

**THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI, COURT NO. 29, ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE J. ENOBIE OBANOR**

**DATED THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2022  
FCT/HC/M/4650/2021**

**BETWEEN: -**

**THE INCORPORATED TRUSTEES  
OF THE MOTORCYCLE AND  
TRICYCLE OWNERS AND  
RIDERS WELFARE ASSOCIATION  
(REPRESENTED BY THE  
INTERNATIONAL HUMAN  
RIGHTS PROTECTION INITIATIVE)**

**APPLICANT**

**AND**

**THE HONOURABLE MINISTER  
FEDERAL CAPITAL TERRITORY  
2. THE DIRECTOR, DIRECTORATE  
OF ROAD TRAFFIC SERVICES**

**RESPONDENTS**

**JUDGMENT**

The Applicant herein instituted the instant suit against the Respondents vide Motion on Notice dated 27<sup>th</sup> January, 2020 and filed on same date, pursuant to order 2(1) of the Fundamental Rights (Enforcement) Procedure Rules 2009, section 41 of the Constitution of the Federal Republic of Nigeria (as amended) and under the inherent powers of this Honourable Court seeking the following reliefs:-

(1). An Order of this Honourable Court, declaring the restriction of movement of the members of the Applicant from plying all the various routes in the Federal Capital Territory as illegal, wrongful, unlawful, unconstitutional and a gross violation of the Fundamental Right to movement of the members of the Applicant.

(2). An Order of this Honourable Court declaring the seizure and impounding of the Motorcycles and Tricycles belonging to the members of the Applicant without any Order of Court as illegal, wrongful, unconstitutional and gross violation of the Fundamental right of the members of the Applicant

(3) An Order of this Honourable Court, restraining the Respondents from further restricting the movement of members of the Applicant from plying the length and breadth of the Federal Capital Territory.

(4) An Order of this Honourable Court, directing the Respondents to return all motorcycles and or tricycles impounded from members of the Applicant between 2005 - till date to their lawful owners forthwith.

(5) An Order of this Honourable Court, awarding the sum of N10,000,000.00 (Ten Million Naira) only against the Respondents in favour of the Applicant as punitive and exemplary damages for the conduct of the Respondents to wit: illegally restricting the movement of members of the Applicant from plying all routes in the Federal Capital Territory.

(6) An Order of this Honourable Court, awarding the sum of N3,500,000.00 (Three Million Five Hundred Thousand Naira) only, against the Respondents in favour of the Applicant as cost of action including legal fees and appearance fees.

(7) And for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

The Applicant predicated his application on the following grounds:

The Applicant has as its members, citizens of the Federal Republic of Nigeria.

The movement of members of the Applicant from plying all the routes in the Federal Capital Territory was not predicated on the Order of Court or Act of the National Assembly as stipulated by law.

The Applicant is eminently entitled to the reliefs sought

The only option open to the Applicant in circumstances of this case is to approach this Honourable Court for redress.

In support, the Applicant filed a 20 paragraph Affidavit and two Exhibits in support and a 14 paragraph Better and Further Affidavit in support with two annexure. In compliance with the Rules of this Court, the Applicant filed a Written Address in support of his application.

Opposing the application, the 1<sup>st</sup> Respondent filed its Counter Affidavit of 8 paragraphs dated and filed on 5<sup>th</sup> March, 2020, and attached Exhibits A – D in support. His Counsel's written address dated 3<sup>rd</sup> March, 2020 was also filed.

Also opposing the application, the 2<sup>nd</sup> Respondent filed a Counter Affidavit on 11<sup>th</sup> November, 2020, of 5 paragraphs with 3 Exhibits. The 2<sup>nd</sup> Respondent's Counsel's written address in opposition was filed as well.

The Applicant's Counsel in his written address, formulated and argued a sole issue for determination of the instant application to wit:-

***"Whether on the strength of the facts before this Honourable Court as averred to in the affidavit in support of the application, the Applicant is entitled to the reliefs sought?"***

The 1<sup>st</sup> Respondent also distilled a sole issue for determination as follows:

***"Whether from the facts before this Honourable Court, the Applicant has established any infringement of their fundamental Human right to be entitled to the reliefs sought?"***

Counsel for the 2<sup>nd</sup> Respondent, adopted the issue distilled by the 1<sup>st</sup> Respondent.

