

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

BEFORE HON. JUSTICE J.ENOBIE OBANOR
ON FRIDAY THE 3RD DAY OF DECEMBER, 2021.

SUIT NO: FCT/HC/CV/179/2021

IN THE MATTER OF AN APPLICATION BY ALI INUSA FOR THE
ENFORCEMENT OF HIS FUNDAMENTAL HUMAN RIGHTS

BETWEEN:

ALI INUSA

.....APPLICANT

AND

- 1. ECONOMIC AND FINANCIAL CRIMES
COMMISSION**
- 2. STEPHEN OGAJI**

.....RESPONDENTS

JUDGMENT

By an Originating Motion on Notice filed on 25th January 2021 and predicated on Order 2 of the Fundamental Human Right Procedure Rules 2009 and Sections 35, 36, 41 and 46 of the 1999 Constitution and under the inherent jurisdiction of the Honourable Court the Applicant seeks for the following reliefs: -

- “1. A declaration that the business transaction between the Applicant and the 2nd Respondent involving the purchase of Pounds and transfer of same to UK sometimes on 16th day of April 2020 is a civil business transaction the breach of which terms (if any) can only give rise to civil action and not criminal action to justify the intervention of the 1st Respondent.*

- (2). *A declaration that the arrest and continuous report by the Applicant to the office of the 1st Respondent from Lagos to Abuja on regular basis on an issue bordering on civil contract and obligation between the Applicant and the 2nd Respondent amounts to administrative oppression against the Applicant, breach and infringement of the Applicant's Fundamental Human Rights as enshrined in the Constitution of the Federal Republic of Nigeria.*
- (3). *An Order restraining the respondents either by themselves, representative's agents, or otherwise from further causing the Applicant unnecessary expenses and travelling risk by reason of the continued and regular report to the office of the 1st Defendant-Abuja, arresting or detaining the Applicant as a common criminal on the basis of the civil business transaction between the Applicant and the 2nd Respondent.*
- (4). *The sum of N30,000,000.00 (Thirty Million Naira Only) being general damages suffered by the applicant by reason of the breach and infringement of the Applicant's Fundamental Human Rights as enshrined in the Constitution of the Federal Republic of Nigeria.*
- (5). *And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances of this case."*

The application was filed along with the Applicant's Statement, the grounds upon which the above reliefs are sought, a 32-paragraph verifying affidavit deposed to by the Applicant and Written Address of his learned Counsel.

In opposition to a grant of the application the 1st Respondent on 13th July 2021 filed a 21 paragraph counter affidavit deposed to by Mohammed Adamu along with a written address. The 2nd

Respondent in opposition as well on 27th July 2021 filed a 4 paragraph Counter affidavit deposed to by himself along with his learned counsel's written address.

In reaction to the 1st Respondent's counter affidavit, the Applicant on 16th July 2021 filed a better and further affidavit along with its learned counsel's written address.

The 1st Respondent on 8th September 2021 filed a further counter affidavit in further reaction to the applicant's further and better affidavit.

On the 16th October 2021 the application was heard with Counsel for the parties adopting their respective written Addresses as their oral submissions in support of their different contentions and judgment was reserved for today.

In the affidavit in support of the application, the applicant avered inter alia that sometimes on 11th April 2020 the 2nd Respondent approached him for the purchase of foreign currencies (Pounds) and transfer of same to his UK account. After negotiation he released his account number for payment of the Naira equivalent in the sum of N3, 813,000 for the transfer of the 7,750 pounds to his UK account. Pursuant to the agreement, he swiftly transferred a total sum of 7,750 pounds into the 2nd Respondent's account in UK. Upon receipt and confirmation of the transfer of 7,750 pounds the 2nd Respondent paid the Naira equivalent as agreed to him and the transaction was concluded. Subsequently the 2nd Respondent came back claiming that the money credited into his account have been blocked and the account frozen. On further enquiry from the 1st Respondent's statement of account supplied, it was discovered that the 1st Respondent had some pending challenges on the account and the credited sum of 7,750 pounds was blocked as indemnity recovery. A copy of the 2nd Respondent's Bank account showing that the said sum of 7,750 pounds was actually deposited into the account was attached as Exhibit 1. He requested that the 2nd Respondent along with his corresponding business associate who credited the 2nd

