

**IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON FRIDAY, 29th DAY OF APRIL, 2022
BEFORE HON. JUSTICE NJIDEKA K. NWOSU IHEME
SUIT NO: FCT/HC/CV/553/2022**

IN THE MATTER OF AN APPLICATION BY OFEM OBASEOYI UKET FOR AN ORDER FOR THE ENFORCEMENT OF HER FUNDAMENTAL RIGHTS TO PERSONAL LIBERTY, HUMAN DIGNITY, RIGHT TO LIFE AND FAIR HEARING.

BETWEEN:

OFEM OBASEOYI UKET APPLICANT

AND

1. COMMISSIONER OF POLICE FCT
2. DIVISIONAL POLICE OFFICER (DPO)
APO RESETTLEMENT POLICE STATION
3. AROME BEN
4. CHINONSO OBI
5. PRIMTECH SECURITY EQUIPMENT CO. LTD

RESPONDENTS

JUDGMENT

The applicant commenced this action on 23/2/2022 via Originating Motion for the enforcement of her fundamental rights. In support thereof are:

[i] Statement setting out the name and description of the applicant, the reliefs sought and the grounds for the application;

[ii] The applicant's 36-paragraph affidavit;

[iii] Written address of E. P. Offiong Esq.;

[iv] The applicant's 9-paragraph further affidavit filed on 4/4/2022;

[v] Reply on points of law of O. A. Obayomi Esq. filed on 4/4/2022 in response to the 4th & 5th respondents' written address.

The applicant seeks the following reliefs against the respondents:

- i. An order of injunction restraining the Respondents, their servants, agents and privies from further threat of arrest, further arrest, detention, harassment, molesting or threatening the life of the Applicant contrary to the provisions of Sections 33, 34, 35 and 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 4, 5, 6 and 7 of the African Charter On Human and Peoples Rights (Ratifications and Enforcement) Act, CAP, A9, LEN, 2004.
- ii. A Declaration that the Fundamental Rights of the Applicant have been, and are further likely to be contravened by the Respondents, if the 3rd and 4th Respondent further coerce the applicant to deposit her Statement of Account from January 2021 to February 2022 and failure of which she will be further arrested, detained and or tortured.
- iii. A Declaration that the detention of the Applicant on the 15th day of February 2022, by the 1st to 3rd Respondents, on the instigation and prompting of the 4th and 5th Respondents, when the applicant only came to visit her friend in their cell is a breach of the Applicant's Fundamental Right to liberty, fair hearing and human dignity contrary to sections 34, 35 and 36 of the 1999 constitution and considering the circumstances of this matter.
- iv. Perpetual injunction restraining the Respondents from further inviting, arresting and or detaining the Applicant in relation to this matter.

- v. N10,000,000.00 damages against the 3rd to the 5th Respondents as damages for unlawful detention, coercion and intimidation of the Applicant.

In opposing the Originating Motion, Ngozi Ugwu, a litigation secretary in the law firm of Counsel to the 4th and 5th respondents, filed a counter affidavit of 32 paragraphs on 30/3/2022; attached therewith is Exhibits A. Onyeka Osigwe Esq. filed a written address with the counter affidavit. Ngozi Ugwu, a litigation secretary in the law firm of Counsel to the 4th and 5th respondents also filed a Further Affidavit 21 paragraphs; attached therewith is Exhibit A& B. Onyeka Osigwe Esq filed a written address with the further affidavit. At the hearing of the Originating Motion on 8/4/2022, the learned counsel for the parties adopted their respective processes.

In her affidavit in support of the Originating Motion, the Applicant stated that:

1. The 1st Respondent is the Commissioner of Police in Nigeria in charge of the entire police force in Abuja FCT, the 2nd Respondent is Divisional Police Officer (DPO) of Apo division at the Resettlement Police Station, in charge of the affairs of Apo Resettlement Police station, the 3rd Respondent is a Police Officer in the station of the 2nd Respondent.
2. The 4th Respondent is the Managing Director of the 5th Respondent Prime Tech Security Co. Ltd which deals on security equipment.
3. Applicant works as a sales representative with Proline Tech, who deals of security gadgets, installation and related items, among other things.
4. Applicant is close friends with Kenneth Chukwuemeka Okparanzekwe they are both in the same line of business. From 14th day of February 2022 after she spoke to Kenneth about 2:30 pm, his phone number was no longer reachable, and he did not show up as promised.

5. Applicant called his phone number severally but it did not go through until evening when it finally rang but no one picked.
6. She kept on dialing his phone number on the 15th day of February 2022 until he finally picked the call by 8:30 am. She could sense from his voice that he was in trouble but he did not disclose his location upon her persistent calls he picked and she asked him "they do not want you to talk" he replied "yes"
7. Later in the day she got a text which read "APO POLICE STATION' 2022 from Kenneth's phone number 09036134330. She had to go to the Apo Resettlement Divisional police station around 9am to know what actually happened to Kenneth Chukwuemeka Okparanzekwe, and upon arriving there, she was denied access to him, she was detained there by the 1st to 3rd Respondents, on the prompting of the 4th and 5th Respondents even when she explained to them that she was sick and was to see her doctor that day.
8. The police woman on duty seized her phone and her power bank from her and kept her behind the counter, saying that she could not let her go until the IPO that is the 3rd respondent comes.
9. She saw the DPO of Apo Resettlement Police Station, the 2nd Respondent she tried reporting to him, she explained to him that she was sick and was to see a doctor but would not be released by the policewoman he replied that she should change her position if she is not comfortable where she is seated.
10. The 3rd Respondent later came, the policewoman informed him that she was the one who came to see Kenneth Chukwuemeka Okparanzekwe. Then he took her phone and power bank from the police woman and asked her to follow him.
11. She was in the 3rd Respondent's office, he threatened to beat and lock her up if she does not tell him the truth that Kenneth Chukwuemeka

Okparanzekwe has been giving her money, that Kenneth Chukwuemeka Okparanzekwe had opened a shop for her and was also staying with her before his arrest. To all his accusations she replied no.

12. The 3rd Respondent gave her a paper to write her statement which she did and also specifically noted the monies she had received from Kenneth Okparanzekwe which are 100,000.00 (one hundred thousand naira) which he lent her to use in a business which she paid him back, N70,000 (seventy thousand naira only) which he gave her to deposit in his account and N30,000.00 (thirty thousand naira) which he gave her for Christmas out of the money he said the 3rd Respondent gave him for Christmas
13. That the 3rd Respondent made sexual advances which she turned down and due to this returned her to the back of the counter where she was forcefully kept.
15. She was not allowed to see Kenneth Chukwuemeka Okparanzekwe until when his boss the 4th Respondent came around and she was taken to another office for interrogations.
16. The 4th and 5th Respondent alleged that they know that Kenneth Chukwuemeka Okparanzekwue has been sending monies to her and he has his proof.

She was later given her phone to call someone to come and sign for her release or sleep in the cell.

19. She called a friend who came to sign for her and paid the sum of N5,000.00 for the bail, which money she borrowed.

20. She was instructed upon her release to bring her statement of account from January 2021 to January 2022 or she will be arrested, detained again, and her account frozen.
21. That the respondent has been calling her on his phone, 08036245246 threatening her to bring her Statement of Account, or he will revoke her bail and arrest her sureties who stood for her bail, whose names are Nathan Olaku and Tina Edwards.
22. She fearfully made efforts to get her Statement of Account with the bank and she was informed that they had network issues and the amount she needed to print the statement of an entire year will be much.
23. She has been traumatized, by the actions of the Respondents to the extent that except the court stops them, she will continually be living in the fear of arrest and detention by the Respondents and their agents.

In the counter affidavit of the 4th and 5th respondents, Ngozi Ugwu stated that:

1. The 4th Respondent employed the services of Mr. Chukwuemeka Kenneth Oparanzekwe as an apprentice in accordance with the Igbo business apprentice system to be settled after a couple of years based on the agreement, he had with Mr Chukwuemeka Kenneth Oparanzekwe's family.
2. Mr. Chukwuemeka Kenneth Oparanzekwe has been with the 4th and 5th Respondent as an apprentice and not business partner for four years and was entrusted with a shop to manage within the jurisdiction of this court.
3. The 4th and 5th Respondents started noticing at some point that unaccounted goods worth millions of Naira were missing from the shop and warehouse.

4. The 4th Respondent has on several occasions questioned Mr. Chukwuemeka Kenneth Oparanzekwe about the unaccounted missing goods but he denied having knowledge of the missing goods.
5. The 4th Respondent collected Mr. Chukwuemeka Kenneth Oparanzekwe's phone on the 30/01/2022 or thereabout and found out that he has three different accounts with Zenith Bank Plc, Guarantee Trust Bank Plc and Access Bank Plc with huge transactions running into millions of Naira.
6. The 4th Respondent summoned Mr. Chukwuemeka Kenneth Oparanzekwe to question him about the discoveries he found in his phone, Mr. Chukwuemeka Kenneth Oparanzekwe fled the house through the fence on that 30/01/2022 and never came back to the house.
7. The 4th and 5th Respondent had no other option than to report the matter to the Nigeria Police Force on the next working day for them to ascertain the whereabouts of his apprentice as well as investigate the case of missing or stolen goods from his business. The 4th Respondent's statement to the Police attached and marked Exh. A.
8. The Nigeria Police Force in the course of their investigation found out that Mr. Chukwuemeka Kenneth Oparanzekwe connived with one Mr. Kingsley Chibuike whom he is handing over most of the goods he stole from the 4th and 5th Respondents as well as the applicant.
9. The Applicant admitted in paragraph 21 of the Affidavit in support of the Motion on Notice for the Enforcement of her Fundamental Rights of having unauthorized monetary transactions with the 4th and 5th

Respondents Apprentice (Mr. Chukwuemeka Kenneth Oparanzekwe).

10. The 4th Respondent merely reported a case of stolen goods and of apprentice who fled his house to the Nigeria Police Force for their investigation.
11. The 4th and 5th Respondents have not or never had any dealings with the Applicant that will necessitate instigating the Nigeria Police Force for her arrest nor detention.
12. Mr. Chukwuemeka Kenneth Oparanzekwe in his statement to the Police admitted stealing goods from the 4th and 5th Respondents.
13. The 4th and 5th Respondents never at any time whatsoever ganged up, threatened, instigated the arrest/investigation of the Applicant for any crime by the law enforcement.
14. The Applicant was only invited by the Nigeria Police Force upon discovery of illicit monetary transactions between the Applicant and Mr. Chukwuemeka Kenneth Oparanzekwe.
15. The Applicant was allowed to go by the Nigeria Police Force after she willingly wrote statement to the Police.
16. The Applicant was never invited back by the Nigeria Police Force for further investigation of the complaint or was ever threatened with arrest.

In the applicant's further affidavit in opposition to the 4th and 5th Respondents counter affidavit, she deposed to the following facts that:

1. Paragraph 3 of the 4th and 5th Respondents Counter-Affidavit is not true.

2. Contrary to paragraph 6 of the Counter-Affidavit, MR CHUKWUEMEKA KENNETH OPARANZEKWE is not an employee of the 4th and 5th Respondents, rather, a servant of the 4th and 5th Respondent who is due to be settled in line with the Igbo trader servant practice, and in order to chase MR. CHUKWUEMEKA KENNETH OPARANZEKWE out without settling him, the 4th and 5th Respondents suddenly raised spurious allegations against him.
3. That contrary to paragraphs 7,8, 9 of the 4th and 5th Respondents Counter-Affidavit, that Mr. Chukwuemeka Kenneth Okparanzekwe started serving the 4th and 5th Respondents for over four years and due to be settled in line with the trade practice at the end of his 5th year.
4. The 4th and 5th Respondent who have enjoyed the services of Mr. Chukwuemeka Kenneth Okparanzekwe suddenly decided to connive with the 3rd Respondent and the 2nd Respondents to lay a criminal allegation against Mr. Chukwuemeka Kenneth Okparanzekwe in order to avoid settling him under the guise of missing goods.
5. At no time did the 4th and 5th Respondents discover that Mr. Chukwuemeka Kenneth was stealing their goods, as no monies whatsoever was missing except for the spurious allegation of the 4th and 5th Respondents.
6. Contrary to paragraphs 10, 11, 12 of the Counter-Affidavit of the 4th and 5th Respondents, the 4th and 5th Respondents and other masters in the Gudu Market had employed similar means to chase out the boys that have served them for years and whose settlements were due and the same office of the 1st to the 3rd Respondents have severally been used to carry out their hatchet job.

7. No order was obtained by the Respondents before freezing the accounts of Mr. Chukwuemeka Kenneth Okpranzekwe and the monies in the said account did not reflect whatsoever sum of money claimed by the 4th and 5th Respondents.
8. The Applicant who is very close to Mr. Chukwuemeka Kenneth Okparanzekwe was arrested when she was enquiring about his whereabouts in order to scare any other concerned person away.
9. The absence of any member of the family of Mr. Chukwuemeka Kenneth Okparanzekwe residing in Abuja is being used by the 4th and 5th Respondents to take advantage and cheat Chukwuemeka Kenneth Okparanzekwe
10. The 4th Respondent threatened to deal with the Applicant upon finding out that they are close and that prompted her arrest
11. Paragraphs 12, 13, 14 are not true as the Applicant who was initially detained at the 2nd and 3rd Respondents office and later by the men and officers of the IRT, has nothing to do with the 4th and 5th Respondents business and was not invited but only went to the station to visit Mr. Chukwuemeka Kenneth Okpranzekwe when she learnt he was arrested and was detained there.
12. Contrary to paragraphs 16, 17 and 18 of the Counter-Affidavit of the 4th and 5th Respondents, the latter did more than report the matter, he instigated the arrest of the Applicant after she called Mr. Chukwuemeka Kenneth Okpranzekwe's number severally without knowing that he had been arrested by the 1st to 3rd Respondents on the prompting of the 4th Respondents.
13. While at the 2nd and 3rd Respondent's detention at Apo Resettlement Police Station, the 4th Respondent personally told the Applicant to produce her account details to ascertain whether the monies were paid into her account by Mr. Chukwuemeka Kenneth Okparanzekwe.

14. Paragraphs 18 and 19 are not true as Mr. Chukwuemeka Kenneth Okpranzekwe, who is still at the time of filing this Affidavit in the custody of the IRT Unit was coerced into writing statements, as he was terribly beaten.
15. Paragraphs 20, 21, 22, 23 and 24 of the Counter-Affidavit are not true as the Applicant was released on bail after she was coerced into writing her statement by the 3rd and 4th Respondent, as the latter was present when she was detained and was further instructed to produce her statement of accounts before then.
16. That contrary to paragraphs 25, 26, 27, 28 and 29 of the Counter-Affidavit of the 4th and 5th Respondents, the Respondents eventually made good on their threat to the Applicant as they arrested her on the 31st of March 2022 and she is still kept in detention.

The 4th and 5th Respondent also filed a Further Affidavit deposed to by Ngozi Ugwu of 21 paragraphs.

In the applicant's written address, E. P. Offiong Esq. submitted two issues for determination, to wit:

1. Whether the applicant is entitled to the protection of his Fundamental Rights in the circumstances of this case.
2. Whether the applicant is entitled to damages.

For his part, Onyeka Osigwe Esq. posed one issue for determination in the 4th & 5th respondents' written address, which is:

'Whether in the light of the materials before this Court and in all circumstances of this case, necessitated the inclusion of the 4th and 5th Respondents as parties to the suit.'

From the affidavit evidence of the parties and the submissions of the learned counsel, the Court will determine this suit on the following issue, which is:

'Whether the application for enforcement of the applicant's fundamental rights is meritorious as to entitle him to the reliefs sought.'

SUBMISSIONS OF LEARNED COUNSEL FOR THE APPLICANT:

The Learned Counsel for the Applicant relied on the provisions of ORDER 2 RULE 1 OF THE FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE RULES, 2009 which provision of the Law appears settled, that where a person's liberty or rights as enshrined under Chapter iv of the Constitution of the federal Republic of Nigeria 1999 (as amended) is being violated or threatened to be violated, such person(s) or body have the right to approach the court of law to have his right protected from infringement or threatened infringement. Learned Counsel also relied on Section 46(1) of the constitution of the Federal Republic of Nigeria 1999 (as amended) and Regulation 340 of the Nigerian Police Regulations.

E. P. Offiong Esq. submitted that the 1st -3rd Respondents abused the process of the law by not formally inviting the Applicant and stating the purported allegation, but waiting for the Applicant to come, and when she arrived the station, she was unlawfully detained, and even sexually harassed by the 3rd Respondent

Applicant Counsel submitted that mere allegation of crime or wrong doing against a suspect, irrespective of its seriousness cannot operate to curtail the fundamental rights of the suspect nor can it operate to justify the incarceration and fortune of the suspect. A person who infringes or breaches the constitutional rights of another person has the onus to justify such breaches relying on the case of

DURUAKUV.NWOKE (2015) 15 NWLR PT.1483 at 417 at423 (pp.473, 474 paras. G-A); ETIMV.ASIKPO (2008) CHR78; and PUNCH NIG LTD.V. A-G.FEDERATION (1998)1 CHR 488.

Applicant Counsel submitted that the Applicant has deposed to the fact that upon arriving the police station and writing her statement, the 3rd Respondent detained her, asked her to bring a surety and still made her pay for her bail. see **DURU AKU.V. NWOKE (supra). P.471, (para.F.G) OGOR.V. ROLAND (1983) 1 NOR 343; FAWEHINMI.V.IGP (2002) 7 NWLR (PT.767) 606.**

They argued further that the Respondents have violated and further threatened to violate the fundamental rights to life, dignity of human person, personal liberty and fair hearing as entered under section 33, 34, 35 and 36 of the Constitution of the federal Republic of Nigeria 1999 (as amended) as they have no justification in further demanding for the Applicant's Statement of account which will amount to violating her right to privacy.

On the second issue formulated by the Applicant Counsel, it was submitted that where a public officer or law enforcement agent allows himself to be used by any member of the public to commit illegality that results in damages and liability to the agency or Government, he should be made to pay such cost or damages, personally, either in part or in whole, if this can serve to warn such officer to act within the rules and scope of his office. From the authority of **ANOC,WIE & ORS.V.ODOM (2016) LPELR-40214 (CA).**

The Applicant Counsel further posited that Section 35 (I) of the 1999 Constitution (as amended) guarantees a citizen the right to personal liberty and no person shall be deprived of such liberty save in the cases and in accordance with a procedure permitted by law as stipulated in section 35(1)(a-f) Also, by virtue of section 35(6) of the constitution, any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the

appropriate authority or person.

SUBMISSIONS OF LEARNED COUNSEL FOR THE 4TH AND 5TH RESPONDENTS

Onyeka Osigwe Esq submitted that the Applicant has failed to disclose any iota of reasonable cause of action against the 4th& 5th Respondents considering the fact that the Applicant failed woefully to present any cogent and verifiable fact or document in proof of their case against 4th& 5th respondents. Relying on the case of **SOCIETY BIC S.A & 20RS V. CHARZIN IND. LTD. (2014) 2 SC (71.11)**

Applicant Counsel argued further that it is evident that before any case must succeed, that there must be a disclosure of the existence of a reasonable cause of action and its breach. Citing the case of **Azubuikwe & Anor V. Government of Enugu State (2013) LPELR-20381 (CA).**

The argument of learned counsel is that the Applicant's case is merely a ploy to use this Honourable Court to stop the Nigeria Police Force from carrying out their lawful duty of investigation of crime. The court of Appeal in the case of **IGP & ANOR V. UBAH & ORS (2014) LPELR-23968(CA)** held that it is the duty of the Police to investigate criminal allegations against citizens. The Courts cannot stop the Police from performing its statutory functions.

Learned Counsel argued further that the 4th Respondent in carrying out his lawful duty merely reported a matter to the Nigeria Police for their investigation which it is clearly within their rights so to do. Relying on case of **MBANG V. JANET & ORS (2014) LPELR- 22656 (CA) Per Otisi J.C.A (Pp. 28-29 paras. A)**, which held that it must be emphasized that the Appellant was certainly acting within his rights in taking his complaint to the police. In **Owomero v. Flour Mills (Nig.) Ltd (1995) 9 NWLR (PT 421) 622 at 629**, the Court of Appeal, per Uwaifo JCA (as he then was) said: 'The law clearly supports a person who had good reasons to make a report to the police about an offence

so long as he leaves them to use their own discretion in taking further steps." Also, **EZEADUKWA V. MADUKA (1997) 8 NWLR (PT 518) 635 at 667.**

Counsel further added that there is no evidence that the 4th and 5th Respondents did anything more than lay his complaint before the police. He has not been shown to have interfered with or otherwise directed the police investigation. Breach of fundamental rights does not cover cases where a respondent has made a legitimate complaint to the police: or cases where the police investigate and act on complaints duly made to them. Court was urged to dismiss the suit for lacking in merit.

REPLY ON POINTS OF LAW OF LEARNED APPLICANT'S COUNSEL:

O. A. Obayomi argued that when an application for Fundamental Right Enforcement is filed, what primarily should be the focal point of the Court, is to ascertain, whether the Applicants Rights as conferred upon him in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria, has been infringed upon, or is being infringed upon or likely to be infringed upon.

Citing extensively the case of **NNAIKE.V. A.G. ENUGU STATE & ORS (2017) LPELR-43443 (CA)-PAR OGUNWUMIJU, JCA. (PP.30-22 PARA. E). EMEKA V. OKOROAFOR & ORS (2017) LPELR-41738 (SC)(pp.110-111 para. B)**

Counsel submitted that Applicant was illegally detained when she went to visit her close friend in the police station and was arrested by the 1st to 5th Respondents and her life threatened.

Counsel submitted that in a Fundamental Right procedure, a person need not wait till threats are carried out, that the existence of likely infringing upon one's right as enshrined in the Constitution of the Federal Republic of Nigeria 1999 is enough to institute a fundamental right enforcement against the person. Relying on **INCORPORATED TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE & ORS v. NIMC (2021) LPELR-55623(CA)**

The Applicant was arrested by the 1st to 3rd Respondent on the instruction of the 4th and 5th Respondent even with his knowledge that the Applicant has instituted an action against the 1st to the 3rd Respondents for the enforcement of her Fundamental right.

Counsel submitted that paragraphs 19,23, 24, 26, 27, 28 and 29 of the 4th and 5th Respondents Counter Affidavit is not in accordance to Section 115(2) of the Evidence Act 2011. As the paragraphs specified above contain legal arguments and should be discountenanced by this court relying on the case of **SEABULK OFFSHORE OPERATORS NIG. LTD V. AUGUSTA OFFSHORE S.P.A (2019) LPELR-50510(CA)**.

4th AND 5th RESPONDENTS ALSO FILED A WRITTEN ADDRESS WHICH WAS HEADED 4TH AND 5TH APPLICANTS WRITTEN ADDRESS

DECISION OF THE COURT:

Applicant Counsel on the day of adoption raised objection to the process of the 4th and 5th Respondent headed 4th and 5th Respondent Further Affidavit and the Written Address in support. The argument was that Order 2 of FREPRs makes provision for documents to be filed by parties and does not anticipate/contemplate a further Affidavit. Secondly there cannot be a written address ontop of a written address. Court was urged to discountenance the process. Counsel to the 4th and 5th Respondent argued that Order IX cures the aberration. Upon consideration of the argument of both sides, I agree with counsel to the Applicant that the provisions of Order 2 of FREPRs does not contemplate a further Affidavit on the part of the Respondent as there must be an end to litigation **PAN ATLANTIC SHIPPING AND TRANSPORT AGENCIES LTD. V. BABATUNDE(2007) LPELR-4826(CA)** Per **SALAMI ,JCA (P. 31, paras. B-F)**. 4th and 5th Respondents Further Affidavit and written address is hereby struck out.

Before proceeding to deal with the substantive matter, I will treat the issue raised in Applicants Counsel's Reply on point of law wherein it was argued that paragraphs 19,23, 24, 26, 27, 28 and 29 of the 4th and 5th of the Respondents Counter Affidavit is not in accordance to Section 115(2) of the Evidence Act 2011. As the paragraphs specified above contain legal arguments. For this court to ascertain whether these paragraphs contain legal arguments, the court has to consider each paragraph as required by the law. In the apex decision of **ISHAYA BAMAIYI v. THE STATE & ORS (2001) LPELR-731(SC)** per **SAMSON ODEMWINGIE UWAIFO ,JSC (Pp. 26-27, paras. D-C)**

I think the legal position is clear, that any affidavit used in the Court, the law requires as provided in Section 86 and 87 of the Evidence Act, that is shall contain only a statement of facts and circumstances derived from the personal knowledge of the deponent or from information which he believes to be true, and shall not contain extraneous matter by way of objection, or prayer, or legal argument or conclusion. The problem is sometimes how to discern any particular extraneous matter. The test for doing this, in my view, is to examine each of the paragraphs deposed to in the affidavit to ascertain whether it is fit only as a submission which counsel ought to urge upon the Court. If it is, then it is likely to be either an objection or legal argument. BAMAIYI V. STATE & ORS which ought to be pressed in oral argument; or it may be conclusion upon an issue which ought to be left to the discretion of the Court either to make a finding or to reach a decision upon through its process of reasoning. But if it is in the form of evidence which a witness may be entitled to place before the Court in his testimony on oath and is legally receivable to prove or disprove some fact in dispute, then it qualifies as a statement of facts and circumstances which may be deposed to in an affidavit. It

therefore means that prayers, objections and legal arguments are matters that may be pressed by counsel in Court and are not fit for a witness either in oral testimony or in affidavit evidence; while conclusions should not be drawn by witnesses but left for the Court to reach.

The purported offensive paragraphs are:

1. That the case of the Applicant failed to disclose any case against the 4th and 5th Respondents necessitating the inclusion of the 4th and 5th Respondents in the Applicant's case.
2. That the Nigeria Police Force, especially the 1st, 2nd and 3rd Respondents were overly professional in handling the investigation of the complaint made by the 4th Respondent.
3. That there is no iota of material fact or evidence placed and or attached by the Applicant to show that the 4th and 5th Respondent threatened and or instigated the purported arrest and detention of the Applicant.
4. That the 4th and 5th Respondents are not necessary parties to this suit and ought not to be joined in the first instance.
5. The Applicant failed to disclose any cogent and verifiable evidence linking the 4th and 5th Respondents to her claims as per the averments in the affidavit in support of her case.
6. The Applicant is not entitled to the grant of her relief against the 4th and 5th Respondents or any person whatsoever as there's nothing placed before this court to enable the court exercise its discretion in favour of the Applicant.

Upon considering each paragraph and in absence of any response by the Respondent, I find that these paragraphs offend section 115(2) of the

Evidence Act (as amended) paragraph 19 contains a legal argument, paragraph 23 is a conclusion, paragraphs 24, 26, 27, 28 and 29 are legal arguments and are struck out accordingly.

The 1st to 3rd Respondents did not appear before this court neither did they file any processes in response to the Originating Motion and Further Affidavit of the Applicant. In the circumstance of this case, where the 4th and 5th Respondents failed and neglected to file any counter process in opposition to the evidence adduced by the Applicant, the case of the Applicant remains unchallenged, uncontroverted and not rebuttable. see the case of: ***ASAFI SEA FOOD V. ALRAINE [NIG] LTD [2002] NWLR [PT.781] 353***

Where evidence is uncontroverted, the onus of proof is satisfied on a minimal proof since there is nothing on the other side of the scale see ***BURAIMOH V BAMGBOSE (1989) 2 NWLR (PT 109) 352.***

In **CHIEF MAURICE UDO IDUNG & ANOR v. THE COMMISSIONER OF POLICE & ORS (2017) LPELR-42333(CA)**

"It is well known in law that failure of a party to challenge or controvert depositions in affidavit of his opponent by filing a counter-affidavit, reply or further and better affidavit is deemed to have accepted the facts deposed in the affidavit. AYOOLA VS. BARUWA (1999) 11 NWLR (PT. 628) 595; COMPTROLLER, NIGERIA PRISON SERVICE V. ADEKANYE (1999) 10 NWLR (PT. 623) 400. When an affidavit is unchallenged, the trial Court is at liberty to accept it as true and correct." Per ADAH ,JCA (Pp. 22-23, paras. E-A)

However, this court before it arrives at its decision must still consider the evidence of the Applicant irrespective of the fact that the Respondent failed to file his defence to the Originating Motion. The burden still rests

on the Applicant to prove his case even though the requirement is minimal proof.

The law is that a plaintiff must establish the case he put forward by credible evidence. He must satisfy the court by the evidence called by him. see ***OGOLO V FUBARA (2003) 5 SC 41.***

A plaintiff must succeed upon the strength of his case and not on the weakness of the defence, although he is entitled to rely on evidence revealed in such weakness to strengthen his case. See ***OTUNBA ABDULLATEEF OWOYEMI V PRINCE OLADELE ADEKOYA 2013 12 SCNJ 131.***

In relief 1, the applicant seeks to enforce her fundamental rights under sections 33, 34, and 35 of the 1999 Constitution [as amended].

Section 34[1] provides that: *"Every individual is entitled to respect for the dignity of his person ..."* Section 35[1] of the 1999 Constitution [as amended] provides: *"Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law"*.

The gravamen of Applicants case can be found in paragraphs **18, 20, 21, 24, 25, 27, 30, 31,32 and 34** of the Affidavit in support of the originating motion. The powers of the police will determine whether in the instant case they acted within those powers when dealing with the Applicant.

Section 4 of the Police Act provides that;

"The Police shall be employed for the prevention and detection of crimes, the apprehension of offenders, the preservation of law and order, the protection of life and property and enforcement of laws and regulations which they are directly charged and shall perform such duties

within or without Nigeria as may be required by them or and under the authority of this or any act.”

The Police have a duty to investigate criminal allegations and the court cannot stop the police from performing its statutory functions. If there is evidence of an infringement of any of the fundamental rights of the applicants, the situation can be remedied but not by stopping police investigation. ***See INSPECTOR GENERAL OF POLICE & ANOR v. DR. PATRICK IFEANYI UBAH & ORS (2014) LPELR-23968(CA) Per CHINWE EUGENIA IYIZOBA, JCA (Pp. 33-34, para. B-B)***

From the Affidavit in support of the Originating Motion, the Applicant is alleging breach of her fundamental rights. Her case is that she was not formally invited by the police for questioning and was detained by the police and made to write a statement. From paragraph 16 of her Affidavit in support and paragraph 3(c) of her Statement and Grounds in support of the application respectively, she was detained between the hours of 9am to 5pm. The facts are clear that she was not kept in the police custody for up to 24 hours. Applicant has also alleged that she was sexually harassed by the 3rd Respondent however she has not placed before this court cogent and verifiable evidence to that effect. See ***Williams v Hope Rising Voluntary Funds Society (1982) LPELR-3484(SC)***.

In relief 2, the Applicant is seeking a Declaration that the Fundamental Rights of the Applicant has been, and further likely to be contravened by the Respondents, if the 3rd and 4th Respondent further coerce the applicant to deposit her Statement of Account from January 2021 to February 2022 and failure of which she will be further arrested, detained and or tortured. This is a ploy to prevent the police from carrying out its statutory function of investigating an alleged offence as provided by its powers of investigation under section 4 of the Police Act and I so hold.

Relief 3 wherein the Applicant is seeking a Declaration that her detention on the 15th day of February 2022, by the 1st to 3rd Respondents, on the instigation and prompting of the 4th and 5th Respondents, when the applicant only came to visit her friend in their cell is not a breach of the Applicant's Fundamental Right to liberty, fair hearing and human dignity contrary to section 34, 35 and 36 of the 1999 constitution and considering the circumstances of this matter. From Paragraph 8 of 4th and 5th Respondents Counter Affidavit, they started noticing that unaccounted goods worth millions of naira were missing from the shop and warehouse. Paragraph 9-11 their internal investigation led them to the apprentice Kenneth. The only logical thing the 4th and 5th Respondents could have done is report their suspicion to the police upon discovering that their apprentice Kenneth was missing and to investigate the missing funds. Paragraph 12. If in course of their investigation they were led to question the Applicant, it is all part of police duty to investigate an alleged crime. It is clear that the 4th and 5th Respondents by virtue of Exhibit A attached to their Counter Affidavit were well within their rights to report suspicion of a crime. Exhibit A was the statement of the 4th Respondent CHINOMSO EMMANUEL OBI at the police station. In the case of **CHIEF (DR.) O. FAJEMIROKUN v. COMMERCIAL BANK NIGERIA LIMITED & ANOR (2009) LPELR-1231(SC) Per JAMES OGENYI OGBE, JSC (P. 4, paras. C-E)** it is the duty of citizens of this country to report cases of commission of crime to the Police for their investigation and what happens after such report is entirely the responsibility of the Police. The citizens cannot be held culpable for doing their civic duty unless it is shown that it is done mala fide.

In relief 4 Applicant is seeking perpetual injunction restraining the Respondents from further inviting, arresting and or detaining the Applicant in relation to this matter. This prayer runs afoul of the performance of the duties of the police in the case of ***IGP V UBAH***

(supra) Per CHINWE EUGENIA IYIZOBA, JCA (Pp. 33-34, para. B-B) the appellate court held;

"There is no doubt that the above powers conferred on the Police are subject to statutory provisions on rights of the citizens and the provisions of the Constitution on fundamental rights. Where there has been no breach of any of those rights, the Court cannot grant an injunction curtailing the rights of the Police to carry out their statutory functions."

IGP V UBAH Per CHINWE EUGENIA IYIZOBA ,JCA (Pp. 37-38, paras. B-A) provided the duty of the police;

"Their job is to investigate and if there is sufficient evidence, to prosecute the suspect. Common sense dictates that it is out of place for a suspect to go to Court and seek to stop the investigation of a criminal offence on the ground that the complainants are biased and that they influenced the police to proceed on the basis that the suspect is guilty. No matter what the police do, the final decision as to the guilt of the accused is that of the Judge before whom the suspect is brought."

The Affidavit in support of the Application paragraph 28 Applicant deposed that; *"The 4th and 5th Respondents also threatened to deal personally with her"*

He who asserts must prove the Applicant has not substantiated this claim before this court in addition, Applicant claimed that the 4th and 5th Respondents instigated the 1st and 2nd Respondents to arrest the Applicant. There is no iota of evidence in the case as put forward by the Applicant to show that the 4th and 5th Respondent instigated the police and I so hold. See **Nsefik v. Muna [2007] LPELR-3934 [CA]**.

The Applicant has failed to show a reasonable cause of action against the 4th and 5th Respondents as the entire set of circumstances do not give rise to an enforceable claim. ***SOCIETY BIC S.A. & ORS v. CHARZIN INDUSTRIES LIMITED (2014) LPELR-22256(SC) PAGE 35.***

The affidavit in support of the Originating Summons does not disclose the existence of any legal controversy between the 4th and 5th Respondents and the Applicants and the consequence of same is that the names of the Respondents ought to be struck out for lack of locus standi. In ***GOV OF OYO STATE & ORS V. AJUWON & ORS(2020) LPELR-50471(CA)***

"It is settled law that, though jurisdiction and reasonable cause of action are distinct but they are interwoven, for without a reasonable cause of action, the Court cannot exercise jurisdiction over the matter. See Amaechi v. Governor of Rivers State & Ors (2017) LPELR - 43065 (CA); Alhaji Sayinna Adam v. Hussaini Zannah Shaibu & Ors (2016) LPELR - 40179 (CA). The suit not having disclosed a reasonable cause of action is incompetent and liable to be struck out."

The applicant has the onus to prove that she was harassed, intimidated and threatened by the officers of the 1st respondent. It is trite law that he who asserts must prove his assertion. See **Nsefik v. Muna [2007] supra**. The applicant did not give particulars or evidence of the alleged harassment, intimidation and threat of arrest and detention or phone calls. The Applicant has not discharged the legal burden on her to establish her case and I so hold.

From all that I have said, I resolve the sole issue in the negative and in favour of the Respondents as against the Applicant. The applicant's suit lacks merit and is dismissed. I make no order as to cost.

HON. JUSTICE NJIDEKA K. NWOSU-IHEME

[JUDGE]

Appearance of Counsel:

1. E. R. Okpara
Eunice . E. Achuba for the Applicant
2. Arubeleze Ekene for the 1st& 2nd Respondents