IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 18TH DAY OF JANUARY, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/1561/2021

BETWEEN:

UDEICHI UCHENNE NWEZE — **APPLICANT**

AND

1. **THE NIGERIAN POLICE FORCE**
2. **THE INSPECTOR-GENERAL OF POLICE**
3. **ABUMERE OMOBOLADE GLORIA**
4. **DSP SUNDAY ADAM**

— **RESPONDENTS**

JUDGMENT

This Judgment is on the application of the Applicant for the enforcement of his fundamental rights brought pursuant to sections 33, 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999, Order II Rules 1 – 5 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, Articles 4, 5, 6 and 12 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria 2004; United Nations Declaration of Human Right, 1948 and under the inherent jurisdiction of this Court.

By way or an Originating Motion on Notice, the Applicant approached this Honourable Court seeking the following reliefs:-

(1) A Declaration of this Honourable Court that the act of the 3rd Respondent of continuous use of the 4th Respondent and other officers of the 1st Respondent to arrest and threaten to detain the Applicant in a matter of land tenancy and recovery of alleged debt is unlawful, reckless and an infringement on the Applicant's fundamental human rights as enshrined in sections 34, 35, 37 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as well as Article 4 of the African Charter of Human and People's Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria 2004 and the United Nations Declaration on Human Rights, 1948.

(2) A Declaration of this Honourable Court that the act of the 3rd Respondent in instigating the unlawful arrest of the Applicant on the 9th day of July, 2021 at about 7am without justifiable cause amounts to a serious breach of the Applicant's fundamental human right as enshrined in section 34, 35, 37 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as well as Article 4 of the African Charter of Human and People's Rights (Ratification and Enforcement) Act CAP A9 Laws of the Federation of Nigeria 2004 and the United Nations Declaration on Human Rights, 1948.

(3) An Order of perpetual injunction restraining the 3rd Respondent from continuing to use the officers of the Nigerian Police or any other law

enforcement agency to arrest, detain or harass the Applicant over issue of land tenancy and recovery of alleged debt.

(4) *An Order mandating the 3rd Respondent to pay to the Applicant general damage of ₦10,000,000.00 (Ten Million Naira) only for harassment, intimidation, embarrassment and unlawful arrest of the Applicant.*

(5) *An Order mandating the 3rd Respondent to pay to the Applicant ₦500,000.00 (Five Hundred Thousand Naira) only for cost of this suit.*

(6) *And such further Orders as this Honourable Court may deem fit to make in the circumstances.*

The Originating Motion on Notice is accompanied with the Statement as stipulated by the Fundamental Rights (Enforcement Procedure) Rules, 2009, a 35-paragraph affidavit deposed to by the Applicant himself, six exhibits attached to the supporting affidavit and marked as **Exhibits A1, A2, A3, A4, B and C**. The Applicant also filed a Written Address in compliance with the Rules.

The Respondents were duly served with the originating processes and hearing notices in respect of this suit. While the 1st, 2nd and 4th Respondents were served at the Legal/Prosecution Unit of the 1st Respondent, the 3rd Respondent was served by substituted means at her last known address, specifically, Flat 3 Block D Zamfara Court, Gaduwa Estate, Abuja. None of the Respondents entered appearance to defend this suit. None of them filed

any process in opposition to this application. On the 26th of October, 2022, this Court heard the learned Counsel for the Applicant adopt his processes.

In the 35-paragraph affidavit in support of the application deposed to by the Applicant himself, the Applicant stated that trouble between him and the 3rd Respondent who was his erstwhile landlady started on or around the 23rd day of June, 2021 when he informed the 3rd Respondent that he would not be renewing his tenancy which would expire on the 30th of June, 2021 because he had paid for a new apartment and would be moving out from his former abode to the new and larger apartment that could accommodate him and his family. According to him, he implored the 3rd Respondent to grant him one-month tenancy so that he could stay with his family while his new apartment was being rehabilitated.

The Applicant averred that the 3rd Respondent flew into a rage and insisted that the Applicant must pay the ₦700,000.00 (Seven Hundred Thousand Naira) only being the rent reserved for the property, a demand that the Applicant rejected. The Applicant swore that he was shocked when the 3rd Respondent came to his office the next day, that is, the 24th of June, 2021, created a scene, accused him of owing her and caused him intense embarrassment that he had to leave the office. He also stated that his office, that is, Consumer Micro Finance Bank Limited where he was a member of

the management staff, was so miffed by the conduct of the 3rd Respondent that it issued a query to the Applicant.

