

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 20TH DAY OF OCTOBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/877/2021

BETWEEN:

ENGR. NOAH DALLAJI

APPLICANT

AND

- | | | |
|---|---|--------------------|
| <ul style="list-style-type: none">1. THE INSPECTOR-GENERAL OF POLICE (IGP)2. ACP ADAMU ELLEMAN (IGP MONITORING UNIT)3. ALH. IBRAHIM ABUBAKAR4. MUJAF AUTOMOBILES LTD | } | RESPONDENTS |
|---|---|--------------------|

JUDGMENT

This Judgment is on the application for the enforcement of the fundamental rights of the Applicant brought pursuant to Order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, sections 35 (4), (5) and (6) and 46 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 as amended, Article 6 of the African Charter on Human and Peoples' Rights and under the inherent jurisdiction of this Honourable Court as enshrined under section 6(6) of the Constitution of the Federal Republic of Nigeria 1999.

By way of an originating motion on notice, the Applicant approached this Honourable Court for the following reliefs:-

- 1. A Declaration that the attempt to arrest and detain the Applicant by the 1st and 2nd Respondents on the petition of the 3rd and 4th Respondents over a civil matter of non-payment of debt and without any reason known to law is unconstitutional, null and void.*
- 2. A Declaration of the Court that the transaction that the Applicant had with Mr Kassim K. Johnny to whom the 3rd and 4th Respondents supplied the four vehicles that the applicant bought from Mr Kassim K. Johnny are pure civil transactions that does not require the involvement of the 1st and 2nd Respondents and their agents and privies for the recovery of the debt and or the said vehicles.*
- 3. A Declaration of the Court that the attempt to arrest and detain the Applicant over a purely civil matter is illegal, violation of the Applicant's rights to life and personal liberty as guaranteed by sections 33(1) and section 35(1) respectively of the 1999 Constitution of the Federal Republic of Nigeria and Article 6 of the African Charter on Human and Peoples' Rights; and that same constitutes gross abuse of the office of the 1st and 2nd Respondents.*

4. *An Order of perpetual injunction restraining the 1st and 2nd Respondents whether by themselves, subordinates, servants, agents, employees, privies or any person howsoever described from further poke nosing, investigating, interacting, recovery of money or vehicles from the Applicant, or arresting, detaining, harassing or intimidating the Applicant in any respect howsoever described or in any other manner infringe on the fundamental rights of the Applicant.*
5. *An Order of Court directing the Respondents to jointly and severally pay the Applicant the sum of ₦50,000,000.00 (Fifty Million Naira) only being general and exemplary damages for the harassment, intimidation and embarrassment of the Applicant in an attempt to arrest the Applicant over a purely civil transaction of debt recovery.*
6. *An Order of Court directing the 1st and 2nd Respondents to return the 570 series Lexus jeep, Mercedes Benz GLE series and the sum of ₦5,000,000.00 (Five Million Naira) only that were collected from the Applicant through his lawyer – Benson Ibezim.*
7. And for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

The motion was supported by the statement as required under the Rules, a 31-paragraph affidavit in support of the application and a written address.

The 3rd and 4th Respondents, after obtaining the leave of Court to file their processes out of time, proceeded to file their counter-affidavit in opposition to the motion on notice of the Applicant and their written address. The 9-paragraph counter-affidavit was deposed to by Silas Maisamari, a litigation clerk in the law office of the Counsel representing the 3rd and 4th Respondents. Upon being served with the counter-affidavit, the Applicant filed a 15-paragraph affidavit which he deposed to in person.

Briefly, the facts as I could glean from the three affidavits before me are that the Applicant approached one Mr Kassim K. Johnny trading under the name and style of Babangida Trading to supply four vehicles valued at the total sum of ₦159,500,000.00 (One Hundred and Fifty-Nine Million, Five Hundred Thousand Naira) only to him for the use of his Foundation known as the African Children Talent Discovery Foundation on credit arrangement. The Applicant claimed that he was unaware that the said Mr Kassim K. Johnny procured the vehicles from the 3rd and 4th Respondents.

