

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT WUSE ZONE 2 – ABUJA
BEFORE HIS LORDSHIP HON.JUSTICE ELEOJO ENENCHE
DELIVERED ON 13thFEBRUARY 2023
SUIT NO. FCT/HC/CV/2687/22**

BETWEEN

ADEOYE ADEREMI..... CLAIMANT/APPLICANT

AND

- 1. ECONOMIC AND FINANCIAL
CRIME COMMISSION(EFCC)**
- 2. MARATAM LIMITED**
- 3. IBRAHIM CLARK**

.....DEFENDANTS/RESPOND

JUDGMENT

The Applicant is AdeoyeAderemi while the Defendants are the Economic and Financial Crimes Commission, Maratam Ltd and Ibrahim Clark being 1st, 2nd and 3rd Defendants respectively. Being an application for the enforcement of his fundamental rights brought pursuant to Section 34 and 35 of the 1999 constitution (as amended), the Applicant sought the following reliefs:

1. **A DECLARATION** that the Applicant has a right to dignity of his human person and right to personal liberty as guaranteed under Section 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 5 and 6 of the African Charter

on Human and People's (Ratification and Enforcement) Act Cap. A9 LFN 2004); and as such the Applicant should not be subjected to any form of inhuman and degrading treatment by any of the Respondents.

2. **A DECLARATION** that the degrading and inhuman treatment imposed and unlawful detention meted out on the Applicant by the 1st Respondent on the instigation of the 2nd and 3rd Respondents over a simple contractual relationship between the Applicant's employer and the 2nd Respondent to wit; repeated invitation to the office of the 1st Respondent for interview and his subsequent detention until the very late hour of the day, forceful taking of Applicant's fingerprint and picture for profiling, and forcing the Applicant to display a placard containing his name, age, tribe and a statement of offence of criminal breach of trust and fraud constitute a grave violation of the Applicant's Fundamental Rights guaranteed by 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended, and articles 5 and 6 of the African Charter on Human and People's Right (Ratification and Enforcement) Act CAP A9 LFN 2004.
3. **A DECLARATION** that the 1st Respondent, lacks the requisite power to investigate, arrest, detain or prosecute the Applicant or his employer over a contractual agreement between the 2nd Respondent and the Applicant's employ.
4. **AN ORDER OF PERPETUAL INJUNCTION** restraining the Respondents, either by themselves, agents or privies from further

violating, in any form or manner the Fundamental Rights of the Applicant.

5. An award of the sum of ₦100,000,000 (One Hundred Million Naira) in favour of the Applicant against the Respondents jointly and severally for emotional and reputational damage to the mental, psychological and perpetual fright suffered by the Applicant in the hand of the 1st Respondents at the instigation of the 2nd and 3rd Respondents.
6. Award of the sum of N5,000,000.00 (Five Million Naira) as cost of this action.

The Applicants ground are that:

1. The right to dignity of human person and right to personal liberty are rights constitutionally guaranteed under Sections 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (As amended) and Article 5 of the African Charter of Human and People's Right (Ratification and Enforcement) Act CAP A9 LFN 2004.
2. The right to dignity of human person also includes the right not to be subjected to inhuman and degrading treatment.
3. The Applicant's employer and the 2nd Respondent are both parties to a consultancy agreement made on 1st December 2011 which agreement contains an Arbitration clause in case of dispute. Therefore, the relationship between the 2nd Respondent and the Applicant is strictly contractual.
4. The 2nd Respondent, through the 3rd Respondent has alleged a breach of the consultancy agreement and has initiated an

Arbitration proceeding pursuant to the agreement since 2020. While the Applicant's employer has since joined issues with the 2nd Respondent in the arbitration proceedings, the 2nd Respondent has failed/refused to take further steps in the arbitration but the arbitration proceedings is still pending

5. The same 2nd Respondent, through the 3rd Respondent is instigating the 1st Respondent to harass, intimidate, victimize and persecute the Applicant and his employer over the alleged breach of the contractual agreement.
6. Acting on the instruction of the 2nd and 3rd Respondents, the 1st Respondent has invited the Applicant to her office on numerous occasions and most of these times, the 1st Respondents will detain the Applicant for several hours (and deliberately in the belief of the Applicant) before he would eventually be released at a very late hour of the day.
7. The 1st Respondent has even taken the 2nd and 3rd Respondents' instructions further by profiling the Applicant as an offender and taking his fingerprint and picture against his will. The 1st Respondent also forced the Applicant to pose for photograph while displaying a placard containing his name age, tribe and a statement of offence of criminal breach of trust and conspiracy to commit fraud.
8. The harassment, intimidation, victimization, degrading and inhuman treatment meted on the Applicant over a contractual relationship his employer has with the 2nd Respondent cannot in any form or manner be justified under any law in Nigeria, as the

Respondent has no power or right under any law in Nigeria to either investigate, arrest, detain or prosecute any person over a civil matter, talk less of a matter founded on contract.