Respondent's account in United Kingdom should visit the bank and clarify and regularize whatever challenges the bank requires- to prove that the credit made into that account was genuine and not fraudulent but the 2nd Respondent refused to take his business associate who actually deposited the money to the bank along with him to his bank as requested and claimed to have visited UK without contacting the person to verify the authenticity of the depositor and the fund deposited. It is very clear and obvious from the conduct of the 2nd Respondent that he knows very well the personal challenges and problems he has with his bank which has nothing to do with him. The 2nd Respondent gave his account and the account of his wife for similar transfer/transaction and the sum of 14,000 pounds was deposited into the wife's account the same day in UK and the wife received value for that money without any problem but the 2nd Respondent's account that was credited with 7750 pounds the same day was withheld as indemnity recovery which has no bearing with him and the depositor in UK. Rather than proceed to UK and ratify and regularize his bank particulars and details required by his bank in UK, the 2nd Respondent choose to run to the 1st Respondent to coerce him to refund the Naira equivalent paid by the 2nd Respondent for the Pounds already and undoubtedly transferred into his account in UK. He is a businessman and a Bureau De Change operator. He sees no reasons why the Respondents should coerce or force him to make double payment for a single transaction that have been concluded and value already credited into the account of the 2nd Respondent. Following the report to the 1st Respondent by the 2nd Respondent, he was arrested and brought back to Abuja from Lagos for investigation despite the full knowledge of the 1st Respondent that the transaction was a legitimate civil transaction without any criminal undertone, they insisted that the total sum of N3,813,000 paid by the 2nd Respondent must be refunded. In the interim he should be reporting from Lagos to Abuja after he was granted bail regularly which he has been doing with great expenses travelling and security risk and inconveniences. He requested to be reporting to the 1st Respondent office in Lagos to avoid these great expenses, travelling and security risk and inconveniences but was turned down. He was warned that any date he failed to report as directed in this routine and regular attendance to

the office of the 1st Respondent from Lagos to Abuja his bail will be revoked and will be subjected to another round of detention. He felt highly intimidated, harassed, ridiculed and embarrassed by the actions and conduct of the Respondents and their agents and representatives and therefore entitled to general damages as the Respondents through their agents and representatives will continue to cause him greater expenses, travelling and security risk and inconveniences to the detriment of his fundamental human right. He was exposed to public ridicule and shame and loss of personal dignity and respect in the eyes of the general public which has grossly undermined his constitutional right to freedom, dignity and respect as a Nigerian Citizen. Unless this application is granted as prayed his fundamental Human Right will continue to be infringed and violated by the Respondents without any just cause against the laws of the land.

In response to the above, the 1st Respondent in its counter affidavit averred inter alia that on 28th July 2020 their office received a written complaint titled: Letter of Petition and Request for assistance relating to Financial Fraud and Reputational Damage from the 2nd Respondent. A copy of the petition was attached as Exhibit EFCC 1. The 2nd Respondent was invited to the commission where he adopted the petition and made a written statement. A copy of the 2nd Respondent's statement was attached as Exhibit EFCC 2. The 2nd Respondent stated he had lived in the United Kingdom for over a decade and from his savings and that of his wife they often times transfer funds from Nigeria to UK so as to pay all necessary bills that relates to their family. Sequel to the above the 2nd Respondent ensures he uses reputable Bureau De Change Operators to avoid illegal issues. The 2nd Respondent had an existing foreign exchange business relationship with Mr Ibrahim Hayatu, the owner of Hayats Association and Mr Ibrahim Hayatu in the cause of their business transaction introduced the 2nd Respondent to Mr Saidu Saleh as his senior partner and the owner of Salson Global ventures. Sometimes in April 2020 the 2nd Respondent contacted Mr Saidu Saleh the owner of Salson Global Ventures through his partner Mr Hayatu Ibrahim for a transaction worth 42,000 pounds. The 2nd Respondent was supposed to remit the sum of N20,290,000 to the company account of Mr Hayatu

