

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

**ON TUESDAY, 28<sup>th</sup> DAY OF JUNE, 2022**

**BEFORE HON. JUSTICE NJIDEKA K. NWOSU- IHEME**

**SUIT NO: FCT/HC/CV/617/2022**

BETWEEN

IFESINACHI OJOGBO

APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE
2. NIGERIA POLICE FORCE
3. COMMISSIONER OF POLICE F.C.T.  
COMMAND, ABUJA.
4. ATTORNEY GENERAL OF THE FEDERATION  
AND MINISTER FOR JUSTICE

RESPONDENTS

**JUDGMENT**

The applicant commenced this action on 24/2/2022 via Originating Motion for the enforcement of his fundamental rights. In support thereof are:

- [i] Statement setting out the name and description of the applicant, the reliefs sought and the grounds for the application;
- [ii] The applicant's 9-paragraph affidavit;
- [iii] Written address of Festus Akpoghalino Esq.;

The applicant seeks the following reliefs against the respondents:

1. A declaration that the arrest and detention of the Applicant for Twelve(12) months by the Respondents; first at the Respondents cell situate at Gwagwa Police Division, and subsequent transfer to the Special Anti-Robbery Squad (SARS) abattoir cell, Abuja from 18<sup>th</sup> December, 2019 to 17<sup>th</sup> day of December, 2020 by the 1<sup>st</sup>-3<sup>rd</sup> respondents without any arraignment is unconstitutional, life threatening and gross violations of Applicant's Fundamental Rights guaranteed under Sections 34 and 35 of the Constitution of Federal Republic of Nigeria 1999 (as amended).
2. A declaration that the continuous detention of the Applicant at the Nigerian Correctional Service, Suleja Custodial Centre since the 17<sup>th</sup> day of December, 2020 on the order of the Mobile Court is an abuse of judicial process and/or power, hence unconstitutional, null and void.
3. A declaration that the torture or degrading treatment meted on the Applicant by the Respondents while in the Respondents' custody from the 18 day of December, 2019 to the 17<sup>th</sup> day of December, 2020 is unconstitutional and unlawful.
4. The sum of N50,000,000(Fifty Million Naira) only as general damages for breach of the fundamental rights of the Applicant.
5. The sum of N1,000,000(One Million Naira) only as cost of litigations.
6. And for such further Order or Orders that this Honourable Court may deem fit to make in the circumstances.

In his affidavit in support of the Originating Motion, the Applicant stated via ISAAC MAZO litigation secretary in the law firm of Festus Akpoghalino that;

1. The 1<sup>st</sup> Respondent is a statutory creation and the administrative head of the Nigerian Police Force with headquarters at the 2<sup>nd</sup> Respondent's office situate at Force Headquarters, LousEdet House, Abuja.
2. That the Applicant was on the 18<sup>th</sup> day of December 2019 on the allegation of armed robbery by the officials of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents detained first at Gwagwa Police division and later kept the Applicant in their custody for 12 months without any arraignment or court order.
3. The Applicant was kept in custody at the pleasure of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents without trial contrary to sections 293 and 296 of the Administration of Criminal Justice Act, 2015, without any arraignment, Order of court or remand order.
4. There are courts within a radius of forty (40) kilometers from the Respondents detention facilities.
5. The Respondents deliberately kept the Applicant in their custody amidst torture and in search of evidence against the Applicant ultimately in breach of the provisions of sections 34 and 35 of the constitution the Federal Republic of Nigeria, 1999 (as amended) and Section 2 of the Anti-Torture Act, 2017.
6. In the course of the continued detention of the Applicant, the Respondents meted terrible psychological and physical tortures on the Applicant in their desperate search of evidence and to stake confessional statement under compulsion from the Applicant more particularly one Inspector Achong Atem Obi, an official of the Respondents who presented him and others for media display before newsmen with arms and ammunitions.
7. The mental and psychological tortures meted on the Applicant as well as the media display were cruel, inhuman and degrading and were all calculated efforts aimed at confusing the mind of the

Applicant as well as undermining the dignity and morale of the Applicant.

