IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 24TH DAY OF MARCH, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/3499/2020

BETWEEN:

ALH. MOHAMMED BELLO SAIDU — **APPLICANT**

AND

1. **THE NIGERIAN POLICE FORCE**
2. **THE INSPECTOR-GENERAL OF POLICE**
3. **SUNDAY IDOWU**
   (IPO I.G.P. MONITORING UNIT ABUJA)
4. **DSP SISILIA BROWN**

— **RESPONDENTS**

JUDGMENT

This Judgment is in respect of an application for the enforcement of the fundamental rights of the Applicant.

By an Originating Motion on Notice dated and filed on the 21st of December, 2020, the Applicant, Alhaji Mohammed Bello Saidu, through his Counsel, E. C. Ezeifedikwa Esq. brought this application for the enforcement of his fundamental rights. In the application, the Applicant seeks the following reliefs from this Honourable Court:-

1. A Declaration that it is the constitutional right of all citizens, the Applicant inclusive, to freedom and liberty inclusive of the right to contractual engagement in economics and business undertakings, without let or hindrance except in accordance with law, rule of law, the extant

Constitution of the Federal Republic of Nigeria and the African Charter on Peoples' and Human Rights.

2. A Declaration that the constant act of harassing, humiliating and dehumanizing the Applicant on a spurious allegation that is totally devoid of any criminality but contractual in nature by the 1st to 3rd Respondents at the behest of the 4th Respondent, amounts to abuse of office, impunity, oppressive use of official position to satisfy private need/individual (*sic*) and contrary to the 1999 Constitution, the extant laws of the Federal Republic of Nigeria and the African Charter on Peoples' and Human Rights.
3. A Declaration that the threats by the 4th Respondent in using and continue to use the 1st to 3rd Respondents to harass and dehumanize the Applicant on a spurious allegation that they are carrying out investigation in a matter that is totally devoid of any criminality is not only impunious (*sic*) but an abuse of office/power and a crass violation/infraction of the Applicant's fundamental rights to freedom, liberty, movement and human dignity enshrined in the 1999 Constitution and the extant laws of the Federal Republic of Nigeria, the African Charter on Peoples' and Human Rights.
4. A Declaration that the 1st to 3rd Respondents are not in any way a debt recovery agency of the Federal Republic of Nigeria nor a money extortion agency.
5. An Order of perpetual of (*sic*) injunction restraining/prohibiting the 1st to 3rd Respondents and all its agents from further inviting, arresting, detaining, interfering, tampering or in any way however whatsoever (*sic*) restrict, limit or abridge the fundamental rights of the Applicant with regard to all matters/issues except in accordance with the 1999 Constitution and all extant laws.

6. An Order directing the 4th Respondent to approach any competent civil court of law for ventilating his (*sic*) grievances and seek redress for any monies she is claiming from the Applicant, if she feels she has any legitimate cause of action instead of employing the apparatus of the Nigerian Police Force and its officers to do money recovery.
7. ₦20,000,000.00 (Twenty Million Naira) only as compensatory, exemplary/aggravated damages payable to the 1st Respondent (*sic*) by the Respondents jointly and severally.
8. And for such further or other Orders as this Honourable Court may deem fit to make in the circumstances of this application.

In compliance with the Fundamental Rights (Enforcement Proceedings) Rules, 2009, the Applicant supported the Motion on Notice with the Statement in support of the application detailing the name and description of the Applicant, the reliefs sought, and the grounds upon which the reliefs were being sought. Also in support of the application were the affidavit and the written address in support of the Motion on Notice. No exhibits were annexed to the affidavit.

This matter came up for the first time in this Court on the 18th of February, 2021 for mention. Counsel for the Applicant was in Court but the Respondents were not in Court and were not represented by Counsel. The matter was adjourned to the 4th of March, 2021 for hearing. On the 4th of March, 2021, Counsel for the Applicant was in Court for the Applicant but the Respondents were neither in Court nor were they represented by Counsel of their choice. With the evidence of service of the originating processes and the hearing notices in the case file, this Honourable Court allowed the Counsel for the Applicant to adopt his processes and argue his case. I shall summarise the case of the Applicant and his legal arguments in respect of same presently.

In the affidavit in support of the Motion on Notice, the Applicant, who was the deponent therein, deposed to the facts which gave rise to this application. Briefly, the facts as stated by the Applicant/deponent are as follows: the 4th Respondent, DSP Sisilia Brown, a Police Officer, approached the Applicant, a businessman whose business interests extend to different fields of economic activities, for a parcel of land to purchase. After a series of discussions and negotiations which included searches at the Abuja Geographical Information System (AGIS), the 4th Respondent and the Applicant entered into a contract for the sale of three plots of land. Those plots, which were specifically identified and described as Plot 64 Sabon Lugbe, F.C.T., Abuja, Plot B113 Sabon Lugbe, F.C.T. Abuja, and Plot B105 Sabon Lugbe, F.C.T. Abuja, were sold to the 4th Respondent at ₦4,000,000.00 (Four Million Naira) per plot, bringing the total sum to ₦12,000,000.00 (Twelve Million Naira).