Following a petition to the 1st and 2nd Respondents by the 3rd and 4th Respondents against Mr Johnny, the 1st and 2nd Respondents led by one Inspector Titus arrested Mr Johnny on the 10th of March, 2021 and detained him. While in the custody of the 1st and 2nd Respondents, Mr Johnny requested that the Applicant return the Lexus 570 series SUV and

the sum of ₦5,000,000.00 (Five Million Naira) only. The car and the money were handed over to the said Inspector Titus. Not satisfied, and still detaining Mr Johnny, Inspector Titus ordered Mr. Johnny to return the Mercedes Benz GLE series. Same ordered was complied with, yet Mr Johnny was not released.

At this point, according to the Applicant, Inspector Titus sent a Short Message Service (SMS) text to the Applicant demanding he report at the Force headquarters or risk arrest. To further carry out this threat, Inspector Titus invaded the residence of the Applicant on the 18th of March, 2021 in his attempt to arrest him. This invasion, coupled with the menacing and frightening threats of the said Inspector Titus to put the Applicant out of circulation compelled the Applicant to bring this application for the enforcement of his fundamental rights to personal liberty.

On the other hand, though the 3rd and 4th Respondents denied the averments in the affidavit in support of the application, they, nonetheless, agreed with the Applicant that the subject matter of the current controversy was the supply of four vehicles which they identified as two Hilux pick-up vans, one Lexus 570 VIP Jeep, and one Range Rover Velar the value of which they put at ₦160,000,000.00 to one Mr Babangida of Babangida Trading Company in August, 2020. The 3rd and 4th Respondents, however,

claimed that Mr Babangida took the vehicles away from them fraudulently and under false pretences.

The 3rd and 4th Respondents averred that their petition to the 1st and 2nd Respondents was against Mr Babangida alone and not against the Applicant or the said Mr Kassim K. Johnny who they claimed was unknown to them. They also insisted that they never told the Police how to do its job; but merely provided the information as required by the Police.

Responding to the averments of the 3rd and 4th Respondents in their counter-affidavit, the Applicant, in his further and better affidavit swore that the 3rd and 4th Respondents knew him and Mr Kassim K. Johnny having met them together. He insisted that Mr Johnny had been in constant communication with the 3rd and 4th Respondents. He concluded that the 3rd and 4th Respondents, by the petition, sought to criminalise a purely civil transaction so that the Police could help them to recover the money for the vehicles which were supplied on credit basis.

In the written address in support of the application, learned Counsel for the Applicant formulated three issues which he proceeded to argue in seriatim. On the first issue, which was on whether the present application could be brought under the Fundamental Rights (Enforcement Procedure) Rules,

2009, learned Counsel pointed out that the present application bordered on the enforcement of the fundamental rights to life, dignity of the human person and personal liberty of the Applicant which were likely to be breached by the Respondents and were, thus, within the contemplation of Chapter IV of the Constitution and Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009. He referred this Court to the relevant portions of the affidavit in support and urged this Court to resolve this issue in favour of the Applicant.

On the second issue, which is, *“Whether the attempt to arrest and detain the Applicant by the men of the 1st and 2nd Respondents over a purely civil transaction of debts regarding the sale of vehicles on credit does not amount to a violation of the Applicant’s rights to dignity of human person and personal liberty as guaranteed by section 34 and section 35(1) respectively of the 1999 Constitution of the Federal Republic of Nigeria as amended and Article 6 of the African Charter on Human and Peoples’ Rights”*, it was contended on behalf of the Applicant that he had not violated the provisions of any known law to justify the abridgement of his rights as protected under the Constitution. He maintained that the subject matter of the dispute being civil and arising from a purely contractual transaction, the 1st and 2nd Respondents ought not to have abused their

powers in delving into a realm that was not within the purview of their statutory responsibilities.

On Issue 3, which is, “*Whether the Applicant is entitled to the reliefs being sought*”, Counsel for the Applicant argued that the Court had the power to make such order that it considered just and appropriate so far as it had been established that the fundamental right of the Applicant had been breached.