8. The 4<sup>th</sup> Respondent is constitutionally vested with the enormous responsibilities of ensuring that the Applicants fundamental rights are not breached or eroded howsoever by the 1<sup>st</sup> -3<sup>rd</sup> Respondents or any other person or authority, even as the Applicant was arrested and detained.
9. The 4<sup>th</sup> Respondent conducted itself non-challantly by not taking any step to cause the arraignment of the Applicant before any court of competent jurisdiction, nor take steps in compliance with the provisions of Sections 293 and 296 of the Administration of Criminal Justice Act, 2015
10. The 4<sup>th</sup> Respondents implicitly endorsed the continued detention of the Applicant as evidenced in the fact that since the Mobile Court which sat at Special Anti-Robbery Squad (SARS) facility at abattoir, Abuja ordered the Applicants' remand on the 17<sup>th</sup> December 2020, the Applicant has been abandoned in Suleja Custodial Centre without any charge or arraignment.
11. That the Applicant is entitled to compensation/exemplary damages from the Respondent.
12. That the Applicant has been reduced to a shadow of himself and this Honourable court is his last hope.

It is worthy of note that on the day of adoption counsel to the Applicant withdrew relief 4 and informed the court that the Applicant has now been arraigned before the High court.

In the applicant's written address, Festus Akpoghalino Esq. submitted two issues for determination, to wit:

**1. Whether the Applicant is entitled to the reliefs sought in this case.**

## **2. Whether damages can be awarded by the court for breach of fundamental rights.**

From the affidavit evidence of the Applicant and the submissions of the learned counsel, the Court adopts the issue 1 as formulated by the Applicant Counsel, which is:

**Whether the Applicant is entitled to the reliefs sought in this case.**

### **SUBMISSIONS OF LEARNED COUNSEL FOR THE APPLICANT:**

Learned Counsel relied on Sections 34 and 35(1) of the 1999 Constitution as amended (CFRN) to the effect that the Defendant was detained from 18<sup>th</sup> December, 2019 till 17<sup>th</sup> December, 2020 in paragraph 8 of the affidavit in support. Once a person is detained beyond the constitutionally accepted period of time without justification then his right to personal liberty has been breached regardless of the length of time. **ALABOH V BOYES (1984) 5NCLR PG 830 AT 830 AT 834 R2.**

Counsel argued that once a person is arrested and detained, the Constitutional provisions must be obeyed, when detained by the Police he is absolutely deprived of his liberty, signifying that the right to personal liberty has been violated. Relying on the decision of **ISENALUMHE V AMADI (2001) 1 CHR PG 461.**

Relying on the case of **ODOGUN VS AG FEDERATION (1996) 6 NWLR (PT 455) PG508**, counsel argued that a Fundamental Right is a Right guaranteed in the Nigerian Constitution and it is a Right which every person is entitled when he is not subject to the disabilities enumerated in the Constitution, the Applicant is not subject to any disability at least none is yet shown before this honorable Court.

Counsel argued that no one can be deprived of his liberty without justification. See Section 35 (1) of the CFRN. It will not be justice under the Constitution if a man arrested or detained upon reasonable suspicion of having committed any offence is brought to Court at the will of the Police or

any Law enforcement agent or even tried in Court thereafter at the Police convenience.

Counsel submitted that when a person is arrested and detained in connection with allegation or reasonable suspicion of a crime and are actively pursuing investigation of the matter, the duty of the Police in appropriate case is to offer bail to the suspect and/or bring him to Court under whatever Section of the CPA or Police Act 1967, the Police may purport to be acting. See **AUGUSTINE EDA VS COP (1982) 3 NCLR PG 219 R1 and 2.**

The Respondents after detaining the Applicant for a period of twelve (12) months without arraignment, court order or remand order brought the Applicant unrepresented by a counsel before the Mobile Court which further remanded the Applicant since the 1<sup>st</sup> day of December, 2020 till now.

The intention of Respondents keeping the Applicant for that period of time was to deny the Applicant his fundamental right to personal liberty and this is the only reasonable implication of the remand order secured at the Mobile Court.

Learned counsel relying on case of **ISENALUMHE VS AMADI** supra, brought to bear the point that the Police have the responsibility to enhance the quality of the liberty and the dignity of the federal Republic of Nigeria as guaranteed by the constitution. Where they fail in this task, they must not be allowed to work to the detriment of law-abiding citizens.

Section 34 of the constitution of the CFRN provides that every individual is entitled to respect for the dignity of his person and No person shall be subjected to torture or to inhuman or degrading treatment. The Law provides that where it is found that any person is subjected to torture, inhuman or degrading treatment, the action will be declared illegal. Relying on **ISENALUMHE VS AMADIN (SUPRA).**

Counsel submitted that the arrest and detention of the Applicant for twelve(12)months and his further remand on the order of the Mobile Court for indefinite period is to say the least cruel and barbaric, hence unconstitutional null and void.

## **On whether damages can be awarded by the court for breach of fundamental rights:**

Counsel argued that Section 35(6) of the Constitution of the Federal Republic of Nigeria gives unrestricted power to the Court to award compensatory damages to the applicant, where the Court found that the fundamental Rights of any Applicant has been trampled upon or breached. See the case of **OKONKWO VS OGBOGU (1996) 5 NWLR, PT449, PG422, and R3, (See page 435, paras f-g).**

Counsel argued that the Supreme Court has enjoined Courts seized with cases relating to breach of fundamental Right to award punitive compensation to act as deterrent to other agencies of Government whose stock in trade is constant abuse of the Constitution. See the case of **SHUGABA V ABDULRAHMAN DAMAN (1982) 3NCLR, PG 928.** Court was urged to uphold the arguments of the Applicant Counsel for the following reasons:

- a. The Applicant was detained for a period of twelve (12) months by the Respondents without trial.
- b. The Constitution provides for detention for only 24 hours or 48 hours as the case may be.
- c. The mere fact of unlawful detention without trial is enough proof of torture, inhuman or degrading treatment.
- d. The indefinite order remanding the Applicant in the custody of the Suleja Custodial Centre till date is excessive and has no legal basis.
- e. The Constitution Presumes the Applicant innocent until declared or proven guilty in a competent Court of Law

## **DECISION OF THE COURT:**

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

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

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

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

However, this court before it arrives at its decision must still consider the evidence of the Applicant irrespective of the fact that the Respondent failed to file his defence to the Originating Motion. The burden still rests on the Applicant to prove his case even though the requirement is minimal proof.

A plaintiff must succeed upon the strength of his case and not on the weakness of the defence, although he is entitled to rely on evidence revealed in such weakness to strengthen his case. See ***OTUNBA***



***ABDULLATEEF OWOYEMI V PRINCE OLADELE ADEKOYA 2013 12 SCNJ 131.***

In ***REV. POLYCARP MATHEW ODIONG v. ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 6, CALABAR (2013) LPELR-20698(CA) (P. 42, paras. A-D)***

**"Although the facts deposed to by an applicant are not challenged by a respondent, the Court still has a duty to consider and weigh the affidavit evidence before it in order to ensure that they can ground the Order sought by the applicant. An unchallenged affidavit which contains obvious falsehood or is self -contradictory cannot sustain the case of 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: Ogojeifo vs. Ogojeifo (2006) 1 S. C. (PT.1) 157."**

Before I proceed to deal with the issue before me, I must raise suomotu glaring paragraphs of the Applicants Affidavit in support of his motion which appear to be legal arguments and contrary to the Evidence Act.

For this court to ascertain whether these paragraphs contain legal arguments, the court has to consider each paragraph as required by the law. In the apex decision of **ISHAYA BAMAIYI v. THE STATE & ORS (2001) LPELR-731(SC)** per **SAMSON ODEMWINGIE UWAIFO ,JSC (Pp. 26-27, paras. D-C)**

**I think the legal position is clear, that any affidavit used in the Court, the law requires as provided in Section 86 and 87 of the Evidence Act, that is shall contain only a statement of facts and circumstances derived from the personal knowledge of the deponent or from information which he believes to be true, and shall not contain extraneous matter by way of objection, or prayer, or legal argument or**

**conclusion. The problem is sometimes how to discern any particular extraneous matter. The test for doing this, in my view, is to examine each of the paragraphs deposed to in the affidavit to ascertain whether it is fit only as a submission which counsel ought to urge upon the Court. If it is, then it is likely to be either an objection or legal argument. BAMAIYI V. STATE & ORS which ought to be pressed in oral argument; or it may be conclusion upon an issue which ought to be left to the discretion of the Court either to make a finding or to reach a decision upon through its process of reasoning. But if it is in the form of evidence which a witness may be entitled to place before the Court in his testimony on oath and is legally receivable to prove or disprove some fact in dispute, then it qualifies as a statement of facts and circumstances which may be deposed to in an affidavit. It therefore means that prayers, objections and legal arguments are matters that may be pressed by counsel in Court and are not fit for a witness either in oral testimony or in affidavit evidence; while conclusions should not be drawn by witnesses but left for the Court to reach.**

The offensive paragraphs are paragraphs (iii), (v) and (ix):

- The Applicant was kept in custody at the pleasure of the 1<sup>st</sup> - 3<sup>rd</sup> Respondents without trial contrary to Sections 293 and 296 of the Administration of Criminal Justice Act, 2015, without an arraignment, Order of court or remand order.
- The Respondents deliberately kept the Applicant in their custody amidst torture and in search of evidence against the Applicant ultimately in breach of the provisions of sections 34 and 35 of the constitution the Federal Republic of Nigeria, 1999(as amended) and Section 2 of the Anti-Torture Act, 2017.

- The 4th Respondent conducted itself non-challantly by not taking any step to cause the arraignment of the Applicant before any court of competent jurisdiction, nor take steps in compliance with the provisions of Sections 293 and 296 of the Administration of Criminal Justice Act, 2015.

I find that these paragraphs offend section 115(2) of the Evidence Act (as amended) the paragraphs contain legal arguments, and are struck out accordingly.

In relief 1, the applicant seeks to enforce his fundamental rights under 35 of the CFRN.

**Section 35[1] of the CFRN provides:**

***“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law”.***

The gravamen of the Applicants case can be found in paragraphs 8(i), (ii), (iv), (vi), (vii), (viii) of the Applicants motion in support of his application as follows;

- The Applicant was on the 1<sup>st</sup> day of December, 2019 arrested on the allegation of armed robbery by the officials of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents and detained first at Gwagwa Police Division and later transferred to the Respondents Special Anti-Robbery Squad (SARS) cell at abattoir, Abuja where he was detained from the 18<sup>th</sup> December, 2019 to 17<sup>th</sup> December, 2020 (twelve months).
- The 1<sup>st</sup> -3<sup>rd</sup> Respondents kept the Applicant in their custody for twelve months without any arraignment or court order.
- There are courts within a radius of forty (40) kilometers and from the Respondents detention facilities.

- The 4<sup>th</sup> Respondent is constitutionally vested with the enormous responsibilities of ensuring that the Applicant's fundamental rights are not breached or eroded howsoever by the 1<sup>st</sup> – 3<sup>rd</sup> Respondents or any other person or authority, even as the Applicant was arrested and detained.

Section 35 (5) provides that 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
- (b) 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 fact that the applicant was arrested and detained from 18<sup>th</sup> December 2019 to 17<sup>th</sup> December 2020 a total of 365 days remains uncontroverted. In breach of section 35 of the CFRN.

The appellate court held in ***STANLEY K. C. OKONKWO v. ANTHONY EZEONU & ORS (2017) LPELR-42785(CA)(P. 10, paras. D-F);***

**“The law is settled that the onus is on the person alleging a breach of his fundamental right to prove same by cogent and credible evidence which in my view the appellant did.”**

The law is trite that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in accordance with the law See the case of ***CHIEF RUFUS GBEMISAYO OLUWATIMITEHIN v. MRS. ADEBAYO KEHINDE & ANOR (2019) LPELR-47888(CA) (Pp. 13-14, paras. F-A)***

In view of the fact that the affidavit evidence of the Applicant on Relief 1 remains uncontroverted, I find in favour of the Applicant as there is no explanation on the part of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents for the 365 days of

detention the Applicant suffered without being arraigned before a court of competent jurisdiction and I so hold.

On relief 2, Applicant complained that his continued detention at the Nigerian Correctional Service, Suleja Custodial Centre since the 17<sup>th</sup> day of December, 2020 on the order of the Mobile Court is an abuse of judicial process and/or power, hence unconstitutional, null and void.

Paragraph x of the Affidavit in support states;

**“The 4th Respondent implicitly endorsed the continued detention of the Applicant as evidenced in the fact that since the Mobile Court which sat at Special Anti-Robbery Squad (SARS) facility at abattoir, Abuja ordered the Applicant's remand on the 17<sup>th</sup> December, 2020, the Applicant has been abandoned in Suleja Custodial Centre without any charge or arraignment.”**

From the case of the Applicant, his continued detention was by a remand order of the Mobile Court hence his purported transfer to Suleja Custodial Centre where he remained for another 2 years.

The Applicant should have furnished this court with sufficient materials to that effect. The Certified true copy of the remand order is not before me so there is nothing before to confirm his continued detention in Suleja correctional facility. The law is trite that he who asserts must prove his assertion. See **Nsefik v. Muna [2007] LPELR-3934 [CA]**. Failure to prove his assertion is fatal to this relief and I so hold. The remand order was not exhibited the Applicant ought reasonably to have furnished this court with cogent and verifiable evidence to prove his claim for enforcement of his fundamental rights. see ***STANLEY K. C. OKONKWO v. ANTHONY EZEONU & ORS (2017) (SUPRA)(P. 10, paras. D-F)***.

In Relief 3, the Applicant is claiming that the torture or degrading treatment meted on him by the Respondents while in the Respondents' custody from the 18 day of December, 2019 to the 17<sup>th</sup> day of December, 2020 is unconstitutional and unlawful

Section 34[1] of CFRN provides that: ***"Every individual is entitled to respect for the dignity of his person, and accordingly –  
(a) No person shall be subjected to torture or to inhuman or degrading treatment***

*Paragraph 8 (vi) & (vii)*

- In the course of the continued detention of the Applicant, the Respondents meted terrible psychological and physical tortures on the Applicant in their desperate search of evidence and to stake confessional statement under compulsion from the Applicant more particularly one Inspector AchongAtem Obi, an official of the Respondents who presented him and others for media display before newsmen with arms and ammunitions.
- The mental and psychological tortures meted on the Applicant was cruel, inhuman and degrading treatment as well as media display were all calculated efforts at confusing the mind of the and/or undermine the dignity and morale of the Applicant.

The law is clear on what constitutes torture, inhuman and degrading treatment in **REV. POLYCARP MATHEW ODIONG v. ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 6, CALABAR (2013) LPELR-20698(CA) (Pp. 21-25, paras. A-F)**

Torture is the "infliction of intense pain to the body or mind to punish, to extract a confession or information or to obtain a sadistic pleasure". See Black's Law Dictionary, 9th edition, page 162.

Torture is forbidden under Section 34(1)(a) of the Constitution of the Federal of Nigeria, 1999 as altered. It is a violation of one of the fundamental rights of every individual in the universe or in Nigeria

In **REV. POLYCARP MATHEW ODIONG v. ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 6, CALABAR (2013) (P. 28, paras. E-F)**

**"...The act of the respondent's agents also constituted "inhuman treatment" which phrase is defined as "physical or mental cruelty so severe that it endangers life or health". See Black's Law Dictionary, 9th edition (supra) page 854."**

In **REV. POLYCARP MATHEW ODIONG v. ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 6, CALABAR (2013) (SUPRA) (P. 29, paras. C-D)**

**"Chambers 21st Century Dictionary page 352 defines the word "degrade" as "1. To disgrace or humiliate someone. 2. To reduce someone or something in rank, status, etc. degrading adj. humiliating; debasing..."**

The Applicant has alleged torture, inhuman and degrading treatment in the paragraphs of his affidavit and statement in support of their application. The Applicant has alleged and the Respondents have not refuted the truth of these assertions. The law is trite that facts not challenged nor countered are deemed admitted. See **STANLEY K. C. OKONKWO v. ANTHONY EZEONU & ORS (2017) (supra) JCA (P. 37, paras. D-F).**

**I enter relief 3 in favour of the Applicant.**

In the Grounds in support of Application, paragraph xi Applicant deposed;

**"that the Applicant is entitled to compensation/exemplary damages from the Respondents"**

However, in the reliefs claimed, the Applicant prayed for the sum of ₦50,000,000(Fifty Million Naira) only as general damages for breach of the fundamental rights of the Applicant.

In **ODIONG V. ASST. IGP** supra (P. 37, paras. A-C) the court held that the police have the power to arrest and detain a suspect under Sections 24, 25, 28 and 29 of the Police Act Cap P19 Laws of the Federation of Nigeria, 2004 this power does not extend to the power to torture a party or extort money from him.

**OKONKWO V. EZEONU & ORS** supra-PP. 62-63, paras. C-E...for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. It is true that there is something repugnant about a big man bullying a small man and, very likely, the bullying will be a source of humiliation...

Section 35(6) of CFRN states that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority.

The law is settled that a person whose fundamental right is violated is entitled to compensation whether or not an actual damage or injury is suffered. See Section 35 (6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), **ARULOGUN V. C. O. P (LAGOS STATE) & ORS. (2016) LPELR - 40190 (CA). (P. 11, paras. B-D)**

It is well settled that any violation of a citizen's guaranteed fundamental rights, for however short a period, must attract a penalty under the law. See: **ALABO vs. BOYES (1984) 5 NCLR 830**. The Appellant is therefore entitled to the award of damages." Per **ONYEKACHI AJA OTISI, JCA (P. 42, paras. E-F)** in **REV. POLYCARP MATHEW ODIONG v. ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 6, CALABAR (2013) LPELR-20698(CA)**

In **REV. POLYCARP MATHEW ODIONG v. ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 6, CALABAR (2013) supra P. 21 paras C-**



**E**); wherein the appellate court referred to the apex decision of **Okonkwo vs. Ogbogu (1996) 5 NWLR (pt.449) 420 at 435 paragraphs "F"-"G"** where the Supreme Court held as follows:

**"Any trespass to the person, however slight, gives a right of action to recover at any rate nominal damages, Even where there has been no physical injury, substantial damage may be awarded for the injury to the man's dignity or for discomfort or inconvenience. Where liberty has been interfered with damages are given to vindicate the plaintiff's rights even though he has not suffered any pecuniary damage. It is also not necessary for the plaintiff to give evidence of damage to establish his cause of action or to claim any specific amount of damage... "**

In **OKONKWU V EZEONU SUPRA (Pp. 63-64, paras. F-A)**

**"The appellant did not claim exemplary damages hence, though a breach of his fundamental rights had been established against the 3rd and 4th respondents, the appellant cannot be granted what he did not claim."**

Therefore, the claim for exemplary damages as contained in the grounds of the Application for enforcement of Fundamental rights will not succeed as this court cannot grant a relief not claimed by a party and I so hold.

Applicant has not established a case against the 4<sup>th</sup> Respondent. Paragraphs viii and x of the Affidavit in support of the application places purported responsibility on the 4<sup>th</sup> Respondent for ensuring that the 1<sup>st</sup> -3<sup>rd</sup> Respondents did not breach or erode his fundamental rights and 4<sup>th</sup> Respondents implicit endorsement of Applicants continued detention from SARS facility to Suleja Correctional facility. This Court cannot see how 4<sup>th</sup> Respondent participated in the breach against the Applicant. The law is trite that he who asserts must prove his assertion. See **Nsefik v. Muna [2007] LPELR-3934 [CA]**. Having failed to prove a case against the 4<sup>th</sup> Respondent I absolve the 4<sup>th</sup> Respondent from any liability and I so hold

Based on the above findings and considerations this action succeeds. The Applications and prayers of the Applicant are granted in part thus;

1. **I DECLARE** the arrest and detention of the Applicant for Twelve(12) months by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents; at the Respondents cell situate at Gwagwa Police Division, and subsequent transfer to the Special Anti-Robbery Squad (SARS) abattoir cell, Abuja from 18<sup>th</sup> December, 2019 to 17<sup>th</sup> day of December, 2020 by the 1<sup>st</sup>-3<sup>rd</sup> respondents without any arraignment is unconstitutional, life threatening and gross violations of Applicant's Fundamental Rights.
2. **A Declaration** that the continuous detention of the Applicant at the Nigerian Correctional Service, Suleja Custodial Centre since the 17<sup>th</sup> day of December,2020 on the order of the Mobile Court is an abuse of judicial process and/or power, hence unconstitutional, null and void is refused.
3. **I DECLARE** that the torture or degrading treatment meted on the Applicant by the Respondents while in the 1<sup>st</sup> to 3<sup>rd</sup> Respondents custody from the 18 day of December, 2019 to the 17<sup>th</sup> day of December, 2020 is unconstitutional and unlawful.
4. **I Award** the sum of ~~N~~5,000,000(Five Million Naira) only as general damages for breach of the fundamental rights of the Applicant against the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.
5. I award the sum of ~~N~~1,000,000(One Million Naira) only as cost of litigations against the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

**HON. JUSTICE NJIDEKA K. NWOSU-IHEME  
[JUDGE]**

**Appearance of Counsel:**

1. Festus Akpoghalino Esq. for the Applicant.
2. 1<sup>st</sup> to 4<sup>th</sup> Respondents were absent and unrepresented.