IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 13TH DAY OF APRIL, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE A. H. MUSA
JUDGE

SUIT NO.: FCT/HC/CV/982/2022

BETWEEN:

1. **SANI BELLO**
2. **AHMED UMAR**
3. **GAIUS JACOB** — **APPLICANTS**
4. **USMAN BAWA**

AND

THE COMMISSIONER OF POLICE,
F.C.T. POLICE COMMAND, ABUJA — **RESPONDENT**

JUDGMENT

This Judgment is on an application for the enforcement of the fundamental rights of the Applicants brought under the Fundamental Rights (Enforcement Procedure) Rules 2009.

By way of an Originating Motion on Notice, the Applicants instituted this action against the Respondent seeking for the following reliefs:

i. An Order of this Honourable Court enforcing the Applicant's fundamental rights to dignity of human person, personal liberty, fair hearing and movement as guaranteed by sections 34(1), 35, 36(1),

(4), (5) and (6) and 41(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and sections 6 and 7 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act.

ii. A Declaration that the arrest and continuous detention of the Applicants since 23rd February, 2022 till date by the Respondent, his servants, agents and or officers is unlawful and unconstitutional.

iii. A Declaration that the torture and/or the beating of the Applicants by the servants, agents and or officers of the Respondent while in their custody is unlawful and unconstitutional.

iv. An Order of this Honourable Court for the immediate and unconditional release of the Applicants from custody/detention facility of the Respondent where they are being kept since 23rd February, 2022.

v. An Order of this Honourable Court granting bail to the Applicants pending the hearing and conclusion of the proceedings herein.

vi. An Order of this Honourable Court directing/compelling the Respondent to pay the Applicant the sum of ₦100,000,000.00 (One HundredMillion Naira) only as exemplary damages for the

infringement of the Applicants' rights to dignity of human persons, personal liberty, fair hearing and freedom of movement.

vii. An Order of injunction restraining the Respondent and his servants, agents from detaining or further detaining the Applicants or in any way constraining their liberty except they have any cogent evidence to charge them to Court which must be done promptly.

The Application was supported with the Statement made pursuant to Order II Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Affidavit in support of the Motion on Notice and the Written Address in support of the Motion on Notice.

In the affidavit, the facts the Applicants seek to rely on were deposed to by one BabangidaAbubakar Musa, an employee of Hassuni Engineering Services Ltd and a colleague of the Applicants. According to the Deponent, on the 23rd of February, 2022 around the hour of 2:30am, he and the Applicants were asleep in their official quarters within the premises of their employee when they were roused from sleep by intrusive sounds. Because the company had suffered loss of over N20,000,000.00 (Twenty Million Naira) only as a result of a series of thefts of their employer's valuable machineries and components, the deponent and the Applicants were at alert.

Stepping out of their official residences, they found some armed intruders within the premises. These same armed intruders, according to the deponent, had already removed some components of the machineries and equipment within the premises. The deponent and the Applicants challenged and repelled them. In the course of the conflict, according to the deponent, two of the robbers were wounded while the others escaped. The deponent and the Applicants conveyed the wounded to the hospital where one of them later died.

According to the deponent, he reported the incident to the Nigeria Police Force. The deponent averred that he was surprised when the officers of the Respondent who had the two injured robbers in their custody informed them in the morning that the robbers had escaped. As if that was not enough, the officers of the Respondent invited the deponent and the Applicants to the Police Station for interrogation and promptly detained the Applicants. Naming the concerned officers as Mrs Josephine and MrEfe, the deponent swore that the Respondent rebuffed all their efforts, including that of Mr Jamal, the Managing Director of their employer, to release the Applicants on bail. This, according to the deponent, necessitated this application.

The deponent also swore that the Applicants did not commit the offences for which they were being detained and had never committed any crime before. He also claimed that the Applicants wanted to be released on bail since they had not been arraigned, tried, convicted and sentenced by any Court of competent jurisdiction, adding that they were willing to produce reasonable sureties that would take them on bail. In conclusion he averred that the Applicants would make themselves available to stand their trial and that they would not interfere with police investigation.

In the written address in support of the application, learned Counsel formulate three issues for determination, to wit: (i) Whether the arrest and continuous detention of the Applicants by the Respondent and his officers for over one (1) month without any lawful order of a Court of competent jurisdiction is not unlawful and unconstitutional having regard to sections 34(1)(a), 35, 36(4) – (6) and 41(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended and Article 6 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act; (ii) Whether the torture of the Applicants by the servants, agents and or officers of the Respondent, to elicit incriminating and confessional statement from them is not unlawful and unconstitutional having regard to sections 34(1)(a), 36(4) – (6) and 41(1) of the Constitution of the Federal

Republic of Nigeria 1999 as amended and Article 5 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act; and (iii) If the answers to Issues One and Two are in the affirmative, whether the Applicants are not entitled to the equitable and legal remedy of an order directing their immediate release from the detention facility of the Respondent and the payment of exemplary damages for the infringement of their fundamental rights.

Arguing Issues One and Two jointly, learned Counsel submitted that fundamental rights being a significant component of liberty, any allegation of its violation should receive the urgent attention of the Court. He added that the Court had a duty to examine the reliefs sought, the grounds for seeking the reliefs and the facts disclosed in the affidavit in support of the application to determine whether the application was reasonable.

Arguing on the infringement of the rights to personal liberty and freedom of movement of the Applicants, Counsel contended that this right is entrenched in the Constitution and the African Charter on Human and People's Rights and that its derogation must be within the ambit of those exceptions recognized under section 35(1)(a) – (f) of the Constitution of the Federal Republic of Nigeria 1999 as amended. He maintained that any law enforcement agency which claimed to abridge the right to liberty of the

citizens must be seen to have done so within the limits provides for under the Constitution.

With particular reference to the arrest and detention of the Applicants, he asserted that such arrest ought to be made in accordance with section 35(4) and (5) of the Constitution which made it mandatory for the Respondent to arraign the Applicants before a Court of competent jurisdiction within twenty-four hours or forty-eight hours of their arrest and detention. He insisted that the arrest and continuous detention of the Applicants since the 23rd of February, 2022 by the Respondent without an order of a Court of competent jurisdiction did not come within the purview of the circumstances envisaged under section 35(1)(a) – (f) of the Constitution.

On the question of torture of the Applicants, it was the submission of learned Counsel that section 34(1)(a) of the Constitution and Article 5 of the African Charter on Human and People's Rights guarantee the right to human dignity and, as a consequence, prohibits every act of torture, degrading and inhuman treatments. He asserted that the Respondent through his officers visited on the Applicants those acts prohibited by the above constitutional and statutory provisions. It was the contention of learned Counsel that torture extended beyond physical torture and

embraced psychological disorientation, mental pain and emotional suffering.

According to learned Counsel, the essential elements of torture included "(i) the perpetrator intentionally inflicted severe physical or mental pain or sufferings upon the victim to either do one or any of the followings: (a) obtain information or confession from the victim or a third party, (b) to punish the victim or a third person for an act committed or suspected to have been committed by either of them, (c) for the purpose of intimidating or coercing the victim or the third person, and (d) for any reason based on discrimination of any kind; (ii) the perpetrator was himself an official, or acted at the instigation of, or with the consent or acquiescence of, an official or person acting in an official capacity." He therefore urged the Court to resolve Issues One and Two in favour of the Applicants.

For all his arguments on the two Issues, learned Counsel cited and relied on the following authorities: ***Ariori v. Elemo (1983) SC 13; Governor of Borno State v. Gadangari (2016) 1 NWLR (Pt. 1493) 396 at 417 B-C; Aliu Bello &Ors v. A.G., Oyo State (1986) 5 NWLR (Pt. 45) 828 SC; F.B.N. Plc v. A.G., Federation (2014) 12 NWLR (Pt. 1422) 470 at 518 – 519, D-B; I.G.P. v. Ubah (2015) 11 NWLR (Pt. 1471) 405 at 432, D; Jim-Jaja v. C.O.P. (2011) 2 NWLR (Pt. 1213) 375 at 393, E; Barigha-Amange***

v. Adumein (2016) 13 NWLR (Pt. 1530) 349 at 396, B-C; Danfulani v. EFCC (2016) 1 NWLR (Pt. 1493) 223 at 246 – 248, G-A; Azuh v. Union Bank of Nigeria Plc (2014) 11 NWLR (Pt. 1419) 580 at 608, F; Akulega v. Benue State Civil Service Commission & Anor (2001) 12 NWLR (Pt. 728) 524; Krishna Achutan v. Malawi (1994) ACtHPR Decision of 25th October – 30th November, 1994; Civil Liberties Organisations v. Nigeria (1999) ACtHPRDecision, 15th November, 1999; Ireland v. UK (1978) 2 EHRR 25; Campbell and Cusans v. UK (1982) EHRR 293; Akayesu's Case (1998) International Criminal Tribunal for Rwanda (ICTR) Judgment, 2 September; Delalic Case, (1998) International Criminal Tribunal for Former Yugoslavia (ICTY) Judgment, 16 November.; and Ray Ekpu& 2 Others v. Attorney-General of the Federation & 2 Others (1998) 1 HRLRA, 391.

On Issue 3, learned Counsel argued that the equitable remedy of injunction directing the immediate release of the Applicants from the detention facility of the Respondent and restraining the Respondent from re-arresting the Applicants was founded on the indefinite detention of the Applicants without any arraignment, trial, conviction and sentence for over a month. Referring to section 35(4) of the Constitution and section 161(2)(b) and (c) of the Administration of Criminal Justice Act, 2015, he posited that the conditions

provided for the grant of bail had been disclosed in the affidavit in support of the application.

On whether the Applicants were entitled to damages, Counsel contended that the circumstances of the present application justified the payment of compensation to the Applicants for the infringement of their rights as enumerated above. He added that the Courts have always leaned towards granting reliefs against any improper use of power by any person. He maintained equally that the Applicants were entitled to general, aggravated and exemplary damages against the Respondent.

Relying on section 33(2)(a) of the Constitution and sections 65 and 66 of the Penal Code Act, he submitted that the law recognizes the right of a victim to use appropriate force to defend his life and property. He contended that the circumstances of the present case fell within the parameters of the law, adding that it was indefensible that the Respondent could continue to detain the Applicants when the only thing they did was to defend themselves against armed robbers.

In conclusion, learned Counsel asserted that the Applicants had established beyond any scintilla of doubt that the Respondent had infringed their rights. He therefore urged the Court to resolve the issues raised in the

Written Address in favour of the Applicants and grant all the reliefs sought in the application.

For all his submissions on this issue, learned Counsel cited and relied on the following cases: ***Aliu Bello &Ors v. A.G., Oyo State, supra; Williams v. Daily Times (1990) 1 NWLR (Pt. 124) 1 at 30 – 31; Iro-Egbu v. C.O.P., Anambra State (2005) 4 AHRLR 697; DrOluOnagoruwa v. Inspector-General of Police (1993) 5 NWLR (Pt. 193) 503 at 650 – 651; Abiola . Abacha (1998) 1 HRLRA 447; Enwere v. C.O.P. (1993) 6 NWLR (Pt. 2290 333; Shugaba v. Minister of Internal Affairs (1982) 3 NCLR 915; Smithkline Beecham Plc v. Farmex Ltd (2010) 1 NWLR (Pt. 1175) 285; NMA v. MMA Inc. (2010) 4 NWLR (Pt. 1185) 613; Rookes v. Barnard (1964) AC 1129; Broome v. Cassell (1972) AC 1027; Maiyaki v. State (2008) 3 NWLR (Pt. 1075) 429 at 546, B-E; Olayiwola v. Federal Republic of Nigeria (2006) All FWLR (Pt. 305) 667 at 696, B-E and Ibori v. FRN (2009) 3 NWLR (Pt. 1127) 94 at 106, C-D***.

The Respondent did not file any Counter-Affidavit to the application of the Applicants. However, on the 7th of April, 2022 when the learned Counsel for the Applicants, O. I. Olorundare SAN, argued the application of the Applicants, the Respondent, through his Counsel, SeiduJibrin Esq. replied orally on points of law. First, he referred the Court to Order 49 Rule 4 of the

High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 which empowers this Court to extend the time for doing any act or taking any proceeding in this case, the filing of a Counter-Affidavit to the application of the Applicant. He also contended that by virtue of section 36 of the Constitution of the Federal Republic of Nigeria 1999 as amended and Abuja Electricity Distribution Company & Anor v. Akaliro and Others (2021) LPELR-54212, the Respondent had the right to be heard. He, however, noted that should the Court be indisposed to granting him time within which to file his Counter-Affidavit, the Respondent would challenge the jurisdiction of the Court.

In his oral challenge of the jurisdiction of this Honourable Court, learned Counsel argued that the law prohibited joint application for the enforcement of fundamental rights. He argued that this Court is bound by the decision of the Court of Appeal, Makurdi Division. He adumbrated further that there were four Applicants before this Court in this application, yet only one statement of fact was filed in support of the application. He referred this Court to Order II Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009.

In his response, learned Senior Counsel for the Applicants contended that though learned Counsel for the Respondent cited and relied on the case of

Akaliro to support his argument that joint application in fundamental rights enforcement proceedings is unknown to know, Order 7 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009 makes provision for consolidation of applications for enforcement of fundamental rights. On the contention of learned Counsel for the Respondent that the Applicants filed a single statement of facts, learned Silk replied that it was improbable that someone in detention would be able to file a statement of facts.

After the conclusion of arguments on the application, the Court adjourned to the 13th of April 2022 for Judgment.

In order to determine whether the Applicants are entitled to the reliefs sought in this application, this Court shall examine the facts in support of the application as well as the oral argument on point of law by the Counsel for the Respondent challenging the jurisdiction of this Honourable Court. In view of this, therefore, this Court shall be adopting the three Issues formulated by the Applicants in their Written Address. The three issues as adopted by this Honourable Court are as follows:-

(i) Whether the arrest and continuous detention of the Applicants by the Respondent and his officers for over one (1) month without any lawful order of a Court of competent jurisdiction is

not unlawful and unconstitutional having regard to sections 34(1)(a), 35, 36(4) – (6) and 41(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended and Article 6 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act;

(ii) Whether the torture of the Applicants by the servants, agents and or officers of the Respondent, to elicit incriminating and confessional statement from them is not unlawful and unconstitutional having regard to sections 34(1)(a), 36(4) – (6) and 41(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended and Article 5 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act; and

(iii) If the answers to Issues One and Two are in the affirmative, whether the Applicants are not entitled to the equitable and legal remedy of an order directing their immediate release from the detention facility of the Respondent and the payment of exemplary damages for the infringement of their fundamental rights.

RESOLUTION OF ISSUES

Before I resolve the issues formulated herein, I must spare some thoughts for the ground of the objection of the learned Counsel for the Respondent. Counsel had contended that the present application, being joint application, is incompetent because the Fundamental Rights (Enforcement Procedure) Rules 2009 does not make provision for joint application for the enforcement of fundamental rights. On the other hand, learned senior Counsel for the Applicants argued that the Rules makes provisions for consolidation of applications for the enforcement of fundamental rights and that, as a result, joint applications could be implied.

I agree with learned Counsel for the Respondent that the Rules does not make provision for joint application for enforcement of fundamental rights. See the case of ***Udo v. Robson (2018) LPELR-45183 at pp. 13-25, paras. C-A***where the Court of Appeal per Adah JCA held that "***…it is not proper to join several Applicants in one application for the purpose of securing the enforcement of their fundamental rights...***" The argument of learned Silk that the Rules make provision for consolidation of applications for enforcement of fundamental rights actually reinforces the position of learned Counsel for the Respondent because, without separate applications, the issue of consolidation of separate applications would not arise.

However, in the recent case of ***Finamedia Global Services Ltd .vOnwero (Nig.) Ltd &Ors (2020) LPELR-51149 (CA)***, the Court of Appeal per Idris JCA held at that "… the Court may allow many applicants to be joined together in the same application once a common cause of action is established. While it is wrong joinder of action and incompetent for the different individuals to join action to enforce different causes of action under the Fundamental Rights (Enforcement Procedure) Rules, or where the infraction of rights differ in content and degree from one applicant to the other, when the infraction is against several persons concerning the same subject matter and on the same grounds, a joint application can be allowed. A Court of law will not lose its jurisdiction to entertain the suit simply because there are several applicants in an application…"

Similarly, in the 2021 case of ***Incorporated Trustees of Digital Rights Lawyers Initiative &Ors v. NIMC (2021) LPELR-55623 (CA)***, Ogakwu JCA, while favourably disposed to ***Govt of Enugu State v. Onya (2021) LPELR-52688 (CA)*** and not comfortable with the decision in ***AEDC v. Akaliro (2021) LPELR-54212 (CA)*** cited by learned Counsel for the Respondent herein elaborately held thus at ***pp. 67 – 70, paras E – D***:

"... I would still, even if perfunctorily, consider the legal position on joint applicants in an application for the enforcement of fundamental

rights. There has been a good number of conflicting decisions of this Court on the point, the most recent decisions which I was able to find being GOVT OF ENUGU STATE vs. ONYA (2021) LPELR - 52688 (CA) delivered by the Enugu Division on 28th January, 2021, which held that joint applicants can bring an application to enforce fundamental rights. Au contraire, in AEDC vs. AKALIRO (2021) LPELR - 54212 (CA) which was delivered by the Makurdi Division on 31st March, 2021, it was held that an application by joint applicants was incompetent. The right to seek redress for evisceration of fundamental rights is by Section 46 (1) of the 1999 Constitution vested in any person. The said stipulation reads: "Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress." See also Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, which is similarly worded for any person to seek redress. The critical question is whether the phrase any person as used in the provision can be construed to include more than one person or whether it is limited to only one person. Where it is wide enough to include more than one person, then it necessarily follows that joint applicants can be bring an

application but where it cannot be so construed then an application by the joint applicants will be incompetent. Let me hasten to state that even if the phrase any person denotes singular, by Section 14 of the Interpretation Act, in construing enactments, words in the singular include the plural and words in the plural include the singular. See COKER vs. ADETAYO (1996) 6 NWLR (PT 454) 258 at 266, UDEH vs. THE STATE (1999) LPELR (3292) 1 at 16-17 and APGA vs. OHAZULUIKE (2011) LPELR (9175) 1 at 24-25. Furthermore, the adjective employed in the provisions of Section 46 (1) of the 1999 Constitution and Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 is any. It qualifies the noun, person. The Merriam-Webster Online Dictionary defines the word any as an adjective which could be one or more, an undetermined number and when used as a pronoun, the word any can be singular or plural in construction. See also the online dictionary, Dictionary.com. So the word any and the phrase any person cannot be construed as referable and restricted to an individual. No. It conduces to more than one individual. In the circumstances, it is my considered and informed view that in so far as the applicants have a common grievance and common interest, and that it is on the same factual situation that they

predicate the evisceration of their fundamental rights, they can bring a joint application for redress. It is for the foregoing reason and the more elaborate and comprehensive reasoning and conclusion in the leading judgment of my learned brother, that I avow my concurrence with the conclusion in the leading judgment that joint applicants can bring an application for the enforcement of their fundamental rights. My learned brother, Abba Bello Mohammed, JCA, referred to the decision of the Supreme Court in the cases of DIAMOND BANK PLC vs. OPARA (2018) 7 NWLR (PT 1617) 92 and FIRST BANK OF NIG. PLC vs. A- G FEDERATION (2018) 7 NWLR (PT 1617) 121, where joint applications for enforcement of fundamental rights were favourably considered and compensation awarded by the apex Court. By all odds, the question of the competence of the action having been brought by joint applicants was never a live issue in the appeal before the Supreme Court, so it made no pronouncement, whether directly or obliquely, in that regard. Howbeit, a question as to whether joint applicants can maintain an action for the enforcement of fundamental rights, is a question which goes to the competence of the action and a fortiori, the competence of the Court to entertain the action, since it is a contention that the action was not initiated by due process of law.

See MADUKOLU vs. NKEMDILIM (1962) LPELR (24023) 1 at 10. So, by parity of reasoning or analytical reasoning, it seems to me that the Supreme Court would have made the pronouncement, for good order sake, if the action was incompetent on account of having been initiated by a joint application, instead of proceeding to award compensation in favour of the joint applicants as it did in the said cases, if the actions were otherwise incompetent."

For the above reasons, therefore, and on the basis of the two recent decisions on the subject of joint applications, I therefore dismiss the objection of learned Counsel for the Respondent that the joint application by the Applicants is competent, having been founded on a common grounds o unlawful arrest and detention.

ISSUE ONE

Section 35 of the Constitution of the Federal Republic of Nigeria 1999 is the terminus a quo to begin the resolution of this issue. The said section provides thus:

> ***(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 fulfilment 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 a 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.*

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

I have taken the liberty to reproduce the above subsection of section 35 of the Constitution *in extenso* in order to juxtaposition these provisions with the facts of these case as disclosed in the affidavit in support of the application. I have gone through the content of the affidavit in support of this application. There is no paragraph that contains any averment that captures any of the circumstances envisaged in paragraphs (a) to (f) of section 35(1) of the Constitution. Perhaps, the paragraphs that came close are paragraphs 9, 10, 11, 12, and 13 of the affidavit wherein the Applicants deposed to the fact that they resorted to self-defence to protect the property of their employer and their lives when a band of armed robbers invaded the company's premises and made to rob their employer and attacked the Applicants when the challenged the invasion.

The Respondent, on the other, did not challenge the averments contained in those paragraphs, seeing he did not file any Counter-Affidavit. The law is settled on the effect of an unchallenged affidavit evidence. In ***DANLADI v***

TARABA STATE HOUSE OF ASSEMBLY & ORS (2014) LPELR-24021 (SC)the Supreme Court held that:

"Where facts deposed to in an affidavit on a crucial material issue are not controverted or denied in a counter-affidavit, such facts must be taken as true except they are moonshine."

It must be noted further that the same provision also stipulated that the deprivation of the liberty of a citizen must be done "in accordance with a procedure permitted by law". The Constitution and the Administration of Criminal Justice Act 2015 make elaborate provision for how the liberty of a person can be lawfully derogated from. Apart from section 35(1)(a) – (f) of the Constitution, subsections (2), (3), (4) and (5) stipulate the procedure that law enforcement agencies must adopt when a person is reasonably suspected of having committed an offence. Subsections (4) and (5) are particularly instructive in this case. The said subsections provide as follow:-

Section 35(4):

"Any person who is arrested or detailed in accordance with subsection (1)(c) of this section shall be brought before a Court of law within a reasonable time, and if he is not tried within a period of –

(a) Two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) Three months from the date of his arrest or detention in the case of a person who has been released on bail;

He shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date."

Section 35(5)

"In subsection (4) of this section, the expression "a reasonable time" means-

(a) In the case of an arrest or detention in any place where there is a Court of competent jurisdiction within a radius of forty kilometres, a period of one day; and'

In any other case, a period of two days or such longer period as in the circumstances may be considered by the Court to be reasonable."

The Applicants were arrested on 23rd of February, 2022 and has been in detention since then. Ordinarily, they ought to have been brought to Court

within a period of one day by virtue of section 35(5). There is no evidence before this Court that the Respondent has charged him to Court for any offence. Having failed to comply with these constitutional stipulations, I have no hesitation is holding that the right to personal liberty of the Applicants has been breached by the Respondent. Issue One is hereby resolved in favour of the Applicants.

ISSUE TWO

In formulating this issue, learned Counsel for the Applicants invited this Honourable Court to find that "the torture of the Applicants by the servants, agents and or officers of the Respondent, to elicit incriminating and confessional statement from them is not unlawful and unconstitutional having regard to sections 34(1)(a), 36(4) – (6) and 41(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended and Article 5 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act." I have carefully perused the affidavit in support of the application and I did not see where the deponent averred that the Applicants were tortured by the servants, agents and officers of the Respondent in order "to elicit incriminating and confessional statement from them."

