

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**BEFORE HIS LORDSHIP HON. JUSTICE J.E OBANOR**  
**HOLDEN AT JABI**

**COURT NUMBER : HIGH COURT NO. 29**  
**CASE NUMBER : SUIT NO: CV/1390/2021**  
**THIS 13<sup>TH</sup> DAY OF DECEMBER, 2021**

**BETWEEN:**

NWOSU CHIDINMA MAUREEN... APPLICANT

**AND**

MRS INNOCENT EKENE ..... RESPONDENT

**JUDGMENT**

The Applicant vide a Motion on Notice for the enforcement of her Fundamental Right approached this Honourable Court seeking the following reliefs;

1. An order of this Honourable Court declaring the acts of the Respondent blocking the Applicant on the road and using a bunch of broom to sweep dust and other dirty particles upon the Applicant as unlawful, illegal, unconstitutional as it offends the Applicant's fundamental human rights to respect

and dignity of human person as provided for under sections 34 (1) (a), 41 and 46 of the 1999 constitution of the Federal Republic of Nigeria (as amended) as well as Articles 4 and 5 of the African Charter on Human and people's Rights.

2. An order of this Hon. Court declaring the acts of threat by the Respondent to eliminate the Applicant from the face of the earth as a violation of the Applicant's Fundamental Human Rights to life as provided for under Section 33(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as well as Article 4 and 5 of the African Charter on Human and People's Rights.
3. An Order of Perpetual Injunction Restraining the Respondent from further threat to kill the Applicant.
4. Damages in the sum of N10,000,000 (Ten Million Naira) only.
5. And for such further order(s) as the Honourable Court will deem fit to make in this circumstance.

The grounds upon which the application was brought are as follows:

1. That the unwarranted blockage of the Applicant on the road and use of a bunch of broom to sweep dust and other dirty particles upon the Applicant by the Respondent violate the

Applicant's right to respect and dignity of her person and freedom from inhumane and degrading treatment as guaranteed by Section 34 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under the Articles 4 and 5 of the African Charter on Human and People's Rights.

2. That the continued unwarranted threats to kill and eliminate the Applicant from the face of the earth by the Respondent violate the Applicant's right to life as guaranteed by Section 33 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under Article 4 of the African Charter on the Human and People's Rights.

The Applicant filed, in support of the application, a Statement setting out the relevant information, an affidavit of 26 paragraphs deposed to by the Applicant herself.

The brief facts of the Applicant's case as shown from her affidavit, is that on 9<sup>th</sup> June, 2021 while she was returning from work, as she merely passed a gutter passage at the front of the Respondent's grocery store, which is the usual route to her house, she was accosted by the Respondent who sternly scolded and warned her to use the road since she neither patronise her business nor exchange greetings with her while using the road.

Further, that on the 17<sup>th</sup> June, 2021, while returning from work and using the same road, the Respondent rushed towards her and used her broom to sweep dust and other dirty particles upon her and eventually hit her with same broom to the point that she was degradingly embarrassed and humiliated in the presence of passer-by. The Respondent conducted left her body with dust and other dirty particles. That was not enough, the Respondent further threatened to kill her the next time she use the said road.

That after the incident, she shamefully walked to her house to change her clothes and quickly put up a call to her counsel Eze Vinmartins Esq., who advised her to lodge a complaint against the Respondent to the police which she did at the police outpost, Daki-Biyu, Jabi, Abuja.

The applicant further averred in her affidavit in support of her application the dust and other dirty particles raised by the Respondent entered her eyes and affected her sleep. That she incurred the cost of N8,000.00 (Eight Thousand Naira) in the purchase of drugs to enable her sleep. Consequently, on the 18th of June, 2021 her lawyer submitted a formal petition on her instruction to the Divisional Police Office, Life Camp, Abuja which is marked as "Exhibit 1".

That after the incidence, she has been living in fear.

The Applicant's Counsel, filed a written address; formulated and argued the following issues for determination of the instant application, to wit:-

- 1. Whether the fundamental right to freedom from the inhumane and degrading treatment of the Applicant has been violated by the Respondent.***
- 2. If the answer to the above is in the affirmative what is the remedy open to the Applicant.***

### **ISSUE ONE**

***"Whether the fundamental right to freedom from the inhumane and degrading treatment of the Applicant has been violated by the Respondent?"***

On issue one, learned Counsel for the Applicant submitted that the Applicant's right under Section 34 (1) (a) of 1999 Constitution of the Federal Republic of Nigeria (as amended) has been breached. He further said that Article 4 and 5 of the African Charter on Human & Peoples right also provides for dignity of person(s) which is binding on Nigeria. He referred the Court to the case of Abacha vs Fawehinmi (2000) 6 NWLR (Pt 660) 228.

Applicant's Counsel further argued that the act of the Respondent resulted in the breach of the Right to the dignity and freedom from inhuman and degrading treatment of the Applicant. To buttress his point, he stated that the said breach is shown by the

conduct of the Respondent when she scolded and sternly warned the Applicant on the ground that she neither patronized her business nor exchange greetings with her while passing the road.

It is the submission of the learned counsel for the Applicant, that the Respondent act of mischievously and intentional sweeping dust and other dirty particles and lashing the Applicant with a bunch of broom amounts to a breach of her right to dignity of person as enshrined in the Constitution of the Federal Republic of Nigeria. Counsel in explaining what torture amounts to referred the Court to the case of **CHIEF NDUKA AHURWONYE & 1OR VS H.R.H.S.E IKONNE & 2ORS ALL FWLR (PT. 811) PAGE 1293 AT RATIO 3 PARA. F.**

## **ISSUE TWO**

***"if the answer to the above is in the affirmative what is the remedy open to the Applicant."***

On this issue, Counsel on behalf of the Applicant contended that the remedy open to the Applicant is compensatory damages and public apology. Counsel cited Section 46 (1) of the 1999 constitution (as amended) which provides that;

***"Any person who alleges that any of the provisions of this Chapter has been is being or likely to be contravened in any state in relation to him may apply to a High court in that state for redress."***

Counsel cited ***JIM-JAJA VS C.O.P, RIVERS STATE (2013) ALL FWLK (PT 665) 2003 at 3.***

Counsel finally, submits that in awarding damages, the courts are also enjoined to take into cognizance the high degree of inflation in the Country and the weak purchasing power of Naira. The case of ***STANDARD TRUST BANK LTD VS ANUMDU (2008) ALL FWLK (PT 399) 405 RT 6 at Page 428*** was cited and relied upon by Counsel.

The Respondent on its part, filed a counter affidavit of 32 paragraph deposed by the Respondent herself in opposition to the Applicant's application.

In the counter affidavit of the Respondent, she averred that sometimes in August 2020, the Applicant came to her shop pleaded with her to support her business of daily contribution which she was not ready to do, and the reply does not go down well with the Applicant.

That sometime in July, 2021 when she was sweeping her shop, the Applicant passed by and started shouting at her that the dust where she was sweeping touched her best cloth and started raining insult on her and her husband.

Respondent avers that the Applicant promised to deal with her to the extent that she will run away from her shop and go back to the village.

According to the Respondent, she single handedly constructed a wooden bridge/passage across the drainage leading to her shop where people who want to buy things from her shop make use of. The picture of the plank she used in the construction of the passage was annexed as Exhibits "A1" to "A4".

Respondent avers that the Applicant abused her and also took her to police station. That after one month of her detention in Daki Biyu, Police station, the Applicant also reported her to Life Camp police station and the D.P.O advised them to settle the matter amicably. And that one month after the report, she was charged to Mpape Upper Area Court where she is still standing trial.

Respondent's Counsel urged the Court to dismiss this application in the interest of Justice with substantial cost of N2,000,000 (Two Million Naira) against the Respondent.

The Respondent on its part, also filed a written address and distilled a sole issue for determination as follows:

***"whether in considerations of the facts and circumstances of the Applicant claims and the Respondent counter if the Respondent is liable in damages to the Applicant for breach of the Applicant Fundamental Human Right in any way"***

Under this issue, learned Counsel to the Respondent submitted in his address that it is a well settled law that he who asserts must



prove. That in this regard, Applicant has failed to prove or establish her allegation as contained in the claim before the Court. He further stated that the Applicant has also failed to attach police investigation report . Counsel further argued that where there is arrest or detention it is the responsibility of the Applicant in an action for enforcement of fundamental right to show that such arrest/detention was lawful. he referred me to the case of **AGBAKOBA VS SSS (1994) 6 NWLK (PT 351) 471** was cited and relied upon by the Respondent.

Counsel submitted further that, the Applicant application is a malicious prosecution propounded by the Applicant counsel to intimidate and suppress the Respondent from complaining on the insult and abuses rained on her by the Applicant.

The Respondent's Counsel finally urged the Court to dismiss the application for being unmeritorious, scandalous and shadow chasing.

The Applicant filed a further and better affidavit of 12 paragraph, wherein the Applicant stated that, the incident that brought about this Fundamental Human Right occurred in June, 2021 and not July as stated by the Respondent.

