IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA
ON MONDAY THE 18TH DAY OF DECEMBER, 2023
SUIT NO: FCT/HC/CV/906/2022

IN THE MATTER OF AN APPLICATION FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS.

BEFORE HIS LORDSHIP: HON. JUSTICE A. I. AKOBI

BETWEEN

CHIEF IRUKWU ONWUKA……APPLICANT

AND

1. **MRS FLORENCE NWABUAKU EZENAGU**
2. **MRS NGOZI BLESSING IJEOMA**
3. **MR. SUNDAY UNEKWU ASP (Force Intelligence Bureau)**
4. **DIG FORCE CRIMINAL INVESTIGATION DEPARTMENT (Nigerian Police Force)**
5. **INSPECTOR GENERAL OF POLICE (Nigerian Police Force)**

….RESPONDENTS

JUDGMENT

This is a suit commenced by originating Motion for enforcement of fundamental right of **Chief Irukwu Onwuka,** a Nigerian Citizen of 36 A.E Ekukinam Street, Utako, FCT Abuja. The application is brought

pursuant to sections 46, 6(6)(b), 33, 34, 35, 36, 37, 39 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended, Articles 5, 6, 9 and 12 of African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap. 10 LFN 1990, Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 and under the inherent jurisdiction of the Honourable Court dated 20/12/22 and filed the 21/12/22. Reliefs sought are:

1. **A DECLARATION** that the Respondents lack the power and authority to inquire and/or investigate a purely civil commercial transaction involving the applicant and the 1st and 2nd Respondents as per the contract friendly loan agreement between the Applicant and the 1st – 2nd Respondent for facilitation of Citidge University under registration.
2. **A DECALARATION** that the Respondents lack the power and authority to harass the Applicant, threaten him with arrest and detention and/or detain him over civil commercial transaction involving the Applicant and the 1st and 2nd Respondent as per the contract friendly loan agreement between the Applicant and the 1st – 2nd Respondent for facilitation of Citiedge University under registration.
3. **A DECLARATION** that the Respondents lack the power and authority to abuse the Applicant fundamental right to life, liberty, freedom of movement under the guise of investigating a pure civil commercial transaction involving the Applicant and the 1st and 2nd Respondents as per the contract friendly loan agreement between the Applicant and the 1st and 2nd Respondents for facilitation of Citiedge University under registration.
4. **AN ORDER** restraining the Respondents from arresting, detaining or otherwise harassing or otherwise abusing fundamental rights of the Applicant in connection with any civil commercial transaction involving the Applicant and the 1st and 2nd

Respondents as per the contract friendly loan agreement between the Applicant and the 1st – 2nd Respondents for facilitation of Citiedge University under registration.

5. **AN ORDER OF PERPETUAL INJUNCTION** restraining the Respondents, their agents, officers or hirelings from further arresting or detaining the Applicant or howsoever breaching his fundamental rights.
6. **SUCH FURTHER ORDERS** as the Honourable Court may deem fit to make in the circumstance of this case.

The application is premised on 5 grounds as contained on the face of the motion. In compliance with order 2 of the rules of the fundamental rights (Enforcement Procedure) Rules 2009, the applicant supported the application with statement of facts; affidavit of 21 paragraphs deposed to by the applicant himself and a written address wherein a sole issue is raised for the determination of the court thus: **Whether the Applicant is entitled to the grant of the reliefs sought in this application.**

The processes of the applicant was deemed adopted upon an oral application by the defense counsel on the 28/09/2023 under Order 12 rule 3 of the rules of this court. In arguing the sole issue, the applicant believed he has done no wrong and that he is being prosecuted for political vendetta and therefore urged the court to invoke its powers under section 46(1) of the Constitution of the Federal Republic of Nigeria to grant all his reliefs. **Section 46(1**) states thus: "Any person who alleges that any of the provision of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that state for redress".

