

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON THURSDAY, THE 04<sup>TH</sup> DAY OF NOVEMBER, 2021**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**CHARGE NO: FCT/HC/CV/035/2021**

**BETWEEN:**

**PRINCE WILLIAMS KENECHI                      APPLICANT**

**AND**

<b>1. INSPECTOR-GENERAL OF POLICE</b> <b>2. COMMISSIONER OF POLICE, FCT</b> <b>3. FIDELIS SAAWUA</b> <b>4. MR EMMANUEL UGWU</b>	}	<b>RESPONDENTS</b>
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**JUDGMENT**

This judgment is on the application of the Applicant for the enforcement of his fundamental rights brought pursuant to section 35 of the Constitution of the Federal Republic of Nigeria 1999, Order 2 Rules 1 and 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, section 6(1)(b) of the National Human Rights Commission Act, 2010 and Articles 6 and 7 of the African Charter on Human and People’s Rights (Ratification and Enforcement) Act.

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

1. *An order of court for the enforcement of his fundamental right to personal liberty.*
2. *An Order of perpetual injunction restraining the Respondents, whether by themselves, agents, servants, privies through any person or persons from further arresting, detaining, intimidating, harassing and/or threatening the Applicant in respect of the matter.*
3. *An Order of this Honourable Court restraining the Respondents from taking further steps in connection with the matter or maintaining status quo or staying all actions pending the determination of this application.*
4. *The sum of Fifty Million Naira (₦50,000,000.00) only as general damages and or compensation to the applicant for arresting, intimidation, harassments and threaten (sic) to arrest and detain the applicant by the Respondents.*
5. *And any other orders as this Honourable Court may deem fit to make in the circumstances.*

The application is supported by the statement of facts, the affidavit in support of the application, a verifying affidavit, the written address and one exhibit.

In the affidavit in support of the application, the Applicant, who deposed to the affidavit, stated that in 2018, he entered into a business with one Mr Okwudili. During the subsistence of the business relationship, he introduced the said Mr Okwudili to the 4<sup>th</sup> Respondent, a businessman who was in the business of

sale of home appliances in Abuja, for the supply of home appliances. The Applicant annexed a memorandum of understanding evidencing this contract to the affidavit. The Applicant averred that he merely signed the memorandum of understanding as a witness without more. He further stated that the contract was duly executed.

The Applicant further swore that in 2019, the 4<sup>th</sup> Respondent approached him that the said Mr Okwudili had yet to pay him for the goods he supplied. Subsequent upon this fact, he and the 4<sup>th</sup> Respondent went to Lugbe, within the jurisdiction of this Court, to beg the said Mr Okwudili to pay the 4<sup>th</sup> Respondent for the goods supplied as well as the Applicant for the job he, the Applicant, had executed for the said Mr Okwudili. According to the Applicant, an altercation ensued between the said Mr Okwudili and the 4<sup>th</sup> Respondent. The said Mr Okwudili attributed his inability to pay to the Covid-19 pandemic and pleaded for more time to enable him pay the 4<sup>th</sup> Respondent.

According to the Applicant, on the 6<sup>th</sup> of January, 2021, he was surprised when the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, in the company of some police officers came to his house, informed him that he had committed an offence and took him away to the Criminal Investigation Department of the FCT Police Command where he was almost detained. He averred that he was only released on bail when he undertook to produce the said Mr Okwudili on or before the 11<sup>th</sup> of January, 2021.

In the written address in support of the application, learned Counsel for the Applicant formulated the following sole issue for determination: “*Whether the arrest and detention, incessant intimidation and threaten (sic) to re-arrest and detain the Applicants for a civil matter, by the Respondents are unconstitutional and illegal.*”

In his submissions on this sole issue, the Counsel for the Applicant referred this Honourable Court to paragraphs 5 – 14 of the affidavit in support of the application and contended that the Applicant had been living in fear following the threats by the Respondents to arrest and detain him for the alleged offence. He submitted that the actions of the Respondents constituted an infringement of the right of the Applicant to personal liberty. Citing several authorities to support his argument, learned Counsel argued that before the liberties of a citizen could be abridged, such abridgement must be shown to have been done within the confines of the law. He therefore urged this Court to grant the application of the Applicant.