For all his submissions on the three issues formulated in the written address, learned Counsel for the Applicant cited and relied on the cases of ***Okafor & Anor v. AIG Police Zone 11 (2019) LPELR 46515 (CA); Kure v. COP (2020) LPELR-49378 (SC); Na Allah v. Kofar Kade (Nig) Ltd (2020) LPELR-49596 (CA); EFCC v. Diamond Bank Plc (2018) LPELR-44217 (SC); Skye Bank v. Njoku (2016) LPELR 40447 (CA); Amechi v. INEC (2008) 5 NWLR (Pt. 1080) 227; Onyirioba v. IGP (2009) 3 NWLR (Pt. 1128) 342 ratio 4; Okonkwo v. Ogbogu (1996) 7 NWLR (Pt. 580); N.N.B. Plc v. Denclag Ltd (2005) 4 NWLR (Pt. 916) 549 Ratio 13.***

On the other hand, in their written address in support of their counter-affidavit, the 3rd and 4th Respondents through their Counsel formulated a sole issue for determination by this Honourable Court. The issue

formulated was: *“Whether the Applicant has established and proved that his fundamental rights were breached or violated by the 3rd and 4th Respondents?”*

In his argument on this issue, learned Counsel for the 3rd and 4th Respondent submitted that facts, and not legal submissions, were the determinants of whether the rights of an applicant had been breached. Counsel restated what he believed to be the law that merely complaining to the Police without more would not make the complainant to be liable if the Police arrested the suspect in the course of its investigation of the complaint. He insisted that the claim of infringement of fundamental rights would fail where the ground of the complaint involved the allegation of crime. He added that investigation of allegation of crime by the Police could not equate to infringement of the rights of the Applicant in any way.

Arguing further, learned Counsel submitted that the 3rd and 4th Respondents acted within their legitimate rights when they reported an alleged fraud to the Police. He added that for the Applicant to successfully navigate the complaint of the 3rd and 4th Respondents away from the safe realm of legitimacy, he must establish that the report was false; that the report was actuated by malice and that the report was without an honest belief.

For all his submissions on the sole issue he formulated on behalf of the 3rd and 4th Respondents, learned Counsel cited and relied on the following:

Onah v. Okenwa (2010) 7 NWLR (Pt. 1194) 512 at 535 – 536; Chrome Insurance Brokers Ltd & Ors v. EFCC & Ors (2018) LPELR-44818 (P. 20, paras C – G) (CA); Olatinwo v. State (2013) 8 NWLR (Pt. 1355) 126; P.G.S.S. Ikachi v. Igbudu (2005) 12 NWLR (Pt. 940) 543 at 574 paras C – E Ratio 12; Unagba v. Ogbe (1996) 8 NWLR (Pt. 469) 626; Ransome Kuti v. A.-G. Federation (1985) 6 SC 245; Hassan v. EFCC & Ors (2013) LPELR-22595 (CA); Usman & Ors v. IGP & Ors (2018) LPELR-45311 (pp. 31 – 34, paras D – E) (CA); Akanbi & Ors v. COP Kwara State & Ors (2018) LPELR-44049 (pp. 24 – 26, paras F – A) (CA); Attorney-General of Anambra State v. Chief Chris Uba & Ors (2005) 15 NWLR (Pt. 947) 44 at 67, paras C – G; Alhaji M. Dokubo-Asari v. FRN (2007) 12 NWLR (Pt. 1048) 320 at 360 B – C; Chukwuma v. COP (2005) 8 NWLR (Pt. 927) 278; Gbajor v. Ogunburegui (1961) All N.L.R. 583; Fajemirokun v. C. B. Nig. Ltd (2009) LPELR-1231 (SC); Rite Foods Ltd & Anor v. Adedeji & Ors (2019) LPELR-47698 (p. 52, paras A – C) (CA); Mainstreet Bank & Ors v. Amos & Anor (2014) LPELR-23361 (p. 13, paras B – D) (CA); Oyewole Sunday v. Adamu Shehu (1995) 8 NWLR (Pt. 414) 484; Dongtoe v. Civil Service Commission, Plateau State

(2001) 9 NWLR (Pt. 717) 132; Chukwudi Nwanna v. A.-G. Federation and Anor (2010) LPELR-9047 (CA) among other judicial authorities.