In paragraph 16 of the affidavit in support, the deponent averred that "…I know as a fact that the Applicants and myself were all invited for interrogation and our statements were taken without an interpreter, without a lawyer and our relatives and under serious oppression." He did not state the nature of the 'oppression'. As one of those persons who were interrogated by the officers of the Respondent, the deponent did not attach any documentary exhibit such as medical report to establish that he, at least, after his release, sought medical attention for the 'oppression'; or pictorial evidence to prove what he passed through during his interrogation at the facility of the Respondent. It is my considered view that 'under serious oppression' is a nebulous term and does not establish the fact of torture. Though the deposition is not challenged, it is not cogent enough to warrant the Court acting on it as an article of faith.

In the case of **OGOEJEOFO v OGOEJEOFO** ***(2006) LPELR-2308 (SC)***, it was held that:

"It is also the law that the unchallenged and uncontroverted facts deemed admitted in the affidavit must be capable of proving and supporting the case of the appellant as the applicant. In other words, the evidence contained in the unchallenged affidavit must be cogent and strong enough to sustain the case of the applicant."

See also the case of ***JMG LTD v ISREAL & ORS (2020) LPELR-50585 CA***where the Court of Appeal held that:

"It is trite that any unchallenged and uncontroverted facts which are deemed admitted by the adversary must be capable of proving and supporting the applicant relying on the said facts. This is to say the affidavit evidence deemed unchallenged must be cogent and sufficient enough to sustain the applicant's case"

I am not unaware of the strenuous argument of the learned Counsel for the Applicants as he provided detailed denotation of the word 'torture' citing in his aid decisions of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for former Yugoslavia. I am particularly impressed with the adumbration of the essential elements of torture as provided by the two Tribunals in the ***Akayesu's case (1998) supra*** and the ***Delalic case (1998) supra***. Unfortunately, as far as Issue Two is concerned, the facts in the affidavit do not bear out the allegation of torture and, the address of Counsel, no matter how brilliant, cannot take the place of evidence. Accordingly, I hereby resolve Issue Two against the Applicants.

ISSUE THREE

Having found in favour of the Applicants in respect of Issue One, it is only natural that Issue Three be resolved in favour of the Applicants. The law assumes in favour of any applicant who has suffered a breach of any of his fundamental rights that he is entitled to damages even if such applicant has not specifically asked for damages.

In ***SKYE BANK v. NJOKU & ORS (2016) LPELR-40447 (CA)***the Court of Appeal held at page 31 para D-E that:

"In fundamental rights action, damages automatically accrue, once the respondent has been adjudged to have violated the applicant's fundamental rights."

Also in the case of ***JIDE ARULOGUN v. COMM OF POLICE LAGOS STATE & ORS (2016) LPELR 40190 (CA)***, the Court of Appeal held *inter alia* that:

"For the avoidance of doubt, common law principle on award of damages do not apply to matters brought under the fundamental rights. When a breach is proved, the victim is entitled to compensation even if no specific amount is claimed. The damages automatically accrue."

In view of the foregoing therefore, this Honourable Court finds the application for the enforcement of the fundamental rights of the Applicants meritorious. The reliefs sought in this application is granted in part as follows:-

1. **THAT the arrest and continuous detention of the Applicants from the 23rd February, 2022 till date by the Respondent, his servants, agents and or officers is illegal, unlawful and unconstitutional and a violation of the fundamental right of the Applicants to personal liberty.**
2. **THAT an Order of this Honourable Court is hereby made mandating the Respondent to release forthwith the Applicants from his custody.**
3. **THAT the Respondent is hereby restrained from further arresting the Applicants subject to the formal preferment of charges against them for the purpose of arraignment in Court.**
4. **THAT the sum of ₦10,000,000.00 (Ten Million Naira) only is hereby awarded against the Respondent and in favour of the Applicants for the infringement of their fundamental rights to personal liberty and fair hearing.**

This is the Judgement of this Honorable Court, delivered today, the 13th of April 2022.

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HON. JUSTICE A. H. MUSA
JUDGE
13/04/2022