The applicant canvassed in paragraph 10 of its written address how his affidavit in support and the exhibits attached thereto shows that his fundamental rights has been threatened by the respondents with arrest and detention. He also complained how the Respondents

ignored several letters from him to be left to pursue the matter as the civil matter is already pending before the Federal High Court. The applicant expresses his dissatisfaction over the conduct of the respondents arrogating to themselves and usurping the powers of the court. Cited **Akila & Ors v. Director General State Security Services & Ors (2013) LPELR-20274(CA); Diamond Bank v. Opara & Ors (2018) LPELR-43907 (SC) and Kure v. COP (2020)9 NWLR (PT.1729) SC.**

On being served with the originating motion and the accompanying processes, the 1st respondent filed 8 paragraphs of counter affidavit deposed to by herself, annexed with 4 exhibits marked FLO 1 – FLO 4 dated and filed the 15/02/2023. The 2nd respondent also filed a counter affidavit of 10 paragraphs dated the 15/02/23 and attached with 9 exhibits. They filed joint written address in support of their counter affidavit wherein they raised sole issue for the determination of the court thus: **Whether, given the circumstances of this case, the Nigerian Police Force, (3rd – 5th Respondents) should be restrained from arresting the applicant or/and investigating the alleged criminal infractions of the applicant?** In answering the issue in the negative, the 1st and 2nd respondents through their learned counsel Victor Edem Esq commended the court to the case of **Orji Kalu v. Federal Republic of Nigeria (2016)39 WRN 53** for consideration and guide. The applicant submitted that the grant of the applicant's reliefs will have the effect of preventing the 3rd – 5th Respondents from discharging their statutory functions. They further cited in support of the same principle other authorities among which is the case of **Attorney General Anambra State v. Chief Chris Uba (2005)15 NWLR (PT.947)44,** wherein the court of Appeal per Bulkachuwa JCA held thus:

"For a person, therefore to go to court to be shielded against criminal investigation and prosecution is an interference with powers

given by the Constitution to law officers in the control of criminal investigation… The plaintiff cannot expect a judicial fiat preventing a law officer in the exercise of his constitutional power… It is indeed trite that no court has the power to stop the police from investigating a crime…" The submitted based on the above cited authorities that the applicant is trying to use this Honourable Court as a shield from being investigated and possibly prosecuted.

It is also on record that the 3rd – 5th respondents filed counter affidavit of 24 paragraphs deposed to by one Sunday Unekwu an IPO attached to the Federal Intelligence Bureau (FCID) and attached with a written address wherein two issues are formulated as hereunder:

1. **Whether the applicant has placed sufficient, cogent and credible facts and material before this Honourable Court entitling him to the grant of any or all of the reliefs sought in this application.**
2. **Whether the failure of the applicant to join the Nigeria Police Force in this application or suit renders the Applicant's application suit a non-starter and incompetent and therefore liable to be dismiss or struck out?**

In arguing the first issue, the 3rd -5th respondents submitted that the applicant did not place any fact before this Honourable Court to entitle him to the reliefs sought. They contended that a mere invitation of person by the police for questioning in connection with a case of suspicion of having committed offence cannot translate to a breach of fundamental right of the person. They added that the rushing of the applicant to this Honourable Court to file application on breach of fundamental rights is tantamount to undermining the constitutional role of the Police especially as he did not wait or show any proven infringement that occurs before coming to this Honourable court. Cited **Ozah v. EFCC & Ors (2017) LPELR-**

43386(CA). They reiterated the law relying on section 131 of the Evidence Act, that a party alleging that his fundamental human rights has been, is being or is likely to be violated or breached, has a duty to establish the breach or threatened breach so alleged with sufficient evidence. Cited **Fajemirokun v. CB (CL) Ltd (2002)10 NWLR (PT.744)95 at 113-114.** They further submitted that the evidence to be relied on by the trial court in resolving the question of infraction of fundamental rights is the affidavit evidence of the parties. They cited so many judicial authorities in support of this principle of law inclusive of the case of **NPF & Ors v. Ahmadu (2020) LPELR-50317 (CA) p.14 para A-C.** The Court of Appeal per Bayero, JCA, held in that case that:

"The question of infringement of fundamental rights is largely a question of fact and does not so much depend on the dexterous submissions of the counsel on law. It is the facts as disclosed in the affidavit evidence that is actually examined, analyzed and evaluated to see if the fundamental rights have been eviscerated or otherwise dealt with in a manner that is contrary to the constitution and other provisions on the fundamental rights of an individual."