More than one year after the assignment of the plots of land had been concluded, the 4th Respondent resiled from the contract and demanded that the Applicant refund the money for Plot B113 Sabon Lugbe, F.C.T. Abuja and Plot B105 Sabon Lugbe, F.C.T. Abuja to her; a demand that the Applicant reluctantly acceded to when he transferred the ownership of a Toyota Camry 2010 model valued at ₦6,000,000.00 (Six Million Naira) only to the 4th Respondent in the presence of one Mr. Shuibu Jibrin and made a cash payment of ₦2,000,000.00 (Two Million Naira) only to the 4th Respondent in the presence of Mr. Suleiman Bala Sambo. Upon these repayments, the 4th Respondent returned the documents of title in respect of those two plots of land to him.

The Applicant was therefore surprised when the 4th Respondent began to demand more money from him, claiming that she had outstanding balance to

collect from him. According to the Applicant, the 4th Respondent threatened to use her status as a Police Officer to ensure he paid the money she was demanding from him. According to the Applicant, the 4th Respondent did deploy the instrumentality of her office to intimidate and harass him, when, in 2013, she reported him to DSP Umar Garba, in 2014 when she reported him to the Inspector-General of Police Monitoring Unit and in June, 2020 when she reported him to the Gwagwa Divisional Police Station. The Applicant averred that on each of those occasions, he was arrested by the concerned Police authority. He, however, did not state whether he was detained after his arrest and, if he was detained, the length of time he spent in the custody of the concerned Police authority.

The Applicant bemoaned the constant threats, intimidation, extortion, harassment and embarrassment served him by the 4th Respondent who had been using the instrumentality of the 1st and 2nd Respondents through the 3rd Respondent as a debt recovery agency these past seven years. He has therefore approached this Honourable Court for solace and reprieve through this application.

In the written address in support of the application, learned Counsel for the Applicant formulated a sole issue for determination which I have taken the liberty to reproduce herein: ***"Whether the Respondents can continue arresting/detaining or threaten to arrest/detain, harass, intimidate and generally infringe, restrict, limit, abridge the Applicant's fundamental rights to liberty, and human dignity in breach of their fundamental rights/rights enshrined in the Constitution of the Federal Republic of Nigeria and the African Charter on Human and People's Right."***

In his argument on the sole issue he formulated, learned Counsel submitted that this Honourable Court had the requisite jurisdiction to hear the present application by virtue of section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended. He contended that the Applicant had placed sufficient material particulars before the Court to be entitled to judgment in his favour. He reproduced the contents of paragraph 2(c) through to (t) of the affidavit in support of the Originating Motion on Notice in support of his assertion that the Applicant had placed ample material particulars before the Court to sway the mind of the Court in his favour.

It was the contention of learned Counsel for the Applicant that fundamental rights were no longer favours, dispensed to the citizens at the whims and caprices of the operatives of the Government. For his argument on the sole issue he formulated, he cited and relied on the following authorities: ***George v. Federal Republic of Nigeria (2014) All FWLR (Pt. 718) 879; Aoko v. Fagbemi (1961) 2 All NLR 400; Machika v. Kaduna State Housing Authority (2011) 3 NWLR (Pt. 1233) 15 at 47 A – B; Uzuokwu v. Ezeonu & Ors (1991) 6 NWLR (Pt. 200) 708; Ezeadukwu v. Maduka (1997) 8 NWLR (Pt. 518) 660 – 661; FRN & Anor v. Ifegwu (2003) 15 NWLR (Pt. 842) 113 at 135 para B;*** and ***Federal Civil Service Commission v. Noye (1998) 2 NWLR (Pt. 16) 650 at 702 paras D – F***.

He finally submitted that the acts of the Respondents constituted a breach of the fundamental rights of the Applicant and that if the Respondents were not restrained via a judicial order, they would continue to intimidate and embarrass the Applicant. Reminding the Court that it was its duty to safeguard the rights and liberties of individuals and protect same, learned Counsel urged this Honourable Court to grant all the reliefs sought by the Applicant.

The above was a concise precis of the case of the Applicant. Besides the fact that the Respondents were not represented by Counsel, no process was filed on their behalf and which the Court would have, pursuant to the provisions of Order XII Rule 3, deemed adopted and therefore considered in this Judgment. This Judgment, therefore, is based on the unchallenged evidence of the Applicant. Though unchallenged, the reliefs sought must not necessarily be granted as a matter of course. The Applicant who seeks to enjoy the judicial protection of this Court must establish to the satisfaction of this Court that they are entitled to the reliefs which they seek this Honourable Court to dispense.

Having gone through the case of the Applicant, I believe the issue which this Court must concern itself is quite simple and straightforward and it is this: ***"Whether from the totality of the facts disclosed in the affidavit in support of the application for the enforcement of the fundamental rights of the Applicant, the Applicant is not entitled to the reliefs sought herein?"***

Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended provides that ***"any person who alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in any State in relation to him may apply to a High Court for redress."*** This constitutional provision reechoes in Order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 where it is stated that ***"Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur, for redress."***

The purpose of the fundamental rights enforcement proceeding is as contained in the Preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009. Specifically, and of interest to this action, paragraph (3) of the Preamble stipulates what it considers to be the overriding objectives of the Fundamental Rights (Enforcement Procedure) Rules, 2009. Of interest are sub-paragraphs (a), (b), (c), (d) and (f) of paragraph (3) of the Preamble. I have taken the liberty to reproduce the above provisions *in extensor* below:-

Paragraph 3:

> "***The overriding objectives of these Rules are as follows:***
>
> ***(a) The Constitution, especially Chapter IV, as well as the African Charter, shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedoms contained in them and affording the protections intended by them.***
>
> ***(b) For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions. Such bills include:***
>
> ***(i) The African Charter on Human and Peoples' Rights and other instruments (including protocols) in the African regional human rights system.***

(ii) The Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations human rights system,

(c) For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the Court may make consequential orders as may be just and expedient.

(d) The Court shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented.

(f) ***The Court shall in a manner calculated to advance Nigerian democracy, good governance, human rights and culture, pursue the speedy and efficient enforcement and realization of human rights.***

The Courts have accorded these provisions judicial recognition in a plethora of decisions and have gone on to hold that it is the duty of the Courts to uphold and give effect to these overriding objectives. In ***Johnson v. Udonsek & Ors (2017) LPELR-43647 (CA)***, the Court of Appeal per Adah, JCA, after examining the provisions of the Preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009, particularly Paragraph 3(c) and (d) held at ***pages 11 – 13, paras F – B*** that ***"the objective to be driven by the Court is to advance and not to restrict the pursuit of rights. The objective is also to be proactive in enhancing access to justice for all who desire to enforce their fundamental rights. The objectives were set as guides to every enforcing Court to have tolerance for substantial justice rather than technical justice."*** See also ***Federal Polytechnic Bauchi & Anor v. Aboaba***

& Anor (2013) LPELR-21916 (CA); Aig-Imoukhuede v. Ubah & Ors (2014) LPELR-23965 (CA); Rumugu Air and Space (Nig) Ltd v. FAAN & Anor (2016) LPELR-41506 (CA); and ***Chima v. FBN & Anor (2017) LPELR-43652 (CA).***

Inasmuch the overriding objectives contained in the Preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009 remain the guiding principles for the Courts in fundamental rights enforcement suits and the Courts are enjoined always to do substantial justice, the suits must, however, conform to the conditions and prerequisites stipulated in the Fundamental Rights (Enforcement Procedure) Rules, 2009. This is because of the *sui generis* nature of fundamental rights matters. In ***IGP v. Ikpila & Anor (2015) LPELR-40630 (CA)*** Georgewill, JCA noted at ***page 60 paras D – F*** that ***"However, it must be borne in mind that proceedings under the Fundamental Rights Enforcement Procedure Rules are neither strictly civil nor criminal proceedings. They are sui generis, being proceedings of their own kind. At best therefore, they are an hybrid proceeding, taking on some of the features of the different types of proceedings in our Courts but still remaining sui generis. See Jim Jaja V. COP Rivers State (2013) 22 WRN 39 @ p. 66."***

In ***Enukeme v. Mazi (2014) LPELR-23540 (CA)***, the Court of Appeal per Mbaba, JCA at ***pages 21 – 23 paras E*** held that,

> ***"I must start by stating the obvious, that fundamental rights enforcement procedure 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. Of course, consideration of issues founded on breaches of fundamental rights in this case must be handled within the exclusive confines of the Fundamental Rights (Enforcement Procedure) Rules of 2009, which actually came to correct some perceived wrongs and hardship which the 1979 Rules (fashioned on the 1979 Constitution) caused to Applicants seeking enforcement of their fundamental rights, especially in the areas of adherence to undue technicalities and delays in determining applications. The preamble to the Fundamental Rights (Enforcement Procedure) Rules (FREPR) 2009, particularly 1, 3(a), (b) and (d), state as follows: "(1) The Court shall constantly and consciously seek to give effect to the overriding objectives of these Rules at every stage of human rights action, especially whenever it exercises any power given it by these Rules or any other law and whenever it applies or interprets any rule ... (3) The overriding objectives of these Rules are as follows: (a) The Constitution, especially chapter iv, as well as the African Charter, shall be expansively, and purposely interpreted and applied, with a view to advancing and realizing the rights and freedom contained in them and affording the protections intended by them. (b)... (c) For the purpose of advancing but never for the purpose of restricting the Applicant's Rights and freedoms, the Court may make consequential orders as may be just and expedient. (d) The Court, shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and the

