IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA

THIS THURSDAY, THE 24TH DAY OF JUNE, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/0981/18

BETWEEN:

1. MASCOT UZOR KALU
2. SHARLOTTE FIRST PROPERTIES LIMITED } **...APPLICANTS**

AND

1. GUARANTY TRUST BANK PLC
2. INSPECTOR GENERAL OF POLICE
3. DCP HABU SANI
4. ASP SUNDAY IDOWU } **.....RESPONDENTS**

JUDGMENT

This is a matter filed under the Fundamental Rights Enforcement Procedure Rules 2009. The Amended application is dated 18th November, 2019 and filed on 21st November, 2019. The Reliefs sought by Applicants as contained in the statement accompanying the application are as follows:

i. **A Declaration that the general duties of the Nigeria Police Force under Section 4 of the Police Act Cap. P19 LFN, 2004 which shall be employed for the prevention and detection of crime and do not extend to recovery of debt which is the subject matter of Suit No. FCT/HC/CV/2365/2012: Guaranty Trust Bank Plc V Sharlotte First Properties Ltd & Another.**

ii. **A Declaration that the arrest and detention of the 1st Applicant on 14th February, 2018 from 9.30am to 7pm in the facility of the 2nd Respondent by the 2nd – 4th Respondents at the instance of the 1st Respondent constitutes an infringement of the 1st Applicant's fundamental rights to personal liberty and freedom of movement as enshrined under Sections 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 as amended and therefore wrongful, illegal, unconstitutional, null and void.**

iii. **A Declaration that the arrest and detention of the 1st Applicant on the 14th February, 2018 by the 2nd – 4th Respondents at the instance of the 1st Respondent with the sole purpose of coercing or compelling the 1st Applicant to admit being indebted to the 1st Respondent and state the way and manner the alleged debt is to be paid by the Applicants to the 1st Respondent despite the pendency of Suit No. FCT/HC/CV/2365/2012: Guaranty Trust Bank Plc V Sharlotte First Properties Ltd & Another is unconstitutional, wrongful, illegal, null and void.**

iv. **Declaration that the transaction between the Applicants and the 1st Respondent was a civil transaction predicated on banker and customer relationship and which transaction does not involve the commission of any crime to warrant any report/petition to the 2nd - 4th Respondents by the 1st Respondent.**

v. **A Declaration that the 1st Respondent's petition to the 2nd Respondent dated January 17, 2017 against the Applicants is malicious as same is based on an entirely civil transaction of banker and customer relationship and has caused the infringement of the 1st Applicant's fundamental rights to personal liberty and freedom by the respondents.**

vi. **Payment of N1, 000, 000, 000.00 (One Billion Naira) damages for the infringement of the 1st Applicant fundamental rights to personal liberty and freedom of movement.**

vii. **An Order of perpetual injunction restraining the Respondents whether by themselves, their servants, staff, officers, men and agents wherever and**

whenever from further threatening to arrest, arrest and detain the 1st Applicant in respect of the aforesaid subject matter of Suit No. FCT/HC/CV/2365/2012 between the Applicants and the 1st Respondent.

viii. And for such further order and other orders as this Honourable Court may deem fit to make in the circumstances.

<u>Grounds upon which the reliefs are sought</u>:

i. The duties of the Nigeria Police Force under Section 4 of the Police Act Cap. P19 LFN, 2004 do not extend to recovery of debt the subject matter of Suit No. FCT/HC/CV/2365/2012: Guaranty Trust Bank Plc. V Sharlotte First Properties Ltd & Anor.

ii. The transaction between the Applicants and the 1st Respondent was entirely a civil transaction for which the 1st Respondent had commenced a civil proceedings only to turn around and maliciously petition against the Applicant to the 2nd Respondent.

iii. The arrest and detention of the 1st Applicant on 14th February, 2018 from 9.30am to 7pm in the facility of the 2nd Respondent by the 2nd – 4th Respondents at the instance of the 1st Respondent constitutes an infringement of the 1st Applicant's Fundamental Rights to personal liberty and freedom of movement as enshrined under Sections 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 as amended and therefore unconstitutional, null and void.

iv. The arrest and detention of the 1st Applicant on the 14th February, 2018 by the 2nd – 4th Respondents at the instance of the 1st Respondent with the sole purpose of coercing or compelling the 1st Applicant to admit being indebted to the 1st Respondent to state the way and manner the alleged debit is to be paid by the Applicants to the 1st Respondent despite the pendency of the aforesaid Suit No. FCT/HC/CV/2365/2012 is wrongful, illegal, unconstitutional, null and void.

The application is supported by a 42 paragraphs affidavit with six (6) annexures marked as **Exhibits MUK1 – MUK6**. A written address was filed in which one issue was raised as arising for determination, to wit:

"In the circumstances of this case, whether the arrest and detention of the 1st Applicant on 14th February, 2018 by the Respondents in respect of the debt of the 2nd Applicant tantamounts to infringement of the 1st Applicant fundamental rights to personal liberty and freedom of movement and therefore unlawful, wrongful, unconstitutional, null and void."

The address which forms part of the Record of Court was essentially anchored on the fact that the actions of the 2nd – 4th Respondents in arresting and detaining 1st Applicant at the instigation of 1st Respondent over a matter that is purely civil or contractual in nature constituted a violation of Applicants rights to personal liberty, dignity and freedom of movement as enshrined in the 1999 Constitution which accordingly entitles Applicants to the Reliefs sought in their claim. I will refer to the address, where necessary in the course of this judgment.

In opposition, the 1st Respondent filed an Amended Counter-Affidavit of seven (7) paragraphs dated 18th November, 2019 with five (5) annexures marked as **Exhibits GTB1 to GTB 4**.

A written address was filed in compliance with the FREP Rules in which two (2) issues were raised as arising for determination as follows:

1. **Whether having regard to the facts of this case and circumstances of this case, the action of the 1st Respondent is so unreasonable as to amount to a violation of the Applicants' Fundamental rights?**

2. **Whether, based on the evidence adduced before this Honourable Court, the Applicants have discharged the burden of proof in this matter to warrant the judgment of this Honourable Court in their favour.**

Before submissions were made on the above issues, the address raised and addressed two (2) preliminary issues to wit:

1. **That Relief (iv) raised by Applicant is not a claim that is cognizable under a Fundamental Rights Matter. That the said relief pertains to a**

determination of the nature of the transaction between Applicants and the 1st Respondent which has nothing to do with Fundamental Rights and accordingly is incompetent and should be struck out.

2. **That an action under the Fundamental Rights (Enforcement Procedure) Rules 2009 can only be instituted by an individual and he must do so independently and not collectively. It was submitted that the extant application having been filed by more than one person to enforce a right under the FREP Rules is incompetent and liable to be struck out.**

On the substantive issues, the address of 1st Respondent is basically to the effect that the constitutionally guaranteed rights of Applicants was not in any way or manner infringed by Respondents and that the actions of 2nd – 4th Respondents complained of were based on a petition against Applicants by 1st Respondent which border essentially on allegations of obtaining money by false pretences, criminal breach of trust and criminal misappropriation which the 2nd – 4th Respondents are statutorily empowered to investigate and which 1st Respondent has no control over how the investigations are conducted. Further that the whole essence off this Application is to seek to surreptitiously use the court to prevent the police from investigating the serious allegations of criminality made against 1st Applicant.