I think it is important for me to quickly put the law straight. By virtue of section 46(1) of the constitution of the Federal Republic of Nigeria, applicant must not wait until his right is infringed upon before approaching the court for redress. If he senses or perceives that any of his rights provided in Chapter IV is likely or about to be violated, is enough for him to approach the court to seek redress. It is therefore a misconception of the law for the respondents to argue that the applicant did not wait or show any prove of the infringement of his right before rushing to court.

In the instant case, it is the contention of the respondents that the applicant merely alleged that the 5th respondent repeatedly called him and seriously threatened that he will deal with him the moment

they get him arrested since he has refused to submit himself to their office. He referred the court to paragraphs 33 and 34 of the applicant's affidavit in support; meanwhile applicant's affidavit stopped at paragraph 21. They further submitted, rightly too that where there is an allegation of wrongful arrest and detention, the burden is on the arresting authority to justify the lawfulness of the arrest and detention in question. However, before the burden to justify the arrest and detention of a party will arise, the party alleging unlawful arrest or detention is duty bound to first establish the existence of the arrest and detention.

In the instant case, the 3rd – 5th respondent alleged in paragraph 4.11 of their written address that there was a complaint made against the applicant, investigation carried out and a prima facie- evidence of commission of criminal offence gathered against him. In that vein, that the police have the statutory and legal duty to invite or even arrest and detained. Cited **Hasan v. EFCC (2014)1 NWLR (PT.1389)607.** Relying on the authority inter alia of **Ekwenugo v. FRN (2001),** it is submitted that the fundamental right of the applicant is not absolute. It can be curtailed in some certain circumstances for the purpose of bringing him before the law and upon an order of Court.

On the 4th and 5th reliefs for restraining order, the 3rd – 5th respondents urged the court to be cautious in granting any damages or restraining order which is meant to prevent constituted authorities from carrying out their constitutional and statutory duties. Additionally, the 3rd – 5th respondents asserted in paragraph 4.23 that apart from the applicant's affidavit not being cogent, credible and of no probative value, it is offensive to the provisions of section 115 of the Evidence Act 2011 and urged the court to discountenance it and resolve issue one in its favour.

ISSUE TWO: Whether the failure of the applicant to join the Nigeria police force in this application or suit renders the Applicant's Application/Suit a non-starter and incompetent and therefore liable to be dismiss or struck out. The argument of the 3rd – 5th respondents on this issue is that any action/suit against the Nigeria Police Force or its officers, no matter how highly placed must be brought against the Nigeria police Force as a statutory body; that the 3rd – 5th respondents sued in the instant case are mere agents of Nigeria Police Force, which is the principal of the 3rd – 5th respondents and vicariously responsible for whatever its agents did officially. Some judicial authorities were cited in support of the argument, inter alia is the case **Commissioner of Police Kaduna State Police Command & Anor v. Dauda & Ors (2020) LPELR-512 (CA), pages 18-20 para D-C**; where they reproduced the holding of the court per Hussein Mukhtar, JCA as follows:

> "….suffice it to observe that any action against the Nigeria Police or its officers, no matter how highly placed must be brought against the Nigeria Police Force as a statutory body. The Inspector General of Police and the Commissioner of Police, the Appellants herein are mere agents of the Nigeria Police, which is the principal and vicariously responsible for whatever its agents do officially. Thus, the Appellants being subordinates or agents of the Nigeria Police Force, as created under sections 214 and 215 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) The latter is a necessary party in any suit against the operations of the Nigeria Police Force. Therefore, the non inclusion of the Nigeria Police force as a party in this matter renders same incompetent and the court below should have struck it out. See **Sampson V. Uwak (2017)10 NWLR (PT.1574) 491 at 504 paras F-H…** where it is held that, if the intention is to hold the Nigeria Police Force vicariously responsible for its operatives' action, it is not

> negotiable that it must be made a party to the action". The action against the Appellants, in their official as opposed to their private capacities, presupposes that the party that ought to be sue is the Nigeria Police Force. Thus, the Nigeria Police Force is an indispensable party to the suit and the failure to join the Nigeria police Force renders the action against the appellants a non-starter and incompetent.