unrepresented....” I believe it was in realization of such objectives that the law stipulates in Order ix Rule 1 as follows: “Where at any stage in the course of or in connection with any proceedings, there has, by any reason of anything done or left undone, been failure to comply with the requirement as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify such proceedings, except as they relate to: “(i) Mode of commencement of the application; (ii) The subject matter is not within chapter iv of the Constitution or the African Charter on Human and People's Right (Ratification and Enforcement) Act.””

See also ***Skye Bank v. Njoku & Ors (2016) LPELR- 40447 (CA)*** where the Court of Appeal cited with approval and followed its decision in ***Enukeme v. Mazi, supra***.

As *sui generis* proceedings, fundamental rights enforcement suits must be for the enforcement of any of the rights enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 as amended. The provisions of section 46(1) of the Constitution and Order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 made by the Chief Justice of Nigeria pursuant to the provisions of section 46(3) of the Constitution imply that the rights enforceable by way of a fundamental rights enforcement proceeding are rights that are specifically delineated in Chapter IV of the Constitution. These rights, for the sake of clarity, are contained in sections 33 to 44 of the Constitution and are, respectively, the right to life, the right to dignity of human person, the right to personal liberty, the right to fair hearing, the right to private and family life, the right to freedom of thought, conscience and religion, the

right to freedom of expression and the press, the right to peaceful assembly and association, the right to freedom of movement, the right to freedom from discrimination, the right to acquire and own immovable property anywhere in Nigeria and the right to be paid compensation for compulsory acquisition of property. An application for the enforcement of the fundamental rights of an applicant which does not seek any of the reliefs contained in Chapter IV of the Constitution must necessarily fail. Similarly, any relief sought which is not one of the rights contained in Chapter IV of the Constitution will not be granted. In ***Aig-Imoukhuede v. Ubah & Ors, supra***, the Court of Appeal held that the provisions of the Fundamental Rights (Enforcement Procedure) Rules, 2009 should not be interpreted in such a manner as to give protection to rights that are not intended in the Rules. In ***Mujaid v. IBEDC &Ors (2020) LPELR-50754 (CA)***, the Court of Appeal held that the rights to be protected must be those covered in Chapter IV of the Constitution. See also ***Omonyahuy & Ors v. IGP & Ors (2015) LPELR-25581 (CA)***.

Another feature of fundamental rights proceedings as *sui generis* proceedings is that they are decided on the basis of affidavit evidence. The facts deposed to in the affidavit in support of the application for the enforcement of the Applicant's fundamental rights must be such that they can ground the reliefs sought. See ***Mbang v. Janet & Ors (2014) LPELR-22656 (CA)***. In ***Anowu v. Ulu & Anor (2020) LPELR-50754(CA)*** the Court of Appeal held at ***pages 15 – 16 paras C – A*** that,

> ***"It is trite that, the facts averred in the affidavits placed before the Court by the parties in fundamental rights enforcement proceedings constitute the pleadings, and the adduced evidence in the matter, see; SSS & ANOR v MALLAM NASIR EL-RUFAI***

OFR; JACK v UNIVERSITY OF AGRICULTURE MAKURDI (2004) LPELR- 1587 (SC); UKAOBASI v EZIMORA (2016) LPELR - 40174 (CA); ASCO INVESTMENT LTD & ANOR v EZEIGBO & ANOR (2015) ALL FWLR (PT. 767) P 766 AT 784. In IKUDAYISI & ORS v OYINGBO & ORS (2015) LPELR - 40525, ABIRIYI, JCA (P.16, PARAS. A - E) held; 'The special procedure of the Fundamental Rights (Enforcement Procedure) Rules is not to be equated with the normal procedure in actions tried on pleadings and to which normal rules of pleadings apply. In the procedure under the Fundamental Rights (Enforcement Procedure) Rules, the affidavit constitutes the evidence. If only evidence before the Court or judge is that of the complainant, that is the material he should consider...'"

With the foregoing at the back of my mind, I return to the reliefs contained in the Originating Motion on Notice and the affidavit of the Applicant in support of the application to determine if the facts deposed therein are sufficient to ground the reliefs sought in this application. I have already set out the reliefs sought by the Applicant above and there is no point repeating same.