The 2nd – 4th Respondents on their part filed a 15 paragraphs counter-affidavit with 5 annexures marked as **Exhibits NPF1 – NPF5**. A written address was filed in which two issues were raised as arising for determination as follows:

a. **Whether there exists a prima facie evidence of commission of crime against the Applicants as to warrant the intervention of the 2nd – 4th Respondents and the arrest of the 1st Applicant.**

b. **Whether the Applicants have made out a case of breach of their fundamental rights as to be entitled to the Reliefs sought.**

The substance of the address of 2nd – 4th Respondents is that the Applicants have not made out any case in proof of the allegations that their Fundamental Rights were infringed and that the actions taken by them was based or predicated on a

criminal petition against Applicants which they are by law statutorily empowered to investigate. That the present action is simply aimed at preventing them from continuing with their investigations on the alleged criminal infractions committed by 1st Applicant.

At the hearing, counsel on either side of the aisle relied on the processes filed and each adopted the submissions in their addresses. The Applicants urged the court to grant the Application while on the other side of the aisle, both sets of Respondents urged that the Application be dismissed.

It is also important to add that in the course of the adoption of the addresses, I called on counsel to make submissions on the following points to wit:

1. **Whether an application filed by more than one person to enforce a right under the Fundamental Rights Enforcement Procedure Rules is competent.**

This point was raised and addressed by 1st Respondent in their address but the Applicant and the 2nd – 4th Respondents did not respond to the point so raised.

On this point, counsel to the Applicants submitted that the joinder of 2nd Applicant to the extant application is simply one of mis-joinder which will not affect the substance of the Rights of the Applicant or affect the jurisdictional powers of the court to entertain the application. On the part of the two sets of Respondents, there contention is that the law is settled that there cannot be a joint application for enforcement of fundamental human rights as done here.

2. **Whether a corporate body such as 2nd Applicant can apply for the enforcement of its fundamental human rights.**

The Applicants counsel did not directly proffer an answer but relied on the earlier submission that the presence or absence of 2nd Applicant will not affect the determination of the infractions of fundamental right made by 1st Applicant.

On the other side of the aisle, both sets of Respondents submitted that a corporate body or company such as the 2nd Applicant cannot apply to enforce its fundamental human rights and that accordingly the joinder of 2nd Applicant to this action further undermines the present case. The case of **First Bank of Nigeria Plc & ors V A.G.F (2018) LPELR 46884** was cited.

I have given an insightful consideration to all the processes filed by parties together with the oral amplification and it seems to that notwithstanding how each party framed the issues as arising for determination, the material issue that really calls for the most circumspect of this courts consideration is simply **whether on the facts and materials before court, the applicants have proved that their fundamental rights were infringed by 1st to 4th Respondents to entitle them to all or any of the reliefs sought**.

This umbrella issue raised by court conveniently accommodates all the issues raised by parties and has succinctly and with sufficient clarity brought out the pith of the contest subject of the present enquiry and it is on the basis of the said issue that I shall proceed to presently decide this matter.

Before I do so, let me address the threshold issues relating to the competence of the extant application particularly the question of whether the Applicants can jointly file the extant application and the question of whether the 2nd Applicant, a corporate body can institute a fundamental human right matter.

On the first point, the cases of **Udo V Robson & ors (2018) LPELR – 45183 (CA) and Kporharor & Anor V Yedi & ors (2017) LPELR – 42418 (CA)** and some other decisions of the Superior Court of Appeal have donated the position that two or more persons cannot jointly sue for enforcement of their fundamental rights. On the basis of these decisions which are no doubt binding on this court, the extant case would have been **compromised, abinitio, without any question**.

The attention of court was however drawn to a recent decision of the same Superior Court of Appeal, Kano Division in Suit No. CA/KN/289/2019 between **Alhaji Ali Ahmad Maitagaran & Anor V Hajiya Rakiya Saidu Dankoli** delivered on 27th October, 2020 which appeared to have altered the existing narrative and now positing that two or more persons can jointly sue for enforcement of their fundamental human rights.

Because of the rather still evolving and fluid nature of the jurisprudence on this point at the moment, let me at some length produce some portions of the unanimous decision of the court per **Habeeb Adewale Olumuyiwa Abiru** J.C.A thus:

"The records show that one of the contentions of the second Appellant on his preliminary objection before the court was that the action, being a joint one by the Respondents, was incompetent as two Respondents cannot jointly file an application for the enforcement of their fundamental rights and he cited the case of Kporharor V Yedi (2017) LPELR 42418 (CA) in support of his position. The records show that the lower court considered the provisions of Section 46 of the 1999 Constitution and the provisions of the Fundamental Rights (Enforcement Procedure) Rules 2009 and the lower court stated that it painstakingly read the decision of the Court of Appeal in Kporharor V Yedi and that it noted that the decision was based on the Fundamental Rights (Enforcement Procedure) Rules 1999 which was different from Fundamental Rights (Enforcement Procedure) Rules 2009 applicable in the present case.

The lower Court expounded on the provisions of 46 (1) of the Constitution, Section 14 of the Interpretation Act and of the Fundamental Rights (Enforcement Procedure) Rules 2009 and it relied on the decision of this Court in Dilly Vs IGP (2016) LPELR – 41452 (CA) and of the Supreme Court in the case of Amalgamated Trustees Limited Vs Associated Discount House Limited (2007) 15 NWLR (Pt.1059) 118 in coming to the conclusion that the decision of this Court in Kporharor Vs Yedi was not applicable to the facts and circumstances of this case. The lower court was of the view that multiple parties can file one action for the enforcement of their fundamental rights under the Fundamental Rights (Enforcement Procedure) Rules 2009…

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

Now, Order 9 Rule 1 of the Federal High Court (Civil Procedure) Rules 2009 provides that "All persons may be joined in one action as plaintiffs in whom any right to relief is alleged to exist whether jointly or severally and judgment may be given for such plaintiffs as may be found to be entitled to relief and for such relief as he or they may be entitled to without any amendment." The Courts have interpreted this provision as permitting persons who have rights arising from one common cause to file a joint action as co-claimants to ventilate the rights – Hyson (Nigeria) Limited Vs Ijeoma (2008) 11 NWLR (Pt.1097) 18, Fode Drilling (Nig.) Ltd Vs Fabby (2017) LPELR 42822 (CA), AbdulRaheem Vs Oduleye (2019) LPELR – 48892 (SC). Dovetailing from the above position of the law, it has been held that a joint action filed by more than one person to ventilate breach of their fundamental rights arising from one and same action of a defendant or defendants is competent – Uzoukwu Vs Ezeonu II (1991) 6 NWLR (Pt.200) 708 at 761, Ihejiobi Vs Ihejiobi (2013) LPELR 21957 (CA), Ubochi Vs Ekpo (2014) LPELR 23523 (CA), Orkater Vs Ekpo (2014) LPELR 23525 (CA). A read through of the case of the Respondents on the affidavit in support of their application shows that the rights they sought to ventilate arose from a common cause. The finding of the lower court that the action of the Respondents was competent cannot thus be faulted. The second issue for determination is resolved in favour of the Respondents."

