

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI**

THIS WEDNESDAY THE 30TH DAY OF MARCH, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/2282/2021

BETWEEN:

**1. ONOSE DEEP OIL & GAS LIMITED
2. CHIEF JIM O. ELUENI
3. MR ADEDEJI ADESEMOYE** } **APPLICANTS**

AND

**1. THE ECONOMIC AND FINANCIAL CRIMES
COMMISSION
2. THE INSPECTOR GENERAL OF POLICE** } **DEFENDANTS**

JUDGMENT

This application is brought pursuant to the Fundamental Rights Enforcement Rules 2009. The application is dated 10th September, 2021 and filed same date at the Court's Registry.

The Reliefs sought as contained in the statement accompanying the application are as follows:

- a. A DECLARATION that the incessant harassment, intimidation, invitation and threatening of the Applicants with arrest and detention by the respondents is illegal and unconstitutional as it violates the Applicants' rights to human dignity and personal liberty guaranteed by Section 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 5 and 6 of the African Charter on**

Human and Peoples Rights (Ratification and Enforcement) Act (CAP A9) laws of the Federation of Nigeria, 2004.

- b. A DECLARATION that a matter which has been reported and investigated by a law enforcement agency (2nd Respondent) and same subjudice; a sister agency (1st Respondent) does not have the power again to invite, arrest and detain the applicants on the same matter already pending before a court of competent jurisdiction.**
- c. An ORDER restraining the respondents whether by themselves, their officers, agents, privies, servants or any person howsoever called from further harassing, intimidating, inviting and threatening the applicants with arrest over the subject of this suit forthwith.**

The application is supported by a 26 paragraphs affidavit with 12 annexures marked as **Exhibit A-L**. A brief written address was filed in compliance with the FREP Rules in which one issue was raised as arising for determination to wit:

Whether or not the applicants are entitled to the relief claim (sic)?

The address of the Applicants which forms part of the Record of Court is essentially anchored on the fact that the actions of Respondents in constantly harassing, inviting, intimidating and threatening to arrest and detain Applicants at the instigation of certain people over a matter that is purely civil or contractual in nature constituted a violation of Applicants' rights to personal liberty and their dignity as human beings as enshrined in the 1999 Constitution which accordingly entitled them to the Reliefs sought on their claim.

In opposition, it was only the 1st Respondent that filed a Response. The 2nd Respondent chose or elected not to respond despite service of the originating court process and hearing notice all through the course of this proceedings.

The counter-affidavit of 1st Respondent was filed on 24th November, 2021 with 3 annexures annexed and marked as **Exhibits EFCC1 to EFCC3**. A written address was filed in compliance with the FREP Rules in which one issue was equally raised as arising for determination as follows:

Whether the Applicant is entitled to the Reliefs sought based on the actions of the 1st Respondent.

The address of 1st Respondent which equally forms part of the Record of court is basically to the effect that the constitutionally guaranteed Rights of Applicants were not infringed in any manner by their actions which was based on a petition which they were statutorily empowered to investigate.

The Applicants then filed a further affidavit with a brief reply on points of law which sought to essentially accentuate the points already made in the substantive address. No purpose will be served repeating the submissions.

At the hearing, counsel on both sides of the aisle relied on the processes filed and adopted the submissions in their written address and urging that the court grant the application and on the other side of the aisle, that the application be dismissed.

I have given an insightful consideration to all the processes filed by parties together with the oral amplification by respective learned counsel and it seems to me that notwithstanding the volume of the processes filed, the issue to be resolved from the materials before the court falls within a very narrow legal compass and that is **whether on the facts and materials before court, the Applicants have proved that their fundamental human rights were threatened and or violated by Respondents to entitle them to the reliefs sought.**

This umbrella issue raised by court conveniently accommodates the issues raised by parties and has succinctly and with sufficient clarity brought out the pith of the contest subject of the present inquiry and it is on the basis of the said issue that I shall proceed to presently decide the matter.

ISSUE 1

Whether on the facts and materials before the court, the Applicants have proved or established that there fundamental rights were threatened and or violated by Respondents to entitled them to the Reliefs sought.

