

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT MAITAMA, ABUJA**

ON WEDNESDAY, 26TH DAY OF JANUARY, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/1410/2019

BETWEEN

MONDAY ONYEKACHI UBANI, ESQ. --- APPLICANT

AND

**ECONOMIC & FINANCIAL CRIMES } RESPONDENT
COMMISSION [EFCC]**

JUDGMENT

On 22/3/2019, the applicant and Hon. Christopher F. Enai [as 2nd applicant] commenced this action by Originating Motion for the enforcement of their fundamental rights. On 15/12/2020, the Court granted the applicants' motion filed on 6/11/2020 for an order to strike out the name of 2nd applicant and an order to amend the Originating Motion. The Originating Motion filed on 6/11/2020 was deemed as properly filed and served.

In the Amended Originating Motion, the applicant seeks the following reliefs against the respondent:

1. A declaration that the arrest and detention of the applicant by the operatives of the respondent from Tuesday the 19th day of March, 2019 till Thursday 11th of April, 2019 despite an order of court directing that he be released on bail, without charging him to a court of competent jurisdiction, within 48 hours of his arrest and detention, is illegal, wrongful and constitute a blatant violation of his fundamental rights as enshrined in sections 35 [1], [3], [4], 37 and 41 [1] of the 1999 Constitution of the Federal Republic of Nigeria as altered, sections 1 [1], [2] and 30 [1], [2], 32 [1], [2] and [3] of the Administration of Criminal Justice Act, 2015, and Articles 6 and 12 of the African Charter on Human and Peoples' Rights [Ratification and Enforcement] Act Cap. A9 Laws of the Federation of Nigeria, 2004.
2. A declaration that the detention of the applicant from the 19th day of March, 2019, till 11th day of April, 2019 by the operatives of the respondent, without any reasonable justification for his detention, and without arraigning him before a court of competent jurisdiction, for any known offence, is illegal, wrongful and constitutes a blatant violation of his fundamental rights as enshrined in sections 35 [1], [2], 32 [1], [2] and (3) of the Administration of Criminal Justice Act, 2015 and Articles 6 and 12 of the African Charter on Human and Peoples' Rights [Ratification Enforcement] Act Cap. A9 Laws of the Federation of Nigeria, 2004.

3. A declaration that the detention of the applicant by the operatives of the respondent without complying with the provisions of section 293[1] of the Administration of Criminal Justice Act, 2015, regulating the remand of a suspect, is illegal, unlawful, null and void and of no effect whatsoever.
4. A declaration that the arrest and detention of the applicant for more than 20 days, by the respondent, based on a contractual suretyship, in respect of Dr.NgoziOlejeme, for which the bail bond could only be forfeited in a civil suit and which does not give rise to any criminal liability, is illegal, wrongful, unlawful and constitutes a blatant violation of applicant's fundamental rights as enshrined in section 35 [1], [3] and 41 [1] of the 1999 Constitution of the Federal Republic of Nigeria as altered, and section 1 [1], [2] and 30 [1], [2], 32 [1], [2] and [3] of the Administration of Criminal Justice Act, 2015, and Articles 6 and 12 of the African Charter on Human and People's Rights [Ratification and Enforcement] Act Cap. A9 Laws of the Federation of Nigeria, 2004.
5. A declaration that the applicant is entitled to public apology and adequate compensation from the respondent as provided for in sections 35 [6] and 46 [2] of the 1999 Constitution of the Federal Republic of Nigeria as altered, sections 314 [1] and 323 [1] and [2] of the Administration of Criminal Justice Act, 2015, for the blatant

- violation of the applicant's rights without following the due process of law.
6. An order of this Honourable Court directing the respondent to tender a public apology in at least three National Dailies to the applicant for the blatant violation of his fundamental rights without following the due process of law.
 7. An order of this Honourable Court directing the respondent to pay to the applicant the sum of N5,000,000,000.00 [Five Billion Naira], only as general and exemplary damages for the wanton and grave violation of the applicant's rights without following the due process of law.
 8. An order of this Honourable Court restraining the respondent whether by itself, agents, employees, operatives, detectives, servants, privies and investigating officer[s], or however and by whatever name called, from further arresting and or detaining the applicant without charging him to court in line with the provisions of section 35 of the Constitution, on the basis of the facts and circumstances of his matter.
 9. And for such further or other orders as the Honourable Court may deem fit to make in the circumstance.

In support of the Originating Motion are: [i] Statement setting out the name and description of the applicant, the reliefs sought and the grounds for the application; [ii] applicant's 65- paragraph affidavit and Exhibits A-I attached therewith; [iii] written address of Oluchi Vivian UcheEsq.; [iv] applicant's further affidavit of 47 paragraphs filed on 10/9/2021; and [v] the reply on points of law of Oluchi Vivian UcheEsq. filed with the further affidavit.

In opposition, EzireUfuoma, a staff of the respondent, filed a 58-paragraph counter affidavit on 10/8/2021; attached therewith are Exhibits EFCC A-M. Sir Steve EhiOdiaseEsq. filed a written address along with the counter affidavit. At the hearing of the Originating Motion on 24/11/2021, both learned counsel adopted their respective processes.

In the applicant's 65-paragraph affidavit in support of the Originating Motion, he stated that:

1. He was briefed by a colleague based in Lagos in respect of an EFCC matter involving Dr.[Mrs.] NgoziOlejeme.
2. Dr.Olejeme eventually called him and briefed him. She alleged that certain officials who worked with her in National Social Insurance Trust Fund [NSITF], an agency of the Federal Government, ganged up when they were arrested for stealing the funds of the Agency, to implicate her falsely, thinking that she will not come back to Nigeria due to her medical issues. She was the Board Chairman of NSITF.

