IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 30TH DAY OF MAY, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/2557/2022

BETWEEN:

IMAM ISHAQ YAQUB — **APPLICANT**

AND

1. **DEPUTY INSPECTOR-GENERAL OF POLICE (DIG) FORCE CRIMINAL INTELLIGENCE AND INVESTIGATION DEPARTMENT (FCIID)**
2. **SUNDAY IDOWU DEPUTY SUPERINTENDENT OF POLICE (DSP) (SEB UNIT FCIID, ABUJA)**
3. **ONUOCHU YAKUBU (INSPECTOR) (INVESTIGATING POLICE OFFICER (IPO) (SEB UNIT FCIID, ABUJA)**
4. **LAWRENCE EMMANUEL**

— **RESPONDENTS**

JUDGMENT

This Judgment is on the application for the enforcement of the fundamental rights of the Applicant.

By an originating Motion on Notice dated and filed on the 2nd of August, 2022, the Applicant brought this application for the enforcement of his fundamental rights seeking the following reliefs against the Respondents:-

a. A declaration that the arrest, forceful undertakings and confessionary statement written by the Applicant and the subsequent threat of arrest of the Applicant, despite glaring evidence before the 1st– 3rd Respondents, is a breach of theApplicant's fundamental rights to personal liberty, dignity of his human person and fair hearing, contrary to sections 34, 35 and 36 of the Constitution of the Federal Republic of Nigeria and Articles 4, 5, 6 and 7 of the African Charter on Human and People's Right (Ratification and Enforcement) Act, CAP A9 Laws of the Federation of Nigeria, 2004 as illegal, null and void and ofno effect whatsoever.

b. An Order of Court declaring the forceful undertakings signed by the Applicant, but written by the 2nd and 3rd Respondents, undertaking to pay the 4th Respondent the sum of N6,000,000.00 (Six Million Naira Only) as illegal, null and void and of no effect whatsoever being contrary to sections 35 and 36 of the Constitution of the Federal Republic of Nigeria 1999 and Articles 5, 6 and 7 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act CAP A9 Laws of the Federation of Nigeria 2004 being an attempt to act as debt collectors for the 4th Respondent.

c. An Order of perpetual injunction restraining the Respondents from any further threat of arrest of the Applicant regarding the unfounded claim of the 4th Respondent to the 1st – 3rd Respondent for which the Applicant was forced into signing undertakings already written by the 2nd and 3rd Respondents in favour of the 4th Respondent and the dictation of confessionary statements by the 3rd Respondent to the Applicant before he was released on bail having torn and trashed the previous statement written by the Applicant out of his freewill.
d. An Order directing the Respondents to issue an apology to the Applicant through a publication in two national daily newspapers.
e. The sum of N5,000,000.00 (Five Million Naira) only against the Respondents and in favour of the Applicant for the breach of the latter's fundamental rights as aforestated.

The application is founded on thirteen grounds. The summary of the grounds is that the dispute between the Applicant and the 4th Respondent arose from a transaction relating to the purchase of plots of land at Jahi and Dape, within the jurisdiction of this Court which the Applicant was unaware of. The application was accompanied with all the originating processes for suits of this nature. They are the statement containing the particulars of the Applicant, the reliefs sought and the grounds upon which

the reliefs are sought, the affidavit deposed to by the Applicant himself and a written address which contains the legal submissions in support of the application.

In the affidavit in support of the application, the Applicant, who is the deponent, averred that he got to know the 4th Defendant some time in 2019 and 2020 when he facilitated the transaction relating to the property at Asokoro particularly known as Plot 3092, File Number AG.10386 measuring approximately 3104m^2 and belonging to one HajiaHabibaAbubakar to the 4th Respondent. Though the original transaction was originally meant to be outright purchase of the property from HajiaHabibaAbubakar, it was converted to a joint venture agreement when the 4th Respondent could not meet up with the outright purchase of the property.

The Applicant swore that while the negotiation for the property was still in respect of the Asokoro property, the deponent averred that the 4th Respondent reported him to the police outpost at the Abuja Geographic Information System (AGIS) in respect of a dispute between the 4th Respondent and one Christian Chinweuba arising from a transaction in relation to certain plots of land at Jahi and Dape districts of the Federal Capital Territory, Abuja. At the police outpost, he volunteered a statement

wherein he denied knowledge of the transactions in relation to the Jahi and Dape plots.

