

**THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, COURT NO. 29, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE J. ENOBIE OBANOR**

FCT/HC/CV/2993/2021

BETWEEN: -

1. MRS. DORIS OJEME

APPLICANT

AND

1. ALEXANDER OJEME

2. STELLA OJEME

**NATIONAL AGENCY FOR THE
PROHIBITION OF TRAFFICKING
IN PERSONS (NAPTIP)**

RESPONDENTS

JUDGMENT

By an amended Statement, brought pursuant to Order VI Rule 1 and 5 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, filed on the 7th September, 2021, the Applicant prayed the Court for the following:-

A. A DECLARATION that the invitation or investigation if any, arrest and detention of the Applicant on the 17th of September 2019 by the 3rd Respondent after the Applicant's direct criminal complaint to the Magistrate Court is *ultra vires*, wrongful, unlawful, unconstitutional and amounts to breach of Applicant's Fundamental Rights to personal liberty, dignity of human person, right to fair hearing and Freedom of movement as guaranteed under the 1999 Constitution (as amended) FRN.

B. A DECLARATION that the invitation or investigation if any, arrest and detention of the Applicant by the 3rd respondent on the basis that Applicant wilfully made false statement against the 1st and 2nd respondents is baseless, reckless, whimsical, abuse of

power, unlawful, wrongful, unconstitutional and amounts to violation of Applicant's Fundamental Rights to personal liberty, dignity of human person, right to fair hearing and Freedom of movement guaranteed under the 1999 Constitution (as amended) FRN.

C. A DECLARATION that the Applicant suffered damages as a result of the act and conducts of the 3rd respondent.

D. The sum of N50, 000,000.00 as compensation against the 3rd respondent for breach of Applicant's Fundamental Rights.

E. A DECLARATION that the act and conduct of the 3rd respondent in accompanying 1st and 2nd respondents to the Nigeria police to interfere, obstruct, hinder, stop or terminate the lawful investigation of the Applicant's complaint against 1 and 2nd respondents is ultra vires, abuse of power, unlawful, unconstitutional and contravened Applicant's Fundamental Rights.

F. A DECLARATION that the 3rd respondent's act and conduct to interfere, obstruct, hinder, stop or terminate the lawful investigation into the Applicant's complaint at the Nigeria police is wrongful and occasioned damages to the Applicant's Fundamental Rights to fair hearing and Freedom of expression guaranteed under the 1999 Constitution (as amended) FRN.

G. The sum of N50, 000, 000.00 as compensation/damages against the 3rd Respondent for the interference, obstruction, hindrance, stopping or termination of the lawful investigation into Applicant's complaint by the Nigeria police.

H. An Order directing the 3rd Respondents to apologise to the Applicant in writing and publish same in two (2) National dailies.

I. A DECLARATION that the name calling, insult, abuses, beating, attack, assault and pushing of the Applicant at the residence of the 2nd respondent on the 19 of July 2019 by the 1 and 2nd respondents is wrongful, unlawful, unconstitutional and amount to

violation of Applicant's Fundamental Rights guaranteed under the 1999 Constitution (As amended) FRN.

J. A DECLARATION that the Applicant suffered damages as a result of the acts and conducts of the 1st and 2nd Respondents.

K. The sum of N50, 000,000.00 as compensation/damages against the 1st and 2nd respondents respectively.

L. A DECLARATION that the continued harassment, physical abuse, intimidation, arrest, detention and threat to life of the Applicant without any lawful justification is unconstitutional, illegal and a gross violation of the fundamental rights to life, respect for the dignity of her person, personal liberty and movement of the Applicant guaranteed under the Constitution of the Federal Republic of Nigeria.

M. AN ORDER of perpetual injunction restraining the respondents by themselves and or their agents, privies, servants howsoever called from any further unlawful arrest, detention, threat to life, abuse, harassment, intimidation and disturbance in any manner whatsoever except in accordance with due process of law.

N. N30,000,000.00 (Thirty Million Naira) being exemplary and aggravated damages for the unlawful intimidation, harassment, physical abuse, arrest, detention, threat to life of the Applicant.

O. The sum of NS, 000,000.00 as cost.

The Applicant predicated his Application on 33 grounds. In support, he filed a 110 paragraph further and better affidavit in support and annexed two Exhibits marked as Exhibit 1 and Exhibit 2. In compliance with the Rules of this Court, the Applicant filed a Written Address.

Opposing the application, the 1st Respondent filed its Counter Affidavit of 71 paragraphs dated and filed on 3rd December, 2021, and attached Exhibits A – G. His Counsel's written address dated 3rd December was also filed.

Also opposing the application, the 2nd Respondent filed a Counter Affidavit on the 3rd December, 2021, of 57 paragraphs with Exhibits Q1-Q3. The 2nd Respondent's Counsel's written address in opposition was filed as well.

On the part of the 3rd Respondent, a Counter affidavit of 31 paragraphs annexed with 4 Exhibits was filed together with a written address.