That she did not shout at the Respondent as she did not previously know whom the Respondent's husband was. And that

it was because of the stubbornness of the Respondent that led to Exhibit "1". That Barr Eze is not her boyfriend.

Now to resolve the issues in the instant application brought by the Applicant for the enforcement of her fundamental rights, the law is that the burden of proof lies on the Applicants to establish by credible affidavit evidence that her 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 AT PP. 613–614 paragraphs. H-A*** 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 ***MR. COSMOS ONAH V. MR. DESMOND OKENWA & ORS (2010) LPELR-4781(CA).***

I have read carefully the affidavit in support of the application of the Applicant for the enforcement of her Fundamental Right under the Fundamental Human Rights Enforcement Rules 2009, as amended. I have equally read carefully the counter affidavit filed by the Respondent in opposition.

Fundamental Human Right Enforcement Rules is not an outlet for the dubious and criminal elements who always run to Court to seek protection on the slightest believe that law is made to protect individual.

The law on the determination of action brought under Fundamental Human Rights (Enforcement Procedure) 2009, is well settled. Only actions founded on breach of any of the Fundamental Human Rights guaranteed under Chapter IV of 1999 Constitution of Federal Republic of Nigeria (as amended) can be enforced under the rules.

It is also a condition precedent to the exercise of the Court's jurisdiction that the enforcement of Fundamental Human Right or the securing of the same thereof should be the main claim and not an ancillary claim. see the case of **WAEC VS. AKINKUMI (2008) 4 SC 1.**

The fulcrum of the Applicant application border on the allege blockage of the Applicant on the road and use of a bunch of broom to sweep dust and other dirty particles upon the Applicant by the Respondent. Applicant also stated that there was threats to kill and eliminate her by the Respondents.

However, the Respondent through its Counter affidavit, vehemently rejected the averments of the Applicant..

The fundamental human right enforcement procedure is truly an outlet for people whose rights have been trampled upon with impunity.

It is certainly a procedure that does not have in contemplation complaint from people who are not plain and straight forward, and or crafty.

Applicant who approached this Honourable Court for the enforcement of her fundamental human right has failed to annexed the said cloth she alleged that the Applicant swept dust and other dirty particles upon her.

It is worthy to note that, the picture depicting the alleged blockage by the Respondent was not equally annexed.

The Respondent on her part, stated that there was a drainage in front of shop. That she single handedly bought wood and constructed a passage to enable people coming to buy things from her shop to cross over.

Respondent stated further that the crossing over did not lead to anywhere or any house but only her shop. This, she annexed Exhibit 'A1' to 'A4' to buttress her assertion.

Applicant never counter this affidavit and therefore, the said assertion remains true and Court must act upon same. Thus see the case of **AUWALU V. FRN & ANOR (2016) LPELR-41171(CA)** where the Court of appeal held:

***"...generally speaking where affidavit evidence is not contradicted it is deemed admitted. Admittedly, it is***

***sound proposition of law that any averment in an affidavit not challenged or contradicted in counter-affidavit must be accepted and acted upon by the Court as true..." Per MOHAMMED MUSTAPHA ,JCA (Pp. 21-24, paras. D-C)***

It is also in evidence that; the police had filed FIR (First Information Report) at upper Area Court Mpape against the Respondent on the Complaint of the Applicant. This leaves a question in the mind of the Court as to what is the outcome of the said case before the Area Court, sitting in Mpape? Another question is Why is the Applicant dragging the Respondent to this Court when Prosecution of the Respondent is still going on? Another question that begs for answer is why did the Applicant not attached the police Investigation report to prove its case.? It appears the Applicant is economical with the truth. If not, the Applicant would have laid bare before the Court all the investigation that relates to this Court.

I must say that Applicant's human right to human dignity is not superior to that of the Respondent as Chapter IV of 1999 Constitution protect all human rights.

I must say that morality cannot be legislated, but behaviour can be regulated. The law may not change the heart, but it can restrain the heartless.

Applicant who has approached this Court for the enforcement of her fundamental human right to dignity amongst other declaratory reliefs has failed woefully to convince this Court by cogent evidence that she is deserving of the reliefs in question.

Indeed, when the purported affidavit of the Applicant is placed side by side with that of the Respondent, the pendulum certainly tilts in favour of the Respondent. He who asserts, definitely ought to prove it.

On the whole, the Applicant's application No **CV/1390/2021** having failed to meet the deserved evidence pedigree of matter under Fundamental Human Right Enforcement is hereby and accordingly dismissed.

***Hon. JUSTICE J. ENOBIE OBANOR***  
***(Presiding Judge)***