It was the case of the Applicant that he was never called again in respect of the dispute by the police outpost at AGIS; and was called only once on the phone by the officers and men of the Intelligence Response Unit (IRT) under the office of the Inspector-General of Police. Following the dissatisfaction of the said Christian Chinweuba with the manner the IRT handled his complaint, he wrote a petition to the Economic and Financial Crimes Commission (EFCC) against the 4th Respondent. Apparently, irked by Christian Chinweuba's petition against him to the EFCC, the 4th Respondent sent a petition to the against the Applicant to the 1st – 3rd Respondents, claiming that he paid the Applicant the sum of N6,000,000.00(Six Million Naira only), prompting his invitation in mid-January, 2022 and his subsequent detention in their underground cell.

The Applicant further swore that the 2nd and 3rd Respondent tore the initial statement he made, and substituted it with another one they wrote themselves, and ordered him to sign same or he would not be granted bail. In the same vein, he was compelled to write an undertaking to pay to the 4th Respondent the sum of N6,000,000.00 (Six Million Naira) only. This was done in spite of the claim of the 2nd and 3rd Respondents that they would

take him to the Deputy Commissioner of Police in charge of the Special Enquiry Bureau of the Nigerian Police Force. He also averred that when their superior found out about his case, he ordered them to take the matter to Court, an order they disobeyed.

He also stated that the EFCC invited him while the complaint was still pending before the 1st – 3rd Respondent, with the EFCC ordering the 4th Respondent to refund Chinweuba's monies to him. He added that the 4th Respondent paid the sum of N3,000,000.00 (Three Million Naira only) to enable the Applicant raise the draft for to payChinweuba. He also averred that the 4th Respondent sent a text message to him on the 11th of November, 2020 instructing him to deduct the sum of N4,500,000.00 (Four Million, Five Hundred Thousand Naira only), being the amount they agreed as the Applicant's agency, from the sum of N6,000,000.00 (Six Million Naira) only which was the amount he paid him.

The Applicant swore that the 1st – 3rd Respondents had continued to harass him at the instance of the 4th Respondent, demanding that he honour the undertaking he made to pay the sum of N6,000,000.00 (Six Million Naira) only to the 4th Respondent. He averred that the actions of the Respondents amounted to an infringement of his fundamental rights as aforesaid.

In the written address in support of the application for the enforcement of the fundamental rights of the Applicant, learned Counsel for the Applicant formulated the following sole issue: “Whether considering the circumstances of this case, the Applicant is entitled to the reliefs sought.” Arguing this sole issue, Counsel submitted that Chapter IV of the Constitution of the Federal Republic of Nigeria,1999 guarantees these rights and enjoins persons whose rights have been infringed or under the threat of imminent infringement to approach the Courts for redress.

It was the argument of Counsel that the Applicant enjoys the constitutional right to presumption of innocence which is a component of the right to fair hearing, and that the actions of the Respondents were a violation of that right as well as the right to personal liberty and dignity of the human person. He submitted further that the mere allegation of crime against the Applicant was not enough to justify the abridgement of his fundamental rights as afore-stated. He also insisted that the detention of a person for a short length of time, will still tantamount to abridgement of the right to personal liberty if the detention is unlawful. He contended that the Applicant was entitled to compensation and public apology for the breach of his fundamental rights. He urged the Court to grant the reliefs sought in the application.

For all his arguments on the sole issue, Counsel cited and relied on the following cases: Atakpa v. Ebetor (2015) 3 NWLR (Pt. 1447) 549 at 569, para D; Okafor v. Lagos State Govt. (2007) 4 NWLR (Pt. 1556) 404 at 434-435, paras H-B; Duruaku v. Nwoke (2015) 15 NWLR (Pt. 1483) 417 CA; and Gusau& Others v. Umezurike& Anor (2012) LPELR-8000 (CA).

This is the case of the Applicant. The 1st – 3rd Respondents were served with the originating Motion on Notice on the 18th of October, 2022. Because the Applicant was unable to serve the 4th Respondent personally with the originating processes, he applied, via a Motion Ex Parte dated and filed on the 26th of October, 2022 for an Order of this Court to serve the 4th Respondent by substituted means, specifically, by pasting the originating processes and other processes at No. 19 Durban Street, Wuse II, Abuja, being the last known place of business of the 4th Respondent. The Court heard the motion on the 27th of October, 2022 and granted the prayers sought in the motion and adjourned the application to the 29th of November, 2022 for hearing. On the 25th of November, 2022, the Bailiff of this Court served the enrolled Court Order for substituted service, the originating Motion on Notice and the hearing notice on the 4th Respondent as per the Order of this Court.