I have carefully gone through the affidavit in support, the contents of which I have taken the pains to summarise above. Undoubtedly, the relationship which existed between the Applicant and the 4th Respondent was contractual in nature. This can be seen from the depositions in paragraphs 2 (c), (d), (e), (f), (g) and (h) of the affidavit. Whatever disagreement that arose out of the relationship is therefore civil in nature and cannot, in anyway, justify the intervention of the 1st, 2nd and 3rd Respondents which are law enforcement agents. The Courts have been consistently emphatic in its deprecation that it is

not the responsibility of law enforcement agencies and their operatives to act as debt recovery agencies. See ***Skye Bank v. Njoku, supra; Nzegbuna & Anor v. Okoye & Anor (2018) LPELR-43943 (CA); Olusegun & Anor v. EFCC & Ors (2018) LPELR-45825(CA); Abah v. UBN Plc & Ors (2015) LPELR-24758 (CA).***

In ***NB Plc v. Akperashi & Anor (2019) LPELR-47267 (CA)***, the Court of Appeal per Otisi JCA at ***pages 26 – 30 paras C - F*** held that,

> ***"The powers of the police as referred to by the Appellant are, concisely provided in Section 4 of the Police Act Cap. P19, LFN, 2004, to be as follows: "The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act." These provisions do not in any way empower the police to settle civil disputes of any colour, including enforcing terms of a contract gone sour. Indeed, judicial pronouncements on this position of the law are legion. I will only mention a few. In Nwadiugwu v. IGP & Ors (2015) LPELR-26027(CA), this Court per Iyizoba, JCA held, page 35 of the E-Report: "The 1st to 5th Respondents are neither debt collectors nor Arbitrators and Section 24 of the Police Act 2004 does not list settlement of disputes or collection of debts amongst the duties of the Police." In concurring with the lead Judgment in Ibiyeye & Anor v. Gold &***

Ors. (2011) LPELR-8778(CA), Mbaba, JCA, observed, at page 58 of the E-Report: "...the resort to the police by parties for recovery of debts, outstanding under contractual relationship, has been repeatedly deprecated by the Courts. The Police have also been condemned, and rebuked, several times, for abandoning its primary duties of crime detection, prevention and control, to dabbling in enforcement or settlement of debts and contracts between quarreling parties, and for using its coercive powers to breach citizen's rights and/or promote illegalities and oppression. Unfortunately, despite all the decided cases on this issue, the problem persists and the unholy alliance between aggrieved contractors/creditors with the Police remains at the root of many fundamental rights breaches in our Courts." Again in Abah v. Union Bank of Nigeria Plc & Ors (2015) LPELR-24758(CA), Mbaba, JCA said, pages 97 - 98 of the E-Report: "We have stated, repeatedly, that the police (or any Law Enforcement Agency, for that matter, including the Economic and Financial Crimes Commissions (EFCC) is not allowed to dabble into enforcement of civil contracts and agreements, or to engage in recovery of debts, under the pretext of doing lawful duties. See the case of Oceanic Securities International Ltd vs. Balogun & Ors (2013) ALL FWLR (Pt. 677) 653; (2012) LPELR 9218 CA; where it was held: "Appellant could not therefore hide under the cover of reporting the 1st Respondent for issuance of dishonoured cheques, to subject him to the ordeal of arrest and detention... and escape the wrath of the law. He was pursuing the recovery of the alleged debt and resorted to the use of the

Police...” See also: Abdullahi v. Alhaji Suleiman Buhari & Anor (2004) LPELR-11257(CA); Arab Contractors (O. A. O.) Nig Ltd V. Umanah (2012) LPELR-7927(CA); Okafor & Anor v. AIG Police Zone II Onikan & Ors (2019) LPELR-46505(CA). The Appellant admitted in their letter to the 2nd Respondent that its relationship with the 1st Respondent was contractual. The question is: why would the Appellant write to the 2nd Respondent and create the impression that there had been aggravation of any degree from the 1st Respondent for which they have been compelled to act with restraint in the face of the provocation? The contents of the said letter were really an attempt by the Appellant to colour the purely civil contractual obligation between the Appellant and the 1st Respondent with criminality. In my view, the 1st Respondent rightly described the letter in paragraph 11 of his supporting affidavit, page 11 of the Record of Appeal, as: 'unkind, malicious, wicked and unfounded.' I see the regrettable action of the Appellant as being in line with the unfortunate pervading culture of impunity sprouting energetically in this Country. See also: Abugo v. Aromuaino (2018) LPELR-46142(CA); Diamond Bank & Anor v. Irechukwu & Ors (2018) LPELR-44866(CA). In the recent case of EFCC v. Diamond Bank Plc & Ors (2018) LPELR-44217(SC), the Apex Court, per Bage, JSC graphically described this regrettable trend in this manner, page 25 of the E-Report: “What is even more disturbing in recent times is the way and manner the Police and some other security agencies, rather than focus squarely on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used

by overzealous and/or unscrupulous characters for the recovery of debts arising from simple contracts, loans or purely civil transactions. Our security agencies, particularly the police, must know that the citizenry's confidence in them ought to first be ensured by the agencies themselves by jealously guarding the integrity of the uniform and powers conferred on them. The beauty of salt is in its taste. Once salt loses its own taste, its value is irredeemably lost. I say this now and again, our security agencies, particularly the police, are not debt recovery agencies.""

Similarly, in ***Omuma Micro-Finance Bank Nig Ltd v. Ojinnaka (2018) LPELR-43988 (CA)***, Mbaba JCA in his concurring judgment at ***pages 15 – 17 paras F – A*** held that,

"We have held, several times, that one who procures the Police or any law enforcement agency, to dabble in a purely civil contract, to recover debt for the party to an agreement, must be ready to bear the consequences of such unlawful act of the Police/law enforcement agency, acting in abuse of their powers. See the case of Anogwie & Ors vs Odom & Ors (2016) LPELR-40214 CA; Ogbonna vs. Ogbonna (2014) LPELR- 22308; (2014) 23 WRN 48, and Abah vs UBN Plc & Ors(2015) LPELR -24758 CA, where it was held: "We have stated repeatedly that the Police or any Law Enforcement Agency, for that matter, including the Economic and Financial Crimes Commission (EFCC) is not allowed to dabble into enforcement of civil contracts and agreements, or to engage in recovery of debts, under the pretext

of doing lawful duties." See the case of Oceanic Securities International Ltd vs Balogun & Ors (2013) ALL FWLR (Pt. 677) 653; Ibiyeye & Anor vs. Gold & Ors (2012) ALL FWLR (Pt. 659) 1074. And in the case of Skye Bank Plc vs. Njoku & Ors (2016) LPELR-40447 (CA), it was held: "...a party that employs the Police or any law enforcement agency to violate the fundamental right of a citizen should be ready to face the consequences, either alone or with the misguided agency... The Police have no business helping parties to settle or recover debt..." See again Ogbonna vs Ogbonna (2014) 23 WRN 48."

It is on the strength of the unchallenged facts contained in the affidavit in support of the application and the principles of law enunciated in the judicial authorities cited above that I come to the inevitable conclusion that the Respondents were in remiss when the 4th Respondent activated the mechanism of the 1st and 2nd Respondents to settle a score arising from a simple contract; and the 1st, 2nd and 3rd Respondents heedlessly abandoned their statutory duties and dabbled into a purely civil dispute where their discipline, expertise and training were not required. It is particularly condemnable that the 4th Respondent, as a law enforcement officer who should know better, chose rather to tow the path of official excess and irresponsibility which amounts to gross abuse of her office as a Police Officer. This Honourable Court shall not indulge and tolerate such irresponsible abuse of office.

There is no doubt that the Applicant has clearly made out a case of infringement of his fundamental rights. It is my considered view that the paragraphs of the affidavit which I find relevant in this regard are paragraphs 2

(i), (j), (k), (l), (m), (n), (o), (p), (q) and (r). These paragraphs established conclusively that the rights of the Applicant to personal liberty and dignity of the human person were breached in 2013, 2014, and 2020 and are in imminent danger of being breached following the relentless threats and intimidating presence of the 3rd Respondent and other operatives of the 1st and 2nd Respondents acting at the behest of the 4th Respondent. The fact that none of the Respondents, particularly the 4th Respondent who is at the epicentre of this storm, deemed it necessary to file a counter-affidavit narrating their own sides of the controversy and, in the process, challenging the facts in the affidavit in support of the Applicant's application means that this application is decided solely on the unchallenged affidavit evidence of the Applicant. Their failure to file any process in opposition is deemed an admission of the facts contained in the Applicant's affidavit in support of his application. In ***Anowu v. Ulu & Anor, supra***, the Court held that if the only evidence before the Court was that of the Applicant, the Court was bound to consider that material.

In ***NB Plc v. Akperashi, supra***, the Court of Appeal at pages ***33 – 35 paras A – F*** per Otisi, JCA held that,