The above decision is clear. The provision of Order 9 Rule 1 of the Federal High Court (Civil Procedure) Rules 2009 construed by the learned jurist is in *pari materia* with Order 13 Rule 1 of the High Court of the Federal Capital Territory Abuja (Civil Procedures) 2018. This decision therefore clearly donates the position as captured by the court that a **"joint action filed by more than one person to ventilate breach of their fundamental rights arising from one and same action of a defendant or defendants is competent."**

In the circumstances, it appears to me reasonable that lower courts such as mine thread with caution until perhaps there is a clear judicial pathway by our Superior Courts on the vexed question of whether multiple parties can file one action for the enforcement of their fundamental rights under the Fundamental Rights (Enforcement Procedure) Rules, 2009.

One more point and a very important one too which is often glossed over. The case of **FBN Plc & ors V A.G Federation (2018) 7 NWLR (pt.1617) SC 121** was a Fundamental Rights matter decided by our revered Apex Court as recently as 2018. It is true that the specific issue of whether multiple parties can file one action for enforcement of their Fundamental Rights was not a precisely defined issue in the case but there is no denying the fact that the case involved multiple parties or applicants who filed one action for enforcement of their Fundamental Rights. The Applicants were:

1. **First Bank of Nigeria Plc**
2. **Mr. Kofo Majekodunmi**
3. **Mr. Olayiwola Yahaya**
4. **Femi Bakre**
5. **Mr. Kingsley Obakpolor**

Even though the case was rooted in the **Fundamental Rights (Enforcement Procedures) Rules of 1979**, both the **Court of Appeal** and the **Supreme Court** decided the case on the merits and never raised any complaints or concerns about the multiple Applicants who filed one action to enforce their Fundamental Rights.

It is settled that our Superior Courts have plenitude of powers to have even *suo motu* raised the point and struck out the said action for want of competence but no such action was taken. It will be overtly presumptuous on my part to pre-empt the Apex Court but it is safe to say that while I may not have any crystal ball to determine how our revered law lords at the Apex Court may determine the issue when the point eventually is dealt with by them, the decision in **FBN Plc & ors (supra)** gives an indication as to how they may treat the issue involving multiple Applicants filing a single action to enforce their Fundamental Rights. If the Apex Court treated on the merits a case involving multiple Applicants under the 1979 Rules that decision must then serve as an invaluable guide, for now.

The 2009 Fundamental Rights (Enforcement Procedure) Rules which seeks to actively expand the frontiers of enforcement of Fundamental Rights when added to the equation only makes the issue more interesting, compelling and indeed intriguing. I leave it at that.

Now on the question of whether a **Corporate body** can apply to enforce its fundamental rights, here too, there is yet no clear consensus of judicial opinion on the issue, so again one must thread with some measure of circumspection.

There is no limitation or qualification to the nature of persons who may seek to enforce contravention of their rights under Chapter IV of the constitution. The enforcement of the rights guaranteed under Chapter IV is without exception or qualification for all persons. Sections 36 (1) and 46 (1) and (2) give access to the Court for the enforcement of the rights guaranteed to all manner of people without exception who claim their rights have been trampled upon. See **Ahmad V Sokoto State House of Assembly (2003) FWLR (pt.174) 306**.

It is also settled principle that corporate entities have the right to sue and be sued in their corporate name. Judicial authorities donated the clear position that this right to sue does not exclude fundamental rights action. A company was therefore a proper party in an action for enforcement of fundamental rights. In **Kelvin Peterside V Imb (1993) 2 NWLR (pt.278) 710**, the court held that a company could be liable for infraction of fundamental rights and can also enforce same. Also in **Onyekwuhije V Benue State Govt. (2005) 8 NWLR (pt.928) 614 at 646 – 647**, it was held that an artificial person can apply for the enforcement of their fundamental rights. Ogbuagu JCA (as he then was and now of blessed memory) stated as follows:

"I will pause here and reject with respect the submission by the respondent's learned counsel that Chapter IV of the 1999 Constitution does not apply to artificial persons. That they are rights peculiar to human beings and that they are recognised as belonging to individuals by the very fact of their humanity… It must be borne in mind and this is settled that a limited liability company such as the 2nd appellant (is indeed limited) is at common law a person ficta – juristic personality. Therefore it can only act through its agents or servants…. Mrs. Sule can now see after reading these great authorities that limited liability companies, like the 2nd appellant, are not robots. They act and operate through human beings – person or persons. The said submission with respect is not only faulty but completely misconceived."

However, in the case decided by Supreme Court in **FBN Plc & ors V A.G. Federation (supra)**, the Court stated that an artificial person cannot be physically arrested and detained. Counsel to the Respondents in their submissions before me would appear to have extended the purview or remit of the judgment to mean that an artificial person cannot maintain an action for violation of its fundamental human rights in all circumstances. Is that really a fair representation of what the case decided? It is true that in the said case, the Supreme Court held that the 1st Applicant being an artificial person was incapable of being arrested and detained. That the 2nd – 5th appellants, being natural persons, were the ones who could institute an action for enforcement of their fundamental human rights. The court further held that the 1st Appellant not being a person capable of being arrested and detained was not entitled to damages in the case although it may have its remedy elsewhere.

Reading carefully the decision of the Apex Court which obviously is binding on all courts and no point will be achieved trying to second guess them, it would appear that this decision does not donate a general position or conclusion that an artificial person cannot apply for the enforcement of fundamental rights.

Now it is not in doubt that the decision of the Apex Court in **FBN Plc V A.G. Fed (supra)** is binding on all lower courts including this court under the doctrine of judicial precedent. This doctrine properly understood postulates that where the facts in a subsequent case are similar or close to the facts in an earlier case that has been decided upon, judicial pronouncement in the earlier case are subsequently utilized to govern and determine the decision in the subsequent case. See **Nwangwu V. Ukachukwu (2000)6 N.W.L.R (pt.662)674.** What is however binding on a lower court in the decision of a higher court is the principle or principles decided and not the rules and where the facts and circumstances in both cases are not similar or the same, the inferior court is not bound by the decision of the superior court. See **Clement V. Iwuanyanwu (1989)3 N.W.L.R (pt.107)39; Emeka V. Okadigbo (2012)18 N.W.L.R (pt.1331)35.**

In **Ugwuanyi V. Nicon Ins Plc (2013)11 N.W.L.R (pt.1366)546,** the Supreme Court made the point thus:

"…cases remain authorities only for what they decided. Thus an earlier decision of this court will only bind the court and subordinate courts in a subsequent case if the facts and the law which inform the earlier decision are the same or similar to those in the subsequent case. Where, therefore, the facts and/or legislation, which are to inform the decision on the subsequent case differ from those which informed the courts earlier decision, the earlier decision cannot serve as a precedent to the subsequent one.

Now the pronouncements of the Supreme Court in **FBN V A.G Fed (supra)** must be seen in the context of the issue (1) dealt with in the lead judgment of Augie JSC at page 154 as follows:

"Whether or not the learned justices of the Court of Appeal were wrong when they held that the 1st Appellant being a bank is an artificial person who cannot physically be arrested and detained and consequently was not entitled to damages."