The Applicant's Counsel in his written address, formulated and argued the following 6 issues for determination of the instant application to wit:-

1. Whether the Applicant is justified and right in the exercise of her civil obligation when she made a complaint or report of sexual defilement to the 3rd Respondent upon the reasonable suspicion that the 1st respondent committed an offence, and therefore, Applicant cannot be said to have wilfully made false statement to the 3rd respondent to provoke purported invitation or investigation if any, arrest detention and prosecution of the Applicant.

2. Whether by the Direct Criminal Complaint made by the Applicant to the Magistrate court against the 1st and 2nd Respondents, the purported exercise of power or functions to invite or investigate if any, arrest and detain the Applicant by the 3rd respondent on the premise that Applicant wilfully made false statement to the 3rd respondent is ultra vires, unwarranted, unlawful, unconstitutional and amounts to violation of Applicant's fundamental rights.

3. Whether by the investigation report of the Nigerian police dated 18 September, 2019 made pursuant to the directive of court of competent jurisdiction on the Direct Criminal Complaint of the Applicant, the purported invitation or investigation if any, arrest and detention of the Applicant by the 3rd respondent on the premise that Applicant wilfully made false statement to the

3 Respondent is baseless and unjustifiable and therefore, the invitation or Investigation if any, arrest and detention of the Applicant by the 3rd respondent is unwarranted, abuse of power, unlawful, unconstitutional and amounts to breach of the Applicant's Fundamental Rights.

4. Whether the 3rd Respondent's collusion with the 1st and 2nd respondents by accompanying the 1st and 2nd respondents or suspects in abuse of power and functions to interfere, obstruct, hinder, stop or terminate the lawful investigation into the Applicant's complaint by the Nigeria police is in violation of Applicant's Fundamental Rights.

5. Whether the name calling, insults, abuses, beating, attack, assault, pushing, arrest and detention made against the Applicant on the 19th July 2019 and 17th September 2019 by the 1st, 2nd and 3rd respondents is wrongful, unlawful, unconstitutional and amounts to torture and degrading treatment and also a violation of other Applicant's Fundamental Rights guaranteed under the 1999 Constitution (as amended) FRN.

6. Whether the Applicant has suffered damages as a result of breach of her Fundamental Rights by the acts and conduct of the 1st, 2nd and 3rd respondents, and therefore, entitled to the reliefs sought for the violation of Applicant's Fundamental Rights.

The 1st Respondent formulated 2 issues for determination as follows:

1. Whether it is within the Constitutional right of the 1st Respondent to complain to the 3rd Respondent NATIP for the alleged crime committed by the Applicants moreover when they have genuine complain and evidence against the Applicant.

2. Whether it will amount to infringement of the fundamental right of the Applicant for the 3rd Respondent NATIP to investigate complain made to them lay a Nigerian citizen including the 1st Respondent.

Counsel for the 2nd Respondent, distilled a sole issue for determination as follows:

"whether the action of the 2nd Respondent as shown by her Counter Affidavit amounts to infringement of the Applicant's Fundamental Right".

On behalf of the 3rd Respondent, Counsel also formulated a sole issue for determination as follows:

Whether this Honourable Court ought to grant the reliefs sought in this suit for the enforcement of the rights of the Applicant?

After a careful consideration of the processes in this suit and addresses of parties, it is my opinion that the resolution of the 3rd Respondent's sole issue will adequately resolve the issues of all other parties in this application. I shall therefore adopt same as the main issue for determination. The issue reads thus:-

"Whether this Honourable Court ought to grant the reliefs sought in this suit for the enforcement of the rights of the Applicant"?

By the affidavit of the Applicant (who is the wife of the 1st Respondent), she averred facts in support of the instant application to the effect that sometimes in December 2018, when the Applicant went to pick her daughter from school, the daughter complained to the Applicant that her private body (part) was paining her. The Applicant checked her private part and discovered that the private body (part) was swollen. The Applicant reported the matter to the 1st Respondent who did not show any concern. The Applicant as a result, visited the daughter's school and complained but she was informed that the nanny assigned for the caring of the children is a female and could not have sexually abused any of the children (see paragraphs 11, 12 and 13 of the further affidavit in support).

The Applicant further averred that sometimes in January 2019, the Applicant and 1st Respondent's daughter complained of the same pains in her private part during vacation. The Applicant upon enquiring from the daughter as to who touched her private part

was told by the daughter(a 3-year old) that it was her daddy(see paragraphs 14-19). The Applicant averred that she took the daughter to a nearby medical centre for medical examination and immediate care or attention. The Doctor confirmed that her private part had been tampered with and some medical care was administered on her daughter(see paragraph 25).

According to the Applicant, the 3rd Respondent on its part, brazenly ignored all the compelling and reasonable grounds on the Applicant's suspicion, not only refused to investigate and prosecute the 1st Respondent but also colluded with the 1st and 2nd Respondents to frustrate the complaint at the office of the 3rd Respondent and equally at the Nigerian Police stations.

The efforts of the 1st, 2nd and 3rd Respondents to frustrate the Applicant's complaint met brick wall when the Applicant made a direct criminal complaint to the Magistrate Court, Mpape, Abuja. Upon the Respondents realizing the consequence of the direct criminal complaint, they quickly in an afterthought hatched a separate plot to tag Applicant's complaint as false statement solely to oppress and compel Applicant to jettison the complaint or go to jail unjustly in the guise and toga of wilfully making false statement. In furtherance to the wicked agenda, the 3rd Respondent, whose affairs are piloted by a female person as its Director General proceeded on the 17th of September, 2019, to lay ambush and bundle the Applicant in a commando style from her place of work in the name of arrest till late in the night with insults and abuses without food and water causing Applicant double jeopardy and pains, Applicant who was then a lactating mother was deprived access to her then suckling baby boy of three (3) months old without remorse from the 3rd Respondent or even her female (mother) Director General. Therefore, Applicant filed this Application to enforce her fundamental rights violated by the Respondents.

The 1st Respondent, in its Counter Affidavit denied all the averments of the Affidavit and stated that the Applicant and the School never complained or raise any issue of sexual assault or complaints of pains on my daughters private body part, such events never occurred neither where they brought to my notice.

The 1st Respondent further state that on the 19th day of July, 2019, upon the Applicant making the allegation against me to the 2nd Respondent (my Mother), the Applicant, other family members and we decided to go for a medical check at Garki Hospital which is the closest hospital located within the premises of the 2nd respondent to determine the allegation raised by the Applicant. That on our way to the hospital, the Applicant carrying our little child of three months on her back opted and threatened to jump out of the moving vehicle if I do not drop down from the vehicle and that I shouldn't go with them to the hospital. For the sake of peace I decided to leave the applicant and the 2nd respondent to join them later at the hospital.

It is also the averment of the 1st Respondent that on the same 19th of July, 2019, before they could collect the first test result conducted on their child, from Garki Hospital, while waiting at the home of the 2nd respondent, the Applicant hastily went to report him and the 2nd respondent at the office of the 3rd respondent. As a result, they were arrested and detained by the 3rd Respondent (NAPTIP) on a malicious complaint

At paragraph 13, the 1st Respondent started that the Garki Hospital medical card of our daughter was seized from the 2nd respondent and I, upon detention by operatives of the 3rd respondent.

That while he was still in detention of the 3rd respondent, NAPTIP on the next day of the alleged incidence, 20th day of July, 2019 the 3rd respondent conducted several tests in different Hospitals Including the hospital suggested by the Applicant, The Limi Hospital, Abuja, and Federal Medical Center, Abuja. On our child and no positive or conclusive results was given from all the Hospitals visited. A photocopy of a certified true copy of the Medical Test result of Federal Medical Center, Abuja dated 7th day of August, 2019 is hereby attached and marked Exhibit A.

At paragraph 17, the 3rd Respondent stated that on the 1st day of August, 2019, Instead of the Applicant to allow the 3rd respondent NAPTIP conclude their investigations, he was arrested by some policemen of the Nigerian Police Force from the Apo police

division, Abujathrough the false and active instigation of the Applicant and was later released on bail after he was detained for about 24 hours after officials of the 3rd respondent informed the Police that the matter was already being investigated by their Agency since the 19th day of July, 2019 and that there was not yet a conclusive test result confirming the allegation and they were yet to collect the first test result from Garki Hospital.

That on the 21st day of August, 2019 the 2nd Respondent his mother and him (1st Respondent) were further arrested by officers from Area Command Metro of Maltama Police Division, Abuja, through the false and active instigation of the Applicant who made a direct criminal complaint at Mpape Magistrates Court, where he was detained at Maitama Police Station again for about 72hrs and later released on bail.

Contrary to paragraph 71 of the affidavit, It was at Maitama Police station that the 1st and 2nd Respondents got to find out that the Applicant in her own malicious wisdom, while the 1st Respondent was still in detention of the 3rd respondent, without any supervision of authorities, police, agents of government or adverse party, the Applicant went to secure a fake and Inconclusive medical report referred to as Exhibit 2 in the Applicants Affidavit, from Wuse District Hospital dated 20th July, 2019, a day after the alleged incidence and after taking the innocent alleged victim (our daughter) to three different hospitals which did not confirm the allegation, all in her bid to bring me and my family down.

20. That the first medical test result conducted on the 19th day of July, 2019, revealed that nothing like sexual assault could be traced to the alleged victim his 3 year old daughter and that her private part was intact. Normal and had not been tempered with. A copy of the result which was later collected from Gorki Hospital by the 3rd respondent during their investigation is hereby attached and marked Exhibit B.