After a careful consideration of the processes in this suit and addresses of parties, it is the opinion of the court that the issue for determination is:

*"Whether the parties before this Honourable Court are proper parties to entitle the Applicant to the reliefs sought?"*

By the affidavit of the Applicant, the Applicant is a duly registered organisation catering for the welfare of commercial motorcyclist and tricyclist in Nigeria with members in all parts of Nigeria including FCT, Abuja.

The Applicant avers that sometimes in 2006, the 1<sup>st</sup> Respondent issued a directive restricting the activities of members of the Applicant from operating in specified areas of the Federal Capital Territory within the jurisdiction of this Honourable Court (see paragraph 7 of the Applicant's Affidavit), which was not backed by any Court Order or an Act of the National Assembly (see paragraph 8).

The Applicant further averred that as a result of the Respondents' act, the movements of the members of the Applicant have been severely restricted within the Federal Capital Territory. That the 1<sup>st</sup> Respondent commissioned the 2<sup>nd</sup> Respondent to impound the motorcycles and tricycles of members of the Applicant on the pretext that such members of the Applicant had flouted the directive of the 1<sup>st</sup> Respondent.

The 1<sup>st</sup> Respondent on his part, states that the 1<sup>st</sup> Respondent is the Minister of the Federal Capital Territory who exercises Executive powers as delegated to him by the President of the Federal Republic of Nigeria, and the 2<sup>nd</sup> Respondent is an agent in an agency of the Federal Capital Territory within the jurisdiction of this Honourable Court empowered to ensure that traffic rules are complied with in the FCT, Abuja.

The 1<sup>st</sup> Respondent in its affidavit averred that it gave directives restricting the business of commercial motorcycles and tricycles from plying certain routes within the city area of the Federal Capital Territory for the purpose of preserving order, safety, and the city's master plan. The 1<sup>st</sup> Respondent made the regulation bearing in mind the peculiar nature of Abuja as the capital city of Nigeria. By virtue of its position, the city is planned in such a way that motorcycles and tricycles (being vulnerable and volatile means of transport), do not form part of the Abuja master-plan. The overall impact desired from the restriction, is to safeguard the lives and properties of residents (see paragraph 3(e)).

Further, the 1<sup>st</sup> Respondent states in paragraph 3(f) that the directive it gave in this regard is premised on existing regulations and laws. In support, the 1<sup>st</sup> Respondent annexed copies of the Road Traffic Act, and FCT Road Transport Regulations as Exhibit A and B.

It is also the deposition of the 1<sup>st</sup> Respondent that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, sometime in 2013 met with all relevant stakeholders, including members of the Applicant in an extensive consultation, and implemented the Feeder Routes and operational zones which minibuses and tricycles are allowed to operate within the FCT. A copy of Implementation of Feeder Routes, Mini Bus Transportation Services is attached as Exhibit C.

It also stated that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have continued to liaise with relevant stakeholders including members of the Applicant, and the general public in creating awareness of the approved routes as laid down by FCTA Traffic Rules and Regulations. Communiqué signed by the Tricycle Owners and Riders Association (NACTOMORAS) and other stakeholders is attached as Exhibit D (see Paragraph h).

The 1<sup>st</sup> Respondent further states that the claim of the Applicant in paragraphs 10 and 11 of their Affidavit that certain motorcycles and tricycles of its members were seized

by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, is a mere conjecture, as necessary facts and details relating to such have not been supplied.

Further, the 1<sup>st</sup> Respondent stated further that the 2<sup>nd</sup> Respondent as an agent of the 1<sup>st</sup> Respondent is empowered to enforce the directives of the 1<sup>st</sup> Respondent on traffic control and regulation within the FCT, and this it has continuously done within the ambit of the law.

That the Applicant, having only recently been formed, has not been the association managing the affairs of the motorcyclists and tricyclists within the FCT before now. The Respondents cannot be held responsible for this, as the Respondents have always carried the relevant associations along in the enforcement of traffic regulations. This fact is evidenced by the exhibits already attached.

The 2<sup>nd</sup> Respondent on its part, admits paragraphs 7-9 of the Applicant's affidavit in support of motion to the extent that the directives of the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent was premised on enforcing existing legislations which restricts and prohibits Motorcycles and Tricycles from operating within the FCT and to further strengthen the safety and sanity of the FCT. Copy of relevant provisions of the Road Traffic Act and FCT Road Transport Regulations is attached and marked as Exhibit A and B.

The 2<sup>nd</sup> Respondent also states that the 1<sup>st</sup> Respondent gave directives restricting the business of commercial motorcycles and tricycles from plying certain routes within the city area of the Federal Capital Territory for the purpose of preserving order, safety, and the city's master plan. That the 1<sup>st</sup> Respondent made the regulations bearing in mind the peculiar nature of Abuja as the capital city of Nigeria. By virtue of its position, the city is planned in such a way that motorcycles and tricycles (being vulnerable and volatile means of transport), do not form part of the Abuja master-plan. The

overall impact desired from the restriction, is to safeguard the lives and properties of residents.

It is also admitted by the 2<sup>nd</sup> Respondent that paragraph 19 is correct only to the extent that it is only carrying out its statutory function of making sure only worthy vehicles ply the FCT roads. Nevertheless, the claim of the Applicant in the above paragraph of their Affidavit that certain motorcycles and tricycles of its members were seized by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, is mere conjecture, as necessary facts and details relating to such have not been supplied.

Further, it is the deposition of the 2<sup>nd</sup> Respondent that the activities of members of the Applicant is a continuous violation of Route Regulations and existing legislations of traffic laws and regulations applicable in the FCT.

In response to the Counter Affidavit filed by the Respondents, the Applicant filed a further and better Affidavit deposed to by one Nasiru Aliyu, a tricycle operator and a member of the Applicant Association. He stated that he was arrested and his tricycle with registration number NSR313QC impounded, and taken to the Headquarters of the 2<sup>nd</sup> Respondent situate at Mabushi Abuja.

That he was forced to pay the sum of N25,550.00 (Twenty Five Thousand Five Hundred and Fifty Naira) as fine even as his offence was not marked on the schedule of offences given to him by operatives of the 2<sup>nd</sup> Respondent neither was any offence whatsoever indicated on the official receipt issued to him by operatives of the 2<sup>nd</sup> Respondent. The receipt for the payment of fine and the offence sheet given to him by operatives of the 2<sup>nd</sup> Respondent are hereby attached and marked as Exhibit B and C.

He also deposed that he was not informed of any offence that he committed by the operatives of the 2<sup>nd</sup> Respondent. That operatives of the 2<sup>nd</sup> Respondent always harass members of

the Applicant, restricting them from plying the routes in the FCT claiming to be working under the directive of the 1<sup>st</sup> Respondent.

The Applicant's Counsel in its written address argued that the fundamental right to free movement is succinctly and elaborately captured in Section 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). That Section 41(supra) guarantees the free movement of every citizen of Nigeria.

The Applicant in its submission posited that they are conscious of the fact that the right to freedom is not absolute. However, before any restriction is placed on a citizen of Nigeria, the provision of Section 41(2) of the 1999 Constitution has to come into play.

In the instant case, Applicant contended that none of its members has been alleged to have committed an offence neither are they being suspected of having committed any offence. It therefore beats the imagination that the movement of Nigeria citizens going about their lawful duties shall be unilaterally restricted without the exceptions as provided for by Section 41(2) of the 1999 Constitution.

Counsel, respectfully submits that the restriction of the movement of the members of the Applicant does not conform with the provisions to the right to freedom of movement and he urged this Honourable Court to so hold.

Applicant's Counsel posited further that the onus of proving the legality and constitutionality of restricting the movement of members of the Applicant within the FCT is on the Respondents to show justification for their action. He referred the Court to the case of ***Etang Edem Ekpo Ene & Ors V Elder Basseya Bassy & Ors (2014) AELR4628 (CA)*** where the court of Appeal sitting in Calabar held that the constitutionality or legality of any arrest is to be proved by the



person or authority that made the arrest. In conclusion, Counsel urged the Court to so hold and grant the prayers of the Applicant in its entirety.

1<sup>st</sup> Respondent's Counsel in his argument, contended that the action of the 1<sup>st</sup> Respondent, restricting the movement of motorcycles and tricycles from plying certain routes of the Federal Capital Territory is neither ultra vires, nor unjustified. By virtue of Section 11(1)(a) and (m) of the Road Traffic Act, Cap 548 LFN, 1990, which provides that; a competent Local Authority may provide bye-law, which may be either general or in respect of special occasions, for a. the specification of routes to be followed by vehicles, animals and pedestrians...

He further submitted that the same Act defined "local authority under its Section 10 to mean "an Area Council or any other body established for the administration of the Federal Capital Territory. It is also the 1<sup>st</sup> Respondent Counsel's contention, that the Honourable Minister of the Federal Capital Territory, being the chairman of the body created for the administration of the FCT under Section 3 of the Federal Capital Territory Act, Cap F6, Vol. 6, LFN, 2004 i.e. the Federal Capital Territory Administration, is empowered to make bye-laws in this regard. That it is upon this legal premise, that the 1<sup>st</sup> Respondent, made the order, restricting the operation of commercial motorcycles and tricycles to satellite towns and estates within the Federal Capital Territory. He referred the Court to the case of **Godwin Sunday Ogboji, Esq. & Anor. v. The Minister Of Federal Capital Territory (2012) VOL. 1 FCTALR, 209@ 222.**

The 2<sup>nd</sup> Respondent adopted the issue for determination distilled by the 1<sup>st</sup> Respondent. I have gone through the argument canvassed by the 2<sup>nd</sup> Respondent's Counsel. They are the same with that of the 1<sup>st</sup> Respondent. So, there is no point repeating same at this point as the argument already made by the 1<sup>st</sup> Respondent will be deemed as the submissions of the 2<sup>nd</sup> Respondent.

Now, It is not in doubt that section 41 of the Constitution provides for the freedom of movement. The said section provides as follows:

*(1). 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 thereby or exit therefrom.*

Pursuant to the constitutional provision above, The Fundamental Right (Enforcement Procedure) Rules 2009, provides as follows:

*any person who alleges that any of the fundamental rights provided for in the Constitution and to which he is entitled, has been, is being or is likely to be infringed may, apply to the court in the state where the infringement occurs or is likely to occur for redress.*

From the above provision, it is clear that the proper party to seek for redress before the Court in matters involving enforcement of fundamental right is that person whose right under chapter four has been infringed or likely to be infringed. The law is remarkably settled that action for the enforcement of fundamental rights, cannot be jointly maintained. They are very personal in nature. See the case of **Udo v. Robson & Ors (2018) LPELR-45183 (CA)**.

Also, in the case of **Kporharor & Anor. V. Yedi & Ors (2017) LPELR 42418 (CA)**, the Court of Appeal relying on the wordings of Section 46(1) of the 1999 Constitution, stated that the use of the word "any" denotes singular and does not admit pluralities of any form. It was thus held that fundamental rights are individual rights and not collective rights and any application filed by more than one person to enforce a right under the Fundamental Rights (Enforcement

Procedure) Rules is incompetent and liable to be struck out. see also the case of **Udo v. Robson & Ors (2018) (Supra)**

Further, on the issue of enforcement of Fundamental Rights by Corporate entities, the general rule is that Corporate Entities have the right to sue and be sued in their corporate name. This right to sue does not exclude Fundamental rights action.

A company in Nigeria is a proper party in an action for Enforcement of Fundamental rights. See the case of **Kelvin Peterside V Imb (1993) 2 NWLR (PT. 278) 710.**

However, in a more recent case of **F.B.N. Plc & Ors v. A.G. Federation (2008) 8 NWLR (Pt. 28) 614** being a case brought under the 2009 Fundamental Right (Enforcement Procedure) Rules, the Court in considering whether an artificial person can sue for violation of its fundamental human rights held that:

*an artificial person cannot maintain an action for violation of its fundamental rights. Thus, in the instant case, the 1<sup>st</sup> appellant being an artificial person was incapable of being arrested and detained. The 2<sup>nd</sup> - 5<sup>th</sup> appellants, being natural persons, were the ones who could institute an action for the enforcement of their fundamental human rights. The 1<sup>st</sup> appellant not being a person capable of being arrested and detained was not entitled to damages in this case although it may have its remedy elsewhere.*

In the instant case, the Applicant is 'The Incorporated Trustees of the Motorcycle and Tricycle Owners and Riders Welfare Association (Represented by the International Human Rights Protection Initiative)' which is an artificial person. The Applicant in its relief seeks the following:

*1) An Order of this Honourable Court, declaring the restriction of movement of the members of the Applicant from plying all the various routes in the Federal Capital Territory as illegal,*

*wrongful, unlawful, unconstitutional and a gross violation of the Fundamental Right to movement of the members of the Applicant.*

*2) An Order of this Honourable Court declaring the seizure and impounding of the Motorcycles and Tricycles belonging to the members of the Applicant without any Order of Court as illegal, wrongful, unconstitutional and gross violation of the Fundamental right of the members of the Applicant.*

*3) An Order of this Honourable Court, restraining the Respondents from further restricting the movement of members of the Applicant from plying the length and breadth of the Federal Capital Territory.*

*4) An Order of this Honourable Court, directing the Respondents to return all motorcycles and or tricycles impounded from members of the Applicant between 2005 - till date to their lawful owners forthwith ...*

From the above, it is evident that the Applicant being a *persona ficta* - a juristic personality sued for the enforcement of the fundamental rights of its members' i.e. freedom of movement jointly. It also prayed the Court to declare the seizure and impounding of the motorcycles and tricycles belonging to the members of the Applicant without court Order as a violation of the Fundamental Right of the members of the Applicant. The Affidavit in support was deposed to by one Samuel Nwadigo, the Executive Director of the Applicant and the further and better affidavit was deposed to by a member of the Association, Nasiru Aliyu, on behalf of the Applicant and the members of the Association, though in his deposition, his story centred more on his personal experience with the 2<sup>nd</sup> Respondent.

I am of the humble opinion that the Applicant cannot maintain this present Application because the Applicant's freedom of movement being a *persona ficta* cannot be curtailed in the circumstance of the case presented by it. The Applicant cannot as well sustain this action on behalf of its members as doing so will amount to instituting a joint action on behalf of

members of the association whose depositions are not made in the present suit and I so hold. Accordingly, this suit is hereby struck out for lack of proper parties before this Court.

To underscore the above position, ***Per Muhammed Lawal Shuaibu, JCA***, in the case of ***Chief of Naval Staff Abuja & Ors v. Archibong & Anor (2020) LPELR-51845 (CA) (Pp. 9-12, paras. C-B)*** posited as follows:

*... It was emphatically held that if an individual feels his fundamental right has been violated he should take action personally for the alleged infraction. In effect, it is a wrong joinder of action and incompetent for different individuals to join in one action to enforce different causes of action....*

See also the cases of: ***C.C.B. (Nig) Plc v. Rose (1998)4 NWLR (prt 544) 37 and Ayinde v. Akanji (1985)1 NWLR (prt 66) 80.***

Having already found that the Fundamental Right (Enforcement Procedure) Rules 2009 does not contemplate joint application and that the Applicant lack the capacity in the instant case; this Court lacks the requisite competence and jurisdiction to entertain the Applicant's application. Accordingly, this suit is hereby struck out in its entirety for lack of proper parties before this Court.

Accordingly, the suit having been struck out, the reliefs are not grantable and are hereby struck out.

**SIGNED**  
**HON. JUSTICE J. ENOBIE OBANOR**  
**(PRESIDING JUDGE)**