

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

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS  
COURT: 28**

**Date: - 19<sup>TH</sup>SEPTEMBER, 2023**

**FCT/HC/CV/6161/2023**

**BETWEEN**

**BONIFACE GODWIN-----**

**APPLICANT**

**AND**

- 1. OKAFOR SUNDAY UZOCHUKWU**
- 2. INSPECTOR GENERAL OF POLICE**
- 3. COMMISSIONER OF POLICE  
FEDERAL CAPITAL TERRITORY COMMAND**
- 4. MR. ESTEEM JOHN  
(IPO SPECIAL TACTICAL SQUAD GUZAPE)**
- 5. IPO IDRIS  
(IPO SPECIAL TACTICAL SQUAD GUZAPE)**

**RESPONDENTS**

**JUDGMENT**

By an originating summon dated 22<sup>nd</sup> day of May, 2023, the Applicant claims the following reliefs against the Respondents:-

1. A declaration of Court that the on and off continuous threat, arrest and detention of the Applicant by the officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents particularly the 4<sup>th</sup> and 5<sup>th</sup> Respondents from Special Tactical Squad (STS) Guzape – Abuja at the behest of the 1<sup>st</sup> Respondent based on a spurious and false allegation of ownership of part of the Applicant employer's land, to wit; quarry site No. 23521 is a breach of the Applicant's fundamental Human rights as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria (1999) as amended.
2. A declaration of Court that the officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents particularly the 4<sup>th</sup> and 5<sup>th</sup> Respondents from special Tactical Squad (STS) Guzape – Abuja are acting ultra vires of their powers by often threatening, arresting and detaining the Applicant at the behest of the 1<sup>st</sup> Respondent.
3. An order of perpetual injunction restraining officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents particularly the 4<sup>th</sup> and 5<sup>th</sup> Respondents from Special Tactical Squad (STS) Guzape – Abuja from further arresting, interrogating, confining and/or detaining the Applicant based on a spurious and false allegation of ownership of part of the Applicant employer's land, to wit: quarry site No. 23521 at the behest of the 1<sup>st</sup> Respondent.
4. The sum of ₦100,000,000.00 (One Hundred Million Naira only) as general damages jointly and severally against the 1<sup>st</sup> to 5<sup>th</sup> Respondents for the often threat, arrest and unlawful detention on several occasion of the Applicant,

for the trauma, pains depression deprivation, humiliation, emotional and physical torture suffered by the Applicant in the hands of all the Respondents.

5. N2,500,000.00 as the cost of this action.

In support of the originating application is a 20 paragraph affidavit deposed to by one Boniface Godwin an employee of nature product Limited and the site manager of its quarry site situate at Guzepe Abuja dated 22<sup>nd</sup> May, 2023 attached to the affidavit are documents marked exhibit A, B, C, D and E respectively the Applicant also filed a written address in support of the application. The respondent in opposition to the Applicant's application filed a 5 paragraph counter affidavit the said counter affidavit was filed by 2<sup>nd</sup> and 3<sup>rd</sup> Respondent same is dated the 27<sup>th</sup> June, 2023 deposed to by Marcel Joseph Emeka a litigation secretary in the office of Messrs Dion solicitors Counsel engaged by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent the said Respondents also filed a written address in support of the Counter affidavit. The case of the Claimant is that Fundamental right to freedom of movement, right to dignity of human person, right to personal liberty and right to private and family life as guaranteed by section 34, 35, 37 and 41 of the 1999 Constitution of the Federal Republic of Nigeria, has been and currently being breached by the Respondent. Also the Applicant was on several occasions arrested detained by officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent particularly 4<sup>th</sup> and 5<sup>th</sup>

Respondent from Special Tactical Squad at the behest of the 1<sup>st</sup> Respondent.

The Applicant also asserted in his grounds upon which the reliefs are sought that the above act of the Respondents amount to a gross violation of the Applicant Fundamental Right as his right has been and is currently being breached and violated.

