

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

ON WEDNESDAY, 13TH DAY OF JULY, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJ

SUIT NO. FCT/HC/CV/76/2019

BETWEEN

ONYINYE MBAKWEM

APPLICANT

AND

- 1. COMMISSIONER OF POLICE, FEDERAL
CAPITAL TERRITORY**
- 2. KELECHI AMADI**

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RESPONDENTS

JUDGMENT

The applicant commenced this action on 18/10/2019 vide Originating Motion for the enforcement of her fundamental rights. In support of the Originating Motion are: [i] Statement setting out the name, address and description of the applicant, the reliefs sought and the grounds upon which the reliefs are sought; [ii] the applicant's 29-paragraph affidavit and Exhibits OM1, OM3, OM4, OM5, OM6, OM7, OM8 & OM9 attached therewith; and the written address of Adebare Akinwunmi Esq.

The reliefs sought by the applicant are:

- i. A declaration that the arrest and torture of the applicant by the 1strespondent on false and concocted allegation of criminal conspiracy and identity theft which resulted in the loss of the applicant's baby, amounts to a breach of the applicant's fundamental rights guaranteed under sections 34, 35 and 41 of the 1999 Constitution of the Federal Republic of Nigeria [as amended].
- ii. A declaration that the seizure and/or conscription of the applicant's title deeds of the properties known and described as Plot of Land measuring 50ft by 100ft with a three-bedroom flat situate at Kaba Village, Abuja, FCT and Lock Up shop situate at Block B3 Shop 09. [G.F] Kukwaba Modern Market and Transit Park, Abuja by the 1strespondent is in breach of sections 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria [as amended].
- iii. A declaration that the continuous threat by the respondents to re-arrest and detain the applicant over false and concocted allegations of criminal conspiracy and identity theft flowing from matters/transactions which the applicant is oblivious of, having not been privy to the said transactions is unlawful and unconstitutional.
- iv. A declaration that the unwarranted and continuous harassment of and threat to the liberty of the applicant by the 1st and 2ndrespondents is unlawful and in breach of section 35 of the 1999 constitution of the Federal Republic of Nigeria [as amended].

- v. An order directing the 1strespondent to return forthwith the applicant's title deeds of the properties known and described as Plot of Land measuring 50ft by 100ft with a three-bedroom flat situate at Kaba Village, Abuja, FCT and Lock Up Shop situate at Block B3, Shop 09. [(G.F) Kukwaba Modern Market and Transit Park, Abuja.
- vi. An order of injunction restraining the respondents and their privies from further inviting, harassing, intimidating and threatening the applicant's liberty and/or acting in any way and manner that will jeopardize, constrain and restrict the applicant's liberty and freedom of movement.
- vii. An order directing the respondents jointly and/or severally to pay the sum of N100,000,000 [Hundred Million Naira] only as damages to the applicant for the loss of her baby.
- viii. An order directing the respondents jointly and/or severally to pay the sum of N50,000,000 [Fifty Million Naira] only as general damages to the applicant.
- ix. And for such further order or orders this Honourable Court may deem fit to make in the circumstances.

In opposing the Originating Motion, Inspector Philip Tumba filed a counter affidavit of 6-paragraphs on 24/2/2020 on behalf of the 1st respondent; attached therewith are Exhibits A1, A2, B1, B2, C1-C4, D, E & F. Dr. Kayode Ajulo Esq.

filed a written address with the counter affidavit. On 26/1/2021, Raphael Oyewole, a legal practitioner briefed by the 2nd respondent, filed a 6-paragraph counter affidavit together with his written address.

On 7/9/2020, the applicant filed a further and better affidavit of 18-paragraphs in response to the 1st respondent's counter affidavit; attached therewith is Exhibit OM10. Oduduabasi Ituen Esq. filed a reply on points of law with the further affidavit. On 5/3/2021, the applicant filed a 13-paragraph further and better affidavit in response to the 2nd respondent's counter affidavit together with the written address of Okonache Ogar Esq.

At the hearing of the application on 26/4/2022, Oduduabasi Ituen Esq. adopted the applicant's processes while Dr. Kayode Ajulo Esq. adopted 1st respondent's processes. The 2nd respondent and his counsel were absent without any reason. Upon being satisfied that the 2nd respondent and his counsel were aware of the hearing date, the Court deemed the 2nd respondent's processes as adopted in accordance with the provision of Order XII rule 3 of the Fundamental Rights [Enforcement Procedure] Rules, 2009.