21. That the officers of the Maitama Police station who was supposed to investigate the matter, in their bias nature never

liaised with the 3rd Respondent who was the first agency to have investigated the matter and was never aware of Exhibit A and B above, till this day, based on their bias nature went ahead and charged the 1st Respondent with one sided evidence.

That it was based on the medical test results from the Limi Hospital, Federal Medical Center (3rd Test Conducted on my Daughter) and the earlier and the first Medical Test results from Garki Hospital conducted on the alleged victim his Daughter that the 3rd respondent granted me bail and didn't see any grounds to prosecute me on the details of those medical reports as they were all inconclusive and based on speculations.

I instructed my lawyers to write to the 3rd Respondent demanding for all test results in possession of the 3rd Respondent upon their investigation and lodged a formal complaint of Malicious prosecution and character assassination against me by the Applicant, before I was ever charged and arraigned at the Magistrates Court on the 6th day of September, 2019. A copy of the Letter mentioned herein in the paragraph above dated 28th day of August is hereby attached and marked Exhibit C.

That it was upon 'Exhibit C' above the 3rd Respondent forwarded the Medical Test results from both Garki Hospital and Federal Medical Centre through my lawyers, that he got to discover and see a copies of the test results Exhibit A and B mentioned above for the first time. A copy of the response letter dated 3rd September 2019 from the 3rd Respondent is hereby attached and marked Exhibit D.

That the Applicant was never arrested and detained from the 17th day of September, 2019 till the following day 18th September, 2019 rather the applicant was invited for her statement on the 17th day of September, 2019 and left that same day.

As regards the complaint he made against the Applicant for maliciously instigating false investigation against him, he never colluded or connived with the 3rd respondent NAPTIP a Reputable Agency of the Government of the Federal Republic of Nigeria that is trained and has jurisdiction in matters related to the malicious allegation made against him, rather it is the Applicant and the

Maitama Area Commander Metro and officers of Maitama Police Station, on her desperation to bring me and my family down that has grossly desecrated his own fundamental rights.

The 1st Respondent further averred that the Maitama Police station hurriedly charged the matter to court without any real investigation in a bid to satisfy the will of the applicant knowing fully well that the Mpape Magistrates Court lacked the requisite Jurisdiction to try such offences; so he would be remanded tried and dragged in different Courts of the country.

That on the 15th day of November, 2019, the Police Prosecutor handling the matter, prayed to withdraw the matter as it had been filed and assigned to a Judge of the High Court of FCT. The matter was eventually struck out.

That he was freshly arraigned in the same subject matter or alleged offence via a fresh Charge dated 16th September 2019 in the High court of the FCT. A copy of the Charge against me dated 16th September, 2019 is hereby attached and marked Exhibit E. The 1st Respondent further stated that the fresh charge was filed immediately after he was granted bail by the Magistrate Court on the 13th day of September, 2019 while the charge is dated the 16th day of September, 2019 all in the evil quest of the applicant to remand him in prison before every court in the country as the applicant has vowed to deal with him and his family.

The 1st applicant in a phone conversation with my Friend Mr Henry Asomugah on the 7th day of September, 2019 boasted that she is connected to the high and mighty and she swore to bring him, the 2nd respondent (my mother) and his entire family down, stating that when he gave the family the time to settle that they didn't want settlement". A copy of the phone Conversation recorded in a DVD/CD/mp3/flash drive format is hereby, attached and marked Exhibit H.

The 2nd Respondent on her part stated that hergranddaughter as at then can barely alter a word or speak to the hearing of the

people as all these were fabricated by the Applicant to execute her evil plans against my peaceful family.

That in further response to the above, the entire family swung into action by taking the child along with the Applicant and other members of the family to the nearby hospital for a test but the Applicant choose to run out of control and order as she goes about reporting the issue from Police to Police and even made a complaint to the 3rd Respondent whilst we are still at the Garki Hospital to determine the allegations.

That my son obeyed for the sake of peace and had to leave the Applicant and me to join us later at the hospital.

That the later Police investigative report by the Area Command Police Station Maitama that led to the charging of the 1st Respondent did not indict me despite the fact the Applicant included my name in the direct criminal complaint to the Magistrate Court sitting at Mpape. A Copy of the Police Investigation Report dated 19th September, 2019 is hereby attached and marked as exhibit CPI

The 3rd Respondent, National Agency for Trafficking in Persons (NAPTIP) in its Counter affidavit in opposition averred that the officers of the 3rd Respondent received a letter dated the 28th day of August, 2019 from the 1st Respondent's Lawyer which is GOZIE NWADIKE & CO, stating the malicious Act of the Applicant. The letter is hereby attached as Exhibit 1.

That investigations revealed that the applicant had committed an offense punishable under Section 8 of the Violence Against Persons (Prohibition) Act, 2015.

That Medical officers of the 3rd Respondent had first examined the applicant's Child and did not find any evidence of Sexual abuse. That some officers of the 3rd Respondent took the applicant's child to the Limi Hospital and Federal Medical Centre for medical examination and it was confirmed that the child's private part was not tampered with.