This case will appear not to donate a general principle that in all other cases of fundamental rights, a company or artificial person cannot properly secure enforcement of its rights. This authority is authority for the principle that an artificial company cannot be **physically arrested and detained and consequently cannot be entitled to damages**.

It is to be noted that this case was decided based on the **1979 FREP Rules** just like the other decisions earlier cited. It would appear that the **2009 FREP Rules** has introduced a new dynamic to the discourse as one of the fundamental objectives of the 2009 FREP Rules is that 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 realising the rights and freedoms contained in them and affording the protections intended by them. The dictates of the facts and justice of each case and the character and nature of the Reliefs sought on the infractions complained of would then appear to largely determine whether a Corporate body can be heard to complain of violations of its fundamental rights.

Indeed in the said case, the Apex Court understandably refused to grant a Relief brought by a company, complaining of arrest and detention, which the Court held was factually impossible, not being a bodied person, that could be arrested and

detained. It would however appear that a Corporate body can for example sue for the protection of its fundamental rights to freedom of association and assembly, freedom from discrimination; the rights not to be harassed, intimidated etc especially now in the broad context of the purposive 2009 FREP Rules.

On the basis of the decision of the Apex Court which was based on the 1979 Rules, it suffices to state that whilst corporate bodies are afforded the right to approach the court through their officials for the enforcement of fundamental rights, it is not every violation of such rights that can be enforced by such entities. This explains why the court held that it was physically impossible for the 1st Appellant, a bank, to be arrested and detained and that the Court of Appeal was therefore right when it refused to award damages to the 1st Appellant for the unlawful arrest and detention of the 2nd to 5th Appellants.

The decision of court on the above important preliminary issues provides legal basis to now determine the justice of the application. Even if I am wrong and I accept that I may be wrong in my understanding of the decision of the Apex Court, I note that while the application may have been jointly filed with 2nd Applicant as a corporate body, the substance of almost **all the Reliefs** sought was to enure essentially in favour of only the **1st Applicant**. In the circumstances and in view of the fluidity with respect to the issues raised and addressed above, it will perhaps serve the greater interest of justice to determine the substance of the case and resolve the questions whether the Reliefs are even availing on the merit. I proceed to do so now.

ISSUE 1

Whether on the facts and materials before court, the Applicants have established that their fundamental rights were infringed by Respondents to entitle them to any or all of the Reliefs sought.

Now it is settled principle of general application that an applicant who seeks for the enforcement of his fundamental rights under **Chapter IV of the Constitution** has the onus of showing that the reliefs he claims comes within the purview of the fundamental rights as contained in chapter IV and this is clearly borne out by the express provision of Section **46 of the 1999 Constitution and Order 11 Rule 1 of the FREP Rules 2009. In Uzoukwu V. Ezeonu II (1991)6 N.W.L.R (pt.200)708**

at 751, the Court of Appeal in construing **Section 42 of the 1979 Constitution** which is in *pari material* **with Section 46 of the 1999 Constitution** stated as follows:

"The Section requires that a person who wishes to petition that he is entitled to a fundamental right:

a. Must allege that any provision of the fundamental rights under chapter IV has been contravened, or
b. Is likely to be contravened, and
c. The contravention is in relation to him''.

The reliefs which therefore an applicant may seek under the FREP Rules are specifically limited to any of the fundamental rights prescribed and embodied in chapter IV of the Constitution. See **Dongtoe V. Civil Service Commission Plateau State (2001)19 WRN 125; Inah V. Okoi (2002)23 WRN 78; Achebe V. Nwosu (2002)19 WRN 412.**

I had at the beginning spelt out the reliefs of applicants in their statement accompanying the application and they clearly come within the purview of fundamental rights under **Chapter IV of the 1999 Constitution.** The contention by 1st Respondent that Relief IV claimed by Applicants is not cognisable under the extant procedure clearly would not fly. Relief IV clearly forms or is an integral pivot of the narrative of Applicants relating to the infractions complained of. I do not accept that it can be isolated and treated as a distinct or independent element of the case presented by Applicants. The burden therefore was on the Applicants alleging that their fundamental rights have been contravened or likely to be contravened to place before the court cogent and credible facts or evidence to enable the court grant the reliefs sought. See **Fajemirokun V. C.B.C.I (Nig) Ltd (1999)10 N.W.L.R (pt.774)95.**

In resolving this dispute, it may be necessary to give a brief background facts of the matter which are largely not in dispute.

On the side of the Applicants, their case is simply that the 2nd Applicant was granted an import finance facility in the sum of **N300, 000, 000** and that as one of the collaterals for the facility, the 2nd applicant created a legal mortgage over its

property at Jabi District Abuja. It was their case that when 2nd Applicant defaulted in the settlement of its financial obligations, the 1st Respondent sold the property at gross under value to one Pat Okoye and that still not satisfied, they instituted an action at the High Court vide Exhibit **MUK1** to recover possession and for outstanding balance on the facility. That the Applicants filed their defence in the said case.

The Applicants further averred that the 1st Respondent abandoned the case and resorted to use 2nd – 4th Respondents to recover the alleged debt and lodged a criminal complaint against them. That the 1st Applicant was then invited by 2nd – 4th Respondents vide **Exhibits MUK3** and **MUK5** but he was unable to attend due to health challenges and that sometimes on 14th February, 2018, he was arrested around 8 am by 2nd – 4th Respondents where he was informed of the contents of the petition and he was released same date by 7pm. The 1st Applicant complained of harassment and intimidation during the period he was arrested and detained on 14th February, 2018.

These actions of Respondents over a matter that is civil or contractual, the 1st Applicant contends, infracted on his right to personal liberty and the dignity of his person. The Relief claiming damages is clearly dependent on the positive proof of the alleged infractions.

These allegations were all variously and vigorously denied by Respondents. The case of 1st Respondent is simply that the 2nd Applicant trades in building materials and was granted a credit facility in the sum of N300 Million Naira in March 2009 to finance the importation of roofing sheets vide **Exhibit GTB1** and this was secured by a legal mortgage over 2nd Applicant's property at Jabi and the personal Guaranty of 1st Applicant vide **Exhibits GTB2A** and **GTB2B**.

It is the case of 1st Respondent that rather than use the funds for the purpose the facility was granted, the 1st Applicant fraudulently dissipated the funds and refused to discharge the resulting indebtedness and they then accordingly exercised their right of sale over the property and then filed an action to recover possession and that the case is presently at the trial stage.

The 1st Respondent further averred that after scrutinizing the transaction, they discovered that the credit facility given was diverted to other accounts for other

purposes unrelated to the purpose for which the facility was granted and that several fictitious invoices were presented to conceal these fraudulent diversion of funds vide **Exhibit GTB3** and that following these discoveries, they then wrote a petition to 2nd Respondent to investigate the criminal allegations against Applicant vide **Exhibit GTB4**. The 1st Respondent aver that they have no control over how 2nd – 4th Respondents exercise their powers of investigation of criminal complaints which they contend is different from the civil action they filed which has no criminal element.

