IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE

COURT CLERKS:	**JAMILA OMEKE & ORS**
COURT NUMBER:	**HIGH COURT NO. 24**
CASE NUMBER:	**SUIT NO. FCT/HC/CV/2496/2021**
DATE:	**24/3/2022**

BETWEEN:

1. MR. FELIX OKONKWO
2. IKENNA CHIBUIKE
3. OKAFOR LAWRENCE UGOCHUKWU

……APPLICANTS

AND

1. NIGERIA POLICE FORCE
2. STATE SECUTRITY SERVICE

……RESPONDENTS

APPEARANCES:
C.C. Emenari Esq for the Applicants
Respondents absent and unrepresented.

JUDGMENT

By an originating motion dated 27th day of September, 2021, and filed on the 28th of September, 2021, brought pursuant to Section 6(6) and Sections 33, 34, 35, 36, 37 41 and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Order 2 Rules 1, 2, 3, 4, 5 and 6 of the Fundamental Rights Enforcement Procedure Rules 2009, Articles 4, 5, 6, 7(b) and (d) of the African Charter on Human and People's Rights (Ratification and Enforcement Act, Cap 10 Laws of the Federation 1999)

and under the inherent jurisdiction of this Honourable Court; the Applicants herein prayed the Court for the following reliefs:

"***(a). A DECLARATION that the invasion of the Applicants' residence at Umunakwa Ifite Oraifite in Ekwusigo Local Government Area of Anambra State, where the Applicants work and reside, by officers of the 1st and 2nd Respondents, and other security agencies, the sporadic and indiscriminate shooting, and consequent arrest and continued detention of the Applicants since the 6th day of June, 2021 till date, by the agents of the Respondents without being charged to Court or released, is illegal, unlawful, oppressive and unconstitutional as it violates the Applicants' Fundamental Rights to Life, dignity of human persons, personal liberty, fair hearing, private and family life and right to freedom of movement, as guaranteed by Sections 33, 34, 35, 36, 37 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011.***

(b). AN ORDER OF THIS HONOURABLE Court directing the Respondents to unconditionally release the Applicants from their custody forthwith.

(c). COMPENSATORY AND EXAMPLARY DAMAGES OF N1, 000, 000, 000.00 (One Billion Naira Only) against the Respondents jointly and severally, for the gross violation of the Applicants' fundamental rights.

(d). AN ORDER of this Honourable Court directing the Respondents to tender unreserved public apology to the Applicants in two National dailies and any other forms of reparation that the Honourable Court may deem fit to grant.

(e). AND FOR SUCH FURTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstances."

The application is accompanied by a Statement in support of the application containing the names and descriptions of the Applicants, an Affidavit of 18 paragraphs deposed to by Barbara Onwubiko a Senior Associate in the law firm of I. C. Ejiofor & Co, the Applicants' Solicitors,

Exhibits marked A, B, C, D, E, F as well as a Written Address all in support of the originating motion.

From the Court's record, all the Respondents were duly served with the originating motion as well as hearing notices for hearing of the application.

However, 2nd Respondent in opposition to the originating motion, filed a Counter Affidavit of 21 paragraphs deposed to by Grace Alfred a personnel of the State Security Service (SSS) attached to the Legal Services Department National Headquarters, Abuja. Attached to the Counter Affidavit are Annextures marked SSS1, SSS2, and SSS3, accompanied with a Written Address in support.

In response to the Respondent's Counter Affidavit, the Applicants filed a Further Affidavit of 20 paragraphs deposed to by Chinwe Umeche the Managing Counsel in the law firm of I.C. Ejiofor & Co, Solicitors and Counsel to the Applicants. Exhibits annexed marked Exhibits F1, F2, and a Reply on points of law.

In further opposition, 2nd Respondent also filed a Notice of Preliminary Objection brought pursuant to Order VIII Rules 1, 2, 3 and 5 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, and the inherent jurisdiction of the Honourable Court, praying for the following:-

> ***"(i). AN ORDER of this Honourable Court striking out the suit for lack of jurisdiction.***
>
> ***(ii). AN ORDER striking out the suit for being incompetent.***
>
> ***(iii). AND for such further or other Order(s) as this Honourable Court may deem fit to make in the circumstances."***

The grounds predicating the Preliminary Objection are as follows:

> "***(1). That the 2nd Respondent/Applicant is an agency of the Federal Government of Nigeria.***
>
> ***(2). That the High Court of FCT does not have jurisdiction to entertain a suit against an Agency of the Federal Government, as in this suit.***

(3). That an application for the enforcement of fundamental rights cannot be instituted by more than one person.

(4). That an application filed by more than one person for the enforcement of fundamental rights is incompetent.

(5). That there is a pending suit filed by the Applicants against the Respondents with the same facts and reliefs sought at the Federal High Court sitting at Awka in Anambra State with Suit No: FHC/AWK/54/2021, FHC/AWK/55/2021, FHC/AWK/58/2021, as EXHIBIT SSS 1, 2, 3 respectively.

(6). That the action of the Applicants constitutes an abuse of Court process.

(7). That this Court lacks the jurisdiction to hear and determine any matter that constitutes an abuse of Court process."

In response to the Notice of Preliminary Objection, the Applicants filed a Reply on points of law dated 15th day of December, 2021.

Now, since the Notice of Preliminary Objection touches on the jurisdiction of the Court, t is pertinent that it be considered first.

In the 2nd Respondent's address in support of the Preliminary Objection, three issues for determination were formulated thus:-

(i). Whether or not this Honourable Court has jurisdiction to entertain a suit against an Agency of the Federal Government in civil causes and matters as this.

(ii). Whether an application filed by more than one person to enforce a right under the Fundamental Rights (Enforcement Procedure) Rules is not incompetent.

(iii). Whether this Honourable Court has jurisdiction to determine a matter that is an abuse of Court process."

In arguing issue one, learned Respondent's Counsel submitted that this Court does not have jurisdiction to entertain this suit. That the 2nd Respondent was established by the National Securities Agencies Act, Cap

74 Laws of the Federation (LFN) 2004 and SSS Instrument No. 1 of 1999, thereby making them agencies of the Federal Government saddled with the responsibility of prevention, detection and investigation of threat to National Security including threat to law and order.