Now it is settled principle of general application that an applicant who seeks for the enforcement of his fundamental rights under **Chapter IV of the Constitution** has the onus of showing that the reliefs he claims comes within the purview of the fundamental rights as contained in chapter IV and this is clearly borne out by the express provision of **Section 46 of the 1999 Constitution and Order 11 Rule 1 of the FREP Rules 2009. In Uzoukwu V.**

Ezeonu II (1991)6 N.W.L.R (pt.200)708 at 751, the Court of Appeal in construing Section 42 of the 1979 Constitution which is in *pari material* with Section 46 of the 1999 Constitution stated as follows:

“The Section requires that a person who wishes to petition that he is entitled to a fundamental right:

- a. Must allege that any provision of the fundamental rights under chapter IV has been contravened, or**
- b. Is likely to be contravened, and**
- c. The contravention is in relation to him”.**

The reliefs which therefore an applicant may seek under the FREP Rules are specifically limited to any of the fundamental rights prescribed and embodied in chapter IV of the Constitution. See **Dongtoe V. Civil Service Commission Plateau State (2001)19 WRN 125; Inah V. Okoi (2002)23 WRN 78; Achebe V. Nwosu (2002)19 WRN 412.**

I had at the beginning spelt out the reliefs of applicants in their statement accompanying the application and they clearly come within the purview of fundamental rights under **Chapter IV of the 1999 Constitution.** The burden therefore was on the Applicants alleging that their fundamental rights have been contravened or likely to be contravened to place before the court cogent and credible facts or evidence to enable the court grant the reliefs sought. See **Fajemirokun V. C.B.C.I (Nig) Ltd (1999)10 N.W.L.R (pt.774)95.**

In resolving this dispute, it may be necessary to give a brief background facts of the matter, for a proper appreciation of the issues to be resolved. I will only summarise the essence of the case as made out on each side.

On the side of the Applicants, the essence of the case made out on the affidavits filed is that the Applicants and in particular 1st Applicant had an agreement with Afe Babalola University, Ado Ekiti (hereinafter referred to as ABUAD) attached as **Exhibit A** and by the terms, the 1st Applicant agreed to act as an agent to ABUAD for the facilitation of procurement of FOREX for the repayment of ABUAD loan facility of USD One Million Dollars obtained from African Development Bank (AFDB).

The crux of the dispute is that ABUAD claimed not to have received all the dollar equivalent which ought to have been transferred to the account it

furnished as agreed. The Applicants contended otherwise; that all the moneys for the repayment of the said loan has been transferred into the account.

In view of this impasse, ABUAD now petitioned the AIG Zone 7 over the dispute and in November 2020, both 2nd and 3rd Applicants were charged at the Magistrate Court vide **Exhibit J** for offences of criminal conspiracy, criminal breach of trust and cheating.

It is the case of the Applicants that despite the petition and ongoing court action, ABUAD wrote a similar application to the 1st Respondent who has now commenced another round of investigations by inviting Applicants notwithstanding that they have been informed and aware of the prior petition on the same issues and the criminal charge already filed against Applicants.

The case of the 1st respondent is simply that it received a petition vide **Exhibit EFCC1** against Applicants in relation to acts of Economic and Financial Sabotage, conspiracy, criminal conversion and Advance Fee Fraud and they commenced investigations as allowed by law. That the invitations to the Applicants was simply part of the process of investigations to hear from them over the serious allegations leveled against them and that they have never honoured any of the invitations. Indeed at the hearing, counsel to the 1st Respondent submitted that if they were aware or had prior knowledge of the investigation and prosecution by a sister agency, they won't have commenced a fresh round of investigations.

I have above deliberately and in some detail sought to capture the essence of the narrative on both sides. The kernel or crux of this dispute is whether the actions of the Respondents within the context of the precise complaints of Applicants can legally and be constitutionally countenanced.

Now it is not in doubt that the provisions of **Sections 34 and 35 of the 1999 Constitution** provides for the right to dignity of the human person and the right to personal liberty.

The sections provides as follows:

“34(1) Every individual is entitled to respect for the dignity of his person, and accordingly:

- a. **No person shall be subjected to torture or to inhuman or degrading treatment;**
- b. **No person shall be held in slavery or servitude; and**
- c. **No person shall be required to perform forced or compulsory labour.”**

“35(1) 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-:

- a. **In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty.**
- b. **By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him 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.**
- d. **In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare.**
- e. **In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community. or;**
- f. **For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.**

The above sections appear to me clear and unambiguous such that the task of interpretation can even hardly be said to arise. **Section 34(1)** emphasises treatment of the human person with respect and therefore any act which makes people lose their sense of self respect, value or worth would be degrading.

Section 35(1) on the other hand places premium on the personal liberty of every person and any deprivation of same must be consistent with the procedure permitted by law. The court obviously serves as a necessary bulwark in the protection of these fundamental rights and any transgression or proved violation of these constitutional provisions are met with necessary legal consequences.

The task before me now is to apply the above clear provisions in relation to the alleged infractions and determine whether these infractions were proved.

I start with the complaint of **“incessant harassment, intimidation, invitation and threatening of the Applicants with arrest and detention by the Respondents...”** captured under **Relief 1**.

In addressing these complaints, there will appear to be **two dimensions** particularly in respect to actions taken by the **Respondents** which are two independent bodies. I will situate the complaints against these two (2) institutions separately. I will here allow the affidavit of Applicants speak for itself. The entire trajectory of the narrative of Applicants in the 26 paragraphs affidavit deposed to by 2nd Applicant from paragraphs 1-18 involves the narrative relating to the contractual relationship it had with ABUAD and the problems arising from same.

The complaints streamlined by Applicants only surfaced in the following paragraphs as follows:

“19. Instead of ABUAD to find out with its bank why the monies sent into its account by the 1st applicant did not reflect, it rather chosen (sic) to use the 1st and 2nd respondents to harass, intimidate and arrest the applicants with the spurious allegations of cheating, economic sabotage and fraud.

20. First, ABUAD petitioned the applicants to the officers of the 2nd respondent, AIG Zone 7, Abuja sometime in November, 2020 with the unsubstantiated allegation of fraud, cheating, conspiracy etc. The matter is now pending at the magistrate court 4, Wuse Zone 6, Abuja. The First Information report is attached as Exhibit J.”

I pause here.

There is absolutely nothing in the **affidavit of Applicants** from paragraph 1 up to paragraph 18 situating any involvement of Respondents in the contractual impasse between parties at any time. That is very clear.

By paragraph 20 above, the Applicants stated that ABUAD petitioned officers of 2nd Respondent over certain criminal allegations “**sometime in November 2020**” and they were charged to court vide **Exhibit J**. The said charge or First Information Report (FIR) shows it was filed on 24th November, 2020. A copy of this petition was not attached to situate when it was written. Let us however take that it was written in November 2020 as alluded to by Applicants themselves. There is however nothing in the affidavit showing when or how many times the Applicants were invited and there is equally nothing to show or situate any **harassment** or **intimidation** by 2nd Respondent as alleged and the court cannot speculate.

Now if as indicated by Applicants themselves that the first petition to the 2nd Respondent, the police, was in November 2020 and the charge was filed on 24th November 2020 before a competent court, this shows that the police or 2nd respondent acted timeously in investigating and submitting the matter to a competent court. Indeed by **Exhibit C**, the bail condition attached to the further affidavit of Applicants shows clearly that 2nd Applicant was even granted administrative bail on the same day the police filed the FIR on 24th November, 2020 suggesting or showing a clear respect for the constitutionally guaranteed Fundamental Rights of Applicants to personal liberty and respect for the dignity of their person.

It is really difficult on the basis of the rather scanty affidavit evidence and or dearth of critical and credible evidence against 2nd Respondent to situate a legitimate complaint of “**incessant harassment, intimidation, invitation and threatening of Applicants with arrest and detention.**” There is nothing on the affidavit to situate these complaints against 2nd Respondent. The 2nd Respondent, as it were, did the needful and the matter is now before a competent court. **Furthermore** there is nothing in the affidavit situating that after the FIR or charge was filed, the 2nd Respondent has invited or called upon the Applicants at any other time. What is interesting here is that nothing was said about the fate of the FIR filed by 2nd Respondent. Has hearing or trial commenced? Nothing was said about this so I keep my peace.

Now with respect to the 1st Respondent, the Applicants in paragraphs 22 and 23 stated as follows:

“22. The applicants are again shocked when the Applicants received letters of invitation by the men and officers of the 1st respondent at the Ibadan Zone Office Oyo State, over the same matter pending before a competent court. The letters of invitation are attached as Exhibit K and L.

23. The applicants now live in apprehensive and fear that the ABUAD has all it takes to subject the less morals (sic) like the applicants to solitary confinement and degrading inhuman treatment since ABUAD still reported the matter already before the court to the 1st respondent.”