Applicant's affidavit in support of the Originating Motion:

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

1. She is a director in Copat Travels Services Ltd. a travel agency duly registered with Corporate Affairs Commission [CAC]. Sometime in 2014, she was employed by a travelling agency known as GTDNL [TravelPort]. Based on the need to keep Copat Travels Ltd. afloat as a going concern, she employed Mr. Ikenna Igwe to take over the management of its affairs.
2. From 2014 to sometime in 2018, when Ikenna Igwe managed the affairs of Copat Travels Ltd., everything went on well. He took day to day business decisions without her knowledge and she had no issues with that. She relied on Ikenna Igwe to keep and sustain the business which, majorly was the issuances of air tickets for intending passengers travelling by air.
3. In March 2018, Copat Travels Ltd. received a mail from one of its business partners, Air Peace Nigeria Ltd., about unpaid issued tickets to the tune of N14,630,600; it sent a detailed adjustment report evidencing its claim. The Adjustment Report Ticket sent by Air Peace Ltd. to Copat Travels is Exhibit OM3.
4. Later, she got an invitation from Economic and financial Crimes Commission [EFCC] for questioning in relation to a case of criminal conversion of funds, which featured Copat Travels. In the course of questioning by the officials of EFCC, she discovered that the invitation was based on the claim by Air Peace Ltd. on unpaid issued tickets.

5. Even though she did not understand how the unpaid issued tickets came about, she agreed with the representatives of Air Peace Ltd. to offset the alleged accumulated debts in her capacity as a director of Copat Travels in order to foster cordial business relations between the two companies. The debt was paid in full on 28/1/2019. Her Zenith Bank statement of account showing the payment is Exhibit OM4.
6. She returned to her office at Copat Travels to carry out a thorough investigation and forensic audit of its account to ascertain how the huge debt/loss was incurred by the company. Her investigation revealed that Mr. Ikenna was responsible for the massive loss. The company wrote a letter [Exhibit OM5] to Mr. Ikenna on 31/1/2019 demanding a refund of the sum of N14,630,600.00 paid to Air Peace.
7. Later, in a meeting between them, Mr. Ikenna Igwe [in the presence of his lawyer] pleaded for forgiveness. In order to mitigate the loss to the company, she demanded for monetary compensation from Mr. Ikenna Igwe. Mr. Ikenna said he did not have such money. It was suggested by his lawyer that he should sell some of his landed properties and use the proceeds to pay Copat Travels.
8. It was mutually agreed at that meeting that instead of selling the properties, Copat Travels should acquire them via a deed of transfer. A proposed terms of settlement was agreed upon. The letter from Mr.

Ikenna Igwe dated 5/2/2019 to the managing director of Copat Travels evidencing the proposed terms of settlement is Exhibit OM6.

9. An irrevocable Power of Attorney dated 18/2/2019 [Exhibit OM7] was executed in favour of Copat Travels in respect of a three-bedroom apartment at Kaba Village, FCT, Abuja belonging to Mr. Ikenna. The Irrevocable Power of Attorney was given for a consideration of N10,000,000 which was to be deducted from his debt to the company.
10. Before the Air Peace episode, she had lent Mr. Ikenna Igwe a total sum of N3,552,000 in different tranches on different dates. Mr. Ikenna Igwe was only able to refund the sum of N259,000.
11. Sometime in 2018, she got wind of a sale promo on shops in Kukwaba Market within Bwari Area Council, FCT Abuja, where shops were sold at the rate of N2,500,000. She got in touch with Mr. Ikenna and demanded for her money to enable her pay for the shop. In the alternative, she asked him to purchase a shop for her in order not to miss the promo.
12. Based on her demand, Mr. Ikenna purchased a shop at the market rate of N2,500,000 in her name with the money he owed her. The documents were delivered to her afterwards as the rightful owner of the shop; the title paper to the shop is Exhibit OM8.
13. On 2/10/2019, officers of the 1st respondent in a gestapo-like manner bundled her into their vehicle shouting that she was under arrest. When

they got to their office at the FCT Police Command, she was informed that the 2ndrespondent had made an allegation of theft against her. She denied the allegation and gave a detailed written statement.

14.Officers of the 1strespondent quizzed her further in respect of the landed property Ikenna parted with in satisfaction of the debt he owed Copat Travels and her shop at Kukwaba Modern Market. She gave explanations about the two properties.

15.To her amazement, the officers demanded that she should produce the original documents of the properties and suggested to her that she conspired with Mr. Ikenna Igwe to defraud the 2ndrespondent. They threatened to detain her if she failed to give them the documents. Being pregnant and feeling unwell, she pleaded to be allowed to go home and bring the documents the next day, but this fell on deaf ears. They kept torturing her physically, mentally and psychologically.

16.At about 5p.m., the officers of the 1strespondent together with the 2ndrespondent insisted on executing a purported search warrant at her house. She was forced to go with them to her house where they executed the said search warrant. They seized all the documents of her shop and that of the property.

17.Upon conclusion of the search, they demanded that she should take them to the property. She informed them that the property was miles away from her house and pleaded that the visit be deferred to the next

day; more so, it was already late and dark. Her plea to them fell on deaf ears.

18. At the prompting of the 2nd respondent, she was forced to go on the tedious journey, sandwiched between officers of the 1st respondent in the 2nd respondent's car on a very bad road which she was not familiar with. On the way, she felt terrible pains and developed nausea. This made her to plead with the officers of the 1st respondent again to let her go and take care of herself all to no avail.

19. The road to the property was so bad that at a certain point, they had to resort to another means of transportation to access the property. At that point, she almost collapsed as she started having difficulty in breathing.

20. The aforesaid actions of the respondents led to the loss of her baby; she had a miscarriage in the early hours of 5/10/2019, *"barely 2 hours after the tiresome and painful enforced sojourn"* to the property that took them to 9.37 p.m. The medical report showing her miscarriage is Exhibit OM9.

21. After her ordeal with the respondents, she was informed by Mr. Ikenna Igwe on 5/10/2019 that:

- i. The relationship between him and the 2nd respondent is purely contractual and formal.
- ii. 2nd respondent is his business partner and he invested heavily in the 2nd respondent's business.

iii. The matter for which she was arrested is presently before the High Court of the Federal Capital Territory, Abuja.

22. Even after she was released, the respondents have not ceased to harass and threaten her. The 2nd respondent continues to threaten to use the 1st respondent to lock her up and also to use any means within his reach and power to inflict harm on me.

23. The 2nd respondent has kept true to his threats and has used the 1st respondent to threaten and harass her at any given time. Due to these threats, she no longer moves freely and her liberty has been restricted.

24. She has suffered severe and irreparable damages as a result of the respondents' actions. She now has trauma and has become hypertensive.

25. The continued harassment/threats by the respondents is a breach of her fundamental rights to personal liberty, freedom of movement, dignity of human person and right to acquire and own immovable property anywhere in Nigeria.

1st respondent's counter affidavit:

In the 1st respondent's counter affidavit, Inspector Philip Tumba stated that he was informed by Inspector Edward Igbafe, the Investigative Police Officer in charge of the 2nd respondent's complaint, of the following facts:

1. Sometime in November 2018, a complaint for criminal conspiracy, breach of trust, cheating and theft was filed against Igwe Ikenna Thaddeus by the 2nd respondent. In his complaint, the 2nd respondent alleged that:
 - a. He is the MD/CEO of Stamkay Logistics Company based in Abuja, whose line of business is agent ticketing services for local and international airlines.
 - b. He engaged the services of Igwe Ikenna Thaddeus to train his staff on how to book tickets of Air Peace airlines.
 - c. In the course of the training, Igwe Ikenna dishonestly saved the password of his Airpeace Agency airline ticketing platform.
 - d. Thereafter, Ikenna Igwe started using the password to book tickets of Airpeace Airline amounting to a total sum of N22,066,300 without his consent, hence the complaint to the Police. Copies of 2nd respondent's statements dated 15/11/2018 and 19/11/2019 are Exhibit A1 & A2.
2. Based on the complaint, Igwe Ikenna was invited to the Command Headquarters and he was interrogated in the presence of his lawyer. Copies of the statements of Igwe Ikenna Thaddeus dated 15/11/2018 and 19/11/2018 are Exhibits B1 & B2.
3. In his voluntary statement [Exhibit B1], Igwe Ikenna Thaddeus admitted the commission of the offence of criminal breach of trust,

cheating and theft where he stated that part of the sum of N22,066,030 was used to get two stores worth about N5,000,000 at Kukwaba Market.

4. Investigation revealed that 3 shops were gotten from the proceeds of crime in the name of Igwe Ikenna Thaddeus, Igwe Ifunnaya Anastacia and applicant [Igwe Onyinye Mbakwe] for N2,500,000 each. Evidence of transfer of the said sum to Ayo Atoyebi & Co. Ltd. and the letters of offer for the 3 shops are Exhibit C1, C2, C3 & C4 respectively.
5. Igwe Ikenna Thaddeus further confessed that he bought a property at Kaba village with some of the money for the sum of N10,000,000. Igwe Ikenna Thaddeus was later charged to the Upper Area Court. A copy of the First Information Report is Exhibit D.
6. Based on the investigation, the applicant was invited by the Police and interrogated. She made her statement under caution admitting that Igwe Ikenna Thaddeus got her a shop in the sum of N2,500,000.
7. In the course of investigation, it was discovered that the applicant is a relation to Igwe Ikenna Thaddeus. A copy of the CAC registration form of Copat Travels Services Limited bearing the name of the applicant as Onyinye Patience Igwe is Exhibit E.
8. The applicant was never arrested or detained by the 1st respondent; she was invited. She voluntarily came to the FCT Command on 4/10/2019 and made her statement. She was thereafter released on the day. The officers of the 1st respondent neither harassed, molested, tortured or

threatened the applicant and they were not aware that she was pregnant.

9. When the officers of the 1strespondent inquired about the documents relating to the shop and property gotten from the proceeds of the offence of Igwe Ikenna Thaddeus, the applicant denied having such documents in her custody. A search warrant was thereafter issued to search her premises in order to ascertain the veracity of her statement.
10. On getting to the applicant's premises at about 3.30 p.m. in the company of her lawyer, she said the documents to the property and shop were in her custody and pleaded with the 1strespondent's officers to be allowed to bring them without executing the search warrant for the sake of her children and members of the community.
11. The officials of the 1strespondent acceded to her plea and she voluntarily handed over the said documents without harassment, torture or any force. The officers of the 1strespondent left the premises and informed her to report to FCT Command on 13/11/2019 for further investigation. The officers of the 1strespondent never went to the said property.
12. No officer of the 1strespondent has ever trailed, harassed or threatened to arrest the applicant. On 13/11/2019, the applicant was charged to the Upper Area Court, Mpape for the offences of criminal conspiracy,

criminal breach of trust, theft and furnishing false information. A copy of the First Information Report against the applicant is Exhibit F.

13. Applicant has failed to prove how the 1st respondent arrested, detained or continued to breach her fundamental rights. The applicant's suit is made in bad faith as her intention is to frustrate the Police from carrying out their statutory duties.

2nd respondent's counter affidavit:

In the counter affidavit of the 2nd respondent, Raphael Oyewole stated that he was informed of the following facts by the 2nd respondent:

1. He cannot personally depose to this affidavit as he is no longer within the jurisdiction of the Court having relocated to Japan.
2. As a law-abiding citizen, he merely reported a case against one Mr. Ikenna Igwe wherein the applicant was implicated by virtue of her relationship with the suspect and she was thereafter interrogated by the 1st respondent. The facts which gave rise to his complaint to the 1st respondent against Mr. Ikenna Igwe are in paragraph 5[[e]-[j]].
3. When Ikenna Igwe was invited by the 1st respondent, he confessed to the crime and implicated the applicant. Investigation at the office of EFCC in Lagos and the 1st respondent revealed that the applicant and Mr. Ikenna Igwe are siblings of the same parents.

4. He had always known the applicant as Patience who was his travel trainer at Travel Port being where he once signed up for his professional training. The applicant was at the Police station severally and even negotiated with him on Mr. Ikenna's release.
5. He was shocked when the officers of EFCC [in Lagos] who were also investigating the matter informed him that Onyinye Igwe is the same person as Patience Mbakwe, later to be known as Onyinye Mbakwem and she is of the same parents with Ikenna Igwe.
6. He was further informed at the EFCC, Lagos that Copat Travels was also involved in their investigation and a director [the applicant] paid the debt without arguments.
7. The Applicant was only invited for interrogation. She left her office in a civil manner and was not treated rudely.
8. 1strespondent politely demanded for the documents of the properties which were already subjects of investigation. In spite of the search warrant which the officers of the 1strespondent had obtained, they still offered her the respect of bringing the documents herself, which she did.
9. Mr. Ikenna Igwe is not his business partner and Mr. Ikenna Igwe has no investment in his business, rather, Ikenna fraudulently uses his online platform to sell tickets to customers without paying for the tickets.

10. He has not harassed or threatened the applicant as he has no reason to do so.

Applicant's further and better affidavit filed on 7/9/2020:

In her further affidavit filed on 7/9/2020, the applicant stated that:

1. The respondents subjected her to inhuman and degrading treatment when they seized the title documents of her properties after making her walk at long stretches at night at about 9.00p.m. on an unmotorable road, which made her lose her pregnancy.
2. She did not know anything about the contract between 2nd respondent and Mr. Ikenna Igwe until her arrest and torture by the 1st respondent.
3. The 1st respondent has not shown her where Mr. Ikenna in his statement stated that he bought a house. Mr. Ikenna only executed an Irrevocable Power of Attorney in favour of Copat Travels Ltd. due to the financial obligations and debt he plunged the company into.
4. She was ambushed, embarrassed and arrested at her place of work. She was detained at the 1st respondent's office. She was only allowed to call her surety to come and bail her after her tedious journey to and from Kaba, which was embarked upon forcefully.
5. She told the officers of the 1st respondent that the documents in question were not in her custody at their station and requested to be allowed to

go home and bring them the following day, a request they turned down.

6. The officers of the 1strespondent after getting all the title documents, still ordered her to take them to the property at Kabain spite of her plea thatit was going to be difficult for her to locate the property as it was already dark. The call log showing that she was in the 1strespondent's custody and actually proceeded to Kaba is Exhibit OM10.
7. She is constantly harassed by the officers of the 1strespondentwho come to heroffice at will. She is constantly threatened with arrest by the officers of the 1strespondent if she did not do their biddings.

Applicant's further and better affidavit filed on 5/3/2021:

In her further affidavit filed on 5/3/2021, the applicant statedthat: [i] Mr. Ikenna Igwe did not implicate her in his written statement to the 1strespondent; [ii] she did not conspire or collude with Mr. Ikenna in any of the offences alleged by the 2nd respondent; and [iii] she was ambushed, embarrassed and arrested at her place of work.

Issue for determination:

From the affidavits of the parties and the submissions of their learned counsel, the Court is of the opinion that the issue for determination is:

Whether the applicant has established that the respondents violated her fundamental rights and therefore entitled to the reliefs sought.

Submissions of Learned Counsel for the Applicant:

Learned counsel for the applicant posited that the facts and circumstances of this case revolve around the insistence of the 1st respondent to recover funds being owed the 2nd respondent by third parties by unlawful means. There is no nexus between the applicant and the 2nd respondent and they never entered into any business arrangement. Besides, the issues relating to the transaction are already pending before a court. As deposed to in the applicant's affidavits, she has been harassed, intimidated, arrested and tortured over transactions or matters she had no knowledge of. Eventually, the actions of the respondents resulted in the loss of her baby. It was submitted that the respondents' actions amount to a gross violation of the applicant's fundamental rights.

Adebare Akinwunmi Esq. further submitted that by section 35[1] of the 1999 Constitution [as amended], the respondents cannot arbitrarily deprive the applicant of her right to freedom of movement and personal liberty. He referred to **Baba-Panya v. President, Federal Republic of Nigeria [2018] 15 NWLR [Pt. 1642] 295** and other cases. He stressed that in an application for the enforcement of fundamental rights, where there is evidence of arrest and torture of the applicant, the burden shifts to the respondents to show that the arrest and torture were lawful. He cited the case of **Fajemirokun v. CB [C.L] Nig. Ltd. [2002] 10 NWLR [Pt. 774] 95** in support. Counsel submitted that the

respondents were unable to give any reason for unjustly arresting, torturing and threatening to re-arrest the applicant.

The applicant's counsel also relied on section 34 of the 1999 Constitution [as amended], which provides that every individual is entitled to respect for the dignity of his/her person and no person shall be subjected to torture, inhuman and degrading treatment. He argued that respondents subjected the applicant to torture, inhuman and degrading treatment which led to the loss of her baby. He cited the case of **Igwe v. Ezeanochie [2010] 7 NWLR [Pt. Pt. 1192] 61** to support the principle that the duties of the Police do not include recovery of funds in respect of civil and contractual relationship between individuals, such as the arrangement between Mr. Ikenna Igwe and the 2nd respondent. Mr. Akinwunmi concluded that by section 35[6] of the Constitution, the applicant is entitled to compensation and damages for the infringement of her rights.

In the written addresses filed along with the applicant's further and better affidavits, applicant's counsel stressed that the respondents have not adduced evidence of any crime or conspiracy against the applicant to warrant her arrest and seizure of her title documents. The only nexus between the applicant and the 2nd respondent is Mr. Ikenna Igwe, who was her manager.

In the additional address filed on 5/3/2021 with the applicant's further and better affidavit, the applicant's counsel [Okonache Ogar Esq.] further argued in respect of the allegation of torture that the applicant deposed that she was

arrested in the morning at her place of work and she went through rigorous interrogation. Despite executing the search warrant and seizing her title documents, she was forced to make another trip to an unknown destination in Kaba. He argued that by section 2[x] of the Anti-Torture Act, 2017, “*prolonged interrogation to deny normal length of sleep and rest*” amounts to torture. Counsel concluded that these events coupled with the “*crass and impulsive actions*” of the respondents led to the loss of the applicant’s pregnancy.

Submissions of Learned Counsel for the 1st Respondent:

Learned counsel for the 1st respondent referred to the case of **Akinbade & Anor. v. Babatunde & Ors. [2017] LPELR-43463 [SC]** on the principle that he who asserts must prove in order to succeed in his action. He argued that the applicant has a duty to establish how the 1st respondent harassed, tortured, arrested and detained her. The applicant has not shown how she was subjected to any form of inhuman treatment or how any of her fundamental rights were breached by the 1st respondent. By section 4 of the Police Act, the Police has the duty to investigate criminal allegations, invite a suspect and prosecute where there is a *prima facie* case against the suspect.

Dr. Kayode Ajulo Esq. submitted that the 2nd respondent’s complaint against Mr. Ikenna Igwe which led to the invitation of the applicant for questioning, Mr. Ikenna Igwe’s statement and the First Information Report filed against the applicant at the Upper Area Court for the offences of criminal breach of

trust, cheating, theft and furnishing false information show that there is a *prima facie* case against her. He referred to **Yav v. State [2005] 5 NWLR [Pt. 917] 1** for the meaning of *prima facie* case. He emphasized that 1st respondent has power to investigate the 2nd respondent's complaint and prosecute Mr. Ikenna Igwe and the applicant as there is a *prima facie* case.

The counsel for the 1st respondent further stated that the 1999 Constitution [as amended] and the Police Act empower the Nigeria Police to arrest and detain any person upon reasonable suspicion that he committed a crime. The officers of the 1st respondent, upon reasonable suspicion that the applicant has in her possession items suspected to be gotten with proceeds of crime, obtained a search warrant and recovered the said documents from her; she willingly gave the documents to them. The applicant was not detained as she was released the same day she went to the Police after writing her statement. It was argued that the applicant has no legally recognizable right to prevent the Police from performing its statutory functions of investigation and prosecution. He cited the case of **A.G., Anambra v. Uba [2005] 15 NWLR [Pt. 947] 44** in support.

