

**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**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 24**

**CASE NUMBER: SUIT NO. FCT/HC/CV/088/2022**

**DATE: 13/12/2022**

**BETWEEN:**

MBANEFO OYEKOZULU MICHAEL.....APPLICANT  
(SUING THROUGH HIS NEXT-FRIEND  
LORD MICHAEL A. N. MBANEFO)

**AND**

BAZE UNIVERSITY, ABUJA.....RESPONDENT

**APPEARANCES:**

Qudu Alalafia Esq Holding brief of Chinedu G. Udora Esq for the Applicant.  
Simiat Suleiman Esq for the Respondent.

**JUDGMENT**

By an originating motion dated 14<sup>th</sup> day of January, 2022. Filed same day, brought pursuant to Sections 34 and 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended); Order 11, Rules 1 – 5 of the Fundamental Rights (Enforcement Procedure) Rules, 2009; Section 11 of the Child Rights Act and under the inherent jurisdiction of this Court, the Applicant Mr. Mbanefo OyekoZulu Michael (suing through his next-friend Lord Michael A. N. Mbanefo) prayed the Court for the following.

- “(1). A DECLARATION of the Court that the actions of the Respondent in rusticating the Applicant for one Semester from school and expelling him from the school hostel over allegation of testing positive to marijuana (THC) as shown in her letter to the Applicant dated 10<sup>th</sup> day of August 2021, without a prior invitation to him to answer to the said allegation, amounts to a breach of his fundamental right to fair hearing and dignity as enshrined under the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Child’s Right Act.**
- (2). A DECLARATION of the Court that the subsequent action of the Respondent to reduce the rustication of the Applicant to a warning letter and to sustain his expulsion from the school hostel over an allegation of testing positive to Marijuana (THC) as shown as in their letter to the Applicant dated the 31<sup>st</sup> day of August 2021, amounts to a breach of his fundamental right to dignity as enshrined under Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 11 of the Child’s Right Act.**
- (3). AN ORDER of the Court setting aside the decision of the Respondent expelling the Applicant from school for one semester and/ or reducing the said punishment to issuing him a warning letter to the Applicant as well as expelling him from the school hostel over an allegation of testing positive to Marijuana (THC), for being ultra-vires, null and void.**
- (4). AN ORDER of the Court directing the Respondent to pay the sum of N100, 000, 000.00 to the Applicant as damages for breach of his fundamental rights to fair hearing and dignity as enshrined under the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Child’s Right Act.**
- (5). AN ORDER of the Court directing the Respondent to publish an apology to the Applicant in two (2) widely read national newspapers.”**

The application is accompanied by a statement stating the name and description of the Applicant, the reliefs sought, the grounds predicated the reliefs sought, the supporting Affidavit of the 34 paragraphs deposed to by Lord Michael A. N. Mbanefo, father of the Applicant, annexures marked Exhibits A1, A2, B2, B2, C, D, E, F, G, H1, H2, H3, H4, H5, I, J, K, L, M, N, M, O and a Written Address dated 14<sup>th</sup> January, 2022.

Meanwhile, in opposition to this originating motion, the Respondent Baze University Abuja, filed a Counter Affidavit of 24 paragraphs deposed to by Simiat Suleiman, a Counsel in the law firm of Levite Solicitors & Arbitrators, Solicitors to the Respondent equally filed in support of the Counter Affidavit is one annexure as well as a Written Address dated 4<sup>th</sup> May, 2022.

In response, the Applicant filed a Further and Better Affidavit of 20 paragraphs deposed to by Lord Michael A. N. Mbanefo and a reply on points of law dated 10<sup>th</sup> day of June 2022.

The Respondents subsequently filed a Counter Affidavit to the Applicant's Further Affidavit.

The facts as distilled in the Supporting Affidavit that the Applicant who is 17 years old was a student of the Respondent school but was subsequently rusticated by the Respondent following two alleged incidents that were said to have allegedly occurred during the Applicant's studies in the Respondent's University.