The hearing of the matter commenced and the Applicant through his Counsel adopted the originating application before the Court praying the Court to grant the prayers as contained therein the Respondents particularly 2<sup>nd</sup> and 3<sup>rd</sup> Respondents adopted its counter affidavit before this Court praying this Court to dismiss the Applicant application. I would like to place on record in this judgment despite several hearing notice served on the Respondents only the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent filed their counter affidavit while the rest of the respondents did not file anything nor did they put up appearance in this matter.

The Applicant in its written address raised a sole issue for determination to wit:-

*“ Whether from the affidavit deposed to by the Applicant, a prima facie case of a breach of his fundamental right as enshrined in the 1999 Constitution of the Federal Republic of Nigeria has been established to all the reliefs claimed in this case.”*

Arguing on issues one above, it is the submission of the Counsel that to find out what our laws stipulates to entitle an applicant to be successful on his claim as regards a breach of his/her Fundamental right. Same cited the case of **ASST. INSPECTOR GENERAL OF POLICE AND ORS VS ELDER ABEL EZENWA (2016)ALL FWLR (pt.830) ratio 8 at page 1361.**

*“The question of the infringement of Fundamental right is largely a question of facts and does not so much depend on the dexterous submission from the forensic arsenal of Counsel on the law. So, the facts of the matter as disclosed by the affidavit filed are the determining factors in whether the Fundamental right of an individual have been eviscerated or otherwise dealt with in a manner that is contrary to the constitution and other provisions on the Fundamental Right of an individual “*

It was the submission of Counsel above that it was now trite and settled principle of law that the affidavit evidence of an Applicant in a suit bothering on fundamental human right enforcement is the most important factor to be considered. The Affidavit in support of this application has chronicled acts which has led to the breach of the Applicant fundamental human rights Counsel further argued that if the 1<sup>st</sup> Respondent has a good claim against the Applicant regarding the law which led to the filing of this application same ought to have a civil suit.

In stead of engaging the 2<sup>nd</sup> and 5<sup>th</sup> Respondent in violating the Fundamental right of the Applicant without any justifiable cause. See section 35 (1) of the 1999 Constituion see 41 of the same constitution see also the case of **OLUWATIMILEHIN VS KEHINDE (2020)3 NWLR (Pt 1740) at page 36 paragraph F.G**

Counsel in his further submission maintained that to curtail the excess of the powers exercised by the 2<sup>nd</sup> -5<sup>th</sup> Respondents referred the Court to the case of **BERNARD ANOGWIEI & 3 ORS VS EBERE ODOM & 4 ORS (2016) LPELR 40214 CA. see also MCLAREN VS JENNINGS (2003) FWLR (pt 154) at p. 538 paragraphs B-D** . Counsel re emphasised that from the above authorites the Applicant has been able to establish a prima facie case of a breach and continuous breach of his fundamental human rights against the Respondent that entitles him to the reliefs claimed against them. Counsel further cited section 46 of the 1999 Costitution to support his argument from the above judicial authorities and statutory provisions cited above, particularly section 35 (6) of the 1999 Constitution can be seen expressly that compensation ought to flow naturally when a prima facie case of unlawful arrest and detention as set out by the Applicant of this nature is proved. It was the Counsel submission that the 1<sup>st</sup> Respondent cannot exculpate himself from liability by claiming that he merely lodged a complaint to the police as it is now trite that when the complaint was lodged falsely against a victim or the complainant procured the police to harass and attack the victim for ulterior motives or over a purely civil matter, with the intent of using the police or law enforcement agency to

settle private scores the complainant can not wash off his hand from the evil visited on the victim of the malicious complaint. See **UDEAGHA VS NWOGWUGWU (2013) LPELR 21819 page 23-25 paragraph and IWUNNEVS EGBUCHULAM(2016) LPELR 40515 CA.**Counsel respectively urge the Court to exercise its discretion judicially and judiciously in granting this application as the issue necessitating the filing of same have been succinctly distilled. On the issue of discretion Counsel referred the Court to the case of **ANACHEBE VS IJEOMA (2015 ALL FWLR (pt 784)183 ratio 8, ANOZIE VS IGP (2017)ALL FWLR (898)ration 2. DASUKI VS D.G 885 (2020)10 NWLR at page 151 paragraph B-F.** In conclusion Counsel urge the Court to grant all the reliefs contained in this application. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed its written address dated 27<sup>th</sup> June, 2023.

In response to the Applicants originating Application same raised a sole issue for determination to wit:-

*“Whether on the material before the Court the Applicant has been able to prove that his fundamental human right(s) was violated or likely to be violated by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to entitle him to the reliefs sought.”*

Counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent submitted that the Applicant has failed to prove by credible evidence that his right has been violated by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent. Counsel further submitted that it beholds on the Applicant to prove that the purported Act was actively carried out with the authority and directives of the 2<sup>nd</sup> and 3<sup>rd</sup>

Respondent. Court cannot work on speculation. See **CHUKWU VS AMADI (2009) 3 NWLR (pt1127)56 Q75 paragraphs E-G 80 paragraph D-F** as it relates to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents the case of the Applicant is vague and only speculative and same is lacking in substance and valuable evidence to put the Court in the commanding gait from the affidavit in support of the application filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent vehemently denied every allegation of facts contained the Applicant has failed woefully to proof. See **ODI VS IYALA (2004)8 NWLR (pt 878)283 Q311**. Also section 131 & 132 of the evidence act. Counsel went on to add that mere averments of infraction in an affidavit cannot suffice especially where they are severally contraverted or challenged see **CHUKWU VS AMADI (supra) AIGORO VS COMMISSIONEROF LANDS MINISTRY, KWARA STATE (2012) 11 nwlr (PT1310) 111 at 130 paragraph G I.B.W.A VS SASEGBON (2007)16 NWLR (pt1059)195**. In conclusion Counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent urge the Court to dismiss the Applicants/Reliefz with substantial cost for wasting the precious time of the Court and unnecessary dragging the Respondnts into litigation. In view of the settled position of the law as it relates to the facts and substance of this case the submission of Counsel to the Applicant and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent's. The issue formualted by the Applicant and 2<sup>nd</sup> and 3<sup>rd</sup> Respondent can be accomadated under the sole issue for determination to with thus:-



*“Whether the Applicant has proved its claims on a balance of probability to entitle it to any or all of reliefs sought”*

The above issue is not raised as an alternative to the issues raised by the parties on both side of the aisle but the issues canvassed by the parties can and shall be cummulatively considered the above issue see **SANUSI VS AMOYEGU (1992)4 NWLR (pt 37)**. The issues thus raised has in the Courts considered opinion brought out with sufficient clarity and focus, the path of the contest which has been brought to Court for adjudication by parties to this action. Let me quickly make the point that it is now settled principle of general application that what ever course the pleadings takes, an examination of them at the close of pleadings should show precisely what the issues upon which parties must propose and present their case. At the conclusion of trial proper, the real issues which the Court would resolve must be manifestly clear. Only an issue which is desire in any case should be what is of concern to parties any other issue outside the confines of the critical or fundamental questions affecting the rights of parties will only have peripheral significant if any. See **OVERSEAS CONSTRUCTION LTD VS CREEK ENTERPRISES LTD & ANOR (1985)3 NWLR (pt 113) 407 at 418**. Supreme Court:-

*“By and large every disputed question of facts is an issue. But in every case there is always the crucial and central issue which if decided in fovour of the Plaintiff will itself give him*

*the right to the reliefs he claims subject of course to some other consideration arising from other subsidiary issues if however the main issues is decided in favour of the Defendant, then the Plaintiff case collapse and the Defendant wins.”*

It is therefore guided by the above wise quote that I would proceed to determine this case based on the issue I have raised and also considered the evidence and submission of Counsel.

