

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

**SUIT NO: CV/289/2019**

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**BETWEEN:**

**THE REGISTERED TRUSTEES OF PICKUP,  
CANTER TRUCK NON PASSENGE  
BUS DRIVERS ASSOCIATION** } .....**APPLICANT**

**AND**

**1. UMAR BABA PRECIOUS INVESTMENT LIMITED }  
2. ABUJA MUNICIPAL AREA COUNCIL (AMAC) } .....**RESPONDENTS****

**JUDGMENT**

The applicant herein filed this application with No. CV/289/2019 for the enforcement of his fundamental rights and seeks for the following reliefs:

- a) A declaration that the harassment, arresting, intimidation, seizure, impoundment and deflation of the vehicles tyres of members of the applicant and forcing them to pay daily levy of N200.00 by the respondents workers, officers, servants, agents and whosoever deriving authority from them or working for them at the prompting of the 1<sup>st</sup> and 2<sup>nd</sup> respondents is unlawful and unconstitutional.
- b) A declaration that the further threat to harass, arrest, intimidate, seize, impound and deflate the vehicles, tyres of members of the applicant and forcing them to pay daily ticket of N200.00 and if they fail to pay before 1:00pm on each

day are liable to pay a fine of N20,000.00 as shown in EXH. "L" is illegal, unlawful and unconstitutional

- c) A declaration that the 2<sup>nd</sup> respondent has no power by virtue of section 2 (1) of the Taxes and Levies Approved List for Collection Act Cap. T2, LFN to appoint, constitutes the 1<sup>st</sup> respondent as consultant, contractor or taskforce on revenue assessment and collection across the Federation.
- d) A declaration that the acts of the respondents, their workers, servants, agents, privies and whosoever deriving authority from them and thereby compelling the applicant's members from operating freely on all roads throughout the 774 Local Governments Areas including the council areas in Abuja and thereby loosing their daily earnings due to their continuous harassment, arresting, intimidation, seizure, impoundment and deflation of the vehicles tyre of the applicant is a gross violation of section 40 of the 1999 constitution of the Federal Republic of Nigeria as amended.
- e) A declaration that the 2<sup>nd</sup> respondent and its counterparts in all the 774 Local Governments areas in Nigeria including the council areas in Abuja having collected a bulk sum from members of the applicant covering a whole year cannot turn around to create other bodies and using their workers, officers, servants, agents to threaten, intimidate, harass, arrest, seize, impound and deflate the vehicle tyres of the

applicant members thereby forcing them to pay double levies.

- f) An order of injunction restraining the respondents themselves, their workers, officers, servants, agents, privies and whosoever deriving, authority from them from further harassing, arresting, intimidating, seizing, impounding, deflating the vehicles tyres of members of the applicant and forcing them to pay daily ticket of N200.00 or in any manner infringing on the fundamental rights of the applicant's members in relation to daily levies and the attendant penalty of N20,000.00.
- g) An order awarding the sum of N100,000,000.00 (One Hundred Million Naira) as compensation jointly and severally against the 1<sup>st</sup> and 2<sup>nd</sup> respondents for the unlawful usage of their workers, servants, impoundment, deflation of the vehicle tyres of members of the applicant and forcing them to pay daily ticket of N200.00 and an apology.
- h) And for such order or further orders as the Honourable Court may deem fit to make in the circumstances of this matter.

The grounds upon which this application is filed are set out on page 11 of the application.

The application is supported by affidavit of urgency and a verifying affidavit which is accompanied by a written address of counsel.

The 1<sup>st</sup> respondent filed his counter affidavit of twenty-three paragraphs which is accompanied by a written address of counsel.

The applicant filed a further affidavit of thirteen paragraphs, and is also accompanied by a written address of counsel.

It is in the affidavit of the applicant that in 2012 after the incorporation of the applicant, the members commenced operations the National Union of Road Transport Workers (NURTW) insisted that the operators of the applicant and its members throughout Nigeria must be under it, and that its refusal and its members to operate as demanded, led to the members and their vehicles being arrested, detained impounded, seized, harassed, imposed with numerous levies and forced out of the highways by members of the National Union of Road Transport Workers, and that the applicant is a registered association in compliance with the law of Nigeria and the provisions of the constitution of the Federal Republic of Nigeria.

It is stated that due to the insistence of the National Union of Road Transport Workers, its members and workers, the applicant in its initial name filed a suit at the High Court of Mararaba, Nasarawa State which was heard and judgment obtained EXH. "B", and thereafter the name of the applicant was changed to expand its area of operation and was named Pickup Vans, Canter Trucks and non-passenger buses to be used in conveying goods from the point of purchase to point of delivery in Nigeria.

It is stated that EXH. "D", "D1", "D2", "D3", "D4" and "D5" are the documents issued by the 2<sup>nd</sup> respondent (AMAC) Abuja which member of the applicant must pay for in order to be authorised to operate their respective vehicles in the various locations in Nigeria, EXH. "D6" is the receipt issued by the 2<sup>nd</sup> respondent to confirm payment by the members of the applicant as applicable to other locations, EXH. 'E', 'E1', 'E2', 'E3', 'E4', 'E5', 'E6', 'E7', 'E8',

'E9', 'E10', 'E11', 'E12', 'E13', 'E14', 'E15', 'E16', 'E17' and 'E18' are documents paid for at Karu L.G.A, Nasarawa State and issued to some members of the applicant in order to operate on the roads in Nigeria, EXH. 'F', 'F1', 'F2', 'F3', 'F4', 'F5', 'F6', 'F7', 'F8', 'F9', 'F10', 'F11', 'F12', 'F13', 'F14', 'F15', 'E16', are documents paid for at Kwali Area Council Abuja as issued to some members of the applicant in order to operate on the roads in Nigeria, and EXH. 'F17' is the receipt issued by Kwali Area Council, Abuja to confirm payment as applicable to other locations where payments are made.

It is stated that any member of the Association that pays for the documents stated above in any Local Government Area Offices in Nigeria or at AMAC is free to use same throughout the period in any part of Nigeria, and that while the members of the applicant were in operating, and in December, 2016, the members of the applicant were served with EXH. 'G' showing the daily prices to be paid for heavy duty vehicles which failure to pay before 1:00pm in any day, would attract a fine of N20,000.00, and the members of the applicant resolved not to pay for daily ticket because it will be double taxation on members. This is after consultation with the chief revenue officer of the 2<sup>nd</sup> respondent, and the secretary of the 2<sup>nd</sup> respondent.