It is obvious and not in dispute that the invite by EFCC clearly came after the filing of the charge in 2020. The letter of invitation to 2nd Respondent vide **Exhibit K** is dated 4th May, 2021 while that of 3rd Respondent vide **Exhibit L** is dated 20th May, 2021. The contents of the letters are the same. I will therefore reproduce the contents of one of the letters, **Exhibit K** thus:

“ATTENTION: Chief Jim Elueni, MD/CEO

INVESTIGATION ACTIVITIES

INVITATION LETTER

This Commission is investigating a case in which your name and your company featured.

2. In view of the above, you are kindly requested to report for an interview with the undersigned through the Head, Economic Governance Section at the EFCC Zonal Officer, No. 16 Rev'd Oyebode Crescent, Iyaganku G.R.A, Ibadan on Monday, 17th May, 2021 by 10am prompt. You are requested to come along with all relevant documents pertaining to your transactions with Afe Babalola University, Ado-Ekiti.

3. This request is made pursuant to Section 38 (1) and (2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004.

4. Your cooperation will be highly appreciated, please.

KANU IDAGU
ZONAL HEAD, IBADAN”

The above letter speaks for itself. It is clear and unambiguous. It is simply an invitation and in coming the applicant was requested to bring all relevant documents pertaining to “your transactions with Afe Babalola University, Ado Ekiti.” No more.

On the materials, this is the **only invitation** sent out by 1st Respondent to which the Applicant did not respond to. It is important to underscore the point that on the materials, there is absolutely no evidence showing that when 1st Respondent wrote **Exhibit K** from Ibadan where the petition was lodged by ABUAD that they knew or had knowledge of a similar petition written in Abuja to 2nd respondent and that there is a pending court case against Applicants. As stated earlier, these are two independent security Agencies.

Relief 2 claimed by Applicants in the circumstances will appear now on the facts of this case to be largely an academic issue having no bearing with the proved facts of this case and undermined abinitio. The court has no luxury or obligation to deal with academic issues. Now it is true that in the further affidavit filed by the Applicants, they contended vide **paragraphs 4, d, e and f** that even after they informed the 1st Respondent of the pendency of the action in court, that **“the 1st Respondent insisted that the Applicants must honour the invitation and subsequently frozen the bank account of 1st and 2nd Applicants.”**

Again on the materials, there is no evidence to situate that after the information of the pending case was communicated to 1st Respondent, they insisted that they must honour the invitation and the court cannot again speculate. There is no further invitation attached to support this assertion. There is equally no evidence that the account of 1st and 2nd Applicants was closed at the instructions or directions of 1st Respondent. These are essentially bare speculations bereft of cogent or credible evidence.

Again on the basis of the materials supplied by Applicants, there is really nowhere to situate any **“incessant harassment, intimidation, invitation and threatening of the Applicants with arrest and detention”** by 1st Respondent. As already alluded to, the Applicants did not even respond or visit 1st Respondent on the one and only invitation they received.

In the circumstances, it is difficult to situate the validity of the “apprehension and fear” that the Applicants claim to live under. Again, what is the basis for the rather unfounded statement that **“ABUAD has all it takes to subject... applicants to solitary confinement and degrading Human treatment...”** The ABUAD is said to be a University or Institution of higher learning. They are certainly not the 1st or 2nd Respondents. There is nothing on the evidence to show or even suggest that they have any powers of control or authority over the activities of 1st and 2nd Respondents. Most importantly, the 1st and 2nd Respondents are creatures of the law and their operations guided by the law. There is nothing within the purview of the laws creating these institutions allowing for arbitrariness or highhandedness in the discharge of their responsibilities.

The bottom line here is that the Applicants have not supported their contentions of incessant harassment, intimidation, invitation and threats to arrest with cogent and credible evidence.

The complaints however made by Applicants bring into focus, once again the proper and precise ambit of the powers of EFCC and other law enforcement agencies in relation to letter(s) of complaint or petition(s) written by individual(s), institutions and or concerned citizens raising allegations of crime and calling for an investigation.

As already alluded to in this case, it is the petition written to EFCC vide **EFCC1** that set in motion the process that is now subject of the present complaint.

In my opinion, the essence obviously of this letter of complaint or petition is to enable the Law Enforcement Agency to evaluate the petition and exercise their discretion on what further actions to take dependent on the strength and credibility of the complaint. The EFCC by the enactment setting it up clearly has a plenitude of powers. The following **Sections 6(a, b, c, e, h and i); 7(1)(a) and 7(2)(f)** under the EFCC (Establishment) Act 2004 among others are relevant, to wit:

6: “The Commission shall be responsible for:

(a) The enforcement and the due administration of the provisions of this Act.