In his reply on points of law, Counsel for the Applicant insisted that Chapter IV protected against both the actual infringement of the rights protected therein as well as the likely breach of those rights. He also contended that both the person who reported a civil matter to the Police and the Police would be liable for the infringement of the rights of an applicant. To this end, he cited the case of **Modibbo v. Abdulmalik (2016) LPELR-41614 (CA)** where the Court drew a distinction between reporting a crime and setting the law in motion. He insisted that the transaction was a civil relationship and that the inability to pay one's debt merely made one a debtor and not a criminal. He concluded that the failure of the 3rd and 4th Respondents to attach the said petition to their counter-affidavit raised the presumption that if the petition was produced, it would have been unfavourable to them. He therefore urged the Court to discountenance the facts in the counter-affidavit and the legal arguments in the written address and grant the reliefs sought in the application.

It is instructive to note that the 1st and 2nd Respondents did not file any process in opposition to the processes filed by the Applicant. They did not

also file any process in support of, or in opposition to the processes filed by the 3rd and 4th Respondents.

Having given serious consideration to the facts as disclosed in the affidavit in support of the application and in the counter-affidavit in opposition to same, and having perused the written addresses espousing the contrasting viewpoints, this Court believes that the following issue can dispose with this application one way or the other. The issue which this Court has formulated therefore, is this:

“Whether from a dispassionate evaluation of the totality of the facts disclosed in the affidavit in support of the application and the counter-affidavit in opposition to same, the Respondents have not violated the rights of the Applicant herein?”

In resolving this issue, it is pertinent to re-examine certain parts of the depositions in the two affidavits. In paragraphs 7, 8, 9, 10 and 11 of the affidavit in support of the application, the Applicant claimed that he purchased four vehicles from one Mr Kassim K. Johnny, an automobile dealer on credit arrangement. He conceded that he was not aware that the

said Mr. Johnny obtained the vehicles from the 3rd and 4th Respondents on credit basis too.

In their counter-affidavit, the 3rd and 4th Respondents in paragraphs 6 (d), (e), (f) and (g) averred that they did not know both the Applicant and the said Mr Kassim K. Johnny and that they supplied those cars to one Mr Babangida of Babangida Trading. Thus, at the root of this dispute is the supply of four vehicles by the 3rd and 4th Respondents to either Mr Kassim K. Johnny (according to the Applicant) or to Mr Babangida (according to the 3rd and 4th Respondents).

The mystery as to who this Mr Babangida is was cleared in paragraph 4 of the further and better affidavit where the Applicant swore that “*Mr Kassim K. Johnny is the sole proprietor of Babangida Trading. Mr. Kassim K. Johnny trades under the name and style of Babangida Trading. The person referred to as Mr Babangida by the 3rd and 4th Respondents is Mr Kassim K. Johnny and the 3rd and 4th Respondents are not in doubt that it is the same person.*” Having cleared this mystery; and having established that Mr. Babangida is not a mythical figure, but a natural person made up of flesh and blood, the very same Mr Kassim K. Johnny, I shall move on to other parts of the facts disclosed in the three affidavits before me.

The Applicant swore in paragraphs 13, 14, and 24 that the 1st and 2nd Respondents upon the petition of the 3rd and 4th Respondents arrested and detained Mr Johnny from the 10th of March, 2021 to the 18th of March, 2021. On the other hand, the 3rd and 4th Respondents in paragraph 6 (s), (t), (u) and (v) confirmed that they forwarded a petition to the 1st and 2nd Respondents against Mr Babangida who this Court has found to be the same person as Mr Johnny. Though the 3rd and 4th Respondents had averred in preceding paragraphs of their counter-affidavit that Mr Babangida/Mr Johnny deceitfully and fraudulently took the vehicles away from them, they started, quite remarkably, in paragraph 6(t) that *“In the petition, which was against Mr Babangida, he, while acting for and on behalf of the 4th Respondent, only pray the 1st Respondent to kindly use the apparatus and competency of his revered establishment to do a thorough investigation of the matter with the view to recover the vehicles from Mr Babangida, as such vehicles, valuing such huge fund taken out of his business capital is crushing hard on everything he do.”* Instructively, the 3rd and 4th Respondents did not tell us whether the said “Mr Babangida” was arrested and detained by the 1st and 2nd Respondents following their petition. They practically left this Honourable Court in high suspense!

