

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU**

**ON WEDNESDAY 6<sup>th</sup> DAY OF JULY, 2021**

**SUIT NO: FCT/HC/CV/389/2021**

**BETWEEN:**

MR. SAMSON OMEBIJE ..... APPLICANT.

AND

(1) MR. KELVIN AYOGU  
(2) INSPECTOR GENERAL OF POLICE } ..... RESPONDENTS.  
(3) THE NIGERIA POLICE FORCE }

**JUDGMENT**

By an originating Motion on Notice, filed on the 11/02/2021 and predicated on Section 33, 35(1) and 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 4 & 6 of the African Charter on Human and People Right (Ratification and Enforcement) Act, 2004 and Order 2 Rule 1 of the Fundamental Rights Enforcement Procedure Rules, 2009, the Applicant seeks for the following reliefs.

- (1) A Declaration that the consistent threat by the 1<sup>st</sup> Respondent to use the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to arrest and detain the Applicant over a purely civil/commercial transaction that is already pending in the FCT High Court is unlawful and a

violation of the Applicants fundamental right to liberty and dignity of his person as guaranteed him under Sections 35(1) and 37 of the CFRN 1999 (as amended and Articles 4 & 6 of the African Charter

- (2) A Declaration that under the Act establishing the 3<sup>rd</sup> Respondent, It lacks the statutory power to function as a debt collector on behalf of the 1<sup>st</sup> Respondent or anybody in matters of commercial contract.
- (3) An Order of Court restraining the Respondents from disturbing or interfering with the right of liberty of the Applicant through further threats of arrest, detention, intimidation and unnecessary harassment or in any other way or manner whatsoever.
- (4) An Order of perpetual injunction restraining the Respondents, their officers, servants, agents and privies from further threat of arrest and detention of the Applicant over the commercial transaction between the Applicant and the 1<sup>st</sup> Respondent, which is subject of a pending civil suit in the FCT High Court.

The application is supported by a statement setting out a description of the Applicant, Reliefs sought and grounds upon which the reliefs are sought. It is also supported by a 19

paragraph affidavit deposed to by the Applicant and a Written Address of his Counsel.

In response, the 1<sup>st</sup> Respondent on 23/3/2021 filed a Notice of Preliminary Objection on points of law against the instant application together with an 11 paragraphs Counter Affidavit deposed to by Kelvin Ayogu (the 1<sup>st</sup> Respondent) along with 10 Exhibits marked as K1 – K10. Attached to the Counter Affidavit is also a Written Address of its Counsel.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not file any process though served with the Applications on 9/3/2021 and the 1<sup>st</sup> Respondents Counter Affidavit on 25/3/2021.

On 17/06/2021, the Applicant file a Motion on Notice for Extension of time within which the Applicant may file his Reply on points of law to first Respondents objection and defence. He also filed his Reply on point of law.

At the hearing on the 22/06/2021, Counsels for the parties adopted their Written Addresses as their oral submission for and against the application and judgment was reserved for today 6/7/2021.

I have carefully read and digest the averments in the affidavits of the parties and submissions of their Counsels. The cardinal issues that call for determination is whether or not the Applicant has made out a case to justify a grant of the reliefs sought.

The gravament of the Applicants case as disclosed in his affidavit in support is that, he is a business man resident in Lagos. That the 1<sup>st</sup> Respondent is the head of the Police Force in Nigeria who controls and supervises all Police Officers in Nigeria while the 3<sup>rd</sup> Respondent is a statutory body responsible for maintaining peace and order and protecting the lives and properties of every resident of Nigeria among other duties.

That sometime in May 2016, Messrs Dollar Construction Company Limited and Fes-wofesk Ltd entered into an agreement for the facilitation of allocation of commercial Plot of Land within Karsana District of Abuja for estate development on the understanding that Fes-wofesk will finance and facilitate the allocation of the said land in the name of Dollar Construction and both parties will have equal interest or share in the allocated land.

That Fes-wofesk being unable to finance the said allocation transaction approached his company “Predra Properties Ltd” and entered into a Partnership Agreement to source the money needed for the facilitation of the said allocation.

That pursuant to the said partnership agreement, the 1<sup>st</sup> Respondent become interested in the business and approached his company “Predra Properties Ltd” through his senior brother and subsequently invested in the business.

