IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 16TH DAY OF NOVEMBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/1183/2021

BETWEEN:

1. **IFEOMA ADESINA**
2. **DAVID ADESINA** — **APPLICANTS**

AND

1. **FEDERAL REPUBLIC OF NIGERIA**
2. **NIGERIA POLICE FORCE**
3. **ATTORNEY-GENERAL OF NIGERIA** — **RESPONDENTS**

JUDGMENT

This judgment is on the application of the Applicants for the enforcement of their fundamental rights brought pursuant to sections 34, 35 and 44 of the Constitution of the Federal Republic of Nigeria 1999, Orders 1, 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 and under the inherent jurisdiction of this Honourable Court.

By way of an originating motion, the Applicant approached this Honourable Court seeking the following reliefs:

1. *A Declaration that the arrest and detention of the applicant and her son David by the agents of respondents was unlawful and unconstitutional contrary to sections 35 and 39 of the 1999 Constitution.*

2. *A Declaration that the torture of the applicant and her son was unconstitutional and unlawful contrary to section 34 of the 1999 Constitution.*
3. *A Declaration that the confiscation and seizure of the working tools of the applicant and her generator is unlawful and unconstitutional contrary to section 44 of the 1999 Constitution.*
4. *An Order to pay the applicant special damages in the sum of Fifteen Million Naira (15M), Twenty Six Million and Four Hundred Thousand Naira (26.4M) and One Hundred and Fifty Thousand Naira Only (150,000) as special damages comprising the legal fees, compulsory acquisition of applicant tools for 11 months and cost of generator seized by the agents of the 1st Respondent.*
5. *Compensation of ₦500 Million as general damages for the arrest, detention and torture resulting to injuries injected on the persons of the applicant and her son*.

The application is supported by the statement of facts, a 49-paragraph affidavit in support of the application, six documentary exhibits and the written address.

In the affidavit in support of the application, the 1st Applicant, IfeomaAdesina, narrated under oath how one Mama Oyibo introduced her to one Lieutenant-Colonel Comfort Igbinoba of the Nigerian Army. The said Lieutenant-Colonel

Comfort Igbinoba subsequently awarded a contract to execute the keystone parapet of a building project being undertaken by the Nigerian Army. According to her, both of them eventually agreed on ₦80,000.00 as the cost of executing the project.

In the course of executing the contract, the 1st Applicant and the said Lieutenant-Colonel Comfort Igbinoba had a serious misunderstanding concerning the size of the keystone parapet. The said Lieutenant-Colonel and her Aide-de-Camp, according to the 1st Applicant, brutalized her, tortured her, and inflicted grievous bodily injury on her. They also impounded her tools and expelled her from the construction site.

According to her, days after that assault, she was on her way to the market when she ran into the said Lieutenant-Colonel Comfort Igbinoba who was together with her Aide-de-Camp and one police officer from Jikwoyi Divisional Police Station. She swore that they compelled her to enter the car and took her to the site under the pretext that she would be paid for her job. En route the site, she called her son, that is, the 2nd Applicant, to join her since he too was being owed for the job he did on the site.

At the site, the policeman took photographs of the site and ordered the 1st Applicant to accompany him to the police station. Upon this order, the 2nd Applicant warned the 1st Applicant to be careful. Upon this word of caution, the Aide-de-Camp to the Lieutenant-Colonel descended on the 1st Applicant,

lifted her up and hit her on the ground. He also wrapped his hands round the neck of the 2nd Applicant as if to strangulate him. Thereafter, they were taken to the Jikwoyi Police Station where they were detained from 12pm to 8pm of that day, that is, the 2nd day of July, 2020.

She stated further that as a result of the violence visited on her by the Aide-de-Camp to the said Lieutenant-Colonel Comfort Igbinoba, she had been having recurrent waist pain which had made it impossible for her to engage in sexual intercourse. She added that she was always on medication to relieve the pains. She also averred that the 2nd Applicant had been incapacitated as a result of the injuries inflicted on him by the soldier. Furthermore, the confiscation of her working tools by the said Lieutenant-Colonel Comfort Igbinoba had affected her source of livelihood and her capacity to earn a living. She has therefore approached this Court for the reliefs as stated on the motion papers.

