

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

**BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE**

<b>COURT CLERKS:</b>	<b>JAMILA OMEKE &amp; ORS</b>
<b>COURT NUMBER:</b>	<b>HIGH COURT NO. 24</b>
<b>CASE NUMBER:</b>	<b>SUIT NO. FCT/HC/CV/2628/2021</b>
<b>DATE:</b>	<b>8/11/2022</b>

**BETWEEN:**

HENRY CHIKOGU.....APPLICANT

**AND**

(1). ECONOMIC AND FINANCIAL CRIMES COMMISSION	} .....RESPONDENTS
(2). GREG HARRY NYESOM	
(3). ESTHER IKEH	

**APPEARANCES:**

R. E. Dauda Esq for the b1st Respondent.

**JUDGMENT**

By an Originating Motion on Notice, dated 8<sup>th</sup> day of October, 2021, filed same day, brought pursuant to Orders 1, 2, 3 and 4 of the Fundamental Rights (Enforcement Procedure) Rules 2009; Sections 35, 36 and 41 and 45 of the Constitution of the Federal Republic of Nigeria, 1999 (As amended); and Article 6 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, (Cap A9) Laws of the Federation of Nigeria, 2004, and the inherent jurisdiction of this Court; pursuant to Section 6(6) of the 1999 Constitution of the Federal Republic of Nigeria,

1999 (As amended); the Applicant herein prayed the Court for the following reliefs:-

- “(i). A DECLARATION that the detention of the Applicant since the 3<sup>rd</sup> day of September, 2021 till date by the 1<sup>st</sup> Respondent upon is a gross violation of the Applicant’s right to personal liberty and freedom of movement guaranteed by Sections 35 and 36 of the Constitution of the Federal Republic of Nigeria, 1999 and Article 6 of the African Charter on Human and Peoples Rights (Ratification and Enforcement Act, 1990) respectively and therefore unconstitutional, unlawful, illegal, null and void.**
- (ii). A DECLARATION that the 1<sup>st</sup> Respondent are not competent or empowered by law to arrest and detain the Applicant based on a commercial transaction or act which does not violate any existing law that amount to crime in a violation of the Fundamental Human Rights of the Applicant to Personal Liberty, Fair Hearing, Freedom of Movement and Right to Own Property cognizable and guaranteed by Sections 35, 36(5) 41 and 44 of the Constitution of the Federal Republic of Nigeria, (supra); Articles 6, 7(1)(c), 12(1) & 14 of the African Charter on Human and Peoples Rights (Enforcement & Ratification) Act.**
- (iii). AN ORDER of Perpetual Injunction restraining the Respondents by themselves, or their agents, servants and/or privies or howsoever otherwise described from further inviting, arresting and or detaining the Applicant with a view to enforce the alleged claim of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents against the Applicant arising from a purely commercial relationship violating the Fundamental Human Rights of the Plaintiff/Applicant to Personal Liberty, Fair Hearing, Freedom of Movement and Right to Own Property cognizable and guaranteed by Sections 35, 36(5), 41 and 44 of the Constitution of the Federal Republic of Nigeria, (supra); Articles 6, 7(1)(c), 12(1) and 14 of the African Charter on Human and Peoples Rights (Enforcement and Ratification) Act/**

- (iv). ***AN ORDER that the grant of this application of the Applicant for the Enforcement of his Fundamental Right shall operate as a stay of all actions, and all proceedings under or by which the Respondents may seek to carry on with the threat of further arrest and detention of the Applicant.***
- (v). ***AN ORDER restraining the Defendants/Respondents and their agents from interfering with the properties of the Applicant except in accordance with due process of law.***
- (vi). ***AN ORDER of the Honourable Court granting the sum of N100, 000, 000.00 (One Hundred Million Naira) jointly and severally against the Respondents as general damages for the infringement of the Applicant's right as protected under Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria and the African Charter on Human and Peoples Rights (Enforcement and Ratification) Act.***
- (vii). ***AND FOR SUCH FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstance."***

The grounds upon which the reliefs are sought are as follows:-

- "1. By virtue of Section 46 of the Constitution of the Federal Republic of Nigeria 1999 as amended and Articles 4 -7 of the African Chartered on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 LFN 2004. Any person who alleges that any provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.***
- 2. That every human being shall be entitle to respect for his life and integrity of his person, and every individual shall have right to liberty, freedom of movement and to security of his person in particular no one may be arbitrarily arrested or detained.***

3. ***That the Applicant is the Managing Director of Coral Trade Capital Investment Limited, a Corporate Limited Liability Company duly registered with the Corporate Affairs Commission and the Special Control Unit Against Money Laundering (SCUML) issued by the 1<sup>st</sup> Respondent.***
4. ***That sometimes in March 2021, the Coral Trade Capital Investment Limited ran at a loss, due to this development the return of investment for most of the investors were not paid on time.***
5. ***That the Applicant sent out the first newsletter in April, 2021 informing the Investors of the development with the Company and follow-up newsletter in May, June, July, and August 2021.***
6. ***That the Applicant has always kept contact with the Investors and informed them about all progress made regarding their investment.***
7. ***That in August 2021, the Applicant started making refund of the Investment Capital of the Investors and a newsletter was published to inform the investors of this development. That at least 20% of the Investors were paid back their Investment capital during the 1<sup>st</sup> payout.***
8. ***That the Applicant has been very apprehensive because the investors have been threatening his life and that of his family and for that he decided to report himself to the 1<sup>st</sup> Respondent before a complaint was filed against him.***
9. ***That the Applicant on getting to the office of the 1<sup>st</sup> Respondent on the 3<sup>rd</sup> of September 2021 to report himself. He was informed that the 2<sup>nd</sup> Respondent wrote a petition against the Applicant in that regard.***
10. ***That since the 3<sup>rd</sup> of September, 2021, the Applicant has been arrested and detained in the custody of the 1<sup>st</sup> Respondent.***

- 11. That the 1<sup>st</sup> Respondent has been arrested and detained the Applicant on a purely civil contractual relationship between the Applicant and the Investors and he has not been charged to Court since then.**
- 12. That the Respondents has detained the Applicant in respect of a matter arising from purely civil transactions is falling into the danger of the law enforcement agencies being used as an instrument of enforcing contractual agreement**
- 13. That as a citizen of Nigeria, the rights of the Applicant as guaranteed by the Constitution cannot be taken away save by the due process of the law.**
- 14. That the continuous arrest and detention of the Applicant is unconstitutional and a violation of the Applicant's rights as guaranteed by the Constitution of the Federal Republic of Nigeria.**
- 15. The rights of the Applicant as guaranteed by the 1999 constitution are sacrosanct and cannot be violated save in manner prescribed by the law.”**

The application is supported by a statement made pursuant to the F.R.E.P Rules, 2009, an Affidavit in Support containing 21 paragraphs, deposed to by one Frank Chukunalu Chikogu, a brother to the Applicant, Exhibits as well as a Written Address.

The three Respondents herein were duly served with the originating process as well as other relevant processes.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were served via substituted means to wit: by sending to their email addresses pursuant to Order of Court made in Motion No: FCT/HC/M/9413/2021 on the 24<sup>th</sup> day of February, 2022.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, however, were absent throughout the hearing of this application and were equally unrepresented, no Counter Affidavits were filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein.

However, in response to this application, the 1<sup>st</sup> Respondent the Economic and Financial Crimes Commission (EFCC), filed a Counter Affidavit of 17 paragraphs deposed to by one Shafiu Amadu an Investigating Officer with the Economic and Financial Crimes Commission, Exhibits marked EFCC 1, 2, 3 and 4 as well as a Written Address.

In response to same, the Applicant filed a Further Affidavit dated and filed 14<sup>th</sup> March 2022, in Support of the Applicant's Originating Motion, along with some Exhibits.