It is in the affidavit that after some months, the deponent was called by one Mathew E. Maiyaki and was informed that the 2<sup>nd</sup> respondent had contracted the job of collecting daily tickets to their company, that is the 1<sup>st</sup> respondent, and in which they told Maiyaki that the members would not agree to payment of double levies. It is stated that the same Maiyaki called the deponent and informed the later that they had stakeholders meeting which resolved that members of the applicant should start to pay daily ticket of N200.00 for four tyres vehicles while 6

tyres vehicle is N500.00, and the reply from the deponent was that the members of the applicant were not part of the meeting, and therefore requested that the resolution of the meeting be put into writing, and on the 28<sup>th</sup> May, 2018, the same Mathew E. Maiyaki sent EXH. '1' attached with EXH. "1<sup>1</sup>", "1<sup>2</sup>" and "1<sup>3</sup>", and upon the receipt of those letters, the deponent said they wrote a letter to Maiyaki dated the 12<sup>th</sup> June, 2018 and attached is EXH. "J", and that due to the these development, the house of Representatives in a letter dated the 17<sup>th</sup> November, 2015 vide EXH. 'K' had written to the Chairman Bwari Area Council on the illegality of using revenue official referred to as consultants, contractors or taskforce as revenue assessment and collections, and the respondents are aware of this development, and in EXH. 'J' in the letter sent by Maiyaki the heavy duty vehicles are listed, and the engagement of the 1<sup>st</sup> respondent was to cover heavy duty vehicles like tippers, trailers, cranes, tractors, excavators and pay loaders within Abuja Municipal Area Council, and the members of the applicant do not drive any of the vehicles listed above, and the respondent have been arresting, stopping, seizing, intimidating and detaining members of the applicant and their vehicles that plies into Abuja from like Mararaba in Nasarawa State or other locations for days without charging them to court.

It is stated that on the 9<sup>th</sup> September, 2019 and before the 11<sup>th</sup> September, 2019, a member of the applicant Mr. James Ameh with vehicle No. KRV 335 XB was arrested, his vehicle impounded and detained by the agents, servants and workers of the respondent and was forced to pay a fine of N10,000.00 as receipted in EXH. 'L' issued in the name of the 2<sup>nd</sup> respondent; and this is as a result of the

failure by Mr. James Ameh to pay daily ticket of N200.00 before 1:00pm on the 9<sup>th</sup> September, 2019 as indicated in EXH. 'M'. That among the members of the applicant who were forced, arrested and detained with their vehicles are still being forced to pay daily tickets of N200.00 are the owners of vehicles No. KRV 252, XE 343 GWA, AA 750 RLU, KEF 99 XA and XG 798 ABJ belonging to Ignatius Eburuo, Emeka Eke, Bartholomew Obiekwe and a host of others, as seen in EXH. 'M1', 'M2', 'M3', and 'M4' respectively. That the agents, servants, workers and these driving authorities from the respondent said that, they will not stop harassing, detaining and impounding any vehicle of the applicant's members which fails to pay the daily ticket of N200.00.

It is deposed to the facts that the arrest and detention for days the vehicles of the members, harassment, intimidation and forcing the members of the applicant to pay daily ticket while conveying goods from the point of purchase to locations in Abuja is on-going as seen in EXH. 'P', 'P1' – 'P6'. That the respondents ordered their thugs to arrest, detain and impound any vehicle belonging to the applicant's members ever seen on the roads.

In his written address, the counsel to the applicant raised this issue for determination, thus:

**“Whether the applicant and its members are entitled to the reliefs sought for against the respondents”?**

The counsel submitted that the applicant and its members are entitled to the reliefs sought against the respondents, having met the requirement of the law in obtaining their appropriate papers to ply all roads in Nigeria without disturbance, harassment, intimidation, arrest and detention as being presently done by the respondents, and that by virtue of section 46(1) of the 1999 Constitution as

amended, and Order 2 Rule 1 of the Fundamental Right (Enforcement Procedure) Rules, this Honourable Court has the requisite jurisdiction to hear the application. To him, the preamble to the Fundamental Rights Enforcement Procedure) Rules, and more particularly paragraph 3(e) therein welcomes public interest litigation in human rights as the interest of the members of the association or other individuals or groups as one of these that can bring fundamental rights actions in court on behalf of its members.

The counsel submitted that in the light of the exhibits, affidavit in support, the respondents have no basis to have violated, to violate and continuously threatening to violate the fundamental rights of its members as shown in paragraph 6(a) – (h), 7(a) – (f), 8(c) – (h), 9(a) – (e), 10(a), (b), (e), (f), (g), 11(b) (c), (d), (e), 12 (a) (b) (c) and 13 of the affidavit.

The counsel posed this question: **can the 1<sup>st</sup> and 2<sup>nd</sup> respondents be allowed under the extant laws to carry on with the crass impunity manifested above, having regards to the provisions of the constitution of the Federal Republic of Nigeria 1999 (as amended) and the African Charter on Human and Peoples rights (Ratification and Enforcement) Act?**, and he answered the above question in the negative. The counsel cited section 2(1) of the Taxes and Levies Approved List for Collection Act, Cap. T2 LFN, 2004, which to him, prohibits and criminalises the case of non-revenue officials popularly referred to as consultants, contractors or taskforce in revenue assessment and collection across the Federation, which provides:

**“Notwithstanding anything contained in the constitution of the Federal Republic of Nigeria 1979, as amended, or in any enactment or law, no**



**persons, other than appropriate tax authority shall assess or collect, on behalf of the Government, any tax or levy listed in the schedule with this Act, and members of the Nigeria Police Force shall only be used in accordance with the provisions of the tax laws”.**

The counsel went further to quote section 2(2) of the Taxes and Levies Approved List for Collection Act which provides:

**“No person, including a tax authority shall mount a road block in any part of the Federation for the purpose of collecting any tax or levy.**

The counsel submitted that an applicant seeking for enforcement of fundamental right is required to show that there was arrest and detention of the applicant or its workers, and to him, the applicant has shown in the affidavit in support of this application that its members’ vehicles were arrested and detained for days by the respondents through their thugs, workers, servants, agents and privies and also were compelled to purchase the daily ticket of N200.00 or pay a fine of N20,000.00 for failing to do so before 1:00pm on each day.