In the written address, learned Counsel for the Applicants formulated the following issues for determination: "*(a) whether by the action of the respondent and their agents, the fundamental right of the applicant and her son were breached? And, (b) whether where the answer to issue No. (a) is in the affirmative, the applicant is* (sic)*entitled to the reliefs sought*?"

In his argument on the first issue, learned Counsel referred this Honourable Court to paragraphs 15 – 21, 23 – 34 of the affidavit in support of the

application and contended that the inhuman treatment visited on the Applicants were contrary to the provisions of section 34 of the Constitution of the Federal Republic of Nigeria, 1999 as amended. He submitted that frog-jumping the 1st Applicant and whipping her with cowhide whip was a grave infringement of her right to dignity of the human person. He insisted that the conduct of the agents of the Respondent ran contrary to the provisions of the law and the principles of the rule of law. He cited the case of ***Cheranchchi v. Cheranci (1960) N.R.N.L. 24 at 28*** and urged the Court to resolve the first issue in favour of the Applicants.

In his submissions on the second issue, learned Counsel restated the settled principle of law that once an applicant had been able to establish the breach of their fundamental rights, then they would be entitled to the reliefs sought. According to him, one of the remedies was damages; and that from the facts disclosed in the affidavit, the Applicants had shown that they were entitled to same. He cited the cases of ***Okonkwo v. Ogbogu (1996) 37 NWLR 580; Odogu v. AG Federation (1996) 6 NWLR (Pt. 456) 508*** and***Anumba v. Shohet (1965) 2 All NLR 183 at 186***. In conclusion, he urged the Court to find in favour of the Applicants and grant all the reliefs sought in the application.

There was evidence in the case file that all the Respondents were duly served all the processes in this suit. There was evidence, too, that they were

served with hearing notices against each of the days that the matter came up for hearing. In spite of the service of the processes in this suit on the Respondents, they neither appeared in Court nor filed any process challenging the suit of the Applicants. On the 6th of October, 2021, learned Counsel for the Applicants argued the application of the Applicants and this Honourable Court adjourned for Judgment.

I have considered the processes in this application and the record of proceedings in relation to this suit. I have also taken note of the parties in this suit and the fact that this application was brought by two applicants jointly. As I have stated earlier, the suit is unchallenged, the Respondents having failed, refused or neglected to file any counter-affidavit challenging the facts contained in the affidavit in support of the application; or a reply on point of law challenging the legal submissions contained in the written address in support of the application. This judgment is therefore on the unchallenged affidavit evidence of the Applicants. To this end, therefore, this Honourable Court hereby formulates a single issue for determination, to wit: "***Whether this Honourable Court does not have the jurisdiction to hear and determine this suit as it is presently constituted?***"

I must state, at the very beginning that jurisdiction is very central to adjudication. Without jurisdiction, a Court labours in vain. It is settled that where a Court lacks the jurisdiction to hear and determine a suit, the entire

proceedings, no matter how beautifully conducted it was, and its decision, no matter how reasoned it was, comes to naught. It is a nullity. See the *locus classicus* of ***Madukolu v. Nkemdilim (1962) 2 SCNLR 341***, where the Court held that for a Court to have jurisdiction, the following conditions must be fulfilled: (1) that the Court must be properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and (2) that the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and (3) that the case comes before the Court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.

The question of jurisdiction is a threshold matter. What this means is that jurisdiction is like the entrance, or doorway, to the Court's power to sit over the parties before it, hear their disputes and determine same. Where jurisdiction is lacking, the Court is like a house that has no door, or, to be more precise, a house whose entrance is barred to prevent unlawful entry by unwanted persons. In ***UTIH VS ONOYIVWE (1991) LPELR-3436 (SC) page 46***, the Supreme Court per Bello CJN (as he then was) gave a graphic depiction of the nature of jurisdiction in these timeless words: ***"Jurisdiction is blood that gives life to the survival of an action in a Court of law and without jurisdiction, the action will be like an animal that has been drained of its blood, it will cease to have life and any attempt to***

resuscitate it without infusing blood into it would be an abortive exercise."

