

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON MONDAY, 5TH DAY OF DECEMBER, 2022

BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME

SUIT NO: FCT/HC/CV/3429/2022

IN THE MATTER OF AN APPLICATION BY MAUREEN OBI FOR AN ORDER FOR THE ENFORCEMENT OF HER FUNDAMENTAL RIGHTS TO PERSONAL LIBERTY, HUMAN DIGNITY, RIGHT TO LIFE AND FAIR HEARING.

BETWEEN

MAUREEN OBI

APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE
2. AIG ZONE 7
3. THE NIGERIA POLICE FORCE
4. IPO ALICE NSE
5. JENNIFER AGBONMA
6. GOLDEDGE MULTIPURPOSE COOPERATIVE SOCIETY LIMITED

RESPONDENTS

JUDGEMENT

The Applicant commenced this action on 13/2/2021 via Originating Motion for the enforcement of her fundamental rights. In support thereof are:

- [i] Statement setting out the name and description of the applicant, the reliefs sought and the grounds for the application;

- [ii] The applicant's 24 paragraph affidavit
- [iii] Written address of S. O. YAHAYA Esq.

The Applicant seeks the following reliefs against the Respondents:

- a) That the threat to arrest, detain and disgrace of the Applicant in her shop by the 4th Respondent who is the officer of the 1st, 2nd and 3rd Respondents as a result of failure of the 23 members of the Applicants group to fulfill their obligations regarding the daily contributions to the 5th Respondent's cooperative and in order to forcefully recover the sum owed by the 23 members through the Applicant in a pure civil transaction between the Applicant and the 5th Respondent and is a gross violation of the Applicant's Fundamental Rights to dignity of human person and personal liberty guaranteed under Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as the Applicant cannot move freely to carry on her day to day business based on the threat from the 4th Respondent.
- b) An Order of perpetual injunction restraining the Respondents whether by themselves, servants, agents, employees, privies or whosoever may be claiming through them from further embarrassing, threatening, arresting and or detaining, harassing or intimidating the Applicant as long as Applicant lives a lawful life devoid of any direct criminal allegation against her.
- C) An Order that the Respondents pay to the Applicant the sum of N10,000,000 (Ten Million Naira) only as general damages for breach of the Applicant's Fundamental Rights as well as loss of goodwill and business deal during the Applicants ordeals based on the threat and intimidation from the 4th Respondents and her accomplice, officers

and men of the 1st, 2nd and 3rd Respondents at the instance of the 5th Respondent which made the Applicant to make herself unavailable in her shop for some serious transaction and this made her to lose business opportunity that can fetch good money.

- c) AN ORDER of this Honourable Court mandating the 5th Respondent to pay the sum of N236, 000. 00 (Two Hundred and Thirty-Six Thousand Naira) being the value and cost of the goods illegally carted away by the 5th Respondent from her shop on the 19th of October, 2021 with the instruction and backing of 4th Respondent in order to recover the sum of N117, 000. 00 (One Hundred and Seventeen Thousand Naira) which is the sum the Applicant is owing the 5th Respondent through her purported corporative society.
- d) An Order that the Applicant deservingly entitled to a written apology from the Respondents.
- f) An Order restraining the Respondents from arresting, harassing, threatening and embarrassing the Applicant for a matter that is purely civil.
- g) And such Order(s) as the Honourable Court may deem fit to make in the circumstances of the case.

In opposing the Originating Motion, ALICE NSE for the 1st to 4th Respondents, filed a counter affidavit of 31 paragraphs on 17/6/2022; attached therewith are Exhibits IGP1, IGP2, A.I.G3, A.I.G4, K.P. ADOKEME Esq. filed a written address with the counter affidavit.

In opposing the Originating Motion, AGBONMA JENNIFER UKAOBASI for the 5th Respondent filed a 34 paragraph Counter affidavit on 10th May, 2022; attached therewith are Exhibits GOLD EDGE 1, GOLD EDGE 2, V. NWADIKE

Esq. filed a written address with the counter affidavit. At the hearing of the Originating Motion on 21/09/2022, the Applicants and 1st to 4th Respondents were absent and unrepresented but their processes were adopted by the court. The learned counsel for the 5th Respondents OBINNA UGWU Esq. adopted the processes for the 5th Respondent. The Counsel to the 5th Respondents urged this court to strike out the name of the 5th Respondent as she was an agent of a known principal. The Court made 5th Respondent a party and joined GOLD EDGE MULTIPURPOSE COOPERATIVE SOCIETY LTD as 6th Respondents on 27th October, 2022 and ordered that the originating processes be served on the 6th Respondent. On 29th November, 2022 matter came up for hearing Applicant was absent and unrepresented Court exercised its power under Order XII (3) of the Fundamental Human Rights and adopted written addresses on behalf of the Applicant and 1st and 4th Respondent and adjourned the matter for judgement.

In her 24 paragraph affidavit in support of the Originating Motion, the Applicant stated amongst others:

1. That she is the leader of the group created by the 5th Respondent, Market women group and they are 23 in number, that the 5th Respondent lent money to the members.
2. That on the 26th September, 2021, 5th Respondent who is carrying on business under the name and style of Goldedge Multipurpose cooperative society limited advanced credit facilities to her in the sum of N 100, 000. 00 (One Hundred Thousand Naira) and 23 others who are members of the same Traders group in Sauka, Airport Road, Abuja-FCT for same to be paid back to the 5th Respondent on a daily basis of N2,000 (Two Thousand Naira) for three months.

3. That she is the group leader but each individual has their guarantor that stood for each person before the credit facilities were advanced to each person individually.
5. That she has been diligent in returning her N2, 000. 00 daily to the 5th Respondent but some of the other 23 members defaulted and she was held responsible for their failure being the leader of the group despite the fact that they all have individual guarantors that guaranteed each and every one of them in the transaction with the 5th Respondent.
6. That as a result of the failure of some of the 23 members, the 5th Respondent on the 19th of October, 2021 with the instruction of the 4th Respondent who is an officer of the 1st, 2nd and 3rd Respondents illegally carted away with all the goods in her provision's shop worth N236, 000. 00 (Two Hundred and Thirty-Six Thousand Naira) in order to recover the outstanding sum from 26th of September, 2021 till 19th of October, 2021.
7. She explained to the 5th Respondent that she could recover from the defaulting members through their guarantors, but the 5th Respondent refused to listen.
8. That the actual amount left to repay the 5th Respondent as at that 19th of October, 2021 is the sum of N 117, 000. 00 (One Hundred and Seventeen Thousand Naira) and the 5th Respondent carted away all her goods in her provision shop worth N236, 000. 00 (Two Hundred and Thirty-Six Thousand Naira) which is more than the sum she is owing the 5th Respondent.
9. That due to the 5th Respondent's act, she has stopped paying the daily contribution of N2, 000 to the 5th Respondent since 19th of October, 2021.

10. That despite the goods carted away from her provision store that is worth more than the amount she is owing the 5th Respondent, the 5th Respondent is still using the 4th Respondent to threaten, harass, intimidate and embarrass her through the Phone calls through the 4th Respondent 09041673520 phone line that if she does not pay for other defaulters, they are going to arrest and detain her for long until the entire debt is liquidated by her.
11. The 4th Respondent has been using the names and officers of the 2nd and 3rd Respondents to intimidate, harass and threaten her at the instance of the 5th Respondent.
12. That the 5th Respondent has vowed not to approach any court of law for redress if there is any but threatens to use 4th Respondent to recover the debt as she has done in the past and succeeded.
13. That the 4th Respondent is putting pressure on her as an officer of the 1st 2nd and 3rd Respondents to pay her debt and that of the defaulting members of her group.
14. The 4th Respondent threatens the Applicant through phone calls to arrest and detain her if she does not pay the debts of the defaulters. They also threaten the Applicant to come to her shop to disgrace her publicly and arrest her.
15. Based on the threats received from the 4th Respondent to disgrace, detain and harass her, she does not move freely in her house, shop and within Abuja as a whole as the Respondents are still intimidating her.
16. That she cannot move freely in the neighborhood and go to her shop as the 4th and 5th Respondents are telling people around her area that she is a fraudster without any pronouncement by a court of law.

In the 31 paragraph counter affidavit of the 1st to 4th Respondents, Alice Nse stated:

1. That she is a member of a team of investigating Police Officers that investigated a case of forgery, criminal breach of trust and theft reported by the 5th Respondent against the Applicant on record and others and has the consent of the 1st to 3rd Respondents to depose to this affidavit.
2. That paragraphs 5, 9 and 11, are not within her knowledge to speak on and same is incumbent on the applicant to prove. That paragraph 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 are false.
3. That on the 11th day of September, 2021, a petition written by Agbonma Jennifer Esq to the Office of the Assistant Inspector General of Police and it was referred to her and her team of investigators for investigation and report.
4. That the said petition alleged criminal breach of trust and fraudulent conversion of the sum of Seven Million Naira (N7, 000,000.00) against one Mary Bala Jonathan and her husband by the 5th Respondent who owned, managed, controlled and is still controlling a duly registered CO-Operative Thrift and Credit Multipurpose Society and also doubles as the alter ego of the aforementioned Credit CO-Operative Society.
5. Based on the Petition, the Petitioner and the 5th Respondent was contacted who eventually made several statements to the Police criminally indicting the applicant and others allegedly of the offences of criminal breach of trust and fraudulent conversion, theft of colossal sums of money under the guise of Managing a segment of her numerous office outlets. The said petition dated 11th September, 2021

and the 5th Respondent statement to the Police dated 30th November 2021 are attached as Exhibits IGP1 and IGP2 respectively.

6. Applicant was invited as the investigation openly linked her with the alleged offences and she was invited severally through phone calls but failed, refused and or neglected to honour Police invitation. Due to this, the 5th Respondent led them to the premises of the 5th respondent where Applicant was invited to follow them to the Zone 7 Police headquarters after the 5th respondent introduced and identified the applicant as Maureen Obi who she earlier stated in her statement as one of those who criminally breached the trust reposed on her and defrauded the 5th Respondent to the tune of eight hundred and eight five thousand naira.
7. That investigation revealed that the Applicant took advantage of the trust reposed on her when she was given free hand to operate and run the business scheme of the 5th Respondent's Company and placed on a monthly salary of forty thousand naira only among other functions, issuing and distributing of forms to deserving and interested members of the public who needed to access financial facilities from the 5th Respondent's company Gold Edge Multipurpose Co-Operative Society Limited and was mandated to recommend and remit funds to deserving and trusted persons.
8. That in a bid to perpetuate fraud the applicant dishonestly filled forms in the names and address of fictitious persons, signed processed and purportedly issued out funds to these fictitious persons in the guise that it was duly issued to prospective customers and converted these proceeds to her personal use and enjoyment.

9. That when this continued unabated and there was incorrectness in the credit and debit ledger books, showing colossal discrepancies between the amount of money issued out to prospective customers and amount of money returned, the 5th Respondent observed massive fraud which was not denied by the Applicant, sequel to which the 5th Respondent reported by way of petition to the office of the 2nd Respondent against the Applicant.
10. In the Police Station, discreet investigation was conducted and it was discovered that the Applicant committed fraud alongside other sectional heads working and supervising the 5th Respondent business.
11. That investigations further revealed several names on the requisition list added with phones numbers among others that were forged with specific amounts inscribed that were issued to them which were never paid or in reality remitted to them by the Applicant.
12. That upon investigation most of them informed her and members of her team that they either applied for financial facilities and were not allotted or were not called upon to access those funds or were not aware of any such process or application. At the close of investigation the Applicant and one Mary Sunday were found culpable and eventually charged to Magistrate Court 10A and 15, Wuse Zone 2 Abuja respectively on the offences of forgery, Criminal breach of trust, theft respectively.
13. That the said F. I. R. attesting to the fact that applicant was charged to the aforesaid court on the above alleged offences is herein annexed and marked exhibit A.I.G.
14. That was the position of affairs when the applicant filed this suit before this honourable court.

In the counter affidavit of the 5th Respondents, Agbonma Jennifer Ukaobasi Esq the 5th Respondent deposed amongst others that:

1. That Gold Edge Cooperative Society (the Co-operative) is registered under the Nigerian Co-operative Societies Act, Cap N98, Laws of the Federation, 2004 which objects empower it, among others, to do business of thrift and credit in the Federal Capital Territory. (Attached as exhibit Gold Edge 'I' is the Certificate of Registration). That it was in carrying out the activities and functions of the Co-operative that she met the Applicant who expressed her desire to join and become a member of the Co-operative.
2. That upon her registration, she also caused the registration of twenty seven others whose integrity and good character she vouched for, while cross guaranteeing themselves in order to meet the eligibility requirement for the soft loans which the Co-operative avail its members from time to time. (Attached as Exhibit GOLD EGDE "2' is a copy of such cross guarantee form),
3. That for ease of disbursement of the soft loan, and for other administrative purposes, members are arranged in groups and placed under leaders who oversee a given area depending on their business location.
4. That as a group leader, part of the function of the Applicant was to profile and do a background-check on each prospective member she introduced to the Co-operative list to ensure eligibility before disbursement of the soft loan, and depending on the level of trust the Co-operative has on such a leader, the Applicant in this case, could also request and receive funds from the Co-operative, disburse to such members who she accredited, bring evidence of such disbursement to

the Co-operative for documentation as well as receiving loan repayment by such beneficiaries and promptly deliver same to the Co-operative.

5. That in the course of carrying out its activities, the Co-operative did an audit of its membership and discovered that the Applicant used falsified documents in favour of fake or non-existent names who she used as conduits to allocate and disburse the Co-operative's money to herself and thereby breached the trust which the Co-operative had in her.
6. That upon inquiry, they discovered that the Applicant withheld and criminally converted 50% of the loan amount meant for some customers to her personal use, the Applicant also collected repayments of loan proceed from credit customers on behalf of the Cooperative but failed to remit same to the Cooperative.
7. The Applicant forged a set of forms purportedly submitted by one Aisha Mohamed who upon being called by her, claimed that she never got a dime and told her that when she got information that the Applicant, without her knowledge and consent, used her name to collect the Cooperatives money, that she had proceeded to report the matter to the Igbira Chief in Sauka, Mr. Mohammed.
8. That she went to the said Igbirra Chief, Mr. Mohammed who confirmed what the Aisha Mohammed told her.
9. That apart from Aisha Mohammed, the Applicant also submitted to the Co-operative forms pertaining to the following names who were also discovered to be non-existent, but were used to dishonestly and fraudulently disburse the Co-operatives money to herself. They are:

1. Ugba Titus
 2. Ayogu Thomas
 3. James Victoria
 4. Wahab Abdulaziz (Attached as exhibits Gold Edge 3,4,5,6 & 7 are the said loan forms of the above fictitious names respectively).
10. That some guarantors that were called claimed that their signatures, passports and ID cards were forged by the Applicant as they never applied for membership, guaranteed anyone nor aware of any soft loan given by the Co-operative.
 11. That when confronted with the available evidence and discoveries, she admitted breaching the trust but vehemently refused telling them what she did with the funds or how she intended to ensure the Co-operative got back the funds which are majorly depositors funds.
 12. That the Co-operative through her lodged a criminal complaint of forgery and criminal breach of trust to the office of the 2nd Respondent against the Applicant and two other group leaders who also perpetrated similar acts.
 13. That the Applicant was invited severally but she refused to turn up, instead she kept sending threat messages to her.
 14. That she accompanied the 4th Respondent in the company of her colleagues to the Applicant's shop where Applicant was invited to the police station and the Applicant went there. Neither the 5th Respondent nor anyone with them touched any of her goods.
 15. That the Applicant was charged to court at Wuse Zone 6, on 15th December, 2021 for forgery and Criminal Breach of Trust and the case is still pending.

In the Applicant's written address, S. O Yahaya Esq. submitted two issues for determination, to wit:

- 1. Whether the applicant fundamental rights to dignity of human person and personal liberty are inalienable and immutable such that same cannot be taken away by any person?**
- 2. Whether in the circumstances of this case, the applicant fundamental rights to dignity of human person and personal liberty have been infringed upon by the respondents such that this honourable court can safeguard in line with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)?**

K. P. Adokeme Esq. distilled four issues for determination in the 1st to 4th respondent's written address. These are:

- 1. Whether the purported arrest and or detention of the Applicant upon a complaint of a reasonable suspicion of his having committed a criminal offence of criminal breach of trust and cheating and subsequent charge to court amounted to a breach of his fundamental right.**
- 2. Whether the arrest of the Applicant upon a moral and legal complaint made to the Nigeria Police ultra vires the statutory powers of the police and as such unlawful.**
- 3. Whether it is lawful for the Applicant having been charged to court to thereafter restrain the police from performing their statutory functions**

4. Whether the Applicant is entitled to the reliefs sought.

For his part, V. C. Nwadike Esq. posed two issues for determination in the 5th respondents written address, which is:

- 1. Whether there exists reasonable suspicion of commission of crime by the Applicant as to warrant the 5th Respondents to lodge a complaint for the intervention of the 1st -4th Respondents in line with their constitutional/statutory duties.**
- 2. Whether the Applicant has made out a case of breach of her fundamental rights as to be entitled to the reliefs sought.**

From the affidavit evidence of the parties and the submissions of the learned counsel, the Court formulates a sole issue for determination in this action, which is:

"Whether the application for enforcement of the applicant's fundamental rights is meritorious as to entitle her to the reliefs sought".

SUBMISSIONS OF LEARNED COUNSEL FOR THE APPLICANT:

On issue 1, S. O. YAHAYA Esq argued that fundamental rights are fundamental and inalienable and as such the infringement of any of such rights can be validly challenged in the appropriate courts. These rights are basic and as such cannot be taken away or violated upon except with legitimate reason. Relying on the cases of **RANSOME-KUTI ORS VS. ATTORNEY GENERAL OF THE FEDERATION (1985) 6 SC 245 AT 276-277 AND UZOUKWU AND ORS VS. EZEONU AND ORS (1991) 6 NWLR (PT 200) 708 AT 761.**

On issue 2, Counsel posited that the Applicant's Fundamental Rights to dignity of human person and personal liberty have been infringed upon and the constitution forbids the infliction of torture or inhuman or degrading treatment against anybody. Relying on the definition of torture in **UZOUKWU VS. EZEONU (SUPRA)**, to include mental harassment as well as physical assault."

Relying in the case of **ISENALUMHE VS. AMASU & 3 ORS. (2001) 1 CHR 458**, the police have the responsibility to enhance the quality of the liberty and dignity of the citizens of the Federal Republic of Nigeria as guaranteed by the Constitution. Where they fail in this task, their failure must not be allowed to work to the detriment of law-abiding citizen.

When a victim is threatened to be arrested and detained and is not charged and yet is not given avenue to move freely but has her movement and freedom restricted by compulsory appointments with the 5th and 6th Respondents as in this case, where the victim cannot go about her normal practice and business life, she is still under detention.

The allegation of fraud of the 4th Respondent has no basis or foundations; The allegation was based on the fact that the Applicant and 23 others owe 5th Respondent. In an action that is purely civil and Respondents has turn themselves to debt recovery agents.

The Applicant rights to dignity of human person and personal liberty have been infringed upon given the arrest, detention, threat and harassment, Counsel argued that the applicant is entitled to perpetual injunction against the respondents and any other persons acting on their instruction to restrain them from further violating the fundamental human rights of the applicant. **RECTOR KWARA STATE POLYTECHNIC VS. ADEFILA (2008) ALL FWLR (PT. 31) 969 RATIO E-G**, Counsel concluded his argument by

stating that the constitutional rights of the applicant will continue to be violated by the men of the respondents if this application is not granted and damages will not be adequate to compensate the applicant.

SUBMISSIONS OF LEARNED COUNSEL FOR THE 1st to 4th RESPONDENTS:

On issue 1, Counsel argued that the police acted in the reasonableness of the complaint lodged to invite the Applicant and the onus is on the Applicant to prove that his fundamental right was violated **AGBAKOKA V DIRECTOR SSS (1994) 6 NLWR (PT 351) 692**. Applicant was not detained beyond 48 hours constitutionally stipulated as reflected in their affidavit. Section 35 of the constitution has not been breached. The police acted under the fact that the Applicant was suspected of having committed a criminal offence which undoubtedly was the offence of criminal breach of trust.

On Issue 2, counsel relied on sections 214, 215 and 216 of the constitution, to stress the powers of the police, sections 4, 24, 27 of the Police Act gives police the power to investigate a crime, power to arrest and prosecute in any court of law. Counsel argued that it is only when the Police subjects an individual to imprisonment or unlawful arrest that does not justify their statutory function that such arrest could be said to be unlawful. Applicant did not prove that she was beaten, pulled or dragged in her deposition nor her properties seized. Counsel argued that the duty of police in carrying out its statutory function is bound to act in the interest of the public at large and in the public good as was done in this case. Relying on **SOONAR MIG LTD AND ANOR V ARIEN REDRE NIG. LTD (1987) 9-11 SC 121 AT 123**. Applicant has been unable to prove malice as police acted in genuine compliance.

On Issue 3, the complainant has a moral and legal duty to make a report to the police about the criminal act of another person. The presumption of

innocence does not exempt a wrong doer from being charged to court by the police. ***WOLMINGTON V DPP (1935) AC 462 and IBEZIAKOR V COP (1965) NMLR 232 AT 235.***

On Issue 4, counsel argued that the Applicant did not prove his entitlement to any of the reliefs sought. The police in this instant case acted within their statutory power under section 4 of the police act and sections 214, 215 of the constitution and 23, 24, 25, and 27 of the police act and section 35(2) of the constitution. The arrest if inconsistent with the above provisions of the law is said to be inconsistent and the court will redress the breach as stipulated by law. For applicant to be entitled to damage it must depend on the seriousness of the breach. ***AGBAKOBA V DIRECTOR SSS and OKONKWO V OGBOGU (1996) 37 NWLR 580.***

SUBMISSIONS OF LEARNED COUNSEL FOR THE 5TH RESPONDENTS:

Counsel argued that paragraphs 9-15 of their counter affidavit captured the basis of the intervention by the 1st to 4th respondents. Relying on Sections 362 (a), 363, 308 and 16 of the penal code. To the effect that by falsifying documents and collecting monies with the said documents the Applicant caused wrongful gain to herself and wrongful loss to the 5th Respondents.

Counsel argued that the Applicant has to prove that her fundamental rights have been infringed upon as she has asserted. Relying on ***COSMOS ONAH V DESMOND OKENWA (2010) 7NWLR (PT 1194) 512 AT 516.*** This court was urged to consider the basic principles that guides it in determining whether the offence of illegal detention has been committed ***ARAB CONTRACTIORS V GILLIAN UMANAH (2013)4NWLR (PT 1344) 323 AT 328.***

- a. Whether there was a reasonable cause which led the defendant to lodge a complaint to the police and;

b. The presence or absence of malice in the act of the defendant

For the applicant to succeed he has to prove that the claim predicated on deprivation of liberty was not based on reasonable suspicion. **GABRIEL JIM JAJA V COP (20110 2NWLR (PT 1231) 375 AT 380**, this is important because the right to liberty, freedom of movement and dignity of the human person is not an absolute right. Section 35(1) CFRN a person's right may be interfered with upon the reasonable suspicion of the commission of a crime **DOMINIC PETER EKANEM V ASSISTANT INSPECTOR GENERAL OF POLICE ZONE 6 (2008) 5NWLR (PT 1079) 97 AT 101**.

The 5th Respondent acted reasonably and in accordance with her duty both to the society and to her members and customers whose funds are being jeopardized by the Applicants actions.

Applicant has failed to show malice on the side of the 5th Respondent **ARAB CONTRACTORS V GILLIAN UMANAH SUPRA**.

The act of writing a petition or lodging a criminal complaint does not amount to an infringement of the Applicants fundamental rights. **OCEANIC SECURITIES V ALHAJI BASHIR BALOGUN (2012) ALL FWLR (part 643) 1889** it is the duty of the citizens of the country to report cases of commission of crime to the police for their investigation and what happened after such report is entirely the responsibility of the police. The citizens cannot be held culpable for doing their duty unless it is shown that it is done mala fide.

SECTION 6 AND 35 OF THE COOPERATIVE SOCIETIES ACT LFN 2004 requires that whenever issues of fraud arise, the co-operative has a duty to refer the matter to the appropriate security agency to conduct investigation. Applicant has failed to discharge the burden of proving the

claim of instigation of police by the 5th Respondent against the Appellant. ***COSMOS ONAH V DESOMOND OKENWA (2010) 7 NWLR (PART 1194) 512***

ON ISSUE 2, Applicant has not discharged the burden placed on him by virtue of ***section 131(1) of Evidence Act. ONUIGBO V NWEKESON (1993) 3NWLR (PART 313) 558.*** Damages for breach of fundamental rights are awarded only when the defendant has proved by way of affidavit evidence that his right was indeed infringed upon. ***JIM JAJA V COP RIVERS STATE (2013) 6NWLR PART 1350 225 AT 244 -245.*** The act of writing a petition by the 5th Respondent upon reasonably suspecting that fraud had been committed by the Applicant and consequent inquiry falls within the ambit of the respondent's duty.

DECISION OF THE COURT

Before I proceed to deal with the issue before me, I must raise suomotu glaring paragraphs of both the Applicants Affidavit in support of her motion and the 1st to 4th Respondents Counter Affidavit which appear to be legal arguments and contrary to the Evidence Act.

For this court to ascertain whether these paragraphs contain legal arguments, the court has to consider each paragraph as required by the law. In the apex decision of **ISHAYA BAMAIYI v. THE STATE & ORS (2001) LPELR-731(SC)** per **SAMSON ODEMWINGIE UWAIFO ,JSC (Pp. 26-27, paras. D-C)**

I think the legal position is clear, that any affidavit used in the Court, the law requires as provided in Section 86 and 87 of the Evidence Act, that is shall contain only a statement of facts and circumstances derived from the personal knowledge of the

deponent or from information which he believes to be true, and shall not contain extraneous matter by way of objection, or prayer, or legal argument or conclusion. The problem is sometimes how to discern any particular extraneous matter. The test for doing this, in my view, is to examine each of the paragraphs deposed to in the affidavit to ascertain whether it is fit only as a submission which counsel ought to urge upon the Court. If it is, then it is likely to be either an objection or legal argument. **BAMAIYI V. STATE & ORS which ought to be pressed in oral argument; or it may be conclusion upon an issue which ought to be left to the discretion of the Court either to make a finding or to reach a decision upon through its process of reasoning. But if it is in the form of evidence which a witness may be entitled to place before the Court in his testimony on oath and is legally receivable to prove or disprove some fact in dispute, then it qualifies as a statement of facts and circumstances which may be deposed to in an affidavit. It therefore means that prayers, objections and legal arguments are matters that may be pressed by counsel in Court and are not fit for a witness either in oral testimony or in affidavit evidence; while conclusions should not be drawn by witnesses but left for the Court to reach.**

The offensive paragraphs are paragraphs 18 to 20 of the Applicants Affidavit in support of her application

- That I was informed by my lawyer S, O. YahayaEsq on 10th December, 2021 in his office at suite 113, 1st floor, Theodak Plaza, CBD, Abuja at about 8.30am which I believe him to be true that the act of intimidation and threat to detain me by the 4th Respondent and men of the 1st to 3rd Respondents on the instruction of the 5th Respondents is an infringement and gross violation of my Fundamental Rights to dignity of human person and

personal liberty under Sections 34 and 35 of the Constitution of the Federal Republic of the Federal Republic of Nigeria, 1999 (as amended).

- That the same lawyer at the same time and place further informed me which I believe that the act of using the 4th Respondents by the 5th Respondent to harass me on a matter that is pure civil and without any pending charge before a competent court is a crude exhibition of power which is not allowed under any of Nigerian laws and is therefore barbaric, illegal, unconstitutional and void ab-initio.
- That the said lawyer at the same place, date and time equally informed me and I believe that 1st to 4th Respondents does not have power to interfere on any matter that concern debt recovery or any civil transaction between parties in Nigeria.
- That he further told me at the same place date and time that using force by the 4th Respondent to recover money owe the 5th Respondent by me and other separate persons that I did not stand as guarantor through me and threat to detain, disgrace, harass and intimidation me on a pure civil matter without any charge or FIR filed before any competent is a great violation of his fundamental human rights.

Paragraphs 27 (i) – (iv) of the 1st to 4th Respondents Counter Affidavit;

“That K.P. AdokemeEsq of Counsel informed me on the 20th day of May, 2022 at his office at Wuse Zone 3 Abuja and I verily believed him to be true as follows:

- i. That this suit is frivolous, null and void abinito.
- ii. That there is no cause of action or reasonable cause of action against the 1st to 4th Respondents.
- iii. That he who seeks equity must come with clean hands that this matter is pending in court and he cannot come before this honourable court to mislead the court.
- iv. That injunction cannot statutorily lie against the 1st to 4th Respondents while performing their statutory functions.

I find that these paragraphs offend section 115 (2) of the Evidence Act (as amended) the paragraphs contain legal arguments and conclusion, and are struck out accordingly.

It is worthy to note that the Applicant did not file a reply to the 1st to 4th Respondents Counter Affidavit and the 5th Respondents Counter Affidavit and it is trite that those averments are uncontroverted and deemed admitted. In ***CHIEF MAURICE UDO IDUNG & ANOR v. THE COMMISSIONER OF POLICE & ORS (2017) LPELR-42333(CA)***

"It is well known in law that failure of a party to challenge or controvert depositions in affidavit of his opponent by filing a counter-affidavit, reply or further and better affidavit is deemed to have accepted the facts deposed in the affidavit. AYOOLA VS. BARUWA (1999) 11 NWLR (PT. 628) 595; COMPTROLLER, NIGERIA PRISON SERVICE V. ADEKANYE (1999) 10 NWLR (PT. 623) 400. When an affidavit is unchallenged, the trial Court is at liberty to accept it as true and correct." Per ADAH, JCA (Pp. 22-23, paras. E-A)

On relief 1, Applicant is seeking enforcement of her fundamental rights that the threat to arrest, detain and disgrace her in her shop by the officers of the 1st to 4th Respondents is a violation to her right to dignity of human person and personal liberty guaranteed under Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (hereinafter referred to as CFRN).

The gravamen of the Applicant's case can be found in paragraphs 4, 8, 12, 13 and 14 of her affidavit in support of her application to the effect that Applicant's rights to dignity of human person, right of free movement and personal liberty have been infringed upon by the Respondents pursuant to the threat to arrest and detain because of the fact that the Applicant is the leader of 23 members who the 5th Respondent advanced credit facilities to and 5th Respondent want to recover the money through the applicant. In doing this 5th Respondent with the assistance of the 4th Respondent who is a police officer and under the employment of the 1st, 2nd and 3rd Respondent carted away goods worth N236, 000. 00 from the Applicant's provision store in her shop at Sauka, Abuja and after this, 4th Respondent still continued threatening and intimidating the Applicant to arrest and detain her if the balance of debt is not paid to the 5th Respondent. These acts of the Respondents made the Applicant to suffer great loss of reputation and business fortunes as a result of the psychological torture by the Respondents and cannot move freely in Abuja.

The main crux of this case is, was her arrest and detention unlawful?

From the Counter Affidavit of the police, they were acting on a petition that was lodged before them for alleged criminal breach of trust and fraudulent conversion of the sum of N7,000,000 Exhibit IGP 1 and in the course of investigation they were led to the Applicant because the petitioner Jennifer Abonma in her statement at the police station Exhibit IGP2 criminally indicted the applicant and others. The applicant was invited to the police

station and she failed to honour the invitation paragraph 8d of the counter affidavit. That Jennifer Agbonma had to lead them to the shop of the Applicant where she was asked to follow the police to the station paragraph 8 e of the counter affidavit. She was also told to lock up her shop and follow them and none of her goods were touched or tampered with paragraph 15.

The appellate court held in ***STANLEY K. C. OKONKWO v. ANTHONY EZEONU & ORS (2017) LPELR-42785(CA) (P. 10, paras. D-F);***

“The law is settled that the onus is on the person alleging a breach of his fundamental right to prove same by cogent and credible evidence which in my view the appellant did.”

The law is trite that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in accordance with the law See the case of ***CHIEF RUFUS GBEMISAYO OLUWATIMITEHIN v. MRS. ADEBAYO KEHINDE & ANOR (2019) LPELR-47888(CA) (Pp. 13-14, paras. F-A)***

Having painstakingly gone through the affidavit in support of her application I cannot see where the applicant was arrested and detained illegally.

In relief a, the applicant seeks to enforce her fundamental rights under section 35 of the CFRN.

Section 35[1] of the CFRN provides:

“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law”.

Section 35 (5) provides that **the expression "a reasonable time" means;**

- (a) In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day, and
- (b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

The applicant has not shown to this court that her arrest and detention was in breach of section 35 of the CFRN and this court cannot speculate as to the timelines. The Applicant has a duty to show this court that she was arrested and detained beyond 24-48 hours as required by the law which she has not done having gone through the affidavit in support of her application I have not seen any paragraph stating the period of time she was detained relying on ***STANLEY K. C. OKONKWO v. ANTHONY EZEONU & ORS (2017) supra she has not furnished this court with cogent and credible evidence.***

On Applicants case that the threats to detain, intimidate her amounts to torture violating section 34 of the CFRN;

Section 34[1] provides that: 'Every Individual is entitled to respect for the dignity of his person, accordingly:

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

The law is clear on what constitutes torture, inhuman and degrading treatment in **REV. POLYCARP MATHEW ODIONG v. ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 6, CALABAR (2013) LPELR-20698(CA) (Pp. 21-25, paras. A-F).**

Torture is the "infliction of intense pain to the body or mind to punish, to extract a confession or information or to obtain a sadistic pleasure". See Black's Law Dictionary, 9th edition, page 162.

Torture is forbidden under Section 34(1)(a) of the Constitution of the Federal of Nigeria, 1999 as altered. It is a violation of one of the fundamental rights of every individual in the universe or in Nigeria

The Applicant has alleged torture, inhuman and degrading treatment in the paragraphs of her affidavit and statement in support of their application. The Applicant has failed to prove her assertions with credible evidence. See **Nsefik v. Muna [2007] LPELR-3934 [CA]**.

I find that her Relief A will fail as it is not in violation of either sections 34 OR 35 of the CFRN.

On Relief B, Applicant is seeking an Order of perpetual injunction restraining the Respondents whether by themselves, servants, agents, employees, privies or whosoever may be claiming through them from further embarrassing, threatening, arresting and or detaining, harassing or intimidating the Applicant as long as Applicant live lawful life devoid of any direct criminal allegation against her.

This prayer is seeking to prevent the police from carrying out their statutory functions.

Section 4 of the Police Act provides that;

"The Police shall be employed for the prevention and detection of crimes, the apprehension of offenders, the preservation of law and order, the protection of life and property and enforcement of laws and regulations which

they are directly charged and shall perform such duties within or without Nigeria as may be required by them or and under the authority of this or any act."

The Police have a duty to investigate criminal allegations and the court cannot stop the police from performing its statutory functions. If there is evidence of an infringement of any of the fundamental rights of the applicants, the situation can be remedied but not by stopping police investigation. ***See INSPECTOR GENERAL OF POLICE & ANOR v. DR. PATRICK IFEANYI UBAH & ORS (2014) LPELR-23968(CA) Per CHINWE EUGENIA IYIZOBA, JCA (Pp. 33-34, para. B-B)***

This prayer runs afoul of the performance of the duties of the police in the case of ***IGP V UBAH (supra) Per CHINWE EUGENIA IYIZOBA, JCA (Pp. 33-34, para. B-B) the appellate court held;***

"There is no doubt that the above powers conferred on the Police are subject to statutory provisions on rights of the citizens and the provisions of the Constitution on fundamental rights. Where there has been no breach of any of those rights, the Court cannot grant an injunction curtailing the rights of the Police to carry out their statutory functions."

IGP V UBAH Per CHINWE EUGENIA IYIZOBA ,JCA (Pp. 37-38, paras. B-A) provided the duty of the police;

"Their job is to investigate and if there is sufficient evidence, to prosecute the suspect. Common sense dictates that it is out of place for a suspect to go to Court and seek to stop the investigation of a criminal offence on the ground that the complainants are biased and that they influenced the police

to proceed on the basis that the suspect is guilty. No matter what the police do, the final decision as to the guilt of the accused is that of the Judge before whom the suspect is brought."

This is a ploy to prevent the police from carrying out its statutory function of investigating an alleged offence as provided by its powers of investigation under section 4 of the Police Act and I so hold.

On Relief C An Order that the Respondents pay to the Applicant the sum of N10,000,000 (Ten Million Naira) only as general damages for breach of the Applicant's Fundamental Rights as well as loss of goodwill and business deal during the Applicants ordeals based on the threat and intimidation from the 4th Respondents and her accomplice, officers and men of the 1st, 2nd and 3rd Respondents at the instance of the 5th Respondent which made the Applicant to make herself unavailable in her shop for some serious transaction and this made her to lose business opportunity that can fetch good money.

On Relief C the Applicant having failed to prove infringement of her fundamental rights, Respondents cannot be held responsible for the purported loss of goodwill and business deal during her ordeal. She failed to prove that her fundamental rights were infringed upon as he who asserts must prove. See **Nsefik v Muna (2007) supra**.

On Relief D An ORDER of this Honourable Court mandating the 5th Respondent to pay the sum of N236, 000. 00 (Two Hundred and Thirty-Six Thousand Naira) being the value and cost of the goods illegally carted away by the 5th Respondent from her shop on the 19th of October, 2021 with the instruction and backing of 4th Respondent in order to recover the sum of N117, 000. 00 (One Hundred and Seventeen Thousand Naira) which is the

sum the Applicant is owing the 5th Respondent through her purported corporative society.

The Applicant has the onus to prove that her goods were carted away. It is trite law that he who asserts must prove his assertion. See **Nsefik v. Muna [2007] supra**. The applicant did not give particulars or evidence of these goods and the receipts evidencing her purchase of these goods.

The Applicant has not discharged the legal burden on her to establish her case and I so hold.

An Order restraining the Respondents from arresting, harassing, threatening and embarrassing the Applicant for a matter that is purely civil. The question is whether this is a civil matter.

The case of the Applicant is that the transaction is purely civil in nature. However, the case of the 5th Respondent is that the police had a duty to investigate upon the allegation of an alleged criminal breach of trust.

Now, it is worthy to note that an allegation of crime may arise from a civil transaction like in the instant case where the 5th and 6th respondents made allegations of crime against the applicant and Mary Sunday arising from the transaction for the 1st respondent is entitled to investigate the allegation in order to determine whether, *prima facie*, a criminal offence has been made out against the applicant and the Mary Sunday. From the uncontroverted evidence of 1st to 4th Respondents and the 5th Respondents, a case of criminal breach of trust was established and a charge filed at the magistrate court. The Applicant is not denying this fact even though the 1st to 4th Respondents never attached a certified true copy of the Charge before the magistrate court.

The case of the 5th Respondent is that she had a duty to report the alleged commission of a crime to the police for investigation. I agree with counsel to the 5th Respondent. From EXHIBIT AIG1 attached to the 1st to 4th Respondents affidavit which is the petition to the police, which she signed for the 6th Respondent.

The law is trite that an individual can report a case of alleged crime for investigation as long as it is done in good faith. The Nigerian Cooperative societies Act 1993 relied upon by V. C. Nwadike, Sections 35 of the Act provide thus:

A person who:

- (a) Obtains possession by false representation or imposition, of any property of a registered society; or
- (b) Having any property of a registered society in his possession, withholds or misapplies the property; or
- (c) Willfully applies any part of the property mentioned in paragraph (a) or (b) of this section, to purposes other than those expressed or directed in the rules of the society and authorized by this Act, is, on the complaint of the society or of any member authorized in that behalf by the society or a committee thereof, or the Director, guilty of an offence and liable, on summary conviction, to a fine of not less than N1,000 or to imprisonment for a term of six months or to both such fine and imprisonment.

In ***SEED VEST MICROFINANCE BANK PLC & ANOR V. OGUNSINA & ORS (2016) LPELR-41346(CA) (PP. 21-22 PARAS. C)*** the court held;

"Now, a plethora of cases have held that any complaint made or information given to those interested in investigating a matter (the police) will in the interest of the society be

privileged, once there is a reasonable belief that a crime has been committed. In the case of Oceanic Securities International Limited vs. Alh. Bashir Olaide Balogun & Ors, the Court held thus: "Generally, it is the duty of citizens of the country to report cases of commission of crime to the police for their investigation and what happen after such report is entirely the responsibility of the police. The citizens cannot be held culpable for doing their duty, unless it is shown that it is done mala fide." It therefore flows from the foregoing that in answering the question on Issue Two (2), that the reporting of a commission of a crime to the police does not make the reporter culpable so long as it was not done in bad faith."

It is clear that there is no malice or bad faith in the report made to the police by the 5th and 6th Respondents and the resultant effect of the report be it an investigation, arrest and eventual prosecution before a court of competent jurisdiction is the responsibility of the police.

The Applicant has failed to show a reasonable cause of action against the 5th and 6th Respondents as the entire set of circumstances do not give rise to an enforceable claim. ***SOCIETY BIC S.A. & ORS v. CHARZIN INDUSTRIES LIMITED (2014) LPELR-22256(SC) PAGE 35.***

The affidavit in support of the Originating Summons does not disclose the existence of any legal controversy between the 5th and 6th Respondents and the Applicants and the consequence of same is that the names of the Respondents ought to be struck out for lack of locus standi. In ***GOV OF OYO STATE & ORS V. AJUWON & ORS(2020) LPELR-50471(CA)***

"It is settled law that, though jurisdiction and reasonable cause of action are distinct but they are interwoven, for

without a reasonable cause of action, the Court cannot exercise jurisdiction over the matter. See Amaechi v. Governor of Rivers State &Ors (2017) LPELR - 43065 (CA); Alhaji Sayinna Adam v. Hussaini Zannah Shaibu &Ors (2016) LPELR - 40179 (CA). The suit not having disclosed a reasonable cause of action is incompetent and liable to be struck out."

The applicant has the onus to prove that she was harassed, intimidated and threatened by the officers of the 1st to 4th Respondents. It is trite law that he who asserts must prove his assertion. See **Nsefik v. Muna [2007] supra**. The applicant did not give particulars or evidence of the alleged harassment, intimidation and threat of arrest and detention or phone calls.

The Applicant has not discharged the legal burden on her to establish her case and I so hold.

From all that I have said, I resolve the sole issue in the negative and in favour of the Respondents as against the Applicant. The Applicant's suit lacks merit. It is dismissed. I award cost of N100,000.00 to the 1st to 4th Respondents and N100,000.00 to the 5th Respondent and N100,000 to the 6th Respondent payable by the applicant.

**HON. JUSTICE NJIDEKA K. NWOSU-IHEME
[JUDGE]**

Appearance of Counsel:

1. Applicant absent and unrepresented
2. Obinna Ugwu and C.P Madu for the 5th Respondents.