That the 3rd Respondent did not in any way abandoned nor went to slumber over the matter, but was rather investigating the matter. That the applicant made efforts to frustrate the investigation when it became obvious that she could not use the 3rd respondent to indefinitely detain her husband and settle her personal vendetta. That the 3rd Respondent was never ever arraigned at the Mpape Magistrate Court for any offence related to Act of Gross Indecency and Sexual Assault.

That a Charge was filed by officers of the 3rd Respondent against the Applicant for misleading a Law Enforcement Agency Into arresting and detaining the 1st Respondent for no cause after a proper investigation.

That officers of the 3rd Respondent did not whisked away the Applicant in a gestapo manner, she was called by the officers of the 3rd Respondent prior to the day she was taken, but she failed to honour the invitation, hence, the need to visit her office to invite her over in an orderly manner.

That the complaint filed by the Applicant to the 3rd Respondent against the 1st Respondent, is false and malicious as investigations revealed and in the medical reports attached as Exhibit 2 & 3.

That officers of the 3rd respondent arrested, but did not detain the Applicant and she was not held incommunicable as she was given access to her phone, her father and her lawyer who came to seek for bail condition for her. The 3rd Respondent stated at paragraph 16 of its counter that officers of the 3rd Respondent did not act in such a way that will jeopardize the Applicant's employment.

That the 3rd Respondent filed a criminal charge against the Applicant before Judge A.B. Mohammed was elevated to the Court of Appeal. The matter is now assigned to, Justice Oba of the Federal Capital Territory High Court 31, Apo.

The Applicant's Counsel in its written address argued that in the instant case, there are reasonable grounds upon which the Applicant relied to reasonably suspect that the 1st Respondent

committed or likely to have committed an offence. To buttressed his point further, Counsel submitted that the repeated and uninterrupted three (3) consecutive times without protest or reaction from the 1st Respondent to such a heinous allegation, it is not possible for a reasonable man to dismiss the direct and unequivocal assertion of the Applicant's daughter in the presence of the 1st Respondent that 1st Respondent is responsible for the pains at her private part. that this necessitated the Applicant complain to the 3rd Respondent.

Counsel further submitted that the attitude of the 2nd Respondent strengthened Applicant's reasonable suspicion that the 2nd Respondent has knowledge of the actual or likely commission of the offence by the 1st Respondent. Counsel also stated that it is worthy of note that a child's mind is in a clean and innocent state and cannot concoct or fabricate falsehood against someone how much more the father.

Counsel contended that by section 20 of ACJA 2015 a private person is empowered to also arrest a suspect who in his presence commits an offence.

Counsel for the Respondent in his argument submitted that the Applicant cannot be said to have made a wilfully false statement since at the time of his report to the 3rd respondent he had reasonable ground to suspect the 1st and 2nd respondent. Counsel referred the Court to Exhibit Ojeme 1, Ojeme 2 and exhibit 1 & 2 of its Affidavit to support his contention.

Oyemaechi Bob James submitted on behalf of the Applicant that by the direct criminal complaint of the Applicant, the subsequent and purported exercise of powers or function by the 3rd Respondent is inconsistent with the provision of section 1 of the 1999 Constitution (as amended), FRN. He referred the Court to the case of Oungbowa v. Gov. Edo State (2015) 10 NWLR Pt 1467 page 257 at 300 paras C-E. He also drew the mind of the Court to sec. 6(6) (b) and also section 36 (1) of the Constitution.

Counsel also in proving its case contended that by section 4 of the Police Act, made pursuant to Section 214 (2) (a) (b) of the 1999 Constitution, the investigation report of the Nigerian Police (exhibit Ojeme 3) prevails over the purported conflicting report of

the 3rd respondent if any, that the Applicant statement is false and he urged the Court to so hold.

Counsel further contended that the act of the 3rd Respondent by going to Apo police station to halt and terminate Applicant's complaint is ultra vires, unlawful and unconstitutional and amounts to the breach of the Applicant's fundamental rights of being heard on the complaint. Counsel added that the arrest and detention of the Applicant was the afterthought of failure of the 3rd Respondent at Metro Police station thereby making the arrest and detention unlawful and unconstitutional.

Counsel submitted that the torture and assault of the Applicant by the 1st and 2nd Respondent amounted to the breach of her fundamental rights. Also, the arrest of the Applicant in the bank in the commando manner violates her rights. He referred the Court to section 34(1), 35(1) of the 1999 Constitution(as amended) and the cases of Oyirioha V IGP (2009) 3 NWLR Pt 1128 pg 347 at 347.