3. He told her that it was better for her to come and clear her name of any allegation as her refusal will not augur well for her reputation and her freedom even while abroad.
4. Dr.Olejeme, who was abroad for medical treatment, came back to the country on 17/12/2017. On 18/12/2017, he took her to the respondent to respond to the allegations against her.
5. After the interrogation of Dr.Olejeme, the respondent gavethe bail conditions which were promptly complied with by providing the Directors of grade levels 14 and 15 in the Federal Civil Service.
6. The Investigation Officer informed them that Dr.Olejeme will not go home that day but has to be detained in a hospital in Abuja at the instruction of the respondent. She was detained in a private hospital in Abuja with officials of the respondent guarding her.
7. An application for the enforcement of the fundamental rights of Dr.Olejeme was filed at the Federal Capital Territory Abuja High Court.
8. The respondent subsequently granted bail to Dr.Olejeme but with the condition that the said levels 14 and 15 officers in the Public Service will no longer be acceptable to the then Acting Chairman of the respondent [Ibrahim Magu].
9. No specific reason was given for the rejection, but the Investigation Officer informed the team of lawyers, that the Acting Chairman said he would only allow him [the applicant], being the then 2nd Vice President

of NBA, and one other prominent Nigerian to take Dr.Olejeme on administrative bail.

10.He weighed the condition and came to the conclusion that since Dr.Olejeme willingly submitted herself to the respondent from South Africa and has many movable assets coupled with the fact that she returned with her whole family back to Nigeria, it will be unjust for him to reject to stand surety for her.

11.During the 14 days when she was in the hospital, he was under immense pressure from Dr.Olejeme and her family members to secure her release as her health was said to be deteriorating, given the fact that he convinced her to come back to Nigeria for the case.

12.Dr.Olejeme was released on bail that night on his signature alone as the second surety signed for her two days later. While she was on bail, she was asked to come for further interrogation, which she complied with on several occasions in his company even though he lives and works in Lagos.

13.He observed that the respondent was not eager to charge Dr.Olejeme to court but was more interested in getting the details of her alleged movable and immovable properties and that process took almost two months to accomplish.

14.He got a call from a colleague in Abuja that the operatives of the respondent invaded the home of Dr.Olejeme and were trying to gain

access to the compound forcefully. He was alarmed since Dr.Olejeme was on administrative bail.

15.The information he got later was that the operatives of the respondent were there at the instance of one man who was alleged to have loaned money to Dr.Olejeme but was demanding the money to be paid back. The man had instituted a civil suit in a court in Abuja for the alleged debt. The man chose to recover the money using his contacts with the respondent, hence the *“ferocity and killer mood with which the operatives came for Dr.Mrs.Olejeme.”*

16.He learnt that Dr.Olejeme was shocked and shaken at such display of raw power and intimidation. He read a report later in the newspaper [Exhibit D] that they arrested her and later released her on bail. He did not know the person to whom they released her on bail.

17.He did not know the whereabouts of Dr.Olejeme since after the invasion of her private residence by the operatives of the respondent. The disappearance of Dr.Olejeme took place after the forceful invasion of her home by the operatives of the respondent.

18.When he was asked to produce her after the invasion, he wrote a letter to the respondent stating his activities with regards to Dr.Olejeme and sought their understanding to work towards getting her back to the country per adventure she had escaped to another country. The letter dated 21/6/2018 is Exhibit E.

19.He wrote a letter to the Inspector General of Police[IGP] to alert the INTERPOL Nigeria about the disappearance of Dr.Olejeme following the threats by the operatives of the respondent to arrest and detain him on account of her disappearance. The letter dated 3/9/2018 is Exhibit F. The office of the IGP responded to his said letter; the response dated 5/9/2018 is Exhibit G.

20.At his request, INTERPOL processed the application for Red Alert and placed Dr.Olejeme on Red Alert by the INTERPOL Headquarters in France. When he visited INTERPOL Office in Abuja, they showed him evidence of the Red Alert, which INTERPOL in France placed on Dr.Olejeme as far back as 31/1/2019 and the responses of some countries on the Red Alert to the effect that they are on the lookout for her in their countries.

21.He went to the office of the respondent on 19/3/2019 to report to them "*this good news*" and to seek their effort to bring Dr.Olejeme back to the country from wherever she was. He was arrested and detained by the operatives of the respondent at the instance of Mr. Ibrahim Magu [the then Acting Chairman] beyond the constitutionally provided limit without being charged to court.

22.He was detained by the respondent despite the fact that the same respondent had earlier granted him administrative bail, the terms of which he did not breach. He was detained in a filthy and overcrowded

detention cell of the respondent at Adetokunbo Ademola Crescent, Wuse 2, Abuja, from Tuesday, 19/3/2019, to Thursday, 11/4/2019.

23. He was detained despite a Motion on Notice filed by the respondent in the High Court of FCT, seeking the forfeiture of the bail bond of N1 billion in respect of the bail granted to Dr. Olejeme. The Motion No. M/4459/2019 is Exhibit I.

24. The High Court of FCT [*Coram: Hon. Justice Sylvanus Chinedu Orij*] also made an order on 26/3/2019 directing the respondent to either charge him [the applicant] to court on or before Friday, 28/3/2019, or release him on bail upon terms.

25. Despite the explicit order of a court of competent jurisdiction, which was served on the respondent, the respondent neglected and refused to release him on bail till 11/4/2019. He spent 22 days in detention in a very dehumanizing condition.

26. He never colluded or connived on the said disappearance of Dr. Olejeme.

27. He was wrongly detained as the legal consequence of a defendant who ran away from justice is for the surety to show cause or forfeit his or her bail bond. It is not a criminal offence that warrants arrest, detention and charge. The consequence of surety to show cause is a civil matter.