Finally, Dr. Kayode Ajulo Esq. relied on the cases of **Securities Solutions Ltd. & Ors. v. Adamu-Oladiran & Ors. [2016] LPELR-40068 [CA]** and **Senator Peter Nwaoboshi & Ors. v. FRN [2018] LPELR-45107 [CA]** to support the principle that both criminal and civil actions on the same subject matter or facts can go on simultaneously in courts. He submitted that there is no law

that prevents or forbids the 2nd respondent from making a complaint to the Police to prosecute a suspect because there is a pending civil case against the suspect.

Submissions of Learned Counsel for the 2nd Respondent:

Learned counsel for the 2nd respondent referred to the case of **Hassan v. EFCC [2014] 1 NWLR [Pt. 1389] 637** to support the principle that fundamental rights are not absolute; they can be curtailed by the appropriate authorities where there are grounds for doing so. He submitted that every person is subject to the Police powers of arrest and detention for the purpose of investigation upon reasonable suspicion of having committed a criminal offence. He relied on sections 35[1][c] and 41[2][a] of the 1999 Constitution [as amended]; and the case of **Sambo v. Nig. Army Council [2017] 7 NWLR [Pt. 1565] 429**. Also, by section 4 of the Police Act, the duties of the Police include the prevention and detection of crime, the apprehension of offenders, the preservation of law and order and the protection of life and property.

Raphael Oyewole Esq. further stated that it is the duty of citizens to report cases of commission of crime to the Police for investigation and what happens after such report is entirely the responsibility of the Police. He cited the cases of **Fajemirokun v. Commercial Bank [Credit Lyonnais] Nig. Ltd. [2009] 5 NWLR [Pt. 1135] 588** and **Ogubie v. F.B.N. Plc. [2020] 4 NWLR [Pt. 1715] 538**. He submitted that a citizen cannot be held culpable for doing his

civic duty unless it is shown that it is done *mala fide*. Once a criminal allegation is made against a citizen, the Police has a statutory duty to investigate the allegation. He referred to Agbi v. Ogbah [2005] 8 NWLR [Pt. 926] 40 and other cases.

Finally, on the allegation of torture and inhuman treatment, 2nd respondent's counsel argued that the particulars of the torture or inhuman treatment must be stated and proved by the applicant. He cited Totor v. Aweh [2000] 2 NWLR [Pt. 644] 309 where it was held that mere allegation of torture by the Police is not sufficient; it must be proved by evidence. Mr. Raphael Oyewole reasoned that the applicant's "*attempt to wrap her miscarriage around the event of her invitation by the 1st Respondent is a means to arouse and provoke the sentiments of the Court. Obviously, the Applicant forgot that this is a Court of law, where evidence is proffered to give justice to all parties and not a Court of emotions.*"

Decision of the Court:

The allegations of the applicant upon which she seeks the enforcement of her fundamental rights and her reliefs are: [a] unlawful arrest and detention; [b] torture, inhuman and degrading treatment; [c] seizure of the title documents to her property at Kaba village and shop at Kukwaba; and [d] threat of further arrest and detention. The Court will consider the allegations in turn.

A. **Allegation of unlawful arrest and detention:**

As rightly stated by the applicant's counsel, there was no business relationship between the 2nd respondent and the applicant and the 2nd respondent did not make any complaint against her to the Police. The 2nd respondent's complaint was against Mr. Ikenna Igwe for criminal breach of trust, cheating and theft of the sum of N22,066,300 as stated in the 1st respondent's counter affidavit.

How then did the applicant become part of the investigation by officers of the 1st respondent? From the unchallenged affidavit evidence of the 1st respondent, the property at Kaba village in respect of which Mr. Ikenna Igwe donated a power of attorney to Copat Travels Ltd. on 18/2/2019 and the shop at Kukwaba which Mr. Ikenna Igwe bought in the applicant's name were found to have been acquired by Mr. Ikenna Igwe from the said sum of N22,066,300.

In his statement to the Police dated 15/11/2018 [Exhibit B1], Mr. Ikenna Igwe stated that he spent the sum of N22,066,300 for the maintenance of their house in the village, purchase of stores at Kukwaba market, etc. In his statement to the Police dated 19/11/2018 [Exhibit B2], Mr. Ikenna Igwe further explained that he acquired two shops at the rate of N10,000,000 and acquired a property worth about N10,000,000 from the said sum of N22,066,300.

In paragraph 5[k] & [l] of the 1st respondent's counter affidavit, it is deposed:

[k] That in the course of investigation of the 2nd respondent's complaint against Igwe Ikenna Thaddeus, it was discovered that three shops were gotten from the proceeds of crime in the name of Igwe Ikenna Thaddeus, Igwe Ifunanya Anastasia and the Applicant [Igwe Onyinye Mbakwe] at the sum of N2,500,000 each.

[l] That Igwe Ikenna Thaddeus further confessed that he bought a property at Kaba village with some of the money for the sum of N10,000,000.

The applicant did not challenge the above depositions either in her affidavit or through an affidavit of Mr. Ikenna Igwe. The Court finds as a fact that Mr. Ikenna Igwe was the one that made the house at Kaba village, the shop at Kukwaba and the applicant to be part of the investigation by the officers of the 1st respondent. In other words, the officers of the 1st respondent knew about the connection of the applicant to the said house and shop from the explanation of Ikenna Igwe on how he spent the said sum of N22,066,300.

It is pertinent to note that the applicant merely described Mr. Ikenna Igwe as an employee in Copat Travels Ltd.; she never disclosed that he is her sibling. However, the deposition in the counter affidavits of the respondents, which is unchallenged, is that Ikenna Igwe is the applicant's sibling.

Also worthy of note is that as at 18/2/2019 when Mr. Ikenna Igwe donated a power of attorney to Copat Travels Ltd. in respect of the property at Kaba, he had made his statements on 15/11/2018 and 19/11/2018 to the Police in respect

of the sum of N22,066,300 which he allegedly stole from the 2nd respondent. The applicant was aware of that complaint against Mr. Ikenna Igwe. This could be inferred from the 2nd respondent's unchallenged deposition in paragraph 5[r] of the counter affidavit that the applicant whom he knew as Patience "*was at the Police station severally and even negotiated with him on Ikenna's release.*"

Both counsel for the respondents are correct that by section 4 of the Police Act, the 1st respondent is empowered to investigate all allegations of crime, like the complaint of the 2nd respondent against Mr. Ikenna Igwe. In the course of the investigation, the 1st respondent can arrest and detain a suspect. In **Onah v. Okenwa & Ors. [2010] LPELR-4781 [CA]**, it was restated that once criminal allegations are made against a citizen, it is a constitutional and statutory duty of the Police to investigate. I must quickly add that in the exercise of its power of arrest and detention, the 1st respondent must act in accordance with the law.

Now, did the 1st respondent breach the applicant's rights to personal liberty and freedom of movement in the course of the investigation? Section 35[1] of the 1999 Constitution [as altered] 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 –

[c] *for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.*

Section 35[4] thereof provides that a person arrested and detained in accordance with section 35[1][c] shall be brought before a court of law within a reasonable time. The expression '*a reasonable time*' is defined in section 35[5] to mean:

- [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 applicant's case is that she was arrested by officers of the 1st respondent from her office on 2/10/2019 in a "*gestapo-like manner*" and detained. She alleged that her arrest and detention were unlawful. On the other hand, 1st respondent stated that the applicant was invited and interrogated; she was not arrested or detained. The applicant was released after making her statement.

As I said earlier, Mr. Ikenna Igwe was the one that made the property at Kaba village, the shop at Kukwaba and the applicant to be part of the investigation by the officers of 1st respondent. Based on the statements of Mr. Ikenna Igwe on how he spent the sum of N22,066,300 allegedly stolen from 2nd respondent, the Court holds that even if the applicant was arrested, she was arrested by officers of the 1st respondent upon reasonable suspicion of her committing a criminal offence. Therefore, the applicant's arrest was not unlawful.

The learned counsel for the applicant did argue that the arrest of the applicant was for the 1st respondent to recover funds on behalf of the 2nd respondent. The Court rejects this argument as there is no basis for it. The 1st respondent did not arrest [or invite] the applicant to recover money for the 2nd respondent.

In respect of the applicant's allegation that she was unlawfully detained by the 1st respondent, the combined effect of the provisions of section 35[1][c] & 35[4] of the 1999 Constitution [as amended] is that where a person is arrested upon reasonable suspicion of his having a criminal offence, he should be charged to court within a reasonable time as provided by section 35[5] thereof. Where he is not charged to court within a reasonable time, he should be released on bail subject to any law that permits his detention for a longer period.

From the applicant's affidavits, she did not allege that the officers of the 1st respondent did not release her on the same day she went to the Police station.

Since the 1st respondent did not detain the applicant till the next day, the decision of the Court is that there is no legal basis to hold that the respondents breached the applicant's rights to personal liberty and freedom of movement respectively guaranteed under sections 35[1] and 41[1] of the 1999 Constitution [as amended]. The applicant failed to prove that her rights to personal liberty and freedom of movement were breached by the respondents.

B. Allegation of torture, inhuman and degrading treatment:

Section 34[1] of the 1999 Constitution [as amended] provides:

1. Every individual is entitled to respect for the dignity of his person, and accordingly –

[a] no person shall be subjected to torture or to inhuman or degrading treatment.