which was provided by Mr Hayatu as Hayats Association, FCMB A/C No 5315327010. All parties agreed on the exchange rate of N495 to One Pound wherein the 2nd Respondent and his wife transferred the sum of N20,290,000 from their joint account to the accounts provided by Mr Hayats. A copy of the proof of payment via bank teller made to A/C No 5315327010 with Account Name Hayats Association was attached as Exhibit EFCC 3. The 2nd Respondent was informed by Mr Ibrahim Hayatu that the above sum was transferred to Salson Global Ventures domiciled at FCMB with Account no 3913820023 belonging to Mr Saidu Saleh. Mr Saidu Saleh stated on his company letter head a detailed breakdown of the foreign exchange transaction between all parties and further stated that the 2nd Respondent is at no risk and Mr Saidu Saleh shall fully indemnify the 2nd Respondent should the foreign transaction goes wrong. The said document was attached as Exhibit EFCC 4a and EFCC 4b. Mr Saidu Saleh in his voluntary statement posited that the Applicant who he also refers to as Ali Daura, is his business partner. A copy of the voluntary statement was attached as Exhibit EFCC 5. Mr Saidu Saleh forwarded the 2nd Respondent's account number to the applicant having confirmed from the Applicant that he has a contact in London who can handle the foreign exchange transaction. The applicant after being duly cautioned in his voluntary statement admitted the receipt of some monies from Mr Saidu Saleh as the pounds equivalent of the payment of 7, 750 pounds and the applicant further admitted that same was paid into the 2nd Respondent's Bank account domiciled in Halifax Bank, United Kingdom. A copy of the applicant's statement was attached as Exhibit EFCC 6. The Applicant in EFCC 6 admitted that he knows Barry Clothing and they have been business partners for about five years and that he was the one who asked Barry Clothing to pay the said 7, 750 pounds into the 2nd Respondent's account. Mr Saidu Saleh in EFCC 4b listed persons he identified as his trust worthy partners with full assurance that they will bear liability for any loss in funds remittances. One of the listed persons is Barry Clothings and Events, a business associate of the Applicant and whose transaction is the sole reason for the 2nd Respondent's petition to the 1st Respondent. Sometimes in April, the 2nd Respondent having logged into his Halifax Bank Account (now Lloyds Bank) was shocked to notice a debit in the

sum of 7,750 pounds and the said account was also suspended. The 2nd Respondent who was in Nigeria at the time of the above occurrence placed a call to his bank and his call was forwarded to the Fraud Department Desk of Halifax Bank and was informed that the payment made into his account in two tranches by Barry Clothings and Events, one of the business associates of the Applicant was flagged as a proceed of fraud. A copy of the 2nd Respondent's Halifax Bank Account was attached as Exhibit EFCC 7. The 2nd Respondent's bank clearly stated that the 2nd Respondent's account has been suspended and the applicant should immediately proceed to the United Kingdom with his means of identification so as to close his accounts of many years with Halifax Bank as a result of the fraudulent activity carried out by the Applicant's associate, Barry Clothings and Events. A copy of the letter from Lloyds Bank was attached as Exhibit EFCC 8. The 2nd Respondent was further informed by his Bank that the victim of the said fraudulent activity in question had made a complaint earlier and traces were made to the funds transferred by Barry Clothings and Events to the account of the 2nd Respondent. The Respondent's Bank Halifax Bank took out the purported 7,750 pounds from the 2nd Respondent's account and same was sent to the victim of the perpetrated crime as indemnity recovery. The 2nd Respondent made frantic efforts to resolve the issues caused by the Applicant including travelling to the UK and having tried all he could humanly do, he decided to report the matter to the 1st Respondent. A copy of the 2nd Respondent's email to Halifax Bank was attached as Exhibit EFCC 9. The 1st Respondent has not in any way coerced the applicant to refund the 2nd Respondent the Naira equivalent of the foreign exchange transaction that ensued between the Applicant and the 2nd Respondent. The 1st Respondent who is saddled with the responsibility of investigating such offences alleged in EFCC 1 commenced investigation and made some invitations. Investigation activities were written by the 1st Respondent to First City Monument Bank (FCMB) and United Bank for Africa (UBA) to produce account opening package, mandate card and bank statements of the Applicant, Hayat's Association and Salson Global Ventures. Correspondences from FCMB and UBA showed how monies were transferred from Hayat's Association to Salson Global Ventures and