In the respondent's 58-paragraph counter affidavit, Ezire Ufuoma stated that:

1. He is one of the staff of the respondent assigned to investigate the complaint made against Dr.Olejeme.On 26/1/2016, a petition made against Dr.Olejeme captioned "*Fraud in Nigeria Social Insurance Trust Fund*" was forwarded to the Commission by the Department of State Services [DSS] for investigation. The petition is Exhibit EFCC A.
2. On 29/3/2016, the Commission received another petition dated 8/10/2015 in relation to monumental fraud of over N1 billion against Dr.Olejeme. The petition is Exhibit EFCC B.
3. Dr.Olejeme fled the country after NSITF Board was dissolved in 2015 following a change in Government.
4. After investigation, Charge No. CR/365/2017 - FRN vs. Umar MunirAbubakar and 4 others was filed before this Court including Dr.Olejeme who was described as being at large.
5. Dr.Olejeme turned herself in at the Commission on 18/12/2017 after being placed on the watch list for over a year. When Dr.Olejeme reported, she volunteered her statement in respect of the said criminal allegations and was thereafter offered administrative bail.
6. On 2/1/2018, the applicant approached the respondent with a written application [Exhibit C] for the administrative bail of Dr.Olejeme with the undertaking to produce her whenever her attention was needed. The application was approved and the applicant entered into bond in the

sum of N1 billion to be forfeited to the Federal Government of Nigeria should the suspect, Dr.Olejeme, jump administrative bail.

7. Charge No. CR/365/2017 was amended to include Dr.Olejeme vide an order made by this Court on 25/6/2018 for the purpose of bringing her before the Court for arraignment. The Charge came up on different dates but the arraignment could not hold due to her absence.
8. Dr.Olejeme jumped the bail granted her. She last reported to the respondent on 16/3/2018 while the next date for her to report was on 30/3/2018. He contacted the applicant severally to produce her in accordance with the terms of the bond and he failed to do so.
9. In the course of investigating the whereabouts of Dr.Olejeme, the team received intelligence and discovered that Dr.Olejeme parted with some of her illicitly acquired landed properties and money to the applicant [as surety] in the process of procuring her bail contrary to his [the applicant's] declaration in the bail bond [Exhibit EFCC E].
10. The officials of the respondent would not have allowed the applicant to take Dr.Olejeme on bail if they were aware that she heavily paid money for her bail. This is more so that Dr.Olejeme was not known to the applicant prior to the criminal investigation by the respondent.
11. In order to unravel the "*apparent complicity*" between the applicant and Dr.Olejeme, the respondent's officials invited the applicant for inquiry. When the applicant reported on 13/11/2018, he was interviewed

and allowed to go home on the same day on the condition that he would produce a surety to take him on bail on his subsequent visit.

12. On 19/3/2019 when the applicant reported to the respondent and failed to produce Dr. Olejeme, he was detained in furtherance of investigation relating to the said complicity.

13. On 21/3/2019, the respondent filed Motion on Notice No. M/4459/2019 before this Court for the applicant to show cause why his recognizance [or bond] should not be forfeited to the Federal Government. A copy of the Motion is Exhibit EFCC G. However, the said process was refused and returned by the Registrar of this Court to the respondent about a week afterwards purporting to be acting on the directive of this Court.

14. While the said application for surety to show cause was not accepted in this Court, this Court granted an *ex-parte* order directing the respondent to either charge the applicant to court within 48 hours or release him on bail. The motion on notice and the *ex-parte* order for bail are Exhibit EFCC H.

15. Also, the Registrar of this Court issued Forms 48 and 49 pursuant to the applicant's request to commit the respondent's Chairman to prison for disobedience to order of the Court. The said Forms 48 and 49 are Exhibits EFCC I.

16. The respondent has since released the applicant on bail as ordered by the Court. Based on the findings from its investigation, the respondent

filed a criminal charge against applicant; the Charge No. CR/280/2019 is Exhibit EFCC J.

17. Their investigation revealed that the primary role of the applicant was to stand as surety for Dr. Olejeme having reached agreement to be paid for the role. Dr. Olejeme was initially represented by the chambers of Dandison Akurunwa & Co. in 2017 and later in 2018 by Mike Ozekhome's Chambers. Exhibits EFCC K1 and K2 are copies of letters written to the respondent by the respective law chambers on behalf of Dr. Olejeme.

18. Dr. Olejeme did not provide any director of grade levels 14 and 15 in the Federal Civil Service as required by the terms of the administrative bail granted to her. Dr. Olejeme was detained after she failed to meet the terms of bail granted to her. The respondent did not reject officers of grade levels 14 and 15 who sought to stand as sureties for Dr. Olejeme.

19. The applicant did not visit the respondent's office again upon the release of Dr. Olejeme on bail until the latter jumped bail.

20. It was in the course of investigating another criminal allegation against Dr. Olejeme by the Enugu office of the respondent that 5 operatives visited her house on 14/4/2018 to execute a search warrant. The new petition against Dr. Olejeme is Exhibit L.

21. The operatives recovered incriminating items which included one Republic of Ghana Passport No. H2619481 in the name of Amarty Doris

bearing the photograph of Dr.Olejeme; and ECOWAS Passport No. F50000049 in the name of Olejeme Juliet Ngoziwith her photograph.

22.The said International passports which were valid till 2020 were in the possession of Dr.Olejeme despite the fact that she deposited a different International passport of hers with the respondent as part of the terms of her bail; but unknown to respondent that she has other International passports.

23.Before 14/4/2018,Dr.Olejeme had already jumped bail andstopped reporting at the office of the respondent in Abuja.Dr.Olejeme reported last on her own on 16/3/2018.