His company invested the said investment fund from the 1<sup>st</sup> Respondent together with his companies own funds to Dollar Construction and Fes-wofesk towards securing the said allocation allocation of the land which resulted to the allocation

of Plot 185 of approximately 8.53 hectares in cadastral zone D05, Karsana North, Abuja.

Upon receipt of the said Allocation Papers by Dollar Construction Company Ltd, it started renegeing and frustrating its agreement with Fes-wofesk Ltd and in effect, trapped the money invested by the 1<sup>st</sup> Respondent and his company.

Fes-wofesk Ltd took out civil and criminal remedies against Dollar Construction Company by Petition to EFCC and Civil Action in the FCT High Court in Suit No. **FCT/HC/CV/325/2019**.

That despite a clear and obvious cause of the failure of the entire business transaction and efforts being committed by his company and its partner Fes-wofesk Ltd to recover the business the 1<sup>st</sup> Respondent engaged in series of vicious attacks, intimidation and blackmail against him (the Applicant) in demanding for refund of the money he invested in the failed business as if he is the one responsible for the business failure. That the 1<sup>st</sup> Respondent emphatically threaten to use the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to arrest and detain him without bail until he refund him the money he invested in the business.

Sometimes in Nov, 2020 his life and liberty was so aggressively threatened by the 1<sup>st</sup> Respondent to the extent that he was blackmailed and coaxed into signing an infamous agreement out of fear for his life and liberty even without the approval and/or authority of his company.

He further averred that, the 1<sup>st</sup> Respondent extorted the sum of ₦10,000,000.00 (ten Million Naira) from him. That despite the refund of the Ten Million to the Defendant out of threat, blackmail and intimidation the 1<sup>st</sup> Respondent has continue with his threat to his life and liberty and even extended his threat to his family members for no just cause.

That the dispute between him and the 1<sup>st</sup> Respondent was for recovery of debt from a failed commercial contract transaction which is presently at the FCT High Court in Suit No: **FCT/HC/CV/162/2012** and **FCT/HC/CV/325/2019**.

That commercial transaction could not transform to fraud or crime warranting the threat of his arrest and detention by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents at the instance and instigation of the 1<sup>st</sup> Respondent.

That the constant threat by the 1<sup>st</sup> Respondent to use the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to arrest and detain him over a purely civil transaction despite the pending civil action over the issue in the High Court was an act of self help, extrajudicial actions and aimed at scuttling these suits.

He seeks the intervention of the Honourable Court and prays the Court to grant all his reliefs in this suit.

In his response, the 1<sup>st</sup> Respondent filed a Notice of Preliminary Objection on point of law against the instant application and his Counter Affidavit.

In his preliminary objection predicated under Order 8 Rule 1 and 2 of the Fundamental Right Enforcement Procedure Rules, 2009, the Applicant prays the Court to dismiss the instant application for being an abuse of judicial process. His grounds are that, the instant application seeks for reliefs already sought before the FCT High Court in **Suit No: FCT/HC/CV/162/2012** between substantially the same parties and that, the Applicant can only apply for the purported injunction as ancillary application before Apo High Court and obtain similar protection, if any at all. That the Action of the Applicant is speculative, imaginary and only explored without reasonable cause.

In his Counter Affidavit, the 1<sup>st</sup> Respondent averred that he denied paragraphs 6, 7, 8, 9, 10 & 11, 12, 13, 15, 16, 17, and 18 of the Affidavit in support of the application. That paragraphs 7, 8, 9, 10 and 11 are all lies.

That it was the Applicant who informed him that his company (Predra Properties Ltd) has ten(10) plots of land along Kubwa Expressway which they negotiated the price and he paid the sum of Ten Million (₦10,000,000.00) to the Applicants company which was received by the Applicant as the Managing Director.

Despite payment, the Applicant did not give him the requisite title documents neither deliver possession of the plots to him. That after four years when it became obvious that he has been defrauded of his money he told the Applicant that he is no longer interested in the business and requested for refund of his Sixty Million (₦60,000,000.00). As a result, the Applicant gave him the sum of Ten Million Naira (₦10,000,000.00) and firm promise to pay up the outstanding Fifty Million Naira before the

31<sup>st</sup> of December 2020 and the undertaken was reduce into writing.

He further averred that since when the transaction and payments were made between him (“the Defendant” and the Applicant), in the year 2016, he has never taken laws into his hands believing that the Applicant will do the needful. That he never made a complaint to any Law Enforcement Agency either formally or informally in respect of the transaction.

That the business between them is a simple contract which he can enforce through a civil action. He never threatened nor even made threatening calls or lodge criminal complaints to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents or any Law Enforcement Agency. The Memorandum of Understanding i.e Exhibit K6 was voluntarily made in the office and in the presence of the Applicant Lawyer and the Applicant was in his right frame of mind. The Applicant and his company never lodge any criminal complaints against him for the purported threats, intimidation or coercion or blackmail but fabricated the ideas to escape investigation, should the need arise.

That it was after over three (3) months of executing Exhibit K6 and when the Applicants has failed to deliver on its undertaken in the Memorandum of Understanding, that the Applicant fashioned out the ideas of threat of Police arrest, intimidation, blackmail and coercion in making and entering into the Memorandum of Understanding prepared by his Lawyer and signed by the Applicant in the presence and office of his Lawyer.



He has never threatened to use and would not use the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to arrest and detain the Applicant or any director of the Applicants Company for a simple contract of Sale of Land. The Applicant's Fundamental Rights to life, liberty, movement or any other aspect of right are intact, unfettered, unthreatened and enjoyed by the Applicant without limits.

The instant case is an abuse of judicial process as the Applicant and the 1<sup>st</sup> Respondents are before the High Court in Apo as can be seen in Exhibit K8 attached. That the Applicant has also filed a Motion on Notice for the same reliefs of interlocutory Injunctions in **Motion No:M/519/2021** in **Suit No: FCT/HC/CV/162/2021** as in Exhibit K8 and K10. It is in the interest of justice to dismiss the instant case. The 1<sup>st</sup> Respondent attached to his Counter Affidavit, Exhibit marked as Exhibit K1 – K10.

The Applicant then on the 17/6/2021 filed his reply on point of Law dated 1<sup>st</sup> day of April 2021, together with a Motion on Notice seeking for an order extending time within which he may file his reply on point of law. The Motion was moved and granted on 22/6/2021.

On his reply on point of law, the Applicant submitted that, the instant application for the enforcement of the Applicants fundamental human rights is not an abuse of judicial process because the law is that, under the fundamental human rights action two or more Applicants who have common complaint against a Respondent can validly bring a joint or separate action. That in this case, the Applicants and his company choose to bring the action separately. That the Court may consider

consolidating all of them in one suit and not to see any of them as an abuse to the other.

That it is a gross misconception of the law for the 1<sup>st</sup> Respondent to think that the action of the Applicant in this case is an abuse of **Suit No: CV/162/2021**, which was instituted by a Writ of Summons involving different parties and claiming different reliefs. The Applicant cited authorities to support his position.

The Applicant thereafter urges the Court to hold that the Applicant has proved all his claims against the Respondent and proceed to enter judgment in favour of the Applicant.

The cardinal issue that call for determination is whether or not the Applicant have presented enough before this Court to warrant the grant of the four (4) Declaration/Relief sought in this matter.

At this juncture, it should be noted that, while filing his Counter Affidavit, the 1<sup>st</sup> Respondent also filed a Notice of Preliminary Objection on points of law praying the Court to dismiss the instant application for being an abuse of judicial process.

I have given due consideration to the process filed by parties and for the reason that the 1<sup>st</sup> Respondent has filed a Preliminary Objection and given that challenge to jurisdiction is a threshold issue which the Court is under a duty to consider and determine first before presiding further, I am minded to first answer the Preliminary Objection.

The issue as raised by the Counsel for the Respondent is “whether the instant case as filed is not an abuse of judicial process.”

Counsel has argued that this suit is between the same persons and their privies and both cases seek substantially the same reliefs. Thus referring to **Suit No: FCT/HC/CV/162/2021 (Exhibit K8 between PREDRA PROPERTIES LTD and MR. SAMSON OMEBIJE V. MR. KELVIN AYOUGU** and this suit which is **FCT/HC/CV/389/2021**. The Counsel further argued that the other matter being filed earlier that this makes the matter an abuse of Court Process. Counsel place reliance of many authorities to support this argument.

In response, Counsel for the Applicant argued that it is gross misconception of the law for the 1<sup>st</sup> Respondent to argue that the fundamental right action by the Applicant in this suit is an abuse of Court on account of the existence of Suit No: FCT/HC/CV/162/2021 that was instituted by a Writ of Summons procedure involving different parties and claiming different reliefs.

The Learned Counsel further argued that fundamental rights enforcement action is a special proceeding with its own rules where the normal rules of the Court do not apply.

At this point, this question must be asked. Is Suit No: FCT/HC/CV/162/2021 an action for enforcement of Fundamental Rights?

The answer must be in the negative. I agree with the Counsel for the Applicant that not only are the parties different, the reliefs are different even if they look the same. I do not feel there is enough law to stop the Court from hearing the substantive application on its merit.

Accordingly, the preliminary objection fails and it is dismissed.

In arguing the Originating Motion the Counsel for the Applicant formulates a sole issue for determination of the Court, that is:-

“Whether the threat or arrest and detention of the Applicant was done under a lawful cause and thus justifiable in law.”

Counsel submitted that threat of arrest and detention of the Applicant by the 1<sup>st</sup> Respondent over a purely civil matter that is already pending in Court is unlawful, as it was done without lawful cause. He contends further that the use of police to arrest and detain a citizen for no lawful cause is illegal and at variance with the Constitution and Police Act.

In opposing the Application, the Learned Counsel for the 1<sup>st</sup> Respondent raised a sole issue for determination. That is

“Whether the Applicant has by law made out a case of infringement of his fundamental human rights as alleged.”

Learned Counsel submitted that the law is trite that whoever asserts must prove the assertion relying on Section 131 – 134 of the Evidence Act 2011. He further relied on the authority in **IGBOSONU V. OHAYAGHA & ORS (2015) LPELR – 41870** where the Court held that

“The Applicant complaining must prove and establish his right that have been or likely to be violated or jeopardized. This he must do by placing enough or sufficient materials before the Court to enable the Court vested with jurisdiction find in his favour.

In this matter the Applicant is alleging that the 1<sup>st</sup> Respondent coerced and intimidated him into refunding the sum of ₦10,000,000.00 and that Exhibit “K” was made under intimidation, threat to life and his personal liberty. And there were moves by the 1<sup>st</sup> Respondent to lodge criminal allegations against him before the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who would arrest and detain him over the transaction without granting him bail. This claim the 1<sup>st</sup> Respondent denies the allegations.

I have perused the affidavit in support of the Application and I do not find any fact as to how, when and by what means the threat of arrest, intimidation or threat to life was accrued. It is not enough to merely state that one is threatened it necessary to state clearly when and how it is done. I also cannot understand as posited by Counsel to the 1<sup>st</sup> Respondent why Exhibit K6 which was purportedly executed on the 2/11/2020 for the Applicant to pay up the balance on or before the 31<sup>st</sup> of December 2020 was not made an issue until February 2021.

Exhibit K6 was co signed by Mr. Gabriel SalihuEsq the Counsel that drafted the agreement, on the instruction of the Applicant according to the 1<sup>st</sup> Respondent in paragraph 6(c) of the Counter affidavit, a fact that was not challenged. It is clear that Exhibit K was signed by witnesses.

I agree with Counsel for the 1<sup>st</sup> Respondent that the allegations of the infringements to the rights of the Applicant or anticipatory breach of same is not made out and it ought to be dismissed for lack of proof. What is before the Court is at best speculative and speculation never forms the basis for a decision of Court of law.

In all I find that no right of the Applicant was breached or threatened here worthy of any junction by way of order of Court. The affidavit of the Respondent is more superior in facts that are believable and convincing.

I shall refuse this application because it is most unmeritorious and specially packaged to mislead the Court.

Application is accordingly dismissed.

This is the decision of the Court.

SGND.  
HON. JUDGE

6/7/2021.

**APPEARANCES**

- (1) Dr. L. O. Arinze, Esq, with J. U EfekimoEsq, for the Applicant.
- (2) Jude Ugwuanyi, Esq, for the 1<sup>st</sup> Respondent.
- (3) No Appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.