IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 6TH JULY, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/2190/19

BETWEEN:

ANTHONY OTUNU UZI:…………………....APPLICANT

AND

1. THE ECONOMIC AND FINANCIAL CRIMES COMMISSION.
2. PETER MBAH.
3. ACCESS BANK PLC. (FORMALLY DIAMOND BANK PLC).
4. FIRST BANK PLC. **:..RESPONDENTS**
5. FIDELITY BANK PLC.

Godwin Chukwukere for the Applicant.
ChikwereAzuwuke for the 2nd Respondent.
MazudaAgboola for the 3rd Respondent.
Mas'udAlabelewe for the 4th Respondent with HadizaAbubakar, A.D. Atanda, Mohammed Suleiman.
5th Respondent not represented.

JUDGMENT.

This is a fundamental rights enforcement application filed by the Applicant on the17th day of June, 2019 wherein he is praying the Court for the following reliefs against the Respondents:

1. A declaration that the arrest without warrant and subsequent dehumanization and detention of the Applicant from 2nd to 6th July, 2018, by the operatives of

the 1st Respondent, is illegal, unlawful, wrongful and constitutes a blatant violation of the Applicant's fundamental rights as enshrined in Sections 35(1), (4) & (6), 37, 41(1), 44(1) and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria, as altered, Section 1(1) (4) 30(1)(2), &314(1) of the Administration of Criminal Justice Act, 2015, and Articles 5, 6 &14 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria 2004.

2. A declaration that thecontinued freezing, restricting, blocking and or placing a post-no-debit on the accounts of the Applicant without a valid order of a court from July, 2018 till date and detention of the personal properties of the Applicant, without warrant, which were seized from him at the time of his arrest, on the 2nd of July, 2018, till date, by the operatives and officials of the 1st Respondent, is illegal, wrongful, unlawful and constitutes a violent violation of the Applicant'sfundamental rights as enshrined in Sections 35(1), (4) & (6), 37, 41(1), 44(1) and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria,as altered, Section 1(1) (2) 30(1)(2), & 314(1) of the Administration of Criminal Justice Act, 2015, and Articles 5, 6 &14 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria 2004.
3. A declaration that the continued placing of restrictions on the Applicant's operation of the said accounts from July, 2018, till date with or without an ex-parte order of a court, and without arraigning the Applicant before a court of law for any known offence, almost one year after investigation, is illegal, wrongful, unlawful and constitutes a violent violation of the Applicant's fundamental rights as

enshrined in Sections 35(1), (4) & (6), 37, 41(1), 44(1) and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria,as altered, Section 1(1) (2) 30(1)(2), & 314(1) of the Administration of Criminal Justice Act, 2015, and Articles 5, 6 &14 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria 2004.

4. A declaration that the restrictions placed on the accounts of the Applicant by the 3rd, 4th and 5th Respondents based on the instructions given to the 3rd, 4th and 5th Respondents by the 1st Respondent without any court order to that effect, thereby denying and depriving the Applicant access to and operation of the said accounts, is illegal, unconscionable, ultra vires and constitutes a breach and blatant violation of the fiduciary relationship between the Applicant and the 3rd, 4th and 5th Respondents, as well as a breach of the Applicant's right to own property as guaranteed by the constitution.
5. A declaration that the acts of the 2nd, 3rd, 4th and 5th Respondents by conniving together and invaded and printed the accounts statements of the Applicant in the custody of the 3rd, 4th and 5th Respondents without the knowledge and consent of the Applicant, is illegal, unconscionable, ultra vires and constitutes a breach and blatant violation of the fiduciary relationship between the Applicant and the 3rd, 4th and 5th Respondents, as well as a breach of the Applicant's right to own property as guaranteed by the constitution.
6. A declaration that the arrest and subsequent dehumanization and detention of the Applicant from 2nd to 6th July, 2018, by operatives of the 1st Respondent on the alleged Petition/Complaint of the 2ndRespondent, without granting him bail within 24 hours of his arrest, is illegal,

wrongful, unlawful and constitutes a blatant violation of his fundamental rights as enshrined in Sections 35(1), (4) & (6), 37, 41(1), 44(1) and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria,as altered, Section 1(1) (2) 30(1)(2), & 314(1) of the Administration of Criminal Justice Act, 2015, and Articles 5, 6 &14 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria 2004.

7. A declaration that the continued confiscation and continued detention of the personal properties of the Applicant, without warrant which were seized from him at the time of his arrest, on 2nd July, 2018, till date, by operatives and officers of the 1st Respondent, on the frivolous Petition/Complaint of the 2nd Respondent,is illegal, wrongful, unlawful and constitutes a violent violation of the Applicant's fundamental rights as enshrined in Sections36(5), 37, 41(1), 44(1) of the 1999 Constitution of the Federal Republic of Nigeria,as altered, (CFRN), Section 1(1) (2),& 314(1) of the Administration of Criminal Justice Act, 2015 (ACJA), and Articles 6 &14 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria 2004.
8. A declaration that the demand by operatives of the 1st Respondent on the Applicant, to continue to make frequent and periodic appearances and visit to the office of the 1st Respondent here in Abuja without arraigning him before a court of law, for any known offence, almost one year after investigation, on the frivolous Petition/Complaint of the 2nd Respondent, of offences alleged against him, is illegal, wrongful, unlawful and constitutes a blatant violation of his fundamental rights as enshrined in

Sections 35(1), (4) &36(5), and 41(1) of the 1999 Constitution of the Federal Republic of Nigeria,as altered, Section 1(1) (2), 30(1)(2) of the Administration of Criminal Justice Act, 2015, and Articles 6 and 12 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria 2004.

9. A declaration that the Applicant is entitled to a public apology and adequate compensation from the Respondents as provided for by Sections 35(6)and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria,as altered, Sections314(1) and 323(1)(2) of the Administration of Criminal Justice Act, 2015, for the blatant violation of the Applicant's fundamental rights without following the due process of law.

10. An Order of this Honourable Court directing the 1st, 3rd, 4th and 5th Respondents whether by themselves, servants, agents, operatives, detectives, investigating officer(s) and privies, howsoever to remove the post-no-debit order and any other restrictions on the accounts of the Applicant and make operational forthwith, the accounts of the Applicant in respect thereof.

11. An Order of perpetual injunction restraining the 1st Respondent whether by itself, its agents, employees, operatives, detectives, investigating officer(s), or by whatever name called, from further inviting, arresting or detaining the Applicant on the frivolous Petition/Complaint of the 2nd Respondent.

12. An Order of this Honourable Court directing the 1st, Respondent to release forthwith to the Applicant, his personal properties i.e. handsets phones with SIM cards, which were seized from him without warrant, at the time of

his arrest, by operatives of the 1st Respondent, on the 2nd of July, 2018.

13. An Order of this Honourable Court directing the Respondents to tender a public apology and pay adequate compensation to the Applicant for the blatant violation of the Applicant's fundamental rights without following due process of law.

14. An Order that Respondents jointly and severally pay to the Applicant the sum of N500,000,000.00 (Five Hundred Million Naira) only as exemplary damages for the wanton and grave violation of the Applicant's fundamental rights.

15. And for such further or other orders as the Honourable Court may deem fit to make in the circumstance.

In the supporting affidavit deposed to by one UsmanSalihu, a Litigation Secretary in the law firm of counsel to the Applicant, the deponent who deposed to the affidavit because according to him, the Applicant has health challenges that could not allow him to travel from Benin to depose to same, averred that the Applicant was at his place of work at Pinnacle Oil and Gas Ltd in Warri, Delta State on 2nd of July, 2018 when the 2nd Respondent, the Chief Executive Officer of the Company called him on phone for a routine meeting of the company.

He stated that while the meeting was in progress, the 2nd Respondent stepped out to make a phone call, and not long after that, an operative of the 1st Respondent who introduced himself as Mr. David Nkpe, appeared at the venue of the meeting in company of some fully armed operatives, and informed the Applicant and five (5) others that they were under arrest, but failed to show him any warrant for such arrest.

He averred that the Applicant was totally humiliated, dehumanised and terrorized, with the operatives forcibly seizing his phones and prevented him from making any calls to his family members or friends concerning his arrest. That the Applicant was informed that his arrest was based on a petition allegedly written against him and five other of his colleagues by the 2ndRespondent.

He further averred that the Applicant and his arrested colleagues were driven by the operatives of the 1st Respondents to their office in Benin where they were detained for three (3) days before they were brought back to Warri where the operatives proceeded to conduct a search on the Applicant's house without showing him any search warrant to that effect. That after the search, the Applicant and his colleagues were driven by the fully armed operatives of the 1st Respondent to their Benin office where they were detained until the evening of 6th July, 2018 when he was released on administrative bail after a period of five(5) days. That during this period of his arrest and detention at 1st Respondent's Benin Office, the Applicant's statement was not taken until in late July, 2018 when he was invited to the 1st Respondent's head office in Abuja along with his five other colleagues – BennethChukwumaIhuoma, Kelvin Enabulele, Jar Jonathan, Eze Sunday and Clifford Igbozurike, before his statement was eventually taken.

Furthermore, the deponent averred that thePetition/complaint of Peter Mbah, the 2nd Respondent was to the effect that the Applicant and his affore-named five colleagues, conspired and stole a cash sum of One Hundred and Thirty-Five Million Naira (N135,000,000.00) belonging to Pinnacle Oil and Gas Ltd, which allegations are completely false and malicious in their

entirety and only meant to disparage the Applicant's person and forcibly dispossess him of his hard earned resources.

He stated that the Applicant was ordered to report to the office of the 1st Respondent at Abuja every two weeks beginning from the 27th July, 2018, and that the journey from Warri Delta State to the office of the 1st Respondent, a journey of over 400km, has taken a great toll on the Applicant, as same is embarked upon at great risk to his health, life, business and finances.

He further stated that the Applicant at various times in the month of July, 2018, approached his banks, the 3rd, 4th and 5th Respondents to withdraw money from his various accounts but the 3rd, 4th and 5th Respondents declined to allow the Applicant access his accounts on the ground that his account numbers have been blocked or restricted on the authority of the 1st Respondent and that no further withdrawals from the accounts would be made by the Applicant. That the Applicant discovered that the 2nd Respondent conspired with the 3rd, 4th and 5th Respondents and invaded and printed the accounts statements of the Applicant without his knowledge and consent, and which the 2nd Respondent attached to his petition to the 1st Respondent.

He averred that upon inquiry, the Applicant was told by the agents of the 1st Respondent that there was no Court order backing the freezing of his accounts besides the written instructions of the 1st Respondent to the 3rd, 4th and 5th Respondents. That the action of placing restrictions on his accounts has rendered the Applicant impecunious and caused him great embarrassment,abject penury, mental agony, public odium, widespread derision and psychological torture, as the Applicant can no longerfend for his wife, children, dependants and associates who depend on him for their means of

livelihood. That notwithstanding the letters of demand for the defreezing of his account, the 1st Respondent has neglected, ignored and/or refused to unblock or unfreeze his account or arraign him in Court, even as their investigations and interrogations that have spanned over a year, which included the subjection of the Applicant to polygraph test,have not yielded anything incriminating against the Applicant.

He averred that the Applicant had worked with Pinnacle Oil & Gas Ltd as Chief Security Officer, and never in the accounts department, for three years before this allegation, and that within this period, there has not been any report or allegation of missing products by the CEO, Mr. Peter Mbah or any other staff of the Company.

In his written address in support of the application, learned counsel for the Applicant, Blessing Eyee, Esq., raised a sole issue for determination, namely;

> ***"Whether the Applicant's fundamental rights has been breached, or are likely to be breached, by the conduct of the Respondents, such as will entitle the Applicant to the grant of the reliefs sought from this honourable Court?"***

Proffering arguments on the issue so raised learned counsel relied on Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to posit that the Applicant is entitled to the grant of the reliefs sought from this Court, following the breach or likely breach of his fundamental rights by the despicable and orchestrated conduct of the 1st Respondent, acting on an alleged petition said to have been written by the 2nd Respondent, as well as by the despicable and orchestrated conduct of the 3rd and 4th Respondents by putting a Post No Debit order on the accounts of the Applicant while

acting upon the instructions of the 1st Respondent without due diligence and without any Court order authorizing same. Hereferred to**FRN v. Ifegwu (2003) 15 NWLR (Pt.113) at 216-217.**

He enumerated the aspects of the breach of the Applicant's fundamental rights by the Respondents as follows:

i) Failure of the 1st Respondent to comply with the provisions of Section 15(1)(2) & (3) of the Administration of Criminal Justice Act, 2015, as they relate to arrest of a suspect without warrant.
ii) Failure of the 1st Respondentto comply with Section 30(1)&(2) of ACJA 2015 by granting bail to the Applicant within 24 hours of his arrest and/or charge him to Court, the Applicant having been arrested without warrant.
iii) Failure of the 1st Respondent to release to the Applicant his properties forcibly seized from him without warrant and without compliance with the provisions for such seizure as provided bySections 10(1) (2)&(3) and 337(1) of the Administration of Criminal Justice Act, 2015, despite repeated demands for same.
iv) The placing of restrictions on the accounts of the Applicant without a valid Order of a Court of competent jurisdiction contrary to Sections 36(5) & 44(1) of the Constitution of the Federal Republic of Nigeria 1999 as altered, Sections 1&2, of the Administration of Criminal Justice Act, 2015 and Sections6, 7, 34 and 38 of the Economic and Financial Crimes Commission Act, 2004. He referred to **GTB PLC v. Adedamola (2019) 5 NWLR (Pt 1664) 30 at 43**; **ESA v. Dangabar (2012) LPELR-19732(CA).**

v) Continuous and serial invitations to visit the office of the 1st Respondent when it is obvious that the Petitioner (2ndRespondent) who has never shown up, has no case against the Applicant, as same constitutes a violation of the Applicant's fundamental right to personal liberty and freedom of movement as enshrined inSections 35& 41(1) of the Constitution of the Federal Republic of Nigeria, 1999, as altered.

vi) Constant and repeated attempts of threats of arrest and detention meted to the Applicant at the office of the 1st Respondent here in Abuja.

Learned counsel submitted that Order XI of the Fundamental Human Rights Rules, 2009 empowers the Court to make such orders and give such directions as it may consider just or appropriate for the purpose of enforcing the rights of an individual. He posited that in cases of infringement or contravention offundamental rights of any person whose rights are held to have been violated or infringed upon, the person is entitled to an award of compensatory damages. He referred to Sections 35(5) of the 1999Constitution, as altered,Sections 323(1)of the Administration of Criminal Justice Act, 2015, and the cases of **Odogu v. A.G. Federation (1996) 6 NWLR (Pt.456) 508 at 519**; **Abiola v. Abacha (1998) 1 HRLRA 447 at 486,** inter alia.

He argued that the Applicant has made out a case of unlawful arrest and detention and the flagrant restriction of his accounts without a valid Order of the Court by the 1st, 3rd and 4th Respondents at the instance of the 2nd Respondent, and that the Applicant is thus entitled to compensatory damages.

He urged the Court in conclusion, to grant the prayers of the Applicant as he has made out a case of serial flagrant violations of his fundamental rights by the Respondents.

In opposition to the Application, the 1st Respondent filed a nine paragraphs counter affidavit deposed to by one Mustapha Sulaiman Shaq, a detective officer of the 1st Respondent, attached to the AMCON DESK Unit of the Commission.

In the said counter affidavit dated and filed on the 1st day of July, 2020, the 1st Respondent averred that the depositions in the Applicant's affidavit do not represent the true facts of the case. That the 1st Respondent received a petition from Pinnacle Oil & Gas Limited on the 16th day of April, 2018 on the allegation of theft of product against the Applicant and others, in response to which its officers commenced investigation into the allegations. That from the relevant documents obtained in the course of investigation, a prima facie case of conspiracy and money laundering was suspected against the Applicant and others which called for their response to the allegations, and following the refusal of the Applicant and the others to respond to their several calls, the officers of the 1stRespondent trailed the Applicant down to Warri, using the address provided.

The 1st Respondent averred that on the 5th of July, 2018, its officers arrested the Applicant in Warri, Delta State and moved him to their Benin Zonal Office for questioning. That on the said 5th day of July 2018, the Applicant made a statement to the officers of the 1st Respondent, after which he applied for bail and same was granted to him same day while investigations continued into the case. That at the conclusions of the investigation against other suspects, a 55 count charge bordering on conspiracy and money laundering was filed

against other suspects at the Federal High Court, Warri on the 28th day of May, 2019 in Charge No. FHA/WR/44C/2019.

The 1stRespondent further averred that the investigation against the Applicant was concluded on 18th June, 2019 when the only response which was being awaited from a service provider to the Applicant was received by the 1st Respondent and that charges bordering on money laundering have been prepared against the Applicant, ready to be filed any moment from now.

The 1st Respondent stated that the phones of the Applicant were not taken from him until the time of making his statement at its Zonal Office in Benin and that he was not prevented from making any call at the point of arrest. That the Applicant was not humiliated and/or detained anywhere by the 1st Respondent for three days and that there was no search conducted at his residence.

It was further averred by the 1st Respondent that the Applicant was informed of the allegation against him before he was arrested at Warri, Delta State on the 5th July, 2019(sic), and that the allegations against him bothers on theft of Petroleum Products and not any cash. That the allegations against the Applicant were investigated and a prima facie case of conspiracy and money laundering was found against others, hence the charge at the Federal High Court, Warri, Delta (Exh.EFCC2). That investigation against the Applicant having been concluded, there will be no need inviting him for further interview. Furthermore, that the 1stRespondent is not holding unto any valuable item belonging to the Applicant except his phone that was forensically analysed and evidence vital to the prosecution of the Applicant were found for which the phone is

to be tendered by the 1st Respondent at the trial of the Applicant.

The 1st Respondentaverred that the facts deposed to by the Applicant in paragraphs 22, 25, 26, 27, 30, 31, 32, 33, 36, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58 and 60 of his supporting affidavit regarding the restriction of his accounts, are facts within the exclusive knowledge of the Applicant; that the 1st Respondent is not in a position to counter them. That the letters written by the 1st Respondent (placing Post No debit Order on Applicant's accounts) have a life span and that the 1st Respondent must not go beyond the letter if no need arise.

Finally, that the 1st Respondent has no restriction on the accounts of the Applicant after the expiration of 72 hours after the letters were served on the Applicant's bankers.

Learned counsel for the 1st Respondent, Francis A. Jirbo, Esq, raised two issues for determination in his written submission in support of the counter affidavit, namely;

a) Whether the Applicant has made out a case of any breach or likely breach of his fundamental rights by the 1st Respondent?
b) Whether the Applicant is entitled to any monetary damages and a public apology by/from the 1st Respondent in this case?

Arguing the two issues jointly, learned 1st Respondent's counsel contended that an applicant whose arrest is lawful and legal as in this case does not have a justiciable right upon which he can approach the Court in line with Section 46 of the Constitution. He argued that the Applicant was not detained for even one day as there is no evidence of such detention.