24.The applicant is still in touch with Dr.Olejeme despite his knowledge of the pending criminal charge against her.

25.The respondent's invitation to the applicant for 19/3/2019 followed an intelligence it received that the sum of N80,000,000.00 was paid to him to stand as surety with the understanding that the applicant would frustrate Dr.Olejeme's subsequent trial.

26.When the applicant was interviewed about the receipt of money from Dr.Olejeme, he admitted receiving about N10,000,000,but claimed the money was his legal fees. The applicant's statement and that of one Clement who paid him on behalf of Dr.Olejeme are Exhibit EFCC M.

27. The applicant lied to officials of the respondent while completing the bail recognizance form for the release of Dr. Olejeme by declaring that he did not receive or pay anything for the bail of Dr. Olejeme.
28. The initial terms of bail administratively granted to the applicant was not fulfilled but he was nevertheless released on bail temporarily on the understanding that he would subsequently meet the terms, which were to provide two civil servants not below grade level 14.
29. The order of the Court for the release of the applicant had since been carried out by the respondent. The applicant has been on bail ever since unmolested and enjoying his constitutional rights. His fundamental rights were not breached.

In the applicant's 47-paragraph further affidavit, he deposed that:

1. Dr. Olejeme never fled the country following any change in Government but went abroad on health grounds.
2. He was invited by the officials of the respondent to question him about the whereabouts of Dr. Olejeme. He stated that he has been making great efforts to make her available in conjunction with the Nigeria security agencies. He was thereafter given bail terms and conditions, which he fulfilled and left. He never defaulted in any of the bail terms and conditions.

3. He was paid for his professional legal services rendered to Dr.Olejeme and nothing more.
4. It is not true that he did not fulfil his bail terms and conditions before he was allowed to go on 13/11/2018. It is rather laughable to hear that the respondent is in the business of releasing accused persons without fully perfecting their bail terms and conditions.
5. The respondent released him on bail after the constitutionally allowed period of detention. The respondent reluctantly obeyed the said order of this Court after issuance of Forms 48 and 49 against their Acting Chairman for disobedience of the order of the Court.

In the written address in support of the Originating Motion, Oluchi Vivian Uche Esq. posed one issue for determination, which is:

Whether the applicant's fundamental rights have been breached, are being breached and will likely still be breached by the conducts and actions of the respondent, such as will entitle the applicant to the grant of the reliefs sought from this Honourable Court.

Sir Steve Ehi Odias Esq. also formulated one issue for determination in the written address in opposition to the Originating Motion, to wit:

Whether the applicant is entitled to the grant of the reliefs sought in this application.

From the depositions in the affidavits of the parties and the submissions of their learned counsel, the Court is of the considered opinion that two issues call for determination in the Originating Motion. These are:

1. Whether the applicant's right to personal liberty and right to freedom of movement respectively guaranteed under sections 35 and 41 of the 1999 Constitution [as altered] were violated by the respondent.
2. Is the applicant entitled to the reliefs sought against the respondent?

ISSUE 1

Whether the applicant's right to personal liberty and right to freedom of movement respectively guaranteed under sections 35 and 41 of the 1999 Constitution [as altered] were violated by the respondent.

Section 35[1][c] of the 1999 Constitution [as altered] provides:

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 –

[c] for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.

Section 35[4] thereof provides that a person arrested and detained in accordance with section 35[1][c] shall be brought before a court of law within a reasonable time. The expression '*a reasonable time*' is defined in section 35[5] to mean:

- [a] *in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and*
- [b] *in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.*

Section 41[1] of the 1999 Constitution [as altered] reads:

Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.

Learned counsel for the applicant referred to section 35[1], [4] & [5] of the 1999 Constitution [as altered], sections 30 & 31[1] of the Administration of Criminal Justice Act, 2015 [ACJA] and Article 6 of the African Charter on Human and Peoples' Rights [Ratification and Enforcement] Act, Cap. A9 Laws of the Federation of Nigeria, 2004 to support the view that a suspect arrested for allegedly committing an offence shall be charged to court within one day [or maximum of two days] or released on bail. For a person to be deprived of his right to personal liberty, it must be in accordance with the six

grounds in section 35[1][a]-[f] of the 1999 Constitution and the deprivation must be by a procedure permitted by law. Learned applicant's counsel cited Ohize v. C.O.P. [2014] LPELR-23012 [CA], Aqua v. Achibong & Ors. [2012] LPELR-9293 [CA], and other cases in support.

For his part, learned counsel for the respondent posited that by sections 6, 7 and 13 of the Economic and Financial Crimes Commission [Establishment Act, 2004 [EFCC Act], the respondent is empowered to investigate all cases of economic and financial crimes reported to it and to prosecute same where a *prima facie* case has been made out. In the course of its investigation, the respondent can arrest, interrogate, search and detain any suspect. He referred to the case of Chrome Insurance Brokers Ltd. & Ors. v. EFCC & Ors. [2018] LPELR-44818 [CA]. Sir Odiase pointed out that the only qualification is that these powers should not be abused.

The Court agrees with the view of applicant's counsel that the fundamental rights of citizens guaranteed under Chapter IV of the 1999 Constitution [as altered] are inalienable and sacrosanct. The deprivation of such rights must be in accordance with the provisions of the law, for example where there is reasonable suspicion that the person committed a criminal offence. The Court is also in agreement with the respondent's counsel that the respondent is statutorily empowered to investigate all cases of economic and financial crimes and in the course of the investigation, it can arrest and detain a

suspect. However, in the exercise of its power of arrest and detention, the respondent must act in accordance with the law and not arbitrarily.

