

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

**HIS LORDSHIP: HON.JUSTICE M.S. IDRIS**

**COURT NUMBER: 28**

**Date:- 6<sup>TH</sup> JULY, 2022**

**FCT/HC/CV/3149/2021**

**BETWEEN**

**AMINA AUDU ENENCHE -----**

**APPLICANT**

**AND**

- 1. THE NIGERIA POLICE**
- 2. THE INSPECTOR GENERAL OF POLICE**
- 3. THE COMMISSIONER OF POLICE  
FEDERAL CAPITAL TERRITORY  
(FCT) POLICE COMMAND**
- 4. ADEYINKA AKEEM**
- 5. TOTAL GRACE GROUP**

**RESPONDENTS**

**JUDGMENT**

The Applicant commenced this suit by way of a motion on notice amended and filed on 23<sup>rd</sup> March, 2022.

The Applicant sought for the following orders:-

- 1. AN ORDER OF COURT** to enforce the Applicant's Fundamental Rights to Life, Dignity of Human Person, Personal Liberty, Fair Hearing, and Freedom of Movement in terms of the reliefs sought in the statement accompanying the affidavit in support of the application.
- 2. AN ORDER OF COURT** restraining the Respondents, their agents, privies, or any officer or person acting under their command from hounding, harassing, detaining and threatening to continue to detain

the Applicant perpetually or taking further steps in connection with this suit.

3. **AN ORDER OF COURT** restraining the 1<sup>st</sup> – 3<sup>rd</sup> Respondents, acting through the 4<sup>th</sup> Respondent at the behest of the 5<sup>th</sup> Respondent from hounding, harassing, detaining, and threatening to arrest and detain the Applicant by falsely alleging that the Applicant issued dud cheques in a bid to intimidate the Applicant into selling the property of her mother, which the Applicant has no right to sell; albeit at the time of using same to secure the Applicant has no right to sell; albeit at the time of using same to secure the loan, she reasonably believed the said property to be under her possession per family devise.
4. **AN ORDER OF COURT** restraining the 1<sup>st</sup> – 3<sup>rd</sup> Respondents acting through the 4<sup>th</sup> Respondent at the behest of the 5<sup>th</sup> Respondent from compelling the Applicant under duress to sell her mother's property by blackmailing her as if she issued a dud cheque in repayment of the loan of the 5<sup>th</sup> Respondent.
5. **AN ORDER OF COURT** directing the Respondents to each tender unreserved apology to the Applicant to be published in at least one newspaper circulating nationwide; and to pay the Applicant a compensation of ₦50,000,000.00 (Fifty Million Naira) only for violating the fundamental rights of Applicant.
6. **A PERPETUAL INJUNCTION** restraining the respondents, their servants, agents, and privies from hounding, harassing, detaining, threatening to arrest, arresting, torture and detaining the Applicant.
7. **AND FOR SUCH FURTHER** Order(s) that this Honourable Court may deem fit to make in the circumstance.

In support of the Motion was a 12 paragraph affidavit deposed to by the Applicant herself.

The case of the Applicant is that she took a loan of ₦8,000,000.00 from the 5<sup>th</sup> Respondent to enhance her business enterprise, which is essentially the importation and distribution of Kiddies toys. However, due to downturn in the world's economy occasioned by the Covid-19 pandemic, her business was adversely affected, making it difficult for her to meet up with the

repayment of the loan on the due date which was the 4<sup>th</sup> of May, 2021. That she secured the loan with the property of her mother- Block 34, Flat 7, Constantine Street, Zone 4, Wuse, Abuja, FCT, and that she also issued cheques with the assurance that she will repay the loan. The applicant claims that she is still committed to repaying the loan, but that the 1<sup>st</sup> to 3<sup>rd</sup> Respondent through the 4<sup>th</sup> Respondent at the behest of the 5<sup>th</sup> Respondent, have been hounding, harassing and threatening the Applicant and alleging that the Applicant issued dud cheques, that they are trying to cow her into selling the property of her mother, which she has no right to sell.

In the written address filed on behalf of the Applicant, learned counsel to the Applicant raised two issues:-

1. Whether in light of the prevailing circumstances, the Applicant's Fundamental Rights to life, Human Dignity, Personal Liberty, Fair Hearing and freedom of movement as enshrined in sections 33, 34, 35, 36 and 41 of the Constitution and the African Charter on Human and Peoples Rights are not likely to be violated
2. Whether the Applicant is entitled to damages as a result of the Respondent's action likely to violate the rights of the Applicant.

On issue 1, counsel argued that the Police is not a debt recovery agent. He referred the court to section 8(1) and (2) of ACJA, and to the case of Kufre v. COP. He submitted that the Applicant cannot be arrested and detained for civil actions which carries no suspicion of crime committed.

On issue 2, counsel submitted that where there is an infringement of the right of a party either tort, contract or as in this case the breach of the Applicant Fundamental Rights in the manner clearly depose to in the affidavit, the party aggrieved is entitled to general damages.

The 1<sup>st</sup> to 4<sup>th</sup> Respondents did not file any process in response to the Applicant's motion. The 5<sup>th</sup> Respondent however filed a Counter Affidavit and written address in opposition to the Applicant's Motion for enforcement of her fundamental human rights on 17<sup>th</sup> May, 2022.

In the Counter Affidavit deposed to by one Esther Tosin Adejobi, the Assistant Group General Manager in the 5<sup>th</sup> Respondent's Company, and the General Manager of Total Grace Support Investment Ltd, the 5<sup>th</sup> Respondent averred that contrary to the Applicant's claims, the Applicant has willfully refused to repay the loan which they advanced to her despite repeated demand letters as can be gleaned from exhibits C, F, F1, F2, F3 and G, and that upon presentation of the postdated cheques issued by the Applicant on due dates, the cheques were all returned unpaid. As a result, the 5<sup>th</sup> Respondent petitioned the Applicant to the Police for Criminal Breach of Trust, Cheating and issuance of dud cheques. The petition was marked as exhibit J. following this petition, the Applicant was invited to Gwarinpa Police Station. She honoured the invitation and was granted bail on that same day, and asked to return on 10<sup>th</sup> November, 2021, which she has failed to go back. Interestingly, the 5<sup>th</sup> Respondent further averred that in a bid to secure the loan agreement, the Applicant had sold the property which was being used as a collateral and signed away the documents to the 5<sup>th</sup> Respondent. These facts can be seen from exhibits K1-K7.

The 5<sup>th</sup> Respondent further averred that it never asked the 1<sup>st</sup> – 4<sup>th</sup> Respondent to recover any debt whatsoever for it, but to investigate its complaint of Criminal Breach of Trust, Cheating and Issuance of Dud cheques by the Applicant.

In his written address, counsel to the 5<sup>th</sup> Respondent raised two issues:-

1. Whether the Applicant has placed before the Honourable Court credible evidence to show that the 5<sup>th</sup> Respondent was in any way responsible for the act of threatening to make the applicant sell her mother's property apart from the Complaint the 5<sup>th</sup> Respondent made to the 3<sup>rd</sup> Respondent.
2. Whether the Applicant's fundamental rights have been violated or are likely to be violated from the facts of the case.

On issue 1, counsel submitted on behalf of the 5<sup>th</sup> Respondent that they merely laid a complaint to the Police, and that they did not detain the Applicant, therefore, they cannot be said to be liable for the infraction of

right arising out of the fact of its report. He referred to the case of First Bank of Nigeria Plc & Ors v. A.G of the Federation & Ors (2013) LPELR- 2015 p. 27 paras B-D (CA).

On issue 2, counsel submitted that the Applicant fundamental right have not been violated because the Police have the power to arrest and detain a suspect for an offence within the law. Furthermore, the Applicant did not place before the court, vital evidence in proof of the alleged likely violation of her fundamental right.

Counsel further argued that the name in which the 5<sup>th</sup> Respondent was sued in this suit is not a registered name. It is not a juristic person capable of suing or being sued.

In reaction to the 5<sup>th</sup> Respondent's Counter affidavit and written address, the Applicant filed a further affidavit together with a reply on point of law on 6<sup>th</sup> June, 2022.

To my mind, the facts of this case is quite simple and unambiguous. This is a fundamental right enforcement suit, and to properly determine this case, one issue is apt. The issue is whether the Applicant has placed sufficient facts before this court to show that her fundamental right has been violated or is likely to be violated.

Both parties in this suit have admitted that they entered into contract for loan and that the Applicant transferred a property and post-dated cheques as security for the loan advanced to her by the 5<sup>th</sup> Respondent. The major agitation of the Applicant is that the Respondents have breached her fundamental right by interrogating her for issuing dud cheque and compelling her to sell her mother's property.

On the other hand, the 5<sup>th</sup> Respondent claims to have merely reported an alleged crime against the Applicant to the 1<sup>st</sup> Respondent, and nothing more.

The law is trite that an Applicant has the burden to prove by cogent, convincing and credible evidence, the facts as alleged by him, as construing the breach or infringement of the Fundamental right as

guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as amended).

General and wide allegations of such breach or infringement will not suffice.

The 1st Respondent has the statutory power to investigate, arrest, interrogate, search and detain any suspect: ***OBIEGUE VS. A-G FEDERATION (2014) 5NWLR (PT1399) 207. AND ONAH VS. OKENWA [2010] 7 NWLR (PT 1194) 512 AT 536.*** This is undoubtedly so. The only qualification, and a very important one at that, is that the power must not be misused or abused. The power must be exercised in accordance with the law. It has to be noted that the right to personal liberty enshrined in Section 35 of the Constitution, which is one of the rights the Appellants sought to enforce is not an absolute right.

By Section 35 (1) (c) of the Constitution, a person can be deprived of his liberty upon reasonable suspicion of his having committed an offence. Where there is such a deprivation of liberty, such a person arrested or detained shall be brought to Court within a reasonable time, within the meaning of Section 35 (5) of the Constitution, that is, one day where there is a Court of competent jurisdiction within a forty-kilometer (40km) radius of the place of detention.

In this case, the Applicant has admitted clearly that she was released on that same day that she honoured the Police invitation. In my view, inviting and questioning a person and releasing her to go home does not amount to a breach of her fundamental rights. The Applicant was merely invited, upon receipt of a complaint against her, so doing alone in my view cannot constitute sufficient breach or infraction on the fundamental rights of the Applicant.

Having established that there was no actual violation of the Applicant's fundamental right, I must state that Section 46(1) of the 1999 Constitution has three segments.

The first segment is on the contravention of a person's fundamental right; the second one is on the fundamental right being contravened meaning the contravention is in progress; while the third segment is on the likely contravention of the fundamental right meaning the contravention of the fundamental right is expected or probable.

Order 1 Rule 2(1) of the Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules) also has these three components. The Applicant built his case on the third segment.

That the likely infringement of a fundamental right can be protected before the actual infringement occurs is therefore not in doubt. See in particular ***IGWE V. EZEANOCHIE (2010) 7 NWLR (PT.1192) 61***. Concerning the third segment (supra) the Court held in the case of ***UZOUKWU AND ORS. V. EZEONU II AND ORS. (1991) 6 NWLR (PT.200) 708 AT 784*** that

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"... before a plaintiff or applicant invokes the third limb, he must be sure that there are enough acts on the part of the respondent aimed essentially and unequivocally towards the contravention of his rights. A mere speculative conduct on the part of the respondent without more, cannot ground an action under the third link".

The fundamental right must be in danger of being infringed before an action may be founded on the third limb. See by analogy ***UKEGBU V. NATIONAL BROADCASTING COMMISSION (2007) 14 NWLR (PT.1055) 551***. As stated in the case ***OF EZEADUKWA V. PETER MADUKA AND ANOR [1997] 8 NWLR [PT.39] AT 661***, mere verbal or oral threat not backed with some overt act of an attempt to infringe the fundamental right of the applicant by the respondent is not enough to sustain the action for threatened breach of fundamental right. There should be evidence showing that the Respondent was determined or unequivocally poised and/or had reached a point of no return to have the respondent's personal liberty restrained.

The 5<sup>th</sup> Respondent has made it clear through Exhibit J that the complaint they laid against the Applicant at the Police was for Cheating, Criminal

Breach of Trust and Presentation of Dud Cheques, and not for recovery of the unpaid loan.

The Applicant has also failed to establish sufficient facts to prove that the Respondents compelled her under duress to sell her mother's property. This is the same property that she voluntarily assigned to the 5<sup>th</sup> Respondent as a security for the loan.

I see this action as a calculated attempt by the Applicant to use this court as an instrument to derail on her contractual obligation towards the 5<sup>th</sup> Respondent. That is obnoxious, immoral and abhorrent to all our ideas of justice, and this court will not allow her to do so. A lender deserves to have his money repaid.

If there is any allegation of dud cheque, that is a criminal case, which the police rightly have the power to investigate and prosecute.

In so far as, the circumstances of the Respondent's invitation to the Applicant did not amount to the likely curtailment of the Applicant's inviolable/inalienable rights to personal liberty, the court cannot award any compensation in the absence of proof of loss or injury to Applicant. It is settled law that for an action to be completely commenced and determined under the fundamental rights procedure, the main or principal claim therein must be enforcement or secure the enforcement of a fundamental right otherwise the jurisdiction of the Court cannot be invoked by the procedure ***TUKUR VS GOVT OF TARABA STATE (1997) 6 NWLR (PT 516) 549*** the question is whether looking at the reliefs as produce in this judgment it can clearly be seen that the issues does not fall within the requirement of the Fundamental Right Procedure Rules. Having carefully considered the respective submission of the learned Counsel on both side I am of the view that the action brought by the Applicant cannot be brought under this procedure. The competence of any Court to exercise jurisdiction in hearing and determining any action before it depend on a number of condition which Baruwe JCA(as he then was ) set out in the leading case on the subject of jurisdiction and competence of Court to adjudicate



***MADUKALOR & ORS VS NKEMDLIRIM & ORS (1962) 2 SCNLR 341***  
condition governing the Court to have jurisdiction on a matter are :-

1. If is properly constituted as regards number and qualification of the member of the bench and no member is disqualified for one reason or the other.
2. The subject matter within the jurisdiction and there is no feature in the case which prevent the Court for exercising its jurisdiction.
3. The case before the Court is instituted by due process of law and Upon fulfillment of any condition presented from the above judicial authority and the fact contained in the application same is lacking in merit. I therefore fully refuse to grant all the prayers of the Applicant.

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**HON. JUSTICE M.S IDRIS**  
**(PRESIDING JUDGE)**

**APPEARANCE**

Amaka Ochil:- Appearing with J.C Okafor for the Applicant.

A.O Agbonlahor:- Appearing U.C Ikefji for the 5<sup>th</sup> Respondent