For all his submission on this sole issue, learned Counsel cited and relied on the cases of ***Nwangwu v. Duru (2002) 2 NWLR (Pt. 751) CA; Fawehinmi v. Abacha (1996) 9 NWLR (Pt. 475) 710 CA; Johnson v. Lufadeju (2002) 8 NWLR (Pt. 768) 192 at 206; and Saidu v. The State (1982) 4 SC 69.***

All the Respondents were duly served with the processes. On the 29<sup>th</sup> of September, Counsel for the Respondents applied to the Court, through

motion on notice with motion number M/4984/2021 for extension of time within which the Respondents shall file their processes out of time and an order deeming the already filed counter-affidavit and written address as duly filed and served. The Court granted the prayers sought in the application.

In the counter-affidavit, the Respondents, through the 3<sup>rd</sup> Respondent who is the deponent thereof, stated that the 4<sup>th</sup> Respondent petitioned the 2<sup>nd</sup> Respondent against the Applicant and one Mr Okwudili alleging criminal conspiracy, criminal breach of trust, cheating and intimidation. According to the deponent, the 4<sup>th</sup> Respondent alleged that the Applicant deceived him into supplying six air-conditioners and airport chairs valued at ₦1,500,000.00 (One Million Five Hundred Thousand Naira) only to the said Mr Okwudili.

Upon receipt of the 4<sup>th</sup> Respondent's petition, the 1<sup>st</sup> – 3<sup>rd</sup> Respondents invited the Applicant and recorded his statement which he made voluntarily. According to the deponent, who is also the investigating police officer (IPO) in charge of the case, the Applicant was released on administrative bail the same day.

The deponent further averred that after the 1<sup>st</sup> – 3<sup>rd</sup> Respondents had concluded their investigations, they made out a *prima facie* case of criminal conspiracy, criminal breach of trust, cheating and threat to life against the Applicant. Upon these findings, the Applicant was accordingly arraigned before the Chief Magistrate Court, Karu, Abuja where his plea was taken and

the case adjourned for hearing. The deponent swore that none of the Respondents violated the rights of the Applicant. He therefore described the present suit of the Applicant as one brought in bad faith to frustrate the 1<sup>st</sup> – 3<sup>rd</sup> Respondents from performing their constitutional and statutory duties. The Respondents annexed two exhibits to the counter-affidavit. They are: (1) **Exhibit A**, which is the petition of Ugwu Emmanuel (4<sup>th</sup> Respondent) to the Commissioner of Police, FCT Police Command (2<sup>nd</sup> Respondent) alleging cheating, criminal breach of trust and threat to life against Mr Kelechi Okoye (the Applicant) and Mr Okwudili; and, (2) **Exhibit B**, which is the First Information Report upon which the Applicant was arraigned before His Worship, Honourable Emmanuel Iyanna.

In the written address in support of the counter-affidavit, learned Counsel for the Respondents formulated one issue for determination, to wit: “*Whether by carrying out its constitutional duty the Respondent has (sic) infringed on the fundamental human rights of the Applicant.*”

Arguing this sole issue, learned Counsel submitted that the 1<sup>st</sup> Respondent was constitutionally and statutorily obligated to enforce law and order and to investigate and prosecute crimes. Quoting the provisions of section 214 of the Constitution of the Federal Republic of Nigeria, 1999 and sections 4 and 23 of the Police Act, learned Counsel reiterated that the 1<sup>st</sup> – 3<sup>rd</sup> Respondents were

merely performing their constitutional and statutory duties in respect of the petition of the 4<sup>th</sup> Respondent against the Applicant.

Counsel referred the Court to the prayers contained in the originating motion and contended that the reliefs sought were speculative as none of the fundamental rights of the Applicant had been breached. He added that the intention of the Applicant was to frustrate his prosecution for the alleged offences. He therefore urged this Court to dismiss the suit of the Applicant for being incompetent.

For his arguments in the written address, learned Counsel cited and relied on ***Fajemirokun v. CB (CL) Nig. Ltd (2002) 10 NWLR (Pt. 774) 95 at 110, para D – E.***

This Court heard the arguments of parties on the 29<sup>th</sup> day of September, 2021 and thereafter adjourned for Judgment.

In determining this particular dispute, and after giving due consideration to the facts and arguments of the parties herein, this Honourable Court hereby formulates this issue for determination: ***“Whether from the facts disclosed in the affidavit in support of the application and the counter-affidavit in opposition to the application, the Applicant has not established that he is entitled to the reliefs sought in the application?”***

In resolving this issue, this court must highlight the salient facts in this case: first, the 4<sup>th</sup> Respondent had supplied goods worth approximately ₦1,500,000.00 (One Million, Five Hundred Thousand Naira) only to one Mr Okwudili through the Applicant. While the Applicant claimed that he was only a witness and not a party to the transaction (see **Exhibit A** attached to the affidavit in support of the application and paragraphs 7 and 8 of the said affidavit), the 4<sup>th</sup> Respondent claimed the Applicant approached him for the supply of those home appliances to a certain hotel he and his partners run. He claimed that he and the said Mr Okwudili sold the goods he delivered to them to the real owner of the hotel and disappeared (see paragraph 3(a) of the counter-affidavit and **Exhibit A** attached to the counter-affidavit).

The Applicant was arrested on the strength of the 4<sup>th</sup> Respondent's petition, interrogated and arraigned for criminal breach of trust, cheating and theft contrary to sections 312, 322 and 287 of the Penal Code Act. Significantly, from the description of the offences contained in the First Information Report, it can be deduced that after taking delivery of the household appliances from the 4<sup>th</sup> Respondent and supplying same to one Okwy Nnaekwe, the owner of De Dons Hotel, the said Okwy Nnaekwe, through the Zenith Bank account of the Applicant, paid for the goods supplied to his hotel (see paragraph 3(b), (c) and (d) of the counter-affidavit and **Exhibit B** attached to the counter-affidavit).



Flowing from the above, therefore, the question that agitates the mind of this Honourable Court is whether the facts of the above facts come within the general principle of law which prohibits the 1<sup>st</sup> – 3<sup>rd</sup> Respondents as law enforcement agencies from dabbling in civil transactions; or, whether the facts have disclosed reasonable grounds to suspect that a crime or crimes have been committed as to justify their intervention as law enforcement agencies.

If the former were the case, then the 1<sup>st</sup> – 3<sup>rd</sup> Respondents, as well as the 4<sup>th</sup> Respondents who procured their services *vide* **Exhibit A** attached to the counter-affidavit would have derogated from the fundamental rights of the Applicant and would be liable to him in damages. If the latter were the case, then, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents acted well within the confines of their constitutional and statutory mandate and the 4<sup>th</sup> Respondent would have been performing his civic duties as a citizen in reporting crime after all.

I have carefully perused the processes before me. At the risk of being repetitive, I have to state that the Applicant insisted that he merely acted as a witness to the transaction between the 4<sup>th</sup> Respondent and the said Mr Okwudili. To buttress his claim, he attached the memorandum of understanding which evidenced this transaction. I have paid avid attention to this memorandum. Though bare, the memorandum of understanding contained the name of the seller as “Mr Emmanuel Ugwu” who is the 4<sup>th</sup>

Respondent in this case and one “Mr Okwudili” as the buyer. The articles supplied were stated therein also. A disturbing feature of this memorandum, however, immediately becomes obvious. Whereas the seller executed his column, the buyer left his column unsigned and undated. Curiously, the witness stated his name as “Mr Williams K. Okoye” and proceeded to execute the memorandum of understanding. This feature is curious because it is inconceivable that a witness would execute an agreement which one of the parties to the agreement has not executed.

Interestingly, the counter-affidavit raised serious allegations of facts which the Applicant ordinarily ought to have responded to since, as he averred in paragraph 14 of his affidavit, “...I need the protection from this court as the court being the hope for a common man because the respondents have been threaten(sic) to re-arrest and detain me without committing any offence.”

What are the serious allegations of facts raised in the counter-affidavit? First, the allegation that the matter before the 1<sup>st</sup> – 3<sup>rd</sup> Respondents is a criminal case of criminal conspiracy, criminal breach of trust, cheating and intimidation (see paragraph 3(a) of the counter-affidavit). Second, the allegation that the Applicant criminally deceived the 4<sup>th</sup> Respondent into supplying the named goods under the pretence of supplying same to one Okwudili (see paragraph 3(b) of the counter-affidavit). Third, the fact that upon completion of their investigation, the 1<sup>st</sup> – 3<sup>rd</sup> Respondents arraigned the Applicant before the Chief Magistrate Court sitting at Karu where his plea was taken and the case

adjourned for hearing (see paragraph 3(d) of the counter-affidavit). Lastly, but by no means the least, the allegation contained in the First Information Report (that is **Exhibit B** attached to the counter-affidavit) that one Okwy Nnaekwe who took delivery of the goods procured from the 4<sup>th</sup> Respondent's shop by the Applicant had actually paid the Applicant for those goods through the Applicant's Zenith Bank account. These are material facts which the Applicant ought to have challenged by way of a further affidavit if he disputed their veracity. Having not challenged those material facts, the Court will treat them as true. And, since they are true, the facts raise the reasonable suspicion that a crime, or a series of crimes, have been committed, thereby justifying the intervention of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents.

It is a settled principle of law that unchallenged and uncontroverted facts in affidavit evidence are deemed admitted by the adverse party. In ***Skymit Motors Ltd v. UBA Plc (2020) LPELR-52457 (SC) at pp. 14 – 22, paras F***, the Supreme Court per Augie, JSC upheld this settled position of the law that ***“Depositions in an affidavit that remain uncontroverted are accepted as true.”*** In ***Uzodinma v. Izunaso (No. 2) (2011) 17 NWLR (Pt. 1275) 30*** the Supreme Court per Rhodes-Vivour, JSC held that ***“Depositions in an affidavit are the factual positions of the Deponent as verily believed by him and where such facts are not controverted with a Counter Affidavit the material facts are taken as unchallenged and undisputed and the Court is bound to act on them except, they are obviously false.”*** In

*Oforlete v. State (2000) LPELR-2270 (SC) at pp. 33 – 34, paras G*, the Supreme Court per Ayoola, JSC held *inter alia* that “...**the fact that contrary evidence has not been adduced to controvert the evidence of a witness on a particular matter weakens any suggestion that that evidence is not true.**” As to what the court confronted with such unchallenged averments is required to do, in *Ezechukwu & Anor v. Onwuka (2016) LPELR-26055 (SC) at pp. 19, paras C*, the apex Court per Muhammad, JSC (as he then was) succinctly puts the position of the law in these words: “...**it is elementary principle of law that such unchallenged averments must be acted upon by the Courts as being true.**”

In view of the foregoing, therefore, I hold that the case before the 1<sup>st</sup> – 3<sup>rd</sup> Respondents was not a mere civil transaction in which the 1<sup>st</sup> – 3<sup>rd</sup> Respondents are not permitted to intervene. The facts disclosed in the 4<sup>th</sup> Respondent’s petition to the 2<sup>nd</sup> Respondent disclosed grounds for reasonable suspicion that at least three of the offences stated in the petition and the First Information Report had been committed, or were about to be committed. They are the offences of criminal breach of trust, cheating and theft. I used the phrase “grounds for reasonable suspicion” circumspectly and most advisedly because the ultimate determination of the guilt or otherwise of the Applicant in respect of those offences falls within the adjudicatory competency of the Chief Magistrate Court to establish if the offences, in fact, had been committed.

What are the grounds for this reasonable suspicion? For the offence of criminal breach of trust, it is the fact that the Applicant took delivery of certain home appliances from the shop of the 4<sup>th</sup> Respondent purporting to deliver same to one Mr Okwudili. As I pointed out earlier, he signed the memorandum of understanding to this effect as a witness but the buyer, Mr. Okwudili, did not sign the agreement. From the First Information Report, it is deducible that he apparently took the goods from the 4<sup>th</sup> Respondent, delivered the goods, was allegedly paid for the goods, but allegedly failed to deliver the money to the 4<sup>th</sup> Respondent. In ***Kure v. COP (2020) LPELR-49378(SC)***, the Supreme Court per Galumje, JSC held at ***pp. 10 – 17, paras E*** of the law report thus:

***“For the prosecution to succeed in establishing the offence of criminal breach of trust, it must prove the following ingredients:- 1. That the accused person was entrusted with property or dominion over it. 2. That he misappropriated it, converted it to his own use or disposed of the said property. 3. That the accused did so in violation of any direction of law, prescribing the mode in which such trust was to be discharged or any legal contract expressed or implied which he had made concerning the trust or that he intentionally allowed some other persons to misappropriate, convert or dispose of the property in violation of the mode of execution of the trust.”***

As the Supreme Court pointed out in this case, a trust involves three parties, namely, the settlor, the trustee and the beneficiary all acting together in respect of a specific property. The only logical explanation deducible from the facts contained in the affidavit and the counter-affidavit and the exhibits annexed thereto for Mr Okwudili's non-execution of the memorandum of understanding is that he was the beneficiary of the home appliances (specific property) delivered to the Applicant herein (trustee) by the 4<sup>th</sup> Respondent (settlor). If, Mr Okwudili who is the buyer was the same person named in the First Information Report as Okwy Nnaekwe, "Okwy" being the contracted form of the Igbo name "Okwudili", then it logically follows that upon receiving the goods, he (as the settlor in this reversed relationship) made payment (specific property) to the 4<sup>th</sup> Respondent (beneficiary) for the goods supplied to and received by him through the Applicant (trustee)'s Zenith Bank account. Yet, the Applicant allegedly refused or failed to deliver the payment to the 4<sup>th</sup> Respondent. For a transaction that took place in 2018, this is curious and worthy of investigation. Either way, a *prima facie* case of criminal breach of trust has been made out to justify the intervention of the 1<sup>st</sup> – 3<sup>rd</sup> Respondent.

For the offence of cheating, the apex Court, in ***Kure v. COP (2020) supra*** held that "***...the offence of cheating under section 322 of the Penal Code involves deceit and or fraudulent and dishonest inducement of the person so deceived to part or deliver the property in issue to any person...***" For the offence of theft, the Court of Appeal in ***Babagana v. State***

**(2020) LPELR-51431 (CA) at p. 11, paras B – F**, per Jummai Hannatu Sankey, JCA stated the ingredients of theft as provided for under section 287 of the Penal Code, Laws of Borno State, 1994 to be:

***“1. That the property in question is movable property. 2. That the property was in the possession of a person. 3. That the accused person moved the property whilst in the possession of the person. 4. That he did so without the consent of that person. 5. That he did so in order to take the property out of the possession of that person. 6. That he did so with the intent to cause wrongful gain to himself or wrongful loss to that person...”***

I dwelt so long on these three offences because of the Applicant’s insistence that he merely executed the memorandum of understanding between the 4<sup>th</sup> Respondent (who signed his column of the agreement) and Mr Okwudili (who did not sign his column of his agreement) as a witness and nothing more. He did not explain why the said Mr Okwudili did not sign the agreement and how a person who was not present to sign the agreement could take delivery of the goods which were the subject matter of the agreement. This yawning void is enough to impress on this Court the exigency to be judicious as it ponders on the evidence placed by both the Applicant and the Respondents on the imaginary scale of justice before it.