Now, from the affidavit evidence of the parties and the records in the case file, the following facts are not in dispute:

1. On 2/1/2018, the applicant and Hon. Christopher Enai stood as sureties for the administrative bail of Dr.Olejeme who was investigated by the respondent for some criminal allegations. The applicant's recognizance, which he signed for the bail of Dr.Olejeme was for N1 billion.
2. Dr.Olejeme reported to the respondent last on 16/3/2018. Thereafter, she jumped bail.
3. On 13/11/2018, the applicant reported at the office of the respondent and was released on the same date.
4. On 19/3/2019, the applicant reported at the office of the respondent and was detained.
5. On 22/3/2019, the applicant and Hon. Christopher Enai instituted this action for the enforcement of their fundamental rights against the respondent. On the same date, they filed a motion *ex parte* with Motion No. M/4487/2019 wherein they prayed the Court for the following orders:

- i. *An interim order of this Honourable Court admitting the applicants to bail on self-recognizance, or on such favourable and liberal terms as the Honourable Court may deem fit to make in the circumstances of this case, pending the formal arraignment of the applicants before a court of law.*

In the alternative:

- ii. *An order of this Honourable Court directing the respondent to immediately release the applicants on bail pending the formal arraignment of the applicants before a court of law by the respondent.*
- iii. *An order of this Honourable Court directing the respondent ... to produce the applicants before this Honourable Court on the next adjourned date of this matter.*

6. The Court heard the motion *ex parte* on 26/3/2019 and ordered that:

The EFCC is directed to charge the applicants to court for the alleged offence that led to their detention since 19/3/2019 on or before Friday [28/3/2019]. If the applicants are not charged to court on or before 28/3/2019, EFCC is directed to release them on bail upon fulfilment of the following conditions:

- i. *The applicants shall each enter into a recognizance along with 2 sureties to forfeit the sum of N50 million to the Federal*

Government if they fail to appear before EFCC on any day they may be required without any justifiable reason.

ii. The 2 sureties shall be resident in the Federal Capital Territory, Abuja and shall be civil servants in the Federal Civil Service of at least grade level 15.

iii. The applicants shall deposit their International Passports with EFCC.

7. From the records in the case file, the said order was served on the respondent on 27/3/2019; OlojeSamsom received it. The respondent did not charge the applicant and Hon. Christopher Enai to court and did not release them on bail as ordered by the Court.

8. On 5/4/2019, the applicant and Hon. Christopher Enaifiled Form 48 to initiate contempt proceedings against the then Chairman of EFCC [Ibrahim Magu] for disobedience of the said order of the Court.

9. On 5/4/2019, they filed motion *ex parte*No. M/4992/2019 for an order granting leave for Forms 48 and 49 to be served on Ibrahim Maguby substituted means. That motion was granted by the Court on 8/4/2019.

10. The respondent eventually released the applicant on 11/4/2019.

From the foregoing facts, it is not in dispute that the applicant was detained by the respondent on 19/3/2019 until 11/4/2019 when he was released. In **Chief [Dr.] OladeleFajemirokun v. Commercial Bank [Credit Lyonnais] [Nig.]**

Ltd. &Anor. [2002] 10 NWLR [Pt. 774] 95, it was held that where there is evidence of arrest and detention of an applicant in an action for the enforcement of fundamental rights, it is for the respondent to show that the arrest and detention were lawful. In other words, the onus is on the person who admits detention of another to prove that the detention was lawful. See also the case of Mba v. IGP &Ors. [2018] LPELR-46106 [CA].

In the instant case, the respondent has the duty to show that the detention of the applicant from 19/3/2019 to 11/4/2019 was lawful. From the counter affidavit and the arguments of Sir Steve EhiOdiase, respondents put forward three reasons or grounds to justify the applicant's detention for the period aforesaid. These reasons or grounds - which will be considered one after the other - are:

- i. Investigation of "*apparent complicity*" between the applicant and Dr.Olejeme in relation to the process of her bail.
- ii. Filing of Motion No. M/4599/2019 for the applicant to show cause why he should not forfeit his recognizance or bond of N1 billion.
- iii. Failure of the applicant to provide a surety for his bail on 13/11/2018.

[I] *Investigation of "apparent complicity" between the applicant and Dr.Olejeme in relation to the process of her bail.*

In paragraphs 17, 19 & 20 of the counter affidavit, it is deposed that in the course of investigating the whereabouts of Dr.Olejeme, the team discovered that the applicant [as surety] collected money to take her on bail contrary to his declaration on the bail bond [Exhibit EFCC E]. Also, Dr.Olejeme “*parted with some of her illicitly acquired landed properties to the Applicant in the process of procuring her bail.*” In order to “*unravel the apparent complicity*” between the applicant and Dr.Olejeme, officials of the respondent invited the applicant for inquiry. In paragraphs 21 & 22 thereof, EzireUfuoma stated that when the applicant reported on 13/11/2018, he was interviewed. The applicant further reported on 19/3/2019 and failed to produce Dr.Olejeme. He was “*detained in furtherance of investigation relating to the depositions in paragraphs 17, 18 and 19 above*” i.e. the alleged “*complicity*”.

In his affidavit, the applicant did narrate how he was briefed by Dr.Olejeme to handle her case and how he was made to sign as surety for her bail. He stated that he signed as surety for Dr.Olejeme because the then Acting Chairman of the respondent [Ibrahim Magu] said he would only allow him [applicant] being the then 2nd Vice President of NBA and one other prominent Nigerian to take her on administrative bail. In paragraph 37 of his further affidavit, the applicant denied the allegation of “*complicity*” between him and Dr.Olejeme; and stated that he was paid for his professional legal services rendered to Dr.Olejeme and nothing more.