Based on the above decision, the respondents submitted and I agreed with them that the issue of incompetent touches on jurisdiction and being a threshold it can be raised at any time. In conclusion, the respondents submitted that the applicant failed to place before this court the necessary evidence to warrant the grant of his reliefs; the court is therefore urged to dismiss the applicant's application with substantial cost of N5, 000, 000.00 (Five Million Naira) and ordered the applicant to immediately submit himself for investigation and probable prosecution.

Having considered all the issues raised by the parties for the determination of the court, the arguments and submission in support, I hereby adopt the two issues formulated by the 3rd – 5th Respondents. I restate them hereunder:

1. **Whether the applicant has placed sufficient, cogent and credible facts and material before this Honourable Court entitling him to the grant of any or all of the reliefs sought in this application.**
2. **Whether the failure of the applicant to join the Nigeria Police Force in this application or suit renders the Applicant's application suit a non-starter and incompetent and therefore liable to be dismiss or struck out?**

ISSUE ONE: To resolve this issue, I considered it necessary to first set out in brief the case of the applicant as revealed in his affidavit

evidence in support. The applicant a businessman and the president/Managing Director of Citiedge University undergoing registration with National Universities reached an agreement with the 1st respondent, a member of the Governing Council of the Citiedge University and the 2nd respondent then a Vice Chancellor of the Citiedge University undergoing registration for them to advance some funds to be used to settled bills in the University pending when the University will be fully registered and begin generating funds. The police are now upon petition against the Applicant investigating what transpired between the applicant, the 1st and 2nd respondents. The contention of the applicant based on the police interference is that what transpired between him, the 1st and 2nd respondents is solely civil with no criminal element, hence, the 3rd – 5th respondent lacks the power to dabble into purely civil matter of this nature.

It is also pertinent to state that on the 28/09/2023, when this matter came up for adoption of the parties' processes which is based on affidavit evidence, the applicant and his counsel were absent from court without any correspondence seeking for permission or indulgence of the court. Sequel to that, Victor Edem Esq who represented all the respondents informed the court that the counsel to the applicant was in court on the last adjourned date hence aware of that current date and therefore applied orally and was granted under **Order 12 rule 3** of the Fundamental Right Enforcement Procedure Rule 2009 to deem the applicant's processes as adopted. Parties having adopted their processes the case was adjourned for judgment.

The applicant alleged that his fundamental rights under sections 33, 34, 35, 36, 37, 39 and 41 has been, or likely to be infringe by the respondents, the reason he approached the court for redress.

Section 33(1) of the Constitution provide thus:

Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of criminal offence of which he has been found guilty in Nigeria.

For the applicant to succeed on this arm of allegation, he must prove to the satisfaction of the court. This is in accord with the principle of law of evidence that he who assert must proved. See **section 131 of the Evidence Act**. It is the party that asserts the existence of a particular fact that must prove it; if he fails to prove that fact, his case will definitely collapse like a pack of cards. See the case of **Imam & Ors v. Sheriff & Ors (2004) LPELR-7315 (CA).** In determining whether there is such breach, the court must relied upon the affidavit evidence of the parties particularly that of the applicant. Our courts have held in plethora of judicial authorities to the effect that the question of infringement of fundamental rights is a question of fact; It is the facts as disclosed in the affidavit evidence that is actually examined, analyzed and evaluated to see if the fundamental rights of the applicant have been dealt with in a manner that is contrary to the Constitution and other provisions on the fundamental rights of an individual. See **NPF & Ors v. Ahmadu (2020) LPELR-50317 (CA)**, earlier cited by the respondents.

On careful perusal of the affidavit of the applicant in support of his originating motion, it is averred therein in paragraphs 8 and 16 as follows:

Para 8: The Applicant has constitutional and fundamental right to life, liberty, freedom of movement and private and family life.