On the part of the 2nd – 4th Respondents, their narrative simply is that based on the petition of 1st Respondent vide **Exhibit NPF1**, they invited the 1st Applicant twice to hear his own side of the story vide **Exhibit NPF2** which he refused to attend and they then obtained a warrant of arrest vide **Exhibit NPF3** and arrested the 1st Applicant on 14th February, 2018. His statement was taken vide **Exhibit NPF4** and he was released on bail same date vide **Exhibit NPF5**.

The 2nd – 4th Respondents denied intimidating or harassing 1st Applicants; that they were simply carrying out there statutory duties of investigating the criminal complaints made against 1st Applicant.

The crux of this dispute essentially relate to whether the actions of the Respondents in the circumstances of this case can legally and constitutionally be countenanced. The Respondents submitted that their actions were within the purview of constitutionality and applicable laws, while the Applicants have argued otherwise.

Now it is not in doubt the fundamental right to personal liberty and freedom of movement are enshrined in **Section 35(1) and 41(1)** as follows:

"35(1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty same in the following cases and in accordance with a procedure permitted by law…

41(1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom…"

The above provisions appear to me clear. **Section 35(1)** places premium on the personal liberty of every person and any deprivation of same must be consistent

with the procedure permitted by law or as streamlined within the same constitutional provisions, for example under **35(1)(c)** as follows:

"35(1) 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 –

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence."

Section 41(1) on the other hand emphasises the right of freedom of movement and like the provision of 35(1), any derogation must be as allowed by law.

The only point to quickly underscore as I shortly evaluate the facts of this case is that though the constitution guarantees fundamental rights, it also provides for restrictions and grounds on which it can take away, derogate or limit the exercise of fundamental rights in the interest of the state by laws which are reasonably justifiable in a democratic society on grounds of defence, public safety, public order, public morality and freedom of other persons. The bottom line is that these rights are not **absolute**. The statutory and or constitutional limitations imposed on enjoyment of these rights are meant to safeguard the rights of others and protect any form of lawlessness.

The task before me new is to apply the above provisions in relation to the alleged infractions and then situate any violation(s).

Now as already alluded to, it is common ground that it was the 1st Respondent that wrote a petition vide **Exhibit GTB4** to the 2nd Respondent to investigate criminal allegations against the Applicants which set in motion the process that is now subject of the extant complaint. Put another way, this petition ultimately led to the arrest and detention of 1st Applicant. The question here is whether the arrest of the 1st Applicant was based on reasonable suspicion of having committed a criminal offence within for example the provision of Section 35(1) (c) of the Constitution or indeed the provision of any law. Related to this is whether the 1st Respondent is absolved of any wrong doing in the circumstances. The role thus played by each

party deserves critical scrutiny. It is important to state that the test as to what is reasonable belief that a person has committed an offence is objective. It is not what the arrestor considered reasonable but whether the facts within his knowledge at the time of the arrest disclosed circumstances from which it could be easily inferred that the person arrested committed any offence. See **Oteri V Okerodudu (1970) 1 All NLR 194; C.O.P V Obolo (1989) 5 NWLR (pt.120) 130**.

As stated earlier, let us now situate whether there was reasonable **basis** for the actions of 1st Respondent and then that of 2nd – 4th Respondents in the circumstances. I will here at some length refer to the affidavit and in particular, the facts said to have been supplied by **Nicholas Igwebuike**, the **legal supervisor in the legal group of 1st Respondent** which in my opinion has provided sufficient and clear facts of this case as follows:

"4. That the facts deposed to herein where not within my personal knowledge are derived from information given to me by Nicholas Igwebuike, Legal Supervisor in the Legal Group of the 1st Respondent at a meeting in our office on the 7th January 2020 at about 2:00pm and I verily believe him as follows:

b. That in response to paragraphs 8 and 9 of the Applicants' Affidavit in support of their Application, the 2nd Applicant opened an account with the 1st Respondent with the 1st Applicant, the alter ego of the 2nd Applicant, as the operator of the account. The 2nd Applicant trades in building materials and was granted a credit facility in the sum of N300 Million in March 2009 to finance the importation of roofing sheets. Attached and marked Exhibit GTB 1 is a copy of the offer of credit facility.

c. That the credit facility was secured by legal mortgage over the 2nd Applicant's property located at Ebitu Ukiwe Street, Jabi, Abuja and Personal Guarantee executed by the 1st Applicant. Attached and marked as Exhibits GTB 2A and GTB 2B respectively are copies of the legal mortgage and the Personal Guarantee of the 1st Applicant.

d. That pursuant to the afore stated facility, the Applicant was supposed to import the building materials which was the purpose for the facility, but

rather, the 1st Applicant fraudulently dissipated the funds granted under the credit facility and refused to discharge the resulting indebtedness.

e. That in response to paragraphs 10, 11, and 12 of the Applicants' Affidavit in support of their Application, the 1st Respondent exercised its right of sale over the mortgaged property as a result of the Applicants' failure/refusal to settle its indebtedness after conducting a valuation of the mortgaged property which was done by a reputable Estate Valuer.

f. That further to the above, the 1st Respondent commenced a civil action to recover possession of the mortgaged property sold pursuant to its power of sale and to recover the outstanding indebtedness of the Applicants in Suit No. FCT/HC/CV/2365/2012.

g. That contrary to paragraphs 13 and 14 of the Applicants' Affidavit in support their Application, the 1st Respondent is diligently prosecuting the civil action and the matter is currently at the trial stage. The matter is now adjourned to 4th February, 2020 for continuation of defence.

h. That in response to paragraph 15 of the Applicants' Affidavit in support of their Application, after scrutinizing the transaction under which the 2nd Applicant was granted the credit facility, the 1st Respondent discovered that the funds granted to the 2nd Applicant have been fraudulently diverted by the Applicants for other purposes. The 1st Respondent discovered that a substantial portion of the said credit facility was diverted to other accounts unrelated to the purpose for which the facility was granted (i.e. importation of roofing sheets). To the knowledge of the Bank, no Letter of Credit for importation of Roofing Sheets was established by the Applicants contrary to the agreement reached with the 1st Respondent under the credit facility. Several fictitious invoices were presented to the 1st Respondent to conceal these fraudulent diversions of funds. Attached and marked Exhibit GTB 3 are copies of some of the invoices.

i. That following the discoveries in paragraph (h) above, the 1st Respondent wrote a petition to the 2nd Respondent to investigate the criminal allegations

against the Applicants. Attached and marked Exhibit GTB 4 is a copy of the petition written by the 1st Respondent to the 2nd Respondent to investigate the criminal allegation against the Applicants.

j. That the petition written by the 1st Respondent to the 2nd Respondent was in respect of the offences of fraudulent diversion of depositors' funds by the Applicants under the credit facility granted by the 1st Respondent to the 2nd Applicant.

n. That in specific response to paragraph 32(c) of the Applicants' Affidavit in support of their application, the 1st Respondent's petition was based on criminal allegations against the Applicants channelled through the appropriate authority (the 2nd Respondent) to investigate the said petition whilst the suit instituted in Court which the Applicants makes reference to is a civil action and has no criminal element."