Oluchi Vivian Uche Esq., learned counsel for the applicant, submitted that the detention of the applicant by the respondent from 19/3/2019 to 11/4/2019 is illegal. This is because the respondent failed to grant bail to the applicant within 48 hours of his arrest and detention and the respondent restricted the applicant's movement despite a clear order of the Court directing the respondent to either charge him to court or release him on bail.

For his part, learned counsel for the respondent posited that the applicant knew the risk of taking on bail someone who was already evading arrest and still *"proceeded to chance it. The only logical explanation for the action of the Applicant is that he acted having been paid money at the detriment of the cause of Justice."* Further, the applicant - knowing that the respondent would not have allowed a paid person to stand as surety to a suspect - deceived the officials of the respondent by declaring in the bail recognizance form that no money was received for the bail of Dr. Olejeme.

Sir Steve Odias submitted that these acts of the applicant are tantamount to perversion of course of justice and even giving false information to officials of the respondent. He emphasized that the above facts disclosed reasonable grounds to suspect that the applicant has committed a criminal offence and this formed the basis for arresting and detaining him. The case of **Mitin v. C.O.P., Bayesla State & Ors. [2017] LPELR-43064 [CA]** was referred to. The respondent's counsel further submitted that respondent did not act arbitrarily in detaining the applicant.

As I said earlier, the respondent is statutorily empowered to investigate all cases of economic and financial crimes and in the course of its investigation, it can arrest and detain a suspect. Thus, the respondent was empowered under section 35[1][c] of the 1999 Constitution [as altered] to detain the applicant as it did on 19/3/2019 based on the allegation of his “*complicity*” with Dr.Olejeme. However, the respondent must act in accordance with the law and not arbitrarily.

Section 35[4] of the 1999 Constitution provides that where a person is arrested or detained upon reasonable suspicion of his having committed a criminal offence, he shall be brought before a court of law within a reasonable time i.e. within one day or two days as provided in section 35[5] thereof. The Court holds the considered view that the effect of the provisions of section 35[1][c], [4] & [5] of the 1999 Constitution [as altered] is that where the person arrested and detained upon reasonable suspicion of his having committed a criminal offence is not charged to court within a reasonable time, it is expedient or necessary that he should be released on bail.

In the instant case, I hold that the respondent was under obligation to charge the applicant to court within a maximum period of two days or release him on bail. The respondent failed to do so but detained the applicant until 11/4/2019 [a period of about 21 days]without any order of court. The Order made by this Court on 26/3/2019 for the applicant to be charged to court on or before 28/3/2019 or be released on bail was disobeyed and/or ignored by the

respondent. I hold that the respondent acted unlawfully, arbitrarily and unconstitutionally when it detained the applicant from 19/3/2019 to 11/4/2019. Therefore, the investigation of the alleged “*complicity*” between the applicant and Dr. Olejeme cannot justify his detention from 19/3/2019 to 11/4/2019.

[II] Filing of Motion No. M/4599/2019 for the applicant to show cause why he should not forfeit his recognizance or bond of N1 billion.

In paragraphs 23 & 24 of the counter affidavit, EzireUfuoma stated that within 48 hours of the applicant’s detention, the respondent filed a Motion on Notice No. M/4459/2019 before this Court on 21/3/2019 for the applicant to show cause why the recognizance [or bond] should not be forfeited to the Federal Government. However, the said process was refused and returned by the Registrar of this Court to respondent about a week afterwards purporting to be acting on the directive of the Honourable Court. The Motion on Notice is Exhibits EFCC G. While the said Motion was not accepted by this Court, this Court granted an *ex parte* order directing the respondent to charge the applicant to court within 48 hours or release him on bail.

In his effort to justify the detention of the applicant for about 21 days, learned counsel for the respondent stated that the respondent was seeking to bring applicant to court to show cause why the bail bond should not be forfeited. He relied on section 35[1][b] of the 1999 Constitution [as altered], which provides that the liberty of a person may be curtailed “... *in order to secure the*

fulfilment of any obligation imposed upon him by law". Section 31 of ACJA imposes an obligation on the applicant as surety to produce the person that he took on bail. Sir Steve Ehi Odias submitted that the bond is liable to be forfeited for failure to produce the suspect.

Sir Odiase further argued that it was in the light of the duty of the respondent to bring the applicant to court to secure the fulfilment of his obligation as surety that it filed Motion No. M/4459/2019 on 21/3/2019 for the applicant to show cause why the bond or recognizance should not be forfeited to the Federal Government. The Motion was a way of bringing the applicant to Court. If the respondent's said Motion had been accepted by this Court, the applicant would have been brought before the Court.

The viewpoint of learned applicant's counsel is that the respondent violated the rights of the applicant by detaining him on the basis of suretyship. It was argued that suretyship, which is contractual, does not constitute any offence for which the applicant could be arrested and detained. In other words, suretyship, as an undertaking before an administrative body whether in respect of a criminal investigation or not, is a civil contract and the remedy or its enforcement lies in a civil suit. Thus, suretyship cannot be the basis for the applicant to be subjected to arrest and detention. Oluchi Vivian Uche Esq. further submitted that the fact of standing as a surety to a person alleged to have committed a criminal offence does not translate to a joint criminal

liability of the surety with the person alleged to have committed an offence. The case of Yusuf v. FRN [2016] LPELR-41811 [CA] was referred to.

Let me first comment on the respondent's deposition in the counter affidavit that the Court "*refused and returned*" Motion on Notice No. M/4599/2019 to the respondent and granted an *ex parte* order for the applicant to be charged to court within 48 hours. This deposition forms the basis for the submission of Sir Steve EhiOdiase that if the respondent's said Motion had been accepted by this Court, the applicant would have been brought before the Court.