lastly to the Applicant's account. Copies of the Bank Statements from FCMB and UBA were attached as Exhibits EFCC 10, EFCC 10b and EFCC 10c. Upon a careful perusal of EFCC1 there was a dire need to invite the Applicant. The 1st Respondent has only invited the Applicant who is the key player in the said transaction to shed more light on the written petition against him and his business associate, Barry Clothings and Events. The applicant has not provided sufficient information that will aid the 1st Respondent in carrying out a comprehensive investigation of the matter but has run to this court for shield. The 1st Respondent has only invited the applicant twice on the 2/9/2020 and 3/9/2020 respectively for the purpose of investigation and the Applicant has never made any request to the 1st Respondent to report at her Lagos Zonal Office. There was never a time that the Applicant was warned or threatened that his bail will be revoked and the 1st Respondent will in no way want to traumatize a Nigerian citizen it has vowed to protect from all forms of Economic Crimes. The subject matter is a criminal case that is capable of denting the image of Nigeria from an International point of view. The applicant in his affidavit admitted that he was responsible for the transfer of the said 7,750 pounds as he stated thus " ... I swiftly without delay caused to be transferred a total sum of 7,750 pounds into the 2nd Respondent's account in UK." The 1st Respondent did not violate the rights of the Applicant or intend to violate the Applicant's right in anyway. This suit is a calculated attempt to obstruct the thorough investigation and possible prosecution being carried out by the 1st Respondent. It will serve the course of justice to refuse the Applicant's application.

The gravamen of the 2nd Respondent's response in his counter affidavit is that he has lived in the United Kingdom since October 2000 and became a British Citizen after he completed his doctoral education and worked for a number of years and returned to Nigeria in January 2011 as a consultant in the power sector while retaining his UK ties and citizenship. From the savings of his wife and his own, they were able to send funds from Nigeria to the UK to service their Mortgage and meet the school fee needs of their children in the United Kingdom. They have always ensured that they use reputable funds transfer agents (Bureau De Change) for their legal transactions to

avoid issues bordering on criminality especially touching on illicit funds transfer but unfortunately their last transaction had issues because the accredited agent they used here in Abuja: Salson Global Ventures contracted third parties to make a transfer to their account in the United Kingdom. Sometimes on 15th April 2020, he contracted with Salson Global Ventures owned/operated by Saidu Saleh and his partner, Hayatu Ibrahim to facilitate the process of transferring/remitting the sum of Forty Two Thousand Pounds into his account and that of his wife in the United Kingdom at the exchange rate of N495 per one pound which means he had to remit the sum of N20,290,000.00 to Salson Global Ventures and his partner, Hayatu Ibrahim and to that effect, Salson Global Ventures owned/operated by Saidu Saleh and his partner, Hayatu Ibrahim provided him with two account numbers to pay in the said N20,290,000.00. The said account numbers he was provided with are FCMB Account No: 5315127010 and FCMB Account No 3913820023. He promptly made the transfer of N20, 290,000 and Hayatu Ibrahim never denied the receipt of the transfer and subsequently the said money was transferred to the account of Salson Global venture. Himself and his wife agreed with Saidu Saleh and provided their account details in the United Kingdom that could be used in receiving the funds to be paid to them and while the second part of the agreement was for Salson Global Ventures to identify their trust worthy parties with full guarantee that Salson Global Ventures and its partners will bear liability for any loss in fund remittance. His first contact was with Hayatu Ibrahim who later introduced Saidu Saleh to the transaction as his senior partner and owner of Salson Global Venture that would handle the transaction. After confirmation of his naira payments, Salson Global Venture started making deposit to their United Kingdom account until the agreed Forty Two Thousand pounds was completed and confirmed to Salson Global Ventures. On 24th April 2020 he logged into his Halifax (now owned by Lloyds) online bank account and he was shocked to notice a debit of 7,750 pounds that was not authorized by him and he quickly got in touch with Halifax Bank UK over the phone since he was currently in Nigeria only to find out to his utter dismay that his account has been suspended and Halifax Bank's help desk put him through to the fraud department and was made to understand that two payments

that came into my account from Barry Clothing and Events, one of the associates used by Salson Global Venture to make payment to him in the United Kingdom on the 16th of April 2020 were flagged as a proceed of fraud. He later discovered that his name had been flagged as a fraudster and his account enlisted to be closed. A copy of the document disclosing the fraudulent transfer of 7,750 pounds deposited into his account with Halifax bank in the United Kingdom which was sent to his UK address was attached as Exhibit A. With the threat of the closure of his account by the Halifax Bank on account of fraud, it became difficult for him to operate his said account and he was left with no other option but to quickly contact the Fraud Department of Halifax bank where one Mr Jonathan of Halifax Bank informed him on 2nd day of May 2020 at 4.15pm over the phone and he verily believed him as telling the truth that his account was used to transact a fraudulent transaction and the owner of the money in question had petitioned Halifax Bank and the Halifax bank on ground of an indemnity recovery was bound to return the money to the owner who was defrauded and in fact the said sum of 7,750 pounds has been refunded as a proceed of crime and his only remedy is to involve any anti-corruption agency in Nigeria to investigate the perpetrators of this cross national border crime that originated from Nigeria. Since the incident he applied mediation in trying to get Salson Global Ventures to refund his said money to wit, 7,750 pound while he sought to raise fund to pay for his flight and other travel expenses to clear his name that has been painted with fraudulent activities of International dimension but till now no refund has been made. He wrote to the Economic and Financial Crimes Commission (EFCC) the 1st Respondent on this requesting for its necessary action on this allegation of fraud especially as the 1st Respondent is fighting against illicit fund transfers in Nigeria. A copy of his petition to the 1st Respondent was attached as Exhibit B. He never had pending challenges on his account prior to this transaction and the Applicant cannot provide any documentary evidence to show that he ever had any challenge or issue of whatever form in respect of his account with Halifax Bank in the United Kingdom or any other place in the entire world. The fraud Department of his bank to wit, Halifax Bank in the United Kingdom alerted him as could be seen in Exhibit A that his