In **Totor v. Aweh [supra]** cited by the 2nd respondent's counsel, it was held that mere allegation of torture by the Police is not sufficient; it must be proved by evidence. In her affidavits, applicant narrated how officers of the 1st respondent took her to her house, executed a search warrant, collected the title documents of the said property at Kaba village and shopat Kukwaba and forced her to go on the tedious journey [on a very bad road] to take them to the said property at Kaba village. These actions of the respondents led to the

loss of her baby; she had a miscarriage in the early hours of 5/10/2019, barely 2 hours after the *“tiresome and painful enforced sojourn”* to the property.

In the 1st respondent’s counter affidavit, the deponent stated that: [i] applicant voluntarily released the documents to the officers of the 1st respondent as she pleaded with them not to execute the search warrant; [ii] the officers of the 1st respondent never went to the said property; and [iii] the officials of the 1st respondent did not harass, molest, torture or threaten the applicant and they were not aware that she was pregnant.

The Court holds the view that even if the officers of the 1st respondent executed a search warrant in the applicant’s house and took her to show them the property, these acts do not amount to torture or inhuman and degrading treatment. These acts are in furtherance of the powers of the Police to investigate the complaint of the 2nd respondent against Mr. Ikenna Igwe and to investigate the facts stated by Mr. Ikenna Igwe in his statements to the Police about how he spent the sum of N22,066,300.

The applicant alleged that the actions of the respondents led to the loss of her baby; she had a miscarriage in the early hours of 5/10/2019. The applicant’s case is that she was arrested on 2/10/2019. On the same date, the search warrant was executed in her house and they went to the property. The medical report [Exhibit OM9] stated that *“she however presented to us on the 6th of October 2018 with complaints of bleeding per vaginam associated with clots of blood and abdominal cramps of 2 days duration.”*

It is unfortunate that the applicant had a miscarriage but there is nothing before the Court to prove that the miscarriage was caused by the alleged acts of the officers of the 1st respondent who, as I had said, acted within the ambit of their powers to investigate criminal allegations. Any other factor or reason could have caused the miscarriage between 2/10/2019 and 5/10/2019.

From all that I have said, the decision of the Court is that the applicant failed to prove that the respondents breached her fundamental right to dignity of human person under section 34[1] of the 1999 Constitution [as amended].

C. Allegation of seizure of the title documents to the property at Kaba village and the shop at Kukwaba:

The applicant alleged that the seizure or conscription of her title deeds of the said property at Kaba village, Abuja and the said shop at Kukwaba Modern Market by the 1st respondent is a breach of her right to acquire and own property under section 43 and 44 of the 1999 Constitution [as amended].

As I said earlier, the title documents of the said property at Kaba and the shop at Kukwaba were recovered from the applicant by the 1st respondent's officers in exercise of their powers to investigate criminal complaints and based on the statements of Mr. Ikenna Igwe. Mr. Ikenna Igwe and the applicant have been charged to Court based on the outcome of the investigation.

I hold the view that the seizure of the title documents of the said property and shop by the officers of the 1st respondent in the course of investigation does not amount to denial of the applicant's right to acquire and own property. The title documents may be part of the evidence to be relied upon by the 1st respondent in the prosecution of the charges against Mr. Ikenna Igwe and the applicant. Besides, the issues concerning the said property may be determined by the court where Mr. Ikenna Igwe and the applicant were charged. The applicant failed to establish this allegation.

D. Allegation of threat of further arrest and detention:

In paragraphs 22 of the affidavit in support of the Originating Motion, the applicant stated that after her release by the 1st respondent, *"the respondents have not ceased to harass and threaten me. The 2nd respondent particularly, continues to threaten to use the 1st respondent to lock me up and also to use any means within his reach and power to inflict harm on me."* In paragraph 23 thereof, the applicant deposed that the *"2nd respondent has kept true to his threats and has used the 1st respondent to threaten and harass me at any given time."*

In paragraph 5[bb] of the 2nd respondent's counter affidavit, it is deposed that he has not harassed or threatened the applicant as he has no reason to do so. In paragraph 5[v] of the 1st respondent's counter affidavit, it is deposed that when the officers of the 1st respondent left the premises of the applicant, they told her to report to the FCT Command on 13/11/2019 for further investigation. The applicant did not deny that she was asked to report on

13/11/2019. By the First Information Report [Exhibit F] attached to the 1st respondent's counter affidavit, the applicant was charged to court on 13/11/2019.

The Court holds the view that the applicant has the duty to prove that after she was released on bail, the respondents continued to harass and threaten her; and that the 2nd respondent continued to threaten to use the 1st respondent to lock her up. The applicant did not give particulars of how, where and when the respondents harassed and threatened her after she was released. The Court holds that the applicant failed to prove this allegation.

Conclusion:

From all that I have said, the decision of the Court is that the application failed to prove that the respondents violated or breached any of her fundamental rights. The suit lacks merit. It is dismissed. I award cost of N50,000 to each of the respondents.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

No counsel.