When the matter came up on the 29th of November, 2022, it could not goon because, according to the Counsel for the Applicant, E. R. Opara, Esq. only two Respondents had been served with the originating processes. The Court therefore adjourned the application to the 18th of January, 2023 for hearing. After a series of adjournments at the instance of the Applicant as a result of non-service of the hearing notice, this Court eventually heard this application on the 9th of March, 2023 and adjourned to the 30th of May, 2023 for Judgment. This is the Judgment that is being delivered today.

In the determination of this application, this Court will adopt the issue formulated by the Applicant in the written address in support of his application and modify same as follows: "Whether from the unchallenged affidavit evidence of the Applicant in support of this application for the enforcement of the fundamental rights of the Applicant, the Applicant is not entitled to all the reliefs sought in this application."

By way of prefatory remarks, I must note that none of the Respondents in this application filed any counter-affidavit challenging the application and the facts contained in the affidavit in support of the application. There is evidence in the case file that all the Respondents were duly served with the originating processes. The Respondents were also served with hearing notices on every day the matter came up for hearing. Where, for any

reason, any of the Respondents was not served with hearing notice, the Court adjourned the proceedings for that day to enable the Applicant serve the such Respondent with the hearing notice. This Court ensured that all the Respondents were aware of this suit and the hearing dates. Their failure to file any process challenging the suit of the Applicant or, even, to appear in Court to challenge same cannot preclude this Court from proceeding in their absence, having satisfied itself that everything needed to be done to bring them to Court has been done.

The attitude of the Court to unchallenged evidence is to deem same as having been admitted. In ***Incorporated Trustees of Ladies of Saint Mulumba, Nigeria v. Ekhator (2022) 15 NWLR (Pt. 1852) 35 S.C. at 61, paras B – C***, the Court held that "***Affidavit evidence constitutes evidence. Therefore, any deposition that is not challenged is deemed admitted***." See **Mohammed v. State (2023) 3 NWLR (Pt. 1870) 157 S.C. at *199, paras. B-G; 217-218, paras. F-G; First Bank of Nigeria Plc v. Standard Polyplastic Ind. Ltd. (2022) 15 NWLR (Pt. 1854) 517 S.C. at 550, paras. G-H***.

It must be observed, though, that the nature of an unchallenged evidence that the Court is obliged to act on is one that is credible, cogent and compelling. In **Onwuta v. State of Lagos (2022) 18 NWLR (Pt. 1863)**

701 S.C. at 721, paras. E-H, the Court held that "The duty of court when evidence is unchallenged and uncontroverted is to act on it where credible." In ***State v. Oray (2020) 7 NWLR (Pt. 1722) 130 S.C. at 151 – 152 paras H – C*** the apex Court succinctly held that "***Unchallenged and uncontroverted evidence stands and should be acted on by courts, including the Supreme Court, where it is not inadmissible and patently incredible,…***"

I have studied the affidavit evidence in support of the application for the enforcement of the fundamental rights of the Applicant. There is no doubt in my mind that the Applicant was engaged in a business relationship with the 4th Respondent in respect of the sale of the property at Asokoro, or, as it later turned out, a joint venture agreement in respect of the same property following the failure of the 4th Respondent to meet up with the terms of payment of HajiyaHabibaAbubakar, the owner of the property. From the affidavit evidence of the Applicant in this suit, that was the beginning of the relationship that existed between the Applicant and the 4th Respondent.

I have studied the depositions in paragraphs 16 – 37 of the affidavit in support of the application. The Applicant had sworn that he was not aware of the transactions relating to the plots of land at Jahi and Dape between the 4th Respondent and one Christian Chinweuba. He had added that the

1st -3rd Respondents detained him on the basis of the petition of the 4th Respondent wherein the 4th Respondent alleged that he gave the Applicant the sum of N6,000,000.00 (Six Million Naira) only. He also stated that he was detained and by the 1st – 3rd Respondents and compelled to write an undertaking to refund the sum of N6,000,000.00 (Six Million Naira) only.

I must state that I find paragraph 29 of the affidavit in support of the application rather intriguing. The Applicant, as the deponent, had averred that "That the 4th Respondent paid some money into my account to raise a draft of N3,000,000.00 (Three Million Naira only) in favour of Christian Chinweuba, as part of maiking the refunds, and as at today the 4th has completely paid Christian Chinweuba who is now insisting on further payments for the expenditures he had incurred I the course of getting his refunds." I am intrigued because the Applicant has not explained why the 4th Respondent should pay N3,000,000.00 (Three Million Naira only) into his account to enable him raise the draft for the refunds to Christian Chinweuba. Considering that the Applicant had denied knowledge of the transactions relating to the plots of land at Jahi and Dape in paragraphs 16, 17, 18 and 19 of the affidavit in support of the application, I wonder why the 4th Respondent paid N3,000,000.00 (Three Million Naira only) into his account to enable him raise a draft for the said Christian Chinweuba. The

question, therefore, is whether this inconsistency is enough to invalidate the evidence of the Applicant and render same incredible such that this Court will not be able to act on it?

The Courts have held that it is not in all cases that an inconsistency in the evidence of a witness can render the evidence inadmissible or incredible.

One thing that stands out in the affidavit in support of the application is that the relationship between the Applicant and the 4th Respondent and the dispute arising therefrom contractual in nature. If that is the case, the 4th Respondent had ample remedies in civil law. Having a recourse to the criminal sanctions and powers of the 1st – 3rd Respondents was inappropriate and has been a behavior the Courts have always frown upon.

The Courts have deprecated the unfortunate practice of aggrieved parties to a civil contract procuring the Police to enforce the terms of a contract gone sour. See generally ***Nwadiugwu v. IGP &Ors (2015) LPELR-26027(CA); Ibiyeye& Anor v. Gold &Ors. (2011) LPELR-8778(CA); Oceanic Securities International Ltd vs. Balogun&Ors (2013) ALL FWLR (Pt. 677) 653; (2012) LPELR 9218 CA; Okafor & Anor v. AIG Police Zone II Onikan&Ors (2019) LPELR-46505(CA); Anogwie&Ors v.***

Odom &Ors (2016) LPELR-40214 CA and ***Ogbonna vs. Ogbonna (2014) LPELR- 22308; (2014) 23 WRN 48***.

In the case of ***EFCC v. Diamond Bank Plc &Ors (2018) LPELR-44217(SC)***, the Supreme Court, per Bage, JSC graphically described this regrettable trend in this manner, page 25 of the E-Report in the following word:

"What is even more disturbing in recent times is the way and manner the Police and some other security agencies, rather than focus squarely on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used by overzealous and/or unscrupulous characters for the recovery of debts arising from simple contracts, loans or purely civil transactions. Our security agencies, particularly the police, must know that the citizenry's confidence in them ought to first be ensured by the agencies themselves by jealously guarding the integrity of the uniform and powers conferred on them. The beauty of salt is in its taste. Once salt loses its own taste, its value is irredeemably lost. I say this now and again, our security agencies, particularly the police, are not debt recovery agencies."

In ***Abah v. UBN Plc &Ors (2015) LPELR -24758 CA,*** the Court of Appeal categorically held: ***"We have stated repeatedly that the Police or any Law Enforcement Agency, for that matter, including the Economic and Financial Crimes Commission (EFCC) is not allowed to dabble into enforcement of civil contracts and agreements, or to engage in recovery of debts, under the pretext of doing lawful duties."***

Actions beget consequences. As to the consequences which must attend the procurement of the interference of the Police in a civil dispute, the Court of Appeal in the case of ***Skye Bank Plc v. Njoku&Ors (2016) LPELR-40447 (CA)*** held that: ***"...a party that employs the Police or any law enforcement agency to violate the fundamental right of a citizen should be ready to face the consequences, either alone or with the misguided agency... The Police have no business helping parties to settle or recover debt..."*** In ***Omuma Micro-Finance Bank Nig Ltd v. Ojinnaka (2018) LPELR-43988 (CA)***, Mbaba JCA in his concurring judgment to the decision of the Court of Appeal at ***pages 15 – 17 paras F – A*** held that, ***"We have held, several times, that one who procures the Police or any law enforcement agency, to dabble in a purely civil contract, to recover debt for the party to an agreement, must be ready***

to bear the consequences of such unlawful act of the Police/law enforcement agency, acting in abuse of their powers."