Whereof, the 1<sup>st</sup> Respondent reacted by filing a Further Counter Affidavit in opposition to the Further Affidavit of the Applicant.

The 1<sup>st</sup> Respondent's Further Counter Affidavit is dated 30<sup>th</sup> day of May, 2022 and filed 30<sup>th</sup> May 2022 accompanied with some annexures.

Now, in a bid to determine this application, I shall raise a sole issue for determination to wit:-

***“Whether the Applicant has made out a case to be entitled to the reliefs sought?”***

First of all, let me begin by stating that such Applications are fought and won on Affidavit evidence. Therefore, an Applicant who seeks enforcement of his fundamental rights where he alleges that any of those rights have been, are being or likely to be infringed in relation to him, must adduce cogent and credible facts in his Supporting Affidavit, in proof of those facts alleged.

See: ***ALUKO & ANOR V C.O.P & ORS (2016) LPELR-41342 (CA); DANGOTE V CIVIL SERVICE COMMISSION PLATEAU STATE & ORS (2001) LPELR-959 (SC); EBO & ANOR V OKEKE & ORS (2019) LPELR-48090 (CA).***

See also Section 46(1) of the Constitution Federal Republic of Nigeria (1999) as amended.

It is averred in the Applicant's Supporting Affidavit, among other things that he is the Managing Director of Coral Trade Investment Limited, duly registered with Certificate of Incorporation attached as Exhibit A as well as

Certificate of Registration under the Special Control Unit Against Money Laundering (SCUM) equally attached as Exhibit B.

That sometimes in March 2021, when the company entered into deficit due to some instability in the market, returns of investment for most of the investors were not paid.

That in April 2021, Applicant sent out letters informing the investors of the development attached as Exhibit C.

That in August 2021, the Applicant started making Refunds of the investment to at least a few of the investors shown in a newsletter attached as Exhibit D.

That due to the threats by the investors a complaint was made against him to the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

That even though the Applicant voluntarily reported to the 1<sup>st</sup> Respondent on the 3<sup>rd</sup> day of September, 2021, he has been in detention and custody of the 1<sup>st</sup> Respondent on a purely civil contractual relationship between Applicant and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

That at some point, the Applicant was unconscious and the medical team taking care of the Applicant asked that he be granted bail.

That the bail conditions given to the Applicant were outrageous and totally unattainable which prompted the Applicant's lawyer Messr Levite Solicitors & Arbitrators to write a letter dated 8<sup>th</sup> September, 2021 to the 1<sup>st</sup> Respondent for variation, attached as Exhibit E.

That the Applicant remains in custody and barred from contacting his wife or any other immediate family.

That allowing the 1<sup>st</sup> Respondent to continue with the said detention is tantamount to law enforcement agencies being used as an instrument of enforcing contractual agreements whereby the Court is urged to Order to the release of the Applicant and to further restrain the Respondents from continuous harassments, intimidation, detention of the Applicant.

That the Applicant and his family have suffered damages, trauma, indignation, discomfort, distress, hardship and embarrassment because of the invasion of Applicant's Fundamental Human Rights by the Respondents.

The Court is urged to grant the application in the interest of justice.

Meanwhile, it is deposed in the 1<sup>st</sup> Respondent's Counter Affidavit in paragraph 5 thereof that the depositions in Applicant's Supporting Affidavit, particularly paragraphs 11, 12, 13, 14, 15 and 16 are not only false but unreliable, misleading and do not represent the true state of affairs.

It is further deposed in paragraphs 6, 7, 8, 9, 10, 12, 14 and 15 among other things that contrary to the Applicant's deposition in paragraph 11, the Applicant did not report himself to the 1<sup>st</sup> Respondent because he and his family were being threatened but he was rather cajoled by his account officer, one Miss. Wokoma Daba to report to the 1<sup>st</sup> Respondent's office.

That contrary to the deposition in Applicant's paragraph 12 of the Supporting Affidavit, Applicant reported on 3<sup>rd</sup> of September, 2021 and volunteered to make several statements under words of caution and was offered administrative bail but was unable to perfect his bail conditions. The statements and conditions for bail were attached as Exhibit EFCC1 and EFCC 2 respectively.

The letter for variation of bail dated 8<sup>th</sup> September, 2021, was honoured, but that the Applicant was still unable to perfect his bail until the 13<sup>th</sup> of October, 2021 when his brother was able to take him on the bail. A copy of the release order was attached as Exhibit EFCC 3.

It is further deposed that the investigation carried out against the Applicant on the petition received by the 1<sup>st</sup> Respondent borders on allegation of fraud and not purely civil contractual relationship as claimed by the deponent to the Applicant's Affidavit in Support. A copy of the petition was attached as Exhibit EFCC 4.

It is further deposed, that Applicant was in constant contact with his wife while in custody via his phone until the phone was taken away from him for forensic analysis, but he was provided with another phone by the officers to speak with his family members.



That the deposition in paragraph 19 of the Applicant's Affidavit is false and unfounded since the Applicant, while in custody of the 1<sup>st</sup> Respondent was never subjected to any form of harassment, intimidation, trauma, hardship or discomfort as alleged.

That the Applicant has since been released on bail and is no longer in the custody of the Respondent.

In paragraph 16, the deponent urged the Court to refuse the reliefs sought by the Applicant in the interest of justice as granting same will be otiose.

Meanwhile, in the Applicant's Further Affidavit in Support of the application, the Applicant deposed therein that he was indeed unconscious at a time during his detention in 1<sup>st</sup> Respondent's custody, where no response was made to his lawyers on request for variation of his bail conditions.

It is further deposed that he has started paying some investors and upon his release from detention on 13<sup>th</sup> day of October, 2021, he has continued to pay back the investors. Receipt attached as Exhibit F.

The Applicant in his paragraphs 9 and 10 of the Further Affidavit, still maintained that this case is purely civil contractual agreement and not within the purview of the EFCC.

Applicant relies on Exhibit G the terms and conditions of the investment agreement.

According to the Applicant in paragraphs 11, 12, and 13, he was ill during the detention and a Covid-19 test was carried out on him and other detainees in 1<sup>st</sup> Respondent's custody in which he was isolated and treated without knowing the essence of the medication.

That it was when his health got worse and started deteriorating, that the 1<sup>st</sup> Respondent called Applicant's brother to stand as surety for him and set aside all previous bail conditions and was granted bail on 13<sup>th</sup> October 2021 more than a month after his arrest.

Applicant further deposed in paragraphs 13 and 14 thereof that he decided to conduct some medical tests upon his release and he tested positive for

the Covid-19 where he isolated himself from his family. Applicant has attached a copy of the Covid-19 test marked Exhibit H.

That he was never informed by the 1<sup>st</sup> Respondent that he had contracted Covid-19 while in their custody and that it was the main reason for granting him bail thereby exposing his family, the public and family members.

As a result, Applicant urged the Court to grant this application in the interest of justice.

Meanwhile, in the 1<sup>st</sup> Respondent's Further Counter Affidavit in opposition to the Further Affidavit of the Applicant, it is deposed in paragraphs 6 and 7 thereof that the Applicant was never unconscious during his detention, and his application for variation of bail was honoured but he could not perfect the bail conditions until 13<sup>th</sup> October, 2021 when his brother came to take him on bail.

In paragraphs 8, 9, 10, 11 and 13 as follows it is deposed thus:-

- “8. That the depositions in paragraphs 7, 8 and 9 of the Applicant's Further Affidavit are false and contrary to same, I state that the investigation carried out by the 1<sup>st</sup> Respondent revealed that funds received by the Applicant from various subscribers were diverted and used for paying salaries of staff with Applicant's wife, Mrs. Precious E. Chikogu receiving as high as N600, 000.00 monthly.***
- 9. That Mrs. Precious E. Chikogu in her statements dated 22<sup>nd</sup> and 23<sup>rd</sup> September, 2021 admitted that she was earning the sum of N600, 000.00 as monthly salary. A copy the statement is attached and marked EXHIBIT EFCC 5.***
- 10. That investigation further revealed that funds received from some investors were never used for investment purposes which is tantamount to diversion or conversion of funds and obtaining under false pretence necessitating the petition against the Applicant which is contrary to the deposition in paragraph 9 of the Applicant's Further Affidavit which stated that the matter is purely a civil matter.***

- 11. That the depositions in paragraphs 10, 11, 12, 13 and 14 of the Applicant's Further Affidavit are not true and I state that the 1<sup>st</sup> Respondent did not afflict the Applicant with any sickness but only took reasonable steps to attend to his ill health at its medical facility pending when a reliable surety came to take him on bail.**
- 13. That the depositions in paragraphs 15 and 16 of the Applicant's Further Affidavit are not true and I state that the 1<sup>st</sup> Respondent never harassed the Applicant and his family members and there is no conceivable reason whatsoever for the 1<sup>st</sup> Respondent to cause them trauma, indignation, discomfort, distress, hardship and embarrassment as alleged by the deponent."**

In paragraphs 14 and 15 the deponent states that the Applicant has since been released on bail and it will be in the interest of justice to refuse the reliefs sought as same is lacking in merit.

However, in the Written Address in support of this application, while arguing on a sole issue formulated, learned Applicant's Counsel submitted, that the fundamental rights of the Applicant is firmly entrenched in the constitution and its violation is not justifiable except by an Order of Court.

Submits that the arrest and detention of the Applicant herein does not conform to any known law. Submitted in that regard that the conduct of the Respondents is a clear violation of the fundamental rights of the Applicant based on a purely civil transaction.

Submitted moreso, that the 1<sup>st</sup> Respondent herein cannot be used as a debt recovery agency.

Submitted further that the Respondents herein equally failed to inform the Applicant of his offence which is clear violation of his fundamental rights enshrined under Section 35(3) of the CFRN 1999 (as amended).

Learned Counsel finally urged the Court to hold in the Applicant's favour and grant him all the reliefs sought.

Authorities cited by learned Counsel are as follows:-

1. **Section 46(1) CFRN 1999 (as amended).**
2. **ABIOLA V ABACHA (1998) HRLRA P. 447.**
3. **ANUBALI V STATE (2019) LPELR-48088 (CA).**
4. **Administration of Criminal Justice Act, 2015.**
5. **ONUN OTUECHUIGRIRICIA V ELEDER EFFIONG OKON BASSEY & ORS (2013) LPELR -20346.**
6. **SANI V THE STATE (2000) 1 WNLR.**

Meanwhile, in the Written Address in Support of the 1<sup>st</sup> Respondent's Counter Affidavit, learned Counsel arguing on the sole issue formulated therein, submitted that the entire deposition in the Supporting Affidavit did not disclose sufficient proven facts or reasonable cause of action to warrant the grant of the reliefs sought.

That the allegations of violation of the rights of the Applicant are presumptuous and devoid of substance.

That the act of inviting the Applicant in the circumstances of this case by officers of the 1<sup>st</sup> Respondent is lawful and justifiable as it was for the purpose of carrying out investigations. Therefore, the Fundamental Rights Enforcement Rules, 2009, are not meant to be exploited and used as a shield to prevent invitation, arrest, criminal investigation and prosecution of citizens alleged to have committed an offence.

Submits, that it is trite law that a Court cannot make Orders to restrain the 1<sup>st</sup> Respondent from performing their statutory duties pursuant to Section 38(1) of the E.F.C.C. (Establishment) Act, 2004.

Furthermore, while conceding that the Applicant has the right to personal liberty enshrined under the Constitution, it is submitted in that regard that such right is not absolute under Section 35(1)(c) of the 1999 Constitution (supra).

Submitted moreso that the Applicant was never intimidated, detained unlawfully or harassed by the 1<sup>st</sup> Respondent as wrongfully alleged by the

Deponent, in the Affidavit in Support and Written Address. Nor, was the Applicant caused any embarrassment, hardship and trauma.

Submits that the burden is on the Applicant in this circumstances to prove what he asserts, in line with the provisions of Sections 131 – 133 of the Evidence Act, 2011.

Submitted further that it would amount to a waste of judicial time for this Honourable Court to make an Order or Orders of Perpetual or Interlocutory Injunction against a statutory agency of the Federal Government empowered to invite, arrest, investigate and prosecute persons alleged to have committed economic and financial crimes considering the facts and circumstances of this suit, and the reliefs sought by the Applicant are not of any judicial relevance.

In particular, the Court is urged to refuse the relief for general and punitive damages in the sum of One Hundred Million Naira as being unreasonable and gold digging, since the Applicant has not shown that his fundamental rights have been, are being or are likely to be infringed by the 1<sup>st</sup> Respondent. Nor has the Applicant established any loss, injury or damages that he suffered from the alleged acts of the 1<sup>st</sup> Respondent.

In conclusion, learned Counsel urged the Court to dismiss the application for lacking in merit. Learned Counsel cited the following authorities thus:-

1. **A. G. ANAMBRA V UBA (2005) 15 NWLR (PART 947) 44**
2. **BORISHADE V NATIONAL BANK OF NIGERIA LTD (2007) 1 NWLR (PART 1015) AT 241 AT 246 – 247.**
3. **FAJEMIROKUN V COMMERCIAL BANK OF NIGERIA LTD (2009) 3 MJSC (PART 11) 114 AT PARAGRAPH C.**
4. **PETER V OKOYE (2002) 3 NWLR (PART 755) 529 AT 553.**

Now, I have considered all the arguments canvassed for and against this application, and the affidavits of both parties and Exhibits annexed.

Firstly, let me state that notwithstanding the submissions of learned Applicant's Counsel in the address that Applicant's fundamental rights were

breached on allegation that 1<sup>st</sup> Respondent unlawfully arrested and detained the Applicant, such is not reflected in the Applicant's Affidavit in Support on the issue on unlawful arrest.

It is clearly stated in the Applicant's Supporting Affidavit that he was invited by the 1<sup>st</sup> Respondent and he reported himself to the office of the 1<sup>st</sup> Respondent.

Therefore, regardless of the depositions in the 1<sup>st</sup> Respondent's Counter Affidavit that the Applicant was cajoled by his account officer to report to their office, I must say that the Applicant whether cajoled or not must be commended for turning himself in or reporting to the 1<sup>st</sup> Respondent as any law abiding citizen is expected to do.

Therefore in this case, the issue is whether the detention of the Applicant from 3<sup>rd</sup> of September, 2021 when he reported himself to the EFCC up till the 13<sup>th</sup> of October, 2021 when he was released on bail, was unlawful or not.

This case emanated from a petition made to the 1<sup>st</sup> Respondent i.e. exhibit EFCC 4, bordering on allegation of a large scale fraud in the sum of over N400, 000, 000.00 (Four Hundred Million Naira) against the Applicant as Chairman and Managing Director of Coral Trade Capital Investment Ltd, and his wife Mrs. Henry Chikogu Chukwubueze.

Therefore, having carefully gone through Exhibit EFCC 4, it is my view that any law enforcement agency would conduct its duties of inviting, arresting, investigating and if need be prosecuting the alleged offenders in the face of the contents of Exhibit EFCC 4.

In the same exhibit, it was also alleged as follows:-

***“Our further investigation reveal that they sneaked into Abuja on the 2<sup>nd</sup> of May, 2021 to carry out biometrics of family members at the Canadian Embassy with a view to escaping out with their family to Canada. He travelled out of Abuja to Enugu on the 6<sup>th</sup> May, 2021, where he is hiding currently. We have engaged the services of a tracker that has given us his current location coordinates in Enugu and the soft targets within Enugu he and his wife talked with most often. Enugu is not their home or office***

***location but a hide out while processing their visas to escape out of Nigeria....?***

Consequently, faced with the above allegations contained in the said petition, Applicant was invited. He reported on 3<sup>rd</sup> of September, 2021 and 1<sup>st</sup> Respondent went ahead to grant him administrative bail same day, on the terms and conditions it deemed fit.

Unfortunately, the Applicant could not perfect bail and remained in the custody of the 1<sup>st</sup> Respondent for more than a month.

It could seem most appropriate for any detaining agency to grant administrative bail to a suspect in its custody during an investigation.

In the instant case, it is not in dispute that administrative bail was granted to the Applicant during his detention.

However, the question to ask here is what is the position of the law as regards administrative bail.

In a recent Court of Appeal decision, the Court has declared as illegal and unconstitutional the usual practice of the Economic and Financial Crimes Commission (EFCC) of keeping suspects in their custody till fulfilment of bail conditions.

Please see the case of ***E.F.C.C. V EMEM UBOH (2022) 1 LPELR -57968 (CA)***. In that case the Court went on to state that by detaining the Respondent for eight days, the E.F.C.C contravened the provisions of Section 35(4)(A) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides that ***“any person arrested and/or detained upon a reasonable suspicion of having committed a crime shall be brought before a Court of law within a reasonable time.”*** To mean 24 or 48 hours as the case may be. The Court in the case cited earlier further held thus:-

***“It is the view of this Court that the Respondent was in breach of the Applicant’s right to personal liberty by detaining him beyond the period of one day prescribed. The Respondent should have sought the leave of this Court to detain the Applicant beyond the time prescribed by the Constitution”.***

The Court also held that the arresting authority has no power to grant bail to a suspect but must approach the Court with facts sworn in an Affidavit explaining why they must further detain such a suspect.

In the case at hand, the Applicant was detained for more than a month in the custody of the E.F.C.C before he was eventually released to his brother on 3<sup>rd</sup> October, 2021.

I am not unmindful of the serious allegations against the Applicant, particularly considering the averments contained in paragraphs 8, 9, 10 of the Respondent's Further Counter Affidavit filed on 30<sup>th</sup> of May, 2022, which I hereby reproduce as follows:-

- “8. That the depositions in paragraphs 7, 8 and 9 of the Applicant's Further Affidavit are false and contrary to same, I state that the investigation carried out by the 1<sup>st</sup> Respondent revealed that funds received by the Applicant from various subscribers were diverted and used for paying salaries of staff with Applicant's wife, Mrs. Precious E. Chikogu receiving as high as N600, 000.00 monthly.***
- 9. That Mrs. Precious E. Chikogu in her statements dated 22<sup>nd</sup> and 23<sup>rd</sup> September, 2021 admitted that she was earning the sum of N600, 000.00 as monthly salary. A copy the statement is attached and marked EXHIBIT EFCC 5.***
- 10. That investigation further revealed that funds received from some investors were never used for investment purposes which is tantamount to diversion or conversion of funds and obtaining under false pretence necessitating the petition against the Applicant which is contrary to the deposition in paragraph 9 of the Applicant's Further Affidavit which stated that the matter is purely a civil matter.”***

However, in addition to the fact that the Applicant was unlawfully detained by the E.F.C.C, I've considered the depositions in the Applicant's Supporting Affidavit and Exhibits annexed that Applicant's relationship with investors including the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents was a civil contractual agreement.



Nevertheless, it is my view that considering the weighty allegations, the commission was right to have invited the Applicant to investigate the matter.

Unfortunately, the E.F.C.C in this case, continued to detain the suspect beyond the time allowed by the CFRN 1999 (as amended) and without obtaining a Court Order in that respect. Hence, has no doubt violated the Applicant's right to personal liberty as enshrined under Section 35( ) of the Constitution (supra). I so hold.

On the issue regarding Applicant's ill-health during his detention in 1<sup>st</sup> Respondent's facility, it is deposed in Applicant's Further Affidavit in paragraph 14 thereof that the 1<sup>st</sup> Respondent did not inform him that he had contracted Covid-19 virus while in their custody and that was their main reason for granting him bail, thereby exposing Applicant's family, the public and him to grave danger.

This allegation is refuted by the 1<sup>st</sup> Respondent in its Further Counter Affidavit in paragraph 11, where it is deposed that reasonable steps were taken to attend to Applicant's ill-health at its medical facility pending when a reliable surety takes him on bail.

However, looking closely at paragraph 11 of Applicant's Further Affidavit, Applicant on this issue deposed therein that due to his ill-health, a Covid - 19 test was carried out on him and other detainees in the 1<sup>st</sup> Respondent's custody in which he was isolated in different cells alongside other detainees where a doctor was attending to them without informing them of the essence of the medication.

I must state here with all sense of consideration for the plight of the Applicant, that he must have known that he had contracted the Covid-19 virus, since he was aware that it was a Covid-19 test, he was isolated and medication administered to him. Therefore, it is a fact known all over the world, that the Covid-19 virus is a deadly and highly contagious disease.

Applicant knew he was being treated for Covid-19 infection. Nonetheless, although Applicant deposed that his family, the public was put in danger, it is my view that the 1<sup>st</sup> Respondent has shown that adequate steps were taken to treat him for the illness. But, 1<sup>st</sup> Respondent ought to have informed and advised the Applicant to isolate from his family and the public

upon his release so as not to endanger his family and the public and also to confirm his health status. Clearly this was not done in this case, and it therefore amounts to a violation of Applicant's fundamental right to life and dignity of the human person enshrined under Sections 33 and 34(1) of the CFRN (as amended). I so hold.

Therefore, the Applicant is entitled to an apology and general damages.

See: ***AMAECHE V INEC (2008) 5 NWLR (Pt.1080); JIM JAJA V C.O.P RIVERS STATE (2013) ALL FWLR (Pt.565); SECTION 35(6) OF THE CFRN 1999 (as amended).***

With regard to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, they were duly served but have not responded in any way to this application.

However, considering the depositions in the 1<sup>st</sup> Respondent's Counter Affidavit particularly those reproduced earlier, it is my view that 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were exercising their rights as citizens of Nigeria to report any suspicious activities bordering on allegations of financial crimes to EFCC notwithstanding the fact that those allegations must be proved beyond reasonable doubt in line with the provisions of Section 139(1) of the Evidence Act; as well as the right of the Applicant to be presumed innocent until proven guilty by virtue of Section 35 of the CFRN 1999 (as amended).

On the whole, it is my considered view that the Applicant has made out a case for the grant of this application.

The sole issue is resolved in his favour and the Court hereby declares and orders as follows:-

- (1). The detention of the Applicant beyond 48 hours as stipulated by the Constitution of the FRN 1999 (as amended) from the 3<sup>rd</sup> of September, 2021 to 13<sup>th</sup> of October, 2021 without any Court Order by the 1<sup>st</sup> Respondent is a gross violation of the Applicant's right to personal liberty and freedom of movement guaranteed by Sections 35 and 36 of the CFRN (supra).
- (2). Failure of the 1<sup>st</sup> Respondent to formally disclose to the Applicant his Covid-19 health status during his detention in the facility of the 1<sup>st</sup> Respondent even at the point of his release from its custody

endangered the life of the Applicant, his family and members of the general public, which is a gross violation of his right to life and Dignity of the Human Person as guaranteed under Sections 33(1) and 34(1) of the CFRN 1999 (as amended).

- (3). The 1<sup>st</sup> Respondent is to issue an unreserved apology in writing to the Applicant for the breach of his fundamental Human Rights.
- (4). ~~N3, 000, 000.00~~ general damages is awarded against the 1<sup>st</sup> Respondent, in favour of the Applicant.

Reliefs 3, 4 and 5 are refused and dismissed.

**Signed:**

**Hon. Justice S. U. Bature  
8/11/2022.**