Submitted in that regard that the 2nd Respondent articulates how to carry these duties, which are translated to the personnel in the form of VISION and MISSION. That these decisions are usually in the form of DIRECTIVES through containment and investigative measures, including intelligence gathering, searches and arrest. That while discharging these administrative directives or actions, and in the event of any breaches that may arise, the appropriate Court to determine such actions is the Federal High Court. Reference was made to Section 251(1)(q)(r) and (s) of the 1999 CFRN (as amended) as well as the cases of ***NEPA V OJUKWU (2002) 18 NWLR (Pt. 798) P.79, per Uwais, C.J.N at 97, Paras, E – G, DGSS V OJUKWU (2006) 13 NWLR (Pt. 998) P. 575.***

Reference was also equally made to the definition of the word "ADMINISTRATION" in the Black's Law Dictionary 9th Edition at P. 49, and the cases of ***CBN V AITE OKOJIE (2015) LPELR-24740 (SC) PP. 26-29, Paras D – F; INEGBEDION V SELO-OJEMEN (2013) LPELR-19769 per ODILI JSC*** on the interpretation of Section 251 on the exclusive jurisdiction of the Federal High Court where a party is an agency of the Federal Government, no matter the issues involved.

Learned Counsel further cited ***CBN V AITE OKOJIE*** (supra) in support of this line of argument on the exclusive jurisdiction of the Federal High Court pursuant to Section 251 CFRN 1999 (as amended).

It is the submission of learned Counsel on this issue that a critical look at the Fundamental Right Enforcement Procedure Rules 2009, will show that the drafters did not intend to take away the exclusive jurisdiction from the Federal High Court.
Reference was made to Order 11 Rule 1, as well as Section 46(1) and (2) of the 199 CFRN (as amended).

Finally on this issue, learned Counsel urged the Court to hold that this Court does not have jurisdiction and strike off the name of the Respondents.

On issue two, it is argued that joint applications for enforcement of fundamental rights is incompetent.

Reliance was placed on Section 46 of the CFRN 1999 (as amended) as well as the Court of Appeal decision in ***KPORHAROR & ANOR V YEDI & ORS (2017) LPELR-42418 (CA), per BADA (JCA) PP. 8 – 13.***

Submitted in that regard that in the instant case, the Applicants are three in number, and assuming without conceding that their fundamental rights were infringed upon, the rights of one differs in content and degree from the complaint of the other. That the parties ought to institute their individual suit which may be consolidated by an Order of this Honourable Court.

Reliance was placed on the cases of ***CHIEF OF NAVAL STAFF ABUJA & ORS V ARCHIBONG & ANOR (2020) LPELR-51845 (CA); OLAGBENRO V OLAYIWOLA (2014) 17 NWLR (Pt. 1436) P. 313 at 371 – 372.***

Learned Counsel then urged the Court to strike out the suit.

On issue three, learned Counsel argued by resolving this issue in the negative and submitted in that regard that this Honourable Court cannot exercise jurisdiction over a matter that is an abuse of Court process. It is learned Counsel's contention that the suits filed by the Applicants in these matter with Suit Nos: FHC/AWK/54/2021, FHC/AWK/55/2021, FHC/AWK/58/2021 respectively against the Respondents on the same subject matter are pending at the Federal High Court, Awka.

Argued further that where there are two cases before a Court on the same subject matter and same parties, the latter in time ought to be dismissed. That in the instant case, the action of the Applicants constitutes an abuse of Court process which Courts time without number, condemned in strong terms.

Reliance was placed on the cases of ***NTUKS V NPA (2007) 31 NSCQR 430; IBOK VS HONESTY II (2007) 6 NWLR (Pt. 1029) P. 70, Paras D – E; OKOREAFFIA VS AGWU (supra) at 189, E – F; EHIRIM V GOV OF IMO STATE (2014) LPELR-24359 (CA).***

In conclusion, learned Counsel urged the Court to hold that it lacks jurisdiction to entertain this matter and to strike out the suit for lack of jurisdiction.

Meanwhile, the Applicants/Respondents on their part, equally formulated 3 issues for determination in their reply on points of law to wit:-

(i). Whether the Honourable Court has the jurisdiction to entertain the instant suit against the 2nd Respondent as an Agency of the Federal Government?

(ii). Whether an application for enforcement of fundamental rights filed by more than one Applicant is competent?

(iii). Whether the Applicants' suit constitutes an abuse of Court process?

It is submitted by the learned Counsel that due to the constitutional nature of fundamental rights which are considered a distinct kind (sui generis), they enjoy distinct procedural rules and therefore on issue of jurisdiction generally, any High Court (Federal or State) has jurisdiction to entertain fundamental rights action.

Reference was made to Section 46(1) of the 1999 CFRN (as amended).

That the 2nd Respondent's argument that it is an agency of the Federal Government and as such this Honoruable Court does not have jurisdiction to entertain this suit, betrays a lack of appreciation of the current position of the law with regards to the concurrent jurisdiction of the Federal and State High Courts with respect to matters brought under the Fundamental Rights Enforcement Rules.

In response to the case of CBN VS AITE OKOJIE (supra) heavily relied upon by 2nd Respondent, learned Applicants' Counsel submitted that in the 2018 case of ***FEDERAL UNIVERSITY OF TECHNOLOGY MINNA, NIGER STATE & ORS Vs BUKOLA OLUWASEUN OLUTAYO (2018) 7 NWLR (Pt. 1617) 176,*** that the Supreme Court effectively overruled itself on the concurrent jurisdiction of the Federal and State High Courts to entertain matters relating to enforcement of fundamental rights.

Learned Counsel further cited the case of ***ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) V WOLFGANG REINT (2020) LPELR-49387 (SC)*** where apex Court cited the case of ***FEDERAL UNIVERSITY OF TECHNOLOGY MINNA, NIGER STATE & ORS V BUKOLA OLUWASEUN OLUTAYO (supra)*** with approval.

It is therefore argued that the current position of the law is that in actions for the enforcement of fundamental rights, both the Federal and State High Courts have concurrent jurisdiction regardless of whether any of the parties is a Federal Government Agency. Reliance was also placed on the case of ***NIGERIAN ARMY V MOHAMMED BELLO (2019) LPELR-47080 (CA).***

The Court is also urged to resolve issue one in Applicant's favour and to discountenance the arguments canvassed in that regard.

On issue two, learned Counsel submitted that the contention of 2nd Respondent's Counsel in paragraphs 3.23 to 3.30 of their address on joint application being incompetent in fundamental rights action, is not the true and current position of the law.

