

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON MONDAY THE 12<sup>TH</sup> DAY OF SEPTEMBER, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/BW/CV/33/2022**

**BETWEEN:**

1. DAVID ITENEBE  
2. BARR. ERIC I. EGWURUBE } ----- APPLICANTS

**AND**

1. THE NIGERIA POLICE FORCE  
2. THE INSPECTOR GENERAL OF POLICE  
3. THE COMMISSIONER OF POLICE FCT COMMAND } RESPONDENTS  
4. MR. BELLO (DPO KUBWA)  
5. ALHAJI SULEIMAN NDATSADU YAHAYA

## **JUDGMENT**

On the 1<sup>st</sup> day of February, 2022 the Applicants, David Itenebe and Barr. Eric I. Egwurube filed this action against the Respondents, The Nigeria Police Force, The Inspector General of Police, The Commissioner of Police FCT Command, Mr. Bello (DPO Kubwa) and Alhaji Suleiman

Ndatsadu Yahaya seeking for the enforcement of their Fundamental Rights and claiming the following Reliefs:

- 1. An Order enforcing and/or securing the enforcement of the Applicants' Fundamental Rights to dignity of (his) human person (under Section 34), personal liberty (under Section 36) as guaranteed under the Constitution of the Federal Republic of Nigeria 1999.**
- 2. A Declaration that the harassment, intimidation, arrest of the 1<sup>st</sup> Applicant and threat to arrest and detain the 2<sup>nd</sup> Applicant by the Respondents simply because he has continued to remain in possession of Plot No. 16 Kubwa Extension II Layout Kubwa, Abuja FCT is wrongful, illegal and amount to a gross violation of the Applicants' Fundamental Rights as guaranteed in the Constitution.**
- 3. A Declaration that the arrest and detention of the 1<sup>st</sup> Applicant as well as the threat to arrest and detain the 2<sup>nd</sup> Applicant despite the pendency of Suit No. FCT/HC/BW/CV/101/19 at the FCT High Court 24, wherein the 2<sup>nd</sup> Applicant seeks to protect his interest and/or title in respect of Plot No. 16 Kubwa Extension II Layout Kubwa, Abuja FCT is wrongful, illegal and also constitute an abuse of administrative powers to undermine and/or bring the powers of the judiciary seized with that adjudication of land matters into disrepute or opprobrium.**
- 4. A Declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Applicants herein have not committed any offence whatsoever to warrant the arrest and threat to arrest and detain them by the 1<sup>st</sup> – 3<sup>rd</sup> Respondents.**

- 5. An Order of Perpetual Injunction restraining the Respondents either by themselves, servants, privies or any persona howsoever named from further harassing, intimidating, arresting and detaining the Applicant to compel him to give up possession of Plot No. 16 Kubwa Extension II Layout Kubwa, Abuja FCT.**
- 6. Fifty Million Naira (N50, 000,000.00) as exemplary and/or aggravated damages, jointly and severally from the Respondents for the unconstitutional, inexplicable, unjust, uncouth and barbaric violations of his Fundamental Right.**
- 7. And for such further or other Orders as the Honourable Court may deem fit to make in the circumstance of this case.**

The application is based on the following grounds:

- a. By virtue of Sections 34, 35, 36 and 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Article 1 – 6 of the African Charter on Human and Peoples Right (Ratification on Enforcement Act Cap 9 LFN 2004), every human being shall be entitled to respect for his life and dignity of his person, and every individual shall have right to liberty and to the security of his person. In particular, no one may be arbitrarily arrested or detained.**
- b. Every person is entitled to fair hearing within a reasonable time by a competent Court of law. Also every person is entitled to apply to the High Court for redress wherever any of his rights guaranteed is being or likely to be contravened.**
- c. SECTION 126 OF THE PENAL CODE**

Whoever being a public servant authorized by law to commit a person to trial or to confinement or to keep persons in confinement commits any person for trial or to confinement or keeps any person in confinement:

- a. Knowing that he is acting contrary to law and
- b. Knowing that he is likely to cause injury to any person or intending unlawfully to give any person an advantage shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.
- d. It is the position of the law that once a matter is brought before a Court of law for adjudication, all issues pertaining to the matter are supposed to be put on hold especially if there is proof of service. Any decision to continue any act of aggression and/or antagonism amounts not only to an affront on the sanity and integrity of the Court but equally constitutes to a commission of a crime against the laws of the nation.

The Applicants supported the application with an Affidavit of 35 paragraphs and a Written Address in which they raised an Issue for determination which is:

**“Whether the Applicants are entitled to the Reliefs sought in this application?”**

They submitted that they were arrested and detained for hours by the 2<sup>nd</sup> Respondent (Inspector General of Police) based on a petition written against the 1<sup>st</sup> Applicant because he refused to relinquish the possession of Plot No. 16 Kubwa Extension II Layout Kubwa, Abuja FCT.

That the arrest of the 1<sup>st</sup> Applicant, the threat to arrest and detain and harassment to relinquish possession of the said **Plot No. 16 Kubwa Extension II Layout Kubwa, Abuja FCT** is a gross violation of his Fundamental Right to dignity of their persons, personal liberty, presumption of innocence and their right to fair hearing. They relied on the cases of:

**Onyirioha V. IGP**

**(2009) 3 NWLR (PT. 1128) 342**

**Adams V. A-G Federation**

**(2006) 44 WRN 46**

That the statement of the facts and Affidavit had shown that the Applicants' Rights were violated and threatened to be violated by Respondents if not restrained by this Court. They referred to **S. 46 (1) of the 1999 Constitution of the Federal Republic of Nigeria.**

That given the issue in dispute, the 1<sup>st</sup> – 4<sup>th</sup> Respondents has no legal right to arrest the 1<sup>st</sup> Applicant as the issue is on commercial transaction and the 1<sup>st</sup> – 4<sup>th</sup> Respondents has no right under the Constitution of the Federal Republic of Nigeria, Police Act or Penal Code to do so. Therefore the action of the 1<sup>st</sup> – 4<sup>th</sup> Respondents is illegal and unlawful. They urged the Court to so hold.

That the 5<sup>th</sup> Respondent under whose behalf the 1<sup>st</sup> – 4<sup>th</sup> Respondents acted has no right to report to them to come to his aid as he should have approached Court to seek redress instead. That that act of the 5<sup>th</sup> Respondent is also

a violation of the Applicants' Rights. They relied on the case of:

**Okoroafor Nkpa V. Jacob Nkume  
(2000) 6 NWLR (PT. 710) 543 @ 563**

They referred and relied on **SS. 35 (1), 34 & 36 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) and the case of:

**Joseph Odogu V. A-G Federation and 6 Ors  
(1996) 6 NWLR (PT. 456) 508 @ 522**

That the action of the 1<sup>st</sup> – 4<sup>th</sup> Respondents at instigation of the 5<sup>th</sup> Respondent is arbitrary, illegal and unlawful and grossly violated the Rights of the Applicants.

That by virtue of **S. 46 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) the Applicants are entitled an apology and compensation. They cited the case of:

**Inlangwu V. Duru  
(2002) 2 NWLR (PT. 751) 265**

That the Applicants are entitled to compensation in form of damage – exemplary and/or aggravated for the said infringement on their Rights. They relied on the cases of:

**Opogu V. AGF & Ors  
Ibrahim Jimoh Ajao V. Michael Jenyo Ademola**

They urged Court to hold that Respondents violated the Applicants' Rights and that the Applicants are entitled to their Reliefs.

The 1<sup>st</sup> – 4<sup>th</sup> Respondents were served with the application on the 16<sup>th</sup> of March, 2022. The Court ensured that they were served Hearing Notices all the days the matter was scheduled. But they did not file any Counter Affidavit or Written Address. They did not enter appearance in person or paper. They never had a Counsel representation too.

The 5<sup>th</sup> Respondent, at whose instigation and petition the 1<sup>st</sup> – 4<sup>th</sup> Respondents acted, filed a Counter Affidavit of 24 paragraphs. The Applicants were served on the 6<sup>th</sup> of June, 2022. The 1<sup>st</sup> – 4<sup>th</sup> Respondents were served on the 7<sup>th</sup> of June, 2022. But they did not respond to the said Counter Affidavit.

In the 5<sup>th</sup> Respondent's Written Address, he raised an Issue for determination which is:

**“Whether the Applicants are entitled to the Reliefs sought in this application which the 5<sup>th</sup> Respondent adopted same issue raised by the Applicants in this application?”**

They submitted that the Affidavit by the Applicants was deposed to be the 2<sup>nd</sup> Applicant whose Right was not breached. That the 1<sup>st</sup> Applicant whose Right was allegedly violated did not depose to any Affidavit in this application. That the application is bound to fail. He referred to the

provision of **Order II Rule 4** which provides that an Applicant shall depose to Affidavit unless he is in detention or custody and as such another person can depose to same showing that the person is indisposed and unable to do so. That failure of the 1<sup>st</sup> Applicant to do so in this case makes the application to be defective. They referred to the case of:

**Ukegbu V. NBC**

**(2007) 14 NWLR (PT. 1055) 551 @ 575**

He urged Court to so hold. That Applicants did not show how their Rights under SS. 34, 35 & 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) was violated. That they did not provide enough material facts to show that their Rights were violated and that they were arrested and detained. No picture or video to show that the 1<sup>st</sup> – 4<sup>th</sup> Respondents pushed the 1<sup>st</sup> Applicant into their vehicle as the 2<sup>nd</sup> Applicant claimed. That failure to do so is fatal to the case of the Applicants.

That the Rights of the Applicants are not absolute. That by virtue of **S. 24 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended), the 5<sup>th</sup> Respondent have civic responsibility to render assistance to Lawful Agency in their maintenance of law and order. That he is right to have reported a crime to the 1<sup>st</sup> – 4<sup>th</sup> Respondents as he did in this case. He is also empowered under the law to arrest suspected offenders in certain circumstances. They referred to **S. 20 ACJA 2015.**



That he did not commit any breach of the Applicants' Right by reporting to the 1<sup>st</sup> – 4<sup>th</sup> Respondents so that they avert breach of public peace and protection of properties. He referred to the cases of:

**Fawehumi V. IGP**

**(2000) 7 NWLR (PT. 665) 481 @ 528**

**Oceanic Securities International Limited V. Alhaji Bashir Olaide Balogun & Ors**

**(2013) FWLR 63**

That he did not incite the 1<sup>st</sup> – 4<sup>th</sup> Respondents to arrest and detain the 1<sup>st</sup> Applicant as he only made complaint in form of petition as his action was done in good faith. He relied on the cases of:

**Aroyewun V. COP**

**(2004) 16 NWLR (PT. 899) 414 @ 431**

**Ifejirika V. The State**

**(1993) 3 NLR (PT. 593) 59**

That this application is a ploy to shield the 1<sup>st</sup> Applicant from being investigated and prosecuted for alleged crime. He urged the Court not to grant the application. He referred to the cases of:

**Iregwu V. State**

**(2013) 12 NWLR (PT. 1367) 62 @ 119**

**A-G Anambra V. Chris Ubah**

**(2000) 15 NWLR (PT. 747) 67 – 68**

**AGF V. Dawodu**

**(1995) 2 NWLR (PT. 380) 712 @ 714**

That the 5<sup>th</sup> Respondent did not violate the Applicants' Rights as shown in their Counter Affidavit. That the 1<sup>st</sup> Applicant is neither a Witness nor party in the Suit instituted by the 2<sup>nd</sup> Applicant before Bello Kawu J. He referred to the case of:

**CCB (Nigeria) PLC V. Okpala**

**(1997) NWLR (PT. 518) 673**

That the application is a ploy to pervert justice. That the Applicants failed to present cogent facts to support their application. He referred to the cases of:

**Oyewole Sunday V. Adamu Shehu**

**(1995) 8 NWLR (PT. 414) 418**

**Buhari V. INEC**

**(2008) 19 NWLR (PT. 1120) 246 @ 248**

That the Applicants are not entitled to equitable Relief as they have not come with clean hands before the Court. He referred to the case of:

**NICON Hotels Limited V. NDIC Limited**

**(2007) 13 NWLR (PT. 1051) 27 Para A – D**

That the 1<sup>st</sup> – 4<sup>th</sup> Respondents acted within the ambits of the law and Constitution. They urged Court to dismiss the application for lacking in merit with cost.

## COURT

It has been held in plethora of cases that any party who was served with a Process but refused, ignored and neglected to respond to such Process is deemed to have admitted all the allegations and facts raised therein and as such is liable having accepted those facts and allegation. More so, when the person was given all the judicial leverages and time to do so.

Again, facts admitted need no further proof and are deemed admitted, uncontroverted, unchallenged and unrebutted. Once that is the case, the Court holds without more that those facts are admitted and uncontroverted by such party who failed to so controvert same. That is exactly the fate of the 1<sup>st</sup> – 4<sup>th</sup> Respondents in this case. They were served with the application on the 16<sup>th</sup> of March, 2022. They were served with the Counter Affidavit filed by the 5<sup>th</sup> Respondent on the 6<sup>th</sup> of June, 2022. They did not respond to those Processes and never responded to the application in the main. So this Court holds that as far as the fact in the Affidavit in support of this application are concerned, the 1<sup>st</sup> – 4<sup>th</sup> Respondents have admitted them and those facts are deemed uncontroverted by the 1<sup>st</sup> – 4<sup>th</sup> Respondents.

As regards the 5<sup>th</sup> Respondent who filed a Counter Affidavit of 24 paragraphs, it is the law that 1<sup>st</sup> – 4<sup>th</sup> Respondents as Government Security Agency have no right to act as property or money recovery agency. See **S. 4, 20 of the**

**Police Act 2020 and S. 251 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended).

From the Affidavit of the Applicants, it puts no one in doubt that the issue in dispute between the Applicant and the 5<sup>th</sup> Respondent is purely commercial in nature, in that it borders on land deal. The 5<sup>th</sup> Respondent confirmed that in the several paragraphs of the Counter Affidavit. Of interest is the content of paragraph 12 of the Counter Affidavit which states thus:

Paragraph 12

**“I had asked the 1<sup>st</sup> Respondent to remove the truck parked on the land causing obstruction to the other land users...”**

Paragraph 13

**“I asked the Nigeria Police Force Kubwa Divisional Headquarters to persuade the 1<sup>st</sup> Applicant to remove the truck...”**

So also paragraph 19 puts no one in doubt that the issue between the Applicants and 5<sup>th</sup> Respondent is on land deal which is purely commercial in nature. The Police, 1<sup>st</sup> – 4<sup>th</sup> Respondents and their staffs, servants, agents, and privies have no right under the Constitution and the law to meddle on issue pertaining to land and property. So any meddling or action by the Police in such regard is without any iota of doubt is illegal, unlawful, unconstitutional and a violation of a person’s right. So the action of the 1<sup>st</sup> – 4<sup>th</sup>

Respondents in this regard is unstatutory, illegal and therefore a gross violation of the Right of the Applicants. That action having been instigated by the 5<sup>th</sup> Respondent, alleged Complainant, is a violation of the Right of the Applicants by the said 5<sup>th</sup> Respondent too. The 5<sup>th</sup> Respondent has no right to report or seek redress for recovery of his possession of the land or a part thereof through the Police or by reporting to the Police. He ought to have sought redress in Court. He knows that is the right thing to do but he decided to use Police to recover possession as it were.

That action of both the 5<sup>th</sup> Respondent and the 1<sup>st</sup> – 4<sup>th</sup> Respondents is illegal and violated the Applicants' Rights. So this Court holds.

Besides, the 5<sup>th</sup> Respondents never attached any copy of the so called petition which he alleged he wrote to the Police. It is the law that such petition should be in writing. There is no evidence it was in writing. If it was, the 5<sup>th</sup> Respondent did not attach a copy.

Again, the 1<sup>st</sup> – 4<sup>th</sup> Respondents have no right to bundle the 1<sup>st</sup> Applicant from the said **Plot No. 16 Kubwa Extension II Layout Kubwa, Abuja FCT** as they did on the mere so called allegation that he packed a vehicle in the said plot. Besides, keeping him in the station till 10 pm that day is a violation of his Right. By 1<sup>st</sup> – 4<sup>th</sup> Respondents bundling him means that they used more than enough force to do so. The said 1<sup>st</sup> – 4<sup>th</sup> Respondents never entered appearance or filed any

document in defence of the Suit. Hence, they admitted the allegation levied against them. So this Court holds.

From the content of the Affidavit in support of the application, the Applicants succinctly stated their facts showing that their Rights were violated by the 1<sup>st</sup> – 4<sup>th</sup> Respondents at the instigation and prompting of the 5<sup>th</sup> Respondent. The fact in the Counter Affidavit screams with evidence/facts that the sole aim of the so called unsubstantiated petition was based on the intention and plan of the 5<sup>th</sup> Respondent to use the Police to secure his possession of the **Plot No. 16 Kubwa Extension II Layout Kubwa, Abuja FCT.**

It is no doubt that the 5<sup>th</sup> Respondent knows about Michael Obi and the issue of the land. He also knows the 2<sup>nd</sup> Applicant who deposed to the Affidavit in support and who has the eye-witness account of the issue and what transpired in this case. So the submission that the 1<sup>st</sup> Applicant did not depose to any Affidavit cannot hold water. It is not tenable too. The facts as stated by the 2<sup>nd</sup> Applicant suffices. Those facts speak for themselves in this case. So the submission of the Applicants are cogent, factual and succinct as the supported and established that their Rights were violated by 1<sup>st</sup> – 5<sup>th</sup> Respondents.

In this case, it is imperative to state that the matter before this Court is on allegation of violation of the Applicants' Rights not on the issue of the matter at the Upper Area Court. So the 5<sup>th</sup> Respondent's laborious submission on the

issue in Upper Area Court has no place in this Suit. More so, he is even the Defendant in that Suit.

So from the totality of the facts in support of the application by the Applicants, it is clear that they were able to shift the onus to the Respondents but unfortunately, the Respondents failed to shift the onus back. By that, the Applicants established their case on the allegation of violation of their Rights by the 1<sup>st</sup> – 5<sup>th</sup> Respondents.

The Applicants not attaching the picture has little or nothing to adversely affect their case; as such picture was only a way to further buttress their claim. After all, there is no law that provides that Applicant must attach picture before the Court can hold that his Right is violated. Once an Applicant, as in this case, have shown in the facts as contained in the Affidavit that his Right have been violated, it suffices.

This Court believes strongly that the Respondents violated the Applicants' Rights as alleged going by those facts which the Respondents especially the 1<sup>st</sup> – 4<sup>th</sup> Respondents could not challenge.

This application is meritorious. This Court holds that the Applicants' Rights were violated by the action of the 1<sup>st</sup> – 5<sup>th</sup> Respondents.

Again, it is a clear provision of the Constitution that once a party has established that his Right was breached or

violated, that such person(s) are entitled to compensation – apology and/or payment of monetary damages.

In this case, the Applicants, having established that their Rights were violated by the 1<sup>st</sup> – 4<sup>th</sup> & 5<sup>th</sup> Respondents, they are entitled to compensation in form of exemplary and aggravated damage according to the Constitution.

In that vein, this Court hereby Order as follow:

**Prayer 1 – 4 granted.**

**The 5<sup>th</sup> Respondent who instigated the 1<sup>st</sup> – 4<sup>th</sup> Respondents to violate the Rights of the Applicants is to pay the sum of Fifty Thousand Naira (N50, 000.00) to the Applicants for his action.**

**The 1<sup>st</sup> – 4<sup>th</sup> Respondents who acted as Property Recovery Agency which they are not are to write a letter of apology to the Applicants for violating their Rights.**

**The Court cannot perpetually restrain the 1<sup>st</sup> – 4<sup>th</sup> Respondents as long as their action is done within the ambit of the law.**

**This is the Judgment of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2022 by me.**

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**K.N. OGBONNAYA**  
**HON. JUDGE**