IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 17TH DAY OF JUNE, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/036/2021

BETWEEN:

EDBERT ODOZOR — **APPLICANT**

AND

1. **EMEKA AGWUBILO**
2. **COMMISSIONER OF POLICE FCT COMMAND, ABUJA**
3. **DSP AMAOBI**
4. **IPO ASP DANJUMA**

— **RESPONDENTS**

JUDGMENT

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

On the 11th of January, 2021, the Applicant, Mr. Edbert Odozor brought this application for the enforcement of his fundamental rights. The reliefs sought in the application, as contained in the Statement in support of the application, are as set out hereunder:-

1. *A Declaration that the purported attempt by the 1st Respondent to use the 2nd to 4th Respondents and their agents and the purported attempt of the later to act as a debt recovery agency on behalf of the 1st Respondent is unlawful, illegal, unconstitutional, null and void.*

2. *A Declaration that the purported attempt by the 2nd to 4th Respondents to enforce the civil agreement between the Applicant and the 1st Respondent amounts to usurpation of the constitutional powers of the Courts and is therefore unlawful, illegal, unconstitutional, null and void.*
3. *An Order of perpetual injunction restraining the Respondents, their agents, privies, servants or any person howsoever called from harassing, intimidating and embarrassing the Applicant through wanton and unwarranted arrests and detention and/or by any other means whatsoever.*
4. *An Order of perpetual injunction restraining the 1st Respondent from instigating the 2nd to 4th Respondents, their agents, privies, servants or any person howsoever called against the Applicant in relation to a civil agreement between the Applicant and the 1st Respondent.*
5. *The sum of ₦10,000,000.00 (Ten Million Naira) only against the Respondents jointly and severally as general damages for the unlawful harassment, intimidation and threat to the Applicant.*
6. *Any such orders as this Honourable Court may deem fit to make in the circumstances of this case.*

The grounds of the application are as set out in the Statement in support of the application. They are that the Applicant has a fundamental right to freedom of movement, liberty and dignity of the human person as guaranteed under the Constitution of the Federal Republic of Nigeria, 1999 as amended and the African

Charter on Human and Peoples' Rights; that the 2nd to 4th Respondents acting at the prompting of the 1st Respondent have been harassing, intimidating, threatening, arresting, detaining and humiliating the Applicant in relation to a civil agreement between the Applicant and the 1st Respondent; and that the said harassment, intimidation, threat, arrest, detention and humiliation constitute a violation of the Applicant's afore-stated fundamental rights.

The facts that gave rise to this application as stated in the Applicant's affidavit in support of his application can be briefly summarized as follows: in 2017, the 1st Respondent approached the Applicant for a parcel of land. The Applicant took him to a plot of land at Kubwa, specifically known and described as Plot 808, Extension II Relocation Layout, Kubwa, FCT Abuja and measuring 800SqM^2. The 1st Respondent expressed the interest to purchase the said plot of land. He demanded for and was furnished with the documents of title to the said plot of land. He conducted a search at the relevant land office in respect of the plot of land, was convinced of its genuineness, proceeded to pay the agreed sum of ₦3,000,000.00 (Three Million Naira) only, executed an agreement which embodied the terms of the transaction and took possession of the land by constructing a gated fence.

In 2020, the 1st Respondent informed the Applicant that there were discrepancies in the record of the land at the land office and demanded the refund of the ₦3,000,000.00 (Three Million Naira) only he paid for the land. Following the failure of the Applicant to refund the said sum, the 1st Respondent procured the service of

the 2nd to 4th Respondents who proceeded to arrest and detain the Applicant at the office of the now defunct Special Anti-Robbery Squad (SARS) in Abuja whereupon they extracted an undertaking from him that he would refund the said ₦3,000,000.00.

In his Written Address in support of the application, learned Counsel for the Applicant formulated a sole issue for determination, that is: *"Whether the fundamental rights of the Applicant to liberty, dignity of human person, and movement and to have his rights determined by a Court of law has been breached by the Respondent?"*

In his submission on this sole issue, the Applicant through his Counsel argued that sections 6(6)(b), 34, 35(1), and 41 of the Constitution of the Federal Republic of Nigeria 1999 as amended, Order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 and, Articles 5, 6, 12, and 16 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A9 Laws of the Federation of Nigeria 2004 guarantee the right of every citizen to approach a Court of law for the determination of their rights and obligations and the protection of their fundamental rights. While he conceded that the sections admit of exceptions, the exceptions, however, did not apply to the instant case. It was his contention that the interference of the Police in a purely civil matter was an abuse of power which was clearly outside the contemplation of section 4 of the Police Act which enumerated the powers of the Nigerian Police Force.

Learned Counsel for the Applicant, after emphasizing the peculiar and fundamental nature of the rights guaranteed in Chapter IV of the Constitution, submitted that a breach of any of those rights, no matter how slight, always attracted the strong disapproval and condemnation from the Court. He insisted that the account of harassment, intimidation, arrests, molestation and humiliation by the 2nd to 4th Respondents at the instance of the 1st Respondent amounted to a breach of the rights of the Applicant to liberty, dignity of the human person and the right to go about his lawful business in Nigeria. For all his submissions on this sole issue, learned Counsel cited and relied on the cases of ***Fagemirokun v. Commercial Bank Nig. Ltd & Anor (2001) 21 WRN 1; Igwe v. Ezeanochie (2010) 43 WRN 123 at 154; Akudo v. Guinness (Nig.) Plc (2012) 11 WRN 129 CA; Arab Contractors Nig. Ltdv. Umanah (2012) 28 WRN 100; Asheik v. Gov. of Borno State (1989) 2 NWLR (Pt. 326) 344 at 352;*** and ***Okonkwo v. Ogbodu (1996) 5 NWLR (PT. 449) AT 420 at 435***. He therefore urged this Honourable Court to grant all the reliefs he sought in the application.

In his reaction to the Applicant's action, the 1st Respondent, Mr. Emeka Agwubilo, filed a 17-paragraph Counter-Affidavit and a Written Address in opposition. The 1st Respondent, while denying certain paragraphs of the Applicant's affidavit in support of his application, averred that the Applicant had shown him two different plots of land before the present plot of land which was the subject of the transaction for the sale of land between the Applicant and the 1st Respondent. According to him, it was

when he went to the Bwari Area Council for change of ownership that he found that the documents of title which the Applicant gave him in respect of the land were fake. He added that all the documents of title which the Applicant furnished him in respect of the earlier two plots of land were also fake.

The 1st Respondent further asseverated that when the Applicant refused to meet him to explain the origin of those documents, he reported the Applicant to the Nigerian Police Force, alleging forgery of land documents, fraud, criminal breach of trust and obtaining by false pretence. Though the 1st Respondent confirmed that the Police did arrest the Applicant upon his petition, he maintained that the Applicant was not tortured nor harassed by the Police, adding that the Applicant willingly undertook to refund the ₦3,000,000.00 (Three Million Naira) only the 1st Respondent paid for the land. The 1st Respondent insisted that the issue before the Nigerian Police Force was neither recovery of money nor contractual agreement but a case of forgery, fraud, obtaining by false pretence and breach of trust. He concluded that the action of the Respondents could not be said to be a violation of the fundamental rights of the Applicant.

In his Written Address, learned Counsel for the 1st Respondent formulated two issues for determination. The issues are:-

1. *Whether the Applicant has established a case of breach of his fundamental rights by the 1st Respondent justifying enforcement?*
2. *Whether the Applicant is entitled to damages?*

In his argument on the first issue, the 1st Respondent, through his Counsel, submitted that from the facts contained in the affidavit, the Applicant had not made out any case of infringement of any of his fundamental right to be entitled to any of the reliefs he was seeking from this Honourable Court. He described the application as purely speculative and an attempt by the Applicant to checkmate the Police in its investigation. He urged this Honourable Court not to lend its weight to that objective.

Counsel for the 1st Respondent restated the position of the law that an action for enforcement of an Applicant's fundamental rights was declaratory in nature and which, therefore, placed a burden on the Applicant to establish an infringement of the said right before laying claim to the reliefs sought – a burden which he claimed the Applicant failed to discharge. Counsel further argued that a person who lodged a complaint before the Police could not be held liable for the acts of the Police unless such complainant was shown to have acted in bad faith. He concluded on the first issue that the 1st Respondent merely carried out his civic duty when he reported the alleged commission of crimes to the Police. For all his arguments on the first issue, learned Counsel cited and relied on the following judicial authorities: ***Fajemirokun v. CB (Cl) Nig. Ltd (2002) 10 NWLR (Pt. 744) 94; Chief (Dr.) O. Fajemirokun v. Commercial Bank Nig. Ltd & Anor (2009) NSCQR Vol. 37;*** and ***Atakpa v. Ibetor (2015) 2 NWLR (Pt. 1447) 455 at 557***.

In his argument on the second issue, learned Counsel for the 1st Respondent cited the case of ***Macfoy v. UAC Ltd (1962) AC 152*** and contended that since the Applicant had failed to establish the infringement of any of his fundamental rights, his claim for damages must of necessity fail. In conclusion, he urged this Honourable Court to dismiss the application with substantial cost for being unmeritorious, incompetent, and vexatious. On their part, the 2nd, 3rd and 4th Respondents, who were already out of time in filing their responses, on the 17th of March, 2021, brought an application for an order of enlargement of time within which to file their joint response to the application and an order of this Honourable Court deeming the already filed 11-paragraph Counter-Affidavit and the accompanying Written Address as properly filed.

In their joint Counter-Affidavit deposed to by one Jibrin, a Litigation Secretary in the law firm of Seidu Jibrin & Associates, the Counsel for the 2nd, 3rd and 4th Respondents, the 2nd, 3rd, and 4th Respondents presented the following facts before this Honourable Court: the 2nd Respondent had, on the 15th of July, 2020, received a petition from the 1st Respondent alleging criminal trespass, forgery, intimidation and threat to life against the Applicant and invited the 1st Respondent who made a statement confirming the content of the petition. On the strength of the petition and the statement of the 1st Respondent, the 2nd Respondent invited the Applicant on the 23rd of September, 2020 who, upon being presented with the petition and the 1st Respondent's statement, made a statement wherein he denied all the allegations

contained therein. Having established a prima facie case of the commission of the alleged offences in the course of its investigation, the 2nd, 3rd, and 4th Respondents, however, granted bail to the Applicant on the same 23rd of September, 2020, that he was invited to the FCT Police Command. The 2nd, 3rd and 4th Respondents annexed three exhibits to their joint Counter-Affidavit, namely, a copy of the petition from Chike Enendu & Co., Solicitors to the 1st Respondent, the written statement of the 1st Respondent made at the FCT Police Command and the written statement of the Applicant made at the FCT Police Command. These documents were marked as **EXHIBIT SJA 001, EXHIBIT SJA 002 and EXHIBIT SJA 003** respectively.

In their joint Written Address, Counsel for the 2nd, 3rd and 4th Respondents formulated a sole issue for determination, to wit: *"Whether the Applicant is entitled to the grant of the reliefs sought in view of the facts and circumstances of the suit as it is presently constituted."*

In their argument of this sole issue, the 2nd to 4th Respondents through their Counsel contended that none of the fundamental rights of the Applicant was breached by the 2nd to 4th Respondents as they were merely performing their constitutional and statutory duties of protection of life and property, detection of crime and maintenance of law and order in the society when they invited the Applicant in the course of investigation of the alleged crimes contained in the petition. Those duties, learned Counsel maintained often necessarily came within

the purview of the exceptions recognized in section 35(1)(c) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

In the performance of those duties, Counsel argued that the law vested on the Police wide discretionary powers, adding that the Police should not be faulted when they exercise their discretion in the performance of their duties. Learned Counsel therefore invited the Court to hold that the 2nd to 4th Respondents were merely exercising their discretionary powers when they invited the Applicant in the course of their investigation of the petition against him.

Learned Counsel further submitted that the Court must look at the reliefs sought and the ground for the reliefs before it could hold that the fundamental rights of the Applicant had been breached. It was the contention of the 2nd to 4th Respondents that the Applicant was not entitled to the reliefs he was seeking.

On the Applicant's relief of an order of perpetual injunction, learned Counsel for the 2nd, 3rd and 4th Respondents submitted that the Applicant was not entitled to the relief, particularly, as the Courts had always deprecated the practice of people running to the Courts to obtain restraining orders against the Police, a practice which learned Counsel contended would engender impunity, anarchy and lawlessness. He also contended that the Applicant had not made out a justifiable case for the Court to award exemplary damages to him.

Learned Counsel also took a swipe at the Written Address of the Applicant, claiming that the judicial authorities the Applicant cited were not apposite to the application

as they were merely academic in nature and did not address the live issues in the application. He also urged this Court to strike out paragraphs 24, 25, 26 and 27 as they contravened the provisions of section 115 of the Evidence Act, 2011 as amended. For all his submissions on the sole issue, learned Counsel for the 2nd to 4th Respondents cited and relied on the cases of ***Opara v. SPDCN Ltd (2015) 14 NWLR (Pt. 1479) 307 CA; Dr. Onagoruwa v. IGP (1991) 5 NWLR (Pt. 193) 593 at 645 para 4; Fawehinmi v. IGP (2007) 7 NWLR (Pt. 767) 481 at 503; R. v. Commissioner of Police of the Metropolis Ex Parte Blackburn (1968) 2 Q.B. 118 at 136; Atakpa v. Ebetor (2015) 3 NWLR (Pt. 1447) 558; Fajemirokun v. CB (CL) Nig. Ltd (2000) 10 NWLR (Pt. 774) 97 – 98; Attorney-General of Anambra State v. Chief Chris Uba (2005) 15 NWLR (Pt. 947) 44 at 67; Odiba v. Azage (1998) 9 NWLR (Pt. 566) 370; and FGN v. A.I.C. Ltd (2006) 4 NWLR (Pt. 970) 337 at 355 – 356 para A – H***.

In conclusion, he urged this Honourable Court to dismiss the application with cost.

Expectedly, the Applicant filed replies to the Counter-Affidavits of the Respondents. The affidavits contained denials of certain averments in the Counter-Affidavits of the Respondents, affirmation of some averments in the Counter-Affidavits and a further illumination of the facts already stated in the affidavit in support of the application. Instructively, the Written Addresses in support of the reply raised some germane issues of law which I shall take in the course of this Judgment.

The above are the cases put forward by all the parties in this suit. The gravamen of this application is the complaint of the Applicant that his fundamental rights to personal liberty, dignity of the human person and freedom of movement have been infringed. Earlier, I had set out the issues formulated by the parties in this suit.In resolving the dispute herein, I shall adopt *mutatis mutandis* the issue formulated by the learned Counsel for the 2nd, 3rd and 4th Respondents as same encompasses the issues formulated by the Applicant and the 1st Respondent and reflects the general circumstances of this application. The issue is this:

> ***"Whether the Applicant is not entitled to the grant of the reliefs sought in this application in view of the facts and circumstances of the application as it is presently constituted?"***

I must state at the very beginning that in the determination of the rights and obligations of the parties in suits such as this one which is resolved on the basis of the affidavit evidence of the parties, the affidavit of the parties and the exhibits, if any, attached to the affidavit are the evidence which the Court must perforce consider in resolving the disputes. 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."*** In ***Chairman, Chief Executive, NDLEA, Headquarters, Lagos &***

Ors v. Umeh & Anor (2014) LPELR-24373(CA), the Court of Appeal 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."***

To this end, therefore, I have addressed my mind to the facts deposed to by the deponents in all the affidavits filed either in support of or in opposition to the application for the enforcement of the fundamental rights of the Applicant and have noticed certain points of convergence in their respective narratives. On one hand, the Applicant and the 1st Respondent are agreed on one point: that the dispute between the Applicant and the 1st Respondent arose from the assignment of Plot 808 Extension II Relocation Layout, Kubwa, Federal Capital Territory, Abuja and the discovery by the 1st Respondent of discrepancies in the documents of title delivered to him by the Applicant and the records relating to the said plot of land at the Bwari Area Council which discrepancies, according to him, rendered the said documents of title fake or forged. I have no hesitation in finding that the assignment of Plot 808 Extension II Relocation Layout, Kubwa, Federal Capital Territory, Abuja is at the root of the dispute between the Applicant and the 1st Respondent.

On the other hand, the Applicant, the 1st Respondent and the 2nd, 3rd and 4th Respondents agreed that the 1st Respondent procured the intervention of the Nigerian Police Force when he wrote a petition through his Solicitors to the Commissioner of Police FCT Police Command alleging criminal trespass, forgery,

intimidation and threat to life against the Applicant. This finding is rooted in the facts placed before this Honourable Court in the affidavits deposed to in this application. See paragraph 23 of the affidavit in support of the application, paragraph 12(d) and (e) of the 1st Respondent's Counter-Affidavit and paragraph 8(d)(i), (ii) and (iii) of the 2nd, 3rd and 4th Respondents' Counter-Affidavit. I therefore hold that the 1st Respondent procured the intervention of the Police in the dispute between him and the Applicant.

There are, however, certain points of divergence of the facts presented by the parties. While the Applicant believes that the relationship between him and the 1st Respondent was purely civil, being contractual in nature and does not require the interference of the Nigerian Police, the 1st Respondent holds the view that forgery of land documents, fraud, criminal breach of trust and obtaining by false pretence are offences which require the intervention of the Nigerian Police. On the other hand, the 2nd, 3rd and 4th Respondents contend that it is well within the constitutional and statutory remit of the Nigerian Police to investigate allegations of crime where there is a reasonable suspicion that a crime has been committed or is about to be committed.

In paragraphs 11 and 12 of the affidavit in support of the application, the Applicant deposed to the fact that he and the 1st Respondent executed an agreement which transferred the interest in the said Plot 808 Extension II Relocation Layout, Kubwa, FCT, Abuja from the Applicant to the 1st Respondent. He further stated that all the

copies were with the 1st Respondent who has refused to release his copy to him. Considering that documents of this nature are executed in counterparts, I wonder why the Applicant did not take his copy with him the very time the document was executed.

While the failure of the Applicant to keep his copy of the agreement raised some serious questions concerning the credibility of his claim, I find it extremely difficult to believe the assertion of the 1st Respondent that no agreement was executed in respect of the assignment of Plot 808 Extension II Relocation Layout, Kubwa, FCT, Abuja. This is particularly so when the parties agreed that the 1st Respondent paid ₦3,000,000.00 (Three Million Naira) only for the said plot of land. It is inconceivable that a person would pay such huge amount of money and fail to obtain a receipt of payment or a written instrument embodying the contractual relationship for which the money was furnished as a consideration.

Of particular interest is the fact that the petition from the 1st Respondent's Solicitors to the Commissioner of Police, FCT Police Command, that is, **EXHIBIT SJA 001**, which the 2nd, 3rd and 4th Respondents attached to their joint Counter-Affidavit, though it purported to emanate from a law firm, namely, the law firm of Chike Enendu & Co, was actually signed by Emeka Agwubilo, the 1st Respondent in this application. It is either the 1st Respondent who described himself as a businessman in his written statement to the Police marked as **EXHIBIT SJA 002** and attached to the Counter-Affidavit of the 2nd, 3rd and 4th Respondents is also a lawyer in the law

firm of Chike Enendu & Co. representing a client whose name is also Emeka Agwubilo, or law firms are making themselves available as vehicles of fraud, misrepresentation, violation of the rights of citizens and oppression of the citizens through framing baseless petitions to the Nigerian Police. God forbid that the latter should be the case. Strangely, in **EXHIBIT SJA 001**, the 1st Respondent claimed that Plot 808 Extension II Relocation Layout, Kubwa, Abuja, was actually his, and accused the Applicant of criminal trespass, forging the documents of title and touting for buyers of the said land. He also accused the Applicant of criminal intimidation and threat to life. This allegation is at variance with the position of the 1st Respondent in his Counter-Affidavit where he averred under oath that he purchased the land from the Applicant and that his grouse was that the documents of title which the Applicant gave him was different from what he saw at the Bwari Area Council. In other words, the allegations in the petition to the Police are materially different from what the 1st Respondent stated in his affidavit. In paragraph 12(d) the 1st Respondent averred *"that I complained to the Nigerian Police Force case of forgery of land document, fraud, criminal breach of trust and obtaining by false pretense."* This discrepancy in the allegations contained in the petition before the Police and the 1st Respondent's Counter-Affidavit could only mean one thing: that the petition to the Nigerian Police was not brought in good faith. In other words, the 1st Respondent was not performing his civic duty to report cases of commission of crime to the Police for investigation.

Having found that the 1st Respondent did not forward his petition to the Nigerian Police in good faith, I would have gladly agreed with the submissions of the learned Counsel for the 2nd, 3rd, and 4th Respondents that the Police, pursuant to its duties under section 4 of the Police Act and section 35(1)(c) of the Constitution of the Federal Republic of Nigeria 1999 as amended, was only exercising its administrative discretion when it invited the Applicant in the course of investigating the allegations contained in the 1st Respondent's petition. The Police, however, has the duty to exercise this administrative discretion reasonably and not whimsically or capriciously. A reasonable exercise of administrative discretion would necessarily involve a dispassionate examination of the facts of every allegation of crime.

The 1st Respondent's petition was dated 15th of July, 2020. In it, the 1st Respondent informed the Police that Plot 808 Extension II Relocation Layout, Arab Road, Kubwa, Bwari Area Council belonged to him and that the Applicant forged the documents of title in respect of the said land and was touting for buyers. He specifically accused the Applicant of criminal trespass, forgery, criminal intimidation and threat to life. The written statement of the 1st Respondent was taken on the 19th of August, 2020. In the written statement, the 1st Respondent stated that he purchased the same plot from the Applicant and that his complaint with the transaction was the discrepancies in the documents of title and the records at Bwari Area Council regarding the said land. I have studied the written statement of the 1st Respondent attached to the 2nd, 3rd and 4th Respondents' Counter-Affidavit as

EXHIBIT SJA 002. The written statement of the 1st Respondent did not disclose that the Applicant had committed any crime. In fact, it reinforced the fact that the transaction between the Applicant and the 1st Respondent was purely civil in nature. The Police, at that point, should have defenestrated the petition and the criminal complaint against the Applicant. It, instead, invited the Applicant, took his statement on the 23rd of September, 2020, detained him for two days and extracted an undertaking from him to refund the ₦3,000,000.00 (Three Millionn Naira) only paid for the plot of land to the 1st Respondent. It is my considered view that this is an unreasonable, capricious and whimsical exercise of discretion. I therefore hold that the Police, in arresting and detaining the Applicant, was not performing its statutory and constitutional duties. It was dabbling in civil transactions and using its revered office and position, recognized in the statutes and in the constitution, as a debt recovery agency. In becoming an adjudicator in a purely civil matter, the 2nd, 3rd and 4th Respondents arrogated to themselves the powers of the Court as enshrined in section 6(6)(a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 as amended, thereby trammeling the right of the Applicant to have his rights and obligations determined by a competent and independent Court pursuant to his right to fair hearing as guaranteed under section 36(1) of the same Constitution. This crass aberration must not be encouraged.

The Courts have deprecated the unfortunate practice of aggrieved parties to a civil contract procuring the Police to enforce the terms of a contract gone sour. See

generally ***Nwadiugwu v. IGP &Ors (2015) LPELR-26027(CA); Ibiyeye & Anor v. Gold & Ors. (2011) LPELR-8778(CA); Oceanic Securities International Ltd vs. Balogun & Ors (2013) ALL FWLR (Pt. 677) 653; (2012) LPELR 9218 CA; Okafor & Anor v. AIG Police Zone II Onikan & Ors (2019) LPELR-46505(CA); Anogwie & Ors v. Odom & Ors (2016) LPELR-40214 CA*** and ***Ogbonna vs. Ogbonna (2014) LPELR- 22308; (2014) 23 WRN 48***.

In the case of ***EFCC v. Diamond Bank Plc &Ors (2018) LPELR-44217(SC)***, the Supreme Court, per Bage, JSC graphically described this regrettable trend in this manner, page 25 of the E-Report in the following word:

> ***"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."

In ***Abah v. UBN Plc &Ors (2015) LPELR -24758 CA,*** the Court of Appeal categorically 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."***

As to the consequences which must attend the procurement of the interference of the Police in a civil dispute, the Court of Appeal in the case of ***Skye Bank Plc v. Njoku & Ors (2016) LPELR-40447 (CA)*** held that: ***"...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..."*** In ***Omuma Micro-Finance Bank Nig Ltd v. Ojinnaka (2018) LPELR-43988 (CA)***, Mbaba JCA in his concurring judgment to the decision of the Court of Appeal 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.***"

The 1st Respondent had ample remedies in the Law of Contract to seek redress against the Applicant. For instance, he could have proceeded against the Applicant for money had and received where the consideration has failed. He could have gone for an order of specific performance. He could have sued the Applicant for damages for breach of the contract. He could have even brought an action for declaration of title. In spite of these remedies available to him, the 1st Respondent chose to involve the Police in a civil dispute and the Police, without being reasonable, agreed to allow itself to be used as a civil arbiter and money recovery agency. This is most unfortunate and this Court will not condone such aberration.

Before I round off this Judgment, I must make a passing comment on the case of ***Fagemirokun v. Commercial Bank Nig. Ltd & Anor (2009) NSCQR Vol. 37, (2009) LPELR-1231 (SC)*** which the 1st Respondent and the 2nd, 3rd and 4th Respondents relied heavily on in their respective Written Addresses in urging this Honourable Court to dismiss the application of the Applicant. I have studied the said judgment and it is my considered view that, though ***Fagemirokun's case*** bordered on the enforcement of the fundamental right of Chief Fagemirokun, it is inapplicable to the present application for the following reasons: first, Chief Fagemirokun did not join the Police in his application for the enforcement of his fundamental rights even when he claimed he was taken to the Federal Investigation and Intelligence Bureau, Alagbon, Ikoyi, Lagos State. Second, Chief Fagemirokun claimed that the Respondents in that case reported him to the Federal Investigation and Intelligence

Bureau for theft. He claimed he saw the report in the Police Entry Book. Yet, he failed to produce a copy of the report or even to obtain an affidavit from the Police for the reason for his arrest. Since, according to section 131 of the Evidence Act, 2011 as amended, the burden of proof lies on the person who asserts the existence of facts, the Supreme Court upheld the concurrent findings of both the trial Court and the Court of Appeal that the Applicant had been unable to establish that his fundamental rights had been breached. Third, the Respondents in that case claimed they simply reported a case of issuance of dud cheque against Broad Base Mortgage Finance Company Limited which had Chief Fagemirokun as the Chairman of the Board. Issuance of dud cheque is a crime. It was in the course of its investigation of this crime that the Police invited the Chief.

In the present application before this Honourable Court, the Police is a party. Second, though the Applicant has a burden to prove through the facts in his affidavit that his fundamental rights were violated by the Respondents herein, his task was made easier by the 1st Respondent and the 2nd, 3rd and 4th Respondents in their respective Counter-Affidavits and Written Addresses where they admitted that the 2nd, 3rd and 4th Respondents did indeed arrest and detain the Applicant upon the complaint of the 1st Respondent. See paragraph 12(d) and (e) of the 1st Respondent's Counter-Affidavit where the 1st Respondent averred that the Police arrested the Applicant upon his petition to the Police and paragraph 5.02 where the 1st Respondent submitted that the Applicant was arrested and detained for two

days. See also paragraph 8(d)(i), (ii) and (iii) of the 2nd, 3rd and 4th Respondents' Counter-Affidavit and **EXHIBIT SJA 001** and **EXHIBIT SJA 002** annexed thereto. Section 123 of the Evidence Act 2011 as amended provides that ***"No fact need to be proved in any civil proceeding which the parties to the proceeding or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings."*** Finally, the subject of the complaint in ***Fagemirokun's case*** was the issuance of dud cheque which in itself is a criminal offence. In the instant case, the subject matter of the dispute between the Applicant and the 1st Respondent is disagreement as to the alleged discrepancies in the documents of title relating to Plot 808 Extension II Relocation Layout, Kubwa, FCT, Abuja. ***Fagemirokun v. Commercial Bank Nig. Ltd & Anor, supra*** is therefore distinguishable from this instant application and therefore inapplicable. I so hold. I must, however quote this dictum of Ogebe, JSC in ***Fagemirokun's case***. Learned Counsel for the 1st Respondent quoted the dictum in his Written Address but he did not quote the concluding part of the dictum. The erudite Jurist, at page 4, paras. C-E of the E-Report held that:

> ***"Generally, it is the duty of citizens of this country to report cases of commission of crime to the Police for their investigation and what happens after such report is entirely the responsibility of the Police.***

The citizens cannot be held culpable for doing their civic duty unless it is shown that it is done mala fide."

Can it be said, from my findings above, that the 1st Respondent acted *bona fide* in his petition to the Police against the Applicant? Can it be said that the 2nd, 3rd and 4th Respondents exercise their discretion in the course of performing their statutory and constitutional duties of prevention, detection and investigation of crimes reasonably? I hold no reservation in answering these questions in the negative. For this and other reasons set out above, I find this application meritorious. The Applicant has been able to establish that his fundamental rights to personal liberty, dignity of the human person and fair hearing were violated by the Respondents.

Having found that the Applicant has been able to establish the violation of his rights, it follows naturally that the Applicant is entitled to damages. The Applicant need not prove his entitlement to the damages sought. As a matter of fact, he need not specifically ask for damages. Once he has proved the abridgement of his fundamental rights, damages accrue automatically.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***." In ***Jide Arulogun v Commissioner of Police Lagos State & Ors (2016) LPELR- 40190 (CA),*** the Court of Appeal held *inter alia* that ***"…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."

In view of the foregoing, therefore, I hereby resolve the issues formulated in this application, particularly, the issue adopted by this Court, in favour of the Applicant. Accordingly, this Court hereby grants all the reliefs sought in this application to the extent set out as follows:-

1. **That the interference and the involvement of the 2nd, 3rd and 4th Respondents in a purely civil dispute between the Applicant and the 1st Respondent at the instance of the 1st Respondent and their acting as money recovery agents in the process is unlawful, illegal and unconstitutional.**
2. **That the attempt by the 2nd, 3rd and 4th Respondents to enforce the civil agreement between the Applicant and the 1st Respondent amounts to a usurpation of the powers of the Court and therefore an infringement of the right of the Applicant to fair hearing which involves his right to have his rights and obligations determined by a competent Court.**
3. **That the arrest and subsequent detention by the 2nd, 3rd and 4th Respondents at the instance of the 1st Respondent over a purely civil transaction constitute an abridgement of the right of the Applicant to personal liberty.**

4. **That the persistent harassment, embarrassment and intimidation of the Applicant by the 1st, 2nd, 3rd and 4th Respondents constitute a violation of the right of the Applicant to dignity of the human person.**
5. **That the 1st Respondent is hereby restrained forthwith from using the 2nd, 3rd and 4th Respondents to harass, embarrass, intimidate, arrest and detain the Applicant over any civil dispute relating to the assignment of Plot 808 Extension II Relocation Layout, Kubwa, FCT, Abuja.**
6. **That the 2nd, 3rd and 4th Respondents are hereby restrained from harassing, embarrassing, intimidating, arresting and detaining the Applicant at the instance of the 1st Respondent, his privies, agents, successors or any person deriving authority from him or acting on his behalf in relation to any civil dispute arising from the assignment of Plot 808 Extension II Relocation Layout, Kubwa, FCT, Abuja.**
7. **That the sum of ₦3,000,000.00 is hereby awarded against the 1st, 2nd, 3rd and 4th Respondents jointly and severally in favour of the Applicant for the violation of his rights to personal liberty, dignity of the human person and fair hearing.**

This is the Judgment of this Honourable Court delivered today, the 28th of April, 2021.

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HON. JUSTICE A. H. MUSA
JUDGE

17/06/2021

APPEARANCES:

FOR THE APPLICANT:
OnwusoronyeEkeneEsq.

FOR THE 1ST RESPONDENT:

Mary Nneoma Elijah Esq.

FOR THE 2ND, 3RD AND 4TH RESPONDENTS:

SeiduJibrin Esq.