The deponent averred that on the 9th of July, 2021 when he was taking his daughter to school to celebrate her birthday with her, the 3rd Respondent, the 4th Respondent and some Police officers arrested him in the presence of his wife, daughter, neighbours and passersby. He swore that he was taken to the Apo Police Station, at Apo Resettlement, Abuja where he was detained for a number of hours. Though the Police acknowledged that there was no criminal imputation from the facts of the 3rd Respondent's complaint, the Applicant stated that he was released only when he executed an undertaking to meet the 3rd Respondent's demand for ₦700,000.00 (Seven Hundred Thousand Naira) only.

The Applicant swore that he has been under great harassment and embarrassment from the 3rd Respondent, acting together with the 4th Respondent and other officers and men of the 1st and 2nd Respondents to intimidate and threaten him over a matter that had no criminal undertone. He therefore urged the Court to grant the application in the interest of justice.

In the Written Address filed in support of the application, learned Counsel for the Applicant, Emmanuel Ifeanyi Egwu Esq. formulated two issues for determination. These are: *(1) Whether the continuous harassment, intimidation and slander of the Applicant's character and person by the 3rd*

Respondent and arrest of the Applicant by the 4th Respondent is unlawful to entitle the Applicant to the grant of this application by virtue of sections 33, 34, 35 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as well as Articles 4, 5, 6 and 12 of the African Charter of Human and People's Rights (Ratification and Enforcement) Act and the United Nations Declaration on Human Rights, 1948; and (2) Whether the 1st Respondent as a law enforcement agency can be used by the 3rd Respondent as an agent for extortion and recovery of debt.

In his submissions on the first issue, learned Counsel embarked on a jurisprudential elucidation of the philosophical underpinnings of fundamental rights. Citing a number of cases such as ***Hassan v. E.F.C.C. (2014) 1 NWLR (Pt. 1389) 607 at 653, Anozie v. I.G.P. (2016) 11 NWLR (Pt. 1524) 405, Akila v. Director-General, S.S.S. (2014) 2 NWLR (Pt. 1392), Ubani v. Director, State Security Service (1999) 11 NWLR (Pt. 625) 129*** among others, learned Counsel contended that the Court had a bounden duty to protect the citizen where the citizen's fundamental rights had been infringed or, if there was a likelihood of those rights being infringed.

Bearing down on the facts of this case, he submitted that the Respondents violated the fundamental rights of the Applicant to personal liberty, dignity of the human person, and fair hearing when they arrested the Applicant and have continued to be in violation of the rights of the Applicant when they

threatened to arrest and detain him over the 3rd Defendant's demand for the payment of ₦700,000.00 (Seven Hundred Thousand Naira) only. He concluded on this issue that the Respondent had no justifiable, legal and constitutional reason to violate the fundamental rights of the Applicant.

In his submission on the second issue, learned Counsel argued that the Respondents acted in breach of section 8(2) of the Administration of Criminal Justice Act, 2015 which prohibits the arrest of a suspect on a civil wrong or breach of contract. He further submitted that the Police, as a law enforcement agency, does not have the powers to act as a debt recovery agent. He relied on the cases of ***Anogwie v. Odom (2016) LPELR-40214 (CA), Skye Bank Plc v. Emerson Njoku & Others (2016) LPELR-40447 (CA), Gusau v. Umezuwike (2012) All FWLR (Pt. 655) 291*** among others to urge the Court to hold the Respondents liable for their infringement of the fundamental rights of the Applicant.

Contending that the Applicant had established the violation of his fundamental rights, learned Counsel for the Applicant submitted that the Applicant was entitled to the award of damages, pursuant to the Latin maxim *ubi jus ibi remedium*. He cited Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1999 as well as the case of Eliochin (Nig.) Ltd v. Mbadiwe (without providing the citation) and submitted that the Applicant was

entitled to the award of damages from this Court and against the Respondents.

I have noted earlier that none of the Respondents filed any process in opposition to the application of the Applicant for the enforcement of his fundamental rights. The position of the law is settled beyond any scintilla of equivocation 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…***"

In acting on unchallenged evidence, however, the Courts must act judiciously and judicially and ensure that the unchallenged evidence is inadmissible, cogent, credible and compelling. In ***Martchem Industries Nigeria Ltd. v. M.F. Kent West Africa Ltd. (2005) 10 NWLR (Pt. 934) 645 S.C. at 659, paras. C-G***, the Supreme Court held thus:-

> "***Even if the evidence in a case went in one direction in that it was unchallenged, the trial court is still expected to examine whether or not the unchallenged evidence was sufficient to***

establish the claims made by the party in whose favour the unchallenged evidence was given. It is not in every case in which the evidence called in support of the plaintiff is unchallenged, that judgment must be given in favour of the plaintiff. On the contrary, it is possible that evidence called in support of the plaintiff's case, even if unchallenged, may still be insufficient to sustain the plaintiff's claims in that it may be so weak and so discredited under cross-examination that it was unnecessary for the defendant to testify."

In ***Lufthansa Airlines v. Odiese (2006) 7 NWLR (Pt. 978) 34 CA at 81 – 82, paras F – A*****,** the Court of Appeal would follow the principle laid down by the Supreme Court in ***Martchem Industries Nigeria Ltd. v. M.F. Kent West Africa Ltd. (2005), supra*** when it held as follows:-

"***The principle that unchallenged/uncontradicted evidence should be accepted by the court is not at large. Therefore, it is not in all cases that unchallenged evidence of a witness will be swallowed hook, line and sinker. The requirement is that for such evidence to be accepted and relied on by the court, it has to be in line with the pleadings, cogent and credible. Thus, where evidence is unchallenged, if it is at variance with the pleadings, and not credible, it cannot form the basis of any***

***decision that can be sustained. In fact, even in situations where evidence of special damages will rest on the ipse dixit of the plaintiff, where it is not credible though unchallenged, the fact that it was not challenged will not improve its quality. Such unchallenged ipse dixit evidence is not an automatic proof of special damages.*"**.

This is particularly so where the Claimant, or the Applicant as in this case, seeks declaratory reliefs. In ***Mohammed v. Wammako (2018) 7 NWLR (Pt. 1619) 573 S.C. at 586, paras. A-B***, the Supreme Court held that

"***A party who seeks declaratory reliefs has an obligation to advance evidence in proof thereof. This is so in that courts have the discretion either to grant or refuse declaratory reliefs. The success of a declaratory claim largely depends on the strength of the plaintiff's case. It does not depend on the defendant's defence. This must be so for the burden on the plaintiff in establishing declaratory reliefs is, often, quite heavy.***"

In ***Adesina v. Air France (2022) 8 NWLR (Pt. 1833) 523 S.C. at 555-556, paras. H-B,*** Aboki, JSC in his concurring Judgment, held that:-

"***A party seeking declaratory reliefs must establish his entitlement to the reliefs upon the strength of his own case. Where a claimant seeks declaratory reliefs, the burden is on him to prove his entitlement to the reliefs on the strength of his own case. A declaratory relief will not be granted, even on admission. The claimant is also not entitled to rely on the weakness of the defence, if any. The rationale for the position of the law is that a claim for declaratory reliefs calls for the exercise of the court's discretionary powers in favour of the claimant. Therefore, he must place sufficient material before the court to enable it exercise such discretion in his favour.***"

It is in view of the above judicial injunctions that this Court will proceed to evaluate the affidavit evidence of the Applicant and the exhibits attached thereto in order to determine whether the Applicant is entitled to the reliefs sought. To this end, therefore, this Court will formulate a sole issue for determination, to wit: "***Whether the Applicant has not established that his fundamental rights to personal liberty, dignity of the human person, fair hearing, right to private and family life and right to freedom of movement have been breached by the Respondents and therefore is entitled to the reliefs sought in this application?***"

It bears restating that the fundamental rights guaranteed by the Constitution and preserved in Chapter IV of the Constitution are inalienable rights. Their protection is the irreducibly minimal duty which the State owes its citizens so much so that it is not only their actual violation that is forbidden, but also the likelihood of their violation. 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 narrated how the 3rd Respondent came to his office on the 24th of June, 2021 to embarrass him. He narrated that her conduct that day, her vituperations and insults made him to lose face among his colleagues and customers. See paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the affidavit in support of the application. It is his contention, therefore, that the conduct of the 3rd Respondent translated to a violation of his right to dignity of the human person.

I do not agree with the Applicant that the conduct of the 3rd Respondent as evinced in the above-mentioned paragraphs amounts to a violation of his right to dignity of the human person. Section 34(1) of the Constitution of the Federal Republic of Nigeria 1999 which provides for the right, enumerates the circumstances under which the right may be said to have been breached. The section 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, referred to the cases of ***Rabiu v. State (1980) 8 - 11 SC 130; A.-G., Bendel State v. A.-G., Fed. (1982) 3 NCLR 1; Fawehinmi v. Abacha (1996) 5 NWLR (Pt. 447) 198;*** *and* ***Uzoukwu v. Ezeonu (1991) 6 NWLR (Pt. 200) 708*** and 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.***"

Perhaps, the dissenting judgment of Boloukuromo Moses Ugo, JCA in the case of ***Felix Elijah Nnanna, Esq. v. Mahmoud Sa'id & Anor (2022) LPELR-57396(CA)*** put this right in perspective. In that case, the learned

Jurist, while referring to the famous case of ***Chief (Dr.) Mrs Funmilayo Ransome-Kuti & Ors v. A.G of the Federation & Ors (1985) NWLR (Pt.6) 211, (1985) 2 NSCC 879, (1985) LPELR-2940 (S.C)***, drew a distinction between circumstances that are most appropriate to be brought under an action for tortious liability and those that come within the ambit of a fundamental rights enforcement proceeding, particularly with regards to right to dignity of the human person, and held:-

> "***The gist of appellant's five and a half page argument in his brief in support of this issue is that the actions of 1st respondent as recounted earlier amount to breach of his fundamental right to dignity of the human person under Section 34(1)(a) of the 1999 Constitution of this country so the learned trial judge was wrong in holding to the contrary. Appellant cannot be right. His complaints of battery and assault inflicted on him by 1st respondent and his son and finished and done with in a brief moment on 15th July, 2019, as the learned trial judge correctly pointed out, is mere tort and not by any means breach or contravention of fundamental right to dignity of the human person under Section 34 of the Constitution of this country. In fact appellant's action is rather reminiscent of the very notorious case of Chief (Dr.) Mrs. Funmilayo Ransome-Kuti & Ors v. Attorney of the Federation (1985) LPELR-2940***

(SC), (1985) 2 NSCC 879, (1985) LPELR-2940 (S.C) where soldiers stormed Late Fela Ransome-Kuti's Kalakuta Republic and battered and assaulted many of its occupants including his mother the first plaintiff Chief (Dr.) Mrs. Funmilayo Ransome-Kuti. One of the arguments canvassed by the plaintiffs before the Supreme Court was that the said assault and battery which was not a continuing one but was rather done and finished with on one single occasion amounted to torture, inhuman and degrading treatment so breach of their right to dignity of the human person under Section 19(1) of the 1963 Constitution of the country then applicable (now Section 34) and enforceable as such and even attracts payment of damages to them. That argument was roundly rejected by their Lordships Karibi-Whyte, Oputa and Eso, JJ.S.C., with their Lordships saying thus individually: First, Oputa J.S.C at (1985) LPELR-2940 (SC) p. 92-93 "The words of Section 19(1) namely 'inhuman treatment, torture and degrading treatment' suggest something continuous and rather more permanent than an occasional assault and battery committed and done with. They envisage where, on a proper application, the High Court may make an order under Section 32 (2) of the same 1963 Constitution to stop the subsisting 'torture, punishment or inhuman treatment

(Emphasis mine) Karibi-Whyte, J.S.C., reasoned along the same lines, saying that the provisions of the extant Section 34 of the 1999 Constitution stating that 'every individual is entitled to respect for the dignity of his person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment' contemplates only treatment arising from criminal process. Hear His Lordship (Karibi-Whyte, J.S.C.) at LPELR-2940 p.68-69: "It seems to me fairly obvious that the enforcement of the right not to be tortured or subjected to inhuman treatment or degrading treatment under the provisions of S. 19(1) of the 1963 Constitution [now Section 34 of the 1999 Constitution] by means of Section 32 (now Section 46] contemplates torture, inhuman treatment arising from criminal process. It does not envisage ordinary civil actions arising from civil wrongs. Where a civil action is contemplated from wrongs arising from civil wrongs, the individual is entitled to resort to his civil remedy. In my opinion the purpose Of Chapter III [now Chapter IV is to preserve the civil rights of the citizen within the limits and scope allowed by law. The rights conferred on all the citizens though described as fundamental do not, as was being suggested by Mr. Braithwaite, override all laws.... It may well be that the facts relied upon for an action

may support an action under Section 32 [now Section 46 of the 1999 Constitution) for the enforcement of a right under Section 19(1); but the negative formulation of the right and the redress prescribed under S. 32(2) which is the making of such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any rights to which the person who makes the application may be entitled under the Chapter ... makes all the difference." Eso, J.S.C., in lead judgment had a similar opinion, saying thus at P. 33 of LPELR-2940. Section 19 of the 1963 Constitution provides that - No person shall be subjected to torture or to inhuman or degrading treatment or other treatment. "This is no doubt a right guaranteed to everyone including the appellants by the Constitution. ... 'We are concerned here with 'cruel and unusual punishment' for it is this that could amount to inhuman treatment which in Prop v. Dulles 356 US 86, (1958) pp. 100-101, the Supreme Court of the United States regards as one which must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.' Yet neither the Magna Carta nor the Eighth Amendment to the Constitution would be equated to and proceeded with except under a cause of action. If either had

amounted to tort simpliciter resulting in a claim for tort to amount to a complaint under fundamental human right, there could have been no necessity for the common law tort of assault, battery, false imprisonment or even inhuman treatment." (Emphasis mine) Following this lead, I also had the following to say in my leading judgment in Professor Ango Abdullahi and Ors v. Nigerian Army & Ors (2019) LPELR-46925 (CA) P. 22-28 (with my learned brothers with the agreement of my learned brothers Mshelia and Abiru, JJ.CA): "It is thus clear that the claims of appellants of "assault and battery which by their own showing happened only on one occasion and were finished with do not amount to breach of fundamental right under Section 34 of the Constitution to be proceeded with or enforceable under Section 46 of the Constitution and the Fundamental Rights (Enforcement Procedure) Rules 2009 made pursuant thereto." That is still the law."

See also the case of ***Adesina v. Air France (2022) 8 NWLR (Pt. 1833) 523 S.C.*** where the Supreme Court held that the right to dignity of the human person of the Appellant was not breached by the Respondent merely because the Respondent transported the deported Appellant who was in the company of French immigration officials back to Nigeria.

I will say no more on the Applicant's claim for a declaration that his right to dignity of the human person was breached other than that his claim fails as he has not shown that his right to dignity of the human person was breached by the Respondents. Not even **Exhibit C**, which is a CCTV video footage could save the Applicant's claim. I have seen the eighteen (18) minutes fifty-eight (58) seconds footage. There is nothing in it that shows that the Applicant's right to dignity of the human person was breached. That claim, therefore, fails.

In the same vein, the Applicant's claim of a declaration that the Respondents derogated his right to private and family life has not been established by the evidence before me. As to what constitute this right to private and family life, the Court of Appeal per Agim, JCA (as he then was, later, JSC) in ***Hon. Peter Nwali v. Ebonyi State Independent Electoral Commission (EBSIEC) & ORS (2014) LPELR-23682(CA) at 27 – 29, paras E – E*** held thus:-

> "***S. 37 of the 1999 Constitution states that "the privacy of citizens, their homes, correspondence, conversations and telegraphic communication telephone guaranteed and protected". It is clear from the text of the provision that it specifically mentioned the types of privacy that it protects. Five of them are listed therein as follows- 1. The privacy of citizens 2. The privacy of their homes 3. The privacy of their***

correspondence 4. The privacy of their telephone conversations 5. The privacy of their telegraphic communication. These are clearly restated by this Court in Federal Republic of Nigeria V. Daniel (2011) 4 ELR 4152 thus- "Undoubtedly, by virtue of the Provision of Section 37 of the 1999 Constitution, the privacy of every Nigerian citizen, the home, correspondence, telephonic and telegraphic communications are cherishingly guaranteed and protected. The trial Court in stating the scope of the said right, listed the aspects of privacy S.37 contemplates as follows- 1. Privacy at home 2. Privacy of one's communication 3. Privacy in private family and matters incidental thereto. I understand privacy of one's communication as used by the trial Court to mean privacy of correspondence, privacy of telephone conversations and privacy of telegraphic communication. It excluded the privacy of the citizens expressly provided for in S. 37 of the Constitution and included privacy of private family life and matters incidental thereto not expressly provided for in the text of the provision. The privacy of home, privacy of correspondence, privacy of telephone conversations and privacy of telegraphic communication are clear and particular as to the nature of privacy protected or the area or activity in

respect of which a person is entitled to enjoy privacy. It is obvious that the right to the privacy of the person's decision and choice of candidate to vote for cannot be enjoyed as part of the privacy of his home, the privacy of his correspondence, the privacy of his telephone conversation and the privacy of his telegraphic communication. It is glaring that the phrase "Privacy of Citizens" is general and is not limited to any aspect of the person or life of a citizen. It is not expressly defined by the Constitution and there is nothing in the Constitution or any other statute from which it's exact meaning or scope can be gleaned."

Explaining the meaning of "privacy of citizens" as used in section 37 of the Constitution, the Court went on to hold at ***pages 35 – 37, paras B – F***:

"""The meaning of the term "privacy of Citizens" is not directly obvious on its face. It is obviously very wide as it does not define the specific aspects of the privacy of citizen it protects. A citizen is ordinarily a human being constituting of his body, his life, his person, thought, conscience, belief, decisions (including his plans and choices), desires, his health, his relationships, character, possessions, family etc. So, how should the term, privacy of the citizen be understood? Should it

be understood to exclude the privacy of some parts of his life? The Supreme Court following the non- restrictive and liberal approach interpreted it as including the privacy of all his constituents as a human being in Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo (Supra) when it held that "the right to privacy implies a right to protect one's thought, conscience or religious belief and practice from coercive and unjustified intrusion and one's body from unwarranted invasion." Even the trial Court in stating the scope of the right to privacy under S. 37 of the Constitution accepted the non-restrictive approach. This can be seen from its holding that the right includes "privacy in private family life and incidental matters" when this aspect is not expressly provided for in that section and that meaning is not patently obvious from the text of that section. But, its interpretation was not liberal or extensive enough to include the privacy of the other aspects of a citizen enumerated above as part of his or her privacy, and even interpreted the section to exclude the privacy of his decision and choice of candidate to vote and whom he voted for from the protection of that section and gave no reason for that. It is glaring that there is nothing in the phrase "Privacy of Citizens" or in the entire text of S.37 of the

Constitution, and the Constitution as a whole suggesting or compelling a restricted interpretation of the phrase. As couched in such general terms, unless interpreted literally, extensively, and expansively, providing the details of the citizen's privacy that is protected therein, the phrase will be meaningless and sterile. Every provision in the Constitution was made with the intendment of realizing a particular practical object. Therefore it cannot be presumed that any clause in the Constitution is intended to be without effect. See Obayuwana vs. Governor of Bendel State & Anor (1982) 12 SC (Reprint) 67 per Nnamani JSC. Where the Constitution states a word or phrase generally or without any limiting words, it is obvious that it intends that the word or phrase should have a general meaning and application, unless other provisions in the Constitution state or suggest the contrary. If there are no other provisions of the Constitution requiring or suggesting the contrary, the Court must apply the word or phrase generally, and will have no power to restrict its application to specific situations. For the above reasons, I interpret the phrase "privacy of citizens" generally, liberally, and expansively to include privacy of citizens' body, life, person, thought, belief, conscience, feelings, views, decisions (including his plans and

choices), desires, health, relationships, character, material possessions, family life, activities et cetera. Therefore the privacy of his choice of that candidate and the privacy of his voting for that candidate constitute part of his "privacy" as a citizen. The appellant was entitled to the privacy of his decision to vote for a particular candidate, his choice of that candidate and his casting his vote for that candidate. Therefore requiring or compelling him to vote openly in the public watch and knowledge by queuing in front of the poster carrying the portrait of the candidate he has decided to vote for intrudes into, interferes with, and invades the privacy of his said decision, choice and voting, completely removing that privacy, therefore amounting to a clear violation of his fundamental right to the privacy of a citizen guaranteed him and protected by S.37 of the 1999 Constitution. The decision of the trial Court that it does not see how making the appellant to vote publicly violates his privacy is therefore clearly wrong"

For the above reasons, therefore, the Applicant's relief for a declaration that his right to private and family life fails irredeemably. I so hold.

The Applicant in this application claimed that the 4th Respondent and other officers of the 1st and 2nd Respondents, acting at the behest of the 3rd

Respondent, arrested him on the 9th of July, 2021 and detained him for several hours. He claimed that he was released only after he signed an undertaking to pay ₦700,000.00 (Seven Hundred Thousand Naira) only to the 3rd Respondent. See paragraphs 22, 23, 24, 25, 26 and 27 of the affidavit in support of the application. It is important to note that this ₦700, 000.00 (Seven Hundred Thousand Naira) only was the rent which the 3rd Respondent demanded from the Applicant but which the Applicant insisted he would not pay because he would relinquish occupation of the property he occupied as a tenant a month after the expiration of his tenancy on the 30th of June, 2021. His plea was for the 3rd Respondent to accept the rent for the extra one month he would stay in her house pending when his new apartment would be renovated.

I do not see any criminal imputations in this dispute as to justify the involvement of the Police. I find the unchallenged deposition of the Applicant in paragraph 26 of the affidavit in support of the application very instructive. The deponent had deposed thus: "*That the police officers acknowledged that I am not owing the 3rd Respondent neither did I assault or threaten her life, but insisted that since I am preventing her from renting out the space to another occupant for one month, I should give the 3rd Respondent the sum of ₦700,000.00 (Seven Hundred Thousand Naira) on the condition that the money will be returned when a new tenant pays her for the occupation of the flat*."

It is the case of the Applicant that this arrest and detention constitute a breach of his rights to personal liberty and freedom of movement. This Court agrees with him. 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***, the Supreme Court per Ogunwumiju, JSC, explains the right to personal liberty 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 arrest of the Applicant and his subsequent detention for a couple of hours by the 4th Respondent and other officers of the 1st and 2nd Respondents acting at the instigation of the 3rd Respondent did not come within the contemplation of the circumstances enumerated in sections 35(1)(a), (b), (c), (d), (e) and (f), 41(2) (a) and (b) and 45 of the Constitution of the Federal Republic of Nigeria, 1999 under which the rights could be derogated from. It is even egregious that the 1st, 2nd and 4th Respondents were acting as debt recovery agents on behalf of the 3rd Respondent. The Courts have condemned this practice in no uncertain terms. In ***EFCC v. Diamond Bank Plc (2018) 8 NWLR (Pt. 1620) 61 S.C.***, the Supreme Court per Bage, JSC held ***at page 80, paras. C-E*****:**

"***What is even more disturbing in recent times is the way and manner the Police and some other security agencies, rather than focus squarely on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used by overzealous and/or unscrupulous characters for the recovery of debts arising from simple contracts, loans or purely civil transactions. Our security agencies, particularly the police, must know that the citizenry's confidence in them ought to first be ensured by the agencies themselves by jealously guarding the integrity of the uniform and powers conferred on them.***

The beauty of salt is in its taste. Once salt loses its own taste, its value is irredeemably lost. I say this now and again, our security agencies, particularly the police, are not debt recovery agencies. The agencies themselves need to first come to this realization, shun all entreaties in this regard and they will see confidence gradually restored in them."

Having found that the arrest and the detention of the Applicant were against the tide of the rule of law, it is easy to establish that his right to fair hearing was infringed in the process. The derogation from the constitutional provisions that guarantee the liberties of the citizens must be in conformity

with the rule of law. This envisages the centrality of the role of the Courts in the process. See sections 35(1)(a), (b) and (c) and 36(1), (4) and (6) of the Constitution of the Federal Republic of Nigeria 1999. In the case of ***Olanrewaju v. The State (2022) 18 NWLR (Pt. 1861) 113 S.C. at 135, para C - F***, the Supreme Court held that:-

> "***Under the Nigerian adversarial juridical system, every person is guaranteed the right of fair hearing in the determination of his civil rights and obligations, be it against any Government, authority or agency thereof. By virtue of section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), every person charged with a criminal offence shall be presumed to be innocent until he is duly proved guilty. The burden of proving the guilt of an accused person square-rests upon the prosecution…***"

Unlike the case of ***Ezeigbo v. Asco Inv. Ltd. (2022), supra*** where the Applicant was actually charged and arraigned in Court after his arrest, the Applicant in the case before me was neither charged nor arraigned in Court. Since the opposite happened in the case of the Applicant on the 9th of July, 2021, this Court finds, and so hold, that the Respondents were in breach of his right to fair hearing.

As to the consequences that must attend the abuse of the process of the law by malicious disputants, the Court of Appeal held in ***Skye Bank Plc v. Njoku & Ors (2016) LPELR-40447 (CA)*** that: ***"...a party that employs the Police or any law enforcement agency to violate the fundamental right of a citizen should be ready to face the consequences, either alone or with the misguided agency... The Police have no business helping parties to settle or recover debt..."*** See also ***Omuma Micro-Finance Bank Nig Ltd v. Ojinnaka (2018) LPELR-43988 (CA); Abah v. UBN Plc & Ors (2015) LPELR -24758 CA;*** and ***Okafor & Anor v. AIG Police Zone II Onikan & Ors (2019) LPELR-46505(CA)*** among others.

I have no hesitation in arriving at the ineluctable conclusion that the Respondents are in grave violation of the fundamental rights of the Applicant to personal liberty, fair hearing and freedom of movement.

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 personal liberty, fair hearing and freedom of movement, it is only appropriate that this Court makes an Order of perpetual injunction. This is necessary to prevent the Respondents from continuing on their path of lawlessness and unconstitutionality.

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) supra,*** 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 therefore find this application for the enforcement of the fundamental rights of the Applicant meritorious. This application therefore succeeds in part and the reliefs sought are hereby granted as follows:-

(1) THAT the act of the 3rd Respondent in instigating the 4th Respondent and other officers of the 1st and second Respondents to arrest the Applicant on the 9th day of July, 2021 at about 7am without justifiable cause and detain him at the Apo Police Station, Apo Resettlement, Apo, Abuja in a dispute that is purely within the realm of tenancy relationship and recovery of alleged debt is unlawful, unconstitutional and an infringement of the Applicant's fundamental human rights to personal liberty, fair hearing and freedom of movement as enshrined in sections 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 as well as Articles VI and VII of the African Charter of Human and People's Rights (Ratification and Enforcement) Act, CAP A9 Laws of the

Federation of Nigeria 2004 and the United Nations Declaration on Human Rights, 1948.

(2) THAT the continuous threat of the 3rd Respondent to continue to use the 4th Respondent and other officers and men of the 1st and 2nd Respondents to arrest and detain the Applicant unless he pays to the 3rd Respondent the sum of ₦700,000.00 (Seven Hundred Thousand Naira) only being the rental value of the property known as Block 4 Road A1 Pentville Estate, Lokogoma, Abuja is a breach of the fundamental rights of the Applicant to right to personal liberty, fair hearing and freedom of movement as enshrined under sections 35, 36, 41 and 46 of the Constitution of the Federal Republic of Nigeria, 1999 as well as Articles VI and VII of the African Charter of Human and People's Rights (Ratification and Enforcement) Act CAP A9 Laws of the Federation of Nigeria 2004 and the United Nations Declaration on Human Rights, 1948 and therefore unlawful, illegal, unconstitutional and an abuse of the rule of law.

(3) THAT an Order of perpetual injunction is hereby made restraining all the Respondents from arresting, detaining and threating to arrest and detain the Applicant over the payment of ₦700,000.00 (Seven Hundred Thousand Naira) only being the rent for the

property known as Block 4 Road A1 Pentville Estate, Lokogoma, Abuja.

(4) THAT the Respondents jointly and severally are hereby ordered to pay to the Applicant the sum of ₦1,000,000.00 (One Million Naira) only as damages for the unjustified, unlawful and unconstitutional abridgement of the fundamental rights of the Applicant to personal liberty, fair hearing and freedom of movement.

(5) THAT the Respondents jointly and severally are hereby ordered to pay to the Applicant the sum of ₦200,000.00 (Two Hundred Thousand Naira) only as the cost of this action.

(6) The Applicant's claims for declarations that the Respondents breached his right to dignity of the human person and his right to private and family life are hereby refused.

This is the Judgment of this Court delivered today, the 18th day of January, 2023.

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HON. JUSTICE A. H. MUSA
JUDGE
18/01/2023

APPEARANCES:

FOR THE APPLICANT:
Emmanuel Ifeanyi Egwu, Esq.

FOR THE RESPONDENTS
None appeared and no legal representation for any of them