On the part of the 1st Respondent, his Counsel submitted that the action of the 1st respondent has not in any way breached the constitutional rights of the applicant as he only complained to the 3rd respondent as the agency that investigated the alleged offence when it actually occurred, with facts and solid evidence of a malicious allegation without doing anything more. He referred the Court to the case of Bayol Vs Ahemba (1999) 10 NWLR (pt 623). Pg 381 at 383

1st Respondent Counsel further submitted that by the provisions of section 8 of the Violence Against persons Prohibition (VAPP) Act 2015 a person who wilfully makes false statement whether oral or documentary with the aim of initiating investigation or criminal proceedings under the Act against another person commits an offence the Act and is liable on conviction to a fine of N200, 000 or a term of imprisonment not exceeding 12 months.

While section 44 of the same Violence Against persons Prohibition (VAPP) Act 2015 mandates the 3rd respondent the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) as the regulatory body to administer all the provisions of the Act and

collaborate with the relevant stakeholders including faith based organizations.

Respondent further submitted that the direct Criminal Com-plaint by the Applicant was a means used by the Applicant to achieve her evil plot to make sure by all means she detained and remanded her husband the 1st respondent in different Prisons as the Applicant and the Maitama Metro Police, knew that the Magistrate Court in Mpape lacked the requisite Jurisdiction to entertain such offences of Sexual Assault as alleged by the Applicant. By virtue of Section 12 (1) and section 13 of the Criminal Procedure Code and section 27 of the Violence Against Person Prohibition (VAPP) Act 2015, it is only the High Court that Has the Jurisdiction to Try the nature of Offences upon which the 1st respondent was charged.

The 2nd Respondent in its written Address contended that there is no place in the affidavit in support of the applicant's application where it is stated that the 2nd Respondent played a role in the arrest. investigation and detention of the Applicants fundamental rights. Moreover, the applicants was only invited by the 3rd respondent, released on bail and was told to show up for further investigation the next day. The 2nd Respondent urged the Court to dismiss the matter.

3rd Respondent on its part, submitted that the accepted legal position as laid down in Section 131 of the Evidence Act, 2011 is that he who asserts must prove by credible Affidavit Evidence that his fundamental right has been breached or likely to be breached as was decided in Onah v. Okenwa (2010) 7 NWLR (PT 11940) 512 AT 535. That the Applicant in this case have failed to prove the substance of the alleged infringement of her rights. The affidavit in support of the Applicant petition has been vehemently denied by the Counter Affidavit of the 3 Respondents. see the case of FAJEMIROKUN V. C.B.(C.L.) NIG. LTD (2002) (PT. 774) 10 N.W.L.R

He further submitted that the officers of the 3rd Respondents were carrying out their statutory responsibility pursuant to the

provisions Section 8 of the VIOLENCE AGAINST PERSONS PROHIBITION ACT, 2015.

It is also the submission of the 3rd Respondent Counsel that a person cannot go to Court to stop a body empowered by law to carry out its statutory duties as provided under the law. He referred the Court to the case of A.G. Anambra State V. Chris Uba (2005) 13 N.W.L.R. (pt.947) at 67. The Court cannot on this premise, prevent a Law Enforcement Agency from carrying out its Statutory responsibilities.

Now in the resolution of the issue before this Court, the instant action is one brought by the Applicant for the enforcement of her fundamental rights. The law is that the burden of proof lies on the Applicant to establish by credible affidavit evidence that his fundamental right was breached. See the decision of the Court of Appeal in the case of **FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (2002) 10 NWLR (PT 774) P. 95**, which decision was upheld by the Supreme Court in **FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (2009) 5 NWLR (PT. 1135) P. 588**. See also the case of **MR. COSMOS ONAH V. MR. DESMOND OKENWA & ORS (2010) LPELR-4781(CA)**.

By the first and second reliefs of the Applicant in support of this Application, the Applicant seeks:

A. Declaration that the invitation or investigation if any, arrest and detention of the Applicant on the 17th of September, 2019, by the 3rd Respondent after the Applicant's direct criminal complaint to the Magistrate Court is *ultravires*, wrongful, unconstitutional and amounts to the breach of Applicant's fundamental rights to personal liberty, dignity of human person, right to fair hearing and freedom of movement as guaranteed under the 1999 constitution (as amended) FRN.

B. A declaration that the Invitation or investigation if any, arrest and detention of the Applicant by the 3rd Respondent on the basis that the Applicant wilfully made false statement against the 1st and 2nd Respondent is baseless reckless, whimsical, abuse of

power, unlawful, wrongful, unconstitutional and amounts to violation of Applicant's fundamental rights to personal liberty, dignity of human person, right to fair hearing and freedom of movement guaranteed under the 1999 Constitution (as amended) FRN.

Under **Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**, every person (including the Applicant) is guaranteed his personal liberty. The circumstances under which a person may be lawfully deprived of such liberty are specifically set out in **Section 35(1)(a)–(f) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**. The said provision is as follows:-

- 35(1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law*
- (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;*
 - (b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;*
 - (c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;*
 - (d) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;*
 - (e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or*
 - (f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion,*

extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Aside the foregoing circumstances, no person shall be deprived of his personal liberty.