Para 16: The Applicant Constitutional and fundamental right to life, liberty, freedom of movement and private and family life is in great danger. His medical condition is deteriorating as a result of the

constant threat of arrest and detention by the respondents on purely civil transaction.

In the instant case, the applicant simply affirmed of his fundamental right to life and claimed that his life is in danger without sufficient evidence to prove that fact. In the light of the aforesaid; I hereby hold that the applicant failed to prove that his right to life is in danger.

Section 34(1) of the constitution:- It provide as follows: Every individual is entitled to respect for the dignity of his person, and accordingly-

(a) No person shall be subjected to torture or to inhuman or degrading treatment.
(b) No person shall be held in slavery or servitude; and
(c) No person shall be required to perform forced or compulsory labour.

No evidence in the entire affidavit of the applicant either expressly or impliedly pointed to the fact that he was held in slavery or servitude or forced to perform compulsory labour. I therefore without hesitation hold that section 34(1) (b) & (c) does not apply.

As regard to section 34(1)(a); the Court of Appeal in defining what torture is in the case of **Oseni v. Nigeria Army(2022) LPELR-58815(CA)** state thus: "What is torture in law or what act can amount to torture? The online electronic dictionary, Dictionary.com defines the noun torture, inter alia, as "the act of inflicting excruciating pains, as punishment or revenge, as a means of getting a confession to information or for sheer cruelty." The English Dictionary - Wiktionary org. defines the verb torture as "To intentionally inflict severe pain or suffering." The Black's Law Dictionary, 8th Edition, defines torture as "The infliction of intense pain to the body or mind to punish, to

extract a confession or information, or obtain sadistic pleasure. **Seelgweokolo .V. Akpoyibo & Ors (2017) LPELR - 41882(CA)."** The Black Law Dictionary Eight Edition defines the phrase "inhuman treatment as "physical or mental cruelty so severe that it endangers life or health". The respondents averred in several paragraphs of their affidavit how the applicant refused to honour the invitation of the 3rd – 5th respondent. The assertion by the respondents that the applicant refused to honour the invitation of the respondents is corroborated by the applicant himself in paragraph 15 of his affidavit when he stated that the respondents have been calling him through their phones numbers to threaten him with arrest and detention.

Considering the facts stated above vis-à-vis the definition of the phrase torture and inhuman treated restated above, I find it extremely difficult to agree with the applicant that his right under section 34 of the Constitution is contravened by the respondents and I so hold.

Section 35(1) of the Constitution: It states as follows: 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 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;

(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) ……
……..

Considering the facts of this case as clearly captured above the evidence of the parties in support, their arguments and submissions; the question that prompt up is whether the involvement of the 3rd – 5th respondents in this matter is a breach to the applicant's right to personal liberty, to fair hearing, private and family life, freedom of expression and the right to move freely. The contention of the 1st and 2nd respondents is that the police have the right to intervene into the situation because they considered the action of the applicant a crime.

The 3rd – 5th respondent also posited and rightly too that upon the receipt of such complaint(Petition) they have the statutory power and responsibility to investigate and in doing that they can invite and interrogate any person who is not covered by immunity over the suspected breach of the law. I agree with the submission of the 3rd – 5th respondents that upon such invitation, the applicant if a law abiding citizen ought to have reported to the police; instead, he kept away and later ran to this court to be shield from police investigation. Courts in several decisions have condemned the dangerous practice of rushing to the High Court to prevent the Police from inviting, arresting, investigating and prosecuting persons who have criminal allegations leveled against them. See **ATTORNEY-GENERAL OF ANAMBRA STATE vs. CHIEF CHRIS UBA (Supra).** Even when the applicant in the instant case believed strongly that what transpired between him, the 1st and 2nd respondents is civil, I am of the opinion that he still owes it as an obligation to have reported to the police upon invitation; though with serious reservation, considering the conduct of the Nigeria Police of late. The Court of

Appeal per Umar J.C.A (pp.28-29 para C) in the case of **Ebo & Anor V. Okeke & Ors (2019) LPELR – 48090 (CA)** held that: "…..The Police under the Police Act 1943 particularly Section 4 have the powers to prevent crimes, detect crimes, apprehend offenders, preserve law and order, protect life and property; and enforce all laws and regulations with which they are directly charged." In carrying out the duty, the police have the right to arrest and possibly detain anyone suspected of having committed or involved in the commission of any crime. See the case of **Okeke V. Igboeri (2010) LPELR – 4712 (CA).** However, in exercise of the statutory power, the police must act within the confines of the law.