Counsel referred the Court to the cases of ***MAITANGARAN & ANOR V DANKOLI & ANOR (2020) LPELR-5205 (CA); INCORPORATED TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE & ORS V NIMC (2021) LPELR-55623 (CA); GOV'T OF ENUGU STATE OF NIG. & ORS V ONYA & ORS (2021) LPELR-52688 (CA).***

Learned Counsel submitted in that regard that the Court may allow many Applicants to be joined together in the same application (such as in this case) most especially when the infraction is against several persons concerning the same subject matter on the same grounds.

The Court is urged to so hold and resolve issue two in favour of the Applicants and discountenance the 2nd Respondent's argument in that regard.

On issue three, it is submitted by learned Counsel, that it is trite that an abuse of Court process arises where multiple actions between the same parties on the same subject matter are constituted deliberately to the annoyance and irritation of the Court; and the adverse party.

It is submitted that the Applicants instituted an enforcement of fundamental rights action at the Federal High Court Awka, with the said Suit Nos: FHC/AWK/54/2021, FHC/AWK/55/2021, FHC/AWK/58/2021 and subsequently discontinued the said suits on the 24th of September, 2021 in accordance with rules of Court upon discovery and confirmation that the Applicants were in the 2nd Respondent's detention facility at their National Headquarters in Abuja within the jurisdiction of this Court. That the

Applicants only instituted the present suit after they effectively discontinued the earlier suits filed at the Federal High Court, Awka.

On the effect of a Notice of Discontinuance, Counsel referred the Court to the cases of ***TAILOR & ORS V BALOGUN & ORS (2012) LPELR-19673 (CA); IMPARTIAL HOMES MORTGAGE BANK LTD V MOUNT GILGAL INVESTMENTS LTD & ORS (2017) LPELR-42711 (CA),*** in submitting that once a notice of discontinuance is filed, the suit automatically terminates. That in the instant case the Applicants' Notice of Discontinuance was filed before issues were joined between parties at the Federal High Court, therefore the matter stands dead.

Reliance was further placed on the cases of ***OLUMBA & ORS V THE REGISTERED TRUSTEE OF THE BROTHERHOOD OF THE CROSS & STATE (2012) LPELR-CA/C/179/2010 (CA); ABAYOMI BABATUNDE V PAN ATLANTIC SHIPPING AND TRANSPORT AGENCIES LTD & ORS (2007) LPELR-698 (SC); UNITED BANK FOR AFRICA PLC V DANA MOTORS LIMITED (2018) LPELR-44101 (CA).***

Finally, learned Counsel urged the Court to hold that the present suit does not constitute an abuse of Court process and resolve issue three in favour of the Applicants.

In determining this Preliminary Objection, I shall adopt the three issues for determination as formulated by the Applicants in their address.

The first issue is whether the Honourable Court has the jurisdiction to entertain the instant suit against the 2nd Respondent as an agency of the Federal Government.

First of all, let me state here that due to the importance and significance of Fundamental Human Rights, the Constitution of the Federal Republic of Nigeria 1999 (as amended) has specifically provided for the procedure to be adopted in ensuring that the rights guaranteed under the constitution are enforceable by citizens of this country.

Section 46(1) and (2) of the CFRN 1999 (as amended) provide thus:-

"46(1) Any person who alleges that any of the provisions of this

Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

46(2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and 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."

Yet again, the above constitutional provisions are replicated in Order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009. Under these Rules (F.R.E.P) Rules, 2009 meaning of "Court" was given as:-

"Court means the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja."

Now, the crux of issue one in this Preliminary Objection is hinged on the provision of Section 251(1)(q)(r) and (s) of the CFRN 1999 (as amended) which confers exclusive jurisdiction on the Federal High Court to entertain actions where the Federal Government or any of its Agencies is a party.

No doubt, in the instant suit, the 2nd Respondent i.e. State Security Service is an Agency of the Federal Government of Nigeria.

That being the case, the question is whether same robs this Honourable Court of its jurisdiction to entertain the instant suit?

Indeed, there are several decisions where the appellate Courts have held that in actions involving the Federal Government or any of its Agencies, it is the Federal High Court that has exclusive jurisdiction to entertain same.

Please see ***NEPA V EDEGBENRO & 15 ORS (2002) 18 NWLR (Pt. 798) 79; OLUTOLA V UNI-ILORIN (2005)123 LRCN 217; AYVENI VS UNIVERSITY OF ILORIN (2000) 6 NWLR (Pt. 644) 290; OLARUNTOBA-OJU VS DOPAMV (2008) 7 NWLR (Pt. 1089) 148; OSAKUE V FEDERAL***

COLLEGE OF EDUCATION (TECHNICAL) ASABA (2010) 10 NWLR (Pt. 1201) 1; INEGBEDION VS SELO-OJEIMEN (2013) VOL 1, MJSC.

However, on matters of Fundamental Rights Proceedings, the appellate Courts have also held that the Federal High Court, State High Courts and High Court of the F.C.T have concurrent jurisdiction even in actions where the Federal Government or any of its agencies are parties.

Please see ***GRACE JACK V UNIVERSITY OF AGRICULTURE MAKURDI (2004) 14 WRN 51; OMOSOWAN VS CHIDOZIE (1998) 9 NWLR (Pt. 566) 477; ZAKARI VS I.G.P & ANOR (2000) 6 NWLR (Pt. 607)66; OYAKHIRE VS OMAR (1998) 3 NWLR (Pt. 542) 438.***

Similarly, in the case of ***PRINCE ABDUL RASHEED ADESUPO ADETONA & ORS VS IGELE GENERAL ENTERPRISES LTD (2011) LPELR-159 (SC)*** His Lordship Mohammed JSC, held that there are areas where both the Federal High Court and High Court of a State enjoy concurrent jurisdiction, an example of such is the enforcement of Fundamental Human Rights in Chapter IV of the Constitution.

In their address on this issue, the 2nd Respondent relied heavily on the recent case of CBN V AITE OKOJIE (supra). I refer to paragraph 3:10 of their address.