The position of the law is that, where there is evidence of arrest and detention of an Applicant in an application for enforcement of fundamental right, it is for the Respondent to show that the arrest and detention were lawful. See the cases of ***EJEFOR V. OKEKE (2000) 7 NWLR (PT. 665) P. 363 at P. 381 paragraph. F and FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (supra) at P. 111.***

The onus is thus placed on the 3rd Respondent (by the law) to show that the arrest and detention of the Applicant is justified and within the circumstances provided in **Section 35(1)(a) – (f) of the Constitution.**

It is not in dispute that the Applicant was the first to make a complaint of sexual defilement and assault against the 1st and 2nd Respondents, respectively, to the 3rd Respondent. From the averments of the parties in dispute, there is also no contention that the 3rd Respondent took the daughter of the Applicant and the 1st Respondent to Court (see paragraphs 70 and paragraphs 7 of the Applicant's Better Further and Better Affidavit and the 3rd Respondent's Counter Affidavit, respectively).

It is also not in dispute that the Applicant was arrested and given bail by the 3rd Respondent (see paragraphs 92 and 15 of the Applicant's Better Further and Better Affidavit and the 3rd Respondent's Counter Affidavit, respectively).

However, what is in dispute is the mode of arrest and detention. Thus, the Applicant in her paragraphs 90 - 93 stated that she was arrested as follows:

"90 - That when it became obvious to the 1st, 2nd and 3rd respondents that the Applicant is likely not to

surrender or bulge, the 3rd respondent in executing the ploy and script proceeded to the Applicant's office on the 17 of September 2019 to bundle and detain Applicant like a common criminal.

91 - That desperate 3rd respondent laid ambush that very morning and disguised as customers on appointment with the Applicant to the deceit of unsuspecting security staff and other colleagues of Applicant's organization (bank).

92 - That the Applicant was bundled in the name of arrest creating a scene in the presence of Applicant's customers and colleagues in violation of Applicants integrity and dignity of human person.

93 - That the uncivilized pattern adopted by the 3rd respondent in arresting the Applicant was targeted to principally humiliate the Applicant as a banker and violate Applicant's right to life and dignity of human person."

The 3rd Respondent on his part, averred at paragraphs 15-16 as follows:

15 -That officers of the 3rd respondent arrested, but did not detain the Applicant and she was not held incommunicable as she was given access to her phone, her father and her lawyer who came to seek for bail condition for her.

16 - That officers of the 3rd Respondent did not act in such a way that will jeopardize the Applicant's employment.

Also from the averments of Respondents in this case, the Applicant was arrested on an offence of wilfully making false statement, punishable under Section 8 of the Violence Against Persons (Prohibition) Act. It is also the averment of the 3rd Respondent, which was uncontroverted that the said matter is

before the FCT High Court with Charge No: CR/2/19. On the part of the Applicant, she lodged a criminal complaint against the 1st and 2nd Respondents in a Magistrate Court in Mpape. From the Exhibit before the Court, the police investigation revealed that 1st Respondent will be charged to Court on the offence of Sexual Assault.

Flowing from the above, the first question now is, has the 3rd Respondent established that the Applicant was arrested over an offence punishable under the law? The second question is was the arrest and detention lawfully conducted?

From the averment above, I am of the opinion that the 3rd Respondent has established the fact that the Applicant was arrested over an offence punishable under the law pursuant to Section 8, Violence Against Persons (Prohibition) Act (Supra) and I so hold.

The 3rd Respondent in its Counter affidavit has discharged its onus by stating that the arrest was conducted in a lawful manner as stated above. it is now the duty of the Applicant to establish otherwise by concrete affidavit evidence which she failed to do and I so hold.

The Applicant's statement that the unlawful manner of her arrest in her workplace (bank) without more is not enough to convince the court. In the bank where the Applicant works, there are CCTV cameras but the Applicant did not furnish the Court with a proof of the commando manner of arrest that took place in the bank where she is a staff. This creates doubt in my mind and it is not the duty of court to speculate or merely deduce it, rather it is the duty of the Applicant to furnish the court with substantial details that will convince it when it places its averment side by side with that of the Respondent, which the Applicant has failed to do in this case . Accordingly, reliefs 'A' and 'B' are hereby refused.

To support the above, I rely in the case of **ABUJA ELECTRICITY DISTRIBUTION COMPANY PLC & ORS V. AKALIRO &**

ORS(2021) LPELR-54212(CA), where the Court of Appeal held as follows:

"In determining the duty on a party alleging breach of fundamental rights, this Court in OANDO PLC V. FARMATIC BIOGAS WEST AFRICA LIMITED & ANOR (2018) LPELR - 45564 (CA); held per Abubakar, J.C.A. thus: "The settled position of the law in cases of allegation of violation of fundamental rights is that a mere allegation or deposition in an affidavit stating that an Applicant was arrested is not sufficient to constitute proof of infringement or infraction on the rights of an applicant, the specific facts of the alleged detention and the duration must be proved in substantial details....In an application for the enforcement of Fundamental Human Rights, particularly where arrest is alleged, the Applicant must prove specific detention and duration. It is not a matter of speculation....."Indeed, the Applicant has the burden to prove by cogent convincing and credible evidence, the facts as alleged by him, as construing the breach or infringement of the Fundamental right to freedom from inhuman and degrading treatment or torture as guaranteed him by Section 34(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria. General and wide allegations of such breach and infringement will not suffice...." It must be clearly stated that a bare and generalized allegation of arrest and detention cannot serve as sufficient proof of infraction on the rights of an Applicant, he must go further to advance concrete, cogent and convincing reasons for the Court to find in his favour. The Court must not give to speculation, conjecture or logical deduction, applicant has a duty to furnish in substantial details the fact of his arrest and detention, he must in other words particularize the particulars of his arrest and detention. A Court of law must not render its self-gullible or vulnerable to

guess-work...."Per AGUBE ,JCA (Pp. 31-32, paras. B-E)

As said earlier, the law is that the burden of proof lies on the Applicant to establish by credible affidavit evidence that his fundamental right was breached. See the decision of the Court of Appeal in the case of ***FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (supra); FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD(supra)..*** See also the case of ***MR. COSMOS ONAH V. MR. DESMOND OKENWA & ORS (supra).***

The Applicant having failed to prove its case as evaluated above, reliefs C, D, E, F, G, H, K, M, N and O are hereby refused.

under reliefs I and L, the Applicant seeks the following declarations:

I - A DECLARATION that the name calling, insult, abuses, beating, attack, assault and pushing the Applicant at the residence of the 2nd Respondent on the 19th of July, 2019, by the 1st and 2nd Respondents is wrongful, unlawful, unconstitutional and amount to violation of Applicant's Fundamental Rights guaranteed under the 1999 Constitution (As amended) FRN.

L- A DECLARATION that the continued harassment, physical abuse, intimidation, arrest, detention and threat to life of the Applicant without any lawful justification is unconstitutional, illegal and a gross violation of the fundamental rights to life, respect for the dignity of her person, personal liberty and movement of the Applicant guaranteed under the Constitution of the Federal Republic of Nigeria.

The Applicant in her affidavit titled 'Further Further and Better Affidavit' averred at paragraphs 68 'that the name calling, insult, abuses, beating, attack and physical assault on the Applicant by the 1st and 2nd Respondents forced Applicant to escape out of the house in protection of her life and person on that 19th July, 2019'. 1st Respondent however, only made a general denial without

specific denial or making averments that shows the reason the Applicant a lactating mother left the house on the 19th July, 2019. I have also combed the affidavit filed by the 2nd Respondent, there was no specific denial of the said paragraphs 68 of the Affidavit in support of the Amended statement of the Applicant. In fact, the Applicant sought for an adjournment to amend/respond to the said affidavit which the Court granted. The mere general denial and without more by the 1st Respondent is too feeble to knock out 'paragraphs 68' of the Applicant's Affidavit in support of its amended statement and I so hold. In fact the 1st and 2nd Respondent did not even address the issue raised at paragraphs 68 of their counter Affidavit.

It is trite that where in a matter decided by affidavit evidence, affidavit takes the place of oral evidence. see the case of NWOSU UCHE & ANOR v. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS(2019) LPELR-48396(CA)

Also, in the case of EYOP INDUSTRIES LTD V. EKONG(2021) LPELR-55837(CA) the Court held as follows:

In GLOBE FISHING INDUSTRIES LTD V COKER (1990)11 SCNJ, it was held that trial Court should have treated the facts contained in the document in support of the application which was not disputed as prima facie prove for the purpose of the motion."Per MUHAMMED LAWAL SHUAIBU ,JCA (P. 24, paras. D-E) In the same case (supra),MUHAMMED LAWAL SHUAIBU ,JCA (P. 25, para. A) posited as follows:

"Where in a counter-affidavit a respondent makes some feeble and shallow averments in denial of specific facts in an affidavit such averment are mere general denials which are ineffective as a challenge to serious averments made against him."

Accordingly, the reliefs 'I' on the face of the amended statement of the Applicant is hereby granted. It is further ordered that the Respondents should henceforth restrain from harassing the Applicant pending the outcome of all the cases in Court.

As per relief 'L' stated above, Applicant in support of the said relief averred in paragraphs 14 and 15 that she has been receiving calls of treat to her life. She has not exhibited call log or any record of such calls to convince the court for the relief she is seeking the Court to so declare. Accordingly, reliefs 'L' is hereby refused and I so hold.

Having resolved relief F in favour of the Applicant, it becomes pertinent to determine reliefs J and K .

Having granted Reliefs I, the Court hereby grants relief J and award the damages of N1200,000.00against the 1st and 2nd Respondent.

That is the Judgment of this Court.

HON. JUSTICE J. ENOBIE OBANOR
(PRESIDING JUDGE)