account was used for fraudulent transaction and the owner of the money in question petitioned the bank which traced the funds as that paid by Barry Clothing and Events to his account and the Halifax Bank on account of indemnity recovery promptly took out the said amount 7,750 pounds out of his account and sent same to the original owner of the money who was obviously the victim of the fraud. All he did in this case was to make a complaint to the 1st Respondent in respect of a cross national border fraud that originated from Nigeria in respect of an ordinary and normal transaction he had with Salson Global Ventures for the normal transfer of money into his account in the United Kingdom in respect of which transfer he had paid the Naira equivalent and the accompanying charges to Salson Global Ventures but instead of having the equivalent foreign currency into his account, money identified by the United Kingdom Financial System as proceed from crime was transferred into his account in the United Kingdom which made the Authorities in the United Kingdom to tag him as “a Fraudulent Person.” He does not know the applicant and had no transaction with and did not also make any complaint against him to the 1st Respondent and it was only when the 1st Respondent was making its independent investigation that it discovered the applicant is behind the veil using Barry Clothing and Events to undertake transnational funds transfer in which the sum of 7,750 pounds was fraudulently transferred into his account with Halifax Bank in the United Kingdom. There was no time any associate whether in real life or in dream approached him to go to any bank whether Halifax Bank or any other bank to resolve the issue of fraud that made Halifax bank to recover the sum of 7,750 pounds from his subject account on ground of the said sum being a clear proceed from fraud. He has no power or authority to order, direct or supervise the 1st Respondent on to the manner the 1st Respondent should carry out its investigation and the conditions of bail to impose or not to impose. He does not know the applicant and never mentioned his name to the 1st Respondent and he never coerced, harassed or intimidated the Applicant who he does not know from Adam. Salson Global Ventures have been identified as their trust worthy partners with full guarantee that they will bear liability for any loss in fund remittance. A copy of the letter was attached as Exhibit C. Neither he nor 1st Respondent

violated the rights of the Applicant or intend to violate the right of the Applicant who was merely invited by the 1st Respondent in the course of its investigation activities into the cross national border fraud that originated in Nigeria and detected in United Kingdom in respect of which the Applicant was also identified as a key player in the illicit funds transfer that is under investigation. It will be in the interest of justice to dismiss this application.

The applicant in his better and further affidavit averred that the 1st Respondent's counter affidavit is in the form of statement of defence in a civil suit rather than affidavit to justify the involvement and interest of the 1st Respondent in the civil right and obligations between the Applicant and the 2nd Respondent. This suit is for enforcement of the fundamental right of the Applicant therefore any counter affidavit must disclose the particular offence known to law the Applicant is alleged to have committed to justify the involvement of the 1st as a Federal Government Agency. The 1st Respondent's counter affidavit is an admission that the Applicant was arrested, detained and subjected to routine and regular travelling from Lagos to Abuja with the attendant financial cost and risk on a subject matter that border on civil right obligations of the parties. The 1st Respondent counter affidavit in Exhibit EFCC 9 that there was a contractual agreement signed by all the parties involved clearly setting out the terms of the agreement and the consequence of the breach thereof. The content of Exhibit EFCC 9 clearly shows that in line with the contractual agreement the applicant actually deposited the said sum of 7,750 pounds into the 2nd Respondent's account as agreed through Barry Clothings and Events. In that correspondence the 2nd Respondent disclosed that the allegation of fraudulent was raised by Barry Clothing and Events and that the same Barry Clothing and Events had also written to the bank confirming that his deposit was not fraudulent thereby clearing any doubt on fraudulent deposit or any complaint thereof. There is nothing thereafter before the court to show the allegation of fraud still existed yet the bank refused to release the funds to the 2nd Respondent. The only issue disclosed so far is the cause of action on unlawful restriction on the account against the 2nd Respondent's bank in UK and not even in Nigeria to fully justify the reason for the restriction of