In summary and as I understand the Applicant to be saying, he is the Project Manager of Kephren Business Limited which is a company providing consultancy services for companies and agencies within the energy sector. His employer he assets, has a separate consultancy agreement with the 2nd Respondent and one Goldman and Demsky. This consultancy agreement was drawn following a contract Kephren Business Ltd has with the Nigerian Port Authority(NPA). The understanding is that from the execution of the contract with the NPA, profit will be shared as follows –

50% - Kephren Business Ltd

35% - 2nd Respondent

15% - Goldman and Demsky.

According to him, 50% due to 2nd Respondent and Goldman and Demsky will be paid to Goldman and Demsky's corporate account for distribution. His employer has been paying the said 50% since 2011 – 2021. He contends that his employer's contract with the NPA from which the profit has being share ended in 2021 by which event the consultancy agreement also ended. However, it is stated that his employer i.e. Kephren Business Ltd renewed her contract with the NPA and no longer require the services of 2nd Respondents and Goldman and Demsky.

On behalf of Kephren Business Ltd, the Applicant continues that he responded to an invitation by the 1st Respondent where he was presented with a petition written by the 3rd Respondent on behalf of the

2nd Respondent to investigate his employer i.e. Kephren Business Ltd in respect of the consultancy agreement. He maintains that the engagement was purely contractual and outside the mandate of the 1st Respondents. He notes that the office of the 1st Defendant has continued to use their authority to intimidate, harass, victimize and persecute him as on one of his visits to the commission, he was subjected to all forms of inhuman and degrading treatment as his fingerprint and picture was taken, and he was made to display a placard containing his name, age, tribe and a statement of offence of Criminal Breach of Trust and conspiracy to commit fraud. He believes that if the 1st Respondent is not restrained or prohibited from further prosecuting him, they would continue to intimidate, harass, victimize, arrest and further subject him to inhuman and degrading treatment.

His application is dated and filed on 11th August, 2022.

The 1st Respondent filed a 27 paragraphed counter affidavit dated and filed on 5th/09/2022. The affidavit which was deposed to by Nwaogwugwu Enzimawho reacted to the application by stating that the Commission received a petition dated 23rd March 2022 and written by one Bar. Oludotun Sowemimo on behalf of Maratam Ltd against Kephren Business Ltd and Goldman and Demsky alleging a case of criminal conspiracy, theft and criminal breach of trust. It was averred that the Applicant has never been detained by the Commission as he is presently enjoying bail granted from the first day. While asserting that the Commission works in line with international best practices, it was averred that the investigation is ongoing and at the end of which whoever is found culpable would be brought before a court.

The 2nd and 3rd Respondents jointly filed a counter affidavit dated 6/12/22. The 15 paragraphed affidavit was deposed by Ibrahim Clark, the 3rd Respondent and in summary, the 2nd Respondent was unhappy with the payment arrangement whereby it got its' share of 35% through a 3rd party. 2nd Respondent therefore requested for its own share to be paid to an account in the name of the 3rd Respondent, a requirement which he maintains the Applicant's Employer denied and instead ceased making payments entirely.

In a bid to resolve this issue, 3rd Respondent averred that series of meetings were held and the Applicant's employer was unable to give accurate accounts of monies due to the 2nd Respondent under the consultancy agreement. It was upon this conspiracy, theft, fraud and criminal breach of trust that the earlier stated petition by OludotunSowemimo& Associates was written to the 1st Respondents. 2nd and 3rd Respondent maintain that all they did was to write a petition to the 1st Respondent and did not thereby violate the rights of the Applicant.

That is as far as the affidavits go. Suffice to mention that upon being served with the counter affidavit of the 1st Respondent on the 7th of September 2022, Applicant filed a further affidavit and reply on points of law also, upon receipt of 2nd and 3rd Respondent's counter affidavit, on the 9th of December 2022 Applicant filed a further and better affidavit and a reply on points of law. The high points of the affidavit were as follows:

- That the request to make payments to the 2nd Respondent directly was refused because the personal account of the 3rd Respondent was forwarded and also, 2nd and 3rd Respondent failed to get the consent of the Goldman and Damsky for them to disrupt the initial understanding.
- That the allegation of suspicious financial dealing were all designs of the 2nd and 3rd Respondents.
- Contrary to the allegation of the 2nd and 3rd Respondent that it stopped making payments, Applicant's employer continued to make payment through Goldman and Damsky and did not misappropriate any funds.
- That the 2nd and 3rd Respondents did more than merely reporting to the 1st Respondent but told the 1st Respondent that their dividends have been misappropriated as a result of criminal conspiracy, breach of trust, theft, fraud, criminal breach of trust.

2nd and 3rd Respondents filed a further affidavit deposed by Prisca Uzoma.

Counsel for the Applicant Taiwo Adebayo Esq. filed a written address in which two (2) issues were distilled for determination viz:

1. Whether or not the Applicant has rights to personal liberty and dignity of human person under Section 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and article 5 of the African Charter on Human and People's Right (Ratification and Enforcement) Act CAP A9 LFN 2004.

2. Whether or not the acts of the 1st Respondents to wit, intimidating, harassing, victimizing and persecuting the Applicant by detaining him for several hours upon invitation, profiling him as an offender by forcefully obtaining his fingerprint and picture and forcing him to pose for picture while carrying a placard containing information describing him as an offender in a matter of simple contract violates the Applicant's right to dignity of human person and personal liberty under Section 34 and 35 of the 1999 Constitution and Article 5 and 6 of the African Charter.

The 1st Respondent in its final address filed by NdehGodspowerIsutu, raised two (2) issues for determination viz:

- i. Whether the Applicant's Fundamental Rights as enshrined in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria was infringed upon.
- ii. Whether a person can be shielded against criminal investigation by the ECONOMIC AND FINANCIAL CRIMES COMMISSION .

2nd and 3rd Respondents in their own written address proceeded by replying to the two issues raised by the Applicant.

I shall take the arguments together with my determination of the issues.

In so doing, I will adopt as mine, the issues raised by the Applicant.

The question raised in the first issue is whether the Applicant has a right to personal liberty and dignity of human person under Section 34 and 35 of the 1999 Constitution and Article 5 of the African Charter on Human and People's Right. To argue this issue, counsel submitted that the Applicant is entitled to enjoy the rights as guaranteed by the Constitution and the African Charter. It was also submitted that the rights guaranteed under Section 34 and 35 of the Constitution and Article 5 of the African Charter are rights to which all humans are entitled. Counsel submits that as a matter of law, the Applicant is entitled to enjoy same. Citing the case of **AIHEME V. CHIEF OF DEFENCE STAFF & ORS (2018) 45534 CA** it was argued that the Applicant is not under any form of disability to stop him from enjoying these rights. To further argue on this trajectory, counsel cited the **TUKUR V. GONGOLA STATE GOVERNMENT (1989) 4 NWLR (PT.117), NWOKORIE V. OPARA (1999) 1 NWLR (PT. 587)** and a host of other cases to anchor his argument on the note that the Applicant is entitled to his right to dignity of human person and personal liberty.

The argument of learned counsel for the 1st Respondent relevant to this issue is that, the rights as enumerated are not absolute but qualified. This position counsel noted is supported by a plethora of judicial authorities out of which he referenced the case of **DOKUBO ASARI V. FRN (2007) 12 NWLR (PT. 1048) 320 AT 360.**

In **ODOGU V. A.G OF THE FEDERATION (1999)6 NWLR (Pt. 456) Pg. 508 (a) 552,** the Supreme Court defined Fundamental Rights as follows:

"Fundamental Rights is a right guaranteed in the Nigerian

Constitution and can be found entrenched in a particular chapter therein i.e. Chapter IV. It follows therefore that for an Applicant to successfully institute an action under the Fundamental Rights (Enforcement Procedure) Rules, the claim must fall within Sections 33-44 of the 1999 constitution being the sections under chapter IV of the said 1999 Constitution.” Also in ***UZOUKWU & ORS V. EZENU II & ORS (1991)6 NWLR (PT200) P. 708 (a) 761***, the Court of Appeal per Hon. Justice Mamman Nasir, PCA (as he then was) held as follows: ***“Fundamental Right means any of the rights provided for in Chapter IV of the Constitution and includes any of the rights stipulated in the African Charter on Human and peoples’ Rights (Ratification and Enforcement) Act.”***

In ***Ransome-KutiVs Attorney General of the Federation (1985) 2 NWLR (Pt 6) 211 at 230***, Eso, JSC stated that a fundamental right ***“is a right which stands above the ordinary laws of the land and which are in fact antecedent to the political society itself” and “it is a primary condition to civilized existence”***. Fundamental rights are rights derived from natural or fundamental law - ***IgweVsEzeanochie (2010) 7 NWLR (Pt. 1192) 61***.

In this case, specific claims were made under Section 34 and 35 of the 1999 Constitution (as amended). The said Section 34 provides that ***“(1) Every individual is entitled to respect for the dignity of his person, and accordingly -***

(a) no person shall be subjected to torture or to inhuman or degrading treatment;

(b) no person shall he held in slavery or servitude; and

(c) no person shall be required to perform forced of compulsory labour.

Section 35 is much longer in content but deals essentially with personal liberty as it touches on constitutional time lines for detention. It requires that a person arrested or detained shall be informed within 24 hours in writing and in a language the person understands of the facts of the arrest and detention. The section goes ahead to provide that the person must be brought before a court within a reasonable time or such a person must be released without conditions.

I note in both sections, the conspicuous use of the word "***shall***". The word "***shall***" used in both sections is in the mandatory sense implying that all persons, organization or authorities must mandatorily comply with these provisions. It is trite law that in interpreting the provisions of the Constitution, where the words used therein are clear, plain and unambiguous, there is no need to give them any other meaning than their ordinary, natural and grammatical construction would permit. The Court does not have the jurisdiction to import into the words what they do not say and it is bound to assign the words their ordinary and plain meanings - **PEOPLES DEMOCRATIC PARTY VS OKOROCHA (2012) 15 NWLR (PT.1323) 205** and **ABUBAKAR VS NASAMU (NO 1) (2012) 17 NWLR (PT.1330) 407.**

Also referenced in the application as providing a launchpad for the Applicant's action is The African Charter on Human and Peoples' Rights. This charter was ratified and re-enacted as a Municipal Law by the National Assembly on 17th March, 1983. The Charter became part of Nigerian Law by virtue of the African Charter on Human and Peoples'

Rights (Application and Enforcement) Act cap.10 Laws of the Federation, 1990 and thus it has become an integral legislation in support of the enforcement of fundamental human rights, a breach of which is enforceable.

Thus, infringement of the Fundamental Rights embodied in Chapter IV of the 1999 Nigerian Constitution (as amended) as well as those spelt out in the African Charter on Human and Peoples' Rights, is actionable no doubt. The intendment of fundamental rights enforcement proceedings is to provide an urgent remedy for human rights abuses or imminent abuses of human rights as the case may be. Accordingly, any person who alleges that any of the fundamental rights provided for in the Constitution and to which he is entitled has been, is being, or is likely to be infringed may apply to the High Court for redress. See **DR. OLORUNTOBA OJU v. A.G FEDERATION & ORS. (2016) LPELR - 41250 CA.**"; and when I say any person, I mean the Applicant herein inclusive.

In direct answer to the issue raised for determination, the human person possesses rights because of the very fact that it is a person, a whole, master of itself and of his acts, and which consequently is not merely a means to an end but an end, an end which must be treated as such. The human person has the right to be respected as a possessor of rights. These are things which are owed to man because of the very fact that he is a man. Fundamental rights are those rights without which neither liberty nor justice would exist. They are freedoms essential to the concept of ordered liberty, inherent in human nature and consequently inalienable. They are rights that belong without presumption or cost of

privilege to all human beings. They are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available to be enjoyed. The moral doctrine of fundamental rights aims at identifying the fundamental prerequisites for each human being leading a minimally good life. In Nigeria, the fundamental rights of the citizens are constitutionally guaranteed in the 1999 Constitution of the Federal Republic of Nigeria and provided for in the African Charter on Human and Peoples' Rights, domesticated as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap 10 Laws of the Federation of Nigeria 1990 and it is the duty of the court to protect these rights. The Applicant in the present suit hinged his complaints on the provisions of Sections 34, 35, of the 1999 Constitution of the Federal Republic of Nigeria and I hold on this issue that being human and entitled to the protection of the court, and having brought his claim within the ambit of same and specifically Sections 34 and 35 as well as the African Charter, the Applicant indeed has rights to personal liberty which this court must protect in obedience to the provision of Section 46(1) of the 1999 Constitution which provides that "any person who alleges that any of the provision of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress" and I so hold. See generally on this **HASSAN & ORS V. EFCC & ORS (2013) LPELR-22595(CA (PP. 35-37 PARAS. G)**

The second issue deals with the main articles of breach. I shall draw the items of breach from the issue raised where the Applicant alleged that he was intimidated, harassed, victimized and persecuted by the 1st Defendants detaining him for hours upon invitation, profiling him as an offender by forcefully obtaining his fingerprint and picture and forcing him to pose for a picture while carrying a placard containing information describing him as an offender in a matter of simple contract.

The law as I know it is that, juristic and natural persons can invoke the fundamental rights provisions in the Constitution. However, the general position of the law upon which I am bound to stand is that in an action founded on the breach of a fundamental right, an Applicant must succeed on the strength of his own case and not on the weakness of the defence. See **PROJECT ARCADE LIMITED & ANOR v. THE INSPECTOR GENERAL OF POLICE & ORS (2022) LPELR-59127(CA)** and **JOLAYEMI & ORS VS. ALAOYE & ANOR (2004) LPELR-1625 (SC)**. Consequently, when a person alleges that his/her fundamental right is breached or likely to be breached, he or she must solidly put before the Court evidence to prove the allegation of such an infraction or likely infraction usually by the affidavit before the Court, being a matter that is contested on the strength of affidavits. See also **OMAME VS. NPF & ORS (2021) LPELR - 54747 (CA)**. Accordingly, the onus of proof is on an Applicant to establish by credible and cogent evidence that he is entitled to the reliefs endorsed in the originating process - to wit, that his fundamental rights has been breached or is likely to be breached; and unless the Applicant discharges this burden of proof on a balance of probabilities,

the burden does not shift to the Respondent. see Per SIRAJO J.C.A in **PROJECT ARCADE LTD &ANOR v. IGP &ORS (SUPRA) (at Pp. 14-15 PARAS. E-E)**

Let me deal first with the case against the 2nd and 3rd Respondents which essentially was that all the 1st Respondent did was at the instigation of the 2nd and 3rd. The crux of the defence of the 2nd and 3rd Respondents is that they simply made a report and left the 1st Respondent to do its work. On this note, counsel for the 2nd and 3rd Respondents Dr. Olukayode Ajulo submitted that by Exhibit G, his clients made a report to the 1st Respondent against the employer of the Applicant i.e., Kephren Business limited and Goldman and Demsky. He further argued that an agency saddled with the duties and functions of investigating financial crimes in Nigeria has the power to prosecute for financial crimes as well. To so argue, counsel urged me to see the provisions of Section 6 and 13 (2) ECONOMIC AND FINANCIAL CRIMES COMMISSION (Establishment) Act, 2004 and the case of **Kalu V. FRN &Ors (2016) LPELR – 40108 (SC)**

The argument of Ndeh Godspower Isotu Esq. for the 1st Respondent was not dissimilar as he canvassed the issue of ***“whether a person can be shielded against criminal investigation by the ECONOMIC AND FINANCIAL CRIMES COMMISSION .”*** He argued that the commission is empowered to investigate all cases of economic and financial crimes. He also referred me to the provision of Sections 6, 7(1) and (2), 8(5) and 13 (2) of the ECONOMIC AND FINANCIAL CRIMES COMMISSION Act 2004. In fortification of this stance, counsel cited the case of **DODODO V. EFCC (2013) 1 NWLR (PT. 1336) 468 PP. 501 @ 510** where it was

held that the ECONOMIC AND FINANCIAL CRIMES COMMISSION and the ICPC enjoy the status of the powers vested in the police which encompasses the duty to examine a complaint or petition, investigate and prosecute if necessary.

It is proper to restate the law on this issue. From the facts and circumstances of this case, the 2nd and 3rd Respondents initiated a complaint to the 1st Respondent. The query to be addressed on this note is whether 2nd and 3rd Respondents did anything wrong by making a report. In **SAMUEL ISHENO v. JULIUS BERGER NIG PLC (2008) LPELR-1544(SC)** the court had to consider a scenario similar to this and it was held that the position of the law is that an action such as this will not lie against a private individual who merely gave information which led the police (in this case the EFCC) on their initiative to arrest a suspect: in quite similar circumstances, a party who had lost some goods was asked whether he suspected anyone. He replied that he suspected a particular person who was consequently arrested and detained by the police for inquiry. The court held that, such expression of opinion is said to be no more than putting the police on a trail upon which it can work instead of leaving them in the wilderness. Giving such information to the ECONOMIC AND FINANCIAL CRIMES COMMISSION cannot therefore form the basis for any action since it would be their duty, after receiving such information, to make investigations themselves which may or may not lead to an arrest or to any action they take on the information given to them. See also: **ESTHER ADEFUNMILAYO V. OMOLARA ODUNTAN (1958) WR.N.L.R. 31**; and **GBAJOR V. OGUNBUREGUI (1961) ALL NLR**

853.

I note as well that it has been held that it is most elementary law that there cannot be an agency relationship between a private citizen and a law enforcement officer in the performance of his duties under the law. The transient relationship between a complainant and the commission in the course of arresting, investigating and prosecuting a case does not, in law, ripen into an agency relationship and a person who makes a report cannot be held liable for the Acts of the ECONOMIC AND FINANCIAL CRIMES COMMISSION . See **BONIFACE EZEADUKWA v. PETER MADUKA & ANOR (1997) LPELR-8062(CA)**.

Relating that to the instant case, the 2nd and 3rd Respondents rather than take laws into their hands made a report to the 1st Respondents. They do not control the commission. It is therefore the initiative of the commission to decide the way and manner investigation is carried out. If they decide in the process to arrest and detain the Applicant I doubt if the two Respondents who merely made a report should be held culpable. This should exculpate them from liability and I so hold.

Earlier, I noted that the onus of proof is on an Applicant to establish by credible and cogent evidence that he is entitled to the reliefs endorsed in the originating process - to wit, that his fundamental rights has been breached or is likely to be breached.

I shall begin with the detention of the applicant with a view to determine if it violated his right to liberty under Section 35 of the Constitution. Now, by Section 35(1)(C) of the Constitution of Nigeria 1999 (as amended), it is provided thus: "35 (1): 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: – (C), for the purpose of bringing him before a Court in execution of the Order of Court or upon reasonable suspicions of his having committed a Criminal Offence or to such extent as may be reasonably necessary to prevent his committing a Criminal Offence” However, by Section 35(4) and (5) of the Constitution of Nigeria 1999 (as amended), it is provided thus: 35(4): Any person who is arrested or detained in accordance with sub – section 1 (C) of this Section shall be brought before a Court of Law within a reasonable time.... 35(5): In sub – section 4 of this Section, the expression ‘a reasonable time’ means – In the case of an arrest or detention in any place where there is a Court of competent jurisdiction within a radius of 40 Kilometres, a period of one day, and in any other case, a period of two days or such longer period as in the circumstances may be considered by the Court to be reasonable.

However, the right to personal liberty, like it is with every other rights including the right to life, the most sacrosanct right of all, is not absolute and can as permitted by law be derogated from. Thus, in all or any of the circumstances spelt out in sub – section (C) of Section 35(1) of the Constitution of Nigeria 1999 (as amended), the right to personal liberty of the citizen may justifiably and lawfully be derogated from. See ***Alhaji Aliyu N. Salihu V. Suleiman Umar Gana & Ors (2014) LPELR – 203069 (CA)***.

In this case, what I can make out from the counter affidavit of the 1stDefendant and in particular paragraph 16 is that the Applicant was not and never detained by the 1stRespondent on the 4th July 2022 when he reported to the 1stRespondent’s office and neither was he detained on

any other date. It is the averment before me that he was granted bail on the same day upon the application of one Mohammed Sallau Esq. The bail application was annexed as EFCC 2 to the counter affidavit. This fact I must say was not heavily contested as it was not denied. It is however glaring that the 1st Respondent is carrying on an investigation of a complaint made to it. By Section 6(b) of the ECONOMIC AND FINANCIAL CRIMES COMMISSION Act 2004, it is provided that the ECONOMIC AND FINANCIAL CRIMES COMMISSION shall be responsible for: ***“The investigation of all financial crimes, including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, future market fraud, fraudulent computer credit card fraud and contract scam, etc.”*** And by Section 6(h) of the EFCC Act 2004, it is further provided as follows: ***“The examination and investigation of all reported cases of economic and financial crimes with a view of identifying individuals, corporate bodies or groups involved.”*** These are no doubt very enormous powers conferred upon the Economic and Financial Crimes Commission by law with the discretion to use same in the performance of its duties, which includes the power to arrest and detain in the course of investigation or to prevent and detect crime. So far, I must say this is what the 1st Respondent has been doing. Truly the courts are wary of interfering with the lawful exercise of the functions, duties and powers of not just the Economic and Financial Crimes Commission but all law enforcement agencies. Thus, constitutionally, the Economic and Financial Crimes Commission has the power to arrest a person upon reasonable suspicion of his having committed a criminal offence or to prevent him from committing one or where an officer of

the law enforcement agency reasonably believes that such a person has committed a criminal offence. In all such cases however, the test of reasonable suspicion is objective and not subjective. See ***COP V. Obolo (1989) 5 NWLR (Pt. 120)130, Jackson V. Omonikuna (1981) NLR 283.***

However, it must be pointed out at once that the discretionary powers of the Economic and Financial Crimes Commission to arrest and detain a citizen is neither left at large nor a carte blanche for indiscriminate and unwarranted arrest and detention of citizens without any reasonable grounds for suspecting that the citizen had or was about to commit an offence known to law and thus these powers are clearly circumscribed by the provisions of Section 35 of the Constitution of Nigeria 1999 (as amended) and all such other laws providing for the protection of the rights of the Citizens to their personal liberty and dignity of the human person amongst other fundamental rights of the Citizen. Again, in the instant case the case of the commission is that it is investigating an allegation of a crime and pursuant to its powers it has been inviting and questioning the Applicant. At this time, it is difficult to hold the 1st Respondent liable. I note that The Applicant has no immunity in law from being investigated for allegation of committing any criminal offence. His right to personal liberty was therefore, not breached nor is a breach threatened or likely to be merely by reason of his invitation, arrest and investigation.

As I anchor here, I find it imperative to agree with the learned counsel for the 1st Respondent when he eloquently made the point that whilst performing its legitimate duties, no Court of law has the power to stop the Economic and Financial Crimes Commission from investigating a

crime and therefore, no person against whom there is a reasonable suspicion of having committed an offence or likely to commit an offence would be granted any relief capable of shielding him against criminal investigation and prosecution. See **ATAKPA V. EBETOR (2015) 3 NWLR (PT. 1447) 549 @ P. 558**. See also **IGP V. UBAH (2015) 11 NWLR (Pt. 1472) 405 @ p. 413**; **NZEVI V. COP (2000) 2 HRLR 156 @ p. 159**; **BADEJO V. MINISTER of EDUCATION (1996) 8 NWLR (Pt. 464) 15 @ p. 19**; **HASSAN V. EFCC (2014) 1 NWLR (Pt. 1389) 607 @ p. 613**

Some facts however bother me and I must speak to them so that the 1st Respondents should show some more circumspection in the circumstances.

The affidavit of the 1st Respondents states that upon receipt of the petition against Kephren business limited and Goldman & Densky alleging a case of criminal conspiracy, theft and criminal breach of trust, investigation commenced and in the interest of justice and fair hearing, a letter of investigation was sent to the Managing Director of Kephren Business Limited for him to state his own side of the story. The affidavit continues that it was the Applicant who appeared and reported to the office of the 1st Respondent instead of the Managing director who was invited and that even when he came, he was unable to provide the requisite information required. Now, looking at the totality of the averments, it is clear that the 1st Respondent have nothing against the Applicant as the complaint was not directed at him but at his employer and that when he came, he hadn't suffice information to render. But then, why were they quick to profile him and take his picture with a placard containing his name, age tribe and statement of offence even at

a time when investigation is still ongoing? I say this because by the mouth of the 1st Respondents themselves in paragraphs 23 of the counter affidavit it was stated that “ ***investigation into the matter is ongoing at the end of which anyone found culpable would be brought before a competent court of law ...***” The act of forcefully profiling the Applicant and taking his picture with a placard carrying the statement of an offence while investigation is still ongoing is indeed a wrongful exercise of the discretion of the commission as it would amount to putting the cart before the horse even as the constitutional presumption of innocent continues to inure in favour of the Applicant.

Additionally, it must also be pointed out at this time that in deserving cases the Court is under a duty to protect the citizen if so, moved in a proper proceeding from the brazen breach of their fundamental rights and from unwarranted and unconstitutional interferences by law enforcement agencies of the Government. This is so because the rule of law is sacrosanct and paramount in every civilized democracy of the world, including Nigeria. The powers of the Economic and Financial Crimes Commission is undoubtedly quite enormous, making the responsible exercise of it all the more a sine quo non on the operatives of the commission and which powers must be exercised legitimately at all times within the ambit of the rule of law as enabled by the Commission’s Act and all other relevant and applicable laws of the land. With all the powers, the commission cannot and should not profile a person in the manner it did here when investigation as in this case is still ongoing. I will therefore direct that those who exercise investigative and prosecutorial powers must do so in strict compliance with the due

process of law. Consequently, in the unlikely event that the 1st Respondents continue with the invitation of the Applicant in the course of investigation, they must do so in strict compliance with law and not to observe the laws in breach as this will only reck havoc to the letter and spirit of the laws which this court is always ever so willing to protect.

One more thing and I will be done. It is appropriate in view of the 3rd declaration sought to speak to the issue of the powers of the commission as it relates to civil transactions. In as much as the Economic and Financial Crimes Commission has wide powers there are limits else, it will become a "man of all work". Delving into civil matters would also be an affront on the interpretation of the enabling act. Put clearly, the 1st Respondent ought not to meddle into purely civil disputes between persons. The powers conferred on the 1st Respondent to receive complaints and prevent and/or fight the commission of financial crimes in Nigeria pursuant to Section 6(b) of Economic and Financial Crimes Commission Act does not extend to the investigation and/or resolution of disputes arising or resulting from simple contracts or civil transactions. The Economic and Financial Crimes Commission has an inherent duty to scrutinize all complaints that it receives carefully, no matter how carefully crafted by the complainant to seek the intervention of the commission over civil transactions. In the instant case, having found that the investigation is still ongoing, I will leave it to the commission to circumspectly determine if the matter at hand is purely civil and whether the petition was only carefully drafted to induce criminal allegation that

warrant the attention of the commission. See *FRN v. Ojo &Anor (2018)*
LPELR-45541(CA) (Pp. 46-48 paras. F)

All in all, I proceed to and do hereby declare as follows

1. That the Applicant has a right to dignity of his human person and right to personal liberty as guaranteed by Section 34 and 35 of the 1999 constitution (as amended) ;Article 5 and 6 of the African Charter on Human and People's Right(Ratification and Enforcement) Act Cap. A9 LFN 2004 and as such the Applicant should not be subjected to any form of inhuman and degrading treatment by any of the Respondents.
2. That the taking of the Applicant's picture for profiling and forcing him to display a placard containing his name, age, tribe and statement of the offence; "**criminal breach of trust and fraud**", when investigation is still ongoing is wrongful and constitute a breach of the rights of the Applicant to personal dignity and presumption of innocence.
3. That the 1st Respondent lacks the powers to investigate, arrest, detain or prosecute the Applicant or any other person over a contractual agreement
4. An order of perpetual injunction is hereby made restraining the Respondents either by themselves, agents or privies from violating in any form or manner the fundamental rights of the Applicant.
5. The Applicant is hereby awarded the sum of ₦1,000,000 (One Million Naira) for the breach of his rights in 2 above by the 1st Respondent.

6. Parties are to bear their respective costs of this action.

ELEOJO ENENCHE

13/02/23

JUDGE

COUNSEL

Tairu Adebayo with Sarafadeen Salimon – for Applicant

G. I. Ndeh – for 1st Respondent with O.S. Ujam, M.B. Baraya and M.A.

Babatunde

Dr. Kayode Ajulo – for 2nd and 3rd Respondent

with Oludotun Sowemimo, Ifunaya Okeke Jamilu