As I pointed out earlier, the responsibility of determining the guilt or otherwise of the Applicant is incumbent on the Chief Magistrate Court sitting at Karu, Abuja before whom the Applicant has been arraigned on the First Information Report taken to it. The duty of this Court is simply to determine whether the 1<sup>st</sup>– 3<sup>rd</sup> Respondents were justified in their intervention. Having analysed the contents of the affidavit in support of the application and the counter-affidavit in opposition and the supporting exhibits thereto; and having given serious consideration to the fact that the Applicant did not deem it fit and necessary to challenge the material averments in the counter-affidavit even when he had the opportunity to do so by way of a further affidavit, it is my considered belief, and I so hold, that the 1<sup>st</sup> – 3<sup>rd</sup> Respondents were not in breach of their constitutional and statutory duties when they invited the Applicant on the 6<sup>th</sup> of January, 2021 for interrogation.

Section 35(1)(c) of the Constitution of the Federal Republic of Nigeria provides thus:

***“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 –***

***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.”***

Section 214(2)(b) of the Constitution of the Federal Republic of Nigeria, 1999 provides thus:

***“(b) The members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law.”***

Section 4 of the Police Act, 2020, an Act of the National Assembly, delineates the duties of the Police thus:

***“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.”***

In *Oguebie v. FBN Plc (2020) 4 NWLR (Pt. 1715) 531 SC*, Abba Aji, JSC, in his concurring judgment held that:

***“By section 4 of the Police Act, section 10 of the Criminal Code, section 20 of the Criminal Procedure Act and section 35(1) (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as***

***amended), the Police are empowered to investigate any criminal allegation. They may take any action they deem fit during an investigation. They may arrest, detain, and prosecute an alleged offender. Where they act in the legitimate discharge of their duties, they cannot be sued in court.”***

When the provisions of the above enactments are juxtaposed with the facts of this case, it is not difficult to see that the 1<sup>st</sup> – 3<sup>rd</sup> Respondents have been professional in their approach. Even the Applicant himself confirmed this fact in paragraphs 11, 12 and 13 of his affidavit wherein he stated that on the 6<sup>th</sup> of January, 2021 the 3<sup>rd</sup> and 4<sup>th</sup> Respondents in the company of police officers came to his house and he “*was almost detain (sic) at CID department (sic), Commissioner of Police FCT Command, Abuja...*” and that he was only released on bail on the condition that he produce Mr Okwudili on or before the 11<sup>th</sup> of January, 2021.

Instead of the Applicant to produce the said Mr Okwudili on or before the 11<sup>th</sup> of January, 2021, being the condition of his administrative bail, he proceeded to file this suit on the said 11<sup>th</sup> of January, 2021 seeking, among other reliefs, “*An order of this Honourable Court restraining the Respondents from taking further steps in connection with the matter or maintaining status quo or staying all actions pending the determination of this application.*”

People must be warned that the provisions of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 and the Fundamental Rights (Enforcement Procedure) Rules, 2009 are not designed as shields against criminal prosecution where a *prima facie* case has been established. They are also not meant to serve as a bulwark against investigation and prosecution where allegation of crime has been made.

In ***Dawan v. EFCC (2020) 5 NWLR (Pt. 1717) 226 CA, the Court of Appeal per Ugo, JCA, held at page 242, paras B – D*** that:

***“The Court would not hastily interfere with the statutory powers of law enforcement agencies in the exercise of their statutory right to investigate alleged offences and detain, where necessary, for purposes of that investigation. The attitude of the courts is to deal with each case of arrest and detention on its merits when it occurs and comes before them.”***

See also ***Danfulani v. EFCC (2016) 1 NWLR (Pt. 1493) 223; Kalu v. FRN (2016) 1 NWLR (Pt. 1516) 1.***

Meanwhile, the Police had received the petition of the 4<sup>th</sup> Respondent on the 29<sup>th</sup> of December, 2020, invited the Applicant for interrogation on the 6<sup>th</sup> of January, 2021 and by 15<sup>th</sup> of February, 2021 the First Information Report had already been assigned to His Worship, Honourable Emmanuel Iyanna for trial. The Police ought to be commended for the professional and expeditious

manner in which they handled the complaint. In *Ihim v. Maduagwu (2021) 5 NWLR (Pt. 1770) 584 SC*, the Supreme Court per Ngwuta, JSC of blessed memory held, at *pp. 615 – 616, paras G – A* that “**An arresting authority, where challenged, has the burden to prove legality or constitutionality of the arrest and/or detention of a person.**” On the standard of proof in this regard, section 35(1)(c) stipulates the standard of proof to be “**...upon reasonable suspicion of his having committed a criminal offence...**” The Court of Appeal adopted this standard in *Ibe v. Ajise (2020) 10 NWLR (Pt. 1731) 1 at pp. 29 – 30, paras F – A* when it held per Abundaga, JCA that:

**“For an arrest and detention to be lawful, it must be based on reasonable suspicion. In considering whether an arrest is illegal, unconstitutional and a violation of an applicant’s right to liberty and dignity of his person, the court is only concerned with whether or not, from the facts deposed to in the affidavit or counter-affidavit before the court, there was reasonable suspicion that the applicant had committed a criminal offence at the time he was arrested and detained.”**

It is my considered view that the 1<sup>st</sup> – 3<sup>rd</sup> Respondents have spectacularly and clinically discharged this burden and acquitted themselves most admirably in their investigation of the petition of the 4<sup>th</sup> Respondent. It bears mentioning at this point that the logical reason the 1<sup>st</sup> – 3<sup>rd</sup> Respondents

dropped the charge of criminal conspiracy against the Applicant and the said Okwudili described as “presently at large” in paragraph 3(a) of the counter-affidavit from the list of offences with which the Applicant was charged in the First Information Report (**Exhibit B** attached to the counter-affidavit) is because they found that “Okwudili” named in the memorandum of understanding as the buyer was the same person as “Okwy Nnaekwe” named in the First Information Report as the owner of De Dons Hotel where the goods taken from the shop of the 4<sup>th</sup> Respondent were delivered and who paid the 4<sup>th</sup> Respondent through the Applicant’s Zenith Bank account.

As to the role performed by the 4<sup>th</sup> Respondent in this entire controversy, I hereby find, after prudent reflection on the facts before me, that the petition of the 4<sup>th</sup> Respondent was an honest performance of his duty as a citizen to report to law enforcement agencies where he reasonably suspects that a crime has been committed or is about to be committed. Section 24(e) of the Constitution of the Federal Republic of Nigeria provides that **“It shall be the duty of every citizen to render assistance to appropriate and lawful agencies in the maintenance of law and order.”** In *Oguebie v. FBN Plc (2020) supra*, the apex Court held that,

***“A citizen’s civic responsibilities include reporting crimes and perceived or suspected criminal acts either to his person or to the person of a fellow citizen, and such a citizen, after making***

***such complaints to the appropriate security agencies, cannot be held culpable for performing his civic responsibility, unless at the conclusion of the investigation of the complaint he made, it is found that the complaint was baseless and made malafide. Therefore, a person does not become culpable and liable to pay damages for making a report to the police.”***

See also ***Fajemirokun v. Commercial Bank (Nig.) Ltd (2009) 5 NWLR (Pt. 1135) 588 SC*** and ***Ibe v. Ajise (2020) 10 NWLR (Pt. 1731) 1 CA at p. 29 paras D – F.***

For the reasons given above, I find the application of the Applicant for the enforcement of his fundamental rights unmeritorious, vexatious and brought *malafide*. It is a disingenuous attempt to use the court to impose fetters on the powers of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents to investigate allegations of reasonable suspicion of the commission of crimes and to prosecute same where a *prima facie* case had been made out in the course of their investigation. This Court will not allow itself to be used for such duplicitous ends. Having found that the Respondents have not breached any of the fundamental rights of the Applicant, I hereby hold that he is not entitled to any of the reliefs sought in this application. I, therefore, resolve the sole issue I have formulated herein against the Applicant. Accordingly, this application is hereby dismissed. I

make no order as to costs. Accordingly, parties are to bear their respective costs.

This is the Judgment of this Court delivered today, the 04<sup>th</sup> day of November, 2021.

**HON. JUSTICE A. H. MUSA**  
**JUDGE**  
**04/11/2021**