In ***Akintola v. Magbubeola&Ors (2011) LPELR-3731(CA)***, the Court of Appeal further held that ***"...The importance of jurisdiction or lack of it is such that there is need for the Court to assume jurisdiction to ascertain first and foremost whether it has jurisdiction over a matter before it. And once the Court reaches the conclusion that it has no jurisdiction, the matter is incompetent and ought to be terminated***."

The suit, no doubt, is one for the enforcement of the fundamental rights of the Applicants. This Court has the power, by virtue of section 46(1) of the Constitution of the Federal of Nigeria, 1999, to hear and determine suits that border on the infringement of the fundamental rights of "***any person who alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened… in relation to him…***" But, the question is this: whether the suit as it is properly constituted is competent. This question is necessary considering the parties before this Honourable Court. First, there are two Applicants suing jointly. Secondly, the persons who actively infringed the rights of the Applicants, that is, one Lieutenant-Colonel Comfort Igbinoba, her Aide-de-Camp and the unnamed policeman, are not joined as parties to this suit. Instead, the Applicants are suing the Federal Government of Nigeria, the Nigerian Police Force and the Attorney-General of the Federation.

The Courts have had reason on several occasions to pronounce on the competency of applications for the enforcement of fundamental rights filed by joint applicants. See, for instance, the case of ***Chief of Naval Staff Abuja &Ors v. Archibong& Anor (2020) LPELR-51845 (CA)***; ***Registered Trustees F.T.C.C.N v. Ikwechegh (2000) 1 NWLR (Pt. 683)1 at 8; C.C.B. (Nig.) Plc v. Rose (1998) 4 NWLR (Pt 544) 37 and Ayinde v. Akanji (1985) 1 NWLR (Pt. 66) 80***among others. In the very recent case of ***Abuja Electricity Distribution Company Plc &Ors v. Akaliro&Ors (2021) LPELR-54212(CA)***, the Court of Appeal per Aguba, JCA, in answering the question whether a joint application can be filed by more than one person to enforce a right under the Fundamental Rights (Enforcement Procedure) Rules, 2009restated the principles already established in the afore-mentioned cases when it held *inter alia* thus:

> "***In answering this question in the negative, I rely on the very recent decision of this Court in CHIEF OF NAVAL STAFF ABUJA & ORS v. ARCHIBONG & ANOR (2020) LPELR-51845 (CA); where it was held and I quote:***
>
> "***Before determining whether or not the fundamental rights (Enforcement Procedure) Rule, 2009, contemplates a joint or group application, let me quickly state that the applicant at the trial Court are husband and wife and therefore brought a single***

application for the enforcement of their fundamental rights. Section 46(1) of the 1999 Constitution states in clear terms 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." Neither the 1999 Constitution nor the Fundamental Rights (Enforcement Procedure) Rules 2009 defines the word 'person' but in the context of Section 46(1) of the Constitution and Order 1 Rule 2(1) of the extant Fundamental Right (Enforcement Procedure) Rules it refers to an individual. The adjective used in both provisions in qualifying who can apply to a court to enforce a right is "any" which also denotes a singular and does not admit pluralities in any form. It is thus an individual right as opposed to a collective right. I am however not unmindful of the preamble to the extant Rules which encourages and welcome public interest litigations in the human rights field which in effect provides that no human rights case may be dismissed or struck out for want of locus standi. The contention here is not on the rights of the applicants to institute the action but rather on the propriety of bringing joint action. In the REGISTERED TRUSTEES F.T.C.C.N v. IKWECHEGH (2000) 1 NWLR (Pt. 683)1 at 8 also following the

decision in C.C.B. (NIG) PLC V. ROSE (1998) 4 NWLR (Pt 544) 37 and AYINDE V. AKANJI (1985) 1 NWLR (Pt. 66) 80, it was emphatically held that if an individual feels his fundamental right has been violated he should take action personally for the alleged infraction. In effect, it is a wrong joinder of action and incompetent for different individuals to join in one action to enforce different causes of action. The fact, in this case, is similar to that of UDO v. ROBSON & ORS (supra) wherein this Court per Adah J.C.A. held that it is improper for two or more persons to apply jointly for the enforcement of their fundamental rights…"

The Court of Appeal further threw more light on the question when it held per Nimpar, JCA in his concurring judgment elsewhere in the law report thus:

"***…The right can be enforced on individual basis and not by collective action. It is faulty for the appellants to file a single affidavit, the alleged breach was not equally or evenly violated and therefore after a finding that the breach was established, how would the Court appropriate the reliefs and compensation for possible enforcement by each applicant, since the breach is not of the same nature and degree? Here, the 5th Appellant alleged she was forced to expose her breast in public, that***

obviously is an allegation of inhuman and degrading treatment for a woman and it cannot relate to the male appellants. Therefore, how would the Court do a surgical operation or separation while considering the claim? It is not the duty of the Court to do a surgical operation in order to grant any of the reliefs to particular applicants. The joint affidavit is incompetent."

See also ***Udo v. Robson &Ors (2018) LPELR-45183(CA)*** where the Court of Appeal held that "***In the 2009, Fundamental Rights (Enforcement Procedure) Rules, there is no joinder provision. What we have is consolidation of separate suits filed. The focus may be that fundamental rights are personal rights and cannot be fought together as right varies from one person to the other.***" See also ***Solomon Kporharor& Anor v. Mr Michael Yedi&Ors (2017) LPELR - 42418 (CA)***.

The Applicants, having brought a joint application for the enforcement of their fundamental rights, I hold that this suit offends one of the cardinal principles of jurisdiction, that is, that a competent suit must be one initiated by due process of law and upon fulfilment of all conditions precedent to the exercise of jurisdiction. It is therefore incompetent and liable to be struck out.

It may be argued on behalf of the Applicants that the joint application was a mere technicality which should not be allowed to stand in the way of doing

substantive justice in the application considering the provisions of the Preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009 which urged the Courts to advance substantive justice and downplay technicality in fundamental rights enforcement proceedings.

To this train of argument, I hereby make reference to the case of ***Abuja Electricity Distribution Company Plc &Ors v. Akaliro&Ors (2021) supra,*** where Aguba JCA went on to hold that,

> "***Perhaps, it may be necessary to restate the legal position that preamble does not prevail over the clear words used in the operative part of an enactment. It does not control the plain words of the enactment. In OGBONNA V. A.G. IMO STATE (1992) LPELR – 22871 at 25, Nnaemeka-Agu, J.S.C. said: – "It is necessary to note that a preamble to an enactment is as it were its preference or introduction the purpose of which is to portray the interest of the framers and the mischief they set out to remedy. It may sometimes serve as a key to open the understanding of the enactment." In the light of the foregoing and considering the fact that there is no ambiguity in the words used both in Section 46(1) of the 1999 Constitution and Order 1 Rule 2(1) of the Fundamental Rights (Enforcement Procedure) Rules 2009, the preamble to the Fundamental Rights***

(Enforcement Procedure) Rules 2009 cannot override the plain words used in both the Constitution and the extant rules. I cannot, therefore, deviate from the previous decision which prohibits joint and or group application for the enforcement of fundamental rights."

Before I conclude this judgment, however, I must say something about the Respondents in this application. It is my considered view, and I so hold, that they are not proper parties in this application. Who is a proper party to a suit? In the case of ***Cotecna Int'l Ltd v. Churchgate Nig. Ltd & Anor (2010) LPELR-897 (SC)***, the Supreme Court per Adekeye, JSC at ***pp. 50 – 51, paras C*** defines a proper party as one "…***to whom rights and obligations arising from the cause of action attach***." This definition was followed by the Supreme Court in the case of ***U.O.O. (Nig.) Plc v. Okafor (2020) 11 NWLR (Pt. 1736) 409 SC***.