Now, while I have noted the above Supreme Court decision as well as the arguments canvassed in that regard, I have also considered a more recent Supreme Court decision on this issue. Same was cited by the Applicants in reply their address. I refer to the case of ***ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) V WOLFGANG REINL (2020) LPELR-49387 (SC)*** where the Court held thus:-

> ***"….I am of the view and I do hold that the decision of this Court in Jack V University of Agriculture Makurdi (supra) and the authorities of Bronik Motors Ltd V Wema Bank Ltd and Tukur V Government of Gongola State (supra) represent the correct position of the law in this regard."***

In a recent decision of this Court in ***FEDERAL UNIVERSITY OF TECHNOLOGY MINNA, NIGER STATE & ORS V BUKOLA OLAWASEUN OLUTAYO (2017) LPELR-43827 (SC) @ 27 – 32 D – E,*** I expressed the following opinion.

"It is quite evident that Section 46(1) of the 1999 Constitution (as amended) above refers to "a High Court of a State without any restriction. The violation of a citizen's fundamental right is reviewed so seriously that the framers of the Constitution sought to ensure that no fetters are placed in the path of a citizen seeking to enforce his rights. In other words, the provision ensures that he has access to any High Court as long as t is within the State in which the alleged infraction occurred. Indeed, it would negate the principle behind the guarantee if fundamental rights of a citizen were to have any obstacle placed in the path of enforcing those rights. There is no ambiguity in the provision of the constitution or of the Fundamental Rights (Enforcement Procedure) Rules…..regarding which Court has jurisdiction to entertain an application for the enforcement of fundamental rights. The decision of this Court in JACK V UNIVERSITY OF AGRICULTURE MAKURDI (2004) ALL FWLR (Pt. 200) 1506 @ 1518, B – D has put the matter to rest…."

"I adopt the view so expressed in the instant case. So long as the enforcement of the Applicant's fundamental right is the main claim in the suit and not an ancillary claim, the Federal High Court and the State High Courts, including the High Court of the FCT, have concurrent jurisdiction to entertain it. See: TUKUR VS GOVERNMENT OF GONGOLA STATE (supra)." Per KEKERE EKUN, J.S.C (PP. 14 -24) (Para F)."

Therefore, I have carefully considered the fact that the main claim of the Applicants on the face of the origination motion is for enforcement of their fundamental rights, and going by the recent decision cited above i.e Economic and Financial Crimes Commission (EFCC) V WOLFGANG REINL (supra) being the most recent decision on the issue, it is my view that this Honourable Court has the requisitive jurisdiction to entertain this suit. I so hold.

The 1st issue is hereby resolved in favour of the Respondents against the Applicants.

On issue two which is whether an application for Fundamental Rights filed by more than one Applicant is competent?

Now, I have considered the arguments canvassed on both sides regarding this issue as well as the authorities cited in that regard.

I have noted that in quite a few decisions, the Court of Appeal has held that joint applications in fundamental rights actions is incompetent.

On this premise, I refer to the cases of ***UDO V ROBSON & ORS (2018) LPELR-45183 (CA), per Adah JCA PP: 18 -25, paras C –A; KPORHAROR & ANOR V YEDI & ORS (2017) LPELR-42418.***

However, having considered the submissions of the Applicants/ Respondents in paragraphs 4.6 and 4.7 of their address, it is my view that from the recent decision of the Court of Appeal in the case of ***GOV'T OF ENUGU STATE OF NIGERIA & ORS V ONYA & ORS (2021) LPELR-52688 (CA); INCORPORATE TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE & ORS V NIMC (2021) LPELR-55623 (CA)*** that the Court of Appeal has overruled itself in the decisions of ***UDO v ROBSON (supra) and KPORHAROR & ANOR V YEDI & ORS (supra).***

Consequently therefore, once many Applicants have a common interest and common grievance in enforcing their fundamental rights, such as in this case, such joint application is competent. I so hold.

Issue two is accordingly resolved in favour of the Applicants/Objectors.

On issue three which is whether this suit constitutes an abuse of Court process, it is the argument of the 2nd Respondent particularly in paragraphs 3.31 and 3.32 of their address that the Applicants filed Suit Nos: FHC/AWK/54/2021, FHC/AWK/55/2021, FHC/AWK/58/2021 respectively against the Respondents herein on the same subject matter, pending at the Federal High Court, Awka, thus this instant suit constitutes an abuse of Court process.

Now while it is conceded by the Applicants that the said suits were filed at the Federal; High Court, Awka, it has equally been argued in paragraphs 5.2 and 5.4 of their address that the Applicants subsequently discontinued the said suits on the 24th day of September 2021. Submitted moreso that the law is settled, that once a Notice of Discontinuance is filed, the suit automatically terminates.

Further submitted in that regard in Applicant's paragraphs 5.6 and 5.7 of their address, that by discontinuing the said suits, filing a fresh suit does not constitute an abuse of Court process.

In the instant case, the Applicants have premised their reason for discontinuance of the said suits on the ground allegedly that upon discovery and confirmation that the Applicants were in the 2nd Respondent's detention facility at their National Headquarters in Abuja within the jurisdiction of this Court, decided to discontinue the earlier suits and filed a fresh suit i.e the instant suit.

On the effect of filing a Notice of Discontinuance, the Court of Appeal has held in the case of **BALOGUN & ORS V TAILOR & ORS (2012) LPELR-19673 (CA)** as follows: -

> ***"Of course, authorities abound to the effect that a suit that is yet to be fixed for hearing, can be withdrawn, readily, even without the leave of Court, by filing a Notice of Discontinuance of same in the Court where the suit, automatically brings the suit to an end, from the moment it is filed. The logic for this appears simple, the Plaintiff who filed a suit, cannot be compelled to pursue the suit, if he elects to withdraw same, prior to the fixture of same for hearing which would have compromised the rights/interest of the opponent…." Per MBABA, JCA at PP. 20-21, paras A –C.***

The Applicants have submitted in paragraph 5.4 of their address that Notice of Discontinuance was filed before issues were joined between parties at the Federal High Court, Awka.

Now, the meaning and nature of an abuse of Court process has been succinctly given by both sides in the authorities cited in their respective Written Addresses, therefore, this suit does not constitute an abuse of Court process. I so hold.

The 3rd and final issue for determination in this Notice of Preliminary Objection is resolved in favour of the Applicants against the 2nd Respondent/Applicant. I so hold.
Consequently therefore, the Preliminary Objection is hereby overruled and accordingly dismissed.

I shall now move to consider the main suit.

The grounds upon which the reliefs are sought in this suit are as follows:-

"(a). By virtue of Section 46(1) of the 1999 Constitution (as amended) and Order 1 Rule 2(1) of the Fundamental Rights (Enforcement Procedure) Rules, any person who alleges that any of the provisions of Chapter 4 of the Constitution to which he is entitled to has been, is being or likely to be contravened in any state in relation to him may apply to the High Court in the State for redress.

(b). The Applicants are Nigerian citizens who are entitled to their fundamental rights to life, dignity of human person, fair hearing, private and family life, personal liberty, and freedom of movement guaranteed by Sections 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria 1999, as amended, 2011.

(c). The arrest and continued detention of the Applicants by the operatives of the Respondents from the 6th day of June, 2021 till date, a period of almost four months, violates their Fundamental Rights to personal liberty, fair hearing, dignity of human person and freedom of movement, and consequently illegal and unconstitutional.

(d). The Respondents have no authority whatsoever to detain the Applicants for the period of time above stated without complying with the constitutional and statutory provisions of the laws of the Federal Republic of Nigeria.

(e). The Respondents cannot exercise their power outside the provision of the law, and thus, the arrest and detention of the Applicants must follow due process and procedure set down by the Constitution of the Federal Republic of Nigeria 1999 as amended and other relevant statutory provision.

(f). The Applicants are constitutionally entitled under Section 36 subsection (6) of the 1999 Constitution of the Federal Republic of Nigeria as amended (2011) to the payment of compensation and public apology from the Respondents

for the gross violation of their rights to life, dignity of human person, personal liberty, fair hearing, private and family life and freedom of movement."

In the Written Address in support of this originating motion, two issues for determination were formulated thus: -

"(a). Whether the Applicants' Fundamental Rights have been violated by the Respondents in the circumstances of this case.

(b). If issue no. 1 above is answered in the affirmative, whether the Applicants are entitled to damages and public apology?"

In arguing the first issue, learned Counsel to the Applicants submitted that it is an established as averred in the deposition which is borne out of the information given by one Mr. Joel Ejiofor, who witnessed the brutal arrest of the Applicants by the Respondents' agents, the manner in which they were dehumanized and beaten like common criminals, and subsequently abducted and taken to an unknown destination. That the Respondents have continued to hold the Applicants in unlawful custody since the 6th day of June, 2021, till date, a period of almost four months, without charging them to Court or releasing them on bail.

Submitted moreso, that it is trite law that the essence of the provisions of the Fundamental Rights enshrined in the 1999 Constitution as amended is to protect the citizen's Fundamental Rights from abuse and violation by authorities and persons.

Reliance was placed on the cases of ***JIM-JAJA VS C.O.P RIVERS STATE (2013) 6 NWLR (Pt. 1350) 225m Pg. 230, Para 2; ANOZIE V IGP (2016) 11 NWLR (Pt. 1524) 387 pgs. 389-390. Para 2 (CA); EMEKA V OKAFOR (2017) 11 NWLR (Pt. 1577) 410, Pg. 423, Para 1; ADETONA & ORS V IGELE GENERAL ENTERPRISES LTD (2011) 7 NWLR (Pt. 1248) 535; JIM JAJA V COP (2011) 2 NWLR (Pt. 1231) 375, Paras 6 and 10; DURUAKU V NWOKE (2015) 15 NWLR (Pt. 1483) 417, Pages 423 and 425, Paras 2 and 5;*** **as well as Articles 5 and 6 of the African Charter**. Learned Counsel also referred the Court to Sections 35(1) and 34(1) of the CFRN 1999, as amended.

Submitted in that regard that the violation of the Applicants' human rights to liberty and dignity of human persons, in the instant case, became so pronounced in the way and manner the Applicants' residence was invaded in the wee hours of the night, and the Applicants were consequently beaten and arbitrarily abducted and detained by the Respondents, for a period of over three months, without any order of Court justifying the detention since 6th day of June, 2021 till date.

Reference was made to the case of ***FEDERAL REPUBLIC OF NIGERIA VS IFEGWU (2003) 15 NWLR (Pt. 848) at 133 and GANI FAWEHINMI VS ABACHA (1996) 5 NWLR; THERESA ONWO V NWAFOR OKO & ORS (1996) 6 NWLR (Pt. 456) 584 at 604 -606; AWOYERA VS INSPECTOR GENERAL OF POLICE (2015) I NHRLR 58; EKPU VS ATTORNEY GENERAL OF THE FEDERATION (1998) 1 HRLRA (Page 421) Para A.***

Learned Counsel submitted further that it is the duty of this Honourable Court to protect the rights of the Applicants even before it is being infringed upon, and more especially in the present circumstance that the Applicants' rights have been so brazenly and grossly infringed upon by the Respondents.

Reliance was placed in the cases of ***ONDO STATE BROADCAST CORPORATION VS ONDO STATE HOUSE OF ASSEMBLY (1985) 61 NCLR, 333 at 337; EZE V IGP (2017) 4 NWLR (Pt. 1554) 44; OKAFOR V LAGOS STATE GOVT. (2017) 4 NWLR (Pt. 1556) 404.***

Submitted that Section 37 of the 1999 Constitution (as amended) provides for the guarantee and protection of the privacy of citizens and their homes. That this is a fundamental right which cannot be waived. Submitted that the invasion of the Applicants' residence by the Respondents' agents violates the Applicants' rights to private and family life.

Reliance was placed in the case of ***OJOMA V STATE (2014) LPELR-22942 (CA).***

It is further submitted that the invasion of the Applicants' residence does not fall within the purview of derogations envisaged under Section 45(1) of the 1999 Constitution as amended and urged the Court to so hold.

Reliance was also placed on Sections 35(4) and (5) of the 1999 Constitution, to argue that in the instant case, the arrest and detention of

the Applicants took place where there is a Court of competent jurisdiction within a radius of forty kilometers. Thus, the Respondents have no discretion in complying with the above constitutional provisions of the grand norm/law of our father land.

It is submitted that the Applicants have made out a case as shown in their affidavit evidence that their fundamental rights to life, fair hearing, dignity of human persons, right to private and family life and right to personal liberty and movement, all provided for under the African Charter on Human and People's Rights under Chapter IV of the 1999 CFRN as amended, were grossly violated by the Respondents. The Court is urged to so hold.

Arguing issue two, learned Counsel submitted that an Applicant whose arrest and detention has been shown to be illegal and unconstitutional, is entitled to award of compensatory damages for the infringement of his fundamental rights as guaranteed under the Nigerian constitution and the African Charter on Human and People's Rights.