his account till date. It is still very surprising that even in the face of the content of Exhibit EFCC 9 the 1st Respondent is still treating the subject matter as a financial crime against the applicant. The Applicant is only a Bureau De Change operator and had undoubtedly paid the agreed sum of 7,750 into the 2nd Respondent's account and the deposit has been confirmed by both the 2nd Respondent and in the counter affidavit of the 1st Respondent. No criminal conduct has been established against the Applicant from the circumstances surrounding the subject matter to warrant the EFCC to continue to harass and cause him unnecessary expenses to travel to and fro Lagos and Abuja. The evidence of the alleged complaint of fraud made to Halifax Bank from Barry Clothing and Event on this transaction was not exhibited to show that there was any complaint of fraud from Barry Clothing and Event or any other person. Assuming there was a letter of complaint of fraud by Barry Clothing and Event as alleged, it has expressly been disclosed from Exhibit EFCC 9 that the same Barry Clothing and Event had retracted their complaint to the bank showing that the transaction was authorized. In all of these no criminal conduct of the Applicant had been disclosed, instead there appear to be some unresolved issues on that UK account between the bank and the 2nd Respondent. Every assertion in this fraudulent allegation still remains a story tale by the moon light without proof and remains unsubstantiated. The interest of EFCC in all of these is very worrisome as it is nothing but unnecessary meddlesome into the affairs of the Applicant and the 2nd Respondent on issues that borders purely on civil contract and obligations without any criminal undertone. The 2nd Respondent has the right to approach the court on a normal civil suit to claim any breach of the contractual relationship without usurping and involving the agency of the Federal Government to oppress and intimidate the Applicant for his selfish interest. The content of the counter affidavit of the 1st Respondent is only a frantic effort to adduce defence on the civil rights and obligations without any effort to justify the involvement of EFCC in this subject matter as no document to show their investigation activities and no document to show any reversal of the money paid by the Applicant. From the content of Exhibit EFCC no criminal conduct of the applicant has been shown rather the disclosed action is only enforceable against the UK

bank and not the arrest and detention of the Applicant and or inviting him from Lagos to Abuja on regular basis. This application has merit and should be granted in the interest of justice.

The 1st Respondent in its further counter affidavit avered inter alia that the 1st Respondent's counter affidavit was not in any way in the form of statement of defence in a civil suit and same is reflected on the heading of the 1st Respondent's processes. The applicant was never detained and subjected to regular routine of travelling from Lagos to Abuja. The applicant's better and further affidavit is aimed at misleading the court to believe that the subject matter for which the applicant was invited by the 1st Respondent is civil matter. The subject matter for this suit involves a serious economic and financial crime that is capable of denting the image of Nigeria from an International point of view and has all the criminal ingredients that will lead to possible prosecution. The 2nd Respondent's Bank in their letter dated 26th May 2020 made reference to Barry Clothing and Events as the one who made the complaint of fraud against the 2nd Respondent. A copy of the letter was attached as exhibit EFCC 11. The letter by Mr Barry Stephen Williams of Barry Clothings and Events that the said 7,750 pounds be made available to the 2nd Respondent was exhibit as Exhibit 12. The sum of 7,750 pounds was withdrawn from the 2nd Respondent's account by the Respondent's bank and same was tagged as Indemnity Recovery. The said indemnity Recovery withdrawal was done same day the 2nd Respondent received a letter(Exhibit EFCC 8) from his bank. A copy of the Respondent's current account statement was attached as Exhibit EFCC 13. It is unambiguously established that the account of Mr Barry William a close associate of the Applicant has been blocked and has remained so because Mr Williams account was described as a potential risk to his bank. A copy of the letter described as a potential risk to his bank was attached as Exhibit EFCC 14a and EFCC 14b. That as soon as a matter is reported to the 2nd Respondent via a Petition or an intelligence, the 2nd Respondent can only determine if the matter is a civil matter or a criminal matter upon the conclusion of investigation. In the instant case, investigation is ongoing to detect where the alleged fraud by Hallifax bank can be traced. Investigation activities have been

written to relevant authorities to help in the thorough investigation of the alleged financial fraud. A copy of the investigation activity was attached as Exhibit EFCC 15a and EFCC 15b. The applicant is a necessary party in this case as it was upon his instruction that Barry Clothing and Events made the transfer of the said sum of 7,750 pounds to the 2nd Respondent's UK Bank account and it was upon this fact that his invitation was necessary in order to shed more light in the investigation of the Petition made by the 2nd Respondent. The 1st Respondent was only carrying out its statutory obligation by inviting the Applicant and the applicant has not placed sufficient evidence before this court to prove that his fundamental rights have been infringed. It is in the interest of justice to refuse the Applicant's application.

