

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON TUESDAY, THE 31<sup>ST</sup> DAY OF JANUARY 2023**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**SUIT NO: FCT/HC/CV/2848/2021**

**BETWEEN:**

**MR. JOHN UWAGBA**

**APPLICANT**

**AND**

**1. THE NIGERIAN POLICE FORCE**

**2. INSPECTOR GENERAL OF POLICE**

**3. AIR VICE MARSHALL ANTHONY ADOKWU (RTD)**

**4. ASP COLLINS IGWUT**

**5. INSP. PRINCE YOMI (AYOBAMI)**

**RESPONDENTS**

**JUDGMENT**

This Judgement is based on the application for the enforcement of the fundamental rights of the Applicant brought pursuant to Order 11 Rules 1, 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, Section 46 (1) (2) and (3) of the Constitution of the Federal Republic of Nigeria 1999 as amended, Articles 6 and 7 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria 2004 and under the inherent jurisdiction of this Honorable Court as preserved under section 6(6) of the 1999 Constitution of Nigeria as amended.

By way of an Amended Originating Motion on Notice with Suit Number CV/2848/2021, dated the 07<sup>th</sup> of February 2022 and filed on the 18<sup>th</sup> of

February, 2022, the Applicant brought this application seeking the following reliefs:-

1. A Declaration that the continuous threat of arrest, detention, incarceration and torture of the Applicant, by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents by the instruction of the 3<sup>rd</sup> Respondent whose (sic) set the law in motion on the 19<sup>th</sup> day of October, 2021 till date from the Force Headquarters, Louis Edet House, Asokoro, Federal Capital Territory, Abuja is barbaric, humiliating, unconscionable, despicable, condemnable, unlawful, illegal and a violation of the Applicant's Fundamental Right to liberty, freedom of movement and personal dignity as guaranteed by the provisions of the African Charter on Human and People's Rights (Ratification and Enforcement) Act CAP 10 of the Laws of the Federation of Nigeria 1990, sections 34, 35, and 41 of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
2. A Declaration that the continuous threat of arrest, detention, incarceration and torture of the Applicant by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents from the 19<sup>th</sup> day of October, 2021 till date from Force Headquarters, Louis Edet House, Asokoro, Federal Capital Territory, Abuja, and further continuous threat of arrest, detention and incarceration and torture by the order of the 2<sup>nd</sup> Respondent, motivated by the 3<sup>rd</sup> Respondent is barbaric, unconscionable, despicable, condemnable, unlawful, illegal and a violation of the Applicant's Fundamental Right of right to liberty, freedom of movement, and personal dignity as guaranteed by the provisions of the African Charter on Human and People's Rights (Ratification and Enforcement) Act CAP 10 Laws of the Federation of Nigeria 1990, and sections 34, 3, and 1 of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

3. A Declaration that the acts of the Respondents, comprising the threat, continuous threat of arrest, threat of torture and depriving the Applicant, his business clients from the 19<sup>th</sup> day of October, 2021 and further threat of detention till date and further threat of arrest and detention at Force Headquarters, Louis Edet House, Asokoro, Federal Capital Territory, Abuja by the order of the 2<sup>nd</sup> Respondent and the act of the Respondents also comprising of the threat of arrest, detention, incarceration and torture in respect of the death of the Applicant's wife caused by Covid-19 which was certified by a Medical Director which the Applicant has no knowledge or involved in, is unconscionable, arbitrary, despicable, reprehensive, unlawful, and a violation and breach of the Applicant's constitutional rights to life, right to freedom of movement and personal dignity (sic) as protected and guaranteed by the provisions of the African Charter on Human and People's Rights (Ratification and Enforcement) Act CAP 10 of the Laws of the Federation of Nigeria 1990 and sections 34, 35 and 41 of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 as amended.
4. An Order of perpetual injunction restraining the 1<sup>st</sup> to 5<sup>th</sup> Respondents, either by themselves or acting through agents, servants, privies, officers or any person or persons as so ever called, from arresting or further threatening to arrest, detain or further detaining, incarcerating or further incarcerating, assaulting or further assaulting, torturing or furthering torturing, or otherwise inviting or further inviting the Applicant to or in respect of the death of the Applicant's wife caused by Covid-19, which the Applicant has no knowledge about or does not bordered (sic) on her acts.
5. An Order directing and or mandating the 1<sup>st</sup> to 5<sup>th</sup> Respondents jointly, or severally, to pay forthwith to the Applicant the sum of ₦100,000,000.00 (One Hundred Million Naira) only as damages for the breach of the Applicant's Fundamental Human Rights to dignity of person, personal liberty and freedom of movement protected and guaranteed by the provisions of the

African Charter on Human and People's Rights (Ratification and Enforcement) Act CAP. 10 of the Laws of the Federation of Nigeria 1990, and sections 34, 35 and 41 of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

6. Cost of this suit assessed at ₦2,000,000.00 (Two Million Naira) only.
7. And for such further order or Orders as this Honourable Court may deem fit to may in this circumstances.

The application was founded on two grounds. The gist of the grounds is that the Respondents, jointly and severally, breached the Applicant's fundamental rights to liberty, freedom of movement, and personal dignity as guaranteed by the provisions of the African Charter on Human Rights and Peoples Right (Ratification and Enforcement) Act CAP 10 of the Laws of the Federation of Nigeria 1990 and sections 34, 35 and 41 of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and have continued to threaten a breach of the said rights.

Accompanying the Originating Motion on Notice are the statement made pursuant to Order 11 Rules 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, a 54-paragraph affidavit, which was deposed to by the Applicant, Mr John Uwagba, which had five (5) exhibits attached and marked as **Exhibits JU1, JU2, JU3, JU4** and **JU5** respectively, and a written address in support of the application.

Briefly the facts of the case as deposed to by the Applicant was that, the late wife of the Applicant, who was the sister of the 3<sup>rd</sup> Respondent, fell sick on the 20<sup>th</sup> of July 2021 and was finding it hard to breathe. She was admitted in a hospital named Life Theological Seminary Jehovah Shammah Medical Center, Ikorodu Lagos State. Another brother of the late wife named Architect Eric Adokwu based in Abakaliki and a survivor of Covid-19 called the Applicant to

inform him that his late wife was sick upon which the Applicant then informed the brother that he knew and was already on his way to Ikorodu, Lagos State.

The Applicant averred that when he got to the hospital, he met his late wife in a private ward eating and in good spirits. The Applicant averred that he called his late wife's younger brother and relayed the situation to him; to which the younger brother informed the Applicant that the late wife had symptoms of Covid-19. The Applicant then told the younger brother that he was going to move his late wife to Ibadan, where the Applicant lived, because the Applicant was not conversant with the Lagos State terrain, a suggestion the younger brother agreed to and said he would inform the other family members.

The Applicant was then informed that before he moved his late wife, he needed to call the 3<sup>rd</sup> Respondent. The 3<sup>rd</sup> Respondent, though initially hesitant, eventually agreed with the Applicant, especially after he also suspected that the Applicant's late wife could be suffering from Covid-19. Consequently, upon the consent of the 3<sup>rd</sup> Respondent and other family members of the Applicant's late wife, the Applicant called the Medical Director of Jubilee Hospital, Ibadan, one Doctor Adeniyi, to intimate him of the situation whereupon he agreed that the Applicant should move his late wife to Ibadan, Oyo State.

It was further averred by the Applicant that on the 21<sup>st</sup> of July 2021, the Applicant brought his late wife to Jubilee Hospital, Ibadan, Oyo State where she was admitted to commence her treatment immediately. It was the case of the Applicant that his wife was taken to the isolation center and placed on oxygen gas from the 23<sup>rd</sup> July to the 2<sup>nd</sup> day of August 2021. At the isolation center the Applicant had to buy prescribed drugs. He also provided regular updates to the 3<sup>rd</sup> Respondent and other family members on the progress the Applicant's late wife was making. The Applicant further deposed that, on the

2<sup>nd</sup> day of August 2021, his late wife's health improved significantly. The Applicant called the 3<sup>rd</sup> Respondent and Architect Eric to inform them of this improvement on his late wife's health. The Applicant then averred that, later that morning, the Chief Medical Director called him and broke the news of the death of his wife and told him that since he was the husband, he would give him the honor of choosing the burial site of his late wife because of his devotion to her all through her struggles with the deadly virus. He instructed him to provide four things for the burial, which were, the burial site, the coffin, twelve yards of white cloth and an ambulance to convey the remains to the burial site.

The Applicant swore that because he was also in the isolation center on treatment as he had contracted Covid-19 because of the contact he had with his late wife, he contacted his sister called Felicia (Kehinde) to help him with the arrangement of the items required for the burial. It was further averred by the Applicant that after the death of his wife, he received a phone call from one Baba Onoja who informed the Applicant that he was in his daughter's school to pick her up on the 3<sup>rd</sup> Respondent's instruction without prior discussion with the Applicant.

The Applicant went on to state that after discussion with the Chief Medical Director, he called the 3<sup>rd</sup> Respondent to inform him of what the Chief Medical Director said about the requirements for the burial. The Applicant averred that the Chief Medical Director was insistent on the immediate burial of his late wife because that was standard Covid-19 protocol. He also averred that the 3<sup>rd</sup> Respondent called the next day, demanding that the burial be postponed by another week to enable the wife's family to be prepared. When he informed the 3<sup>rd</sup> Respondent that he, the Applicant, had no control over the burial date, the 3<sup>rd</sup> Respondent demanded for the mobile number of the Chief Medical Director. Though he informed him that he did not have his phone number, he

nonetheless arranged for the Chief Medical Director and the 3<sup>rd</sup> Respondent to speak to each other.

It was the case of the Applicant that during the conversation the Chief Medical Director informed the 3<sup>rd</sup> Respondent that the burial would take place on Sunday the 8<sup>th</sup> day of August 2021. This information infuriated the 3<sup>rd</sup> Respondent who pulled his family members out of the burial arrangements. The Applicant further stated that his late wife was finally buried on the 9<sup>th</sup> of August 2021 beside the grave of the Applicant's late parents at the Catholic Cemetery, Oke, Ibadan, Oyo State.

The Applicant further deposed that he shielded his daughter from knowing about her mother's sickness so as not to disrupt her studies as her second semester examination was coming up. He also stated that he ordered the said Baba Onoja to return his daughter to the school so she could prepare for her examinations. He stated that he on the 14<sup>th</sup> of August 2021, he visited his daughter in school and broke the sad news to her. Curiously, when he visited again on the 21<sup>st</sup> of August, 2021, she refused to come out after the Hostel Mistress had sent for her. He could not communicate with her because students were not allowed to use their phones. Worried, he called albeit unsuccessfully the Dean of Student Affairs of the University. When, however, the Applicant's brother called the Dean, he answered but said he was attending an international conference.

The Applicant further stated that 2<sup>nd</sup> of September 2021, he decided to visit the university to sort out things and upon getting to the campus, he decided to see his daughter's lecturer, one Professor Owa through whom he broke the news of his late wife's death to the institution, thereby impelling Dean of Student Affairs to invite the Applicant to his office. The Dean advised the Applicant to await his daughter whose examination would start at 11am and end by 2pm.

The Applicant waited in the University's guest house as advised by the Dean, only to receive another call from the Dean inviting him to his office where the Dean informed the Applicant that two maternal uncles of the Applicant's daughter, Baba Onoja and one Agbo Onoja, were prepared to cause trouble if the Applicant was allowed to see his daughter. The dean, therefore, advised the two parties to see the school chaplain.

The school chaplain informed the Applicant and the maternal uncles that the school was still trying to console the Applicant's daughter on the loss of her mother and that what the institution owed the Applicant's daughter was her academics. The Chaplain advised the parties that the family issues should be resolved at home outside the University premises. According to the Applicant, his daughter refused to answer his calls after he returned home, and, rather, decided to stay back in Ilorin, Kwara State with her maternal family for the long vacation. He stated too that when the Applicant's family called his daughter to commiserate with her over the death of her mother, the Applicant's daughter told the Applicant's family that she doesn't know why her father decided to shroud her mother's sickness and death in so much secrecy, so much that none of the maternal uncles and aunties knew about the sickness and none were allowed to visit while the Applicant's late wife was sick, adding that she was not also allowed to attend her mother's burial or knew where she was buried.

After all that had transpired, on the 19<sup>th</sup> of October 2021, the Applicant sighted some policemen approaching the gate of the estate of his residence and one of his neighbors frantically waved down at the Applicant and warned him that he should not go into his house as the policemen were looking for him to arrest him. The Applicant swore that the 3<sup>rd</sup> Respondent had been accusing the Applicant of being responsible for the death of the Applicant's late wife, that there was secrecy surrounding the death of the wife, that the 3<sup>rd</sup> Respondent,



according to the Applicant, had been feeding the Applicant's daughter with some of the falsehood in spite of the fact that the 3<sup>rd</sup> Respondent and his family members were carried along from the date the Applicant's wife fell sick till her death.

Finally, the Applicant averred that the 3<sup>rd</sup> Respondent had been threatening to arrest him with the policemen from the Force Headquarters, Abuja. The Applicant further averred that he eavesdropped on the conversation of the 4<sup>th</sup> and 5<sup>th</sup> Respondents who had gone to the house of the Chairman of the Estate Residents Association. According to him, the 4<sup>th</sup> and 5<sup>th</sup> Respondents announced themselves as members of the 2<sup>nd</sup> Respondent attached to the Homicide Department, Force Headquarters, Abuja and that they were acting on the instruction of the 3<sup>rd</sup> Respondent who met the 2<sup>nd</sup> Respondent to prefer a 20-count charge against the Applicant with the ultimate objective of sending the Applicant to life imprisonment. He added that the 4<sup>th</sup> and 5<sup>th</sup> Respondents have been calling and threatening to arrest and kill the Applicant. He stated that the 4<sup>th</sup> and 5<sup>th</sup> Respondents have been unlawfully and continuously threatening to arrest, detain, harass, and torture the Applicant by the order and instruction of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. He swore that this has caused the Applicant to suffer a lot of hardship, torture, inhuman, demeaning and dehumanizing treatment which the Applicant stated has robbed him of engaging in his daily business.

In his written address in support of the application, learned counsel for the applicant formulated these two issues for determination: “(1) *Whether by the circumstance of this case, the applicant has not shown serious breach of his right to dignity of human person, liberty, right to private family life, freedom of movement and infringement fundamental human rights is not being breached?* (2) *Whether considering the circumstance of the application, the Applicant is not entitled to the reliefs sought accordingly.*”

In his submissions on issue one, learned Counsel for the Applicant cited Article 4 of the Charter of Human and People's Rights and then went ahead to argue that the Applicant, through his affidavit in support of the Originating Motion gave a vivid narration of the degrading and inhuman treatment that had been meted out to him by the Respondents even where there was a medical issue that the Applicant's late wife died of Covid-19 and the Applicant was still mourning his wife's death. Learned Counsel referred the court to all the paragraphs of the affidavit. He further argued that the Applicant has subject to untold hardship, insecurity, loss of self-esteem and demoralizing and degrading treatment under the guise of investigating report made by the 3<sup>rd</sup> Respondent.

He further argued that the fundamental right to dignity of person had been considerably breached and was continually breached by the activities of the Respondents. Counsel relied on the case of ***Ezechukwu V Maduka (1997) 8 NWLR (Pt. 518) 635***. He also referred to sections 31, 35(1), and (6), 37, and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Learned Counsel for the Applicant then submitted that this court had the duty to redress this breach where it had been established. He added that the Applicant need not give evidence of damages to establish his cause of action to claim specific sum of damages though same has been proved to a reasonable extent. Counsel relied on the case of ***Ekaete Edet Etim v Ogbogifiok (Dr) Asikpo & 3 Ors (2008) CHR 78 at 100 paras C-D***.

Finally, Counsel submitted that from the said exhibits attached to the affidavit, it could be established that the Respondents have infringed on the rights of the applicant and are both breaching the right of the Applicant when they alleged that the Applicant was responsible for the death of his late wife in the face of medical evidence which was not traceable to the Applicant. Counsel further submitted that the Respondents' continuous threat of arrest, threat of

detention, incarceration, threat to torture and threat to killing of the Applicant was a violation of the Applicant's fundamental rights as the exhibit JU1 - JU5 attached to the Applicant's affidavit amount to violation of the Applicant's fundamental rights. Learned Counsel concluded his argument by relying on the case of ***Collins v. Wicock (1984) 3 All E.R 374 at 377.***

In their reaction to the Applicant's action all the Respondents filed Counter-Affidavits in opposition. It is instructive to note that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their Counter-Affidavit before the Court ordered the joinder of the 4<sup>th</sup> and 5<sup>th</sup> Respondents. Their Counsel did not file an amended Counter-Affidavit to reflect the change in the number of the parties. This Court did not know, therefore, whether the legal representation is for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents only or whether the legal representation is for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as well as for the 4<sup>th</sup> and 5<sup>th</sup> Respondents. Since learned Counsel did not inform the Court, when the parties adopted their processes, that he was appearing for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents, this Court will take it that his appearance is for only the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Accordingly, this Court will take it that the 4<sup>th</sup> and 5<sup>th</sup> Respondents are not represented and are not challenging the application of the Applicant.

In the 10-paragraph Counter-Affidavit of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents deposed to by one Inspector Ati Jonah, who was attached to the Legal Section, Force Criminal Investigation Department (FCID) of the Nigerian Police Force, Abuja, the deponent denied all the averments in the Applicant's affidavit, especially, the averments in paragraphs 46, 51, 53, 54 and 55, and put the Applicant to the strictest proof thereof to mention the police officers that arrested him.

In his written address, learned Counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents formulated one sole issue for determination which is that: *"Whether the Applicant has proved his case against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents?"*

In his argument on this sole issue, Counsel argued that the Applicant could not mention a particular police officer that threatened to arrest or detain him as alleged, neither did the Applicant mention a particular cell number through which he was invited or detained. It was the contention of the Counsel that the allegation was cross-checked on the register of persons and the name of the Applicant was not seen. Counsel relied on the case of ***Fawehinmin v. IGP (2009) 7 NWLR (Pt. 665) 363***. It was further argued by the Counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that the statutory powers of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is trite as police has the power to investigate and apprehend offenders. He added that the Court should not allow the Applicant to take the legal system for granted by bringing up this frivolous application laced with bad faith.

It was then submitted by Counsel that this application was a calculated attempt to avert criminal responsibility as no evidence showed that the rights of the Applicant were infringed and the Applicant was not entitled to the reliefs sought before this Honorable Court. Learned Counsel relied on these cases in support of his argument: ***Okanu v. COP (2004) CHR 407***, ***Ona v. Okenwa (2010) NWLR (Pt. 1194) pg 512***, ***Shittu v. Olaegbe (2010) ALL F.W.L.R (Pt. 549) 1000 at paras F-G***, and ***Ekeagwu v. Nigerian Army (2010) 6 SCNJ 22 at 24 to 25***.

The 3<sup>rd</sup> Respondent, on the other hand, filed a 22-paragraph Counter-Affidavit and a written address in opposition to the Applicant's application with no exhibits attached. The counter affidavit was deposed to by the 3<sup>rd</sup> Respondent himself, Air Vice Marshall Anthony Adokwu. The 3<sup>rd</sup> Respondent averred that the facts deposed to by the Applicant in his application did not represent the true picture of what transpired. He insisted that the depositions further fueled the suspicion that led the 3<sup>rd</sup> Respondent's family to demand for an investigation of the whole incident.

Responding to the depositions in paragraphs 6 – 7 of the Applicant’s affidavit, the 3<sup>rd</sup> Respondent averred that his younger sister named Enne Adam Adokwu, who was the late wife of the Applicant, indeed got married to the Applicant, but the marriage was not as blissful as the Applicant had stated. Rather the Applicant abandoned and deserted the late wife for at least five (5) years before her demise. He added that the decision to live apart was not a mutual decision in the normal course of the marriage and that the 3<sup>rd</sup> Respondent’s family was aware of the underlying problem that led to the separation.

The whole gist of the 3<sup>rd</sup> Respondent’s affidavit was a denial of the paragraphs of the Applicant’s affidavit; that the Applicant refused to disclose any information on his late wife’s health status to the family of the 3<sup>rd</sup> Respondent who was the late wife’s brother; that the Applicant did not allow the 3<sup>rd</sup> Respondent and any of their family members to communicate with the Applicant’s late wife; that Applicant was either incommunicado or apprehensive when being asked about the situation of his late wife; and that even after the death of the Applicant’s late wife, the Applicant refused to share details of the burial with the 3<sup>rd</sup> Respondent’s family. The Applicant’s secrecy gave rise to suspicion which necessitated the call by her family for a detailed investigation. According to the 3<sup>rd</sup> Respondent, the family had to engage the services of the 1<sup>st</sup> Respondent to investigate what truly happened to the Applicant’s late wife. The 3<sup>rd</sup> Respondent believed that the Applicant only brought this application before this Court to avoid answering questions which the 3<sup>rd</sup> Respondent and his family had been asking.

In the written address of the Learned Counsel to the 3<sup>rd</sup> Respondent, he formulated two issues for determination by this Honorable Court. These issues are: *“(1) Whether the present application to enforce fundamental right of the Applicant indeed establishes any action(s) that violate(s) the Applicant’s*

*rights? (2) Whether the Applicant can use an application to enforce fundamental rights to shield himself from criminal investigation?"*

In his arguments on issue one, learned Counsel submitted that the law was clear that a person whose fundamental rights was breached, being breached or about to be breached may apply to a High Court in that State for redress. He added that this presupposed that the Applicant must put cogent facts of the breach or anticipated breach alleged before the Court. Counsel relied on the cases of ***FRN v. Ifegwu (2003) 5 SC 525 at 303*** and ***Keyamo v. House of Assembly Lagos State (2003) FWLR (Pt. 146)***. Counsel submitted that the reliefs sought by the Applicant and the depositions in the supporting affidavit of the Applicant were quite verbose. He added that apart from the reliefs sought being rather unwieldy and not lending themselves to easy apprehension, they seemed to be designed deliberately to distract the Court from the lack of any substance in them.

Learned Counsel for the 3<sup>rd</sup> Respondent further submitted that the reliefs sought were speculative and repeated *ad nauseum*. Counsel then argued that the Applicant had neither established any infringing action on the part of the Respondents nor adduce any cogent evidence to persuade the Court about the imminent violation of his rights. He insisted that the only deposition in the affidavit that breathed life into the allegation of impending breach of the Applicant's fundamental rights was hearsay and not permitted under section 115 of the Evidence Act, 2011. He argued further that other depositions in the Applicant's affidavit were nebulous as no particulars were furnished to buttress the allegations that the 3<sup>rd</sup> Respondent threatened to arrest the Applicant. He added that there was no solid basis in the Applicant's deposition to believe that a genuine threat existed that the Applicant's rights were about to be breached. Finally learned Counsel to the 3<sup>rd</sup> Respondent submitted that the Applicant had not supplied necessary particulars and details to buttress his fears and

conclusion especially when the entire situation was viewed against the background of the Applicant's suspicious actions in the matter.

On Issue Two, learned Counsel for the 3<sup>rd</sup> Respondent submitted that the Applicant in bringing this application was seeking to shield himself from investigation and possible prosecution. He contended that the depositions in paragraphs 19 and 20 of the affidavit of the Applicant did not disclose any consistent story. He added that the Applicant was even answerable to the 3<sup>rd</sup> Respondent over the circumstances surrounding the death of his wife. He submitted that the fact that the Applicant never processed the documents for the demise of his late wife was enough ground for suspicion. Counsel concluded his submissions by relying on the case of ***AG Anambra State v Uba (2005) 15 NWLR (Pt. 947) 44.***

In the Applicant's Further and Better Affidavit, the Applicant denied the averments in the 3<sup>rd</sup> Respondent's Counter-Affidavit. He denied he had a stormy marital relationship with his wife, adding that the 3<sup>rd</sup> Respondent was in the habit of interfering in his marriage. He denied that he never carried his wife's family along throughout her ailment and eventual death.

In his Reply on Points of Law, learned Counsel for the Applicant described as misconceived the contention of the 3<sup>rd</sup> Respondent that the Applicant did not supply necessary particulars and details to buttress his fears. He submitted that he had shown that his fears and apprehension were real because the 3<sup>rd</sup> Respondent procured members of the 1<sup>st</sup> Respondent at Abuja to hound the Applicant to Abuja for an alleged offence committed in Oyo State. Counsel concluded by describing as misconceived the contention of the 3<sup>rd</sup> Respondent that the Applicant was using the present application to shield himself from criminal investigation. He concluded that the Applicant's application was

meritorious because he was exercising the right to prevent his rights from being breached.

The Applicant and the 3<sup>rd</sup> Respondent adopted their processes in support of and in opposition to the application on the 3<sup>rd</sup> of November, 2022. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents were not in Court and were not represented by Counsel. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents had however, filed their Counter-Affidavit and Written Address in opposition to the application. Same was deemed adopted pursuant to the provisions of Order 5 of the Fundamental Rights (Enforcement Procedure) Rules, 2009. Their Preliminary Objection dated and filed on the 10<sup>th</sup> of December, 2021 was struck out for want of diligent prosecution upon the application of Counsel for the Applicant to that effect.

In determining this particular dispute, and after giving due consideration to the facts and arguments of the parties herein, this Honorable Court hereby formulates this issue for determination: “***Whether from the facts disclosed in the affidavit in support of the application and the Counter-Affidavits in opposition to the application, the Applicant has not established that he is entitled to the reliefs sought in the application?***”

I will preface my resolution of this issue by noting, as I did indeed do earlier, the 4<sup>th</sup> and 5<sup>th</sup> Respondents did not file any process in opposition to the application of the Applicant for the enforcement of his fundamental rights. There was no legal representation for them throughout the pendency of this suit. Rachael N. Maiguru Esq. who settled the processes of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and appeared for them did not announce his appearance as representing the 4<sup>th</sup> and 5<sup>th</sup> Respondents. The implication therefore is that, in relation to the 4<sup>th</sup> and 5<sup>th</sup> Respondents, the suit of the Applicant is unchallenged. The position of the law is settled beyond any scintilla of



uncertainty that a party who has opportunity to challenge a process but chooses not to challenge same is deemed to have accepted the depositions of facts and the case set up by the other party. For instance, in the case of ***State v. Oray (2020) 7 NWLR (Pt. 1722) 130 S.C. at 151 – 152 paras H – C***, the Supreme Court succinctly held that “***Unchallenged and uncontroverted evidence stands and should be acted on by courts, including the Supreme Court, where it is not inadmissible and patently incredible...***”

It is important the Court highlight the salient facts in this case: First, it is not in dispute that the Applicant and the deceased were legally married as husband and wife. A logical consequence of a marital union is that the parties are responsible to each other. This being stated, the Applicant upon visiting his late wife and seeing how sick she was, took her to the hospital in Ibadan, Oyo State, where she was admitted. See **Exhibit JU1** attached to the affidavit in support of the application. The Applicant’s late wife was then tested for Covid-19 as she was displaying symptoms of the disease. She was isolated after she returned a positive result and placed on a treatment regime, which included the administration of oxygen. See **Exhibit JU2** attached to the affidavit. After days of treatment, the Applicant’s wife succumbed to the disease on the 2<sup>nd</sup> of August, 2021 and was buried according to the Covid-19 Protocols on the 9<sup>th</sup> of August, 2021. See **Exhibit JU5**. Indeed, **Exhibits JU3 and JU4** are evidence that the Applicant did apply for and was granted a space in the St Mary’s Cathedral Catholic Church cemetery to bury his deceased wife after he had paid the required fees.

The Applicant in the affidavit in support of his application has given a graphic depiction of the facts leading up to this application. I have taken my time to highlight the salient elements in the affidavit. I have accorded similar attention to the facts as presented by the Respondents herein. Though the Applicant

may be prolix in his processes, he has, nonetheless, established that he was lawfully wedded to Mrs Enne Uwagba, his deceased wife and a younger sister of the 3<sup>rd</sup> Respondent. Marriage as a union between a man and wife is contracted between the concerned parties to the exclusion of all. See the cases of *Ijioma v. Ijioma (2009) 12 NWLR (Pt. 1156) 593 at 607 at C – D*. In *Amobi v. Nzegwu (2014) 2 NWLR (Pt. 1392) 510 S.C. at 562, paras. A – C*, the Supreme Court defined marriage to mean “***the legal union of a couple as spouses. In other words, it is the voluntary union for life of one man and one woman to the exclusion of all others.***”

The implication of this legal conceptualization of marriage is that the 3<sup>rd</sup> Respondent lacked the right to interfere in the private affairs of the Applicant including his marriage to his deceased wife. Yet, this concept of marriage notwithstanding, there is no gainsaying that Africans, especially, Nigerians, retain some cultural practices which conceptualise marriage as a union, not only between the man and the woman, but also as a liaison between the families of the man and the woman. The bridge between the concept and the praxis of this family relationship was established in this case. See paragraphs 10, 11, 12, 13, 14, and 19 of the Applicant’s affidavit in support of his application. See also paragraphs 4 and 5 of the 3<sup>rd</sup> Respondent’s Counter-Affidavit. These averments contradict the 3<sup>rd</sup> Respondent’s claims that there was no line of communication between the Applicant and the family of his late wife.

What I find, from a careful consideration of the facts of this case is a case of distrust between the families. This is heightened by the 3<sup>rd</sup> Respondent’s lavish use of ‘suspicion’. But, is the suspicion that the Applicant killed his wife founded? The depositions in the affidavit in support of the application and the Counter-Affidavit of the 3<sup>rd</sup> Respondent do not support this possibility. At least, both families are agreed that the Applicant’s wife came down with an ailment

that had traces of Covid-19. **Exhibits JU2 and JU5** corroborate this finding. I find it difficult to agree with the 3<sup>rd</sup> Respondent that contradictions existed between the depositions in the Applicant's affidavit and the exhibits attached to the affidavit to justify the involvement of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents in this crisis.

Since the suspicion is not founded, why, then, did the 3<sup>rd</sup> Respondent involve the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents in a case for which medical attention was the solution? The 3<sup>rd</sup> Respondent confirmed in paragraph 16 of his Counter-Affidavit that he reported the matter to the Police for investigation. This averment negates the averment in paragraph 8 of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Counter-Affidavit that the Police never got involved in the case between the two families. The 4<sup>th</sup> and 5<sup>th</sup> Respondents who were implicated in the Applicant's application as the Police officers who came from the Homicide Department of Force Headquarters, Abuja to investigate the allegation did not file any process in opposition to the Applicant's application.

Though the Applicant did not state that he was arrested and/or detained, he has, however, established that there were, indeed, attempts to arrest him. See paragraphs 44, 45, 46, 50, 51, 52, and 53 of the affidavit in support of the application and paragraphs 16 and 20 of the 3<sup>rd</sup> Respondent's Counter-Affidavit. I do not agree with the 3<sup>rd</sup> Respondent that the Applicant has not disclosed material facts to be entitled to the reliefs he seeks. I must be stated that it is not only when the rights have been breached that a victim can approach the Court for reliefs; a person who fears that the rights protected under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 can approach the Court to preempt the violation of those rights in relation to them. Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 provides that "***Any person who alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in any State***

*in relation to him may apply to a High Court for redress.”* In *Gabriel v. Ukpabio (2022) 11 NWLR (Pt. 1841) 261 S.C. at 285-286, paras. F-A*, the Supreme Court per Ariwoola, JSC (as he then was, later, CJN) held that:-

***“The rights enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria,1999 (as amended) are termed fundamental for the simple reason that they are inalienable natural rights which stand above the ordinary laws of the land and are primary conditions to civilized existence. It is for their natural inalienability that the law prioritises their preservation against violation. It is for this reason that section 46(1) of the Constitution of the Federal Republic of Nigeria,1999 (as amended) grants any person who alleges that his fundamental right provided for in Chapter IV of the Constitution has been, is being or likely to be contravened in any state to apply to any High Court in that State for redress.”***

The Applicant has approached this Court for declarations that the threats by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents acting at the instance of the 3<sup>rd</sup> Respondent to arrest and detain the Applicant constitute a breach of his fundamental rights dignity of the human person, personal liberty and freedom of movement as enshrined in sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999. The Courts have explained in a long line of judicial authorities the ramifications of these rights and what constitute their breach or the circumstances under which they are likely to be breached.

Section 34 of the Constitution of the Federal Republic of Nigeria 1999 provides for the right to dignity of the human person. The section enumerates the circumstances under which the right may be said to have been breached. It provides thus:-

***“Every individual is entitled to respect for the dignity of his person, and accordingly-***

***(a)No person shall be subject to torture or to inhuman or degrading treatment;***

***(b)No person shall be held in slavery or servitude; and***

***(c)No person shall be required to perform forced or compulsory labour.”***

Any action that does not come within any of the abuses contemplated in paragraphs (a), (b) and (c) of subsection (1) of section 34 of the Constitution cannot amount to a violation of the right to dignity of the human person. In ***Ezeigbo v. Asco Inv. Ltd. (2022) 8 NWLR (Pt. 1832) 367 S.C. at 386, paras. E-F; 387, paras. C-E***, Garba, JSC, delivering the verdict of the apex Court, held that

***“By virtue of section 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered), every individual is entitled to respect for the dignity of his person, and accordingly no person shall be subject to torture or to inhuman or degrading treatment. In essence, no other person or persons or authority in Nigeria shall subject a person or persons to any form of torture; physical, psychological, mental, etc., inhuman or other degrading treatment, but shall accord due respect for the dignity of the person or persons.”***

On the rights to personal liberty and freedom of movement, the Supreme Court was quite effulgent when it held in the case of ***Ezeigbo v. Asco Inv. Ltd. (2022) 8 NWLR (Pt. 1832) 367 S.C. at 386-387, paras. F-A; 387, paras. E-H***, per Ogunwumiju, JSC, as follows:-

***“By virtue of section 35(1)(a)(b) and of the Constitution of the Federal Republic of Nigeria,1999 (as altered), 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:***

***(a)in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;***

***(b)by reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law, and;***

***(c)for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.***

***The provisions guarantee the personal liberty for every person living in Nigeria and such liberty shall not be deprived, denied or interfered with except as may be provided for in the section. Thus, even though the right to personal liberty is a fundamental right, it is not an absolute right since the Constitution itself; the giver and guarantor of the right, recognizes and provides for some and specific situations or circumstances which may warrant, allow or permit the limitation, restriction of or derogation from the right, as exceptions to the right. However, for any derogation, interference or limitation of the right to be legally and constitutionally excusable and availing, it must***

***strictly fit into any of the enumerated situations or circumstances set out in the Constitution.”***

Speaking on the right to freedom of movement, the Court held at **pages 387, paras. A-B; 387-388, paras. H-B of the Law Report** that,

***“By virtue of section 41(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered), every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom. The provisions guarantee the freedom of movement throughout Nigeria for every citizen of Nigeria who shall not be expelled from or refused entry into Nigeria, except as may be provided by any law which is reasonably justifiable in a democratic society. In essence, the Constitutional right to freedom of movement within, entrance into or expulsion from Nigeria, is not absolute since situations or circumstances are recognised and provided for in which it could legally and lawfully be curtailed, interfered with or limited so long as it is done in strict compliance with the law. The primary aim of the section is to generally protect persons from abuse of power; official and individual.”***

It is my considered view that the Applicant was clothed with the requisite right to approach this Court in view of the likelihood that his rights as protected in Chapter IV were on the brinks of being infringed by the actions of the Respondents.

There are better ways of resolving crises of trust of this nature. Involving the Police, certainly, is not one of them. I believe the 3<sup>rd</sup> Respondent should have allowed the Applicant to grieve the loss of his wife in peace. Accusing him of

killing his wife is, without any equivocation, an infliction of a mental torture and psychological trauma. According to the Supreme Court in ***Ezeigbo v. Asco Inv. Ltd. (2022), supra***, that is an infringement of his right to dignity of the human person. Similarly, hounding the Applicant and making him a fugitive abridges his right to personal liberty and freedom of movement. There is no doubt that the intervention of the Court is required in this case to preserve the sanctity of the fundamental rights of the Applicant.

As to the entitlement of the Applicant to an Order of perpetual injunction, it must be stated that the Courts have laid down the principles guiding the grant of perpetual injunction. In ***F.C.D.A. v. Unique Future Leaders Int'l Ltd. (2014) 17 NWLR (Pt. 1436) 213***, the Court of Appeal held at ***P. 243, paras. E-G*** that,

***“Perpetual injunction is based on final determination of the rights of parties, and it is intended to prevent permanent infringement of those rights and obviate the necessity of bringing action after action in respect of every such infringement.”***

In ***Adekunjo v. Hussain (2021) 11 NWLR (Pt. 1788) 434***, the Supreme Court explained at ***p. 455, paras. A-D*** that,

***“A perpetual injunction is a post-trial relief meant to protect a right established at the trial. Because of its nature of finality, it can only be granted if the claimant has established his case on the balance of probability on the preponderance of evidence. Its aim is to protect established rights.”***

Having found that the Applicant has established the breach of his fundamental rights to dignity of the human person, personal liberty and freedom of



movement, it is only appropriate that this Court makes an Order of perpetual injunction.

Similarly, the Applicant, having established that his rights as identified above were breached and are, indeed, under the threat of being infringed, this Court has a duty to award damages against the Respondents. In ***Skye Bank v. Njoku & Ors (2016) LPELR-40447 (CA)***, the Court of Appeal held at page 31 para D-E that ***“In fundamental rights action, damages automatically accrue, once the respondent has been adjudged to have violated the applicant’s fundamental rights.”*** Also in the case of ***Jide Arulogun v. Commissioner of Police Lagos State & Ors (2016) LPELR 40190 (CA)***, the Court of Appeal held *inter alia* that ***“For the avoidance of doubt, common law principle on award of damages do not apply to matters brought under the fundamental rights. When a breach is proved, the victim is entitled to compensation even if no specific amount is claimed. The damages automatically accrue.”***

I have no hesitation, therefore, in arriving at the ineluctable conclusion that this application is meritorious and deserving of this Court’s favourable disposition. Accordingly, the reliefs sought herein are granted as follows:-

- 1. THAT the threat by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents acting at the instance of the 3<sup>rd</sup> Respondent to arrest and detain the Applicant while he is mourning the demise of his wife on the allegation that he was responsible for the death of his wife whereas the wife died of Covid-19 thereby inflicting mental and psychological torture and trauma on him is a breach of the Applicant’s right to dignity of the human person.**
- 2. THAT the threat by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents acting at the instance of the 3<sup>rd</sup> Respondent to arrest and detain the Applicant**

and the steps the Respondent have taken in that regard, particularly, when the 4<sup>th</sup> and 5<sup>th</sup> Respondent arrived at his residence on the 19<sup>th</sup> of October, 2021 to effect the arrest of the Applicant thereby forcing the Applicant to go into hiding constitute a breach of the rights of the Applicant to both personal liberty and freedom of movement.

3. THAT an Order of perpetual injunction is hereby made restraining all the Respondents herein either by themselves, or acting through their agents, servants, privies, officers or any person or persons howsoever described from arresting, detaining or threatening to arrest or detain the Applicant and generally infringing or threatening to infringe any of the fundamental rights of the Applicant as guaranteed in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 in relation to the subject of this application.
4. THAT all the Respondents herein jointly and severally are hereby ordered to pay to the Applicant damages in the sum of ₦1,000,000.00 (One Million Naira) only for the breach of the Applicant's rights.
5. THAT all the Respondents herein jointly and severally are hereby ordered to pay to the Applicant the sum of ₦500,000.00 (Five Hundred Thousand Naira) as the cost of this action.

This is the Judgment of this Court delivered today, the \_\_\_\_ day of January, 2023.

**HON. JUSTICE A. H. MUSA**

**JUDGE**

**\_\_\_\_/01/2023**

**APPEARANCES:**

**FOR THE APPLICANT:**

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**FOR THE 1<sup>ST</sup> & 2<sup>ND</sup> RESPONDENTS**

**R. N. Maiguru Esq.**

**FOR THE 3<sup>RD</sup> RESPONDENT**

**Marx Ikongbeh, Esq.**

**Ene Elijah, Esq.**

**Philip Agi, Esq.**

**FOR THE 4<sup>TH</sup> & 5<sup>TH</sup> RESPONDENTS**

**None appeared and no legal representation for any of them**