To support the claim for breach of his fundamental right the applicant averred in the following paragraphs of affidavit as follows:

Para 12: The Respondents have being harassing the Applicant, threatening to arrest and detain him unless he makes payments in regard to the civil transaction.

Para 13: Police officers of the 3rd – 5th Respondent have been visiting my house and University threatening to arrest, dealt with me until I bow to demands of the 1st and 2nd Respondent.

Para 14: I know that the respondents are keen on arresting, detaining and harassing me to force me to make payments over civil transaction entered into by me and the 1st and 2nd respondent.

Para 15: The Respondents have been calling me with their phone numbers 08064594706; 08035699609 and 08035078682 to threaten me with arrest, and detention unless I dance to their tune.

It is in evidence and undisputed that the 1st respondent petitioned the 3rd - 5th respondents against the applicant for an alleged criminal act to wit: offence of fraud, obtain money by false pretence and issuance of dud cheque. The police are statutorily empowered to

investigate such criminal allegation. However, they owe it a duty to critically examine the complaint or the content of the petition if in written form to separate a petition with criminal substance from civil matters. It is not every report or petition on criminal infraction to the police that is actually criminal. In the instant case, the applicant contended that what transpired between him, the 1st and 2nd respondents is a contract of friendly loan agreement; solely civil with no criminal element. The 1st and 2nd respondents in their paragraph 4(c) of their counter affidavit respectively averred that they have understanding with the applicant to advance him funds for the facilitation of Citiedge University. That is to say the 1st and 2nd respondents admitted advancing money in form of loan to the applicant for the facilitation of the said University under registration.

It is also alleged that the applicant boasted of having impressive financial resume from his companies/businesses /investments that will be used to finance the take off of the university. They claimed it was that impression that made them believe he has the financial capacity to fund the University project which they later realized to be false. There is no averment from both the 1st and 2nd respondent affidavit to suggest that the money they advanced the applicant was meant to be paid from the business investment source which they claim does not exist; if that was to be so the 1st and 2nd respondent will be justified to say the applicant dishonestly and fraudulently induced them into advancing the money. I therefore think the issue of fraudulent inducement and dishonesty is an afterthought. Going by the circumstances, exhibits and facts of this case, I agreed with the submission of the applicant that the petition against him by the 1st and 2nd respondents was meant to use the 3rd – 5th Respondents to recover their money from the applicant. This is confirmed by the second to the last paragraph of the petition which I reproduced thus: **"Finally, we crave the indulgence of your good**

office to help recover the sum of N19,200,000.00 (Nineteen Million, Two Hundred Thousand Naira)"

It has been stressed by the Apex Court over plethora of cases that law enforcement agents should not be used to recover debts. See **IGWE vs. EZEANOCHIE (2010) 7 NWLR [pt.1192] 61; AGBAI vs. OKUGBUE (1991)7 NWLR [pt.204) 391: NKPA vs. NKUME [2001] 6 NWLR (pt.710)543.** A case of indebtedness cannot properly translate into a case of obtaining by false pretence. Where there is a clear case of indebtedness, law enforcement agencies, not being a debt recovery agency has no business to dabble into assisting a creditor in a contractual dispute to recover money owed to him, which is a purely civil transaction. The powers of the Police is indeed enormous but is not left at large. By the combined reading of sections 214 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 4 of the Police Act 2004, the law did not leave us in doubt that the power of the police does not cover recovery of debt. I am therefore persuaded by the affidavit evidence of the applicant to agree with his submission that the relationship between him, the 1st and 2nd respondent is base on a contract of loan and a breach of it can only be address in civil court and I so hold. I therefore resolved this issue in favour of the applicant.