That being mindful of the constitutional provisions relating to liberty of an individual, the 1st Respondent within 24 hours of the arrest of the Applicant, offered him administrative bail, and therefore, no right of the Applicant was ever breached by the 1st Respondent.

Learned counsel further posited that Section35(1)(c) of the same constitution legitimized the arrest and detention of any one reasonably suspected to have committed a criminal offence as in the case of the Applicant whose invitation and/or arrest was pursuant to a reasonable suspicion of his having committed the offence of money laundering. He contended that the reasonableness of the suspicion on the part of the 1st Respondent has been put to rest with the filing of charges against the co-suspects with the Applicant in Charge No. FHC/WR/44C/2019 pending before the Federal High Court, Warri, Delta State while the charges against the Applicant will be filed shortly as investigations against him has just been concluded.

Relying on **A.G. Anambra State v. Chief Chris Uba(2005) 33 WRN 191,** he submitted that the Applicant does not have a right to be shielded from investigation and prosecution. He further referred to **Nzewi&Ors v. Commissioner of Police (2002) 2 HRLR 156.**

He urged the Court on the strength of the above authorities to refuse the claim for injunctive reliefs sought against the 1st Respondent in this case; arguing that the grant of same would amount to the Court lending itself as a shield against the investigation of the Applicant for an alleged crime.

On the suspension of the Applicant's accounts, learned counsel posited that the 1st Respondent is empowered by Section 6 of the Money Laundering (Prohibition) Act, 2011 as amended in

2012, to issue letters to banks for suspension of accounts in the course of investigation for a duration of 72 hours, after which the 1st Respondent may apply to the Court for exparte order if it desires to extend the suspension. He argued that the 1st Respondent, in this case, did not make any application to Court for any order on the bank accounts of the Applicant and that as such the Applicant's accounts opened at the expiration of the 72 hours.

He urged the Court to follow the above judicial authorities and the legislation cited by the 1st Respondent and dismiss the application of the Applicant for lacking in merit and/for being commenced mala fide, with a cost of N20,000,000.00 (Twenty Million Naira).

In response to 1st Respondent's counter affidavit, the Applicant filed a 40 paragraphs Further Affidavit deposed to byUsmanSalihu and filed on 7th day of July, 2020. He averred that what was shown to the Applicant by the agents of the 1st Respondent at their AMCON Desk in Abuja was a petition from the 2nd Respondent alleging theft of a cash sum of N135,000,000.00 against the Applicant and others, and not theft of product.

He maintained that the Applicant was arrested on the 2nd day of July, 2018 and not 5th July, 2018, and that he did not leave the custody of the 1st Respondent until the evening of 6th July, 2018.

Contrary to the 1st Respondent's averment that the Applicant's accounts remained opened after 72 hours of the placing of suspension on same,the Deponent averred that the Applicant approached the 3rd Respondent to make withdrawals from his account domiciled with the 3rd Respondent on the 22nd, 26th and 31st July, 2018 and the 23rd day of December, 2019 (sic) and in

each occasion, the 3rd Respondent declined to allow him access, but rather, referred him to the 1st Respondent to address the issue.

He averred that after waiting in vain for several months, the Applicant caused a letter to be written to the 1st Respondent, dated 21st February, 2019 through Mike Ozekhome's chambers, demanding the lifting of "Post No Debit" placed on his account among others.

That the 1st Respondent refused or neglected to act on the letter and thus the Applicant approached the 1st Respondent's agent named Usman Imam, who because of the Applicant's deteriorating health, instructed the 3rd Respondent to allow the Applicant to continually withdraw to the extent of the Applicant's monthly pension which is less than Thirty Thousand Naira (N30,000.00), notwithstanding the fact that the Applicant has sufficient funds in his account. That on 23rd December, 2019, the Applicant went to the 3rd Respondent to withdraw the sum of N200,000.00 from the said account and he was refused access to his money, with "PND" written on his withdrawal slip. Also on 14th January, 2020, the Applicant had the same experience when he went to the 4th Respondent to withdraw money from his account and he was refused access to his money, with the inscription "DORMANT/FROZEN" written on his withdrawal slip. That uptill this moment, the Applicant cannot access any of his accounts domiciled with the 3rd and 4th Respondents on the ground that the 1st Respondent has not directed them to so do.

He averred that the Applicant is not aware of any charge against him as alleged by the 1st Respondent as he was arrested andinvestigated along with others after which other suspects were charged to Court, without him.

The learned Applicant's counsel raised two further issues for determination in his written submission in support of the Further Affidavit, namely;

a) Whether the Applicant has made out a case of any breach or likely breach of his fundamental rights by the 1st Respondent?
b) Whether the Applicant is entitled to any monetary damages and a public apology by/from the 1st Respondent in this case?

Arguing issue one, he contended that the 1st Respondent's mere denial of paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 29, 31, 36, 40, 41, 43, 59 and 60 of the Applicant's affidavit in support of the motion on notice, without more, will not be sufficient to exonerate them from the fundamental breaches against the Applicant, such as the Applicant's arrest without warrant, keeping the Applicant in custody for 5 days without taking his statement, all the intimidations and harassments by the 1st Respondent's armed personnel which the 1st Respondent admitted in their paragraph 7(1) oftheir counter affidavit, and finally, the acts of placing the Applicant's accounts on "Post No Debit" by the letter written by the 1st Respondent to the 3rd, 4th and 5th Respondents without any ex parte order from a Court of competent jurisdiction backing such directive.

He posited that the said paragraphs of the Applicant's affidavit in support of the motion on notice are explicit and point to the facts that the 1stRespondent breached the fundamental rights of the Applicant as provided by Section 44 of the 1999 Constitution of the Federal Republic of Nigeria, by seizing and not allowing the Applicant access to his property and thereby

caused the Applicant what he suffered as contained in paragraph 39 of his affidavit.

Learned counsel contended that even in the face of the said letter as acknowledged by the 1st Respondent in paragraphs 7(u) and (v) of their counter affidavit, and by the provisions of Sections 34 and 38 (1&2) of the Economic and Financial Crimes Commission Act, the 1st Respondent has no power to freeze, attach or place a "Post No Debit" on the accounts of the Applicant howsoever without first applying for and obtaining an order of a Court of competent jurisdiction to that effect.

He drew the Court's attention to the Applicant's solicitor's letter to the 1st Respondent (Exhibit B), dated 20th February, 2019 which demanded for the unfreezing and/or unblocking of the accounts of the Applicant and other suspects, and argued that the restrictions on the Applicant's accounts with the 3rd, 4th and 5th Respondents had been in force before and after the conclusion of the investigation by the 1st Respondent.

He referred to **Atiku v. Oyekunle (2018) 8 NWLR (Pt.1620)** on the point that documentary evidence lends more credence to material facts deposed to in an affidavit.

He referred to **GTB PLC v. Adedamola (2019) 5 NWLR (Pt.1664) 30 at 43** on the point that before freezing customer's account, the bank must be satisfied that there is an order.

On the reliance of 1st Respondent on Section 35(1)(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), learned Applicant's counsel posited that they do not contest the provisions of the said section of the Constitution and contended that what is in issue here is the way and manner the 1st Respondent carried out the arrest and whether it complies with the provisions of the relevant laws.

He argued to the effect that the actions of the 1st Respondent being complained of by the Applicant are in breach of Sections 34, 35, 37, 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The 2nd Respondent on his part, filed a 15 paragraphs counter affidavit deposed to by one AmanyiOcholaOchoyo, a Solicitor in the law firm of counsel to the 2nd Respondent. He averred that a theft of Petroleum products worth the sum of N135,000,000.00 at the tank farm of the 2nd Respondent led the 2nd Respondent to write a petition to the office of the 1st Respondent in April, 2018 against the Applicant and others over the theft. That to the best knowledge of the 2nd Respondent, the Applicant and others were invited in respect of the petition sent to the 1st Respondent and that the 2nd Respondent is not privy to the internal processes of investigations/fact finding at the 1st Respondent's office.

He stated that the 2nd Respondent's complaint to the 1st Respondent is that petroleum products worth over N135m were stolen under the watch of the Applicant and five others which needed to be investigated. That as a law abiding citizen the 2nd Respondent decided not to take laws into his hands but had an obligation to report thefts and criminal activities in his company to the law enforcement agencies, and that his petition caused no harm or injury to the Applicant in any way.

In his written address in support of the counter affidavit, learned counsel for the 2nd Respondent, OgiwoduOkibe-Oga (Mrs) submitted a lone issue for determination, namely;

> ***"Whether from the facts and circumstance of this case, the mere complaint of the 2nd Respondent amounts to breach of the Applicant's fundamental rights?"***

Proffering arguments on the issue so raised, learned counsel posited that the law is trite that any person can lay genuine complaint to the law enforcement agents for the purpose of investigation which not only aids the duties of such law enforcement agency but also helps in prevention of crime in the society. He referred to Section 38(1) of the Economic and Financial Crimes CommissionAct, 2004 which empowers the Commission to receive information from any person, authority, or company.

He contended that the 2nd Respondent acted within the ambit of the law by lodging a complaint to the 1st Respondent.

He referred to **Diamond Bank PLC v. Opara (2018) 7 NWLR (1617) P.97** on when complaint to law enforcement agencies amounts to abuse of process of law, and argued that in the instant case, the petition of the 2nd Respondent on behalf of his company and the consequential investigations of the 1st Respondent will reveal that there was neither malice nor bias in the petition of the 2nd Respondent.

He urged the Court to hold that the complaint of the 2nd Respondent to the 1st Respondent was made in good faith which was upon a reasonable ground and does not amount to breach of the fundamental rights of the Applicant.

Responding to the 2nd Respondent's counter affidavit, the Applicant filed a 12 paragraphs Further Affidavit where he reaffirmed the averments in his affidavit in support of the Motion on Notice and further averred that the Applicant admits paragraph 8 of the 2nd Respondent's counter affidavit to the extent that the 2nd Respondent made a complaint to the office of the 1st Respondent where he falsely accused the Applicant of theft of his company's petroleum products. He stated that since the completion of investigation into the 2nd Respondent's

allegation by the 1st Respondent, only the Applicant was not charged or arraigned in any Court by the 1st Respondent out of the six members of staff affected by the said allegation. That it was still on the prompting of the 2nd Respondent that the accounts of the Applicant are still on Post No Debit status by the 1st Respondent in spite of the fact that investigation has since been concluded and the Applicant not charged or arraigned in any Court based on the alleged theft.

In his reply on points of law to the 2nd Respondent's written address, learned Applicant's counsel raised for determination, the issue of: "***Whether from the facts and circumstances of this case, the mere complaint of the 2nd Respondent amounts to breach of the Applicant's fundamental rights?"***

He submitted that the case of Diamond Bank PLC v. Opara (supra) is apt in this circumstances, to show that the complaint of the 2nd Respondent amounts to a breach of Applicant's fundamental rights in that the false information of the 2nd Respondent was borne out of malice and bad faith, and that same made the Applicant to pass through pains, agony and hardships in the hands of the 1st Respondent.

He urged the Court to hold that the instigation and prompting of the 2nd Respondent in "staging" the arrest of the Applicant without warrant by the 1st Respondent as well as the encouragement and support of the 2nd Respondent to the 3rd, 4th and 5th Respondents through the 1st Respondent to tenaciously hold on the accounts of the Applicant without Court Order even as investigation into the matter has been completed and nothing incriminating found against the Applicant, are acts of malice, bias and a desire to misuse or prevent the system of administration of justice.

Also in opposition to the application, the 3rd Respondent filed an 18 paragraphs counter affidavit deposed to by its compliance officer, one FarukIdiaro. The 3rdRespondent averred that it received a letter from the 1stRespondent requesting for the account of the Applicant to be placed on a "No Debit Status". That the 1st Respondent omitted to attach the usual order of Court which therefore, made it impractical for the 3rd Respondent to carry out the directive and that the funds of the Applicant have always been accessible to the Applicant beginning from when the letter from Economic and Financial Crimes Commission was received by the Bank.

The 3rd Respondent further averred that as a matter of fact, the Applicant still makes withdrawals from his account till even after the filing of the Originating Process in this suit. The Applicant's Statement of Account was attached to the affidavit as Exhibit A.

The learned 3rd Respondent's counsel, Katchy Felix, Esq, in his written address in support of the counter affidavit, raised two issues for determination, to wit;

i) Whether the Applicant's case is competent ab initio in view of the non-compliance with Order 2 Rule 4 of the Fundamental Rights, Enforcement Rules, 2009?

ii) i) Whether the Applicant has established their (sic) claims against the 3rd Respondent to entitle him to the reliefs sought?

Arguing issue one, learned counsel relied on **Onifade v. Olayiwola&Ors (1990) LPELR-2680 (SC)** to submit that when a statute or rules has laid down a procedure for doing a particular act, the doing of that act in any other particular way other than the way prescribed by law will amount to a nullity.

He further relied on **MIC Royal Ltd v. APCON (2018) LPELR-45314(CA)** to contend that the Applicant's affidavit in support of the originating motion is incompetent having been deposed other than by person so authorised by virtue of the provision of Order II Rule 4 of the Fundamental Rights Enforcement Procedure Rules, 2009. He urged the Court to strike out the said affidavit for being in deliberate violation of Order II Rule 4 of the Fundamental Rights Enforcement Procedure, Rules.

He argued that in the absence of a competent affidavit, this Court is bereft of the relevant material to adjudicate on this matter. He urged the Court to dismiss the action of the Applicant with cost awarded in favour of the 3rd Respondent.

On issue two, learned counsel placed reliance on **Onah v. Okenwa (2010) 7 NWLR (Pt.1194) 535-536** to submit that the burden of proof lies on an applicant who applied for the enforcement of his fundamental rights to establish bycredible affidavit evidence that his fundamental rights was breached. He contended that the Applicant herein has failed to establish his claims as to be entitled to his reliefs sought.

Replying to the 3rd Respondent's counter affidavit, the Applicant filed a 15 paragraphs further affidavit and reply on points of law.

The Applicant in thefurther affidavit reiterated the averments in his affidavit in support of the motion on notice and stated that even as at 23rd day of December, 2019, the Applicant attempted again to withdraw some funds from his account domiciled with the 3rd Respondent, an amount higher than the usual monthly withdrawal, but the 3rd Respondent did not honour the withdrawal instruction but rather stamped and wrote on the withdrawal slip the inscription "PND".

In his reply on points of law, learned Applicant's counsel raised the following two issues for determination;

1. Whether the Applicant's case is competent ab initio in view of the non-compliance with Order 2 Rule 4 of theFundamental Rights Enforcement Procedure Rules, 2009?
2. Whether the Applicant has established his claims against the 3rd Respondent to entitle him to the reliefs sought?

On issue one, he posited that the Applicant'sapplication contains all the procedures as laid down in Order II Rules 3 and 4 of the Fundamental Rights (Enforcement Procedure) Rules, 2009. He referred to paragraphs 1,2,3,10,11,16,19 and 23 of the Applicant's affidavit in support of the Motion on Notice.

He further argued that assuming but without conceding that the Applicant did not comply with all the laid down rules, that the breach of a rule of practice and procedure does not render the proceedings a nullity but merely an irregularity. He referred to **Saudev. Abdullahi (1989) NWLR (Pt.166) 388.**

He submitted that the Applicant's affidavit in support of the originating motion is competent having been deposed to by a person so authorised by virtue of the provision of Order II Rule 4 of the Fundamental Rights Enforcement Procedure, Rules, 2009.

On issue 2, learned counsel contended that the mere denial of paragraphs 25, 26, 27, 32, 33, 36, 38 and 39 of the Applicant's affidavit in support of the Motionon Notice,without more, will not suffice to exonerate the 3rd Respondent from its involvement and collaboration with the 1st Respondent to put the account of the Applicant on PND. He argued that the Applicant had attached Exhibit 'A1'suggesting that his account has been

restricted, in further proof that his account domiciled with the 3rd Respondent had been on "PND" contrary to the depositions of the 3rd Respondent in paragraphs 17 and 18 of their counter affidavit.He relied on **<u>Akiti v. Oyekunle (2018)8 NWLR (Pt.1620) 191</u>** to posit that documentary evidence lends more credence to material facts deposed to in an affidavit. Hesubmitted that the Applicant has established by credible affidavit evidence that his fundamental right was breached.

Still in opposition to the application, the 4th Respondent filed a 10 paragraphs counter affidavit deposed to by one Farida Umar Usman, a legal practitioner in the law firm of counsel to the 4th Respondent.

Admitting paragraphs 25, 26, 27, 32, 33, and 35 of the Applicant's affidavit in support of the application, the 4th Respondent averred that the depositions contained in the said paragraphs are true only to the extent that it received a letter with reference: CR/3000/EFCC/ABJ/AMCON/VOL.1/944 dated 9th day of July, 2019 from the 1st Respondent informing it that the 1st Respondent was investigating a case in which the Applicant's account featured, and requested the 4th Respondent to furnish it with the account opening package; statements of account and certificate of identificationrelating to the Applicant's account.

The 4th Respondent stated that the 1st Respondent by the said letter also directed it to place a Post No Debit ("PND") on the Applicant's account pursuant to its powers contained in Section 38(1) & (2) of theEconomic and Financial Crimes Commission (Establishment) Act, 2004 and Section 21 of Money Laundering (Prohibition) Act, 2011, as amended. That the 4th Respondent in compliance with the 1st Respondent's directive, forwarded all the requisite documents to the 1stRespondentand placed a Post

No Debit on the account of the Applicant on the 12th day of July, 2018.

The 4th Respondent stated that it acted lawfully in complying with the directives issued by the 1st Respondent to produce relevant documents and place a Post No Debit on the account of the Applicant without knowledge of any defect in the procedure leading to the exercise of the powers by the 1st Respondent, and that the 4th Respondent and its officers who acted believed fervently that they were carrying out a lawful and usual directive, and giving due cooperation to the 1st Respondent in carrying out its lawful duties of investigation of an alleged crime.

The said letter from the 1st Respondent was exhibited as "Exhibit FBN1".

In his written address in support of the counter affidavit, learned 4th Respondent's counsel, Mas'udMobolajiAlabeleweEsq., submitted a lone issue for determination, namely;

> ***"Whether from the facts deposed to in the affidavit, in support of the application, the fourth Respondent could be held liable for complying with the directives of the first Respondent in placing a Post No Debit on the account of the Applicant."***

Arguing the issue so raised, learned counsel posited that the Banker/Customer relationship existing between the Applicant and the 4th Respondent is purely contractual and not in any way connected with any criminal allegation which is the purview of the investigations by the 1st Respondent and for which the Applicant was arrested, detained and interrogated. He contended that the 1st Respondent is empowered by law to issue directives to any financial institution including the

4thRespondent, and that the 4th Respondent is legally obliged to fully cooperate with the 1st Respondent or risk penal sanctions. He referred to Sections 38(1) & (2), and 34(1)(2)&(4) of theEconomic and Financial Crimes Commission (Establishment) Act and Section 21 of the Money Laundering (Prohibition) Act.

Learned counsel posited that the purport of the above laws is that the 1st Respondent will by a motion exparte obtain an order from a Court of competent jurisdiction, and thereafter forward a directive as contained in Form B of the schedule to the EFCC Act, signed by the Chairman of the 1st Respondent or any of its authorised officers directing the bank to restrict an account domiciled with it.

He argued that the law did not contemplate that the Ex-parte Order be served on the bank or financial institution before it complies with the directives contained in Form B.That the only order which ultimately gest served on the financial institution is the directive in Form B.

He contended that in the face of Section 38(2)(b) of the EFCC Act, which provides penal sanctions for a person who fails to comply with any lawful enquiry or requirements made by any authorised officer in accordance with the provisions of the Act, that it is inconceivable that any officer of a financial institution who receives a directive in Form B is vested with any discretion to comply with the directive, and neither is such officer given an opportunity or latitude to investigate or enquire into the due compliance or otherwise of the procedure leading to the issuance of the directive.

Learned counsel urged the Court to decline the invitation to apply the authorities of **Guaranty Trust Bank PLC v. Adedamola (supra)** requiring a bank to satisfy itself that there

was an order issued by a Court before placing any form of restriction on a customer's account. He argued that the directive issued by the 1st Respondent to the 4th Respondent in this case wasnot hinged on Section 34 of the EFFC Act which was interpreted by the Court of Appeal in the**Guaranty Trust Bank PLC v. Adedamola**case, but on Section 38(1) of the EFCC Act and Section 21 of the Money Laundering Act.

He thus contended that the facts and the decisions in the above case and previous decisions on this issue, are therefore clearly distinguishable from the facts and peculiar circumstances of this case.

He submitted that where, as in this case, a function is discharged, being an official duty, there is always a presumption recognised by law that it was done legitimately, correctly and solemnly until the contrary is established. He referred to Section 168(1&2) of the Evidence Act, 2011, and the case of **Hon. Dr.TukurIdrisNadabo v. SaniAbdullahiDabai& 4 Ors (2011) 7 NWLR (Pt.1245)155 at 178.**

He urged the Court in conclusion, to hold that the 4th Respondent was justified to place restriction on the Applicant's accounts pursuant to a directive of the 1st Respondent in view of Section 5(a) of the Money Laundering Act, and to resist the invitation to find the 4th Respondent jointly liable to the Applicant for carrying out a seemingly lawful directive.

Replying to the 4th Respondent's counter affidavit, the Applicant filed an 11 paragraphs further affidavit and Reply on points of law. The Applicant averred that the restriction of his account by the 4th Respondent from the 19th day of July, 2018 till date caused him and his entire family an untold hardship and great pains. That on the 14th day of January, 2020, the Applicant again went to the 4th Respondent to withdraw from his account

where he has sufficient funds and he was told by the staff of the 4th Respondent that his account has become dormant.

He maintained that the 4th Respondent is privy to the whole illegal acts of the 1st Respondent in acting without any Court order, and that the 4th Respondent carried out the instructions without first ensuring that the directive of the 1st Respondent has the backing of a Court order as required by law.

Learned Applicant's counsel further raised a sole issue for determination in his reply on points of law to the 4th Respondent's written address in support of its counter affidavit, namely;

> ***"Whether from the facts deposed to in the affidavit in support of the application, the 4th Respondent could be held liable forcomplying with the directives of the 1st Respondent in placing a Post No Debit on the account of the Applicant?".***

He argued that the 4th Respondent is jointly liable to the Applicant for failure to exercise due diligence in ensuring that the 1st Respondent's instructions and directive had an order of a competent Court backing it in line with Section 34(1)(2)(3) and (4) of the Economic and Financial Crimes Commission (Establishment) Act. He posited that it is only an Ex-parte order as provided in the said Section 34 of the Act that can make the acts of the 1st and 4th Respondents to be lawful. That anything short of that will be acting in illegality.

Learned counsel submitted that the case of **Chief (Dr.) O. Fajemirokun v. Commercial Bank (credit huonnais) Nig. Ltd &Anor (2009) 5 NWLR (Pt.1135) 558 at 600,** cited by the 4th Respondent is clearly inapplicable or at best, distinguishable from the facts of this case. That the said case relates to duty of

citizens in reporting cases of commission of crimes to the Police simplicita and does not in any way support an institution such as the 4th Respondent who infringed on the rights of a citizen while trying to carry out the instruction of another without ensuring that the law backs their act.

Arguing that the issue here is not all about criminal allegation, he submitted that the fundamental rights of the Applicant as guaranteed by Section 43 of the 1999 Constitution of the Federal Republic of Nigeria has been breached by the 4th Respondent in acting without due diligence, thereby causing hardship and pains to the Applicant and his family.

He contended to the effect that the exercise of the power to give directive by the 1st Respondent to financial institutions to place a Post No Debit order on a customer's account, must be done in according with the provision of the law in Section 34(1) of the Economic and Financial Crimes Commission, Act which requires that the order of Court must first be sought and obtained ex parte.

He urged the Court to hold that the 4th Respondent actually received instructions from the 1st Respondent to place restrictions on the account of the Applicant and that the4th Respondent actually placed a Post No Debit (PND) on the Applicant's account without due diligence of ensuring thatthe directive was backed by law.

On the part of the 5th Respondent, it filed an 11 paragraphs counter affidavit deposed to by one OnyeteEfenjiOlelewe, in opposition to the Applicant'sapplication.

The 5th Respondent averred that the Applicant is its customer who maintains an account numbered as 6551989343. That it received a letter from the 1stRespondent dated 9th July, 2018

with Reference No. CR:3000/EFCC/ABJ/AMCON/VOL.11941, informing it that the 1st Respondent was investigating a case in which the said Applicant's account No. 6551989343 featured prominently.

That the 1st Respondent requested it to furnish it with the Applicant's account opening package including mandate card, statement of account from January, 2017 to date, as well as to place a Post No Debit ("PND") on the Applicant's account with the 5th Respondent, pursuant to Section 38(1) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 and Section 21 of the Money Laundering Act, 2011.

The 5th Respondent further averred that it knows as a fact that the 1st Respondent is empowered by law to investigate individuals and Corporate Accounts in financial institutions suspected to have carried out suspicious transactions or money laundering. Thus in compliance with the 1st Respondent's directive in the said letter, the 5th Respondent forwarded all the requested documents to the 1st Respondent and placed a Post No Debit on the Applicant's account on the 9th day of July, 2018. That it complied with the 1st Respondent's directive and request as contained in the 1st Respondent letter of 9th July, 2018 to enable the 1st Respondent carry out its lawful activities as empowered by law.

Furthermore, the 5th Respondent averred that it is entitled to presume that the directive contained in exhibit A (Letter from 1st Respondent) issued to her by the 1st Respondent was properly and lawfully issued and in compliance with all requirements of law enabling the 1st Respondent to issue the directive.

The 5th Respondent however, averred that when it did not get any further response or directive from the 1st Respondent, it removed the Post No Debit status placed on the Applicant's

account and that the Applicant has been operating the account as his account is neither blocked nor restricted.

In his written address in support of the counter affidavit, learned counsel for the 5th Respondent,Olelewe Felix Ibe, Esq, raised a lone issue for determination, namely;

> ***"Whether the fifth Respondent could be held liable of breach of Applicant's fundamental human rights as contained in the Applicant's Motion and deposition in the Affidavit, when the fifth Respondent complied with the directives of the first Respondent in placing a Post No Debit on the account of the Applicant with the fifth Respondent?".***

Arguing theissue so raised, learned counsel contended that the 5th Respondent's action in this matter was only complying with the lawful directive of the 1st Respondent inplacing a Post No Debit on the account of the Applicant with the 5th Respondent to enable the 1st Respondent effectively investigate the complaint against the Applicant.

He argued that the 5th Respondent never at any time arrested or detained the Applicant and as such, is not liable either jointly or otherwise for the alleged hardship suffered by the Applicant from the actions of the 1st Respondent. He posited that the action of the 5th Respondent in this matter, by the authorities of **Sea Trucks Nigeria Ltd v. Anigboro (2001)10 WRN 78, Tukurv. Government of Taraba State (supra),** is merely ancillary or incidental in the 1st Respondent's investigation of the Applicant based on the complaint of conspiracy, stealing and criminal breach of trust alleged against the Applicant by the 2nd Respondent.

He urged the Court to hold that it is improper to constitute the action of the 5th Respondent in this matter as one for the enforcement of fundamental right of the Applicant. He further urged the Court to hold that the Applicant's action as it relates to the 5th Respondent is baseless, frivolous and lacks merit.

Learned counsel further contended that by the depositions of the Applicant in his affidavit in support of the application, the Applicant clearly admitted that he was arrested and detained by the 1st Respondent on the complaint of the 2nd Respondent. That the Applicant further admitted that it was the 1st Respondent that directed the 5th Respondent to place a Post No Debit on the account of the Applicant with the 5th Respondent.

He argued that by the above admissions, the 5th Respondent did not in any way breach the fundamental right of the Applicant as alleged by the Applicant in this matter.

Arguing further, learned counsel contended that a close look at the depositions of the Applicant will show that the averments did notcontain facts to substantiate the Applicant's depositions and claims as contained in paragraphs 24, 25 and 26 of the Applicant's affidavit as it relates to the 5th Respondent. Furthermore, that the said depositions in paragraphs 24, 25 and 26 of the Applicant's affidavit contradict Applicant's depositions in paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 40-61 of the said affidavit as they relate to the 5th Respondent.

He referred to **Oludamilola v. State (2008) 26 WRN 57 at 65; Nasamu v. State (1979)6-9 SC pg 153** and urged the Court to hold that the contradictions in the Applicant's depositions are fundamental and material conflicts and that the averments

cannot substantiate the claim of the Applicant in this matter as against the 5th Respondent.

Learned counsel in his further arguments, submitted that the directive of the 1stRespondent having been hinged on Section 38(1) of the Economic and Financial Crimes Commission (Establishment) Act and Section 21 of the Money Laundering Act, and not on Section 34(1)of the Economic and Financial Crimes Commission (Establishment) Act, the 5thRespondent was justified to have complied with the directive without first satisfying itself that there was an order issued by a Court in that regard as held by the Court of Appeal in **Guaranty Trust Bank PLC v. Adedamola (2019) 5 NWLR (Pt.1664) 30 at 43.**

He urged the Court to hold that the 5th Respondent was justified to place a Post No Debit on the Applicant's accounts pursuant to a directive of the 1st Respondent in view of Section 5(a) of the Money Laundering Act and to resist the invitation to find the 5th Respondent jointly liable to the Applicant for carrying out a seemingly lawful directive.

The Applicant in response to the 5th Respondent's counter affidavit, filed an 11 paragraphs Further Affidavit and Reply on Points of Law. The Applicant averred that the depositions in paragraph 8(i-iii) of the 5th Respondent's counter affidavit are false, misleading, erroneous, contradictory, approbating and reprobating, and that the Applicant's account domiciled with the 5th Respondent has been placed on "Post No Debit" status until about 15th December, 2019 when it was lifted. He averred that the restriction placed the Applicant's account by the 5th Respondent from the 19th day of July, 2018 till December, 2019, caused an untold hardship and great pains to the Applicant and his entire family.

He maintained that the 5th Respondent is privy to the whole illegal acts of the 1st Respondent in acting without any Court order.

In his reply on points of law, learned Applicant's counsel raised for determination, the issue of:

> ***"Whether from the facts deposed to in the affidavit in support of the application, the5th Respondent could be held liable for breach of the Applicant's fundamental rights, by complying with the directives of the 1st Respondent in placing a Post No Debit on the account of the Applicant?"***

He argued that the 5th Respondent is jointly liable to the Applicant because the 5th Respondent ought to have exercised due diligence in ensuring that the 1st Respondent's instructions and directive had an order of a competent Court backing it in line with Section 35(1),(2),(3) and (5) of the Economic and Financial Crimes Commission (Establishment) Act.

Countering the 5th Respondent's contention that it was carrying out *"a seemingly lawful"*and usual directive of the 1st Respondent, the learned Applicant's counsel posited that it is only an exparte order as provided in Section 35 of the Economic and Financial Crimes Commission (Establishment) Act that can make the acts of the 1st and 5th Respondents lawful. That anything short of that will be acting in illegality.

He submitted in conclusion that the Applicant has been able to establish by credible affidavit evidence that his fundamental rights were breached by the5th Respondent when it complied with the directive of the 1st Respondent which led to the restrictions placed on the Applicant's account without satisfying itself of any existing ex parte order authorising such directive.

The question for consideration is, **whether the applicant has proved the infraction or the likelihood of infraction of his fundamental rights as enshrined in 1999 Constitution of the Federal republic of Nigeria against the Respondent?**

The constitution of the Federal Republic of Nigeria, 1999 (as amended) in its chapter IV guarantees to every citizen of the country, some basic fundamental human rights, some of which are right to personal liberty, (S.35), and right against compulsory acquisition of property (S.44).

Where there is any infraction or likelihood of breach of the rights guaranteed by the Constitution, Section 46(1) of the Constitution empowers a citizen who alleges that his right has been, is being or likely to be contravened, to apply to the High Court for redress.

In the exercise of this constitutional right, the Applicant herein has approached this Court alleging in essence that his rights to personal liberty and right to own property have been breached by the Respondents and is therefore seeking for redress against the Respondents.

The Courts in a plethora of cases, have laid down the procedure to be adopted by the trial Court in an application such as the instant case. Thus in **Sea Trucks (Nigeria) Ltd v. Anigboro (2001) LPELR-3025 (SC),** the Apex Court, held, per Karibi-Whyte, J.S.C, that:

> ***"The correct approach in a claim for the enforcement of fundamental rights is to examine the relief sought, the grounds for such relief, and the facts relied upon. Where the facts relied upon disclose a breach of the fundamental right of the applicant as the basis of the claim, here there is a redress through the enforcement***

of such rights through the Fundamental Rights (Enforcement Procedure) Rules, 1979."

Briefly summarised, the Applicant herein is praying the Court for a declaration that his rights to personal liberty and to own property were breached by the Respondents and for an order enforcing his fundamental rights against the Respondents. The Applicant alleged that he was unlawfully arrested without warrant by the 1st Respondent at the instigation of the 2nd Respondent, and detained without arraignment nor trial in Court for five (5) days. Also, that the 1st Respondent, without due process of law, gave directives to the 3rd – 5th Respondents to place restriction on his bank accounts, and the 3rd – 5th Respondents, without satisfying themselves that the 1st Respondent'sdirective was backed by an order of Court as required by law, proceeded to comply with the said directive thereby breaching his fundamental right by denying him access to his funds and causing him pains and hardship in so doing.

The law is trite that the burden of proving the legality and constitutionality of an arrest and detention is on the party who effected the arrest. See **Madiebo&Ors v. Nwankwo (2001) LPELR-6965 (CA).**

However, that burden will only arise where a prima facie evidence of unlawful arrest and detention has been adduced by the person alleging unlawful arrest and detention. Thus, in **SPDC &Anor v. Pessu (2014) LPELR-23325 (CA),** the Court of Appeal, per Ogakwu, J.C.A. held that:

"Though trite law as held by the lower Court on pages 74-75 of the Records that the burden of proving that an arrest and detention is legal is on the party who effected the arrest, it seems to me that this a (sic) burden that will only arise where the person alleging

unlawful arrest and detention has adduced prima facie evidence of an unlawful arrest and detention. In Gusau v. Uwazurike (2012) 28 WRN III at 140-141, this Court held that a detention can only by adjudged wrongful or unlawful in the first place if there is no legal foundation to base the arrest and/or detention."

In the instant case, the grounds on which the Applicant is alleging that his arrest and alleged detention by the 1st Respondent is unlawful, is that he was arrested without warrant, and that having thus arrested him without warrant, the 1st Respondent detained him for a total period of five (5) days before he was released on administrative bail.

Regarding the arrest without warrant, it is not the law that the absence of warrant of arrest ipso factomakes and arrest wrongful or unlawful. The import of Section 35(1)(c)of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) is that a person's right to personal liberty may be deprived (by way of arrest without warrant)where the person is reasonably suspected of having committed a criminal offence.

There is no gainsaying the fact that the 1st Respondent is empowered by Sections 6(b) and 7(1)(a) of theEconomic and Financial Crimes Commission (Establishment, etc) Act, 2004, to conduct investigations as to whether any person or organisation has committed offence relating to economic and financial crimes.The performance of this function of investigation may entail the bringing into custody, the person being investigated, either for the purposes of taking his statement or to ensure a proper and uninhibited conduct of the investigation.

The 1st respondent admitted that the Applicant was arrested, stating that the arrest was premised on a petition written to

them by the 2nd Respondent alleging theft of Petroleum Products worth over N135,000,000.00 against the Applicant and five others, and that the arrest was consequent upon the failure of the Applicant to respond to their invitation to come forward and answer to the allegation.

It is instructive that the enabling law of the 1st Respondent, the Economic and Financial Crimes Commission (EFCC), did not provide that every arrest by the Commission, must be by virtue of a warrant to that effect. And since the Constitution envisages that a person may be arrested without warrant of arrest upon reasonable suspicion of having committed a criminal offence, an arrest cannot be unlawful where no law has been breached thereby. What the law requires in the absence of warrant of arrest is for the law enforcement agency, in this case the Economic and Financial Crimes Commission (EFCC), to exercise their power of arrest and detention in good faith. Thus in **First Bank of Nigeria PLC &Ors v. A.G. Federation &Ors (2013) LPELR-20152(CA),** the Court of Appeal, per Akomolafe-Wilson, JCA, held:

> ***"It is indisputable that the EFCC Act, like the EFCC, the Police has the right to investigate, arrest and detain any person who is suspected of the Commission of any offence under the EFCC Act. Any proved detention however must be justified in law, and must be exercised in good faith in the light of the important right of each individual."***

The learned Justice further held at page 59, paras C-F, that:

> ***"It is an established principle of law that where there is evidence of arrest and detention of an applicant which were done or investigated by the respondent in an action for the enforcement of fundamental rights, it***

is for the respondent to show that the arrest and detention were lawful. In other words, the onus is on the person who admits detention of another to prove that the detention is lawful."

What is evident from the above decision of the Appellate Court is that it is not sufficient for an applicant to merely allege that he was detained by the respondent. The applicant must prove the fact of his detention, except where same is admitted by the respondent before the onus of proving the legality of the detention shifts to the respondent.

In the instant case, the 1st Respondent in paragraph 6 of its counter affidavit denied the facts as to the detention of the Applicant for five days, and averred in paragraph 7(d)&(e) of the said counter affidavit that on the same day it arrested the Applicant, it moved the Applicant from Warri to its Benin Zonal Office where the Applicant made a statement and applied for bail which was granted him the same day.

It is therefore incumbent on the Applicant to show by material evidence that he was indeed detained by the 1st Respondent for the number of days which he alleged in his affidavit. This, the Applicant failed to do and without the 1st Respondent admitting the detention of the Applicant for the number of days which he alleges, there is nothing before this Court on the basis of which this Court can hold that the right to personal liberty of the Applicant was breached by the 1st Respondent. The ipsit dixit of the Applicant, without more, does not suffice in the circumstances of the instant case.

Regarding the 2nd Respondent in this case, who was sued bythe Applicant on the basis that his petition to the 1st Respondent led to thealleged breach of his fundamental rights;

the law was succinctly stated by the Court of Appeal, per Ogakwu, J.C.A in **SPDC &Anor v. Pessu (supra),** that:

> ***"There is no doubt that someone who merely gives information without more, which information led to the arrest of a suspect by the police, acting within their mandate and responsibility, cannot be liable in an action for unlawful arrest and detention."***

See also **Nwangwu&Anor v. John Duru&Anor (2001) LPELR-2001(CA).**

From the facts of this case, the 2nd Respondent merely wrote a petition, to the 1st Respondent, and probably facilitated the arrest of the Applicant and other suspects by giving information to the 1st Respondent. The evidence before this Court shows that the petition of the 2nd Respondent was not frivolous as five out of the six suspects against whom the petition was written,have been charged before a Court at the conclusion of investigation by the 1st Respondent.

It is my considered view, and I so hold, that the 2nd Respondent is not liable for the acts of the 1st Respondent done in the exercise of its investigative duties.

The Applicant also alleged to the effect that he suffered inhuman and degrading treatment from the 1st respondent. This, in my view, was not substantiated, and therefore, not proved by the Applicant. Beyond the mere allegation of humiliation and forcible dragging "like common criminal", which were denied by the 1st Respondent, the Applicant did not offer any material evidence in proof of the facts alleged.

Another aspect of the breach of his rights alleged by the Applicant is the placing of Post No Debit order on his bank accounts with the 3rd – 5th Respondents by the 1stRespondent

without the order of Court as required by law. The Applciant relied on section 34 of the Economic and Financial Crimes Commission (Establishment,etc) Act, and the case of **GTB PLC v.Adedamola (supra)** to contend that the failure of the 1st Respondent to obtain an order of Court before placing a restriction on his account, constitutes a breach of his fundamental rights as the action of the 1st Respondent deprived of him of the use of his funds to cater for his personal needs and those of his family and dependants.

The 1st Respondent admitted directing the placement of restriction on the accounts of the Applicant but alleged that the suspension of the Applicant's accounts was only for the duration of 72 hours pursuant to Section 6 of the Money Laundering (Prohibition) Act, 2011, as amended in 2012. This assertion of the 1st Respondent is however, clearly unfounded.

Section 6 of the Money Laundering (Prohibition) Act deals with situations where the Commission receives report of suspicious financialtransactions from a Financial Institution or Designated Non-Financial Institution. The said Section is inapplicable to the instant case as the 1st Respondent was only investigating a petition alleging theft of petroleum products.

Also, the letter from the 1st Respondent requesting the 3rd – 5th Respondents to place Post No Debit (PND) on the accounts of the Applicant (See "Exhibit FBN 1" attached to the 4th Respondent's counter affidavit) stated that the request was made pursuant to Section 38(1) of the Economic and Financial Crimes Commission (Establishment) Act and Section 21 of the Money Laundering (Prohibition) Act, 2011, as amended, and not Section 6 of the Money Laundering Prohibition) Act, 2011. The said letter also did not state that the restriction on the

Applicant's accounts was for 72 hours as alleged by the 1st Respondent.

It is pertinent to note that Section 38(1) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 and Section 21 of the Money Laundering (Prohibition) Act, 2011, merely give the Commission the power to demand and obtain record. The Economic and Financial Crimes Commission (Establishment) Act, did not just give the 1st Respondent power to demand and obtain records from financial institution, it also prescribed the method or procedure for exercising that power in order to prevent the abuse of same, particularly where the Chairman of the Commission feels the need to place restriction on or freeze the bank account of a person. The Act in this regard, provided that the Chairman of the 1st Respondent or any officer authorised by him, must first apply to the Court ex parte for power to issue such order or directive.

Even where the Commission is proceeding against an account pursuant to the Money Laundering (Prohibition) Act,Section 34(1) of the Economic and Financial Crimes Commission (Establishment) Act,still mandates the Commission to first obtain the order of Court before placing restriction on any account.

The 1st Respondent in this case, did not deny issuing the directive placing restriction on the Applicant'saccounts, neither did it deny that it did not obtain the order of Court to issue the said directive. By the authority of the case of **GTB PLC v. Adedamola (supra)** among plethora of other judicial authorities, the action of the 1st Respondent in this regard is unlawful and amounts to the breach of the fundamental right of the Applicant.

What is more? The directive to place Post No Debit on the Applicant's accounts was left ad infinitum by the 1st Respondent as the 1st Respondent never directed the 3rd – 5th Respondents to lift the order on the Applicant's account since July, 2018. This is nothing but a gross violation of the rights of the Applicant. In**Skye Bank PLC v. David &Ors (2014) LPELR-23731 (CA)** Court of Appeal, per Mbaba, JCA, held thus;

> ***"Though by itsvery nature, the EFCC Act, particularly Section 34(1) thereof, appears to be dictated by the exigency to fight financial crime, and allows the EFCC to apply by motion ex parte for freezing of account, "if satisfied the money in the account of a person is made through the commission of an offence…," I do not think that law intended to create a monster out of the EFCC, to just, at the slightest suspicion, whether real or imagined, cause the Court to freeze an account by ex parte order, indefinitely, without bringing the operator of the account to trial and giving him the opportunity to be heard on why the account is frozen."***

Thus, even where the 1st Respondent obtains an ex parte order of Court to freeze an account the law does not allow the 1st Respondent to freeze such account indefinitely, let alone where no order of Court was obtained abinitio.

In the circumstances of this case, therefore, the 1st Respondent acted ultra vires its powers in directing the placing of indefinite Post No debit order on the Applicant's accounts without the order of Court, and thereby breached the fundamental right of the Applicant.

The Applicantalso alleged that the 1st Respondent seized his telephone upon his arrest and has refused to release same to

the Applicant till date. The 1st Respondent admitted to holding on to the Applicant's telephone, saying that same is needed for purposes of tendering it in evidence when prosecuting the Applicant.

There is however, nothing to show that the 1st Respondent has any intention or plans to prosecute the Applicant for any offence.

The Applicant was arrested as per paragraph 7(d) of the 1st Respondent's counter affidavit, on the 5th of July, 2018. At the conclusion of investigation into the 2nd Respondent's petition, the 1st Respondent filed a 55 counts charge against the other five suspects, excluding the Applicant, on the 28th day of May, 2019, as per Exhibit EFCC2.

On the 17th of June, 2019, the Applicant filed this application to enforce his fundamental rights against the Respondents. Following the service of the application on the 1st Respondent, the 1stRespondent filed a counter affidavit wherein it claimed in paragraph 7(h) thereof that investigation against the Applicant was just concluded sometime on 18th June, 2019, and that charges bordering on money laundering have been prepared against the Applicant and ready to be filed any moment.

Curiously however, the purported charges prepared to be filed against the Applicant were not exhibited to prove the 1st Respondent claim.Instead, it was the charges preferred against suspects who are not parties to this suit that was exhibited by the 1st Respondent as Exhibit EFCC 2.

I do not believe the assertion of the 1st Respondent that charges were prepared and ready to be filed against the Applicant, for which reason they are still holding on to the Applicant's telephone. From the 18th of June, 2019 when

investigation on the Applicant was purportedly concluded and charges prepared, to the 10th day of May, 2021 when this application was moved by the Applicant and the Respondents adopted their respective counter affidavits is(about the space of two (2) years), there was no evidence to show that the purported prepared charges were filed before any Court, neither was there any evidence that the Applicant was arraigned by the 1st Respondent for any offence.

For whatever reason or reasons the 1st Respondent may have been holding on to the Applicant's telephone since 5thJuly, 2018 till date, it is absolutely not justifiable since the 1stRespondent has concluded its investigation and did not find any reason to charge the Applicant before any Court of law.

It is my considered view, and I so hold that the act of seizing perpetually as it were, the telephone of the Applicant by the 1st Respondent is very unconscionable and smacks of abuse of its powers. It amounts to the violation of the right of the Applicant to own property.

Coming to the 3rd – 5th Respondents, the contention of the Applicant is that they are jointly liable with the 1st Respondent for the breach of his fundamental rights, for failing to satisfy themselves that the directive of the 1st Respondent was backed by a Court order before complying with same by placing a Post No Debit on his accounts in their custody. For this contention, the learned Applicant's counsel relied on the authority of **GTB PLC v. Adedamola&Ors (supra).**

I have made a finding in this judgment that the directive of the 1stRespondent to the 3rd -5th Respondent banks to place a Post No Debit on the Applicant's accounts in their custody, having not been backed by an order of Court, is illegal and ultra vires the powers of the 1st Respondent.

On the part of the 3rd Respondent, the 3rd Respondent averred that it received the directive of the 1st Respondent requesting it to place a No debit status on the Applicant's account,but that since the 1st Respondent omitted to attach the usual order of Court, it made it impractical for the 3rd Respondent to carry out the directive. (See paragraph 11(a) & (b) of the 3rdRespondent's counter affidavit).

The 3rdRespondent further averred in paragraph 16 of its counter affidavit that the funds of the Applicant have always been accessible to him, and that the Applicant still makes withdrawals from his account even after the filing of the originating process in this suit. To prove that the account of the Applicant with the 3rd Respondent has been accessible to him, the 3rd Respondent exhibited the Applicant's statement of account from 1st April, 2017 to 18th October, 2019 which shows that the Applicant has had access to account up until the last day of the statement of account.

The contention of the Applicant however, is that the 3rd Respondent was instructed by the 1st Respondent's agent, Usman Imam, who was conversant with the Applicant's deteriorating health condition, to allow the Applicant to continually withdraw an amount to the extent of the Applicant's monthly pension which is less than thirty thousand naira, and that the said permitted monthly withdrawals could not sustain him and his family as well as his medical bills.

The Applicant's statement of account exhibited by the 3rd Respondent appears to give credence to Applicant's assertion as it shows that from the 9th day of July, 2018 when the 1st Respondent issued its directive to the 3rd -5th Respondents, up until 10th October, when the statement ended, the monthly withdrawals from the Applicant's account with the

3rd Respondent never exceeded the sum of thirty-one thousand naira.When juxtaposed with the previous transactions on the said account before the 1st Respondent's directive, it is evident that debit transactions on the Applicant's account with the 3rd Respondent were greatly restricted from the date of the issuance of the 1st Respondent's unlawful directive to the 3rd – 5th Respondents.

The Applicant further exhibited a withdrawal slip from the 3rd Respondent (Exhibit A) to his further affidavit showing that he attempted to withdraw the sum of N200,000.00 from his account on the 23rd of December, 2019, but same was declined by the 3rd Respondent and "PND" inscribed on the slip by the 3rd Respondent.

From the foregoing, I believe the evidence of the Applicant that the 3rd Respondent did indeed place restriction on his account with the 3rd Respondent on the instruction of the 1st Respondent.

The 4th and 5th Respondents on the other hand outrightly admitted placing Post No Debit(PND) on the Applicant's accounts in their custody, both of them stating that they believed they were carrying out "seemingly" lawful directive.

On the part of the 5th Respondent, it stated that after no further response from the 1st Respondent, it lifted the Post No Debit status on the account of Applicant. The Applicant in his further affidavit (paragraph 7), confirmed the lifting of the "Post No Debit" order on his account by the 5th Respondent, stating however, that it was not until the 15th of December, 2019 before the order was lifted by the 5th Respondent.

The respective learned counsel for both the 4th and 5th Respondents both argued in the written submissions in support

of their counter affidavits that the 1st Respondent's directive was premised on Section 38(1) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 and Section 21 of the Money Laundering (Prohibition) Act, 2011, and not on pursuant to Section 34(1) of the Economic and Financial Crimes Commission (Establishment) Act, 2004. They thus argued to the effect that the 4th and 5th Respondents were notobliged to satisfy themselves that there was an order of Court before complying with the directive of the 1st Respondent.

The 4th and 5th Respondents, to my mind, were only trying to be clever by half. As stated earlier in this judgment, Section 38(1) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 and Section 21 of the Money Laundering (Prohibition) Act, 2011, merely empower the 1st Respondent to receive information and records without hindrance from Financial Institutions andDesignated Non-Financial Institutions. Section 34(1) of the Economic and Financial Crimes Commission (Establishment) Act, 2004, however, stipulates the procedure for exercising that powers by the 1st Respondent.

By Section 34(3) of the Economic and Financial Crimes Commission (Establishment) Act, 2004:

> ***"The Manager or any other person in control of the financial institution shall take necessary steps to comply with the requirements of the order made pursuant to subsection (2) of this section."***

By interpretation, the manager or any other person in control of the financial institution like the 3rd – 5thRespondents,shall take steps to comply with the 1st Respondent's directive, only when such directive or order is made pursuant to Subsection (2) of Section 34 of the Act. Subsection (2) of the Section requires

that the order of the Chairman of the 1st Respondentor any other person authorised by him to the financial institution, to be issued under subsection (1) of the section, which in turn made it mandatory for the 1st Respondent to first apply ex parte to the Court for power to issue such order or directive.

What this means in a nutshell is that a bank or financial institution must first ascertain or satisfy itself that a directive or order from the 1st Respondent is backed by an order of Court before placing any form of restriction on a customer's account. The Court of Appeal stated this much in the case of **GTB PLC v. Adedamola&Ors (supra).**

Having held that the ***"Economic and Financial Crimes Commission has no power to give direct instructions to banks to freeze the account of a customer without the order of Court,"*** the Appellate Court proceeded to further hold thus:

> ***"… the judiciary has onerous duty of preserving and protecting the rule of law. The principle of the rule of law are that, both the governor and the governed are subject to rule of law. The Courts must rise to the occasion, speak and frown against arrogant display of powers by an arm of government. It is in theinterest of both Government and citizens that law are respected, as respect for the rule of law promotes order, peace and decency in all societies, we are not an exception. Our financial institutions must not be complacent and appear toothless in the face of brazen and reckless violence to the rights of their customers. Whenever there is specific provision regulating the procedure of doing a particular act, that procedure must be followed."***

The law made specific provision for the procedure to be followed by the 1st Respondent whenever it considers it necessary to place a restriction on a customer's accounts. Thelaw also makes it incumbent on the banks including the 3rd – 5th Respondents, to ensure that the order or directive they are meant to comply with are made in accordance with the procedure prescribed by law.

It does not lie in the mouth of the 4th and 5th Respondents to assert as they did in their respective written addresses, that they are entitled to presume that the order or directive of the 1st Respondent was properly and regularly issued and served on them. They are not entitled to any such presumption. Laying claim to such presumption only amounts to being complacent in protecting the rights of their customers.

For aiding the infringement of theright of the Applicant by the 1st Respondent, the 3rd, 4th and 5th Respondents became parties to that violation of the Applicant's rights.

Among the reliefs claimed by the Applicant in this application is a claim for a declaration that he is entitled to public apology and adequate compensation from the Respondents pursuant to Section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria, and an order of perpetual injunction restraining the 1st Respondent from further inviting, arresting or detaining the Applicant on the petition/complaint of the 2nd Respondent.

The provision of the constitution in Section 35(6) for compensation and public apology, relate to where a person was unlawfully arrested or detained. In the instant case, the arrest of the Applicant, pursuant to a lawful complaint of the 2nd Respondent, for purposes of investigation of the complaint, was not unlawful. Also, the allegation of unlawful detention by the Applicant was not proved. Therefore, the Applicant in the

circumstances of this case, has not shown that he is entitled to compensation and public apology.

Also, the claim for a perpetual restraining order against the 1st Respondent is misconceived by the Applicant. This Court is not invested with any power to curtail the lawful exercise of the investigative powers of the 1st Respondent.

In **A.G. Anambra State v. Chief Uba (2005) 15 NWLR (Pt.947)44,** the Court of Appeal, per Bulkachuwa, JCA, held that:

> ***"The order of perpetual injunction restraining the appellants is unconstitutional because it is an interference with the powers given by the constitution to police officers to investigate and prosecute crimes… It is indeed trite that no Court has the power to stop the police from investigating a crime… For a person therefore to go to Court to be shielded against criminal investigation and prosecution is an interference with the powers given by the constitution to law officers in the control of criminal investigation".***

This Court will therefore not exercise the power which it does not have in purporting to restrain the 1st Respondent from carrying out its lawful function of investigation. The Court will readilycome to the aid of the Applicant, and indeed, any citizen, on that citizen's application, where in the exercise of its investigative function, the 1st Respondent breaches the right of thatcitizen.

From the totality of the foregoing, this application succeeds inpart, and this Court makes the following orders:

1. Relief (1) fails for want of proof, and is accordingly dismissed.

2. It is declared that the continued freezing, restricting, blocking and or placing a Post No Debit on the accounts of the Applicant without a valid order of a Court from July, 2018 till date, and detention of the personal properties of the Applicant without warrant, which were seized from him at the time of his arrest on the 2nd of July, 2018, till date by the operatives and officials of the 1st Respondent, is illegal, wrongful, unlawful and constitutes a violent violation of the Applicant's fundamental rights.
3. Relief (3) is subsumed in relied (2) above.
4. It is declared that the restrictions placed on the accounts of the Applicant by the 3rd, 4th and 5th Respondents based on the instructions given to the 3rd, 4th and 5th Respondents by the 1st Respondent without any Court order to that effect, thereby denying and depriving the Applicant access to and operation of the said accounts, is illegal, unconscionable, ultra vires, as well as a breach of the Applicant's right to own property as guaranteed by the constitution.
5. The allegation of connivance or conspiracy between 2nd, 3rd, 4th and 5thRespondents, was not proved. Accordingly, relief (5) fails and hereby dismissed.
6. Relief (6) fails for want of proof, and is hereby dismissed.
7. It is declared that the continued confiscation and continued detention of the personal properties of the Applicant without warrant, which were seized from him at the time of his arrest, on 2nd of July, 2018, till date, by the operatives and officers of the 1st Respondent, is illegal, wrongful, unlawful and constitutes a violent violation of the Applicant's fundamental rights.
8. Relief (8) fails and is hereby dismissed.
9. Relief (9) fails and also dismissed.

10. The 1st, 3rd, 4th and 5th Respondents are by themselves, servants, agents, operatives, detectives, investigating officer(s), ordered to remove the Post No Debit order and any other restrictions on the accounts of the Applicant and make operational forthwith, the accounts of the Applicant domiciled with the 3rd, 4th and 5th Respondents.
11. Relief (11) fails and is accordingly dismissed.
12. The 1st Respondent is hereby ordered to release forthwith to the Applicant, his personal properties, i.e. handset phones with SIM cards, which were seized from him at the time of his arrest by the operatives of the 1st Respondent on the 2nd of July, 2018.
13. Relief (13) fails and is hereby dismissed.
14. The 1st, 3rd, 4th and 5thRespondents are ordered, jointly and severally, to pay to the Applicant the sum of N3,000,000.00 only as exemplary damages for the wanton and grave violation of the Applicant's fundamental rights.
15. Cost of this action assessed at N1,000,000.00(One Million Naira) against the 1st, 3rd and 4th and 5th Respondents.

HON. JUSTICE A. O. OTALUKA
6/7/2021.