I have carefully read and digested the averments in the affidavits of the parties and submissions of their learned Counsel in their written addresses.

The crucial issue that calls for determination is whether or not the Applicant has made out a case to justify the grant of the reliefs sought in the Originating Motion.

The instant action is predicated on alleged violation of the Applicant's rights as guaranteed in Sections 35, 36, 41 and 46 of the 1999 Constitution of Nigeria (As Amended). It is the position of the Applicant that the business transaction between him and the 2nd Respondent involving the purchase of pounds and transfer of same to UK is civil business transaction the breach of which can only give right to civil action and not criminal action to justify the involvement of the 1st Respondent. He also alleged that his continuous invitation to the office of the 1st Respondent on regular basis on a civil matter amount to an infringement of his fundamental human rights to personal liberty and movement. The general position of the law in our adversarial legal system is that the burden of proof first lies on the party who asserts a state of affairs and seeks the Court's favourable finding or pronouncement on it to lead credible evidence in proof of it lest he fails. The burden of proof is however not static as it shift from party to

party until the issue in contention is resolved. The burden of proof is always on the party who will fail if no further evidence is adduced. See: **Sections 131 to 133 of the Evidence Act 2011.**

In line with this, the Court in **FAJEMIROKUN V CB (CI) NIG LTD (2002) 10 NWLR (PT. 774) P. 95**, made the point that for an application alleging infringement of an Applicants' fundamental rights to succeed, the application must place before the Court all vital evidence regarding the infringement or breach of the right. It is only thereafter that the burden shifts to the Respondent to prove otherwise.

The 1st Respondent in this case is an authority established by the Economic and Financial Crimes Commission (Establishment) Act, 2004 with the fundamental function of investigation and prosecution of economic and financial crimes. It also performs other duties and functions set out therein. Part of their duties also includes prevention of financial crimes, investigation, detection and prosecution. In execution of the above responsibilities, the Commission have the discretion to investigate into any complaint made in good faith to them. However, their power to investigate, arrest or detain a person can only arise where there is reasonable suspicion of commission of crime. EFCC is not a place for civil matters. Therefore it has been cautioned not to reduce itself to debt recovery agent as it is not its duty to recover debts. Going outside its duty as spelt out in Act which created it will amount to arrogating to itself powers that it does not have which is ultra vires its powers. It will be in direct confrontation with the judicial powers donated to the court by the Constitution for the EFCC to handle civil matters. **See Section 6(6)(b) of the 1999 Constitution.**

I have given due consideration to the contentions of parties as well as the provisions of the law. I have also read and digested the averments in the parties affidavits to determine whether the transaction in this matter is purely a civil one which the 1st Respondent ought not to have delved into or whether it has criminal undertone. There is no gainsaying the purchase of foreign currencies (Pounds) and transfer of same to 2nd Respondent's UK account is the subject matter of the