It is my considered view, therefore, and I so hold, that the Applicant has been able to establish his case against the Respondents. He is therefore entitled to the reliefs he seeks in this suit, including the relief for 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."

It is my considered view, and I so hold, that the circumstances of this case justify the making of an order of perpetual injunction. This is all the more impelling in the light of the depositions in paragraphs 32, 33, 34 and 37 of the affidavit in support of the application for the enforcement of the fundamental rights of the Applicant.

In all, I find this application for the enforcement of the fundamental rights of the Applicant meritorious and worthy to be granted. Accordingly, the reliefs sought in this application are hereby granted as follows:-

a. **THAT the arrest of the Applicant by the 1st, 2nd and 3rd Respondents acting at the instance of the 4th Respondent, and his subsequent detention in the underground cell of the 1st, 2nd and 3rd Respondents constituted a breach of the Applicant's fundamental rights to personal liberty and fair hearing contrary to sections 34, and 36 of the Constitution of the Federal Republic of Nigeria and Articles 4, 5, 6 and 7 of the African Charter on Human and People's Right (Ratification and**

Enforcement) Act, CAP A9 Laws of the Federation of Nigeria, 2004 and are therefore unlawful, illegal and unconstitutional.

b. THAT the undertaking the Applicant was forced to execute while in the underground cell of the 1st, 2nd and 3rd Respondents that he would refund to the 4th Respondent the sum of N6,000,000.00 (Six Million Naira only) and the confessional statement that was extracted from him while in the underground cell of the 1st, 2md and 3rd Respondents admitting to his indebtedness to the 4th Respondent was unlawful, illegal and unconstitutional same having being done in violation of the Applicant's rights to personal liberty and fair hearing as enshrined in sections 34 and 36 of the Constitution of the Federal Republic of Nigeria, 1999.

c. THAT the 1st, 2nd, and 3rd Respondents lack the powers under the Constitution of the Federal Republic of Nigeria, 1999 and the Police Act, 2020 to act as debt collectors. Accordingly, their actions in assisting the 4th Respondent to recover the sum of N6,000,000.00 (Six Million Naira only) from the Applicant whether or not the sum was indeed due to the 4th Respondent from the Applicant was ultra vires the constitutional and statutory powers

of the 1st, 2nd and 3rd Respondents and therefore unconstitutional, unlawful and illegal.

d. THAT an Order of Court is hereby made nullifying the enforced undertakings which the Applicant executedwhile inside the underground cell of the 1st, 2nd and 3rd Respondent wherein he undertook to pay the 4th Respondent the sum of N6,000,000.00 (Six Million Naira Only) and declaring same as illegal, null and void and of no effect whatsoever being contrary to sections 34and 36 of the Constitution of the Federal Republic of Nigeria 1999 and Articles 5, 6 and 7 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act CAP A9 Laws of the Federation of Nigeria 2004 being an attempt to act as debt collectors for the 4th Respondent.

e. THAT an Order of perpetual injunction is hereby made restraining all the Respondents from further arresting and/or threatening to arrest the Applicant regarding the complaint of the 4th Respondent to the 1st, 2nd and 3rd Respondents over which the Applicant was forced execute a pre-written undertaking.

f. **THAT an Order of Perpetual Injunction is hereby made restraining all the Respondents from giving effect to the undertaking which the Applicant executed while in the underground cell of the 1st, 2nd and 3rd Respondents same having being declared unlawful, illegal and unconstitutional and accordingly null and void and of no effect whatsoever.**

g. **THAT an Order of Court is hereby made directing all the Respondents to issue a public apology to the Applicant through a publication in two national daily newspapers.**

h. **THAT the sum of N1,000,000.00 (One Million Naira) only is hereby awarded against the Respondents and in favour of the Applicant for the breach of the Applicant's fundamental rights as afore-stated.**

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HON. JUSTICE A. H. MUSA
JUDGE
30/05/2023

APPEARANCES:
FOR THE APPLICANT:

FOR THE 1ST RESPONDENT:
NO LEGAL REPRESENTATION

FOR THE 2ND RESPONDENT:
NO LEGAL REPRESENTATION