It is deposed in that respect in paragraphs 6 -28 thereof among other things that on the 5<sup>th</sup> of July, 2021 the Respondent's security operatives invited the Applicant and asked him to make a statement in respect of an ongoing investigation of an alleged laptop theft that occurred in the male hostel. That despite Applicant's denial of any complicity in the alleged theft, the security operatives detained him in their office for several hours and the Applicant missed all his lectures on that date.

According to the deponent Lord Michael A. N. Mbanefo father of the Applicant, he was warned by the Respondent's Chief Security officer one Mr. Daniel Ede to remove the Applicant from school or else something bad will happen.

That a point, the said Mr. Daniel Ede even asked the Applicant to remove his shirt to ascertain if there was any cult mark on his body as they suspected Applicant was a member of a cult group, but found no cult mark on his body.

Following the above, the deponent averred that on the 12<sup>th</sup> of July, 2021, he wrote to the Respondent's Registrar on the incessant harassment of the Applicant by the school authorities, while also demanding answers to the letter of invitation sent to him through his email as it relates to the case of theft levelled against the Applicant without justification. But, that the Respondent did not answer or respond to the said letter, therein attached as Exhibit C.

That subsequently, following the threats by Mr. Ede, on the 4<sup>th</sup> of August, 2021, at about 5:40 a.m, the Applicant was woken up from his sleep by Respondent's security operatives who came along with a urine container and demanded for Applicant's urine sample for a drug test.

That in a state of bewilderment, the Applicant availed the security operatives with his urine and he was also made to fill and mark a drug test form at the behest of the security operatives, who went ahead to carry the drug test and the result of same was signed by one Mr. O. Aghedo, who is neither a laboratory scientist nor a pathologist. Copy of the test result was attached as Exhibit D.

That deponent was subsequently invited to the school to meet with the Registrar on the alleged positive drug test, but that despite several scheduled dates for the meeting, the Deponent did not see the Registrar, but was rather simply handed a letter by the security men on the 16<sup>th</sup> of August, 2021, dated 10<sup>th</sup> August, 2021.

Written by one Miss Safia Garba titled: **"YOUR RECENT SOCIAL MISCONDUCT ON CAMPUS: THE UNIVERSITY'S DECISION"** same attached as Exhibit E.

That same contained the decision of the Respondent rustivating the Applicant from school for one semester and expelling him permanently from the school hostel of the purported allegation of testing positive to illicit drugs, and that the said letter also requested that the Applicant should

check into Rehabilitation facility for 3 months and return with a negative test result.

According to the Deponent, the Applicant was not invited by the University Management to be heard before their decision to rusticate him for a semester and expel him permanently from the hostel, was made, thus denying the Applicant fair hearing.

That despite writing a letter to the Respondent and requesting for some documents listed in Applicant's paragraph 18 to the Supporting Affidavit including the test result, the specimen sample of Applicant's urine that was tested and reason for singling out the Applicant for the said test (copy of the letter attached as Exhibit F) the Respondent did not respond to the letter which necessitated the Deponent's several visits to the school to demand for the rest result and the Respondent reluctantly availed him with a copy of the test result, but did not provide the specimen and did not give any reason for witch-hunting the Applicant.

That after writing to the Respondent of his intention to Appeal the decision to rusticate the Applicant in a letter dated 16<sup>th</sup> of August 2021 (annexed as Exhibit G), the Deponent further states that he took the Applicant to the facility of the Federal Medical Centre Abuja for psychiatric evaluation and a re-confirmatory drug test particularly for marijuana, which the Respondent had alleged that Applicant tested positive to, and that the drug tests came out negative and the psychiatric evaluation showed that the Applicant is mentally sound.

That the Deponent on the 20<sup>th</sup> of August, 2021, wrote to the Vice-Chancellor of the Respondent. Forwarding all the documents on the tests and evaluation carried out on the Applicant at Federal Medical Centre Abuja a requesting the Respondent to review their decision against the Applicant.

That by Exhibit I annexed, the Respondent in a letter dated 31<sup>st</sup> August, 2021, addressed to the Deponent, the Respondent decided to reduce the Applicant's rustication from school to a warning letter, but still expelled the Applicant from the school hostel.

Deponent avers further that based on the Respondent's decision and failure to give the Applicant fair hearing to defend the allegations, severally,

attached the Applicant's dignity and emotion as the entire school saw him as a drug addict, which he is not.

That the Respondent continued their acts of intimidation, harassment and torture of the Applicant, when they wilfully failed him in Computer and Applied Sciences, a course he made "A" in the first semester.

That despite reaching out to his lecturer one Salami Muyideen, who alleged that the Applicant was caught for exam-malpractice, when the Deponent met the lecturer and HOD, it was obvious that the Respondent wilfully wanted to fail the Applicant and frustrate him out of school, which made the Deponent to write a letter of complaint to the Respondent on the ceaseless harassment and intimidation of the Applicant successively from July to September, 2021, the said letters is attached and marked Exhibit N.

That due to the actions of the Respondent, the Applicant suffered damages to his person, mentally, dignity and confidence as he could not continue in the school, where he is seen as a drug addict, thief and now a cheat.

The Deponent in paragraphs 29, 30, 31, 32 and 33 thereof, among others, averred that he sought a new school for the Applicant who was already developing fear and hesitation from continuing with school and gained admission into Nile University of Nigeria, where the Deponent had to pay a fresh school fee for the Applicant in the sum of **N2, 400, 000.00**, the Admission Letter and evidence of school fees paid were attached as Exhibits N and O.

That the Respondent herein has breached the Applicant's right to fair hearing and dignity of his person as is protected under the 1999 Constitution of the Federal Republic of Nigeria and the Child Right's Act.

That as a result of the actions of the Respondent, the Applicant suffered damages to his person, honour and reputation including loss of school fees he paid to the Respondent and the subsequent fees paid to Nile University of Nigeria as a result.

And, that the Applicant is entitled to the protection and enforcement of his fundamental rights while deposing that it would be in the interest of justice to grant this application.

Meanwhile, it is deposed in the Respondent's Counter Affidavit among others, that contrary to paragraphs 6, 7, 8 and 9 of the affidavit in support of the application, the Respondent's security operatives invited the Applicant and some other students to make a statement in respect of the allegation of a missing laptop on the complaint of one Paul Opara the room mate of the Applicant and that none of the roommates was subjected to any dehumanizing process by removing shirts as alleged by the Applicant's father.

That as part of the procedures in the school, the school provided an opportunity to all the students mentioned in the complaint to respond to the allegation of the stolen laptop by extending an invitation to all the students for interview and none of the students was detained as alleged by the father of the Applicant.

Further deposed is that the security operatives confirmed from the students whether they had lecturers before proceeding with the interview process in order not to clash with any of the lectures.

That during the said interview, most the students in respect of the allegation exhibited symptoms of being under the influence of drugs, and in accordance with the University handbook and its policy on zero tolerance for drugs, its security operatives can upon suspicion of any students alleged to be under the influence of drugs subject any of such students to drug test without notice.

That in further response, the new urine drug test kit, was unsealed by the Applicant and the Applicant was allowed to carry out the urine test personally after which he recorded the result and signed while the supervising security signed and the Dean signed on the form in line with the internal drug testing, and from all the students tested at the interview, some of them tested positive for drugs and not only the Applicant tested positive for illicit drugs marijuana.

That the invitation to the Applicant's parent by the Respondent is a routine of the University to have a counselling session with the parent of a student that has been sanctioned for taking illicit drugs and not a management panel as perceived by the father of the Applicant. That the drug test was carried out recorded by the Applicant unilaterally and the Dean of Student

Affairs merely signed on the test Form as a matter of practice by the University.

It is further deposed inter alia that pursuant to paragraph 20 of the Applicant's Supporting Affidavit, the Respondent considered the letter of appeal written by the father of the Applicant who did not challenge the validity of the drug test result, rather pleaded for the sanction to be waived in which the management considered same and reduced the sanction against the Applicant to "warning" in line with the school's guidelines.

That after the drug test was conducted on the Applicant who tested positive to marijuana, the result was never published anywhere in the school premises neither was the allegation against the Applicant announced on any means of communication within the school premises or any other place.

In paragraph 20(i) – (v), the Deponent states thus:-

- “(20)(i). That during the PHY 102 (General Physics) test of 21B semester, 6 students were caught for examination malpractice which included the Applicant in which they were informed that their test script would not be graded but they reserve the right to appeal to the Dean of the Faculty.***
- (ii). That the Applicant failed to Appeal the decision of the teacher not to grade the test scripts instead the Applicant's father called the said lecturer raining down all manner of insult in which the lecturer calmly informed him that the reason the Applicant's script was not graded was not as a result of malpractice in which the Applicant failed to appeal.***
- (iii). That after the father of the Applicant's wrote to the school, it took the intervention of the Dean of the Faculty to review the case and ordered that all the students test script be graded and forwarded to Exams and Records for computation.***



- (iv). ***That the said test script was forwarded to Exams and Records and the student was accordingly graded.***
- (v). ***That it was not the Applicant's PHY 102 (General Physics 2) test result alone that was withheld."***

Further to that it is averred in paragraphs 21 -23 thereof that the Applicant was never maltreated or humiliated or caused to undergo any inhuman degrading treatment or in the school environment during his interview process with the security operatives of the Respondent.

That the Applicant will not be prejudiced if this application is dismissed and that it is in the interest of justice for this Honourable Court to dismiss the application of the Applicant.

In the Written Address in support of this application learned Applicant's Counsel Chinedu G. Udora Esq formulated a sole issue to wit:-

***"Whether the Applicant is entitled to the grant of the reliefs sought in this application."***

Submitted the above issue in the affirmative, learned Counsel stated that the application borders on the breach of the Applicant's fundamental rights, thus he is entitled to all the reliefs sought.

That the Applicant being a child of 17 years, it clearly projected by the Constitution of the Federal Republic of Nigeria 1999 (as amended) as well as the Child Rights Act.

Reliance was equally placed on the Black's Law Dictionary 8<sup>th</sup> Ed, page 692 and the case of ***ODOGWU V A-G FED (1995) 2 NWLR (Pt.6) 211***, and Section 3 of the Child Rights Act.

That the main grouse of the Applicant in bringing this application is that the Respondent breached his fundamental rights by rusticating him from school and the hostel without allowing him to defend himself before the school management took their decision to expel him.

That the Applicant is equally complaining that the Respondent breached his right to the dignity of his person, when they adjudged him a drug addict, expelled him from the school, accused him of being a thief and a cheat.

Reliance was placed on Section 36 of the CFRN (1999 as amended), paragraph 3 of the Preamble to the Constitution (supra), Article XII of the United Nations Convention on the Rights of a Child, while submitting that the principle of fair hearing is defined as one of the twin pillars of natural justice which supports the Rule of Law. Hence the maxim Audi Alterem partem (hear the other side in other words), one must be heard in his own defence before being condemned) and nemo iudex in causa sui (no one may be a Judge in his own cause).

Learned Counsel cited the cases of ***ONUNWO & ANOR V WOKO & ORS (2011) LPELR-2841 (SC)***; ***WAZIRI V LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE & ANOR (2021) LPELR-55595 (SC)***; ***ABAH V MONDAY & ORS (2015) LPELR-24712 (SC)***; reference was also made to Applicant's paragraphs 15 and 16 of the supporting affidavit.

Submitted moreso, that the purported positive test result was carried out by the Respondent's security personnel and was signed by one Mr. Aghedo who is neither a medical scientist nor a pathologist, trained to conduct and analyze such a test.

Submitted further that the test carried out on the Applicant at the Federal Medical Centre showed a negative result contrary to the positive result relied on by the Respondent, who equally should have invited the Applicant to defend himself before unlawfully rustivating him from school for an offence he did not commit, where the Respondent also failed to provide the Applicant's urine sample which they claimed tested positive. Reference was made to paragraph 17 of the Applicant's Supporting Affidavit.

Submitted however, that the Respondent may argue that the Applicant was subsequently granted the right to fair hearing upon his appeal to the said decision, which resulted in reducing the punishment of rustivating from school to issuing him with a warning letter. It is submitted in that regard that the Appeal granted to the Applicant did not obviate the need for the Respondent to invite him to respond to the said allegation before reaching the decision to punish him.

The Court is urged to hold that Applicant's right to fair hearing was breached.

On the Right to Dignity of the Applicant's person, reliance was placed on Section 11 of the Child Rights Act and the case of **USMAN V EFCC (2017) LPELR-43196 (CA)** to argue that every child is entitled to the dignity of his person and shall not be subjected to attacks upon his honour or reputation. That such honour and reputation is not to be in-dignified by smearing the child's image such as adjudging a child as a drug addict, a cheat and a thief.

Reliance was placed on Section 11 of the Child Rights Act as well as paragraphs 23, 24, 25 of the Applicant's Supporting Affidavit as well as Exhibits D, G4, G5, I, J, K and L annexed thereto.

On the definition of the word "DIGNITY" learned Counsel relied on the case of **USMAN V EFCC** (supra) to argue that in the instant case, the letter of the Respondent expelling the Applicant from school on the basis of testing positive to marijuana, requesting to check into a rehabilitation facility for three months, accusing him of theft and being a cheat are actions that lower the dignity of the Applicant rather than elevating it.

Consequently, learned Counsel argued while relying on Order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009, that the rights therein are protected and enforced by the Courts, thus going by paragraph 3 of the Preamble to the F.R.E.P Rules 2009, Courts were enjoined to expansively and purposely interpret and apply the provisions of Chapter IV of the Constitution with a view to advancing and realizing the rights and freedoms contained in them.

Learned Counsel urged the Court to resolve the sole issue in favour of the Applicant and also finally urged to enter Judgment in favour of the Applicant for the unbridled violation of his fundamental rights by the Respondent and grant all the reliefs sought, particularly damages to serve as a deterrent to the Respondent against future similar acts.

Meanwhile, on the part of the Respondent, Dayo C. Oshonibare Esq, Respondent's Counsel, formulated a sole issue for determination to wit:-

***“Whether it is not in the interest of justice to dismiss the suit of the Applicant for lacking in merit.”***

On a preliminary point, learned Counsel challenged the competence of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of the Supporting Affidavit on the grounds that same violates Section 115 of the Evidence Act which Counsel argued renders the facts deposed therein as hearsay, objection, prayer and conclusions, therefore inadmissible and liable to be struck out.

Counsel relied on the cases of ***HAKAIR LTD & ANOR V STERLING BANK (2019) LPELR-47638 (CA); KASA V THE STATE (1994) LPELR-SC. 2/2/1993; IWEKA V FRN (2010) LPELR-CA/IL/C.57/2009***, to argue that Lord Michael A. N. Mbanefo who is neither a student nor staff of the Respondent is caught up by the principle of hearsay and urged the Court to strike out the Affidavit of the Applicant in support of the enforcement of fundamental right in opposition to the application of the Applicant, thus with the Respondent’s objection the motion falls apart like a pack of cards.

Arguing on the sole issue formulated, while citing the cases of ***A –G RIVERS STATES V UDE (2006) 17 NWLR (Pt.1008) 436 and EZECHUKWU V ONUWKA (2006) 2 NWLR (Pt.633) 151***, learned Counsel submitted that the test of fair hearing is the impression of a reasonable person who was present at the trial whether from his observation; justice has been done in the case.

It is submitted that the averments in the Applicant’s affidavit on the security operatives detaining the Applicant for hours thereby missing his lectures and asking him to remove his shirt and all unsubstantiated and urged the Court to discountenance same as being an attempt by the Applicant to further buttress the alleged and imagined infringement of his fundamental rights.

Submitted moreso that the invitation and interviewed of all the students which include the Applicant was just a matter of procedure and not a perceived detention, and that it was meant to avail the Applicant all opportunities to defend himself and explain the allegations especially the fact that he was the roommate to the complainant. Reference was made to Exhibit A.

Learned Counsel further argued that there is no evidence before this Honourable Court to show that the Applicant was denied fair hearing and urged the Court to so hold.

Counsel relied on the case of **AHMED & ORS V REGISTERED TRUSTEES OF ARCHDIOCESE OF KADUNA OF THE ROMAN CATHOLIC CHURCH (2019) LPLER- SC. 365/2007.**

Learned Counsel submitted that by law, an individual has a right to fair hearing, however, the party alleging breach of same must prove that his rights were breached. It is the learned Counsel's submission particularly in paragraphs 4:9 and 4:10 thereof on the allegations levelled against the Applicant herein, that he was afforded all the opportunities to defend himself and therefore cannot turn round and complain of denial of fair hearing.