- (b) The investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc;**
- (c) The co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority;**
- (e) The adoption of measures to eradicate the commission of economic and financial crimes;**
- (h) The examination and investigation of all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies or groups involved;**
- (i) The determination of the extent of financial loss and such other losses by government, private individuals or organisation....”**

7(1)(a): The Commission has power to:

- (a) Cause investigations to be conducted as to whether any person, corporate body or organisation has committed an offence under this Act or other law relating to economic and financial crimes...”**

7(2) The Commission is charged with the responsibility of enforcing the provisions of...

- (f) Any other law or regulations relating to economic and financial crimes, including the Criminal Code and Penal Code.**

By Section 46 of the Act, Economic and Financial Crimes was defined to mean:

“The non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and

illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.”

The above provisions appear to me clear and unambiguous.

I have deliberately and *in extenso* referred to some of the salient provisions of the EFCC Act above to show the undoubted powers of the commission to investigate Economic and Financial Crimes and the due and proper enforcement of all laws relating to Economic and Financial Crimes.

The EFCC may independently and for good reasons, commence investigations on violations of relevant laws on Financial and Economic Crimes. These investigations, may also for good reasons, commence based on complaints of individual citizen. Indeed I am of the view that citizens have the civic duty and responsibility to help in realising the noble objective of this enactment by reporting Economic and Financial Crimes and related wrong doings for proper investigation according to law. As earlier stated, the EFCC evaluates the complaint and then exercise their discretion one way or the other in the interest of the public guided by the law. When a citizen reports a matter in such circumstances, I cannot accept the contention that such citizen is doing anything wrong. The decision whether to take further steps is logically a judgment call for the EFCC to make. Indeed there is also nothing stopping them from abandoning the complaint altogether if it has no justifiable basis.

Now because of the trajectory of the narrative of the Applicants in this case, it appears to me necessary to emphasise that there must be some level of appreciation of how the law enforcement agencies operate. For me, a logical and necessary corollary duty or implication of these complaints or petitions must involve the processing of the complaint or petition and this must necessarily require the basic step of investigation which is the examination of the facts of the situation. There may or may not be the need to call in people for questioning in the process. The process may take a period of time and the invitation for questioning may also be repeated. There is no cast iron formular on how the process will pan out. These are issues largely dictated by the facts uncovered in the process of investigation. The only point to add here is that the process must be conducted with civility and decorum. Where investigation reveals a *prima facie* crime has been committed, it is now for the EFCC to prosecute same or forward the results of their investigations to the necessary

prosecutorial agencies. Where no crime or criminality is disclosed after such investigations, that puts an effective end to the matter.

I do not therefore accept that it can be argued with validity that ABUAD has violated any laws in writing the petition, **Exhibit EFCC 1**. In the same vein, I incline to the view that the right to report acts of being a victim of fraud or indeed any act of criminality cannot be denied anybody on the supposed or anticipated fear of violation of human rights. The guiding principle is for all law enforcement agencies to exercise this discretion with scrupulous fidelity to the rule of law at all times and where they have so acted in the exercise of their undoubted powers, except it can be shown or established that they acted outside the purview of their statutory powers or indeed acted mala fide, the EFCC cannot be faulted.

The call to attend an interview as disclosed by Applicants here, without more, does not tantamount to an indictment or accusation of any wrong doing with respect to the complaint leveled specifically at 1st Applicant. The Right to personal liberty or respect for the dignity of the person is therefore not infringed when such invitations are extended to private citizens. There is really nothing in evidence to support the allegation of arbitrariness in the invitation of Applicants. The bottom line really is that while the court seeks at all times to prevent abuse and any infraction of the rights of citizens, it cannot however be seen to shield anybody from criminal investigation by stopping a body empowered by law and the constitution to carry out such investigation. See **A.G Anambra V. Chris Uba (2003)13 N.W.L.R (pt.947)67**. There is clearly on the materials no credible proof of any wrongdoing by the 1st and 2nd Respondents in the circumstances.

The actions of Respondents here is consistent with the constitutional provisions situated above and I cannot locate any infringement or violation of the same or extant provisions of any law.