Reference was made to the case of ***MINISTER OF INTERNAL AFFAIRS VS SHUAABA (1982) 3 NCL, 915 at 953.***

Submitted further that the Applicants were not only arrested and detained for a period of almost four months, they were also severely beaten and tortured by the Respondents.

Submitted moreso that any trespass to the person however slight, gives a right of action to recover at any rate nominal damages. That even where there has been no physical injury, substantial damages may be awarded for the injury to the man's dignity and for discomfort or inconvenience, much more so where in the instant case the Applicants were severely beaten and tortured by the Respondents' agents.

Reliance was placed on the cases of ***YAHAYA V NPF, PLATEAU STATE COMMAND (2018) LPELR -46045 (CA); ARULOGUN V C.O.P LAGOS STATE & ORS (2016) LPELR -40190 (CA).***

Learned Counsel equally cited Section 35(6) of the CFRN 1999, as amended on payment of compensation in cases of unlawful arrest and detention, as well as the cases of ***BELLO V AG OYO STATE (supra) JIMOH V AG FEDERATION (1998) INRLE Pg 13 at 523. Para A – B;***

CHIEF CHINEDU EZE & ANOR VS IGP & 4 ORS (2007) CHR @ 43; JULIUS BERGER (NIG) PLC V IGP & ORS (2018) LPELR -46127 (CA).

Learned Counsel then argued that in the instant case, the Applicants are entitled to the payment of full compensatory damages in the sum of N1, 000, 000, 000.00 (One Billion Naira) only, public apology in two national dailies and any further Order this Court considers appropriate in the circumstance of this case, the Court is urged to so hold.

Counsel cited in support of the case of ***IGWE OKOLO V AKPOYIBO & ORS (2017) LPELR-41882 (CA).***

In conclusion, learned Counsel urged the Court to hold in favour of the Applicants and to grant all the reliefs sought.

Meanwhile, in the 2nd Respondent's address in support of their Counter Affidavit, two issues for determination were formulated thus: -

> "(***1). Whether from the facts of the case, the Applicants have disclosed any cause of action against the 2nd Respondent.***
>
> ***(2). Whether this Honourable Court has jurisdiction to determine a matter which is an abuse of Court process."***

In arguing issue one, learned Counsel submitted that this being an application for enforcement of fundamental rights, the depositions in the affidavit should disclose the cause of action.

Submitted further that from a careful perusal of the Applicants' Affidavit there is no scintilla of evidence to show that the Applicants are in the custody of the 2nd Respondent, submitted moreso that the allegation that the Applicants were arrested by the officers of the 2nd Respondent was vehemently denied and that in any event is not enough without more, as anybody from anywhere is capable of making such allegations.

That in a plethora of cases, the Court has held that he who alleges must prove and this burden lies on the Applicant who must establish his position by credible affidavit evidence and that in the current scenario, the burden has not been discharged by the Applicants.

Reliance was placed on the cases of ***ONAH V OKENWA (2010) 7 NWLR (Pt. 1194) 512 @ 535 – 536, Paras H –A; MILITARY ADMINISTRATOR , EKITI STATE V PRINCE BENJAMIN ADENIYI ALADEYELU (2007) 14 NWLR (Pt. 1055) 619 @ p. 652, Paras E – F; A.G FEDERATION V ABUBAKAR (2007) 10 NWLR (Pt. 1041) 1 @ PP. 121 – 122, Paras G –A. Section 133 of the Evidence Act and MILITARY ADMINISTRATOR BENUE STATE V ABAIHO (2001) FWLR (Pt. 45) 606 @ P.616, Paras E – F.***

Submitted that the Applicants have not placed any evidence before the Court to show that the fundamental rights of the Applicants is being violated by the 2nd Respondent. That the allegation that the Applicants were arrested by the 2nd Respondent is vehemently denied. That Applicants therefore need to place vital evidence linking the 2nd Respondent with the alleged arrest and or detention.

That the need to place vital evidence before the Court was emphasized by the Court in the case of ***FAJEMIROKUN V CB (CL) NIG. LTD (2002) 10 NWLR (Pt. 774) 95 @ P.112, Paras E –F.*** As well as the cases of ***BAKARE V NRC (2007) 17 NWLR (Pt. 1064) P. 606 @ 637; CHEVRON NIG. LTD V LONESTAR DRILLING NIG LTD (2007) 7 SC (Pt. 11) P. 27 @ P. 33; Sections 131(1)(2), 132, 133(i) and (e) and 136(1) and (2) of the Evidence Act 2011.***

Equally cited are the cases of ***OKPOKAM VS TREASURE GALLERY LIMITED & ANOR (2017) LPELR-42809 (CA); BULET INT'L (NIG) LTD & ANOR VS OLANIYI & ANOR (2017) LPELR -42475 (SC).***

It is further argued that in the instant case the Applicants have not discharged the burden of proof as laid down by law.

Submitted consequently, that it is well settled that Courts of law do not embark on conjecture or guess work as same can hardly produce a just and equitable decision.

That where Applicants seek grant of some reliefs, more particularly where those reliefs are clothed with declaratory flavor, it is the duty of such Applicant to place before the Court sufficient material upon which he will rely in granting the reliefs sought.

Submitted further that the factual situation on which the Applicants rely to support this application does not give rise to a substantive right capable of being enforced.

Reliance was placed on the case of ***FRIN V GOLD (2007) 11 NWLR (Pt. 1044) P. 1 at 18 -19.***

On issue two, I have observed that the arguments canvassed therein are the same with the arguments contained in the address in support of the Notice of Preliminary Objection.

I need not reproduced them as the issue has been earlier determined in this judgment.

In their response to the 2nd Respondent's Counter Affidavit, the Applicants filed their Further Affidavit, (as stated earlier), along with Exhibits F1 and F2 and their reply on points of law dated 15th December, 2021. The two issues formulated therein are basically the same with those formulated by the 2nd Respondent.

Submitting on issue one on whether the Applicants' suit disclosed a cause of action against the 2nd Respondent, it is submitted that from the depositions contained in paragraph 8(h) of the Applicants' Further Affidavit herein, that it is an established fact that the Applicants are presently in the custody of the 2nd Respondent, who has continued to unlawfully detain the Applicants in their custody without charging them before a competent Court of jurisdiction or releasing them on bail, but have rather denied this fact on oath as to the present incarceration of the Applicants in their custody.