It appears to me that the deposition that the Court "*refused and returned*" Motion No. M/4599/2019 is a subtle way to smear or impugn thereputation and integrity of the Court. I must quickly point out that the deposition is not the complete narration of facts about the said Motion as the deponent did not state the reason why the Motion was returned to the respondent. It is therefore necessary to state the complete facts in order to show that the said deposition and the submission of Sir Steve EhiOdiase that the applicant would have been brought before the Court if the respondent's Motion No. M/4599/2019 had been accepted by this Court are, with profound respect, misguided and uncharitable.

The complete facts are that when the Registrar of the Court presented Motion No. M/4459/2019: *Federal Republic of Nigeria V. Ubani Monday Onyekachi & Anor.* for my directive, I noticed that the Motion was not an

interlocutory application that could be brought in *Charge No. CR/365/2017: Federal Republic of Nigeria V. Umar Munir Abukabar & Ors.*, which was/is pending before me.

I was of the view - and I still hold the view - that Motion No. M/4459/2019 for Ubani Monday Onyekachi and Christopher F. Enai to show cause why the recognizance they entered into for the bail of Dr. Olejeme should not be forfeited was an Originating Motion which ought to be assigned by the Hon. Chief Judge before it could be entertained by any Judge. Since the Motion was not assigned to me by the Hon. Chief Judge, I promptly directed the Registrar to return the copies of the Motion to the learned counsel for EFCC to enable him take same to the process unit of the Court for assignment by the Hon. Chief Judge. The Registrar later told me that he duly informed the learned counsel for EFCC of the Court's directive. Thereafter, I did not hear anything about the said Motion.

It must be noted that Charge No. CR/365/2017 - under which Motion No. M/4459/2019 was purportedly filed - came up on 26/3/2019. On that date, Sir Steve Ehi Odiase moved Motion on Notice filed on 11/3/2019 for amendment of the Charge. The application was granted and the defendants took their plea on the Amended Charge. On 27/3/2019, the matter also came up and the prosecution opened its case with the evidence of PW1. On these two dates, which were about 5 days after the filing of *Motion No. M/4459/2019*, the

learned prosecuting counsel did not say anything about the Motion. This was an indication that EFCC was satisfied with the directive of this Court.

In the ordinary or natural course of events, the learned counsel for EFCC would not have collected the said Motion if he was not satisfied with the reason given by the Court for its inability to entertain the Motion, which, as I have said, was an Originating Motion. Further, if EFCC was not satisfied with the said directive given by the Court, its counsel would have complained to the Court on 26/3/2019 or 27/3/2019 when Charge No. CR/365/2017 came up or on any other date; or it would have complained or reported to My Lord, the Hon. Chief Judge that I refused to entertain the Motion.

The respondent also complained that while the Court did not accept the said Motion, it granted the *ex parte* order aforesaid. Let me point out that the present Originating Motion and the *Motion Ex Parte No. M/4487/2019* for an order for the release of the applicant and Hon. Christopher Enaiwere assigned to me by the Hon. Chief Judge on 25/3/2019; the Assignment Sheet is in the case file. This Court entertained the suit and granted the *ex parte* order because the matter was assigned to me by the Hon. Chief Judge.

Now, can the detention of the applicant by the respondent from 19/3/2019 to 11/4/2019 be justified by the filing of *Motion No. M/4459/2019* on 21/3/2019? There is no doubt that the Motion is a civil action for the enforcement of the remedy of forfeiture of the recognizance or bond, which the applicant signed

as surety for the bail of Dr. Olejeme. The Court agrees with the applicant's counsel that the enforcement of the remedy of forfeiture of the recognizance entered into by the applicant as surety cannot be the basis or ground for his detention. The Court holds that section 35[1][b] of the 1999 Constitution [as altered] relied upon by the respondent's counsel to justify the detention of the applicant for about 21 days is not applicable to the instant case.

Even if this Court accepted to entertain the Motion, did the respondent expect that the applicant will continue to be in detention until the determination of the Motion? My considered view is that it was unlawful or improper for the respondent to continue to detain the applicant merely because it filed the Motion for him to forfeit his recognizance. When the applicant reported to the respondent on 19/3/2019, the respondent would have released him even though it intended to file a Motion for him to forfeit his recognizance. This is more so as the applicant was already enjoying the bail granted on 13/11/2018.

The Court therefore rejects the submission of Sir Steve Ehi Odiase that if the said Motion had been accepted by this Court, the applicant would have been brought before the Court. Clearly, the Motion was not the appropriate court process for bringing applicant to a court in respect of any criminal allegation against him.

The decision of the Court is that the detention of applicant by the respondent from 19/3/2019 to 11/4/2019 cannot be justified by the filing of Motion No. M/4459/2019.

[III] Failure of the applicant to provide a surety for his bail on 13/11/2018.

In paragraph 21 of the counter affidavit, EzireUfuoma stated that when the applicant reported on 13/11/2018, he was interviewed and allowed to go home *"on condition that he would produce a surety to duly take him on bail on his subsequent visit."* In paragraph 54 thereof, it is deposed that *"the applicant was granted bail and he was not able to meet up with the bail condition after he was released first to enable him to produce a surety."*

On the other hand, in paragraph 22 of the further affidavit, the applicant stated that when he was invited by the respondent and questioned about the whereabouts of Dr.Olejeme, he was given administrative bail terms and conditions which he fulfilled and left. In paragraph 42 thereof, the applicant further stated that it is rather laughable to hear that the respondent is in the business of releasing accused persons without fully perfecting their bail terms and conditions.