whole transaction. However the bone of contention is the 7,750 pounds which was transferred through one Barry Clothing and Events' account into the 2nd Respondent's Halifax (Lloyds) Bank account in United Kingdom but later withdrawn as an indemnity recovery and the account of the 2nd Respondent suspended as part of fraud prevention method. As a result of this, the 2nd Respondent wrote Exhibit B to 1st Respondent requesting for assistance to uncover those behind the financial fraud with a view of getting his money back. It is the contention of the Applicant that the 2nd Respondent ought to have initiated a civil matter to recover his money rather than involving the 1st Respondent and the 1st Respondent ought not to have delved into the matter, however on the other hand the 1st and 2nd Respondents have contended otherwise. I have examined all the exhibits particularly 1st & 2nd Respondent's Exhibit A and Exhibit EFCC 8 respectively which is the communication to the 2nd Respondent by his Lloyds Bank that his account has been suspended for fraudulent activities. Therein the 2nd Respondent's Lloyds Bank highlighted the account of the 2nd Respondent as the "Receiving account for a fraudulent transaction." The sums of 3,750 pounds and 4000 pounds totaling 7,750 pounds as well as 16th April 2020 representing the date of transfer were highlighted as the fraudulent transaction. In Exhibit EFCC 7 which is the 2nd Respondent's statement of account with Halifax (Lloyds) Bank, the above stated sum of money tagged as fraudulent was paid into the 2nd Respondent's account with Halifax(Lloyds) Bank UK on 16th April 2020 by one Barry Clothing and later withdrawn and debited as an Indemnity Recovery. The applicant admitted in paragraph 7 of his affidavit in support of the application and paragraph 12 of his further and better affidavit as well as in Exhibit EFCC 6 that Barry Clothing and Events is his business partner and that he actually deposited the said sum through Barry Clothing and Events into the 2nd Respondent's account in with their agreement in Exhibit EFCC 4a and EFCC4b. The Court has held in the case of **KEHINDE VS FEDERAL REPUBLIC OF NIGERIA (2020) LCN/14272(CA)** that "the transaction between parties could be grounded in a civil transaction but when fraud becomes part of the transaction, the persons perpetrating it must be tried according to law. A civil transaction can also generate a crime in the process of

execution and as long as the elements of the offence are present, the law will apply". Furthermore **Sections 6 and 7 of the Economic and Financial Crimes (Establishment) Act 2004** has clothed the 1st Respondent with the responsibility of investigating all financial crimes and fraud. In this case since the transfer of 7,750pounds was marred with fraudulent activities, it is the responsibility of the 1st Respondent to investigate such financial fraud and the invitation of the applicant by the 1st Respondent as the person who initiated the said fraudulent transaction based on the 2nd Respondent's Exhibit B cannot be said to be wrong. The courts have been enjoined not to allow persons to use the court as a shield against criminal investigation and prosecution as doing so will amount to a clear interference with the powers given by law and the Constitution to law enforcement agency to conduct criminal investigation and prosecution. **See CROWN-HILL UNIVERSITY, ILORIN & ORS V. EFCC (2019) LPELR-49530(CA); KALU VS. FRN (2016) LPELR-(SC)**. Also the writing of Exhibit B by the 2nd Respondent to the 1st Respondent cannot be said to be wrong as well because it is the law that a person who merely set the process of the law in motion which led to the invitation, arrest or detention of another will not be liable except if the Applicant by evidence shows he was actively instrumental and participated substantially in procuring his arrest and detention and that his invitation or arrest was instigated in bad faith.

Furthermore on the contention of the Applicant that his arrest and continuous report to the 1st Respondent office from Lagos to Abuja on regular basis on the subject matter of this case is an infringement of his Fundamental Human Rights and that his request to be reporting to the 1st Respondent's office in Lagos to avoid great expenses, travelling, security risk and inconveniences was turned down. The 1st Respondent in response to the above in its counter affidavit denied same and avered that it had only invited the applicant twice on the 2/9/2020 and 3/9/2020 for the purpose of investigation and that the applicant was granted bail and he has never made any request to the 1st Respondent to report at her Lagos Zonal Office.

With this, the onus shifted back to the Applicant to lead further evidence in this regard in his further affidavit. I have gone through the Applicant's further affidavit and no further evidence was led in this regard showing when he was arrested and detained and when he was released on bail to enable this court determine if such period was more than the reasonable period allowed under the Constitution or that he was invited more than twice which made it to be continuous. He has not also exhibited request he made to the 1st Respondent to be reporting at its Lagos Office which was turned down. It is settled law that where a party deposed to a fact in a counter affidavit which the other party ought to rebut in a further affidavit but the later fails to do so he is deemed to have admitted such facts in the counter affidavit. **See ASOL NIG. LTD VS. ACCESS BANK NIG. PLC (2009) 10 NWLR PART 1149 P.283.**

By reasons of the foregoing findings, the Court resolves the sole issue raised above against the Applicant in favour of the 1st and 2nd Respondents. In consequence, this application fails and the reliefs sought in the motion paper by the Applicant cannot be granted. They are hereby refused.

I make no order as to cost.

Signed
Hon. Judge
3/12/2021.

LEGAL REPRESENTATIONS

1. Nicholas O. Eku Esq. for the Applicant.
2. Bamidele Akanmode Esq for the 1st Respondent.
3. Sepiribo Cromwell Peters Esq for the 2nd Respondent.