Reliance was placed on the case of **ABUBAKAR V YAR'ADUA (2008) 4 NWLR (Pt.1078) P. 465 @ 503.** From the foregoing learned Counsel urged the Court to discountenance the arguments of the Applicant as canvassed on denial of fair hearing when the Respondent rusticated the Applicant and urged the Court to so hold.

On whether or not the Applicant's right to dignity of the person was breached, learned Counsel referred the Court to the provision of Section 34(1) of the Constitution (supra) and the case of **BASSEY & ANOR V AKPAN & ORS (2018) LPELR-44341 (CA).**

Learned Counsel therefore submitted that in the purported Supporting Affidavit of the Applicant shows no solid evidence that his fundamental right to dignity is breached, and that the Applicant's claims are imaginary and unsubstantiated, and urged the Court to so hold.

In conclusion, the learned Counsel urged the Court to dismiss the originating application for being frivolous and calculated to occasion miscarriage of justice in this suit. The Court is equally urged to dismiss same with substantial cost in favour of the Respondent.

Now, having considered the issues canvassed for and against this application for enforcement of fundamental rights filed on behalf of Mr. Mbanefo Oyekoze, the Applicant, suing through his next-friend, Lord

Michael A. N. Mbanefo, father of the Applicant, it is my view that the issue for determination is thus:-

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

Now, before I dwell on the issue formulated, it is pertinent to first of all consider the preliminary point raised by the Respondents on paragraphs 1 - 32 of the Applicant’s Supporting Affidavit. It is the contention of the Respondent in the Written Address particularly paragraphs 2:1 – 2:7, mainly that the said paragraphs offend the provisions of Section 115 of the Evidence Act 2011 thereby making the Affidavit in support of this originating application, incompetent.

The basis of the argument is that the facts deposed therein contain hearsay, objection, prayer and conclusions, thereby rendering them inadmissible and liable to be struck out.

Meanwhile, in the Applicant’s reply on points of law to this issue raised, it is argued that the direct evidence of a witness who saw, heard or perceived a fact is not hearsay evidence and is admissible in evidence in line with Section 126 of the evidence act.

It is further argued that the Respondent’s fatal and slammed submission on the Applicant’s purported contravention of Section 115(1), (2), (3) and (4) of the Evidence Act, does not apply to the Applicant’s Affidavit in support, since the depositions made in the said Affidavit by the Applicant’s father are facts known to him.

Learned Counsel argued in paragraphs 10:00 and 11:00 thereof as follows:

***“10:00. For example, does the Applicant’s father require an informant to depose to the fact that he is the father of the Applicant or that the Respondent is University attended by the Applicant or that he paid school fees for the Applicant or that the Applicant was tested for drugs by the Respondents or that he was given the test result of the alleged drug test to test him for drugs or that he wrote several correspondences and had several interactions with the staff of the***

***Respondents e.t.c, the Applicant's father is a competent witness, his evidence is direct and his evidence is admissible under the Evidence Act.***

***11:00. More importantly, we submit that the Respondent did not identify the particular deposition of the Applicant's Affidavit that offends Section 115 of the Evidence Act. She merely generalised the entire paragraphs of the Applicant's affidavit, which we have shown in paragraph 10:0 above, as not to be true. The Respondent's submission on this point is speculative and the law does dwell in speculative. The Court is, therefore, humbly urged to also discountenance the Respondent's submission on this issue and resolve same against the Respondent."***

I have carefully considered the arguments canvassed visa-vis the paragraphs of the Applicant's supporting affidavit earlier referred to.

In the circumstances therefore and for purpose of clarity I shall reproduce the provisions of Section 115(1), (2), (3) and 4 of the Evidence Act, 2011 hereunder. The section provides thus:-

- Section 115(1). Every Affidavit used in the Court shall contain only a statement of facts and circumstances to which the witness depose, either of his own personal knowledge or from information which he believes to be true.**
- (2). An affidavit shall not contain extraneous, by way of objection, or prayer, or legal argument or conclusion.**
- (3). When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.**

- (4). When such belief is derived from information received from another person, the home of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information.”

I've carefully looked at the said paragraphs under reference and I have observed that in paragraph1 thereof the Deponent states thus:

***“That I am the father of the Applicant, by virtue of which I am conversant with the facts of this case.”***

Also, in the subsequent paragraphs the Deponent succinctly highlighted the facts leading up to the institution of this action, such as the invitations made to him by the Respondent on the allegations against his son, the visits he made to the school in consequence of the allegations, the evidence of payment of school fees, the copy of the test result given to him by the Respondent upon his request, taking the Applicant to the Federal Medical Centre for tests and several correspondences and interactions with staff of the Respondent.

Therefore, it is my view that all the above prove that the facts deposed to are well within his knowledge and do not constitute hearsay nor are they inadmissible. I so hold.

Therefore, the objection raised on inadmissible by the learned Counsel to the Respondents is hereby discountenanced and overruled.

This now brings me to the main suit.

Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides thus:-

***“Any person who alleges that any of the 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.”***



Consequently, an Applicant who alleges infringement or violation of his fundamental rights must adduce cogent and credible facts in his Supporting Affidavit for the Court to rule in his favour.

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).***

The facts leading up to this action have been succinctly stated in the Applicant's Supporting Affidavit.

And from the submissions in support of the application, it is clear that the Applicant alleges that he was denied fair hearing by the Respondent when he was rusticated from school and also was treated in an undignified manner, moreso considering the fact that he was at the time in question 17 years of age, thus a minor protected under both the Constitution and the Child Rights Act.

Now, before I decide considering the issues, it is pertinent to consider the other reliefs sought by the Applicant particularly Reliefs 3 and 4 on the face of the application.

It must be borne in mind that aside the allegation of breach of his fundamental rights, the Applicant equally alleges that the Respondent deliberately failed him in one of the exams he took while he was a student in the Respondent's school.

All these allegations were clearly denied by the Respondents in their Counter Affidavit and Counter Affidavit to the Applicant's Further Affidavit.

In particular, it is averred in paragraph 20 (i), (ii), (iii), (iv) (v) thereof among others, that 6 students were caught for examination malpractice which included the Applicant in which they were informed that their test script would not be graded but they reserve the right to appeal to the Dean of Faculty.

But that the Applicant failed to appeal the decision of the teacher, as a result it is equally alleged that the Applicant's father called the said lecturer raining down all manner of insult, but that upon intervention of the Dean

Faculty of Law the scripts were later graded and that it was not only the PHY 102 test result alone that was withheld.

On the issue of the drug test, the Respondent's contention is that the school has a zero tolerance for drugs, and that its security operatives can upon suspicion of any students alleged to be under the influence of drugs subject any of such students to drug test without notice.

It is further contended that the new urine drug test kit was unsealed by the Applicant and the Applicant was allowed to carry out the urine drug test personally after which he recorded the result and signed while the supervising security signed and the Dean of Student Affairs signed on the form in line with the internal school rules as regards drug testing.

And that following the test which Applicant allegedly tested positive to marijuana, he was sanctioned by the school in accordance with the rules and regulations of the institution.

The Applicant has refuted the above allegation in his Supporting Affidavit as well as several Exhibits annexed particularly Exhibits H4 and H5 annexed therewith, the result of the drug test conducted at the Federal Medical Centre in which he tested negative to any illicit drugs.

Meanwhile, in paragraphs 2 and 6 of the Applicant's Further Affidavit, the Deponent states that being a former student of the same institution having graduated from the Faculty of Law in 2019, he is well aware of the handbook of the school and that the security operatives are not permitted to subject any student to drug test as the Respondent prevaricates.

He still maintained that the Applicant was not given fair hearing before he was rusticated by the Respondent, and his several requests to have the urine specimen the Respondent did not produce the said urine specimen.

The Deponent further contended that contrary to the averments of the Respondents in their Counter Affidavit, it was only his son that was tested for drugs that faithful day and the only person who was rusticated for drugs by the Respondent on the 4<sup>th</sup> of August, 2021, on account of the false positive drug test carried out on that day.

Meanwhile in paragraphs 10, 14, 15, 18 and 19 of the Applicant's Further Affidavit, it is averred thus:-

***“Paragraphs 10. That paragraph 14 of the Counter Affidavit is not true as the Respondent only handed over the copy of the drug test to me on the 18<sup>th</sup> of August 2021 after the decision rustivating my son was already made on 10<sup>th</sup> August 2021. That in Exhibit G attached to the Applicant's originating motion, which was dated 16<sup>th</sup> of August, 2021, I was still demanding the said drug test result from the Respondent, as same was not made available to me at the time. My son was not given any copy of the drug test at all by the Respondent.***

***14. Paragraph 19 of the Counter Affidavit is not true as Exhibit E attached to the Applicant's affidavit in support of the Originating Motion, show on it that the Respondent published their decision rustivating my son from the school to its Chief Security Officer and the Male Hostel, both of whom were copied in the said letter.***

***15. That my son was escorted out of the hostel disgracefully by the Respondent's Chief Security Officer (Mr. Ede), the Male Hostel Officer and a host of other security officers of the Respondent in the presence of my son's hostel mates. I was also present as I helped him park his belongings before driving him home.***

***18. That contrary to paragraph 20(f) of the Counter Affidavit, the Applicant's result was not withheld by the Respondent as she prevaricates but the Applicant was scored 30 marks for a course he passed and was graded “f” under his grade showing that he did not pass the course. This is shown in the Applicant's printout result sheet for the second semester attached to his***

***Affidavit in support of the Originating Motion as Exhibit M.***

***19. That the Respondent failed the Applicant in the said course in a bid to frustrate him mentally and emotionally.”***

However, in the Respondent’s Further Counter Affidavit to the Applicant’s Further Affidavit, particularly paragraph 8, the Respondent denied some of the assertions made in the Applicant’s Further Affidavit and further states in paragraph 9 as follows:-

***“That granting this application will hamper the disciplinary process of the school and might give room for other erring students to challenge the procedures in place to maintain the core values of the school.”***

Now, flowing from the above, the pertinent questions that comes to mind here is what is actually the school policy on drugs, what are the procedures laid down for investigating an erring student suspected to have taken illicit drugs? What is the disciplinary process in such instances, it is the process fair and transparent? What procedure did the Respondent follow before rustivating the Applicant?

Moreso, it must be borne in mind that pursuant to presentation of Exhibits H4 and H5, the report and test result from the Federal Medical Centre, the Respondent accepted same and considered the appeal of the Applicant and reduced the sanction to rustication for one semester and permanent expulsion from the hostel as seen in Exhibit 1. Therefore, another pertinent question to ask here is, how did it arrived at its subsequent decision.

Also, looking carefully at the assertions and counter assertions presented in this application, one might ask, rustication of a student by an educational institution amount to breach of their fundamental rights?

It is noteworthy to point out here that application of this nature are determined mainly on Affidavit evidence.

However, looking carefully at the reliefs sought, the grounds predicating same, the Supporting Affidavit, the Exhibits annexed, the address of

Counsel to the Applicant, the Respondent's Counter Affidavit and Address, the Applicant's Further Affidavit, address, as well as Respondent's Counter Affidavit to the Applicant's Further Affidavit, it is my candid opinion that the issues herein are contentions which would in addition to the documentary exhibits annexed, must of necessity require the issue formulated herein to be determined by calling of oral evidence on both sides for the effective and complete determination of the issues between the parties in this application, in the interest of justice.

Consequently, therefore, it is my considered opinion that this matter ought to have commenced via Writ of Summons.

See: ***ABDULLAHI & ORS V NIGERIA ARMY & ORS (2019) LPELR-46925 (CA); HON. MINISTER OF DEFENCE & ANOR V OCHIKIRI & ORS (2020) LPELR-51352 (CA); CLIMAX HOTEL (NIG) LTD & ANOR V VENITEE GLOBAL (NIG) LTD & ORS (2019) LPELR-474103 (CA).***

In conclusion, without further ado, I hold that this Court cannot dwell on the issues raised and also for the reasons given earlier, therefore this suit be and is hereby struck out.

***Signed:***

***Hon. Justice S. U. Bature  
13/12/2022.***