The above facts speaks clearly and in volumes to the fact that by **Exhibit GTB1**, the 1st Respondent made an offer of Banking facility to the Applicants in the sum of N300 Million. This relationship is obviously contractual and provides and or contains the terms for the mutual reciprocity of legal obligations. Where there is a valid agreement or contract such as Exhibit GTB1, parties must be held bound by the agreement and by all its terms and conditions. There should be no room for departure from what is stated therein. See **Jeric (Nig) Ltd V Union Bank Nigeria Plc (2000) 15 NWLR (pt.691) 447 at 462 – 463 G-A; 466 C**.

By the said Exhibit GTB1, the facility was secured by a legal mortgage over 2nd Applicants property and a personal guarantee by 1st Applicant and the tenor was for one (1) year but disbursed in 90 days tranches with roll over option.

The 1st Respondent then alleged that the facility was not utilised for purpose but fraudulently dissipated and that the Applicants refused to discharge the resulting indebtedness and accordingly they took the following actions vide paragraph **4 e-g (supra)** which I must again repeat at the risk of prolixity as follows.

"e. That in response to paragraphs 10, 11, and 12 of the Applicants' Affidavit in support of their Application, the 1st Respondent exercised its right of

sale over the mortgaged property as a result of the Applicants' failure/refusal to settle its indebtedness after conducting a valuation of the mortgaged property which was done by a reputable Estate Valuer.

f. That further to the above, the 1st Respondent commenced a civil action to recover possession of the mortgaged property sold pursuant to its power of sale and to recover the outstanding indebtedness of the Applicants in Suit No. FCT/HC/CV/2365/2012.

g. That contrary to paragraphs 13 and 14 of the Applicants' Affidavit in support their Application, the 1st Respondent is diligently prosecuting the civil action and the matter is currently at the trial stage. The matter is now adjourned to 4th February, 2020 for continuation of defence."

The above **actions** of **1st Respondent** were within the bounds of propriety and constitutionality. The Applicants obviously did not meet up with their commitments or obligations under Exhibit GTB1 and as ostensibly envisioned by the offer, the 1st Respondent then sought to realize the security by exercising its right of sale over the mortgaged property and in addition **filed or commenced an action vide Exhibit MUK1** attached to the Applicants affidavit in **Suit No. FCT/HC/CV/2365/12** to recover possession of the mortgaged property sold pursuant to its power of sale and to recover the outstanding indebtedness of the Applicants. Indeed by **paragraph 4(g)** above, the 1st Respondent contend that they are diligently prosecuting this action.

I have at length interrogated the facts of the 1st Respondent's depositions and it is difficult to factually and legally situate any criminal complaint of fraudulent dissipation of funds granted. If funds were granted and not utilised, the best to be made of the actions of the Applicants is a breach of the agreement encapsulated in the letter of offer. If the rather lazy contention is that funds of innocent Nigerians have to be protected, the response is that the facility was properly secured; not only that, the 1st Respondent has even already exercised its power of sale over the mortgage property which it sold after the Applicants refused to settle its indebtedness and after conducting a valuation of the mortgage property which was said to have been done by a reputable Estate Valuer. In passing, I need add that I find it curious that the valuation done by the **"reputable Estate Valuer"** was not

attached or the amount realized from the sale of the mortgaged property streamlined.

Furthermore and most importantly, the 1st Respondent recognizing as stated in paragraph 4(e) that "… as a result of the Applicants failure/refusal to settle its indebtedness…" they filed a **civil action** in court which is still pending to recover possession of the property mortgage by Applicants for the facility and to recover **"the outstanding indebtedness of the Applicants in Suit No. FCT/HC/CV/2365/2012"** vide paragraph 4(f).

It is clear that the 1st Respondent fully recognised that this was a **clear case of indebtedness and a civil matter in character**. There was absolutely no criminal element to it. It is not enough to make empty and bare averments of fraudulent dissipation without situating clear factual elements providing the basis to infer or impute act(s) of fraudulent dissipation.

The complaint of criminality made may have had some traction in the context of the offer letter if a case was made for example that the title documents given for the mortgaged property by Applicants as security were found to be forged and which has compromised or undermined the legal mortgage. There may then be a basis to bring in the police. No such situation or similar scenario played out in this case.

The 1st Respondent may have given the facility, but there is nothing in **Exhibit GTB1** which allows them to as at were **police** how the funds are utilised. The rather misplaced enthusiasm that they scrutinized the transaction and that the funds was applied for other purposes is unfortunately not one they can make. If they wanted to monitor how the funds were to be used or that it should be strictly applied, then they ought to have made it a term of the offer. The logical question to ask here is if the Applicants had not reneged on the payments and paid up the facility as required by the offer letter, would the bank have bordered about how the loan was utilised or whether it was not used for the purpose it was given? Your guess is as good as mine. They certainly would not have cared so long as the facility is paid back.

In addition, the contention that the facility was to be solely used to finance importation of roofing sheets clearly has no legal traction in view of what is clearly

contained in the offer letter, **Exhibit GTB1**. In the said Exhibit, the purpose of the facility was stated as follows:

"To part finance the importation of roofing sheets."

The above is clear. It is too late in the day for the 1st Respondent to make any alteration or interpolations to the offer letter and the above clause to suit any particular purpose. See **Section 128 of the Evidence Act**. The facility was clearly not for only importation of roofing sheets. The contention therefore that the facility was used for other purposes, assuming it was available to the 1st Respondent to make the complaint and it is not available to them, clearly has no root in the offer letter.

The bottom line is this: whatever reservations, the 1st Respondent may have over the failure of the Applicants to pay or settle their indebtedness, and this is understandable, but they have taken the proper legal steps allowed by law to realise the security and the outstanding indebtedness by the action filed in court, which is still pending.

Having **submitted or filed an action in court**, over the matters or issues clearly relating to the indebtedness, the court has become the complete master of the situation and at no stage is either party or any authority inclusive of law enforcement agencies allowed to interfere at the expense of the other or of the court to assume that role. Put in more succinct and clear language, once a matter is subject to the comforting authority of a **Court of Law**, there is no more liberty in any one litigant to take steps that would derogate from the authority of the court.

The further actions of 1st Respondent in involving Law Enforcement Agency (the Police) having already exercised its power of sale and filed an action for possession and the outstanding on the facility is certainly inculpatory. Having on the Record clearly submitted the matter to the jurisdiction of the court, the same court will not lose its jurisdiction simply because the 1st Respondent is perhaps dissatisfied with its progress and in a vantage position and in complete disregard for the outcome of the pending suit they initiated, goes ahead to now seek to get extra judicially what it has sought for legally. The 1st Respondent has no legal authority to determine the case they filed in court to recover possession and the outstanding indebtedness due from Applicant through extra-judicial processes.

The court cannot in any circumstances surrender or subject its jurisdictional powers to the unwieldy whims and dictates of any party. See **Adeogun V Fashogbon (2008) 17 NWLR (pt.1115) 149 at 173 – 174**. The attempt to muddy the waters by imputing or making allegations of criminality to make a report to the police does not aid or support their indefensible actions in the circumstances and as already demonstrated.

The bottom line is that they laid a criminal complaint through a petition and as we have demonstrated, it completely lacks basis and a mischievous attempt to bring in the police into a purely civil matter of recovery of indebtedness.