Though the Applicant was neither arrested nor detained by the 1st and 2nd Respondents, he deposed in paragraph 15 of the affidavit in support of the application that one Inspector Titus, an officer of the 1st Respondent and 2nd Respondent, sent an SMS to him advising him to report to the IGP Monitoring Unit, at Force Headquarters, Abuja *“in respect to your ongoing case with Kassim K. Johnny and MUJAF AUTOMOBILE which your name future (sic)...”* in paragraph 17, he swore that the said Inspector Titus warned him to either make himself available at Force Headquarters *“...or else he will deal decisively with me and make a public show of me, and that I will suffer the fate of Mr Kassim K. Johnny who was still in custody and denied bail...”* This threat, according to the Applicant, was given flesh when the 1st and 2nd Respondent sent the same Inspector Titus to the Applicant’s apartment at No. 17B, Udi Crescent, Aso Drive, Abuja to arrest him. See paragraphs 18 and 19 of the affidavit in support of the affidavit.

in view of the above, I find that there was a business relationship between one Mr Kassim K. Johnny for the supply of four vehicles, properly described as one Lexus 570 SUV, one Range Rover Velar and two Hilux pick-up vans on a credit purchase arrangement at the total sum of ₦159,500,000.00 (One Hundred and Fifty-Nine Million, Five Hundred Thousand Naira) only (according to the Applicant) or ₦160,000,000.00

(One Hundred and Sixty Million Naira) only (according to the 3rd and 4th Respondents). Though, the 3rd and 4th Respondents claimed ignorance of the identity of the Applicant, it is obvious that the vehicles were meant for him, or his Foundation as the ultimate end user. This fact is discernible from the SMS Inspector Titus sent to the Applicant advising him to report to the IGP Monitoring Team at the Force Headquarters; and also from the 1st and 2nd Respondents' confiscation of the Lexus 570 series SUV, the Applicant's Mercedes Benz GLE series and the cash of ₦5,000,000.00 (Five Million Naira) only from the Applicant in order to secure the release of Mr Kassim K. Johnny from the custody of the 1st and 2nd Respondents.

I also find that the 3rd and 4th Respondents wrote a petition to the 1st and 2nd Respondents and, upon the strength of the petition, the said Mr Johnny was arrested and detained for eight days at the facility of the 1st and 2nd Respondents while the Applicant was threatened with similar treatment. In view of the foregoing verifiable facts established by this Honourable Court, is the Applicant entitled to the reliefs he is seeking from this Honourable Court?

To answer this question, I must consider the duties of the Police as provided for under the Police Act 2020 as amended. Section 4 of the Act enumerated the general duties of the Police. The section provides that

“The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.”

Nowhere is it stated therein that the Police shall be involved in mediating in disputes arising from purely civil transactions, or, for that matter, carry out duties as debt recovery agents. The Courts have consistently condemned the practice of parties to a contractual relationship involving the Police in either settling contractual disputes or as debt recovery agents. This is particularly so where the nominal complainant has a remedy in civil law. In ***Onagoruwa v. State (1993) LPELR-43456 (CA)***, the Court of Appeal, per Niki Tobi JCA (as he then was) noted that

“There is no law known to me where a breach of agreement between two parties, which has no element of criminality, can result in a criminal charge and subsequent conviction. At best, it can be a breach of a contractual relationship which

the criminal law lacks legal capacity or competence to enforce.”

See also ***Kure v. COP (2020) LPELR-49378 (SC)***, where the apex Court held that ***“The primary duty of the Police by section 4 of the Police Act is the prevention of crime, investigation and detection of crime and the prosecution of offenders. See Ibiyeye v. Gold (2012) All FWLR (Pt. 659) 1074.”***

Having found that the subject of the disputations leading to this application involved the supply of vehicles – a purely civil transaction between the 3rd and 4th Respondents and one Mr Kassim J. Johnny/Mr Babangida from whom the Applicant purchased the vehicles, the involvement of the 1st and 2nd Respondent was clearly *ultra vires* their statutory powers. The Courts have been consistent in its condemnation of the meddlesomeness of the Police and other law enforcement agencies in purely civil transactions. See, for instance the following cases: ***Nwadiugwu v. IGP & Ors (2015) LPELR-26027(CA); Ibiyeye & Anor v. Gold & Ors. (2011) LPELR-8778(CA); Oceanic Securities International Ltd vs. Balogun & Ors (2013) ALL FWLR (Pt. 677) 653; (2012) LPELR 9218 CA; Anogwie & Ors v. Odom & Ors (2016) LPELR-40214 (CA) and Ogbonna vs. Ogbonna (2014) LPELR- 22308; (2014) 23 WRN 48.***