As to the inevitable consequence which must befall a suit that does not disclose proper parties to it, the Supreme Court in ***Plateau State of Nigeria v. A.-G. Federation (2006) 3 NWLR (Pt. 967) 346***, per Niki Tobi JSC (of blessed memory) held ***at page 423*** that "***Where proper parties are not before a Court, the Court is without jurisdiction to adjudicate.***" This position was restated by the Supreme Court per Clara Bata Ogunbiyi JSC in

the case of ***CBN v. Interstella Communications Ltd &Ors (2017) LPELR-43940 (SC)***.

In ***U.O.O. (Nig.) Plc v. Okafor (2020) 11 NWLR (Pt. 1736) 409 SC***, the Supreme Court per Augie JSC held at ***pp. 438, paras A – E; 441, paras A – B*** that "***The question of proper parties is a very important issue which affects the jurisdiction of the Court, since it goes to the foundation of the suit* in limine*. In effect, where the proper parties are not before the Court, then the Court lacks jurisdiction to entertain or hear the suit.***"Earlier, in the case of ***Cotecna Int'l Ltd v. Churchgate Nig. Ltd & Anor (2010) LPELR-897 (SC)***, the Supreme Court had held per Adekeye at ***pp. 50 – 51, paras C*** that, "***It is trite law that for a Court to be competent and have jurisdiction over a matter, proper parties must be identified. Before an action can succeed, the parties to it must be shown to be the proper parties to whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the Court as it goes to the foundation of the suit* in limine*. Where the proper parties are not before the Court, then the Court lacks jurisdiction to hear the suit***.

In the suit before me, the Applicants did not join Lieutenant-Colonel Comfort Igbinoba who allegedly oversaw the infringement of their fundamental rights. They neither joined the Aide-de-Camp to the said Lieutenant-Colonel Comfort

Igbinoba who allegedly inflicted the grave bodily injuries on them nor the police officer who allegedly took them to the Jikwoyi Police Station and detained them from 12pm to 8pm on the 2nd of July, 2020. They did not even join the Nigerian Army who they claimed owned the building they were working on at the time of the infringement of their fundamental rights. All these persons are natural and, in the case of the Nigerian Army, juristic persons that can be sued and be sued in their own names.

On the contrary, the Applicants were quick to join the Federal Republic of Nigeria, the Nigerian Police Force and the Attorney-General of the Federation. This style of practice, in my considered view, amounts to leaving the substance and chasing mere shadows. For inexplicable reasons, the Applicants decided to leave the proper parties and chose, rather, to come against persons who, at best may be considered nominal parties. This is strange.

There is no connection between the persons named as Respondents in this application and the infringement of their fundamental rights complained of. I do not see how the rights and obligations arising from the cause of action can attach to the persons named in this suit as Respondents. Not even the description of the said Lieutenant-Colonel Comfort Igbinoba, her Aide-de-Camp and the unnamed police officer as the agents of the Respondents can save this suit. Besides, it is settled law that it is not in cases that the Attorney-

General of the Federation can be made a party to a suit. See the cases of ***A.-G. Kano State v. A.-G., Federation (2007) 6 MJSC page 8, per Kalgo, JSC and A.-G., Rivers v. A.-G., Akwalbom (2011) 8 NWLR (Pt. 1246) SC 31 at 202 paras C – E***. I do not find it difficult to hold, therefore, that the proper parties are not before me in this suit.

For the above stated reasons, therefore, that is, the joint application brought by the Applicants for the enforcement of their rights and the absence of proper parties before me, I hold that this suit is incompetent and, therefore, this Honourable Court lacks the jurisdiction to entertain same. This application is, therefore, liable to be struck out and is accordingly struck out.

This is the Judgment of this Court delivered today, the 16th day of November, 2021.

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HON. JUSTICE A. H. MUSA
JUDGE
16/11/2021