The counsel cited the case of **George V. F.R.N. (2014) 2 WRN 37 at ratio 4** to the effect that a person shall not be convicted of a criminal offence unless the offence is defined and the penalty is prescribed in a written law, and therefore, to him, the threat to arrest, to detain, to harass, to intimidate and impound the vehicles of the applicant’s members and general intimidation of their freedom of movement, liberty, association, and human dignity to carry out their lawful duties in earning a living, is contrary to the provisions of the 1999 constitution, and the applicant needs not to wait until the freedom, liberty, association and human

dignity of its members to operate their vehicles on Nigeria roads are disregarded; and he cited the cases of **Machika V. Kaduna State Holding Authority (2011) 3 NWLR (pt 1233)15.**

The counsel also submitted that a careful perusal of the facts deposed to in the affidavit in support of the application, shows that from September, 2019 when the respondents and their workers, agents, servants, thugs and privies started arresting and detaining the vehicles of the applicant's members, it has been a tale of brutality and use of force with a view to cage the members of the applicant to be submissive to them, and he cited the case of **Federal Civil Service Commission V. Nwoyo (1998) 2 NWLR (pt 16) 658** to the effect that it is the duty of court to safeguard the rights and liberties of individuals and to protect them from abuse or misuse of power. He further submitted that having regards to all that have transpired between the applicant's members and the officers, servants, agents, thugs and privies of the respondent, it has brought this court to focus on its duty to cast upon it as enunciated in the preamble to the Fundamental Rights (Enforcement Procedure) Rules 2009. He further argued that the roles played by the respondents are not for the benefit of individuals and collection taxes but to lock vendetta or turning the 1<sup>st</sup> respondent into tax recovery agency, and he cited the case of **Nkpa V. Nkume (2001) 6 NWLR (pt 710) 543** to the effect that every person resident in Nigeria has a right to go about his or her lawful business unmolested or unhampered by anyone else, be it a government functionary or a private individual, and to him, the respondents have violated the right of the applicant's members to move from one place to another with their own vehicles and operate them freely in order to find their means of livelihood, and that the

respondents have violated the rights of the applicant's members by arresting and detaining their vehicles, deflating their tyres, intimidating and forcing them to pay daily levy of N200.00, and by threatening to re-arrest and detain any of the members vehicles for no justification, and the members whose vehicles were impounded, arrested, detained and their papers seized were prevented from moving from one place to Abuja.

The counsel submitted that it is very glaring from the depositions that members of the applicant and their vehicles arrested, detained and intimidated and forced to pay daily levy before their vehicles were released but their original papers seized up to date, and he cited section 42 (1) of the constitution of the Federal Republic of Nigeria, (as amended), and also the case of **Jack V. Uniagric Makurdi (2004) 14 WRN 9**, and he argued that this application is brought before the Honourable Court because the fundamental right of the applicant's members have been breached when their vehicles were arrested, detained and forced to pay ticket of N200.00, and he submitted that the applicant is entitled to the reliefs sought.

The counsel cited the provisions of section 35(6) of the 1999 constitution to the effect that a person who is unlawfully arrested or detained shall be entitled to compensation and a public apology from the appropriate authority or person, and he also cited the case of **Jaja V. Commissioner of Police River State (2012) 12 SCNJ 1132**, and he urged the court to so hold that having violated the fundamental rights of the applicant's members, they are entitled to damages as claimed, and he referred to the case of **Amaechi Akudo V. Guinness Nig. Plc (2012) 11 WRN 129**, and also the case of **Akpan V. FRN (2012) 1 NWLR (pt**

**1281) 403**, and he urged the court to do substantial justice for the applicant and its members.

It is in the counter affidavit of the respondents that paragraphs 4(a) – (m) of the applicants affidavit are within the personal knowledge of the applicant, and so also paragraph 5(a). That paragraph 5(c) of the applicant's affidavit are half truth, the purpose for the issuance of EXH. D, D1, D2, D3, D4 and D5 are only issued for the purpose set out on the face of the documents and not for the purpose of operating their vehicles in Abuja.

It is stated that paragraph 5(d) of the applicant's affidavit is not true, exhibit D6 is issued by the Federal Capital Territory Administration as shown on the face value of the exhibit, and that paragraph 5(e) is also not true as the purpose for the issuance of exhibits E, E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, E17, E18 and E19 are only issued for the purposes set out on the face of the exhibits and not for the purpose of operating their vehicles on the road of Nigeria.

It is stated that paragraph 5(f) and (g) of the applicant's affidavit is not true, the purpose for the issuance of EXH. F, F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13, F14, F15, F16, and F17 are only issued for the purposes set out on the face of the exhibits and not for the purpose of operating their vehicles on the road in Nigeria, and contrary to paragraph 5(f) of the applicant's affidavit, the receipts purportedly issued by Kwali Area Council, Abuja is only for one member of the applicant with vehicle registration No. AA 750 RLU as shown in EXH. F1, F2, F3, F5, F6, F7, F8, F10, F12, F14, F15 and F17 while majority of the members neither pay their dues nor comply with the revenue regulations while exhibits F4, F9, F13 and F16 were purportedly issued to faceless members of the applicant.

It is deposed to the fact that paragraph 6(a) of the applicant's affidavit is not true, EXH. 'G' is neither address to the applicant nor appeared to have been acknowledged by any member of the applicant as shown on the face value of the exhibit, and that paragraph 6(c)-(f) is within the personal knowledge of the applicant. That paragraph 6(g)-(h) of the applicant's affidavit is half truth, the daily ticket does not amount to double taxation.

It is stated that paragraph 7(a) – (f) of the applicant's affidavit is true only to the extent that the 1<sup>st</sup> respondent has engaged by the 2<sup>nd</sup> respondent, and that paragraph 8 (a) – (f) of the applicant's affidavit are half truth by the applicant showing via EXH. E14 and E13, members of the applicant are using truck and any vehicle that carried load by itself or convey articles or goods is under the mandate to pay N200.00 daily tickets. That paragraph 8 (g) – (h) of the applicant's affidavit is not true, when the owner of vehicle number KRV 335 XB was found not have bought the ticket, he pleaded and was allowed to pay the N10,000.00, and that paragraph 8(j) of the applicant's affidavit is not true, the owner of vehicles numbers KRV 252, XE 343 GWA, AA 750 RLU, KEF 99 XA and XG 798 ABJ were neither arrested nor detained in connection with the payment of N200.00 tickets exhibited as exhibits M1, M2, M3 and M4.

It is stated further that paragraph 9(a) and (b) of the applicant's affidavit are not true, members of the applicant are using truck and any vehicle that carries load by itself or convey articles or goods is under the mandate to pay N200.00 daily tickets, and that paragraphs 9(c) (d) (e) (f) and (g) of the applicant's affidavit are not true, members of the applicant are not arrested, detained, harassed, intimidated on every day of the week and the pictures annexed as exhibits N, N1, N2 and O1 are faceless.

It is also averred that paragraph 10(a) (b) (c), (f) and (g) of the applicant's affidavit are not true, members of the applicant are not arrested, detained, harassed, intimidated or forced and the 1<sup>st</sup> respondent did not have thugs or use excessive force or abuse power on members of the applicant and the 1<sup>st</sup> respondent did not seize original copy of any document from members of the applicant.

It is also averred that paragraph 11(a) (b) (c) (d) and (e) of the applicant's affidavit are not true, the 1<sup>st</sup> respondent had at no time ordered its agents or privies to arrest and detain members of the applicant simply because of the explanation by the applicant and non of the members of the applicant had ever paid the penalty of N20,000.00, and that paragraph 12 (a) (b) (c) (d) and (e) of the applicant's affidavit are not true, exhibits N, N1, N2, O and O1 are pictures snapped by members of applicant and nothing was done to the applicant that snapped same.

It is averred further that there is no urgency to warrant the grant of the applicant's application and the 1<sup>st</sup> respondent neither have not retain any thugs that threaten or is further threatening arrest, detention, and intimidation of the applicant or any of their members.

In his written address, the counsel to the respondent raised two issues for determination, thus:

- (1) Whether the plaintiffs have proved their case on the balance of probabilities entitling them to the reliefs sought before this Honourable Court?**
- (2) Whether the mode of commencing the applicant's suit is valid and proper having regard to the principal reliefs claimed in the applicant's application?**

On the issue No. 1, the counsel averred in the negative, and further submitted that it is the law that the burden of proof in any civil proceeding is on that party who would fail if no evidence were given on either side, and he referred to sections 133-134 of the Evidence Act, 2011 (as amended), and he also cited the cases of **Mbanefo V. Agbu (2014) All FWLR (pt 724) at 71-22 paras. H-B; Okoye V. Nwankwo (2014) All FWLR (pt 756) at 495 paras B-C; and Williams V. Tinubu (2014) All FWLR (pt 755) at 232 paras. B-D**, and further submitted that in cases of allegation of violation of fundamental rights a mere allegation or deposition in an affidavit stating that the applicant was arrested is not sufficient to constitute proof of infringement or information on the rights of an applicant, the specific facts of the alleged detention and the duration must be proved in substantial details and he referred to the case of **Oando Plc V. Farmatic Biolas West Africa Ltd & Anor (2018) LPELR – 45564 (CA)**, and also the cases of **Udo & Ors V. Essin & Ors (2014) LPELR – 22684(CA); and Adekunle V. A.G. of Ogun State (2014) LPELR – 22569 (CA)** to the effect that an applicant for the enforcement of fundamental right has the duty to furnish substantial details the fact of his arrest and detention, and he must in other words particularize the particulars of his arrest and detention. He argued that the applicant has not proved that he is entitled to the grant of the reliefs sought, and he cited the case of **Lawrence V. Olugbemi & Ors (2018) LPELR – 45966 (CA)** to the effect that where evidence is lacking or is insufficient and/or incredible to sustain the claim, the claimant have failed to prove his claim and the judgment of the court would be against him, and that is what the law regards as the ultimate burden of proof. The counsel buttressed this point with the following cases of **Adedeji V. Oloso & Anor. (2007) 5 NWLR (pt 1026)**

**133; Okoye & Ors V. Nwankwo (supra); Oduoga & Ors. V. Coker & Ors (1981) JSC 197; Union Bank of Nigeria Ltd V. B.O. Umeh & Fows Ltd (1996) 1 NWLR (pt 426) 565; and Osesa V. Tulip Cocoa Processing Ltd (2018) LPELR – 45000 (CA).**

The counsel further submitted that the rights under chapter 4 of the 1999 constitution are personal rights to individual and not to association, no injury could be legitimately said to have been done to juristic person and therefore, any claim for damages without proof of injury will inevitably fail, and he urged the court to refuse this application, and he cited the case of **Mekwunye V. Emirates Airlines (2019) LPELR – 46535 (SC)**, and to him, an artificial person like the applicant cannot maintain an action for violation of its fundamental right because artificial person is incapable of being arrested or detained, and this is supported by the decision in the case of **First Bank & Ors V. A.G, Federation & Ors (2018) LPELR 46084 (SC)**.

On the injunctive and declaratory reliefs, the counsel submitted that the applicant did not satisfy the condition for the grant of same as set out in the case of **Kotoye V. C.B.N. (1989) 1 NWLR (pt 98) 419**.

On the issue No. 2, the counsel to the respondents submitted that where a special procedure is prescribed for the enforcement of a particular right or remedy, non-compliance with or departure from such a procedure is fatal to the case of enforcement of remedy, and he cited the case of **Dangote V. C.S.C Plateau State (2001) FWLR (pt 34) 1639**, and he humbly submitted that the main claim of the applicant are not based on breach of fundamental rights, and this, it is incompetent to commence the suit under the Fundamental Right (Enforcement Procedure) Rules 2009, and the counsel referred this court to the exhibits attached and the reliefs sought as the entire documents



attached to the application principally are receipts and evidence of purported to show that the members of the applicant religiously pay their statutory dues and the facts leading to the institution of the instant application boards on the dissatisfaction of the applicant over the demand and payment of N200.00 to the 2<sup>nd</sup> respondent through the 1<sup>st</sup> respondent, and the facts leaving to the institution of this case has to do with the citation of section 2 of the Taxes and Levies Approved List for collection Act and not fundamental human right per se. The counsel further submitted that the applicant's complaint relating to infringement of their fundamental rights is not the main plank of their action and just because the applicant stated so or have formulated their case to look so is not something to reckon with, and cited the case of **Governor, Kwara State V. Lawal (2006) All FWLR (pt 336) 313 at 346**, and further submitted that a proper examination of the reliefs sought and the grounds upon they are based would reveal that the instant reliefs do not relate primarily to the violation of any of the applicant's right under chapter iv of the constitution, and in other words, the application before the court does not mainly seek to enforce the rights of the applicant but rather, the application principally seeks for all interpretation of section 2 of the Taxes and Levies Approved List for Collection Act in view of the alleged complaints made against the applicants. He argued that the law is trite that where the main or principal claim is not enforcement of fundamental right, no matter how the jurisdiction of the court cannot be exercised because it will be incompetent and he cited the case of **Gafar V. The Govt. of Kwara State & 2 Ors (2007) All FWLR (pt 360)p. 1415 at 1436**, and he cited the case of **Sea Trucks Ltd V. Anigboro (2001) FWLR (pt 37) 100** to the effect the court should examine the claim for

enforcement of fundamental rights, that is the reliefs and the grounds for such relief and the facts relied upon, and where the alleged breach of right is ancillary to the main grievance or complaint, it is incompetent to proceed under the rules, this is because the right, if any, violated, is not synonymous with the substantive claim which is the subject matter of the action. Enforcement of right per se, cannot resolve the substantive claim which in any case different.

The counsel then urged the court to strike out the application.

In the further affidavit of the applicant, it reiterated its position as are contained in the affidavit in support, more particularly the depositions in paragraphs 6, 7, 8, 9, 10, 11, 12 and 13 and are almost replica of the affidavit in support of this application, therefore, I need not repeat same.

In his reply on point of law tailored his response, against the two issues raised by the counsel to the respondent, on one issue, thus:

**Whether the plaintiffs have proved their case on the balance of probabilities entitling them to the reliefs sought before this Honourable Court?**

The counsel submitted that the applicant has led credible affidavit evidence to prove its claim and the reliefs sought for in compliance with section 132 of the Evidence Act, 2011, and he also relied on the cases of **Mbanefo V. Agbu (supra); Okoye V. Nwankwo (supra); and Williams V. Tinubu (supra)** which were relied upon by the counsel to the respondents, and submitted that paragraphs 1, 2, 3, 4 (a) – (m), 5(a) and 11 of the affidavit in support of the application are not denied. He argued that the contents of paragraphs 1, 2, 3 and 4 of the counter affidavit of the 1<sup>st</sup> respondent are said to be within the personal knowledge of the

applicant and therefore failed to deny same in law. And thus, the 1<sup>st</sup> respondent has nothing to say to debunk the averments contained in the above paragraphs and they are therefore deemed admitted, and he cited the case of **Henry Stephen Eng. Ltd V. S.A. Yakubu (Nig.) Ltd (2009) 41 WRN 43** to the effect that any deposition in an affidavit which is not challenged, is deemed admitted, and he then urged the court to deem paragraphs 1, 2, 3, 4, 5(a) and 11 of the affidavit in support as admitted, and he also cited the case of **A.G, Anambra V. Okeke (2002) 3 WRN 16**.

The counsel to the applicant also took his time to examine EXH. D, D1 – 5, and even EXH. D6, and he also examined EXH. E, E1 – 15, F, F1 – F3, F10 – 17, and he commended paragraphs 8(a) –(d), 9(a) – (f) and 10(a) – (j) of the further affidavit in response to paragraphs 7, 8 and 9 of the counter affidavit, and he urged the court to so hold that the respondents had no business troubling members of the applicant for any double collections.

The counsel also took cognisance of the cases of **Oando V. Farmatic Biolas West Africa Ltd & Anor (supra); Udo V. Essien & Ors (supra); Adekunle V. A.G., Ogun State (supra);** and **Lawrence V. Olugbemi (supra)** as cited by the counsel to the respondents, which to him supported his case before this Honourable Court.

The counsel submitted that having taken the scenario into consideration, EXH. 1 issued to the 1<sup>st</sup> respondent took into action the types of heavy duty vehicles to be covered as listed therein, and it is to be noted that at paragraphs 6(b) – (h) and 7(a) – (f) and 8(b) of the affidavit, the applicant's members had meetings and interactions with workers and representatives of the respondents which the respondent did not deny in having such meetings with members of the applicant, and these are instructive to state

that the respondents have all this while had knowledge of the issue of double taxation on members of the applicant but intentionally and willfully decided to impound, arrest and detain vehicles of the applicant's members for days subject to payment of the 200.00 daily tickets collection.

The counsel also submitted that it is glaring that the vehicles which were picked on the 16<sup>th</sup> September, 2019 and released on the 17<sup>th</sup> September, 2019 and others picked on 19<sup>th</sup> September, 2019 as seen at paragraphs 8(h) and 9(e), clearly shows that they were impounded, arrested and detained in the office of the respondents at old Nyanya, FCT – Abuja. He also submitted that at paragraph 10(a) & (b) of the affidavit in support of the application, the applicant has stated that the arrest and detention for days, the vehicles of the members, harassment, intimidation and forcing the members to pay for daily ticket while conveying goods from the point of purchase to locations in Abuja is ongoing as seen in EXH. P, P1-P6, and to him, the other paragraphs in support of the application attest to the precarious situation of the applicant's members which have continued unabated till date.

The counsel referred to the preamble to the Fundamental Rights (Enforcement Procedure) Rules in paragraph 3(d) and (e) (v) which states in human rights litigations, the applicant may include any of the following:

(v) Association acting in the interest of its members or other individuals or groups, this is in response to the respondent's response that application for enforcement of fundamental human right cannot be granted to an artificial person, having not a human being, and the counsel to the applicant further submitted that the applicant which is the association under which its members operate can sue as presently done, and the damages and injuries being sought

as this application is for the benefit of the applicant's members whose vehicles have been impounded, arrested and detained for days and are being impounded, arrested and detained up to date as seen in EXH. P, P1 – P5 attached to the application, and he cited the case of **Okafor V. Lagos State Government (2016) 48 WRN 104** to the effect that the overriding objectives for enforcement of fundamental rights and that anybody, not necessarily the person whose right has been infringed can bring the application to enforce the right as stated in paragraph 3(e) of the preamble to the Fundamental Rights (Enforcement Procedure) Rules 2009.

The counsel submitted that the case of **Mekunye V. Emirates Airline (supra)** is a good authority but not applicable to the situation at hand as the members of the applicant suffer pains, lack of opportunity to convey their goods from one point to any location in Abuja.

On the issue of injunctive and declaratory reliefs and contrary to the case of **Kotoye V. CBN (supra)**, the counsel to the applicant submitted that under Fundamental Human Rights, what is paramount to the court is the existing legal right of the applicant's members which chapter iv of the 1999 constitution protects; and he cited the case of **Azuh V. UBN Plc (2014) 45 WRN 1 at ratio 2** to the effect that order of injunction is usually granted to protect a party's existing legal right from invasion by another.

Contrary to the submission of the counsel to the respondent which he cited the case of **Dangote V. C.S.C Plateau State (supra)**, the counsel to the respondent submitted that the main claim of the applicant's members is based on the breach of fundamental human rights and thus competent to commence under the Fundamental Rights (Enforcement Procedure) Rules, 2009.

The counsel also submitted that relief (a) talks about the harassment, arresting, intimidation, seizure, impoundment, detention for days and deflation of vehicles tyres of members of the applicant's unlawful, illegal and unconstitutional, and he referred to section 41(1) of the 1999 constitution which guarantees members of the applicant freedom of movement all over Nigeria in order to carry out their lawful business without restraint. He argued that section 35 (1) guarantees the members personal liberty which must not be deprived of by anybody except as permitted by law, and section 40 guarantees members of the applicant to associate with other persons in order to protect his interest.

The counsel submitted that relief (b) (d) (e) and (f) therein talks about the invasion of the fundamental right of the applicant's members from carrying out their lawful businesses by the respondents via lawful levy collection, and to him, it is not the entire documents and receipts attached to the application show that the applicant's members religiously paid their statutory dues but having paid their statutory payments as covered in EXH. D, D1 – D6, E, E1 – E19 and F, F1 – F17, EXH. M, M1 – M3 and P, P1 – P5 were not statutory and lawful dues meant to be paid by the members of the applicant, and the respondents have not denied collecting the said amount from members of the applicant, and therefore, he submitted that it is wrong for the 1<sup>st</sup> respondent to address the court that the case borders on the dissatisfaction of the applicant over the demand of payment of N200.00, and the essence of section 2(1) of the Taxes and Levies Approved List for Collection Act is not meant to fall under fundamental human rights, but to prove to this court that the illegality and contravention of the rights of the applicant's members in appointing the 1<sup>st</sup>

respondent to collect N200.00 levy from the members is not backed by law as seen in EXH. K.

The counsel commends the case of **Government of Kwara State V. Lawal (supra)**, however, to him, it is not appropriate to this case, and he also took cognisance of the cases of **Gafar V. Government of Kwara State (supra)**; and **Sea Truck Ltd V. Anigboro (supra)** and urged the court to examine the reliefs sought, and also urged the court to so hold that the principal relief claimed is within the provisions of chapter iv of the 1999 constitution and enforceable.

Thus, I adopt the issues for determination already formulated by the counsel to the respondents in the following order:

- 1. Whether, having regards to the facts and circumstances of this application and the principal relief claimed, the applicants were proper to have filed same?**
- 2. If the answer to the above question is in the affirmative, whether the applicants are entitled to the reliefs sought?**

On the issue No. 1, the counsel to the respondents contended that where a special procedure is prescribed for enforcement of a particular right or remedy, non compliance with or departure from such a procedure is fatal to the enforcement of the remedy, and he buttressed this with the case of **Dangote V. C.S.C Plateau State (supra)**, and submitted that the main claims of the applicants are not based on breach of fundamental right, and this, it is incompetent to commence the suit under the Fundamental Rights (Enforcement Procedure) Rules, 2009.

The counsel referred this court to the relief sought as well as the exhibits attached to the application which are principally receipts and evidence of payments to show that

the members of the applicant religiously pay their statutory dues and it borders on their dissatisfaction of the applicant over the demand and payment of N200.00 (Two Hundred Naira) to the 2<sup>nd</sup> respondent through the 1<sup>st</sup> respondent, and therefore, to him, the facts leading to the commencement of this suit has to do with the instruction of section 2 of the Taxes and Levies Approved List for Collection Act and not fundamental human right per se, and is therefore not the main flank of their action, and he cited the case of **Gov., Kwara State V. Lawal (supra)**. He argued that the law is trite that where the main or principal claim is not enforcement of fundamental rights, no matter how, the jurisdiction of the court cannot be exercised because it will be incompetent, and he cited the cases of **Gafar V. The Govt. of Kwara State (supra)** and **Sea Trucks Ltd V. Anigboro (supra)**. While it is the contention of the applicant that the main claim of the applicant's members is based on the breach of the fundamental human rights and thus competent to commence it under the Fundamental Human Rights (Enforcement Procedure) Rules, 2009. The counsel to the applicant submitted that relief in paragraph (a) talks about the harassment, arrest, intimidation, seizure impoundment, detention for days and deflation of vehicle tyres of members of the applicant is unlawful, illegal and unconstitutional, to the effect that section 41(1) of the 1999 constitution guarantees members of the applicant freedom of movement all over Nigeria in order to carry out their lawful business without restraint, and section 35(1) guarantees the members of their personal liberty which must not be deprived by anybody except as permitted by law as stated in paragraphs (a) (b) (c) (d) (e) (f) of subsection (1) of section 35, and while section 40 of the constitution guarantees members of the applicant to



assemble freely and associate with other persons in order to protect their interest. The counsel submitted that the reliefs in paragraphs (b) (d) (e) and (f) talk about the invasion of the fundamental right of the applicant's members from carrying out their lawful business by the respondent via unlawful levy collections, and it is wrong to contend by the counsel to the respondents that their entire documents and receipts attached to the application show that the applicant's members religiously paid their statutory dues, but having their statutory payments as covered in some documents were not statutory and lawful dues meant to be paid by the members of the applicant, and it is also misleading for the counsel to the respondents to contend that this instant suit borders on the dissatisfaction of the applicant over the demand of payment of N200.00. He argued that the essence of section 2(1) of the Taxes and Levies Approved List for Collection Act is not meant to fall under Fundamental Rights, but to prove to this court that the illegality and contravention of the rights of the applicant's members in appointing the 1<sup>st</sup> respondent to collect N200.00 levy from the members is not backed by law, and that the attempt to collect revenue by illegally contracting the 1<sup>st</sup> respondent and thereby impounding, arresting, harassing, detaining for days and forcing members of the applicant to pay N200.00 daily levy tickets beside their lawful documentations which have been paid and thereby depriving them of their movement to transact their lawful business is a breach of their fundamental human right. The counsel commend the case of **Governor of Kwara State V. Lawal (supra)**, however, said it is not appropriate to the case at hand. He also commend the cases of **Gafar V. Government of Kwara State (supra)**, and urged the court to examine the reliefs and the grounds.

Thus, in following the decision of the Supreme Court in the case of **Gafar V. Government, Kwara State (supra)** where the apex court held that when an application is brought under section 42(1) of the 1979 constitution (now section 46(1) of the 1999 constitution) and Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 (now Order II Rule I of the Fundamental Rights (Enforcement Procedure) Rules, 2009), a condition precedent to the exercise of the court's jurisdiction is that the enforcement of Fundamental Rights or the securing of the enforcement thereof should be the main claim and not an accessory claim. Where the main or principal claim is not the enforcement or securing the enforcement of a fundamental right, the jurisdiction of the court cannot be properly exercised as it will be incompetent. See also the case of **Abba V. J.A.M.B. (2015) All FWLR (pt 777) p. 746 at pp. 762 – 763; paras. H.B.**

In the instant case, and it is based upon the above decisions that I have to examine the reliefs sought by the applicant, the grounds upon which the application is brought and the facts relied upon with a view to determine if they disclose that breach of fundamental right is the main flank, redress may be sought through the Fundamental Rights (Enforcement Procedure) Rules. See the case of **Sea Trucks Ltd V. Anigboro (supra)**.

Now, the reliefs in paragraph 2 of the statement of facts read:

- a. A declaration that the harassment, arresting, intimidation, seizure, impoundment and deflation of the vehicles tyres of members of the applicant and forcing them to pay daily levy of N200.00 by the respondent's workers, officers, servants, agents and whosoever deriving

authority from them or working for them at the prompting of the 1<sup>st</sup> and 2<sup>nd</sup> respondents is unlawful, illegal and unconstitutional.

- b. A declaration that the further threat to harass, arrest, intimidate, seizure, impound and deflate the vehicles tyres of members of the applicant and forcing them to pay daily ticket of N200.00 and if they fail to pay before 1:00pm on each day are liable to pay a fine of N20,000.00 as shown in exhibit 'L' is illegal, unlawful and unconstitutional.
- c. A declaration that the 2<sup>nd</sup> respondent has no power by virtue of section 2(1) of the Taxes and Levies Approved List for Collection Act, Cap. T2, Laws of the Federation of Nigeria to appoint, constitute the 1<sup>st</sup> respondent as consultant, contractor or taskforce in revenue assessment and collections across the Federation.
- d. A declaration that the acts of the respondents, their workers, servants, agents, privies and whosoever deriving authority from them and thereby compelling the applicant's members from operating freely on all roads throught the 774 Local Government Areas including the council Areas in Abuja and thereby loosing their daily earnings due to their continuous harassment, arresting, intimidation, seizure, impoundment and deflation of the vehicles tyres of the applicant is a gross violation of section 40 of the 1999 constitution of the Federal Republic of Nigeria as amended.

By the above paragraphs of the reliefs sought by the applicant, they appear to do with the infringement of the

rights of the members of the applicant. Also taking into consideration the grounds upon which this application is brought, they appear that because the applicant's members and the vehicles were and still being arrested, detained, their tyres deflated, intimidated, harassed, and forced to pay for daily ticket of N200.00 before 1:00pm in each day of arrest or pay a penalty of N20,000.00 by the respondent and their workers, agents, servants, and privies from 2017 to date without any justification.

By these, it can be inferred that the reliefs are interwoven between the claim for the enforcement of fundamental right and questioning the demand for the payment of N200.00 for the daily ticket which non payment of such resulted to arrest, harassment, intimidation and deflation of tyres of the vehicles, of the members of the applicant. That is to say if there was no demand of the N200.00 for the daily ticket, those claims would not have arisen, to my mind, the allegations of violation of the human rights of the members of the applicant are not quite apart from the demand of N200.00 for daily ticket payable before 1:00pm otherwise there would be a penalty of N20,000.00, and therefore, they are interwoven.

Let me go further to look at the facts as deposed in the affidavit of the applicant.

It is in the affidavit of the applicant that because the applicant was registered, its members were advised by the trustees of the need to obtain all necessary papers from the appropriate authorities or Local Government council Areas including the 2<sup>nd</sup> respondent having regard to the vast membership operating in all the 774 Local Governments Areas in Nigeria including the council Areas in Abuja, and they would pay for and obtain all the necessary papers from any of the Local Government Area Offices in Nigeria or

AMAC or other Area Councils in Abuja and such papers will be effective throughout Nigeria.

It is a fact that having obtained their necessary papers from the authorities concerned, and EXH. 'D', 'D1', 'D2', 'D3', 'D4' and 'D5' are the documents issued by the 2<sup>nd</sup> respondent (AMAC), Abuja which members of the applicant must pay for in order to be authorised to operate their respective vehicles in the various locations in Nigeria, and that any member of the applicant that pays for the documents stated above in any of the Local Government Area offices in Nigeria or at AMAC or the council Areas in Abuja is free to use same throughout the period in any part of Nigeria.

It is a fact that while the members were operating sometimes in December, 2016, the members of the applicant were served with EXH. "G" showing the daily prices to be paid for heavy duty vehicles which a failure to pay before 1:00pm in any day, would attract a fine of N20,000.00, and on the receipt of 'G' the deponent and some of the members of the applicant were delegated to find out the rationale behind the giving of the price list. First they met the Chief Revenue Office (AMAC), and secondly they met with the secretary of the 2<sup>nd</sup> respondent, and they disagreed with respect to payment of N200.00 penalty.

It is also a fact that after some months of silence, the members of the applicant were informed that the 2<sup>nd</sup> respondent had contracted the job of collecting daily tickets to their company (The 1<sup>st</sup> respondent), and on a particular day in 2018 the 1<sup>st</sup> respondent and its workers, agent, servants, privies continued to collect its levies from those operating heavy duty vehicles, and that the members of the applicant told one Mathew E. Maiyaki that the members of the applicant would not agree to pay double

levies or willing to be part of the scheme, and pursuant to these developments, the House of Representatives in a letter dated 17<sup>th</sup> November, 2016 herein referred to as EXH. 'K' had written to the Chairman Bwari Area Council on the illegality or using non-revenue officials properly referred to as consultants, contractors or taskforce in revenue assessment and collections, and the 1<sup>st</sup> and 2<sup>nd</sup> respondents are aware of the development.

It is a fact that the heavy duty vehicles involved are listed, and that the engagement of the 1<sup>st</sup> respondent was to cover heavy duty vehicles like tippers, trailers, cranes, tractors, excavators and pay loaders within Abuja Municipal Area Council, and that the members of the applicant do not drive any of the vehicles listed above and named as heavy duty vehicles to be held by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and to be harassed, intimidated and forced to pay daily ticket of N200.00 per vehicle, and instead the 1<sup>st</sup> and 2<sup>nd</sup> respondents, their workers, agents, servants, privies have been arresting, stopping, seizing, intimidating and detaining members of the applicant and their vehicles that ply into Abuja from either Mararaba in Nasarawa State or other locations for days without charging them to court.

Thus, from the above facts distilled from the affidavit in support of the application, the following are determined being the grants against the respondents:

- a. That having obtained their necessary papers from the authorities any member of the applicant that pays for the documents in any of the Local Government Area offices in Nigeria or at AMAC of the Council Areas in Abuja is free to use same throughout the period in any part of Nigeria;

- b. That upon being served with EXH. 'G' by the 2<sup>nd</sup> respondent, the members of the applicant do not see the rationale behind giving of the price list EXH. "G", and as such they do not agree to pay the price of N200.00 for the daily ticket, because it will be a double taxation on members;
- c. That there is a difference between heavy duty vehicles as mentioned in EXH. 'G' and their vehicles, and therefore, cannot by EXH. 'G' be subjected to pay any of the price list of daily ticket;
- d. That the contract entered between the 1<sup>st</sup> and 2<sup>nd</sup> respondents for the collection of the levies from the members of the applicant is in contravention of section 2(1) of the Taxes and Levies Approved List for Collection Act Cap. T2, LFN, 2004, and therefore the members of the applicant would not agree to pay the double levies; and
- e. That it was because of members of the applicant's refusal to pay N200.00 for daily ticket the respondents, their workers, servants, agents and privies have been arresting, stopping, seizing, intimidating and detaining members of the applicant and their vehicles that plies into Abuja from either Mararaba in Nasarawa State or other locations for days without charging them to court.

Now, deducing from the above facts in paragraphs (a) (b) (c) (d) and (e), it can be inferred that EXH. 'G' which is the letter from the 2<sup>nd</sup> respondent introducing the payment of N200.00 for heavy duty vehicles for daily ticket payable

before 1:00pm every day, and N20,000.00 as penalty for nonpayment before 1:00pm, is an instrument, which requires the construction by this court to determine whether it includes members of the applicant as described in the EXH. 'G' or not. It can also be inferred that the construction or interpretation of section 2(1) of the Taxes and Levies Approved List for Collection Act Cap. T2, LFN 2004 as to whether the contract between the 1<sup>st</sup> and 2<sup>nd</sup> respondents contravenes such section or not or whether the payment of N200.00 for daily ticket will amount to double levy. It is only when such are determined, then the actions of arresting, detention of the vehicles of the members of the applicant will come to limelight. I therefore, hold that the allegations of violation of fundamental right of the members of the applicant are not quite apart from the dispute of payment of N200.00 for daily ticket imposed by the 2<sup>nd</sup> respondent to be collected by the 1<sup>st</sup> respondent from the members of the applicant, that is to say, the said violations of the fundamental rights of the members of the applicant stem from the dispute of payment of N200.00 for daily ticket, and therefore, the allegation of the infringement of the rights of the members of the applicant are not the principal reliefs, this is because the enforcement of the fundamental rights of the members of the applicant cannot end and resolve the substantive claims.

Thus, where the allegation of the violation of the fundamental rights of the members of the applicant is not the substantive and principal relief, then the appropriate way of commencing this application is by originating summons. See Order 2 Rule 3(1) and (2) of the Rules of this court which provides:

**“(1) Any person claiming to be interested under a deed, will, enactment or other written instrument**



may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

(2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.”

See the case of **Ukpaka V. Toronto Hospital Nig. Ltd (2010) All FWLR (pt 532) p. 1712 at 1730; para. A** where the Court of Appeal, Enugu held that declaratory relief can be sought in court through originating summons.

In the circumstances, I resolve question or issue No. 1 in the negative.

On the issue No. 2, that is to say, if the answer in issue No. 1 is in the affirmative, whether the applicants are entitled to the reliefs sought? I answered the issue No. 1 in the negative, and I hold that the suit is incompetent and should be struck out without necessarily going further to determine the issue No. 2.

This application is hereby struck out accordingly. See the case of **Sea Trucks Ltd V. Anigboro (supra)**.

Hon. Judge  
Signed  
9/5/2022

Appearances:

None of the parties is in court, and are not represented by their counsel.

CT – REG: Have you sent an SMS message inviting the counsel and their parties?

REG-CT: I called the counsel personally and I told him that the judgment is ready to be delivered today, however, the claimant is in court.

Chukwu Ogbonnaya appeared as the claimant.

CT: The matter is stood down till 1:00pm for judgment to enable the counsel to the defendant appear or the respondents themselves.

Hon. Judge

Signed

9/5/2022

The court resumes sitting with the same membership at 1:05pm.

S.O. Ochaze Esq appeared for the claimant.