The law is trite that civil cases are decided on the balance of probability that is the preponderance of the evidence the Court arrives at this by placing the totality of evidence by parties on an imaginary scale to determine which side of evidence is heavier and accordingly preponderates . the party whose evidence is heavier succeeds see **DR. USENI UWOH& ANOR VS DR. EDMOND SBN T AKPABIO& ANOR (2014) 2 MJSC (PT11) 108 Q113 .**

More so the success or failure of the case of the Claimant is predicated first on the nature of his pleadings and secondly the evidence led in support of his averment. In the same vein the success or failure of the defence of the Defendant is based on the averments in his statement of defence and the evidence led in support thereof. See **RAMAN FUAI APENA & ANOR VS OBA FATAI AILERU & ANOR 92014) 6-7N MJSC (pt 11) 184 Q188.**

I have given a resolute consideration to the facts that led to the Institution of this action, the counter affidavit and the argument canvassed by the learned Counsel to the respondent in his written address (2<sup>nd</sup> and 3<sup>rd</sup> Respondent). I wish to start by saying that all the Respondents with the exception of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, other Respondents refuse to file their counter affidavit in opposition to the application file neither do they put up appearance in this matter. I have carefully with absolute consideration critically gone through the affidavit in support of the motion filed by the Applicant. I am of the view that the affidavit in support have not clearly shown the involvement of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent on the infringement of the rights of the Applicant. The mere assertion contained in the affidavit was not sufficient enough in granting the reliefs sought by the Applicant. It should be noted that mere averments contained in the affidavit is not sufficient enough. There must be cogent and material evidence contained in the affidavit deposed when the Applicant cited his case fail to do the needful the Court should not speculate this is trite this procedure of instituting an action is sue generies. The releifs sought most be principally established by way of evidence. I therefore without reproducing the authorities again in this judgment convincely hold and relied also on the authorities cited by Counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents hold that the Applicant in this action failed to satisfy the requirement as provided by this procedeuire consequently the reliefs soght against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent in this matter is hereby refused and accordingly dismiss.

This was principally based on the case cited above and the provison of the law I so hold. No order as to cost I now look at the involvement of the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondent in

order to ascertain whether their involvement actually took place which led to the filing of this application by the Applicant. I must start by emphasizing that the duty of establishing the breach of the fundamental right of the Applicant lies squarely on the Applicant this can only be done by affidavit evidence. I have gone through the affidavit filed by the Applicant I am fully satisfied that same have established his claim against the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondent.

See the entire paragraph of the affidavit attached to the motion on notice filed by the Applicant. I would also like to state in this judgment, the Respondent are expected to file their counter affidavit they have not done that. However my reasons on this finding was basically based on the affidavit evidence of the Applicant and the exhibits attached thereto. Generally speaking it is also the law where Respondent failed to file a counter affidavit same is deemed admitted. It is trite where a party failed to file a counter affidavit in support of the application is deemed admitted by the other party. It should be noted that the aims and objectives of the procedure of enforcement of fundamental right is to provide a simple and effective judicial process for the enforcement of fundamental right in order to avoid the cumbersome procedure and technicalities for their enforcement under the rules of common law or other statutory provisions. See **OGUGUA VS STATE(1998)HRLRA 167 168. EFFIONG VS EBONG(2007)28 WRN 71Q83 HONOURABLE AHMED VS SOKOTO STATE HA (2002) 44 WRN 52 -75 GOVERNOR OF KOGI STATE VS MOHAMMED**

**(2009)(pt1159) and NAKOJU VS ADELEKU(2008)30 WRN 1.**

Where it was stated to those cases in an action began by originating summons failure to file a counter affidavit means that the Respondent has admitted that facts deposed in the affidavit in support of the originating summons consequently all the reliefs sought particularly reliefs 1 , 2 and 3 are hereby granted. However with the exclusion of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent those reliefs does not apply to them. While on the issues of general damages the essence and purpose of award of damages for breaching fundamental right is to reasonably compensate the Applicant on avenue for goldmine. The Respondent appear to have acted recklessly. It is therefore in consideration of this that I order as follows, general damages of N500,000.00 is awarded in favour of the Applicant against the 1<sup>st</sup> , 4<sup>th</sup> and 5<sup>th</sup> Respondents for infraction of the constitutionally guaranteed fundamental right of the Applicant. I made no order as to cost of filing this action.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**

Appearance

Godwill Sunday Ogboji:- For the Applicant

Odion peter Odia:- For the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents