

IN THE HIGH COURT OF JUSTICE OF THE F. C. T.
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT APO, ABUJA
ON THURSDAY, THE 20TH DAY OF APRIL, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/2810/2021

BETWEEN:

MR SOROCHI SOLOMON

APPLICANT

AND:

1. GLOBAL APPLIANCES NIGERIA LTD

[a.k.a. BINATONE ELECTRONICS]

2. MR ABHISHEK SATISH SURVE

3. MR SAMUEL CHINYERE MORDI

RESPONDENTS

JUDGMENT

By an Originating Motion on Notice dated and filed on the 25th of October, 2021 the Applicant brought this application for the enforcement of his fundamental rights under section 46 of the Constitution of the Federal Republic of Nigeria, 1999 and Order II Rules 1, 2, and 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 seeking the following reliefs:-

- i. A Declaration that the Applicant, being a Nigerian citizen, is entitled to the enjoyment of his fundamental rights to personal liberty and freedom of movement guaranteed him under sections 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 and Articles 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria, 2004 respectively.*

- ii. *A Declaration that the Respondents have no power of authority to unlawfully detain the Applicant, at the Respondents' office situate at Plot 759, Bassan Plaza, Ground Floor, Block-F, Central Business District, Abuja, from the hour of 1:00pm to 3:00pm of Friday, the 15th day of October, 2021, on the ransom/condition that the Applicant must write and sign a resignation letter before he will be released.*
- iii. *A Declaration that the act of the Respondents in detaining the Applicant, without legal backing or authority, at Respondents' office situate at Plot 759 Bassan Plaza, Ground Floor, Block-F, Central Business District, Abuja from the hour of 1:00pm to 3:00pm of Friday, the 15th day of October, 2021, on the ransom/condition that the Applicant must write and sign a resignation letter before he will be released, constitutes a flagrant breach of Applicant's fundamental rights to personal liberty and freedom of movement guaranteed him under sections 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 and Articles 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria 2004 and therefore unlawful and unconstitutional.*
- iv. *AN Order of perpetual injunction restraining the Respondents, their agents, servants, privies or any one acting through them, in trust for them or on their behalf from further contravening or threatening to contravene any of the Applicant's fundamental rights guaranteed under sections 33, 34, 35, 37 and 44 of the Constitution of the Federal Republic*

of Nigeria, 1999 and Articles 4, 5, 6, 7, 14 and 18 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria, 2004.

- v. *The sum of ₦150,000,000.00 (One Hundred and Fifty Million Naira only) jointly and severally against the Respondents, being general and exemplary damages or compensation for the Respondents' breach of the Applicant's fundamental rights to personal liberty and freedom of movement guaranteed him under sections 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 and Articles 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria, 2004.*
- vi. *The sum of ₦1,000,000.00 (One Million Naira only) being the cost of this suit.*
- vii. *Public apology to the Applicant published in three (3) national dailies in wide circulation across Nigeria by each of the Respondents in this case.*
- viii. *21% interest per annum on the judgment sum from the date of judgment until full and final liquidation.*

The reliefs sought were founded on twelve (12) grounds as set out in the statement in support of the Application. The originating Application itself was accompanied by the statement in support of the application setting description of the parties to the application, the reliefs sought and the grounds upon which the reliefs are sought, a written address in support of the application and an affidavit in support of the application to which was attached an exhibit marked as **Exhibit 1**.

The 1st Respondent had been served earlier with the originating processes, the hearing notice and other accompanying processes in the manner prescribed by the Rules of this Court for service of Court processes on corporate entities. Upon a consideration of the processes in the case file, I saw that an avoidable hullabaloo had ensued when the bailiff of this Court went to serve the 2nd and 3rd Respondents with the Originating Motion on Notice. For reasons best known to them but totally unwholesome and unacceptable to this Court – because no reason can justify the non-acceptance of court processes from a court official duly appointed by the Court to serve the processes – the 2nd and 3rd Respondents refused to accept service of the originating processes. The bailiff of this Court, on the 7th of June, 2022, deposed to an affidavit of non-service of the originating processes, narrating how he was assaulted by the 2nd and 3rd Respondents and the officials working for them. The facts stated in the affidavit of non-service were not rebutted by the Respondents. Irked by the conduct of the Respondents, Counsel for the Applicant wrote a petition to the Chief Registrar of this Court complaining of the conduct of the Respondents. The petition was dated the 20th of June, 2022. Determined to serve the Respondents with the originating processes, the Applicant through his Counsel brought an application for leave of this Court to serve the 2nd and 3rd Respondents by substituted means. The application, brought vide a Motion *Ex Parte* with Motion Number M/7165/2021 dated and filed on the 25th of October, 2021 was moved on the 26th of June, 2022. The Court granted the lone relief sought therein but varied the same by ordering that the service be effected on the Counsel for the Respondent who was in Court on that date.

Upon being served with the originating processes, the Respondents filed a joint Counter-Affidavit deposed to by the 3rd Defendant on the 12th of November, 2021. The Respondents, because they were out of time within which they were required to file their response to the originating application, also filed a Motion on Notice with Motion Number M/7871/2021 on the 12th of November, 2021 to regularize their processes before the Court. The Motion was dated the same date it was filed. It is obvious, from the dates of the processes, that the Respondents were already aware of the pendency of this suit, indisputably from the service on the 1st Respondent *vide* the mode provided for under Order 7 Rule 8 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018.

The Court heard the application for regularization on the 20th of October, 2022 and granted the reliefs sought therein. The Court thereafter adjourned this suit to the 29th of November, 2022 for hearing of the substantive suit. The suit could not be heard on that date owing to the absence of the Applicant and his Counsel in Court. the case was therefore adjourned to the 26th of January, 2023 for hearing. On the next adjourned date of 26th of January, 2023, parties adopted their respective processes and argued their respective positions for and against the originating application for the enforcement of the fundamental rights of the Applicant.

In the affidavit in support of the application, the deponent, MrSorochoi Solomon, swore to how he was restrained from leaving the office of the 1st Respondent after his appointment was terminated by the 1st Respondent *vide* an email sent to him at 12:20pm on the 15th of October, 2021. The email was attached to the affidavit as **Exhibit 1**. He averred that his attempt to respond to the email was truncated by

the 2nd and 3rd Respondents who ordered him to tender his resignation letter and vacate the premises immediately thereafter. As he demurred in writing the letter of resignation, notwithstanding that he had returned all the 1st Respondent's properties in his possession and had filled out a clearance form to that effect, the 2nd and 3rd Respondents insisted that he would not leave the premises of the 1st Respondent until he had written the letter of resignation. The Applicant swore that the security personnel of the 1st Respondent acting on the instructions of the 2nd and 3rd Respondents restrained him from leaving the premises from about 1:00pm of that day, that is Friday, the 15th of October, 2021 to about 3:00pm of the same day. Desperate to regain his freedom, the Applicant stated that he wrote the letter of resignation before he was released.

In the written address in support of the originating application, Counsel for the Applicant formulated two issues for determination: *“(1) Whether the act of the Respondents in detaining the Applicant, without legal backing or authority, at the Respondents’ office situate at Plot 759, Bassan Plaza, Ground Floor, Block-F, Central Business District, Abuja, from the hour of 1:00pm to 3:00pm of Friday, the 15th day of October, 2021, on the ransom/condition that Applicant must write and sign a resignation letter before he will be released does not constitute a flagrant violation of Applicant’s fundamental rights to personal liberty and freedom of movement guaranteed him under sections 35 and 41 of the Constitution and Articles 6 and 12 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria 2004 and therefore unlawful and unconstitutional; and (2) Whether the Applicant is*

not entitled to damages for the violation of his fundamental rights, and protection from further or likely infringement on the Applicant's fundamental rights."

In his joint argument of the twin issues, learned Counsel for the Applicant highlighted the sacrosanctcy of the rights engraved in Chapter IV of the Constitution, adding that all citizens of the country were guaranteed these rights. He maintained that those rights could not be derogated from except in accordance with a procedure recognized and provided for by the law.

Counsel submitted that any detention without any legal justification would amount to infringement of the fundamental rights to personal liberty and freedom of movement. He asserted that in view of the facts which had been established in the affidavit in support of the originating Motion on Notice, the Applicant's rights to personal liberty and freedom of movement were violated by the Respondents. He insisted that the Court had a duty to protect the citizens when allegations of violation of the rights of the citizens came before it.

It was the legal argument of the Applicant through his Counsel that he had established the violation of his rights as afore-stated. He argued therefore that the Applicant was entitled to compensation as well as injunctive reliefs against the Respondents.

Referring to the provisions of Chapter IV of the Constitution, the Preamble to and Order XI of the Fundamental Rights (Enforcement Procedure) Rules, 2009 as well as the decisions of the Courts on the subject, Counsel adumbrated on the nature of the orders the Court should make when the violation of a citizen's fundamental

rights has been established. He added that the orders may be for injunctions, damages or declarations. He pointed out that violations of the rights of the citizens by foreign companies were on the ascendency. He added that the Court had a duty toward exemplary damages against the Respondent to serve as a deterrence against foreign entities that were minded to toe that ignoble path of impunity. He therefore urged the Court to grant the reliefs sought in the application.

For all his submissions on the two issues he formulated, Counsel cited and relied on the following authorities: ***Ransome-Kuti v. AG Federation (1985) 7 NWLR (Pt. 6) 211 at 229; Igwe v. Ezeanochie (2010) 7 NWLR (Pt. 1389) 607; Salihu v. Gana & Ors (2014) LPELR-23069 (CA); Ogbonna v. Egbulefu & Ors (2018) LPELR-43810 (CA); Okeke & Anor v. Iheazie & Ors (2018) LPELR-45017 (CA); Nemi v. A.G. (Lagos) & Anor (1996) 6 NWLR (Pt. 452) 42 at 55; Nigerian Navy & Others v. Lionel Okong Garrick (2006) 4 NWLR (Pt. 969) 69; SPDC (Nig.) Ltd v. Katad (Nig.) Ltd (2006) 1 NWLR (Pt. 960) 198 at 217 para F, 218, paras A – D*** among other cases. He also cited and relied on sections 33, 34, 35, 37, 44 and 46 of the Constitution of the Federal Republic of Nigeria, Articles 4, 5, 6, 14, and 18 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A9 Laws of the Federation of Nigeria, 2004 and relevant Orders and Rules of the Fundamental Rights (Enforcement Procedure) Rules, 2009.

In answer to the submissions of Counsel for the Applicant, Counsel for the Respondent informed the Court of the Respondents' Counter-Affidavit and the accompanying processes. In the Counter-Affidavit deposed to by the 3rd

Respondent, Mr Samuel Chinyere Mordi, the deponent denied paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of the affidavit in support of the application and insisted that the Applicant resigned voluntarily from the employ of the 1st Respondent. He swore that the Applicant whilst in the employ of the 1st Respondent was guilty of workplace-related infractions and had been disciplined on several occasions.

The deponent further denied that the Applicant was restrained from leaving the premises until he had written the letter of resignation. He added that the Applicant voluntarily wrote his letter of resignation in the office of one of the 1st Respondent's workers, one Mr Friday Ubong. The copies of the letter of resignation and the clearance form were attached to the Counter-Affidavit and marked as **Exhibits A and B** respectively. The deponent also exhibited as **Exhibit C** an email from the 1st Respondent to the Applicant urging him to return the sum of ₦100,000.00 (One Hundred Thousand Naira) that was transfer to his account in error. He also exhibited as **Exhibits D, E and F** a query the 1st Respondent issued to the Applicant, the Applicant's response to the query and the email that embodied the communication. The supporting affidavit of the said Mr Friday Ubong was also attached to the Counter-Affidavit as **Exhibit G**. In the supporting affidavit attached as **Exhibit G**, the deponent, Mr Friday Ubong swore that he gave a sheet of A4 paper to the Applicant upon the latter's request. He added that the Applicant wrote the letter at his desk. He denied that the Applicant was arrested, detained and harassed. He also denied that the 1st Respondent had security personnel at its office.

The deponent also denied the employment of security guards by the 1st Respondent. He asserted that the Applicant was not entitled to any of the reliefs sought in the originating application.

In the Written Address in support of the Counter-Affidavit, the Respondents through their Counsel formulated a sole issue for determination, to wit: *“Whether the Applicant has set before this Honourable Court enough evidence to warrant the grant of the reliefs sought for in this application.”*

Arguing this sole issue, Counsel submitted that the Applicant who alleged that his rights had been infringed had a duty to prove that his rights were violated, adding that the burden would not shift to the Respondent to disprove the Applicant’s claims except the Applicant had discharged that primary onus on him. He insisted that the Applicant had not proved that his rights had been violated by the Respondents in any way. He referred this Court to the depositions in the Counter-Affidavit and urged this Court not to let itself be used as a vehicle for fraud as the appointment of the Applicant with the 1st Respondent was terminated because of repeated acts of workplace misdemeanors.

Counsel further argued that the Applicant’s rights could not have been infringed because the Applicant did not adduce evidence to prove that the Respondents reported the Applicant to the Police, adding that the Applicant was a dishonest person who brought the present application in bad faith. He also insisted that the Applicant had not placed cogent material particulars before this Court to establish the allegation of arrest and detention by the security personnel of the

1st Respondent. Counsel maintained that by not adducing the evidence in support of his claims, he knew the evidence would be prejudicial to his case if produced. He also submitted that the address of Counsel could never take the place of evidence. Asserting that the Respondents had controverted all the allegations of the Applicant, Counsel urged the Court to discountenance the application of the Applicant.

For all his submissions on the sole issue he formulated, Counsel cited and relied on the following cases: *Fajemirokun v. C. B (CL) Nig. Ltd. (2002) 10 NWLR (Pt. 774) 95*; *Gbademosi v. Akinloye (2013) 15 NWLR (Pt. 1378) 455*; *Dangtoe v. C.S.C. Plateau State (2001) 9 NWLR (Pt. 717) 132*; *UTB v. Ozoemena (2007) 3 NWLR (Pt. 1022) 448*; *Nnubia v. A.G. Rivers State (1999) 3 NWLR (Pt. 593) 82*; *Aliyu & Ors v. Intercontinental Bank Plc Plc & Anor (2013) LPELR-20716 (CA)*; *Gov., Kwara State v Lawal (2007) 13 NWLR (Pt. 1051) 347 at 387 para G*; *Onah v. Okenwa (2010) 7 NWLR (Pt. 1194) 512*; *Usufu v. The State (2007) 1 NWLR (Pt. 1020) 94 at 118 paras C – E*; *Sunday v. The State (2018) 1 NWLR (Pt. 1600) 251 at 272* among other cases. He also cited sections 35(1) and (6) and 41 of the Constitution of the Federal Republic of Nigeria, 1999, Articles 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A9 Laws of the Federation of Nigeria, 2004, sections 135 – 137 and 167(d) of the Evidence Act, 2011.

The above is the summation of the cases of the parties before me. After due consideration of the facts before me, and upon intense reflection on the arguments of Counsel for the parties herein, the following issue lends itself for determination:

“Whether the Applicant has not established the infringement of his fundamental rights to personal liberty and freedom of movement to be entitled to the reliefs sought in the application?”

In the resolution of this issue, it is important to consider the provisions of section 46 of the Constitution of the Federal Republic of Nigeria 1999. Subsection (1) of that section 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.”*** It is therefore not only the actual violation of the fundamental rights of a person that can be challenge in Court, the likelihood of their infringement is also actionable.

The Applicant has approached this Court seeking declaratory reliefs regarding the constitutional guarantee of his rights to personal liberty and freedom of movement and whether the Respondents’ conduct in relation to his person could be construed to mean an infringement of those rights. According to the Applicant, the Respondents, acting through the 2nd and 3rd Respondents and their officials, restricted his personal liberty and freedom of movement on the 15th of October, 2021 between the hours of 1:00pm and 3:00pm. According to him, the agents of the Respondents would not let him leave until he had written a letter of resignation. He had attached **Exhibit 1** in support of his claim. **Exhibit 1** is an email from one Kehinde Adesuyi to the Applicant. It was sent on the 15th of October, 2021 and reads *inter alia* ***“This is to inform you that the management has terminated your appointment letter due to several gross misconduct, absenteeism***

from work, late coming and others. We hereby advise you to tender your resignation letter now (15/10/2021)."

Expectedly, the Respondents denied the Applicant's claims. They insisted the Applicant voluntarily resigned from the employ of the 1st Respondent. They accused the Applicant of sundry misdemeanors. They asserted that the Applicant's appointment was terminated because of the Applicant's misdemeanors. In proof of their assertions, they attach a number of documentary exhibits. **Exhibit A** is the letter of resignation dated the 15th of October, 2021, written by the Applicant and addressed to the 2nd Respondent. It is self-explanatory. **Exhibit B** is the clearance form dated the 15th of October, 2021. It is also self-explanatory. Interestingly, it states that the Applicant handed over the 1st Respondent's property in his possession to one Omoh. I note with interest that the Respondents did not mention who this Omoh is. **Exhibit C** is an email which Kehinde Adesuyi sent to the Applicant on the 27th of October, 2021. It supports the averment in paragraph 11 of the Counter-Affidavit that the Applicant misappropriated the sum of ₦100,000.00 (One Hundred Thousand Naira) only which the 1st Respondent transferred to his bank account in error but which was meant for one Mr Mohammed Idris, the driver at the 1st Respondent's Abuja office.

Exhibit C holds my attention for a number of reasons: first, it was sent on the 27th of October, 2021 – that was, twelve (12) days after the 1st Respondent had terminated the Applicant's appointment and two days after this suit had been filed. The sender claimed that one Mr Kamal in the 1st Respondent's head office purportedly had a telephone conversation with the Applicant on the 18th of

October, 2021 over the subject. That was three (3) days after the appointment of the Applicant had been terminated. I have noted earlier that the Respondents filed their joint Counter-Affidavit on the 12th of November, 2021, that is, sixteen (16) days after **Exhibit C** was made. This Counter-Affidavit was filed notwithstanding the 2nd and 3rd Respondents' evasion of service of the court processes in this suit, thereby impelling the Counsel for the Applicant to move the Applicant's Motion *Ex Parte* for substituted service on the 26th of June, 2022, even though it was filed on the 25th of October, 2021.

Exhibit D is the query from the 1st Respondent to the Applicant giving him the opportunity to explain why he left the office during working hours without due permission. It was dated the 29th of January, 2020. **Exhibit E** is the Applicant's reply to the query which he sent to the 1st Respondent on the same 29th of January, 2020. In the reply, the Applicant admitted his wrongdoing and pleaded for forgiveness. **Exhibit F** is an email from one Yinka Oladapo to Kehinde Adesuyi complaining of the Applicant's lateness to work. It was sent on the 30th of October, 2020.

I have reflected on the exhibits and the depositions therein. It is immediately obvious that the Respondents and the Applicant had been in a toxic, frosty employer-employee relationship. the bellicose tone of **Exhibit 1** supports this finding. The entire paragraphs of the Counter-Affidavit, saving for paragraph 4 and paragraph 4(i) where the Respondents made a general denial of the material averments of the paragraphs of the Applicant's affidavit in support of his application, are dedicated to enumerating instances of the Applicant's commission

of infractions while in the employ of the 1st Respondent. Paragraph 5 of the Counter-Affidavit which controverted the Applicant's averment that he was detained for two hours on the 15th of October, 2021 because of his refusal to write the letter of resignation, is at variance with **Exhibit 1**, which is the email from the 1st Respondent to the Applicant ordering him to, in fact, "...tender [his] resignation letter now (15/10/2021)". **Exhibit G**, which is the supporting affidavit of one Friday Ubong lacks the vitality to cure the paragraph of its feebleness.

I return to **Exhibit C**. **Exhibit C** is a document that was made after the fact and falls squarely within the contemplation of section 83(3) of the Evidence Act, 2011. The section provides that "***Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.***" For a documentary evidence to be caught within the web of section 83(3), such document (1) must have been made by a person interested; (2) must have been made at a time when proceedings were pending or anticipated; and (3) must have been made regarding a dispute as to any fact which the statement might tend to establish. See ***Skye Bank Plc v. Perone (Nig.) Ltd (2016) LPELR-41443 (CA) at 50-53 paras F.***

First, who is a person interested and what is the nature of interest prohibited by section 83(3) of the Evidence Act, 2011 as amended? Though the Evidence Act did not define a person interested or the nature of interest for the purpose of section 83(3), the Courts have provided more than enough effulgence in this regard in a plethora of judicial authorities. I will mention but a few. In ***B. B.***

Apugo & Sons Ltd v. OHMB (2016) LPELR (40598) 1 at 67-68, the apex Court per Kekere-Ekun, JSC cited with approval the cases of *Nigeria Social Insurance Trust v. Klifco (Nig.) Ltd. (2010) 13 NWLR (Pt. 1211) 307* and *Evan v. Noble (1949) 1 KB 222 @ 225* where the term was conversely defined in terms of a person not interested in the outcome of a case as **“a person who has no temptation to depart from the truth on one side or the other, a person not swayed by personal interest but completely detached, judicial, impartial, independent.”** In *Charles Ogunmola v. United Bank for Africa Plc (2020) LPELR-50775(CA)*, the Court of Appeal defined a person interested as **“someone who would be affected by the result of a proceedings and would by so doing have the intuition to pervert justice by giving a false statement.”** In *U.T.C Nigeria Plc v. Alhaji Abdul Wahab Lawal (2013) LPELR–23002 (SC)*, the Apex Court per Ariwoola, JSC (as he then was, now, CJN) held thus; **“A ‘person interested’ is said to mean one who has pecuniary or other material interest in the result of the proceeding. A person whose interest is affected by the result of the proceedings, and therefore would have a temptation to pervert the truth to serve his personal or private ends.”** See also *Union Bank Plc v. Tenosys Global Konnect Limited & Anor (2020) LPELR-49736(CA)*.

As to whether a party to a suit can be described as a person interested, the Supreme Court in *U.T.C.Nigeria Plc v. Alhaji Abdul Wahab Lawal, supra* put it beyond all scintilla of disputation when it held that **“Generally, it is trite law that document made by a party to a litigation or person otherwise interested when proceedings are pending or is anticipated is not admissible.”**

As to the kind or nature of interest envisaged by section 83(3) of the Evidence Act, the Evidence Act, 2011 as amended, the Supreme Court in ***U.T.C. Nigeria Plc v. Alhaji Abdul Wahab Lawal, supra*** held that ***“the interest that is envisaged by the law which disqualifies is a personal interest not merely interest in an official capacity.”*** In ***Ogunmola v. UBA, supra***, the Court of Appeal held that the nature of interest envisaged herein ***“...does not mean an interest in the sense of intellectual observation or an interest purely due to sympathy. It means “an interest in legal sense, which imports something to be gained or lost.”*** I have no difficulty in holding that the 1st Respondent who prepared and sent that email to the Applicant through Kehinde Adesuyi on the 27th of October, 2021 that is, two (2) days after this suit had been filed and sixteen (16) days before the Respondents filed their Counter-Affidavit and which email resurrected in their Counter-Affidavit as **Exhibit C** is a person interested in this suit within the contemplation of section 83(3) of the Evidence Act, 2011 as amended. See also ***Lanlehin v. Akanbi & Ors (2015) LPELR-42147 (CA)***.

Second, the statement must have been made when proceedings were pending or anticipated. I have observed earlier that **Exhibit C** was made on the 27th of October, 2021, that was, twelve (12) days after 1st Respondent had terminated the appointment of the Applicant, two (2) days after this suit had been filed and sixteen (16) days prior to the filing of the Respondents’ Counter-Affidavit.

Finally, the statement must tend to establish any fact which is in dispute. There is no question that the intendment of the Respondents in annexing **Exhibit C** is to support their disposition in paragraph 11 of their Counter-Affidavit which seeks to

cloth the Applicant with the cloak of dishonesty. That much was the thrust of the argument of learned Counsel for the Applicant in paragraph 4.05 of the Written Address in support of the Counter-Affidavit. **Exhibit C**, though, attached to an affidavit, therefore, becomes inadmissible on this ground. This Court cannot therefore act on it.

The Respondents have argued that the Applicant had the primary duty to establish his entitlement to the reliefs sought. I agree with them. Section 131(1) of the Evidence Act, 2011 states that “**Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist.**” This is particularly so where the Applicant seeks declaratory reliefs. In **Akande v. Adisa (2012) 15 NWLR (Pt. 1324) 538 S.C. at 571, paras. C-E**, the Supreme Court held that “**A declaratory action is discretionary in nature. Therefore, the onus of proof lies on the party claiming and he must succeed on the strength of his own case and not on the weakness of the defence except where the case for the defence supports his case.**” Speaking further **at 571, paras. G-H**, the Court held that “**A declaration is a discretionary remedy and anybody seeking such a remedy has the legal burden of proof as well as the evidential burden under sections 135 to 137 of the Evidence Act.**”

In **Mr. Ebong John Ebong v. Mr. Okon Warriie Ebong (2022) LPELR-56506(CA) at 12, paras A – D**, the Court of Appeal per Abiriyi, JCA explained the standard of proof in declaratory actions thus:

“Declaratory reliefs are only granted when credible evidence has been led by the person seeking the declaratory relief. The plaintiff must plead and prove his claim for declaratory relief without relying on the evidence called by the defendant. Declaratory relief is not granted even on admission by the defendant. There is however nothing wrong in a plaintiff taking advantage of any evidence adduced by a defendant which tends to establish the plaintiff's claim. See Oguanuhu v Chiegboka (2013)2 SCNJ 693, Matanmi&Ors. v Dada & Anor (2013)1 LPELR (SC) and Anyanru v Mandilas LTD (2007)4 SCNJ 288.”

Has the Applicant been able to establish the infringement of his rights to personal liberty and freedom of movement? These rights are created and guaranteed under sections 35 and 41 respectively of the Constitution of the Federal Republic of Nigeria, 1999. To answer the question, therefore, it is necessary to examine the constituent elements of these rights as provided for in the sections afore-cited and the judicial explication of those sections. Section 35(1) provides that

“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 fulfilment of any obligation imposed upon him by law;***
- (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;***
- (d) In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;***
- (e) In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community;***
- (f) For the purpose of preventing the unlawful entry of any person into Nigeria or, effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.***

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to

be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.”

Section 41(1) and (2), on the other hand, provides for the right to freedom of movement. It is stated therein that

(1) “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.

(2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society –

(a) Imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

(b) Providing for the removal of any person from Nigeria to any other country to –

(i) Be tried outside Nigeria for any criminal offence; or

(ii) Undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.”

The courts have adumbrated on what constitutes an infringement of these two rights. 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.”

The Respondents have argued in paragraph 4.05 of their Written Address that no right of the Applicant was infringed as the Applicant did not prove that the Respondent reported the incident to the police. This argument is a *non sequitur*. Infringement of any of the rights guaranteed under Chapter IV does not presuppose that the infringement must be committed by the police, or indeed, by any of the law enforcement agencies. Private citizens and corporate entities can be guilty of this malfeasance too. It, however, speaks to the degree to which the police and other law enforcement agencies have abdicated their primary, constitutional and statutory responsibilities that lawyers could be canvassing the type of argument that was canvassed by the Counsel for the Respondents. The police and other law enforcement agencies need to redeem and reinvent themselves, seeing that citizens now see them as instruments of oppression.

But, I digress.

Returning to the case at hand, I must state that it is immaterial that the restriction on the liberty of the Applicant is for a few minutes or for an interminable length of

time. What matters is that the rights of the Applicant were derogated from in a manner not contemplated by the law. In ***Ogbonna v. Egbulefu&Ors (2018) LPELR-43810 (CA)***, the Court of Appeal held that ***“It is however correct to hold that detention, no matter how short, can lie a breach of fundamental rights. But, that can only be so if the detention is adjudged wrongful and unlawful in the first place; that is, if there is no legal foundation to base the arrest and/or detention of the Applicant.”*** It is my considered view that the restriction of the personal liberty of the Applicant on the 15th of October, 2021 between the hours of 1:00pm and 3:00pm and the abridgement of his right to freedom of movement on that same day and at that same time by the officers of the 1st Respondent acting at the instructions of the 2nd and 3rd Respondents 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.

The Respondents arguing in paragraphs 4.08 of their Written Address had contended that the failure of the Applicant to call witnesses to prove the fact of allegation was fatal to his case. They cited and quoted section 167(d) of the Evidence Act, 2011. They also cited judicial authorities in the regard. It is my considered view, and I so hold, that section 167(d) of the Evidence Act, 2011 and the judicial authorities cited in that regard are inapplicable in this case for obvious reasons. The first is that the Applicant had adduced facts and evidence which he believed would ground the reliefs he seeks in this suit. It is for the Respondents, pursuant to section 133(2) of the Evidence Act, 2011 to adduce contrary evidence

either to disprove the evidence of the Applicant, or to provide justification for their action.

Second is that this suit is one that is decided on the basis of affidavit evidence. The Court may have recourse to oral evidence in the event of a conflict in affidavit evidence. Section 116 of the Evidence Act, 2011 provides that “**When there are before a court, affidavits that are irreconcilably in conflict on crucial facts, the court shall for the purpose of resolving the conflict arising from the affidavit evidence, ask the parties to proffer oral evidence as to such facts, and shall hear any such oral evidence of the deponents of the affidavits and such other witnesses as may be called by the parties.**”

Yet, and significantly too, the Courts have held that it is not in all cases that conflicts in affidavits will be resolved by oral evidence. In some cases, documents attached to the affidavits will be considered in the resolution of conflicting evidence in the affidavits. In ***Oriental Energy Resources Limited v. Hercules Offshore Nigeria Limited (2020) LPELR-50873(CA) at 53-54, paras. D-B***, the Court of Appeal per Ogakwu, JCA held that

“...While it is abecedarian law that where there are conflicts in affidavits, oral evidence has to be called to resolve the conflict: FALOBI vs. FALOBI (1976) 9-10 SC 1; as a Court of law has no competence to suo motu and willy-nilly reconcile affidavit evidence without oral evidence: See PHARMACISTS BOARD vs. ADEBESIN (1978) 5 SC 43 and NATIONAL BANK (NIG) LTD vs. ARE

BROTHERS (NIG) LTD (1977) 6 SC 97. However, where there is enough documentary evidence outside the conflicting affidavit evidence, the Court can make use of that evidence without needing to call oral evidence: LIJADU vs. LIJADU (1991) 1 NWLR (PT 169) 627 at 649 and EZEGBU vs. FATB LTD (1992) 1 NWLR (PT 220) 699. In this regard, the lower Court was justified when it used the documentary evidence before it to resolve the conflicting affidavits, thus obviating the need to call oral evidence.”

It is in this regard that I evaluated earlier the documentary exhibits attached to the two affidavits before me with painstaking fastidiousness and also paid particular attention to the depositions in the Counter-Affidavit. It is my considered view that the arguments of learned Counsel for the Respondents on this score go to no moment. The documents exhibited by the Respondent do not speak to the incident that occurred between 1:00pm and 3:00pm on the 15th of October, 2021. Ditto for the depositions in the Counter-Affidavit. They are, mildly speaking, exercises in the logical fallacies of ad hominem, strawman and red herring. Instead of addressing the incident complained of, they seek to question the credibility of the Applicant as a person. They deviated by a wide berth from the tangent of the cause of action embedded in this suit, which is, the infringement of the Applicant's fundamental rights to personal liberty and freedom of movement, and sought to draw this Court into the realm of workplace disputations. This Court cannot be drawn into a fatuous adventure that is of no relevance to the suit before it.

Having found that the rights of the Applicant to personal liberty and freedom of movement have been breached, this Court will determine whether the Applicant is entitled to other reliefs sought in this suit. The Applicant seeks orders for damages, compensation and injunction from this Court. In an action for enforcement of the fundamental rights of an Applicant, damages automatically accrue once the Applicant has established that their right was abridged. In ***Skye Bank v. Njoku, supra***, the Court held at **page 31 paras D – E** that ***“In fundamental rights action, damages automatically accrue, once the Respondent has been adjudged to have violated the Applicant’s fundamental rights.”*** In ***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 principles on award of damages do not apply to matters brought under fundamental rights. When a breach is proved the victim is entitled to compensation even if no specific amount is claimed. The damages automatically accrue.”***

Of all the rights protected under Chapter IV of the Constitution, however, only the violation of the rights to personal liberty enshrined in section 35 and the right to own property under section 44 entitles the victim of the violation to compensation and public apology. Additionally, it is only the violation of the right to personal liberty entitles the victim to the tendering of a public apology by the perpetrators. Section 35(6) of the Constitution provides that

“Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority

or person; and in this subsection, “the appropriate authority or person” means an authority or person specified by law.”

On the other hand, section 44 provides that compensation shall be paid to a citizen whose property whether movable or immovable has been acquired compulsorily. The right protected under this section, is, however, not in focus in this application.

The Courts have pronounced in a plethora of judicial authorities on the nature of damages and when the Courts can award damages. In ***Toyinbo v. Union Bank Plc (2023) 1 NWLR (Pt. 1865) 403at 428, paras D – E***, the Supreme Court identified the different types of damages when it held that ***“Damages are varied and ubiquitous, namely: common law damages, compensatory damages, consequential damages, nominal (contemptuous) damages, general damages, special damages, hedonic damages, liquidated damages, restitution damages, et al.”*** In ***G.K.F.I. (Nig.) Ltd v. NITEL Plc (2009) 15 NWLR (Pt. 1164) 344 at 373, paras D- F***, the Supreme Court defines the different types of damages as follows: ***“Special damages, as the name imply (sic), are damages which must be specifically claimed and described in the pleadings if recovery of them will be ordered by the Court. Exemplary damages are damages on an increased scale over and above special or actual or ordinary damages, awarded in aggravated circumstances. They are punitive in nature. General damages are damages which the law presumes to flow naturally from the wrong complained of. They are damages implied by law***

and need not be proved specifically. While the law of evidence requires and exemplary damages to be proved, general damages need not be proved.”

In view of the circumstances of this case, particularly the impunity of the three Respondents in restricting the rights to personal liberty and freedom of movement of the Applicant in a manner that reeked of obscene exercise of power and impunity of power, the obstinacy of the 2nd and 3rd Respondents to accept service of the Court processes on them, thereby compelling the Applicant to bring an application for leave to serve them by substituted means, this Court in the exercise of its inherent jurisdiction, finds that the circumstances for the award of exemplary damages have been established. This is more so against the backdrop of the disdain and the subhuman treatment some foreign companies treat their Nigerian workers. The award of exemplary damages is apposite in this circumstance to halt the descent into ferine degradation and dehumanization of Nigerians which some of these foreign companies find fashionable.

With regards to an order of perpetual injunction, 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.”

In all, this suit succeeds, the entitlement of the Claimant to the reliefs having being established by a preponderance of credible and cogent affidavit evidence. Accordingly, the reliefs sought in the Originating Motion on Notice are hereby granted as follows:-

1. **THAT the Applicant, being a Nigerian citizen, is entitled to the enjoyment of his fundamental rights to personal liberty and freedom of movement guaranteed him under sections 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 and Articles 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria 2004 respectively.**
2. **THAT the Respondents have no lawful power and authority to detain the Applicant unlawfully at their office situate at Plot 759, Bassan Plaza, Ground Floor, Block-F, Central Business District, Abuja on Friday, the 15th day of October, 2021 between the hours of 1:00pm and 3:00pm unless and until the Applicant wrote the letter of resignation as ordered by Kehinde Adesuyi, an officer of the 1st Respondent in Exhibit 1 and which order was enforced by the 2nd**

and 3rd Respondents and the employees under their control at the 1st Respondent's Abuja office.

3. **THAT the act of the Respondents in detaining the Applicant without legal justification at their office situate at Plot 759 Bassan Plaza, Ground Floor, Block-F, Central Business District, Abuja on Friday, the 15th of October 2021 between the hours of 1:00pm and 3:00pm unless and until the Applicant wrote a letter of resignation as ordered by Kehinde, Adesuyi, an officer of the 1st Respondent and which order was enforced by the 2nd and 3rd Respondents acting with the employees under their control at the Abuja office of the 1st Respondent constitutes a breach of the Applicant's fundamental rights to personal liberty and freedom of movement as enshrined under sections 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 and Articles 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria, 2004 and therefore unconstitutional, illegal and unlawful.**
4. **THAT an Order of Perpetual Injunction is hereby made restraining all the Respondents, their agents, servants, privies or any one acting through them, in trust for them or on their behalf from further contravening or threatening to contravene any of the Applicant's fundamental rights guaranteed under sections 33, 34, 35, 36, 37, 41 and 44 of the Constitution of the Federal Republic of Nigeria, 1999**

and Articles 4, 5, 6, 7, 14 and 18 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria, 2004.

5. THAT the sum of ₦500,000.00 (Five Hundred Thousand Naira only) is hereby awarded against all the Respondents jointly and severally against the Respondents for their breach of the Applicant's constitutionally guaranteed fundamental rights to personal liberty and freedom of movement as enshrined under sections 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 and Articles 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria, 2004
6. THAT the sum of ₦500,000.00 (Five Hundred Thousand Naira only) is hereby awarded against all the Respondents jointly and severally as exemplary damages for their breach of the Applicant's constitutionally guaranteed fundamental rights to personal liberty and freedom of movement as enshrined under sections 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 and Articles 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria, 2004 as well as for their intransigency in refusing to accept the originating processes in order to frustrate the application of the Applicant for the enforcement of his

fundamental rights which they had breached, thereby compelling the Applicant to bring an application for substituted service which otherwise would have been unnecessary.

- 7. THAT the sum of ₦200,000.00 (Two Hundred Thousand Naira only) is hereby awarded against all the Respondents jointly and severally against the Respondents as compensation for the Respondents' breach of the Applicant's fundamental right to personal liberty guaranteed him under section 35 of the Constitution of the Federal Republic of Nigeria, 1999 and Article 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria, 2004.**
- 8. THAT the sum of ₦300,000.00 (Three Hundred Thousand Naira only) is hereby awarded against all the Respondents jointly and severally as the cost of this suit.**
- 9. THAT the Respondents are hereby ordered to tender a joint public apology to the Applicant within fourteen days from the date of this Judgment. The said public apology shall be published in two (2) national dailies in wide circulation across Nigeria.**
- 10. THAT a post-judgment interest of 10% per annum is hereby imposed on the total Judgment sum from the date of Judgment until same is fully and finally liquidated.**

This is the Judgment of this Court delivered today, the 20th day of April, 2023.

HON. JUSTICE A. H. MUSA
JUDGE
20/04/2023

APPEARANCES:

FOR THE APPLICANT

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