Learned counsel for the respondent submitted that another reason for the applicant's detention was the need to release him to reliable sureties in view of the emerging facts about his role in the release and disappearance of

Dr.Olejeme. He stated that the condition for bail given to applicant to produce public servants of grade level 14 was not met when he was first released on bail. He was expected to meet the said condition subsequently but he did not. Sir Steve EhiOdiase submitted that the respondent is relieved from liability where it is shown that a detainee was granted bail but he or she failed to meet the conditions for bail. He cited the cases of Ene&Ors. v. Bassey&Ors. [2014] LPELR-23524 [CA] and Daniel v. EFCC [2016] LPELR-41173 [CA].

In the reply on points of law, Oluchi Vivian UcheEsq.submitted that the respondent's claim that the applicant was granted bail but the terms and conditions were not fulfilled is "*rather laughable and not tenable.*" There is no record whatsoever before the Court evidencing the claim by the respondent.

It is trite law that he who asserts a fact has the evidential burden to prove it. See Nsefik v. Muna [2007] LPELR-3934 [CA].The respondent has the burden to prove its assertion that the applicant did not fulfil the conditions for his bail before he was released on 13/11/2018; and that he was detained for about 21 days because he failed to fulfil the conditions for the bail granted on 13/11/2018. As rightly submitted by learned counsel for the applicant, the respondent did not present any cogent or credible evidence to prove this assertion. I note that the period from 13/11/2018 to 19/3/2019 is more than 4 months. In my humble but firm opinion, it is incredible and untenable that

the respondent released the applicant on bail on 13/11/2018 when he did not fulfil the conditions for his bail and it did nothing for 4 months.

Having found that the grounds or reasons put forward by the respondent to justify the detention of the applicant for about 21 days are unsustainable, the decision of the Court on Issue 1 is that the detention of the applicant by the respondent from 19/3/2019 to 11/4/2019 was a violation or breach of his right to personal liberty and right to freedom of movement.

ISSUE 2

Is the applicant entitled to the reliefs sought against the respondent?

In reliefs 1, 2 & 3, applicant seeks a declaration that his arrest and detention by the operatives of the respondent from 19/3/2019 till 11/4/2019 were illegal, wrongful and constitute a violation of his fundamental rights. In the light of the decision of the Court under Issue 1 that the detention of the applicant by the respondent from 19/3/2019 till 11/4/2019 [for a period of about 21 days] was wrongful, unlawful and a violation of his fundamental rights, relief 2, which is similar to [and covers] reliefs 1 & 3, is granted.

The applicant in relief 4 seeks a declaration that the arrest and detention of the applicant by the respondent for more than 20 days based on a contractual suretyship in respect of Dr. Olejeme is illegal, wrongful and constitutes a violation of his fundamental rights. The respondent has shown that the

applicant was arrested and detained for “*apparent complicity*” between him and Dr.Olejeme in the process of her bail. Relief 4 is refused.

In relief 5,the applicant seeks a declaration that he is entitled to public apology and adequate compensation from the respondent for the violation of his fundamental rights. In relief 6, he seeks an order directing the respondent to tender public apology to the applicant in at least 3 National Dailies. Relief 7 is an order for the Court to direct the respondent to pay the applicant the sum of N5 billion as general and exemplary damages for the violation of his rights without following due process of law.

Learned counsel for the applicant relied on the provisions of section 36[6] of the 1999 Constitution [as altered] and submitted that the applicant is entitled to compensatory damages and public apology. On the other hand, learned counsel for the respondent relied on the principle that a party who suffers injury due to the legitimate exercise of right by another cannot succeed in an action for damages against the latter.

Section 35[6] of the 1999 Constitution [as altered] provides:

“Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, “the appropriate authority or person” means the authority or person specified by law.”

By the above provision, the applicant is entitled to compensation and public apology in view of the decision of the Court that his detention from 19/3/2019 to 11/4/2019 was unlawful. However, I am mindful of section 46[2] of the 1999 Constitution [as altered], which provides that the Court “... *may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this Chapter.*”

In the circumstances of this case, the Court holds that the applicant is entitled to general damages or compensation of the sum of N12,000,000.00 [twelve million] Naira. The Court also holds that the said sum awarded as general damages or compensation is sufficient remedy to the applicant for the pain and loss he suffered as a result of the violation of his fundamental rights. Thus, the order for public apology as prayed will not be appropriate or necessary. The Court hereby declines to grant an order for the respondent to render public apology to the applicant. Relief 6 is refused.

In relief 8, the applicant seeks an order restraining respondent from further arresting or detaining him without charging him to court on the basis of the facts of this matter. In paragraph 27 of the counter affidavit, the respondent stated that based on its investigation, it has filed a criminal charge against the applicant; the Charge No. CR/280/2019 filed on 10/4/2019 is Exhibit J. In count 2 of Exhibit J, it is alleged that the applicant and Christopher Enai “*with intent to influence the course of justice in the proceedings of Charge No. CR/365/2017 ...*

did refuse to produce Dr.NgoziOlejeme whom you undertook to produce as sureties when she was needed in the course of the criminal matter ...”

Since the applicant has been charged to court, I am of the respectful view that this relief has been overtaken by events or circumstances; the relief no longer has any utilitarian value. Relief 8 is refused.

Conclusion:

All said, the Court enters judgment for the applicant against the respondent and make the following orders:

1. A declaration that the detention of the applicant from the 193/2019 till 11/4/2019 by the operatives of the respondent without arraigning him before a court of competent jurisdiction for any offence is illegal, wrongful and constitutes a violation of his fundamental rights to personal liberty and freedom of movement as enshrined in sections 35 and 41 of the 1999 Constitution [as altered] respectively.
2. A declaration that the applicant is entitled to compensation from the respondent for the violation of his fundamental rights.
3. The sum of N12,000,000.00 [twelve million] as general damages or compensation for the violation of his fundamental rights to personal liberty and freedom of movement by the respondent.
4. Cost of N100,000.00 [one hundred thousand Naira].

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel: