

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

**THIS WEDNESDAY, THE 1<sup>ST</sup> DAY OF JUNE, 2022.**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: FCT/HC/CV/3545/2020**

**BETWEEN**

**DR. UCHE NWOGBO UCHE                   .....APPLICANT**

**AND**

<p><b>1. INSPECTOR GENERAL OF POLICE</b> <b>2. NIGERIA POLICE FORCE</b> <b>3. INSPECTOR JOE</b> <b>4. MRS. CHINWE VIVIAN UCHE</b> <b>5. DIG IN ZONE 7</b></p>	}	<p><b>..... RESPONDENTS</b></p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---	---------------------------------

**JUDGMENT**

This is an application brought pursuant to the Fundamental Rights Enforcement Procedure Rules 2009. The application is dated 23<sup>rd</sup> December, 2020 and filed on 24<sup>th</sup> December, 2020 at the Court’s Registry.

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

- a. That the act of the 3<sup>rd</sup> and 5<sup>th</sup> Respondents who are officers of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents forcefully ordered the applicant to bring his house key of No. 5A, Road 9, Biltmore Estate, Galadimawa, Abuja-FCT, to their office and forced the Applicant to write an undertaking on when he will bring his house key to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents on a purely civil matter without any pending charge filed against the Applicant before any competent court contravenes the Applicant’s rights to dignity of human person and right to property.**

- b. That the threat to detain and disgrace the Applicants by the 3<sup>rd</sup> and 5<sup>th</sup> Respondents who are the officer of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as a result of failure of the Applicant to fulfilled the content of the purported and forcefully obtained undertaking from the Applicant in order to forcefully transfer the ownership of the applicant house to the 4<sup>th</sup> Respondent in a purely civil transaction and matrimonial matter between the Applicant and the 4<sup>th</sup> Respondent is a gross violation of the Applicant's Fundamental Rights to dignity of human person, personal liberty and Right to property guaranteed under Sections 34, 35 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as the Applicants cannot move freely to carry on his day to day business and also cannot enjoy his house built with his money based on the threat from the 3<sup>rd</sup> and 4<sup>th</sup> Respondents.**
- c. An Order nullifying the purported undertaking the 3<sup>rd</sup> Respondent who is an officer of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents forcefully lured the Applicant to write in order to forcefully transfer the ownership of the Applicant's house No. 5A, Road 9, Biltmore Estate, Galadima, Abuja-FCT to the 4<sup>th</sup> Respondent.**
- d. An Order of perpetual injunction restraining the Respondents whether by themselves, servants, agents, employees, privies or whosoever may be claiming through them from further embarrassing, threatening, arresting and or detaining, harassing or intimidating the Applicant as long as Applicant live lawful life devoid of any direct criminal allegation against him.**
- e. An Order that the Respondents pay to the Applicant the sum of N20, 000, 000.00 (Twenty Million Naira) only as general damages for breach of the Applicant's Fundamental Rights as well as loss of goodwill and business deal during the Applicant ordeals at the hands of the 3<sup>rd</sup> and 5<sup>th</sup> Respondents and their accomplice, officers and men of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents at the instance of the 4<sup>th</sup> Respondent around 11<sup>th</sup> and 23<sup>rd</sup> day of December, 2020 when the Applicant was arrested and denied of his free movement for some hours and also taking to his place of abode in order to embarrass him within his neighbourhood and the messages**

sent by the 3<sup>rd</sup> to 4<sup>th</sup> Respondents to put the Applicant in an unnecessary fear.

- f. An Order that the Applicant deservingly entitled to a written apology from the Respondents.
- g. An Order restraining the Respondents from arresting, harassing, threatening and embarrassing the Applicant for a matter that is purely civil.
- h. And such Order(s) as the Honourable Court may fit to make in the circumstances of the case.

#### **GROUND UPON WHICH THE RELIEFS ARE SOUGHT**

1. The Applicant is a business man.
2. The Applicant and the 4<sup>th</sup> Respondent are husband and wife who got married to each other sometimes in 2014 under the Marriage Act wherein the marriage was solemnized at AMAC Marriage Registry, Abuja-FCT.
3. The 4<sup>th</sup> Respondent sometime in 2016, for no just cause, deserted and/or abandoned both the applicant and their matrimonial house to wit: house No. 5A, Road 9, Biltmore Estate, Galadima, Abuja-FCT and moved to an unknown place.
4. The Applicant and the 4<sup>th</sup> Respondent jointly between January and June 2014 acquired an interest in a house situated and/or known as house No. 5A, Road 9, Biltmore Estate, Galadima, Abuja-FCT.
5. The Applicant has been living alone in the said house No. 5A, Road 9, Biltmore Estate, Galadimawa, Abuja-FCT since the 4<sup>th</sup> Respondent moved out of the said matrimonial house.
6. Sometimes in 2016, the 4<sup>th</sup> Respondent, to the utmost surprise of the applicant, filed a petition for dissolution of marriage between the applicant and the 4<sup>th</sup> respondent. The said petition is still pending in the

**High Court of the Federal Capital Territory and the court had ordered that the parties maintained status quo pending the determination of the said petition for the dissolution of marriage.**

- 7. To the Applicant utmost surprise, the 3<sup>rd</sup> Respondent in the company of another police officer suddenly came to the applicant house on the 11<sup>th</sup> day of December, 2020 and unfriendly invited him to the 5<sup>th</sup> Respondent office on the ground that the 4<sup>th</sup> respondent had written a petition against the applicant, the petition which was never given to the applicant.**
- 8. Upon the invitation of the Applicant by the 3<sup>rd</sup> Respondent on the 11<sup>th</sup> day of December, 2020, the Applicant honoured the 3<sup>rd</sup> respondent invitation and went to the 5<sup>th</sup> respondent office. Also, the 3<sup>rd</sup> and 5<sup>th</sup> respondents invited the applicant to their office on the 23<sup>rd</sup> day of December, 2020 and the applicant honoured the invitation. However, the applicant was arrested and detained and he was informed that until he writes an undertaking to hand over the ownership of the house where he is living to the 4<sup>th</sup> respondent, he will not be allowed to go home.**
- 9. The applicant was forced and/or lure into writing an undertaking before he was release that date.**
- 10. The 3<sup>rd</sup> respondent went to the house of the Applicant in house No. 5A, Road 9, Biltmore Estate, Galadimawa, Abuja-FCT and embarrassed him together with the men and officers of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in order to disgrace the Applicant in his neighborhood in order to favour the 4<sup>th</sup> respondent.**
- 11. The Applicant explained to the 3<sup>rd</sup> and 5<sup>th</sup> Respondents about the ownership of house No. 5A, Road 9, Biltmore Estate, Galadimawa, Abuja-FCT and the pending petition in court but the 3<sup>rd</sup> and 5<sup>th</sup> respondents will not listen to the applicant, rather the 3<sup>rd</sup> and 5<sup>th</sup> respondents threatened to remand and/or incarcerate the applicant if the applicant refuse and/or fail to hand over the key of the house to the 4<sup>th</sup> respondent.**

- 12. Based on the pressure and threat to detain the Applicant, the Applicant put it in written form by way of undertaking that the Applicant shall hand over the said house key to the 3<sup>rd</sup> and 5<sup>th</sup> Respondents.**
- 13. Both the 3<sup>rd</sup> and 5<sup>th</sup> Respondents also threatened the application that in the event he fails to hand over the ownership of the said house to the 4<sup>th</sup> respondent that they will come to the Applicant house to disgrace and embarrass him with guns and handcuff in order to force him out of that house by all means.**
- 14. Based on the threat received from the 4<sup>th</sup> and 5<sup>th</sup> respondents to disgrace, detain and harass the Applicant, Applicant could not move freely in his house and in Abuja as a whole as the Respondents are still intimidating him.**
- 15. The act of intimidation and threat to detain the Applicants by the 3<sup>rd</sup> and 5<sup>th</sup> respondents and men of the 1<sup>st</sup> respondent on the instruction of the 4<sup>th</sup> respondent is an infringement and gross violation of the Applicants Fundamental Rights to dignity of human person and personal liberty under Sections 34, 35 and 44 of the Constitution of the Federal Republic of the Federal Republic of Nigeria 1999 (as amended).**
- 16. The act of using the 3<sup>rd</sup> respondent by the 4<sup>th</sup> respondent to harass the Applicant on a matter that is pure civil and without any pending charge before a competent court is a crude exhibition of power which is not allowed under any of Nigerian Laws and is therefore barbaric, illegal, unconstitutional and void ab-initio.**
- 17. That using force by the 3<sup>rd</sup> and 5<sup>th</sup> respondents to transfer ownership of house to the 4<sup>th</sup> respondent from the Applicant and threat to detain, disgrace, harass and intimidation Applicant on a pure civil matter without any charge or FIR filed before any competent is a great violation of his fundamental human right.**
- 18. The Applicant is therefore entitled to the protection of his inalienable Fundamental Rights.**

The motion is supported by a 19 paragraphs affidavit and a brief written address, in which two issues were raised as arising for determination as follows:

- 1. Whether the Applicant Fundamental Rights to dignity of human person and personal liberty are inalienable and immutable such that same cannot be taken away by any person?**
- 2. Whether, in the circumstances of this case, the Applicant Fundamental Rights to dignity of human person and personal liberty have been infringed upon by the respondents such that this Honourable Court can safeguard in line with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)?**

The address of the Applicant which forms part of the Record of Court is that the actions of the Respondents particularly 3<sup>rd</sup> and 5<sup>th</sup> Respondents in allegedly threatening and harassing him over ownership of a property at No. 5A Biltmore Estate, Galadima and also forcing him to write an undertaking to hand over the keys and ownership of the property in favour of 4<sup>th</sup> Respondent constitutes a gross violation of his Fundamental Rights to personal liberty and dignity of the human person as enshrined in the 1999 Constitution which accordingly entitles him to the Reliefs he prays for in his claim.

At the hearing, counsel to the applicant relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application.

In opposition, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents filed a thirty three (33) paragraphs counter-affidavit with (9) nine annexures marked as **Exhibits Z1-Z8 (a-d)** and **Z9**. A written address in support was filed in compliance with the FREP Rules in which one issue was raised as arising for determination:

**“Whether the Applicant is entitled to the Reliefs sought in this application.”**

The submissions on the above issue equally forms part of the Record of Court. The thrust of the submissions is basically that the constitutionally guaranteed Rights of Applicant was not in any way threatened, infringed or violated in any manner by their actions which was based on a complaint of threat to life, forgery, assault and battery among other serious criminal allegations which the police are statutory empowered to investigate.

At the hearing, counsel to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents was unavailable. The court on being satisfied on the record that counsel was aware of the date of hearing as he was present in court when the date was taken had recourse to the provision of **Order XII Rule 3 of the FREP Rules** and the processes he filed were deemed read and or adopted.

On the part of the 4<sup>th</sup> Respondent, she filed a 3 paragraphs affidavit with nine (9) annexures marked as **Exhibits A-H**. A written address was equally filed in compliance with the FREP Rules in which two (2) issues were raised as arising for determination as follows:

- 1. Whether in view of the facts and circumstances of this case, the Applicant had made a case for the enforcement of fundamental right.**
- 2. Whether the Applicant have a cause of action against the 4<sup>th</sup> Respondent in this suit as it is presently constituted.**

The submissions on the above issues equally forms part of the Record of court. The summary or essence of the address is to the effect that absolutely no case of violations or violation of Applicant's fundamental rights was made out against Respondent and in particular 4<sup>th</sup> respondent on the materials supplied by Applicant to entitle him to all or any of the Reliefs sought.

At the hearing, counsel for the 4<sup>th</sup> respondent relied on the paragraphs of the counter-affidavit and adopted the submissions contained in the written address in urging the court to dismiss the application as lacking in merit.

I have carefully read and considered the processes filed on both sides of the aisle. The issue to be resolved from the processes appears narrow and that is simply whether on the facts and materials before the court, the Applicant has established that his fundamental human rights were threatened and or violated by respondents to entitle him to the Reliefs sought.

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

## ISSUE 1

**Whether on the facts and materials before the court, the Applicant has proved or established that his fundamental rights were threatened and or violated by Respondents to entitled him to the Reliefs sought.**

Now it is settled principle of general application that an applicant who seeks for the enforcement of his fundamental rights under **Chapter IV of the Constitution** has the onus of showing that the reliefs he claims comes within the purview of the fundamental rights as contained in chapter IV and this is clearly borne out by the express provision of **Section 46 of the 1999 Constitution and Order 11 Rule 1 of the FREP Rules 2009**. In **Uzoukwu V. Ezeonu II (1991)6 N.W.L.R (pt.200)708 at 751**, the Court of Appeal in construing **Section 42 of the 1979 Constitution** which is in *pari material* with **Section 46 of the 1999 Constitution** stated as follows:

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

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

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

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



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

On the side of the Applicant, the case made out is that the 3<sup>rd</sup> and 5<sup>th</sup> Respondents have been threatening and harassing him with respect to ownership of a property at No. 5A, Road 9 Biltmore Estate, Galadima Abuja, FCT which he says is a jointly owned matrimonial home with 4<sup>th</sup> respondent. That in 2016, the 4<sup>th</sup> Respondent moved out of the matrimonial home and has been using thugs to threaten his life. That to his surprise, he was ordered to hand over the keys of the property and also to write an undertaking that he will transfer ownership of the property to 4<sup>th</sup> respondent by the 3<sup>rd</sup> and 5<sup>th</sup> respondents without any order of court.

The Applicant stated that the 3<sup>rd</sup> and 5<sup>th</sup> respondents threatened him that if he does not effect the transfer, they will come to his home and publicly ridicule and disgrace him. That he cannot now move freely in his house and Abuja because of the intimidation by respondents.

On the part of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> respondents, they wholly denied the allegations of Applicant. Their case is simply that they received a petition or complaint vide **Exhibit Z1** of threat to life, forgery, assault and battery dated 21<sup>st</sup> December, 2020 and they commenced investigations as allowed by law. That the invitation to the Applicant was simply part of the process of investigation to hear from Applicant over the allegations leveled against him, and he was granted bail on terms which he has breached and never reported back.

The case of 4<sup>th</sup> Respondent on the whole supports the trajectory of the narrative of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> respondents. She duly laid the criminal complaint allowing the police to commence the investigations over the serious complaints she laid against the Applicant and did no more. Indeed by **Exhibit E** attached to the counter-affidavit of 4<sup>th</sup> Respondent, the Applicant had similarly filed a fundamental rights enforcement case against her which was heard by a court of competent jurisdiction in Suit No. **CV/495/2019 between Dr. Uche Nwogbo Uche (Applicant) V. Mrs. Chinwe Uche (Respondent)**. That by the judgment delivered on 17<sup>th</sup> September, 2020 vide **Exhibit G** the case against her was dismissed as lacking in merit. That the present action filed after the dismissal is simply another attempt to prevent the police from concluding their

investigations into the serious criminal complaints leveled against the Applicant.

I have above briefly captured the essence of the case made out by parties. The kernel or crux of this dispute is whether the actions of the Respondents within the context of the precise complaints of Applicant can legally and be constitutionally countenanced.

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

The sections provides as follows:

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

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

**“35(1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law-:**

- a. In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty.**
- b. By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law.**
- c. For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.**

- d. In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare.**
- e. In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community. or;**
- f. For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.**

The above sections appear to me clear and unambiguous such that the task of interpretation can even hardly be said to arise. **Section 34(1)** emphasises treatment of the human person with respect and therefore any act which makes people lose their sense of self respect, value or worth would be degrading. **Section 35(1)** on the other hand places premium on the personal liberty of every person and any deprivation of same must be consistent with the procedure permitted by law. The court obviously serves as a necessary bulwark in the protection of these fundamental rights and any transgression or proved violation of these constitutional provisions are met with necessary legal consequences.

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

As stated earlier, the allegations made by Applicant have all been denied by the respondents. The implication is that issues have been joined on the allegations and they thus must be established by the Applicant with convincing evidence putting the court in a commanding height to grant the Reliefs he seeks.

From the affidavit of Applicant, the dispute is centered around a matrimonial home situate at No. 5A Road 9 Galadima FCT (disputed house) which he contends that he jointly acquired with 4<sup>th</sup> respondent. It is because of this house that he was allegedly harassed and told to hand over the keys and also forced to write an undertaking that he will transfer interest to 4<sup>th</sup> respondent.

Let me quickly state that this is a Fundamental Rights Enforcement Matter and it is therefore not a conduit or process for determination of title or who owns any property. I leave it at that.

Now on the materials supplied by Applicant, absolutely no scintilla of evidence was proffered showing joint interest of any property or indeed any defined interest in the disputed property. Ownership or joint ownership cannot hang in the air. Within the land tenure system in the FCT, ownership must either be predicated on an allocation by the FCT or acquisition of interest either in terms of purchase or alienation from a clear defined source. On the other hand by **Exhibits B, C and D**, the 4<sup>th</sup> respondent has attached her receipt of payment, letter of allocation all in her name in relation to the disputed property.

If the Applicant cannot **delineate his interest** or show **ownership of the disputed house or any house**, it is difficult to situate the basis of the complaint that he was told to bring the house key of the disputed premises. I cannot fathom how one can be ordered to produce a house key he neither owns and which on the evidence he was not given to hold or keep. Again in the absence of evidence of ownership of the defined disputed property, it is again illogical to complain that he was forced to write or give an undertaking to transfer interest of the property he does not own in the first place.

There is really nothing on the evidence to support the complaints against 3<sup>rd</sup> and 5<sup>th</sup> Respondents of threats to Applicant to hand over keys to any house or to give an undertaking to hand over interest of the disputed property to 4<sup>th</sup> respondent. The respondents had denied that any such undertaking was demanded of Applicant or obtained and there is absolutely no evidence of any kind to support this complaint and the court cannot speculate or act on conjectures. There is equally nothing on the evidence to support the allegation that thugs and hooligans were sent on several occasions by 4<sup>th</sup> Respondent to threaten his life. Where is the evidence to situate that thugs were sent to him on several occasions to threaten his life and by 4<sup>th</sup> respondent? It is curious that these “several” threats to life were not reported at all to the police and to determine who was behind it? These allegations of “several threats to life” are clearly speculative posturing bereft of any evidence and accordingly lack probative value in the circumstances.

Now with respect to the complaints of the alleged threat to arrest, detain and embarrass Applicant, it may be necessary to situate even if briefly the duties of the police.

It is common ground that the Nigerian Police is a body statutorily created with precisely streamlined powers to prevent, detect crime and the apprehension of offenders. **Section 4 of the Police Act** provides as follows:

*“The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within and outside Nigeria as may be required of them by or under the authority of this or any Act.”*

The 1<sup>st</sup> – 3<sup>rd</sup> and 5<sup>th</sup> Respondents as police officers or indeed any serious Law Enforcement Agency do not however go about willy-nilly looking to unreasonably interfere with the Fundamental Rights of law abiding citizens.

In this case by **Exhibit Z1**, attached to the counter-affidavit of 1<sup>st</sup> – 3<sup>rd</sup> and 5<sup>th</sup> Respondents, a complaint was laid against Applicant containing serious criminal allegations including even threat to life. There cannot be any argument that the police have the undoubted powers pursuant to **Section 4 (Spura)** to carry out investigations into these alleged criminal complaints.

There really cannot be any valid complaints if the police commence investigations based on complaints such as laid vide **Exhibit Z1**. When a citizen makes such a complaint, I cannot accept the contention that he is doing any wrong. The decision whether to proceed or take further steps is for the police to make. They can even abandon the complaint if it has no justifiable basis.

Now because of the trajectory of the narrative of Applicant in this case, it appears to me necessary to emphasise that there must be some level of appreciation of how the law enforcement agencies operate. For me, a logical and necessary corollary duty or implication of these complaints or petitions must involve the processing of the complaint or petition and this must necessarily require the basic step of investigation which is the examination of the facts of the situation. There may or may not be the need to call in people for questioning in the process. The process may take a period of time and the invitation for questioning may also be repeated. There is no cast iron formular on how the process will pan out. These are issues largely dictated by the facts uncovered in the process of investigation. The only point to add here is that the

process must be conducted with civility and decorum. Where investigation reveals a *prima facie* crime has been committed, it is now for the police to prosecute same or forward the results of their investigations to the necessary prosecutorial agencies. Where no crime or criminality is disclosed after such investigations, that puts an effective end to the matter.

I do not therefore accept that it can be argued with validity that the 4<sup>th</sup> Respondent has violated any laws in writing the petition, **Exhibit Z1**. In the same vein, I incline to the view that the right to report acts of threat to life or indeed any act of criminality cannot be denied anybody on the supposed or anticipated fear of violation of human rights. The guiding principle is for all law enforcement agencies to exercise this discretion with scrupulous fidelity to the rule of law at all times and where they have so acted in the exercise of their undoubted powers, except it can be shown or established that they acted outside the purview of their statutory powers or indeed acted *mala fide*, the Police cannot be faulted.

The call to attend an interview as disclosed by Applicant here, without more, does not tantamount to an indictment or accusation of any wrong doing with respect to the complaint leveled specifically at him. The Right to personal liberty or respect for the dignity of the person is therefore not infringed when such invitations are extended to private citizens.

In this case, on the materials supplied by Applicant, he said he was invited on 11<sup>th</sup> December, 2020, by 3<sup>rd</sup> Respondent; he honoured the invitation and went to the office of 5<sup>th</sup> Respondent. No complaint was delineated with respect to this visit. It is taken that nothing untoward happened. He then stated that he was invited on 23<sup>rd</sup> December, 2020 where he was allegedly forced to write an undertaking before he was released. As stated earlier, there is absolutely no evidence of any kind denoting demand for an undertaking or evidence that any undertaking was taken. What is clear on the materials is that by **Exhibit Z2** dated 23<sup>rd</sup> December, 2020 attached to the counter-affidavit of 1<sup>st</sup> – 3<sup>rd</sup> and 5<sup>th</sup> Respondents, the applicant was granted bail by the police on the same date he honoured the second invitation.

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

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

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

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

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

In rounding up, I feel compelled to quote the admonition I made in the unreported case in **Suit No: HC/CV/3199/13 between Dr. Ezekiel Izougu V. Dr. Mrs Catherine Okparaeké & Anor** delivered on 10<sup>th</sup> April, 2014 where I stated as follows:

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

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

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

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



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

.....  
*Hon. Justice A.I. Kutigi*

*Appearances:*

- 1. O.A. Mathew, Esq., for the Applicant.*
- 2. E.A. Enegho, Esq., for the 1<sup>st</sup> – 3<sup>rd</sup> and 5<sup>th</sup> Respondents.*
- 3. Maxwell Chukwueke, Esq., for the 4<sup>th</sup> Respondent.*