The Courts have, logically, consistently recommended the visitation of severe sanctions on the instigators and perpetrators of such meddlesomeness. In ***Skye Bank Plc v. Njoku & Ors (2016) LPELR-40447 (CA)*** the Court of Appeal held that: ***“...a party that employs the Police or any law enforcement agency to violate the fundamental right of a citizen should be ready to face the consequences, either alone or with the misguided agency... The Police have no business helping parties to settle or recover debt...”*** In ***Omuma Micro-Finance Bank Nig Ltd v. Ojinnaka (2018) LPELR-43988 (CA)***, Mbaba JCA in his concurring judgment to the decision of the Court of Appeal at ***pages 15 – 17 paras F – A*** held that, ***“We have held, several times, that one who procures the Police or any law enforcement agency, to dabble in a purely civil contract, to recover debt for the party to an agreement, must be ready to bear the consequences of such unlawful act of the Police/law enforcement agency, acting in abuse of their powers.”***

In ***Kure v. COP (2020), supra***, the Supreme Court warned that

“The Police is not a debt recovery agency and has no business to dabble into contractual disputes between parties arising from purely civil transactions. See McLaren v. Jennings (2003) FWLR (Pt. 154) 528. When as in the

circumstances of this action, a purely civil matter is reported to the Police, such a person cannot go scot-free as the report ought not to have been made at all since it is not within the purview of Police duties. It is a report made malafide and he will be equally liable for the action taken by the Police irrespective of whether he actively instigated them or not, since he had no business involving the Police in a purely civil matter in the first place. Such conduct which portrays disregard of the law and is aimed at using the coercive powers of the State to punish a contracting party in a purely civil matter ought to be mulcted in exemplary damages. See Okafor & Anor v. AIG Police Zone II Onikan & Ors (2019) LPELR-46505.”

As to whether the Applicant can claim reliefs pursuant to the provisions of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 as amended and the Fundamental Rights (Enforcement Procedure) Rules, 2009, the provision of section 46(1) of the Constitution of the Federal Republic of Nigeria is relevant. Therein, it is stated 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.”

Thus, where there is a likelihood that the fundamental rights provided for and protected in Chapter IV of the Constitution will be breached, the person affected has the right to apply to a High Court for redress.

See ***C.B.N. v. Okemuo & Anor (2016) LPELR-41405 (CA); Nigerian Air Force & Ors v. Chia & Ors (2021) LPELR-53293 (CA).***

The Applicant has furnished the Court with compelling facts which point inexorably to the conclusion that the Respondents were intent on visiting the same fate that befell Mr Kassim K. Johnny on him. The Respondents took practical steps towards actualising that threat by expropriating the Applicant's Lexus 570 series SUV, Mercedes Benz GLE series and cash of ₦5,000,000.00 (Five Million Naira) only. The 1st and 2nd Respondent through their officer, Inspector Titus, threatened fire and brimstone on the Applicant and, in fact, invaded his apartment at No. 17B Udi Crescent, Aso Drive, Abuja in a manifest attempt to arrest him. I do not see why the Applicant should not be entitled to the protection of this Court.

I pointed out earlier in this Judgment that the 1st and 2nd Respondent did not consider it necessary or imperative to file any counter-affidavit in

