the applicant was granted bail on the same day she was arrested but could not perfect the bail conditions, and that the applicant who could not meet up with the bail conditions applied for variation of his bail conditions which was approved and upon fulfillment of same was released accordingly.

It is in the reply affidavit of the applicant that it is true that the sum of \$382,900 was converted by Mallam Bashir to the sum of N170,000,000.00 and was credited into the account of Olosh & Associates. It is also stated that it is true that the sum of N22,800,000.00 was credited into the account of the applicant from the account of Olosh & Associates Ltd. it is stated that the applicant being a person in possession of the sum of \$382,900 and converting same is not enough for the respondent to unlawfully arrest and detain the applicant and that no prima facie case was made out by the respondent against the applicant as their averments and evidence are inconsistent and inconclusive.

In trying to resolve the first issue for determination, these questions arose:

- a. Whether the arrest of the applicant by the respondent was unlawful and illegal?**
- b. Whether the detention of the applicant by the respondent was unlawful and illegal?**

It is in the affidavit of the applicant in support of this application that she was invited by the respondent for her to provide the address of Amaka Okafor, and she was asked by the respondent to come the following day with her statement of account, and which he honoured on the 19th of June, 2020. That it was further stated by the applicant in her affidavit in support of this application, and the reply affidavit that it was credited into her account with the sum of N22,800,000.00 out of the sum of N170,000,000.00 equivalent to the sum of \$382,900.

It is in the counter affidavit that the sum of N22,800,000.00 was credited into the account of the applicant from the account of Olosh & Associates Ltd, and that it was the applicant together with her husband that handed over the sum of \$382,900 to the Bureau De Change operator, and same was converted in the sum of N170,000,000.00. That the respondent placed a Post No Debit on the accounts of the applicants to avoid dissipation of the funds suspected to be proceeds of

crime. That the respondent is investigating the applicant for her involvement in laundering part of the sum of N550,000,000.00.

Now, whether the investigation by the respondent will reveal that the applicant did not commit any offence or that no prima facie case will be established against the applicant, it is a fact that the applicant is suspected of having committed an offence of money laundering which made the respondent to have invited or arrested the applicant. See the case of **Agundi V. Commissioner of Police (2013) All FWLR (pt 660) p. 1273 at 1297 para. A** where the Court of Appeal, Kaduna Division defines what a reasonable suspicion means that a particularised and objective basis, supported by specific and articulate facts for suspecting a person of criminal activity.

The counsel to the respondent relies on section 35(1) (c) of the 1999 constitution to the effect that 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 procedure permitted by law among which is in paragraph C of subsection (1) of the said section 35 of the 1999 constitution that for the purpose and upon reasonable suspicion of him having committed a criminal offence. Thus, the respondent has provided facts and relied upon some documents as to the involvement of the applicant of the commission of the offence of money laundering, more particularly **EXH. "ICPC 5", EXH. "ICPC 6", EXH. I.C.P.C 7"**. See the case of **Aleshe V. F.R.N. (2018) All FWLR (pt 952) p. 52 at 85-87 paras. G-B** where the Court of Appeal, Ibadan Division relying on the case of **Dokubo-Asari V. F.R.N (2007) All FWLR (pt 325) at 558 – 587** held that it is therefore beyond dispute that the fundamental right to personal liberty guaranteed by section 35(1) of the constitution of the Federal Republic of Nigeria, 1999 is not absolute, as its existence is subject to certain exceptions as stipulated in subsections (a) – (f) of the section, and one of the exceptions is as stipulated in subsection (c) thereto, that a person may be lawfully arrested and/or detained upon suspicions of having committed a criminal offence.

More so, the respondent is empowered under section 28(1) of the Corrupt Practices And Other Related offences Act 2000 to investigate the commission of a crime under the same Act.

Thus, the fact of detention and the duration thereof is on the person alleging the detention to prove both. See the case of **Gusau V. Umezurike (2012) All FWLR (pt 655) p. 295 at 318 paras. C-D.**

In the instant case, the applicant stated that she was detained from the 19th June, 2020 to 23rd June, 2020, and this was confirmed by the facts deposed to by the respondent in its counter affidavit. However, the respondent further deposed to the fact that the applicant was granted bail on the same date of 19th June, 2020 only that she could not be able to perfect the bail conditions until she applied for the variation of same, and it was approved and the applicant was released upon fulfillment of the new terms.

It is the contention of the counsel to the applicant that for the respondent to have detained the applicant from 19th June, 2020 to 23rd June, 2020, to him, amounting to violating the rights of the applicant of her right to personal liberty, and therefore she is entitled to the reliefs sought. While it is the contention of the respondent that where a person is arrested and is granted bail on the same day, only that he could not fulfill the conditions of the bail, and is detained until he satisfies the conditions before he is released that does not amount to violation of his fundamental right to personal liberty, and he relied on the case of **E.F.C.C. & 2 Ors. V. Chukwurah (2018) LPELR – 43972 (CA).**

The combined effect of sections 35(1), (4) and (5) of the constitution is that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in a situation as envisaged in paragraphs (a) – (f) of subsection (1) of the said section, that is to say, upon reasonable suspicion of him having committed criminal offence, and that where a person is arrested and detained in accordance with subsection (1) (c) of the section 35, shall be brought before a court within a reasonable time, and in the case of arrest and detention in any place where there is a court of competent jurisdiction within radius of forty kilometres, a period of one day. In the instant case there are courts of competent jurisdiction within the radius of forty kilometers, that is within the Federal Capital Territory, Abuja. See the case of **Asst. Inspector General of Police V. Ezeanya (supra) at pp. 1371-1372 paras. C-D per Bada JCA.** In the instant case, the respondent should have brought the applicant to the court within a day as is enshrined in section 35 (1) (4) and (5) of the Constitution. However, the respondent

said that the applicant was granted bail on the same day, but that she could not perfect the bail conditions until when the terms are varied by the respondent, and the applicant was subsequently released upon the fulfillment of the new terms. The respondent relies on the EXH. I.C.P.C. 13, which is the application for variation of the terms of bail granted administratively.

I found relevant the case of **E.F.C.C & 2 Ors V. Chukwurah (supra)** where the Court of Appeal, Abuja Division held that the learned counsel for the appellants was right in relation to issue three that the appellants could not have been held to violate the respondent's right to liberty, when the respondent was in fact granted administrative bail by the appellants 1st December, 2015 when he was first invited by the appellants but failed to meet the bail conditions until 3rd day of December, 2015. See also the case of **Augustine Eda V. C.O.P Bendel (1982) N.C.L.R. 19** where it was held that in appropriate cases once the police have offered bail to an arrested or detained person any further stay in the custody by that person until he satisfies the conditions for bail and is taken up by someone on bail cannot properly be regarded as unlawful detention under the constitution. In the instant case and for the fact that there is no evidence showing that the applicant has applied for her bail and she was refused by the respondent, I hold that the applicant was granted bail and could not perfect the conditions until when it was varied and the applicant was subsequently released.

In the circumstances of this application, I hold the view that the arrest and detention of the applicant is not in violation or an infringement of the fundamental right of the applicant as it was done within the confines of the law. Therefore, the issue No. 1 is resolved in favour of the respondent.

Coming to the issue No. 2.

It is deposed to the fact by the applicant in her affidavit in support of this application that the respondent without due process of the law froze the two accounts 1780039506 – Emon Aje Okune – Polaris Bank & 1020079422 – Emon Aje Okune – Polaris Bank. That on the 8th July, 2020, the respondent without reasonable ground invaded her matrimonial home and family residence at Block SD1 Woodfield Estate Abuja, on the strength of a proposed search warrant, and made away with her husband's 2 laptops, car manuals, tenancy agreement and Hajia Fatima

S. Alhassan's Land Survey documents. That the applicant has been stripped and deprived of her fundamental rights to private and family life, freedom to acquire and own property as enshrined in section 44 of the 1999 constitution, and that the applicant's children's education and family source of income has been put on hold as a result of the respondent's impromptu freezing of her accounts, and that the respondent has locked the applicant and her family members out of their home without any valid criminal charges.

The respondent in its counter affidavit stated that the freezing of the accounts and sealing of the property were done within the confines of the law.

It is the contention of the counsel to the applicant that the accounts of the applicant were frozen without any court order, and he referred to the case of **Guaranty Trust Bank V. Mr. Akinsiku Adedamola (supra)**, and therefore, to him, the respondent has no power to give direct instructions to freeze the applicant's accounts, without an order of court, and doing so constitutes flagrant disregard and violation of the applicant's human rights. It is also the contention of the counsel to the applicant that section 45 of the respondent's Act which was used to freeze the applicant's accounts is a bad law and is in conflict with sections 43 and 44(1) (a) & (b) of the 1999 Constitution. He submitted that section 45 of the respondent's Act is inconsistent with the provision of section 44(1) of the Constitution and this he submitted with the aid of judicial authorities among which is the case of **Bose Olagunju V. E.F.C.C. (supra)**. While it is the contention of the respondent that in view of the funds suspected to be proceed of crime in the accounts of the applicant, the respondent invoked its powers under section 45 (1) of the I.C.P.C. Act 2000 and section 44 (2) (k) of the 1999 constitution to temporarily seize any movable property under investigation pending the outcome of such examination, investigation or enquiry, and therefore, the respondent acted within the confines of the law.

The counsel to the applicant heavily rely on the case of **Bose Olagunju V. E.F.C.C. (supra)**, and to this, I have to distinguish such case with the instant one.

In **Bose Olagunju's** case, the parties are an individual against the E.F.C.C, and even though the substance of the cases may be the same, however, the provisions of the law considered were the constitution of

the Federal Republic of Nigeria 1999 (as amended) more particularly section 44 (2) (k) and section 38 of the E.F.C.C. Act, however, the instant case, the parties are an individual and the I.C.P.C. and the law to be considered are the Constitution and the Corrupts Practices and other Related Offences Act 2000 otherwise known as I.C.P.C. Act 2000, that is to say section 44(2)(k) of the constitution, and section 45(1) of the I.C.P.C. Act.

Thus, section 44 (1) of the constitution of the Federal Republic of Nigeria provides:

“(1) No moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:
(a) requires the prompt payment of compensation therefore; and
(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.”

By the above quoted provision, it could be inferred that this case does require for the payment of compensation and does relate to any claim of compensation or a right to determine the interest of any person in the property and the amount of compensation.

“(2) Nothing in subsection (1) of this section shall be construed as affecting any general law:

(k) relating to the temporary taking of possession of property for the purpose of examination, investigation or inquiry”

The above quoted subsection of section 44 of the constitution is against the compulsory acquisition of property, moveable or immoveable without compliance with the extant law, and the extant law in the instant case in section 45(1) of the I.C.P.C. Act 2000 which provides:

“where the chairman of the commission is satisfied on information given to him by an officer of the commission that any moveable property, including any monetary instrument or

any accretion thereto which is the subject matter of any investigation under this Act or evidence in relation to the commission of such offence is in the possession, custody or control of a bank or financial institution, he may, notwithstanding any other written law or rule of law to the contrary by order direct the bank or financial institution not to part with, deal in, or otherwise dispose to such property or any part thereof until the order is revoked or varied.”

By the above quoted provision, it could be inferred that the chairman of the respondent, as in this case, at his discretion, may, temporarily seize any moveable property including monies in the bank which is the subject of investigation under the Act until when the order is revoked or varied. This is distinct from the provision of E.F.C.C Act which requires that there should be a court order before the chairman of such commission to seize or free the accounts of any person which is under investigation by virtue of section 38 of the E.F.C.C. Act.

Therefore, the provision of section 45(1) of the I.C.P.C. Act has to be construed and interpreted literally to the effect that there is no condition precedent envisaged in the section that a court order must be obtained before effecting such seizure or freezing of accounts of the applicant, and to this, I therefore so hold.

In the circumstances of this case, I hold the view that by the respondent seizing or freezing the accounts of the applicant temporarily does not amount to violating the fundamental right of the applicant to own a property as enshrined in section 44 of the constitution, and therefore, question No. 2 is resolved in favour of the respondent.

Now, looking at the affidavit of the applicant side by side with the counter affidavit of the respondent, it can be seen that while the applicant deposed to the fact that the respondent has locked the applicant and her family members out of their home without any valid criminal charges, however, the respondent did not depose to any affidavit stating any facts involving the applicant in the commission of any offence in relation to the residence to which the applicant lives. In essence, there is no evidence showing that the applicant is reasonably suspected of having committed any offence in relation to the offence of money laundering with particular reference to the residence of the applicant. More so, in his argument the counsel to the applicant relies on

sections 43 and 44 of the constitution, the counsel to the respondent relies on section 44 of the constitution 1999 and section 45 (1) of the I.C.P.C. Act, and in essence no argument is canvassed in relation to the residence of the applicant to which she lives whether such property being immovable is a subject of investigation in relation to the money laundering. Since the residence of the applicant is not made the subject of investigation for the purposes of reasonably suspecting the applicant to have committed an offence, I hold that the seizure of such immovable property is not done within the confines of the law. See the case of **A.G. Rivers State V. Ikalama (2016) All FWLR (pt 842) p. 1726 at 1734 paras. F-G.** where the Court of Appeal, Port Harcourt Division held that by the provisions of section 44 of the constitution of the Federal Republic of Nigeria, 1999, the right to own immovable property anywhere is seriously regarded as a fundamental right.

On the whole and in this application, I so declare that the arrest and detention of the applicant is done within the confines of the law and therefore, the liberty of the applicant is not infringed by the respondent. I also declare that the freezing of the applicant's accounts 1780039506 – Emon Aje Okune – Polaris Bank & 1020079422 Emon Aje Okune – Polaris Bank is not in breach and a violation of her fundamental rights as enshrined in section 44(1) and (2) of the constitution.

I declare that the unlawful seizure of the applicant's property located at Block SD1 Woodfield Estate Jabi, Abuja by the respondent constitutes a gross violation of the applicant's right guaranteed under section 44 of the constitution of the Federal Republic of Nigeria, 1999 (as amended).

Relief in paragraph (F) is awarded because this will be contrary to the provision of section 35 (1) (a) – (f) of the Constitution of the Federal Republic of Nigeria. See the case of **Ozah V. E.F.C.C. (supra) Per Bada JCA p. 258 paras. A-F:**

“Finally on this issue, the current trend of rushing to court to halt or abort criminal investigation and prosecution in this country, if not urgently halted, we might witness a situation where a kidnap suspect, robbery and murder suspects will file action in court to restrain the police and other security agencies from arresting investigating, and

prosecuting them as they are also entitled to secure their fundamental rights.”

Based upon the above, this relief is bereft of any justifiable reason as to why it should be allowed.

The relief in paragraph (G) is not awarded. See section 35(6) of the constitution of the Federal Republic of Nigeria, 1999 (as amended).

Relief in paragraph (J) is granted.

Relief in paragraph (I) is granted and the respondent is hereby ordered to remove the embargo it placed on the applicant's new residence located at Block SD1 Woodfield Estate Jabi, Abuja.

Relief in paragraph (k) is not granted. See section 35(6) of the constitution of the Federal Republic of Nigeria 1999 (as amended).

In an application between James Erebuoye And Independent Corrupt Practices And other Related Offences Commission with No. CV/2279/2020 the applicant prays the court for the following:

- A. A declaration that the respondent's unlawful arrest and detention of the applicant on the 7th July, 2020 is an infringement of the applicant's rights and a breach of his fundamental rights enshrined in section 34(a), 35(1) (4) & (5), sections 37 and 46 of the 1999 constitution of the Federal Republic of Nigeria.
- B. A declaration that the respondent's false imprisonment of the liberty, safety, peace and security of the applicant on the 7th July, 2020 is a breach and a violation of his fundamental rights enshrined in 34(a), 35(l) (4) & (5), sections 37 & 46 of the 1999 constitution of the Federal Republic of Nigeria.
- C. A declaration that the respondent's unlawful freezing of the applicant's account No. 0018797278, Erebuoye James, Sterling Bank and account No. 409122039 Dorason Global Construction Ltd Polaris Bank, is a breach and a violation of her fundamental rights enshrined in sections 44(1) and 46 of the 1999 Constitution of the Federal Republic of Nigeria.
- D. A declaration that it is an unlawful violation of the applicant's human rights to dignity of human person, privacy and family life guaranteed and protected rights under section 34 and 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Article 17 of the International Covenant on Civil and Political Rights and Articles 12 of the Universal Declaration of Human Rights and a

most egregious violation of the treaty obligations of the respondent under and by virtue of its being a signatory to the above legal instruments for the respondent's agents, privies, servants to have unlawfully detained the applicant under a dehumanizing condition.

- E. A declaration that the invasion of the applicant's privacy, home at Block SD1 Woodfield Estate Jabi, Abuja and forcefully and unlawfully seizure of the applicant's properties, without any lawful order or warrant of a court of competent jurisdiction constitutes a gross violation of the applicant's fundamental rights guaranteed under section 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Article 14 of African Charter of Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004, and Articles 17 of the International Covenant on Civil and Political Rights and a most egregious violation of the treaty obligations of the respondent under and by nature of its being a signatory to the above listed legal instruments is therefore illegal and unlawful.
- F. An order directing the respondent and its agents to forthwith release the entire applicant's unlawfully seized properties during the invasion and unlawful sealing of the house/home of the applicant without any lawful order or warrant of any court of competent jurisdiction.
- G. An order of perpetual injunction restraining the respondent, by themselves, agents, privies or anybody deriving authority from them by whatever name called from harassing, intimidating, arresting, abducting or detaining the applicant.
- H. An order directing the respondent to tender an unreserved public apology to the applicant for the infringement of his fundamental rights pursuant to section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria.
- I. An order directing the respondent to immediately defreeze and remove the embargo it placed on the applicant's account No. 0018779778 – Erebuoye James Sterling bank and account No. 4091221039 Dorason Global Construction Ltd Polaris Bank.

- J. An order directing the respondent to immediately remove the embargo placed on the applicant's new residence located at Block SD1 Woodfield Estate Jabi, Abuja.
- K. An order of injunction restraining the respondent their privies or agents from inviting, detaining or arresting the applicant for any reason without following the appropriate due process of law.
- L. An order that the respondents pay the sum of N50,000,000.00 (Fifty Million Naira) as damages for the unlawful arrest and detention of the applicant on the 7th July, 2020 pursuant to section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria.
- M. And for such further order(s) this Honourable Court may deem fit to make in the circumstances.

The grounds upon this application was filed are the same with the ones in the application I just treated, and I need not to repeat same.

The applicant filed a verifying affidavit of thirty paragraphs and he relies upon all of them.

Attached to the affidavit are the following documents:

- A. A letter from the N.D.D.C. dated the 8th day of April, 2019 to Managing Director Olosh & Associates Ltd.
- B. Niger Delta Development Commission Contract Verification Checklist.
- C. A letter of Acceptance from Olosh & Associates to the Director EPC N.D.D.C. dated the 8th April, 2019.
- D. A letter of Niger Delta Development Commission addressed to Emajok Global Projects Limited.
- E. N.D.D.C. Contract Verification Checklist of Emajok Global Projects Limited.
- F. Acceptance letter written by Managing Director Emajok Global Projects Ltd addressed to the Director EPC, N.D.D.C.
- G. Bureau Receipt issued by Mallam Bashir dated the 7th day of June, 2020
- H. An invitation letter by the respondent to the applicant.
- I. Radiology result issued by the National Hospital Abuja dated 9th July, 2020.
- J. Nisa Premier Hospital Medical Bill.
- K. Receipts issued by Nisa Hospital in the sum total of N645,000.00

- L. A medical report issued by Nisa Hospital dated the 21st day of July, 2020 with respect to the applicant.
- M. A letter from the Polaris Bank dated the 23rd July, 2020 addressed to the Solicitor of the applicant.
- N. A letter from Sterling Bank dated the 17th July, 2020 addressed to the solicitor of the applicant.
- O. A notice of seizure dated the 2nd July, 2020 addressed to Sterling Bank.
- P. A picture of sealed residence.

In his written address, the counsel to the applicant formulated two issues for this Court to determine, that is to say:

1. Whether the fundamental rights of the applicant have been infringed?
2. Whether the applicant is entitled to damages?

It is in the affidavit of the applicant that the applicant was awarded two emergency contracts through Olosh & Associates Ltd and Emajok Global Projects Ltd by the Niger Delta Development Commission, and by the terms of the contract, the applicant was to source for funds to execute these contracts, and he then approached his sister Hajia Fatima S. Alhassan and same expressed her willingness to advance to the applicant the sum of \$382,900. That while the applicant, his wife and Hajia Fatima Alhassan were on their way to meet Mallam Bashir, the Bureau De Change Operator, there were profuse calls from Amaka Okafor, who had earlier on opened an account with Polaris Bank. Though the wife of the applicant, and Amaka Okafor requested the wife of the applicant to help her exchange the sum of N340,000,000.00 to its dollar equivalent.

It is stated that the applicant, then phoned Mr. Bashir to stop by the Bank and pick the \$382,900 which was in the bag of the wife to the applicant, and Mr. Bashir did that and upon which the same Mr. Bashir credited, at the request of the applicant the sum of N170,000,000.00 being the Naira equivalent to \$382,900 into the account of Olosh & Associates Ltd., that the company account of Olosh & Associates credited the applicant's account with N24,000,000.00, and Olosh & Associates Ltd credited Dorason Global Construction Ltd with the sum of N121,000,000.00. That Dorason Global Construction Ltd then credited the

Eugenia N. Eze & Co a company in partnership with Olosh & Associates with the sum of N41,000,000.00

It is stated that on the 24th of June, 2000, the respondent sent a letter to the applicant inviting him for an interview on the 25th of June, 2020, and on the 29th June, 2020 the applicant honoured the invitation and went to the office of the respondent.

It is stated that the respondent unlawfully arrested and detained the applicant on the 7th July, 2020 for failure to provide three permanent secretaries as sureties each and that he was detained for two days. That on the 8th July, 2020 the respondent conducted a search at the applicant's residence on the strength of a search warrant whose contents were not shown to him, and the following items were taken away from the applicant's residence:

- a) A tenancy agreement in respect of a new apartment which James has paid for.
- b) Quotation of a house
- c) 2 laptops
- d) Copy of MOU which the applicant executed with in 2017 with Bar. Isa.

It is further stated that the applicant was under detention had slumped at the respondent's headquarters and was rushed to National Hospital, Abuja, and that the applicant was lying unconscious at the National Hospital, Abuja. That the applicant's health worsened and he later transferred to the emergency unit at Nisa Hospital Jabi and were informed by the doctor that his body has been paralised due to stress he was subjected by the respondent. That the respondent without due process of law froze the account of the applicant with No. 0018797278, Erebuoye James, Sterling Bank and account No. 4091221039 Dorason Global Construction Ltd Polaris Bank, and the respondent sealed the applicant's property located at SD1 Woodfield Estate Jabi, Abuja and no reason was given for such action, and was not brought before the court within a reasonable time, and that the applicant is going through deep physical, psychological and mental trauma as a result of the respondent's gross violation of his fundamental human rights.

In his address, the counsel enumerated the applicant's rights that were grossly violated by the respondent as follows:

- a) Applicant's right to dignity of his person as guaranteed under section 34 of the constitution.
- b) Applicant's right to personal liberty as guaranteed under section 35 of the constitution;
- c) The applicant's right to privacy of his home under section 37 of the constitution; and
- d) Applicant's right to ownership of moveable property under section 44 of the constitution, and further submitted with the aid of judicial authorities that what is before the court is that having regard to the absence of any reasonable cause for the respondent to invite the applicant to interview and the fact that till date no charge is prepared against the applicant, the inhuman treatment inflicted on the applicant are unlawful detention and that the applicant was diagnosed with stroke, and he urged the court to hold that the applicant's right to personal liberty has been infringed, and he cited the cases of **SCC (Nig.) Ltd & Anor V. George & Anor (2019) LPELR – 46963 (CA)** and **Ogbonna V. Egbulefu & Ors (2018) LPELR – 43810 (CA)**.

The counsel submitted that when the respondent invaded the family residence of the applicant and made away with his Survey laptops, car manuals, tenancy agreement and finally placed no withdrawal notice on the applicant's business and personal accounts without just cause, his right to ownership of property was grossly infringed, and he cited the case of **Musical Copyright Society of Nig. Ltd/GTE V. Compact Disc Technology Ltd & Ors (2018) LPELR -46353 (SC)**.

The counsel further submitted that the applicant's right to privacy was infringed when the respondent without any just cause, reasonable ground, concocted a warrant of search and invaded the applicant's family residence making away with applicant's valuables.

On issue No. 2, the counsel submitted that once an infringement of rights has been established, then damages follows as a question of law and he cited the case of **Ukpai V. Omoregie & Ors (2019) LPELR – 47206 (CA)**.

The respondent in its counter affidavit stated that it received an intelligence of suspicious transaction on the account of one Mr. Egbuha Roseline Uche domiciled with GTB in the sum of N550,000,000.00, and the officers of the respondent were carrying out an investigation into the

suspicious transaction, and a Post No Debit was placed on the account of the said Mrs. Egbuha Roseline, and an interim order was obtained from a court that Mrs. Egbuha Roseline filed a case against the respondent and two officers and retained Baba Isa as a counsel. That while Mrs. Egbuha Roseline opted to discontinue the case against the 2nd and 3rd respondents it is stated that the applicant, his wife and a staff of GTB Bank by name Onuegbu Leonard Chukwudi, secured the lifting of the Post No Debit placed on the account of Mrs. Egbuha, and upon that lifting of Post No Debit on the 4th June, 2020, Mrs. Egbuha transferred the sum of N550,000,000.00 from her account to F. Baba Isa legal account owned and managed by F. Baba Isa Esq.

It is stated that the deponent was informed by Kabiru Maigari, an investigator with the respondent of the following facts:

1. That the respondent is investigating the applicant or his involvement in laundering part of the sum of N550,000,000.00 removed from the account of Mrs. Egbuha domiciled with GTB.
2. That the investigation so revealed that on the 5th June, 2020 the wife of the applicant called her colleague Mr. Adedeji Adefolalu informing him that her customer is expecting the sum of N340,000,000.00 which would like to use to buy dollars. That Mr. Adedeji Adefolalu made contacts and got one Mr. Umar Gajo, a Bureau De Change operator to provide the dollars, and the applicant together with his wife, Mrs. Egbuha and one Amaka Okafor went to Polaris Bank on the 5th June, 2020 for the purchase of the dollars.

It is stated that the applicant's wife linked Umar Gajo a Bureau De Change operator to F. Baba Isa who then transferred the sum of N340,000,000.00 into the account of the Bureau De Change account with Polaris Bank for the purchase of the dollars. And the sum of N340,000,000.00 was converted into \$423,163 and handed over to the applicant and his wife, and that out of \$423,163, the applicant and his wife sold the sum of \$382,900 to Mallam Bashir, a Bureau De Change operator for the purpose of converting same to naira on the 5th June, 2020, and Mallam Bashir converted the sum of \$382,900 into the equivalent of the sum of N170,000,000.00 and credited same into the account of Olosh & Associates with Access bank. That from Olosh &

Associates account the sum of N24,000,000.00 was moved into the account of the applicant with Sterling Bank.

It is stated that the respondent placed a Post No Debit on the accounts of the applicants to avoid further dissipation of the funds suspected to be proceeds of crime. That investigation revealed that the Olosh Company Ltd and Emajok Global Projects was awarded contract on 8th April, 2019 respectively, and as at 5th June, 2020 when the transactions took place, there was no pending contract to be executed by the applicant.

It is stated that investigation revealed that the applicant and his wife went back to Mallam Bashir Bureau De Change on the 26th June, 2020 together with Fatima S. Alhassan and introduced the later to him as someone from America, and for Mallam Bashir to claim that Fatima S. Alhassan is the one that provided the sum of \$382,900 if anyone asks him anything about the transaction.

It is stated that Amaka Okafor was given her own share of N50,000,000.00 through the account of Umar Bureau De Change domiciled with Polaris Bank.

It is stated that the applicant was promptly granted bail on the same day he was arrested but he would not perfect the bail conditions, and that the applicant could not meet up with the bail conditions, applied for the variation which was approved and upon fulfillment of the same was released accordingly.

It is stated that the applicant was handled with utmost care having been subjected to medical checks and found out his underlying medical conditions and was promptly rushed to National Hospital when he had crisis, and that the freezing of the applicant's account and sealing of the property were done within the confines of the law.

In his written address, the counsel to the respondent, on the arrest and detention of the applicant, submitted that the applicant was granted bail on the same day, but due to the inability of the applicant to fulfill the bail conditions, he applied for variation and same was varied after which he was subsequently released on bail, and he cited the case of **E.F.C.C. & Ors V. Chukwura (supra)** where the Court of Appeal held that failure to perfect bail terms granted administratively does not constitute a violation of the fundamental human rights. The counsel also submitted that it is the duty of the arresting authority, the respondent in

this case, to establish that the arrest and/or detention was justifiable, and he cited some judicial authorities, and submitted that the authorities are in tandem with section 35(1) (c) of the constitution, and submitted that the respondent has discharged that onus as are contained in the paragraphs of his counter affidavit, to the effect that the applicant is involved in the laundering of the funds from Mrs. Egbuha's account suspected to be proceeds of crime which to the knowledge of the applicant is a subject of investigation. To him, the applicant has failed to presents facts disclosing that his fundamental rights have been contravened.

With respect to claim of damages, the counsel to the respondent submitted that it is trite that where there is no cause, there will be no damages, and he referred to the case of **Obinwa V. C.O.P (2007) 11 NWLR (pt. 1045) 411 at 426 para. F**, and to him, the applicant is not entitled to damages against the respondent for having and legal evidence to establish actionable wrong against the respondent.

On the freezing of the accounts, the counsel to the respondent submitted that the respondent invoked its powers as enshrined in section 45(1) of the I.C.P.C. Act 2000 and section 44 (2) (k) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to temporarily seize any moveable property under investigation pending the outcome of such examination, investigation or enquiry, and to this, the respondent acted within the confines of the law and has therefore not violated the rights of the applicant.

The applicant filed a reply affidavit otherwise known as, further and better affidavit and stated that the applicant has nothing to do with the sum of N550,000,000.00 being transferred to the account of Baba Isa and is unaware of same, and that the applicant is never a party to the proceedings instituted by F. Baba Isa against the respondent.

It is stated further that it is true that Mallam Bashir converted the sum of \$382,900 to the sum of N170,000,000.00 and was credited into the account of Olosh & Associates Ltd. That the sum of N24,000,000.00 was paid into the account of the applicant from the Olosh & Associates Ltd's account, and that the applicant was arrested on the 7th July, 2020, and this is a complete violation of his fundamental rights to personal liberty.

It is deposed further that the applicant being person in possession of the sum of \$382,900 and converting same is not enough for the

respondent to unlawfully arrest and detain the applicant, and that the respondent's accounts are inconsistent and inconclusive and as such it cannot be relied upon.

With respect to arrest and detention, the counsel relied on the provision of section 35(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and submitted that the respondent failed to charge the applicant within the time frame stipulated by section 35(5) (a) of the constitution and detained the applicant for three days which is beyond the period of one day without any evidence, and to him, the arrest and detention was unconstitutional and the applicant is entitled to the reliefs sought.

It is submitted that the applicant's individual claims for damages against the respondent is proper in law and enough compensation for the unlawful and unconstitutional arrest and/or detention of the applicant, and he relies on the case of **First Bank of Nigeria Plc & Ors. V. Attorney General Federation & Ors (supra)**.

On the freezing of the account of the applicant, the counsel submitted that it was done without the due process of law, as no court order was obtained before doing so, and he buttressed this argument with some judicial authorities, and notable among them is the case of **Bose Olagunju V. E.F.C.C. (supra)** to the effect no property of a citizen will be taken over by any authority or person except by a court order in line with section 44 of the constitution, and to him the provision of section 45(1) of the I.C.P.C. Act which the counsel to the respondent is relying is a bad law, and is inconsistent with the constitution, and urged the court to so hold that the applicant's fundamental rights have been infringed.

I formulate the following questions for determination in this application as follows:

1. Whether or not the fundamental right to liberty of the applicant has been violated or infringed by the respondent to warrant the grant of the reliefs sought?
2. Whether or not the right to own property by the applicant has been infringed by the respondent?

Thus, in trying to answer question No. 1, it will be appropriate to pose these two questions and to answer them accordingly, that is to say:

1. Whether the arrest of the applicant by the respondent was unlawful and unconstitutional?

2. Whether the detention of the applicant by the respondent is unlawful and unconditional?

It is not in doubt and it is agreed by the two counsel that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save, among other things, upon reasonable suspicion of him having committed a criminal offence. See the case of **Obla V. E.F.C.C. (2019) All FWLR (pt 991) p. 44 at 57 paras. E-G** where the Court held that by the provisions of section 35(1) (c) of the constitution of the Federal Republic of Nigeria, 1999, the right to personal is not an absolute right. A person can be deprived of his liberty upon reasonable suspicion of him having committed an offence. Where there is such a deprivation of liberty, such person arrested or detained shall be brought to court within a reasonable time, that is one day where there is a court of competent jurisdiction within a forty kilometers radius of the place of detention.

In the instant case it is contended by the counsel to the applicant that the applicant was arrested and detained for no just cause, and that the respondent has not established by evidence the prima facie case against the respondent, and more so, the respondent has failed to bring the applicant before the court within a reasonable time as provided in section 35(1) (4) & (5) of the constitution, and therefore to him, the arrest is unconstitutional and unlawful.

The counsel contended that the respondent by its counter affidavit has not linked the applicant with the laundering of the sum of N550,000,000.00, and therefore, there is no facts to warrant the reasonable suspicion of the applicant committed any offence, and that by the applicant in possession of the sum of \$382,900 = to be exchanged into naira equivalent does not make the applicant to be alleged to have committed any offence, and therefore, urged the court to grant the reliefs sought.

It is the contention of the counsel to the respondent that the applicant was involved in the investigation as to the commission of the crime. The respondent relied on the averments of the counter affidavit, and the exhibits attached.

Thus, the importance of an affidavit in support of a Fundamental Right Enforcement Procedure cannot be overemphasized in that the affidavit must set out facts upon which the application is made. See the case of **Attah V. I.G.P. (2015) All FWLR (pt 805) p. 113 at 149 paras. B-C**. See also

the case of **SCC Nig. Ltd V. George (supra)** where the court held that fundamental rights actions are contested by affidavit evidence.

It is on this premise, I have to look at the affidavit of both parties with a view to see whether there is a reasonable suspicion of the applicant committed a crime act. See the case of **Agundi V. Commissioner of Police (2013) All FWLR (pt 660) p. 1273 at pp. 1296-1297 paras. H-A** where the court defines reasonable suspicion to mean a particularised and objective basis, supported by specific and articulable facts for suspecting a person of criminal activity.

Thus, it is the counter affidavit of the respondent that there was an intelligence of suspicious transaction in the account of one Mrs. Egbuha Roseline Uche domiciled in GTB Bank Plc in the sum of N550,000,000.00, and the respondent was carrying on an investigation into the suspicious transaction, and in order not to dissipate the funds and to protect the res, a Post No Debit was placed on the account, and later by an exparte order of forfeiture was obtained on the 3rd June, 2020. It is also in the counter affidavit that the respondent was sued by Mrs. Egbuha challenging the Post No Debit while retaining F. Baba Isa as her counsel, and the respondent filed its response and Mrs. Egbuha opted to discontinue the case against the 2nd and 3rd respondents. That Mrs. Egbuha and her lawyer F. Baba Isa and another lawyer representing GTB in person of Nsikak E. Udoh connived and entered into terms of settlement unknown to the 2nd and 3rd respondents, and this was entered as a judgment of court on 3rd June, 2020, and though the court did not make any specific order lifting the Post No Debit, however, the applicant, his wife, F. Baba Isa and a staff of GTB Leonard Chukwudi secured the lifting of the Post No Debit placed on the account of Mrs. Egbuha, and after the lifting and on 4th June, 2020 Mrs. Egbuha transferred the sum of N550,000,000.00 into the legal account of F. Baba Isa Esq.

The above averments in the counter affidavit are not challenged, rather in the reply affidavit of the applicant, it is stated that the applicant had no knowledge of the issue involving the sum of N550,000,000.00, this is as per paragraph 3 (iii) of the reply affidavit.

However, it is in the affidavit in support of the application that more particularly paragraph 5 (g) (h) (i) (j), it is evident that the wife of the applicant had contact with Amaka Okafor, and that the later requested

the former to help and exchange the sum of N340,000,000.00 in dollar equivalent which Mr. Adedeji Adefolalu, a colleague of the wife of the applicant, agreed to make the exchange, and there were profuse calls from Amaka Okafor to confirm the state of the transaction, and later Mr. Adedeji Adefolalu acknowledged the receipt of the sum of N340,000,000.00 from Amaka Okafor's law, who is F. Baba Isa.

It is also in the affidavit in support that the applicant phoned Mr. Bashiru to stop at the bank of his wife to collect the sum of \$382,900 which was in his wife's handbag, and Mr. Bashiru stopped by the bank and the applicant's wife handed over the \$382,900 to him, and in turn at the request of the applicant, Mr. Bashiru credited the sum of N170,000,000.00 equivalent to the account of Olosh and Associates Ltd, and out of such money Olosh & Associates credited into the account of the applicant the sum of N24,000,000.00, and also credited as to the account of Dorason Global Construction Ltd belonging to the applicant the sum of N121,000,000.00. These can be seen in paragraph 5 (e) (p) (q) (t) (v) of the affidavit in support.

It is also in the counter affidavit in paragraph 6(c) (d) (e) that the applicant, his wife, Mrs. Egbuha and Amaka Okafor went to Polaris Bank for the purchase of the dollars, and that by paragraph 6(f) of the counter affidavit is in tandem with paragraph 5(j) that the dollar account was forwarded to the wife of the applicant for delivery to Mr. Baba Isa, Amaka Okafor's lawyer, and that F. Baba Isa then transferred the sum of N340,000,000.00 into the account of the Bureau De Change for the purchase of the dollars.

It is also in the counter affidavit of the respondent that the sum of N340,000,000= was converted into the sum of \$432,163 and out of which the sum of \$382,900 was sold to Mallam Bashir, subsequently Mallam Bashir converted the sum of \$382,900 into the sum of N170,000,000.00 Naira equivalent, and it was out of the sum of N170,000,000.00 the sum of N24,000,000.00 was credited into the account of the applicant, and the sum of N121,000,000.00 was transferred into the applicant's account of Dorason Construction Company Ltd. These transfers are admitted by the applicant in his reply affidavit.

By paragraph 6(a) of the counter affidavit, it is stated that the respondent is investigating the applicant of his involvement in laundering

part of the sum of N550,000,000.00 removed from the account of Mrs. Egbuha domiciled with GTB.

By the above, it could be inferred that the respondent has set out facts and has particularised the basis for suspecting the applicant of his involvement in the commission of the crime of laundering the sum of N550,000,000.00, and to this, I therefore so hold.

In so far as there is such reasonable suspicion, then the applicant's arrest will not be said to have been carried out unconstitutionally and unlawfully, in line with section 35 (1) (c) of the constitution of the Federal Republic of Nigeria, 1999 (as amended).

As to whether the detention of the applicant from the 7th of July, 2020 to 9th July, 2020 is unconstitutional and unlawful, it is the law that the fact of detention and the duration thereof is on the person alleging the detention to prove both. See the case of **Gusau V. Umezurike (2012) All FWLR (pt 655) p 295 at 318 paras. C-D**. In the instant case, it is averred by the applicant in paragraph 11 of the affidavit in support, as well as paragraph 3(XXV) of the reply affidavit that the applicant was unlawfully detained from 7th July, 2020 to 9th July, 2020, however, this was admitted by the respondent in paragraph 6(v) that the applicant was arrested and was granted bail the same day, and in paragraph 6(w) of the counter affidavit it is that the applicant could not perfect his bail until 9th of July, 2020.

It is the contention of the counsel to the applicant that the applicant was not charged to court within the reasonable time as defined by section 35(5) (a) of the Constitution, which is within one day, rather applicant was detained for three days under deportable condition.

I believe, the two counsel are in agreement that a person who is reasonably suspected of having committed an offence is to be brought before a court within a reasonable time as per section 35(4) of the Constitution, and that reasonable time is one day where there is a court within 40 kilometers of the detention place. But the contention of the counsel of the respondent is that keeping of the applicant till the perfection of his bail terms before he was released does not amount to the violation of his fundamental right to personal liberty, and he cited the case of **E.F.C.C. & Ors V. Chukwurah (supra)** where the Court of Appeal held that failure to perfect bail terms granted administratively does not constitute a violation of the fundamental human rights. The respondent

relied on the exhibits “**I.C.P.C. 12 and 13**” **EXH. 12**’ is the document spelling out the terms of the bail earlier granted to the applicant, while EXH. ‘13’ is the appeal to the chairman of the respondent to vary the terms of the bail of the applicant, and this was approved on the 9th July, 2020. Therefore, it is a fact that the bail was granted to the applicant on the 7th day of July, 2020, that was the day he was invited to come to the office of the respondent, and the variation of the terms was approved on the 9th July, 2020, and that the applicant was released upon the fulfillment of the new terms.

It is on the above premise, I have to follow the decision of the Court of Appeal, which I am bound to, in the case of **E.F.C.C. & Ors V. Chukwurah (supra)** and to hold that the keeping of the applicant beyond one day in detention until the bail terms are varied and satisfied, does not amount to a violation of the fundamental right of the applicant as guaranteed in section 35(1) of the Constitution.

The arrest and detention of the applicant is constitutional and lawful and was done within the confines of the law.

On the issue No. 2, the applicant deposed in his affidavit in support that on the 8th of July, 2020 the respondent conducted a search of the applicant's residence on the strength of a search warrant and some items were taken away, and that without due process the respondent sealed the applicant's property located at SD1 Woodfield Estate Jabi, Abuja, and that no reason was given for doing so, however, in paragraph 6(4) of the counter affidavit, the respondent stated that the sealing of the property was done within the confines of the law.

It is also stated in the affidavit in support of his application that the respondent without due process of law froze the accounts of the applicant No. 0018797278, of Sterling Bank and 4091221039 Dorason Construction Company Ltd being the company owned by the applicant.

It is the contention of the counsel to the applicant that the freezing of the account of the applicant is a breach to his fundamental right to own movable property as enshrined in section 44(1) of the constitution. More so, the sealing of the residence of the applicant is a breach of his right to privacy and therefore, unconstitutional and unlawful. While the counsel to the respondent argued that the freezing of the accounts of the applicant is within the confines of the law, and relies on section 44(2) (k)

of the constitution and section 45(1) of the I.C.P.C. Act which all point at that the respondent acted not in violation of the fundamental right of the applicant.

The applicant's counsel further relied on the case of **Bose Olagunju V. E.F.C.C. (supra)** to the effect that no person shall be deprived of his movable or immovable except by a court order, while it is the contention of the counsel to the respondent that section 45(1) of the I.C.P.C. Act does not place any condition precedent that the freezing of the accounts of the applicant must be made by a court order.

Thus, the decision in the above case was based upon the law that by section 34 of the E.F.C.C. Act, while the law under consideration in this case is section 45(1) of the I.C.P.C. Act which provides that:

“where the chairman of the commission is satisfied on information given to him by an officer of the commission that any movable property, including any monetary instrument or any accretion thereto which is the subject matter of any investigation under this Act or evidence in relation to the commission of such offence is in the possession, custody or control of a bank or financial institution, he may, notwithstanding any other written law or rule of law to the contrary by order direct the bank or financial institution not to part with, deal in, or otherwise dispose of such property or any part thereof until the order is revoked or varied.”

By the above quoted provision, it could be inferred notwithstanding any other written law, like the E.F.C.C. Act where there is a restriction that there must be a court order, the chairman of I.C.P.C. has the discretion to freeze the account of any person which the subject matter of the investigation under the Act until such order is revoked or varied. The constitution envisaged this in section 44(2) (k) of the constitution where the provision of section 45(1) of the I.C.P.C. Act is the extant law, and in it, there is no condition precedent that there must be a court order before such order can be given by the respondent, and to this, I therefore, so hold.

Thus, throughout the counter affidavit of the respondent, there is no where it is deposed to any fact that the residence of the applicant is a subject matter of investigation. In essence, there is no fact linking the property being the subject matter of any investigation by the

respondent. More so, the law which the counsel to the respondent is relying, in this regard, is section 45(1) of the I.C.P.C. Act and not section 37 (1) of the Act which provides:

“If in the course of investigation into an offence under this Act, any officer of the commission has reasonable grounds to suspect that any movable or immovable property is the subject matter of an offence of evidence relating to the offence, he shall seize such property.”

By the above quoted provision, it could be inferred that it is only any immovable property is the subject matter of an offence, that the respondent should so take over the property, however, in the counter affidavit of the respondent no where it is stated that the residence of the applicant otherwise known as SD1, Woodfield Estate Jabi, Abuja, is a subject matter of the commission of the offence of money laundering, and it is only the money in the sum of N550,000,000.00 or part thereof that is involved, and to this, I hold that the sealing of the residence is unconstitutional and unlawful as it is not done within the confines of the law, and to this the fundamental right to privacy of the applicant has been trampled upon. See the case of **F.R.N. V. Daniel (2012) All FWLR (pt 627) p. 693 at 703 paras. G-H.** where the Court of Appeal, Lagos Division held that by the provision of section 37 of the Constitution of the Federal Republic of Nigeria, 1999, the privacy of every Nigerian citizen, the home, correspondence, telephone and other telegraphic communications are guaranteed and protected. In the instant case, the privacy of the applicant has to be protected by this court, and to this, I so hold.

Thus, the applicant also predicated his application on the provision of section 34 of the constitution which provides:

“(1) Every individual is entitled to respect for the dignity of his person, and accordingly:

- (a) no person shall be subjected to torture or to inhuman or degrading treatment;
- (b) no person shall be held in slavery or servitude; and
- (c) no person shall be required to perform forced or compulsory labour”.

While the applicant concerns himself of the paragraph (a) of the subsection of the above section, it is on this, I have to look at the

affidavit of both parties to see whether there is such a violation of such right.

It is in the affidavit of the applicant that while the applicant was under detention, he slumped and was rushed to National Hospital, Abuja and was lying unconscious at the National Hospital, Abuja, while his health was deteriorating, he was rushed to Nisa Premier Hospital Abuja. It is in the counter affidavit of the respondent that the applicant was taken to hospital because of the underlying medical conditions and was handled with utmost care. In the reply affidavit of the applicant it is shown that the causes of why the applicant slumped were as a result of the inhuman treatment meted out on him and for the constant harassment even while lying on his sick bed in hospital. See the case of **Iyeghe V. A.B.U (2016) All FWLR (pt 851) p. 1386 at 1419 para C** where the Court of Appeal, Kaduna Division define torture to mean to inflict intense pain to body or wound for purpose of punishment, or to extract a confession or information, or for sadistic pleasure. The court went ahead to define inhuman treatment to mean such mental or physical cruelty or severity as endangers the life or health of the party to whom it is addressed or creates a well founded apprehension of such danger. In the instant case the applicant while in detention slumped and was rushed to the National Hospital for treatment, and later was taken to Nisa Premier Hospital Jabi, to my mind, he was subjected to torture with a view to extract information or to make him to confess to the commission to the crime, and to this, I therefore, so hold.

On the whole, and for the fact that the arrest and detention of the applicant was in order, and by virtue of section 35(6) of the constitution of the Federal Republic of Nigeria, 1999, (as amended), I will not be inclined to grant relief in paragraph (B), (H), and (L).

To protect the right to privacy of the applicant, I therefore grant relief in paragraph (J), that an order is given directing the respondent to immediately remove the embargo it placed on the new residence of the applicant located at SD1 Woodfield Estate, Jabi, Abuja.

It is hereby declared that the right of the applicant to dignity of human person is guaranteed under section 34 of the constitution of the Federal Republic of Nigeria, and the respondent is directed to protect and safeguard the right of the applicant under the above section.

Having arrived at that the freezing of the two accounts of the applicant as having done within the confines of the law, I will not be inclined to grant reliefs in paragraphs (C) and (I).

I am also not inclined to grant the relief in paragraph (G), because this relief or application for such relief is bereft of any justifiable reason. See the case of **Ozah V. E.F.C.C. (2018) All FWLR (pt 953) p. 231 at 258 paras. A-F**, on notable pronouncement per **Bada JCA**:

“Finally on the issue, the current trend of rushing to court to halt or abort criminal investigation and prosecution in this country, if not urgently halted, we might witness a situation where kidnap suspect, robbery and murder suspects will file action in court to restrain the police and other security agencies from arresting them as they are also entitled to secure the fundamental rights. But this court or any court in this Country Nigeria will not be a party to shielding a person against criminal investigation and prosecution because that would amount to interference with the powers given by the constitution to the law officers in control of criminal investigation and prosecution and it can destroy this country called Nigeria.”

Based upon the above dictum, I will not be a party to shielding a person against criminal investigation however, I will grant the relief in paragraph (K), that the respondent or its privies or agents is restrain from inviting, detaining or arresting the applicant for any reason except by due process of law.

In an application with No. CV/2280/2020 between Ogar Okune And Independent Corrupt Practices and other Related offences Commission whereas the applicant seeks for the following reliefs:

- A) A declaration that the respondent's unlawful arrest and detention of the applicant on the 17th July, 2020 is an infringement of the applicant's rights and a breach of his fundamental rights enshrined in sections 34(a), 35(1) (4) and (5), sections 37 and 46 of the constitution of the Federal Republic of Nigeria.
- B) A declaration that the respondent's false imprisonment of the liberty, safety, peace and security of the applicant on the 7th July, 2020 is a breach and a violation of his fundamental rights

enshrined in section 34(4), 35 (1), (4), and (5), sections 37 and 46 of the 1999 constitution of the Federal Republic of Nigeria, 1999 (as amended).

- C) A declaration that the respondent's unlawful freezing of the applicant's business account No. 0024941065, account name Olosh and Associates Ltd, Access Bank is a breach and a violation of his Fundamental Rights enshrined in section 44(1) and 46 of the constitution of the Federal Republic of Nigeria, 1999 (as amended).
- D) An order of perpetual injunction restraining the respondent, by themselves, agents, privies, or anybody deriving authority from them by whatever named called from harassing intimidating, arresting, abducting or detaining the applicant.
- E) An order directing the respondent to tender an unreserved public apology to the applicant for the infringement of his fundamental rights pursuant to section 35(6) of the constitution of the Federal Republic of Nigeria.
- F) An order directing the respondent to immediately remove the embargo it placed on the applicant's business account No. 0024941065 account name, Olosh and Associates Ltd, Access Bank.
- G) An order of injunction restraining the respondent, their privies or agents from inviting, detaining or arresting the applicant for any reason without following the appropriate due process of the law.
- H) An order that the respondent, pay the sum of N20,000,000.00 (Twenty Million Naira) as damages for the unlawful arrest and detention of the applicant on the 7th July, 2020 pursuant to section 35(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- I) And for such further orders this Honourable court may deem fit to make in the circumstances.

The grounds upon which this application is filed are the same as are enumerated in the previously dealt application, and I need not to repeat same.

In support of the application is verifying affidavit of sixteen paragraphs, and same is relied upon by the applicant.

Attached to the affidavit are the following documents:

- a) a letter from the N.D.D.C. to the Managing Director of Olosh & Associates Ltd dated the 8th April, 2018;
- b) N.D.D.C. Contract Checklist of Olosh & Associates;
- c) Acceptance letter written by the Managing Director Olosh & Associates Ltd dated the 8th April, 2018;
- d) N.D.D.C letter addressed to the Managing Director of Emajok Global Projects Limited dated the 8th April, 2018;
- e) N.D.D.C. Contract Checklist for Emajok Global Construction Company Ltd.
- f) Acceptance letter written by the Managing Director of Emajok Global Projects Limited dated the 8th April, 2018;
- g) Invitation letter extended to the applicant by the respondent dated the 2nd July, 2020.

The counsel to the applicant filed a written address, which he adopts as his oral arguments.

It is in the affidavit of the applicant that the Mr. James Erebuoye uses Olosh & Associates Ltd to win and execute contracts with government agencies and private organisations. That the applicant was informed by James Erebuoye on the 5th June, 2020 at about 9:00p.m via a phone call that Hajia Fatima S. Alhassan advanced the sum of N170,000,000.00 which was transferred to the Olosh & Associates Ltd account on the 5th July, 2020, Hajia Fatima S. Alhassan is a Pharmacist in the United State of America for 30 years and own a farm with over 5000 birds and 2000 pigs. That at the request of James Erebuoye, the Olosh & Associates Company Ltd transferred the sum of N121,000,000.00 to Dorason Global Construction Company Ltd.

It is stated that the respondent, on the 2nd July, 2020 invited the applicant to explain the circumstances of the credit, and as a law abiding citizen, he immediately went to the respondent, and in which he explained that the credit was meant to source funds to execute the contract awarded Mr. James Erebuoye, and the sum of N170,000,000.00 is not a public fund, and that he was detained by the respondent for two days from 7th July, 2020 till 9th July, 2020.

It is stated that the respondent without due process of law arrested and detained the applicant on the 7th July, 2020, and the account of Olosh & Associates frozen, and that is without just cause. That the applicant was not brought before the court within a reasonable time by

the respondent. That the applicant has been made to undergo pensive mental torture and social dislocation as a result of the unlawful arrest and detention. That applicant's children's education and family source of income has been put on hold as a result of impromptu freezing of the applicant's business account which is a gross violation of the applicant's fundamental right. That the applicant is a law abiding citizen and has never involved himself of any act of money laundering, and that he is entitled to compensation.

In his written address, the counsel to the applicant formulated lone issue for determination, to wit:

Whether or not the applicant's Fundamental Rights have been breached and therefore entitled to reliefs sought?

The counsel submitted that fundamental rights are regarded as these aspects of human rights which have been recognised and entrenched in the constitution of this country, and they are specifically provided for to enhance human dignity and liberty in a modern state, and he referred to the cases of **E.F.C.C. V. Akingbola (2015) 11 NWLR (pt 1470) p. 249 at 290**, **Odogu V. A.G. Federation (1999) 16 NWLR (pt 456) P. 508 at 552**. The counsel cited the case of **Skye Bank V. Njoku & ors (2016) LPELR – 40447 (CA)** to the effect that an action founded on Fundamental Rights (Enforcement Procedure) Rules is sui generis; and is not subject to the rules of court except where it is expressly adopted to fill a lacuna. The counsel further argued that the unlawful arrest and detention vented on the applicant by the respondent is not only a violation of Fundamental Right but a breach to his security and freedom, and he cited **Inusa V. The State (1982) 4 SC 41**.

It is in the counter affidavit of the respondent that it received an intelligence of suspicious transaction in the account of one Mrs. Egbuha Roseline Uche domiciled with GTB, in the sum of N550,000,000.00 (Five Hundred and Fifty Million Naira), and the respondent was carrying out an investigation into the suspicious transaction. That upon lifting the Post No Debit already placed upon the account of Mrs. Egbuha on the 4th June, 2020, Mrs. Egbuha transferred the sum of N550,000,000.00 into the legal account of F. Baba Isa, and the sum of N340,000,000.00 was converted into the sum of \$423,163, and out of that the sum of \$382,900 was sold to Mallam Bashir, a Bureau De Change operator, and it was converted into the sum of N170,000,000.00, and that money was credited into the

account of Olosh & Associates a company belonging to the applicant. It is stated by the respondent that the applicant was granted bail on the same date he was arrested, but had not perfected bail until the terms were varied, and was released upon fulfillment of the new terms and that the freezing of the account of the applicant was done within the confines of law.

In his address the counsel to the respondent contends that the applicant was arrested upon having suspected of having committed an offence of money laundering and is under investigation, and that the keeping of the applicant until the perfection of the bail terms before he was released does not amount to the violation of his fundamental human rights, and he cited the case of **E.F.C.C & Ors V. Chukwurah (supra)**.

The counsel further submitted that the respondent invoked its powers under section 45 (1) of the I.C.P.C Act 2000 to temporarily seize any movable property under investigation pending the outcome of such examination, investigation or enquiry, and further relied on section 44(1) of the constitution.

In the reply affidavit of the applicant, it is stated that the sum of N170,000,000.00 was credited into the account of Olosh & Associates.

In his reply on points of law, the counsel to the applicant submitted that the arrest and detention of the applicant amounts to infringement of the right of the applicant enshrined in section 35(1) (4) and (5) of the constitution, should therefore deserves to be paid a compensation or damages. It is also argued that the freezing of the account of Olosh & Associates Ltd to which the applicant owns is an infringement of the applicant's fundamental rights enshrined in section 44(1) of the constitution. He also relied on the case of **Bose Olagunju V. E.F.C.C. (supra)** to the effect that before a person is to be deprived of his immovable property or that before a person's account is to be frozen, there must be a court order, and where there is no court order, the respondent will be liable for the breach of the applicant's right to own movable property under section 44(1) of the constitution.

Let me formulate issues for determination in this application, to wit:

- 1) Whether or not the arrest and detention of the applicant is unlawful and unconstitutional to entitled the applicant of the reliefs sought?

2) Whether or not the freezing of an account of the applicant is unlawful and unconstitutional to entitled the applicant to the reliefs sought?

Thus, it was held by the Supreme Court in the case of **Diamond Bank Plc V. Opara (2019) All FWLR (pt. 992) p. 321 at 346 paras. B-C** that by the provisions of section 35(1) of the 1999 constitution of the Federal Republic of Nigeria every person shall be entitled to personal liberty and no person shall be deprived of such liberty save in accordance with the procedure permitted by law. In the instant case both parties and their counsel agreed on the said principle.