There is also nothing on the evidence to support the allegation that Respondents have continuously threatened and or harassed Applicants with threats of further arrest and detention. In **Fajemirokun V C. B Nig. Ltd (supra) 588 at 613 – 614 H-H**, the Supreme Court stated thus:

“From the claims of the appellant who was the applicant at the trial court, the duty to establish that his fundamental right was breached rested

squarely on the appellant. It is trite law that he who asserts must prove. See Sc. 135 – 137 of the evidence Act which lay down the fundamentals of such proof.... Thus, it is certainly the appellant who would fail if no evidence at all were given on either side. The appellant was therefore, bound to prove the existence of those sets of facts which curtailed or threatened to curtail his right of freedom of movement.”

All these complaints by Applicants cannot simply be left hanging in the air for purposes of securing a decision on infraction of human rights. I only need add here that the business of court does not include that of speculating. A court of law qua justice only acts or decides on the basis of what has been clearly demonstrated and creditability proved. I must also add that bare averments of infractions in an affidavit cannot suffice especially here where they are seriously controverted or challenged. I do not think that the assertions of applicants can stand or be accepted as correct without proof. The mere stating of a fact does not prove the correctness or credibility of that fact without cogent evidence to substantiate same. In as much as the assertion does not relate to any fact which the court can take judicial notice, it behoves applicants to substantiate same with proof.

The point therefore is that in a fundamental rights enforcement matter, which is a serious matter, the court will not declare an applicant’s right(s) to be infringed simply because he says so and in the absence of credible evidence or proof. The materials also supplied by applicant in the circumstances must also not be such that is incredible, improbable or sharply falls below the standard expected in a particular case. It must establish that the rights claimed exist and has been infringed upon or is likely to be infringed. See **Neka B.B.B Manufacturing Co Ltd. V. ACB Ltd. (2004)2 N.W.L.R (pt.858)**.

The salutary point in matters of this nature is simply that the court in carrying out its invaluable judicial oversight functions must be circumspect in this very delicate balancing Act between protection of the fundamental rights of citizens from unnecessary attack on one hand and on the other hand providing sufficient space to the law Enforcement Agencies to carry out their statutory duties in what we must concede are challenging times or circumstances.

In rounding up, I feel compelled to quote the admonition I made in the unreported case in **Suit No: HC/CV/3199/13 between Dr. Ezekiel Izougu V.**

Dr. Mrs Catherine Okparaeke & Anor delivered on 10th April, 2014 where I stated as follows:

“Counsel qua advocate must therefore resist the convenient temptation to disguise every invitation, arrest and detention by Law Enforcement Agencies as a violation of human rights. How would the law Enforcement Agencies really meaningfully carry out their duties, if they are denied the opportunity for example to invite a person for necessary questioning? I just wonder. This position should however not be misconstrued. As stated earlier, the constitution itself has provided necessary safeguards to prevent abuse and the court still remain a veritable bulwark to prevent any violations or transgression(s) of these rights...”

I only again need emphasise on the imperatives of the EFCC and indeed all law enforcement agencies like all progressive institutions and notwithstanding the challenges they face, must keep strict fidelity to the rule of law in all their actions. There is therefore no room for highhandedness or arbitrariness in the discharge of their statutory duties and responsibilities. They similarly must not succumb to the unwieldy dictates or whims of any person no matter how wealthy or powerful. The EFCC must ensure that their actions at all times serve only to enhance the quality of liberty and dignity of the person as enshrined in the 1999 constitution. The investigative and prosecutorial paths, where the EFCC now play critical roles must as much as possible be kept pristine clear, transparently free, fair and unfettered. I leave it at that.

I have here carefully considered the materials before me and I cannot locate any violation of the relevant constitutional provisions. There is absolutely no evidence of such quality and cogency beyond controverted speculative averments showing that the Applicants rights were threatened and or violated and the conclusion I reach is that the Applicant’s narrative lacks credibility and value. I so hold.

It is a fundamental principle of our legal system in respect of facts averred that where they are weak, tenuous, insufficient or feeble, then it would amount to a case of failure of proof. A plaintiff whose affidavit does not prove the reliefs he seeks must fail. See **A.G. of Anambra State V. AG of Fed. (2005)All F.W.L.R (pt.268)1557 at 1611; 1607 G-H.**

In the final analysis, the issue raised as arising for determination is answered in the negative. All Applicants' claims or reliefs on the alleged violation of their fundamental human rights are not availing. The Applicants' claims therefore fail and same are accordingly dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. E. Jatto, Esq., for the Applicants.**
- 2. A.S. Tonwell for the 1st Respondent.**