opposition to the affidavit in support of the Applicant's application or, even, to concur or disagree with the depositions of fact in the counter-affidavit of the 3rd and 4th Respondents. The implication therefore is that the 1st and 2nd Respondents are deemed to have admitted as true the depositions of facts as contained in the affidavit in support of the application and the counter-affidavit in opposition. The law is settled on the legal implication of a party not filing a counter-affidavit in opposition to an affidavit. In the case of ***Ramawa v. NACB Consultancy & Finance Co. Ltd. & Anor (2006) LPELR-7606(CA)*** the Court of Appeal per Kekere-Ekun JCA (as he then was) held that ***"There is a plethora of authorities in support of the general position of the law that evidence or averments in an affidavit that are not denied are deemed admitted and the court ought ordinarily to act on them. See: Ajomale v. Yaduat (No. 2) 1991 5 NWLR (PT. 191) 266; Honoka Sawmill (Nig.) Ltd v. Hoff (1994) 2 NWLR (Pt. 326) 252."*** See also ***Bwala v. Ashaka Cement Plc (2010) LPELR-3898 (CA); Ugo & Ors v. Maha & Ors (2015) LPELR-25930 (CA); Davies & Ors v. Odofin & Ors (2017) LPELR-41871 (CA); Babalola v. A.-G. Federation & Anor (2018) LPELR-43808 (CA); Inegbedion v. Selo-Ojemen & Anor (2013) LPELR-19769 (SC); Mabamije v. Otto (2016) LPELR-26058 (SC); Ogoejefo v. Ogoejefo (2006) LPELR-2308 (SC)***

and Owuru & Anor v. Adigwu & Anor (2017) LPELR-42763 (SC) among numerous judicial pronouncements on this subject.

The 1st and 2nd Respondents, having not filed any counter-affidavit in opposition to the facts disclosed in the Applicant's affidavit and the 3rd and 4th Respondents' affidavit, are deemed to have admitted the facts as disclosed therein. They are therefore bound by the findings of this Honourable Court and the conclusion drawn therefrom. I so hold.

For the reasons provided above, I find this application meritorious and accordingly grant all the reliefs sought by the Applicant on the following terms:

- 1. THAT the attempt to arrest and detain the Applicant by the 1st and 2nd Respondents on the petition of the 3rd and 4th Respondents over a civil matter of non-payment of debt which is not an offence known to law and without any reason known to law is a breach of the Applicant's right to fair hearing, unconstitutional, null and void.**
- 2. THAT the transaction between the Applicant and Mr Kassim K. Johnny to whom the 3rd and 4th Respondents with regards to the purchase of four vehicles, namely, one Lexus 570 series SUV, one**

Range Rover Velar and two Hilux pick-up vans on a credit basis was a purely contractual relationship that did not require the intervention and/or interference of the 1st and 2nd Respondents and their agents and privies for the recovery of the outstanding debt and or the said vehicles.

- 3. THAT the attempt to arrest and detain the Applicant over a purely civil matter is illegal, violation of the Applicant's rights to life and personal liberty as guaranteed by sections 33(1) and section 35(1) respectively of the 1999 Constitution of the Federal Republic of Nigeria and Article 6 of the African Charter on Human and Peoples' Rights; and that same constitutes gross abuse of the office of the 1st and 2nd Respondents.**
- 4. THAT an Order of perpetual injunction is hereby made restraining the 1st and 2nd Respondents whether by themselves, subordinates, servants, agents, employees, privies or any person howsoever described acting at the instance of the 3rd and 4th Respondents from further harassing, threatening to arrest and detain, threatening to recover either vehicles or money from the Applicant or in any way intimidating the Applicant with regards to the subject matter of the contractual relationship between the Applicant and**

the said Mr Kassim K. Johnny to whom the 3rd and 4th Respondents supplied the vehicles identified herein.

5. THAT the 1st and 2nd Respondents are hereby ordered to return to the Applicant or to his authorised nominee the Lexus 570 series SUV, Mercedes Benz GLE series and the sum of ₦5,000,000.00 (Five Million Naira) only that the 1st and 2nd Respondents expropriated from the Applicant at the instance of the 3rd and 4th Respondents.
6. THAT the Respondents are hereby ordered jointly and severally to pay the Applicant the sum of ₦1,000,000.00 (one Million Naira) only being general and exemplary damages for the harassment, intimidation and embarrassment of the Applicant in an attempt to arrest the Applicant over a purely civil transaction of debt recovery.

This is the Judgment of this Honourable Court delivered today, the 20th day of October, 2021.

HON. JUSTICE A. H. MUSA
JUDGE
20/10/2021

APPEARANCES:
FOR THE APPLICANT:

Benson Ibezim Esq.
FOR THE 1ST & 2ND RESPONDENTS:

No legal representation.

FOR THE 3RD & 4TH RESPONDENTS:

Abdulkarim Audu Esq.

G. B. Ajibulu Esq.