However, the counsel to the applicant contends that the arrest and detention of the applicant from 7th of July, 2020 to 9th July, 2020 is a breach of the applicant's fundamental right enshrined in the constitution which means, the detention should not be more than one day, and that the applicant should have been brought before a court. While, it is the contention of the counsel to the respondent that the applicant was granted bail on the same date he was arrested, but that he could not be released because of the non fulfillment of the bail terms and conditions, and until when the applicant applied for variation, and it was approved by the respondent, that was when the applicant was released upon the fulfillment of the new terms, and to him, that does not amount to a breach of the right to liberty of the applicant, and he relied on the case of **E.F.C.C. & Ors V. Chukwurah (supra)**.

Thus, fundamental rights actions are contested by affidavit evidence. See the case of **SCC Nig. Ltd. V. George (supra)** and therefore, it is on this, I have to have recourse to the affidavit evidence of the two parties with a view to see whether there was a breach of the right to liberty of the applicant.

It is evident that the applicant was arrested and detained for three days from the 7th July, 2020 to 9th July, 2020. It is also evident that the applicant was granted bail on the 7th July, 2020. See EXH. I.C.P.C. 12 the document which contains the terms imposed by the respondent, and also EXH. I.C.P.C. 13 which is an appeal to the respondent to vary the terms of the bail granted administratively, and was approved on the 9th July, 2020.

Based upon the doctrine of judicial precedent, and except I have another authority to the contrary, I have to follow the decision of the

Court of Appeal, Abuja Division. See also the case of **Augustine Eda V. C.O.P. Bendel (1982) N.C.L.R.19** where the court held that in appropriate cases once the police have offered bail to an arrested person any further stay in the custody by that person until, he satisfies the conditions for bail and is taken up by someone on bail cannot properly be regarded as unlawful detention under the constitution. In the instant case, I hold that the arrest and detention of the applicant is not unconstitutional and unlawful, that is to say, it was done within the ambit of the law.

On the issue No. 2, it is the contention of the counsel to the applicant that the freezing of the account of Olosh & Associates Ltd, a company belonging to the applicant was done without due process of law, that there must have been an order of court directing that the account of the applicant be frozen, and to him, is against the provision of section 44(1) of the Constitution. He also relied on some judicial authorities and notable among them is the case of **Bose Olagunju V. E.F.C.C. (supra)**. While, it is the contention of the respondent that the freezing of the account of the applicant by the respondent is within the confines of the law and relies on section 44(2) (k) of the constitution, and section 45(1) of the I.C.P.C. Act.

Thus, one of the fundamental rights of the citizens of this country is the right to own property both movable and immovable, and no one should be deprived of such right except in situations envisaged in subsection 2 of section 44, of the constitution of the Federal Republic of Nigeria, and the said subsection 2 of section 44, has number of paragraphs (a) to (m). So, the respondent is relying on paragraph (k) of subsection 2 of the said section, to the effect that even though section 44(1) of the constitution provide that no one should be deprived of his property or that should not be compulsorily acquired, however, by paragraph (k) of the said subsection is one of the exceptions, and to him, therefore, the freezing of the account of the applicant was done within the confines of the law. To this, I agree with the position of the respondent that by the provision of section 44(2) (k) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) no property of any citizen of this country should be compulsorily acquired, however except in a situation as envisaged in paragraph (k) of the said subsection of section 44 of the constitution which provides:

“(2) Nothing in subsection (1) of this section shall be construed as affecting any general law:

(k) relating to the temporary taking possession of property for the purpose of any examination, investigation or enquiry”

By the above quoted subsection of section 44 of the constitution, the general law, in this regard, is section 45(1) of the I.C.P.C. Act which provides:

“Where the chairman of the Commission is satisfied on information given to him by an officer of the commission that any movable property, including any monetary instrument or any accretion thereto which is the subject matter of any investigation under this Act or evidence in relation to the commission of such offence is in possession, custody or control of a bank or financial institution, he may, notwithstanding any other written law to the contrary by order direct the bank or financial institution not to part with, deal in, or otherwise dispose of such property or any part thereof until the order is revoked or varied.”

From the above quoted subsection (1) of section 45 of the I.C.P.C. Act 2000, it could be inferred that upon having an information from the officer of the commission, the chairman has the discretion to take possession of any movable property including any monetary instrument which is subject of the investigation under the Act and to order that a bank or any other financial institution not to part with, deal in or otherwise dispose of such property, and this is notwithstanding any other written law. It is evident that it was one Kabiru Maigari that reported the matter upon an intelligence report, and that the sum of N550,000,000.00 become the subject of investigation on the offence of money laundering. The law, that is section 45(1) of the I.C.P.C. Act does not impose a restriction that until when there is a Court before such discretion may be exercised, to me, the argument of the counsel to the applicant goes to no issue, this is because the case of **Bose Olagunju V. E.F.C.C. (supra)** was based upon Section 34 of the **E.F.C.C. Act**, while this case is premise on section 45(1) of the I.C.P.C. Act, and therefore, the case of **Bose Olagunju V. E.F.C.C. (supra)** is not all fours with the case at hand.

Based upon the foregoing consideration, I hold and declare that the freezing of the account of Olosh & Associates Ltd to which the applicant is the owner, was done within the confines of law. Therefore, the right of the applicant has not been infringed.

The reliefs in paragraphs (A), (B), (C), (E), (F) (H) of the claims are not granted. See section 35(6) of the 1999 Constitution. See also the case of **Duruaku V. Nwoke (2016) All FWLR (pt 815) p. 359 at 403 paras. F-G** where the Court of Appeal Owerri Division held in essence that by the provision of section 35(6) of the constitution of the Federal Republic of Nigeria, 1999, if an applicant for enforcement of his fundamental right proves that he was unlawfully arrested and detained, he will be entitled to compensation and apology. In the instant case, this has not been proved.

Relief in paragraph (D) of the claims is also not granted as it is sought without any justifiable legal reason. See the case of **Ozah V. E.F.C.C. (supra)**.

Relief in paragraph (G) is allowed to the extent that the respondent is restrain from arresting and detaining the applicant for any reason without following due process of law.

Thus, the counsel to the applicant filed a further and better affidavit to the applicants' originating motions filed the 24th day of July, 2020, this is on the premise that the Fundamental Rights (Enforcement Procedure) Rules 2009 has allowed that, by order XIII of the Rules, any person or body desires to be heard in respect of any Human Rights application and who appears to the court to be heard, processing and whether or not the party has any interest in the matter. In essence, the counsel wants to join one Eugenia N. Eze in the application of James Erebuoye, because the former has an interest in the matter.

Thus, Order XIII of the Fundamental Rights (Enforcement Procedure) Rules provides:

“(1) Any persons or body who desires to be heard in respect of any Human Rights Application and who appears to the court to be heard, processes, and whether or not the party has any interest in the matter.”

It is the settled law that when interpreting any statute or rule, ordinary and literal meaning has to be given to such statute or rule. Therefore, by the above provision of Order XIII of the Enforcement Rules,

it could be construed to mean that whoever desires to be a party in an application of this nature, and whether or not a party, and if he has interest, such persons or group of persons can be so joined by processes. The word "processes" used in the Order did not only means a further and better affidavit, rather any process that will kick start a matter before a court, that is to say, an application in form of Motion on Notice or Originating Motion or summons. So, by the Enforcement Rules even though did not provide how a person or group of persons can be joined in an application of this nature. So, to my mind, and the Rule has provided in Order XV that where in the course of any Human Right proceedings, any situation arises for which there is or appears to be no adequate provisions in these Rules, the Civil Procedure Rules of the court for the time being in force shall apply. By this, it could be inferred to mean that by these, no adequate provisions are provided as to how a person or group of persons who are interested in a proceeding of this nature should be heard, then recourse has to be had to the Rules of this Court, that is to say, a person or group of persons has/have to apply to be joined in the proceedings, and in applying to be joined, it has to be by motion which shall be accompanied by an affidavit and a written address, and this is provided in Order 43 of the Rules of this court.

Therefore, the filing of any further and better affidavit made by the counsel to the applicant is procedurally wrong, and to this, I so hold. I therefore, strike out the further and better affidavit filed by the counsel to the applicants made on behalf of Eugenia N. Eze. The further and better affidavit filed by the counsel to the applicant is hereby struck out.

Signed
Hon. Judge
16/2/2021

Appearances:

G. A. Okereke Esq appeared for the applicants.
Yetunde Mosomola Esq appeared for the respondent.