The next question to address now is whether it is such a matter within the jurisdictional sphere of the police. Again there is no dispute that the 1st Respondent wrote a petition to the 2nd Respondent against the Applicants. The contents of the petition vide Exhibit NPF1 attached to their counter-affidavit is essentially a repetition of the facts the 1st Respondent averred in their affidavit which I had already evaluated. At the risk of prolixity but without going into unnecessary details, the letter of the 1st Respondent to the 2nd Respondent happily reiterated the fact that they gave a facility to the Applicants which was secured. They indicated in the letter that the facility was not utilised for purpose and fraudulently dissipated and that the Applicants were **"in total breach of the terms of the offer letter and the facility agreement"** and have refused to discharged the "resulting indebtedness". In the petition, the 1st Respondent again candidly made it clear that they have commenced a court action in **"Suit No. FCT/HC/CV/2365/12 ... seeking among other things, the repayment of the above stated indebtedness."** They then stated that they were convinced that 1st Applicant is liable to be prosecuted for the offence of obtaining money from the Bank under false pretences and fraudulent misrepresentation.

I have deliberately and at length referred to the contents of the petition to the police and there is no doubt that despite the attempts to garnish it with elements of criminality that this was clearly a simple matter of indebtedness for which the petitioner had filed an action in court. It is difficult to situate allegations of conspiracy, fraudulent diversion of funds, obtaining money under false pretences in the context of this bare petition.

Now if the argument is made that they (the police) misconceived the import of this letter and whether it is a matter they can look into, that excuse will not hold because when they invited 1st Respondent vide Exhibit MUK3 dated 21st February, 2017, the **solicitors of Applicants replied immediately vide Exhibit MUK 4** dated 22nd February, 2017 informing them that this was a civil transaction in which the petitioner had even sold the mortgaged property of Applicants and filed an action in court.

The police in their letter of 8th March, 2017 vide **Exhibit MUK5** clearly ignored the letter and stated that they were dealing with a criminal allegation of fraud which has nothing to do with a civil action. Nothing was however demonstrated by the police as to how a simple **offer of facility** or of a civil matter of alleged outstanding indebtedness suddenly translated to a matter of fraud. What is however clear is that they were bent on continuing with their investigations without a clear precise verifiable basis.

Now it is not in dispute that the Nigeria police has a plenitude of powers. Section 4 of the Police Act streamlines the duties of the police as follows:

1. Prevent crime;
2. Detect crime;
3. Apprehend offenders;
4. Preserve law and order
5. Protect life and property and;
6. Enforce all laws and regulations with which they are directly charged.

See **Chukwuma V. C.O.P (2005)8 N.W.L.R (pt.927)278.**

The principal point here is that the duties of the police is centered around infractions or acts of criminality and related activities as allowed by extant laws. The police however do not exercise these powers of investigation without reasonable basis and as stated earlier in this judgment, the test is objective. The facts on which the police act must disclose circumstances from which it can easily be inferred that criminal infractions or acts of criminality were committed. It is a duty or huge responsibility that the police must exercise with due circumspection without fear or favour.

In the same vain, the right of citizens and corporate entities to report suspected acts of crimes or criminality and related wrong doing cannot be under emphasised, but the exercise of that right must not be done malafide or on grounds that are not salutary or indeed on whimsical grounds. Any exercise of right to report act(s) of criminality to the police which is devoid of propriety and calculated to harass or to achieve an ulterior purpose will lack legal validity.

The police cannot equally take steps in such situation where a complaint lacks any feature of criminality but is simply calculated to oppress. Where there is no factual or legal basis to have made any criminal complaint and the police acts on such frivolous criminal complaint, both parties in such situations cannot escape liability in such circumstances. The Apex Court in **Effiong Bassey V E. Afia & ors (2010) All FWLR 1477**, made this abundantly clear thus:

"When a citizen reports a matter to the police or any law enforcement agency for the exercise of their discretion including the discretion to investigate, neither the police nor the citizen would be liable for the breach of fundamental rights if the report to the police discloses a prima facie case against the applicant."

There is no such prima facie case of any criminal infractions established against Applicants.

The Apex Court again in **Fajemirokun V C.B.C.I (Nig) Ltd (1999) 10 NWLR (pt.774) 95**, made this clear in the following terms:

"Generally, it is the duty of citizens of Nigeria to report cases of commission of crime to the police for their investigation. What happens after such report is entirely the responsibility of the police. In other words, citizens of Nigeria cannot be held culpable for doing their civil duty unless it is shown that it was done mala fide. In the instant case, acts that were criminal in nature, that is, issuance of dishonoured cheques to the Respondents were done. In the circumstance, the respondents, as citizens of Nigeria had the choice to exercise their legal right of placing their grievance before the police as they did. Whatever action the police took was not the responsibility of the Respondent."

From the facts and entire trajectory of this case, it is difficult to situate what is criminal about the case of the facility granted to Applicants over which 1st Respondent has already sold the mortgage property and filed an action in court for possession and balance of the outstanding indebtedness. There is absolutely no legal right in the 1st Respondent having already taken clear actions to get its funds back to now again report the same grievance to the police as they did here. It is strange that the police chose to act despite the clear facts of the case and most importantly been aware that the matter is already before a Competent Court. I am in no doubt that on the facts of this case, the 1st Respondent clearly instigated the police to arrest the 1st Applicant on what are clearly spurious and completely unfounded allegations of fraud. In law it is settled that whether a party instigated the police has to be established by evidence. To claim instigation requires evidence as to facts to support the allegation that the complaint was not made in good faith or that it is a fabricated story which caused the police to arrest and detain. See **Onah V Okenwa (2010) 7 NWLR (pt.1194) 512**.

In the instant case and in the petition to the police, nothing was really presented particularly in the clear **context of the terms of the offer facility** situating any criminal infractions, providing any basis to arrest and detain 1st Applicant. The contention in **paragraphs 7(ii) – (iv) and (v) of their Counter-Affidavit** that they found evidence of criminal "dishonest diversion" and "breach of the terms of the facility" clearly rings hollow in the absence of any credible evidence. Merely mentioning criminal offences without evidence or facts to support the offences will not fly. Again the 2nd to 5th Respondents by this **paragraph 7(iv)** recognise that this case is essentially a **civil action relating to breach of terms of the offer facility**. If that is the position and on the facts, that is the situation, then the 2nd – 4th Respondents have no powers to look into or determine any complaint relating to breach of the offer of facility to Applicants.

I am in no doubt the allegations of crime was simply used as a ploy or ruse to use the instruments of coercion of the 2nd – 4th Respondents to unduly harass, intimidate and recover the 1st Respondent's debt from applicants and to settle a civil matter already pending in a Court of Competent jurisdiction.