> ***"It is trite law that any fact in an affidavit which is neither challenged nor contradicted is undisputed and is deemed admitted by the adversary and the Court will so hold and act thereon; Jim Jaja v. Cop Rivers State & Ors (supra), (2012) LPELR-20621(SC). In The Honda Place Limited v. Globe Motor Holdings Nigeria Limited (2005) LPELR-3180(SC), Edozie, JSC succinctly stated, page 33 of the E-Report: "The position of the law is that when in a situation in which facts are provable by affidavit, one of the parties deposes to certain facts, his***

adversary has a duty to swear to an affidavit to the contrary, if he disputes the facts. Where such a party fails to swear to an affidavit to controvert such facts, they may be regarded as duly established. See Agbaje v. Ibru Sea Foods (1972) 5 SC 50 at 55; Alagbe v. Abimbola (1978) 2 SC 39 at 40; Ajomale v. Yaduat (No.1) (1991) 5 NWLR (Pt. 191) 266." In Chairman, Chief Executive, NDLEA, Headquarters, Lagos & Ors v. Umeh & Anor (2014) LPELR-24373(CA), this Court, per Agube, JCA, graphically put it this way, pages 110-111 of the E-Report: "The Law is trite that facts sworn to in an Affidavit constitute evidence upon which the Court can act in the resolution of the issues in controversy. Thus, where as in this Appeal the case in the trial Court was fought purely on Affidavit evidence the Deponents are deemed as witnesses and the Court will treat the Affidavits and Counter-Affidavits as oral evidence supported by documentary evidence. See Akeredolu V. Akinremi (1985) 2 N.W.L.R (Pt.10) 787 and Alhaji Jibrin Babale V. Innocent Eze (2011) 11 NWLR (Pt. 1257) 48 at 69 Para. H; where as in this case the Appellants did not deem it fit to file Further Counter-Affidavit to controvert the averments of the Applicant/1st Respondent's Further Affidavit and Annexure "FA1" thereto, the Appellants had admitted to the facts as deposed to in the Further Affidavit and the Court below was duty bound to act on those uncontroverted facts as the truth of the matter. See Egbuna V. Egbuna (1989) 2 N.W.L.R. (Pt. 106) 773, Rakol Clinic & Maternity Hospital Ltd. V. Supreme Finance Investment Co. Ltd. (1991) NWLR (Pt. 612) 513, Long John V. Blakk (1998) 59 LRCN OOP 3864; and N.P.A. Vs. A.I.CO. (2010) 3

N.W.L.R. (Pt. 1182) 487 at 491." However, any such unchallenged and uncontradicted facts which are deemed admitted in the affidavit must be capable of proving and supporting the Applicant relying on such facts. That is to say, the affidavit evidence that is unchallenged must necessarily be cogent and strong enough to sustain the case of the Applicant; Ogoejeofo v. Ogoejeofo (2006) LPELR-2308(SC); Inegbedion v. Dr. Selo-Ojemen & Anor (2013) LPELR-19769(SC). The unchallenged evidence before the lower Court was that the 1st Respondent was detained from 18/2/2015 until about 3pm on 19/2/2015 for no justifiable reason. He was made to spend the night in deplorable conditions, all for no justifiable cause. He contended that his said detention violated his rights to personal liberty and human dignity protected under Sections 35(1) and 34(1) respectively of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Court below was duty bound to act on the uncontroverted facts as the truth of the matter."

I must, however, state quickly that upon a considered examination of the facts deposed to in the affidavit, the Applicant has been able to make out a breach of only his rights to personal liberty and dignity of the human person and the imminence of their further breach by the Respondents. His first relief which is for a declaration that it is the constitutional right of all citizens, the Applicant inclusive, to engage in contractual relationships, economic activities and business undertakings is not grantable for the singular reason that it is not one of the rights protected under Chapter IV of the Constitution. So also is the sixth relief sought in this application. See ***Aig-Imoukhuede v. Ubah & Ors, supra;***

Mujaid v. IBEDC & Ors, supra. I am not oblivious of the provisions of Article XXII(1) of the African Charter of Human and Peoples' Rights which provides that ***"all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind."*** Though this Charter has been domesticated in Nigeria and is part of our municipal laws by virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap 10) Laws of the Federation of Nigeria 2004, this Act ranks lower than the Constitution which is our grundnorm. It cannot, therefore, supplant the Constitution. This is even so, notwithstanding the provisions of Paragraph 3(b) of the Preamble of the Fundamental Rights (Enforcement Procedure) Rules, 2009 which enjoins the Courts to ***"respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitution."*** Besides, the economic development of the citizens is provided for under section 16 of the Constitution. Section 16 forms part of Chapter II of the Constitution whose provisions are not justiciable by virtue of section 6(6)(c) of the Constitution.

In the same vein, the Applicant has not been able to establish, through the facts disclosed in the affidavit in support of his application, how his right to freedom of movement was breached.

I will not fail to add here that having found that the Respondents were in remiss when they unlawfully abridged the fundamental rights of the Applicant to personal liberty and dignity of the human person, it is only logical that this Honourable Court award damages against them in favour of the Applicant. In

Skye Bank v. Njoku, supra, the Court held at ***page 31 paras D – E*** that ***"In fundamental rights action, damages automatically accrue, once the Respondent has been adjudged to have violated the Applicant's fundamental rights. See Ozide & Ors vs Ewuzie & Ors (2015) LPELR 24482 (CA); Ejefor vs Okeke (2000) 7 NWLR (Pt 665); Anogwie & Ors vs Odom & Ors (supra)."*** In ***Anowu v. Ulu & Anor, supra***, the Court observed at ***pages 17 – 18 paras D – E*** that ***"In JIDE ARULOGUN v COMM. POLICE LAGOS STATE & ORS (2016) LPELR- 40190 (CA), this Court held that where a specific amount is claimed, it is for the Court to consider the claim and in its opinion, the amount that would be justified to compensate the victim of the breach. For the avoidance of doubt, common law principles on award of damages do not apply to matters brought under fundamental rights, when a breach is proved the victim is entitled to compensation even if no specific amount is claimed. The damages automatically accrue. See; OZIDE & ORS v EWUZIE & ORS (2015) LPELR - 24482 (CA); IGWEOKOLO v AKPOYIBO & ORS (2017) LPELR - 41882 (CA); SSS & ORS v THE INCORPORATED TRUSTEE OF PEACE CORPS OF NIG & ORS (2019) LPELR- 47274 (CA); JULIUS BERGER NIG PLC v IGP & ORS (2018) LPELR - 46127; BASHIR BALA NUHU v SHITTU SALEH & ORS (2014) LPELR - 24616 (CA)."***

In view of the foregoing, therefore, it is my considered view and I so hold that the Applicant is entitled to recover damages against the Respondents for their breach of his fundamental rights to personal liberty and dignity of the human person.

In all, I find the application meritorious and the reliefs sought are accordingly granted to the extent set out below:-

1. **That the arrest of the Applicant by the 1st and 2nd Respondents in 2013 and 2014 at the instance of the 4th Respondent over a dispute which arose from the contractual relationship between the Applicant and the 4th Respondent is an infringement of the right of the Applicant to personal liberty and therefore contrary to section 35 of the Constitution of the Federal Republic of Nigeria 1999 as amended and Article VI of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.**
2. **That the persistent threats by the 3rd Respondent and other agents of the 1st and 2nd Respondents acting at the instance of the 4th Respondent to arrest the Applicant under the guise of investigating a criminal complaint is an infringement of the right of the Applicant to personal liberty as enshrined under section 35 of the Constitution of the Federal Republic of Nigeria 1999 as amended and Article VI of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and against the provisions of section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended.**
3. **That the use of the 1st, 2nd and 3rd Respondents by the 4th Respondents to harass, embarrass, criminalise, arrrest and intimidate the Applicant over a dispute which arose from a simple civil contract amounts to abuse of office and constitutes an infringement of the right of the Applicant to dignity of the human person.**
4. **That the 1st, 2nd, 3rd and 4th Respondents are hereby restrained from arresting, inviting or threatening to arrest or invite the Applicant in respect of the contract for the sale of land between the Applicant**

and the 4th Respondent being the dispute that gave rise to this application.

5. **That the 1st, 2nd, and 3rd Respondents are hereby ordered jointly to pay to the Applicant the sum of ₦500,000.00 (Five Hundred Thousand Naira) only as damages for the breach of the Applicant's rights to personal liberty and dignity of the human person. This, it is hoped, will serve as a lesson to the Police and to deter other law enforcement agencies from dabbling in purely civil transactions.**
6. **That the 4th Respondent is hereby ordered to pay to the Applicant the sum of ₦500,000.00 (Five Hundred Thousand Naira) only as damages for the breach of the Applicant's rights to personal liberty and dignity of the human person.**
7. **That the 1st, 2nd, 3rd and 4th Respondents are hereby ordered jointly to pay to the Applicant the sum of ₦100,000.00 (one Hundred Thousand Naira Only) as the cost of instituting and prosecuting this action.**
8. **The first relief sought by the Applicant, to wit:*"A Declaration that it is the constitutional right of all citizens, the Applicant inclusive, to freedom and liberty inclusive of the right to contractual engagement in economics and business undertakings, without let or hindrance except in accordance with law, rule of law, the extant Constitution of the Federal Republic of Nigeria and the African Charter on Peoples' and Human Rights"*** **and the sixth relief sought by the Applicant, to wit: *"An Order directing the 4th Respondent to approach any competent civil court of law for ventilating his (sic) grievances and seek redress for any monies she is claiming from the Applicant, if she feels she has any legitimate cause of action***

***instead of employing the apparatus of the Nigerian Police Force and its officers to do money recovery"*, are not grantable as they fall outside the remit of fundamental rights enforcement proceedings. It is accordingly refused.**

This is the judgment of this Honourable Court delivered today, the 24th of March, 2021.

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HON. JUSTICE A. H. MUSA
JUDGE
24/03/2021

APPEARANCES:
FOR THE APPLICANT:
Emmanuel Ezeifedikwa Esq.

FOR THE RESPONDENTS

No legal representation.