That in the instant case, there exists an eye witness account of Mr. Joel Ejiofor, who was also abducted by the Respondents' agents on the 6th of June, 2021, before he was subsequently released. That the said Mr. Joel Ejiofor saw the invading operatives of the Respondents, he interacted with them and was able to identify the various agencies that participated in the joint operation. That the bare denials of the 2nd Respondent as contained in their Counter Affidavit is unavailing in the circumstance. That the set of facts clearly gives the Applicants a right of action against the 2nd Respondent.

It is further contended that the 2nd Respondent had the opportunity to deny their involvement in the illegal operation of 6th June, 2021, after the letter of

10th June 2021 was written to them, but they never did. That this therefore raises a presumption of admission by conduct.

Reliance was placed on the case of ***BELLVIEW AIRLINES LTD V FATAI FADAHUNSI & ORS (2015) LPELR-25915 (CA).***

Submitted further that the evidence of the Deponent to the 2nd Respondent's Counter Affidavit, without more, cannot trump or impeach the eye witness account of Mr. Joel Ejiofor, who personally witnessed the incident of 6th June, 2021. That Mr. Joel Ejiofor identified the 2nd Respondent's agents vide their uniforms which had "DSS" clearly inscribed on it. That it is trite that the evidence of an eye witness is the finest evidence in proceedings. Reliance was placed on the cases of ***MR. NSIKAK MATHIAS OKON V THE STATE (2019) LPELR-47476 (CA); AKINOLU V STATE (2015) LPELR-25986 (SC); CIL RISK & ASSET MGT LTD V EKITI STATE GOV'T (2020) 22 NWLR (Pt. 1738) 203, 217, Para 5 (SC); NSCDC V OKO (2020) 10 NWLR (Pt. 1732) 288 @ 295, Para 5; OKAFOR V B.D.V, JOS RANCH (2017) 5 NWLR (Pt. 1559) 385 @ 390, Para 1; EDJERODE V IKINE (2001) 13 NWLR (Pt. 745) 446; ADEMORA V ALUFO (1988) 3 NWLR (Pt. 80) 1; EMEKA V CHUBA-IKPEAZU (2017) 5 NWLR (Pt. 1589) 345 @ 350 – 351, para 1; EJURA V IDRIS (2016) 4 NWLR (Pt. 971) 538; DAPIALONG V DARIYE (2007) 8 NWLR (Pt. 1036) 332.***
It is further submitted that every citizen has the right to approach the Court where his/her fundamental rights has been, is being or likely to be violated.

Reliance was placed on the case of ***EMEKA V OKAFOR (2017) 11 NWLR (Pt. 1577) 410 @ 423, Para 1 (SC).*** That in the instant case the 2nd Respondent is a proper and necessary party to this suit having participated in the said invasion and continued detention of the Applicants.

Reliance was placed on the cases of ***OKONTA V PHILLIPS (2010) 18 NWLR (Pt. 125) 320 (SC) at 326, Paras D –E (sc); L.S.B.P.C V PURIFICATION TECHNIQUES (NIG) LTD (2013) 7 NWLR (Pt. 1352) SC, STATMAK V C.O.P (2020) 9 NWLR (Pt. 1728) 176 (CA); RANSOME-KUTI V AG FED. (1985) 2 NWLR (Pt. 6) 211 and HASSAN V EFCC (2014) 1 NWLR (Pt. 1389) 607; NIGERIAN ARMY & ORS V OYEWOLE (2021) LPELR-55113 (CA).***

On the burden of proof in civil cases learned Counsel cited Section 136(1) of the Evidence Act as well as of ***CORPORATE IDEAL INS. LTD v AJAOKUTA STEEL CO. LTD (2014) 7 NWLR (Pt. 1405) Pg. 197.***

Reliance was also placed on paragraph 8(h) of the Applicants' Further Affidavit to argue that the Applicants have shown that they are indeed in the custody of the 2nd Respondent. The Court is therefore urged to discountenance the 2nd Respondent's Counter Affidavit.

Reliance was also placed on the cases of ***UNIVERSITY OF AGRICULTURE MAKURDI & ORS V SUGH (2021) LPELR-54211 (SC); FCMB V ZARAMI (2016) 10 NWLR (Pt. 1520) 217.***

The Court is urged to resolve this issue in favour of the Applicants.

On issue two which is whether this suit constitutes an abuse of Court process, I have observed that the arguments canvassed are basically the same as those highlighted in the response to the Notice of Preliminary Objection.

Besides, this Court has already treated this issue two and will not re-visit same, having already held that the instant suit does not constitute an abuse of Court process. I so hold.

Consequently therefore, in determining this application, I shall raise two issues for determination to wit:

> "***(1). Whether the Applicants' suit has disclosed a cause of action against the 1st and 2nd Respondents.***
>
> ***(2). If the answer to issue 1 above is in the affirmative, whether the Applicants have satisfied the Court to be entitled to the reliefs sought."***

Now, on the first issue, let me begin by considering the meaning of "cause of action" and how the Court determines same, the Court of Appeal in the case of ***A.G. FEDERATION V ABACHA (2010) LPELR-8997 (CA)*** held as follows: -

> ***"I understand a cause of action to mean the entire set of facts or circumstances giving rise to an enforceable claim. It also***

includes all those things necessary to give a right of action every fact which is material to be proved to entitle the Plaintiff to succeed." Per Okoro, J.S.C @ PP 34 – 35, Paras C –D.

See also the case of ***CIL RISK & ASSET MANAGEMENT & ORS (2020) LPELR-49565 (SC).***

Similarly, the Court in the case of ***ROS JOS CO. (NIG) LTD & ANOR V AFRICANA FEP PUBLISHERS LTD & ORS (2017) LPELR-43583 (CA)***, the Court held thus:-

"My Lords, in law deciding whether the claim of a Claimant discloses a reasonable cause of action, it is the averments of the Claimant that the Court has to look at and critically examine to see if there are some questions fit for determination and if it does, then if it has disclosed a reasonable cause of action…." Per Georgewill J.C.A, PP.33 – 34, Para A.

See: ***BARBUS & CO (NIG) LTD & ANOR V OKAFOR-UDEJI (2018) LPELR-44501 (SC).***

Therefore, in fundamental rights actions which is sui generis, it is the Affidavit of the Applicant that will determine whether or not a cause of action is disclosed.