The sphere of operation of the police under **Section 4 of the Police Act** or other criminal legislations does not extend to enforcement of a contract or recovery of

debt or determining who is in breach of the terms of offer of loan facility. The police will be exceeding their jurisdictional sphere or boundaries if they venture into matters of debt recovery as the 2nd – 4th Respondents have done in this case. There are a surfeit of judicial authorities that makes it abundantly clear that the police have no business serving as debt collectors or in resolution of civil disputes amongst people as in this case. In **Ibiyeye & ors V Gold and Ors (2013) All FWLR (pt.659) 1074**, the Court of Appeal stated thus:

"I have to add that the resort to the police by parties for recovery of debt outstanding under contractual relationship has been repeatedly deprecated by the court. The police have also been condemned and rebuked several times for abandoning its duties of crime detection, prevention and control to dabbling in enforcement or settlement of debts and contract between quarrelling parties, and for using its coercive powers to breach citizens rights and promote legalities and oppression. Unfortunately, despite all the decided cases on these issues, 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 court."

Also in **Ogbonna V Ogbonna (2014) 23 WRN 4**, the Court held thus:

"… that the police have no business helping parties to settle or recover debts. We also deprecate the resort by the aggrieved creditors to the police to arrest their debtors using one guise of criminal wrong doing or another."

The same principle was reechoed in **Gasua V Umezurike (2012) 28 WRN 111 at 145; Osil V Balogun (2012) 7 WRN 143 at 173-174; Mclaren V Jannings (2003) 3 NWLR pt. 808 p.740 at 484 E-H and Igwe V Ezeanochie (2010) 7 NWLR (pt.1192) 61 at 93 B-C.**

A purely civil arrangement of offer of loan facility between Applicants and 1st Respondent is certainly not a matter for the police. The court will continue to **demand of the police** to keep strict fidelity and stay within the purview of their statutory duties and powers. The court shall equally **demand of Nigerian citizens and corporate bodies** to resist the convenient temptation to drag or involve the police in matters of recovery of debt and generally civil transactions which are matters completely outside their jurisdictional sphere and competence.

As a logical corollary, there is therefore no legal basis to support the arrest and detention of 1st Applicant clearly at the instigation of the 1st Respondent over a purely civil transaction or recovery of debt. The law is settled that it is only an arrest **properly made by the police** that does not or cannot constitute a breach of fundamental rights. A citizen who is arrested by the police in the legitimate exercise of their duty and on grounds of reasonable suspicion of having committed an offence cannot sue the police in court for breach of his fundamental rights. Where there are no grounds for reasonable suspicion, as in this case, the police will certainly be held liable. See **Ayankandue & ors V Ekprieren & ors (2012) LPELR – 20071 (CA)**. The person who instigated the arrest mala fide will equally not be free from liability as earlier demonstrated. See **Dumbell V Roberts (1944) 1 ALL E.R. 326 at 331.**

It is for the above reasons that I have no difficulty in holding that the arrest and detention of the 1st Applicant on 14th February 2018 was clearly not effected under a procedure allowed by law or that is one that can be constitutionally countenanced and violated his rights to personal liberty and freedom of movement.

This legally then leads to the issue of damages having found that the Fundamental Rights of 1st Applicant was infringed in the circumstances. The 1st Applicant claims N1, 000, 000, 000 (One Billion Naira). In **Jim-Jaja V C.O.P. Rivers State (2013) 6 NWLR (pt.1350) 225**, the Apex Court made it clear that a person who has established that he was unlawfully arrested or detained, as in this case, does not have to pray for compensation before he is awarded one. He is entitled to compensation automatically. But where he claims a specific amount as in this case, it is for the court to consider the claim and award in its opinion, an amount that would be appropriate compensation in the circumstances.

In this case, I have found that the 1st applicant rights to personal liberty and freedom of movement were needlessly tampered with by the 2nd – 4th Respondents at the instance of 1st Respondent which instigated the malicious harassment, arrest and detention of 1st Applicant by 2nd – 4th Respondents over an indebtedness or simple civil matter in which they have already sold the mortgaged property of Applicants and filed a court action in court for possession and the outstanding balance on the facility.

The 1st applicant is therefore no doubt entitled to damages since his rights have been violated and these are essentially compensatory and are intended to redress the loss that 1st Applicant has suffered by reason of the Respondents wrongful conduct. I cannot however situate the basis for the **One Billion Naira** claim of damages made. Damages or compensation cannot be awarded as a largesse or on grounds of benevolence. There has to be a justifiable basis for it. I cannot on the facts situate the basis for the claim of one billion naira as damages. The 1st Applicant was unjustifiably arrested and detained but he was released same date, albeit in the evening. On the whole, damages will be available against all the respondents jointly and severally as they are clearly responsible for the unfortunate and avoidable infraction of the liberty of 1st Applicant including his right to freely move about.

The extant case clearly has considerable merits but before I round up, I only need emphasise on the imperatives of the police and indeed all law enforcement agencies like all progressive institutions and notwithstanding the challenges they face, must keep strict fidelity to the rule of law in all their actions. There is therefore no room for highhandedness or arbitrariness in the discharge of their statutory duties and responsibilities. They similarly must not succumb to the unhealthy influences, unwieldy dictates or whims of any person or institution no matter how wealthy or powerful. The police must ensure that their actions at all times serve only to enhance the quality of liberty and dignity of the person as enshrined in the 1999 constitution. The investigative and prosecutorial paths, where the police play critical roles must as much as possible be kept pristine clear, transparently free, fair and unfettered. I leave it at that.

On the whole, I hereby make the following orders:

1. **It is hereby declared that the general duties of the Nigerian Police Force under Section 4 of the Police Act Cap. P19 LFN, 2004 which shall be employed for the prevention and detection of crime and do not extend to recovery of debt which is already subject matter of a civil action in Suit No. FCT/HC/CV/2365/2012: Guaranty Trust Bank Plc V Sharlotte First Properties & Anor.**

2. **It is hereby declared that the arrest and detention of 1st Applicant on 14th February, 2018 in the facility of 2nd Respondent by the 2nd – 4th Respondents at the instance of 1st Respondent in respect of an entirely civil transaction and subject of a civil action in court is wrongful and constitutes an infringement of the 1st Applicant's Fundamental Rights to personal liberty and freedom of movement as enshrined under Sections 35 and 41 of the 1999 Constitution.**

3. **It is hereby declared that the petition of the 1st Respondent to the 2nd Respondent dated 17th January, 2017 against Applicant over a wholly civil transaction and subject of a Court action in FCT/CV/2365/2012 is malicious and actively caused the infringement of the 1st Applicant's Fundamental Rights to personal liberty and freedom of movement by 2nd – 4th Respondents.**

4. **I award the sum of N2, 000, 000 damages in favour of 1st Applicant jointly and severally against Respondents for the unlawful infringement of the 1st Applicant's Fundamental Rights to personal liberty and freedom of movement.**

5. **An Order of Injunction is granted restraining the Respondents whether by themselves, their servants, staff, officers from further threatening to arrest, arrest and detaining the 1st Applicant in respect of the aforesaid subject matter of Suit No. FCT/HC/CV/2365/2012 between Applicants and the 1st Respondent still pending in a Court of Competent Jurisdiction.**

6. **I award cost assessed in the sum of N50, 000 payable by Respondents to Applicants.**

……
Hon. Justice A.I. Kutigi

Appearances:

1. **George Ukaegbu, Esq., with Daniel Okorie, Esq., for the Applicants.**

2. **Omolade Sanni Esq., for the 1st Respondent.**

3. **V.C. Nwadike, Esq., for the 2nd – 4th Respondents.**