See the case of ***ALUKO & ANOR V C.O.P & ORS (2016) LPELR-41342 (CA), per Denton West, J.C.A at PP. 26 – 27, Paras D – B.***

It is the case of the Applicants as distilled from their supporting Affidavit that the Respondents herein including the 2nd Respondent conducted an illegal raid and invaded the residence of one Mr. Ifeanyi Ejiofor Esq, where the Applicants work and reside at Umunakwa Ifite Oraifite, Ekwusigo Local Government of Anambra State, on the 6th day of June, 2021, by the operatives of the 1st and 2nd Respondents and other security agencies.

The averments in the supporting Affidavit gave a harrowing account of what allegedly occurred on the faithful day in question, particularly in paragraph 10 a – x thereof.

It is further the case of the Applicants in paragraph 10x and y thereof that till date almost four months after, there has been no statement from any of

the Security Agencies, taking responsibility for the invasion and/or operation, and/or proferring any explanations for same.

That while the Anambra Police Command claimed ignorance of the entire operation, and the other security agencies maintained a studios silence on same, one Chukwuka Chizorom Ofoegbu on the said 6th day of June, 2021 a few hours after the invasion of the Applicants' residence share an obvious classified information on the said invasion and abduction of the Applicants on his facebook page, with pictures of the Applicants with their hands cuffed behind their backs, also annexed as Exhibit C.

Exhibits A and B are equally video CDs on the alleged invasion.

Further to that, it is contended by the Applicants in paragraph 11(c) and (d) thereof that all search and inquiries yielded no result notwithstanding Exhibit C.

That they subsequently got information that the Applicants were in custody of the 1st Respondent Inspector General of Police Intelligence Response Team, at their dreaded Garki Police Command F.C.T, Abuja notoriously called "Abattouir. "

However it is further averred in paragraph 11 thereof among other things that sister of the 2nd Applicant received a call from a person who did not give his name but only identified himself as one of the "Buhari Must Go" protesters claiming to have seen the Applicants in the 2nd Respondent's detention facility at their Headquarters in Abuja.

It is further averred in paragraphs 12, 13 and 14 thereof among other things that the unlawful arrest and continued detention of the Applicants without being charged to Court or being released since the 6th day of June, 2021 till date is in gross violation of their Fundamental Rights as enshrined in Chapter IV of the 1999 Constitution (as amended) and the African Charter on Human and People's Rights.

The Applicants also seek compensatory damages in that regard.

Meanwhile, the 2nd Respondent has denied all the allegations made by the Applicants i.e the alleged killing, arrest and detention of the Applicants and heavily relied on Exhibit C the facebook post of one Ijele speaks.

That the Applicants have failed to show how the facebook post of Ijele speaks is connected to the 2nd Respondent.

Averred further in their paragraphs 19 and 20 thereof, among others that paragraphs 10(c) (d)(e)(f) and (m) of Applicants' Affidavit are self contradictory in that while the deponent on the one breath averred that he came out of his compound to see the lifeless body of one Samuel Okoro (fondly called Biggie) in another breath claimed in paragraph m that they were traumatized by the extra judicial killings of the said Samuel Okoro which they witnessed.

In their Further Affidavit, the Applicants further maintained their allegations particularly in paragraphs 8 – 15 thereof.

Well I have carefully considered the Applicants' supporting Affidavit as well as the Counter Affidavit of the 2nd Respondent and equally the Further Affidavit of the Applicants.

At this juncture, it is noteworthy to point out that 1st Respondent although duly served did not file a Counter Affidavit challenging this application.

On the other hand 2nd Respondent in their Counter Affidavit had vehemently denied the allegations made by the Applicants.

I have also noted from the Applicants' Supporting Affidavit, it was averred that the Applicants were allegedly kept in the detention facility of the 1st Respondent.

As stated earlier 1st Respondent did not challenge these averments by filing a Counter Affidavit. Consequently therefore, where evidence is unchallenged and uncontroverted the onus of proof is satisfied on minimal proof since there's nothing on the other side of the scale.

See ***MOBIL OIL LTD VS NATIONAL OIL AND CHEMICAL MARKETING CO. LTD (2000) 9 NWLR (Pt. 671) page 44 @ Page 52, Para H.***

However with regards to the 2nd Respondent I have studied exhaustively all the Exhibits tendered particularly the videos, it is the duty of the Applicants to provide the Court with full disclosure of material facts linking 2nd Respondent to the Applicants' arrest and detention.

The Court cannot act on information said to have been given by an unnamed caller or unidentified source nor from a facebook post which has not been verified.

Consequently, it is my humble view that no cause of action has been disclosed against the 2nd Respondent. I so hold.

However, since 1st Respondent has not challenged this application, and it is trite that any person who alleges that any of the provisions of Chapter IV of the Constitution has been, is being or is likely to be contravened in any State in relation to him may apply to a High Court in that State for redress pursuant to Sections 46(1) and (2) of the CFRN 1999 as amended, and 2nd Respondent has denied the allegations, it can be safely presumed that the Applicants are in the custody of the 1st Respondent.

I therefore hold that Applicants have successfully disclosed a cause of action against the 1st Respondent.

The 1st first issue for determination is hereby resolved in favour of the Applicants against the 1st Respondent. I so hold.

Having held so, the 2nd issue for determination can only be resolved in favour of the Applicants.

Consequently therefore, this Court hereby makes the following Orders:

1. I hereby declare that the invasion of the Applicants' employer's residence at Umunakwa Ifite Oraifite in Ekwusigo Local Government Area of Anambra, where the Applicants work and reside, by officers of the 1st Respondent, and consequently arrest and continued detention of the Applicants since 6th day of June, 2021 till date by the Agents of the Respondents without being charged to Court or released, is illegal, unlawful, oppressive, unconstitutional as it violates the Applicants' Fundamental Rights to life, dignity of Human persons, personal liberty, fair hearing, private and family life and right to freedom of movement, as guaranteed by Sections 33, 34, 35, 36, 37 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

2. The 1st Respondent is hereby directed to unconditionally release the Applicants from their custody forthwith.

3. Compensatory damages of **₦2, 000, 000.00 (Two Million Naira Only**) is hereby awarded against the 1st Respondent for the gross violation of the Applicants' Fundamental Rights.

4. The 1st Respondent is hereby directed to tender unreserved apology in writing to the Applicants.

Signed:

Hon. Justice S. U. Bature
24/3/2022.