However, in this civil case, it is alleged that the applicant issued the respondents with dud cheques. Copies of the dud cheques are attached as exhibits. In the case of **Seed Vest Micro Finance Bank Plc & Another Vs Ogunsina & Ors (2016) LPELR-41346 CA, it was held:** "It is instructive to point out clearly that the issuance of dud cheques is a criminal offence under Section 1 of the Dishonoured Cheques (Offences) Act Cap D11 Laws of the Federation of Nigeria 2004 for which the Appellants was entitled to make a report to the police. **See: Chief (Dr.) O. Fajemirokun vs. Commercial Bank Nigeria Ltd. &**

Anor (2009) 2-3 SC (pt.1135) 58." The applicant in his defence to the issuance of dud cheque, averred in paragraph 7 of the applicant's further affidavit conceded to the 1st and 2nd respondent providing funds for the facilitation of the University under registration which he guaranteed that the loan will be refunded when the University commences operation. Contrary to the averment of the respondents that applicant gave them dud cheques, the applicant alleged how he gave them blank cheque without writing any figure or amount of money on them to assure them that the University will pay although no specific date is fixed for the repayment.

On careful scrutiny of cheques marked FLO1 - FLO3 attached by the 1st respondent as evidence of dud cheques issues to her, it shows that FLO1 is issued in the name of the 1st respondent in the sum of N10, 000.000 (Ten Million Naira only), with a mature date of 30/09/2022; FLO2 is issued in the name of the 1st respondent in the sum of N7, 200,000.00 (Seven Million Two Hundred thousand naira only) with a mature date of 30/12/2022 and FLO3 is also issued in the name of the 1st respondent in the sum of N2, 000, 000.00 (Two Million Naira only). The cheques are all Zenith Bank cheques with inscribe name of Citiedge University Limited. Considering the above facts, I do not therefore agree with the applicant averment in paragraph 8 of the further affidavit that the cheques were blank without any figure or amount of money written on them.

Issuance of dud cheque according to the Court of Appeal pronouncement in the case cited above **Seed Vest Micro Finance Bank Plc & Another Vs Ogunsina & Ors (supra),** that is a criminal offence under Section 1 of the Dishonoured Cheques (Offences) Act Cap D11 Laws of the Federation of Nigeria 2004. Being a criminal offence and an allegation against the applicant, the 3rd – 5th respondents acted within the law to commence investigation. The court should not be use as an instrument to stop or restrain the police

from discharging their statutory duties of investigation for alleged criminal infractions or as a shield to protect suspected persons from investigation. See **Attorney General Anambra State v. Chief Chris Uba (2005)15 NWLR (PT.947)44; Ewulo v. EFCC & Ors (2015) LPELR-40912(CA); Hassan v. Economic and Financial Crimes Commission (2013)LPELR-22595 (CA).** Cited by the 1st and 2nd respondents. **Isokariari v. Economic and Financial Crimes Commission (2018)LPELR-46271(CA),** wherein the Court of Appeal per Lamido JCA held thus:

> "The courts should not be used in any attempt to shield a person from criminal investigation and possible prosecution. No person in this country is above the law. The only exception being the President, Vice President, Governors and Deputy Governors while they hold those positions. Even in case of these officers, they can be investigated and prosecuted after leaving office. See AG Anambra State v. Uba(supra) and Samba & Ors v. The Nigerian Army Council (2015) LPELR 40636".

There is no evidence before the court to show that the applicant was detained by the 3rd – 5th respondents, what the 3rd – 5th respondent did as disclosed before me is that upon the receipt of the petition, the applicant was called through telephone for interrogation and questioning which is in line with their duties; the applicant failed to honour the invitation, instead ran to this court to accused the respondents of violation of his fundamental right. There is nothing put before the court to show the voice conversation between the applicant and the respondents for the applicant to entertain fear of the breach or likely breach of his fundamental right by the 3rd – 5th Respondents.. I hold that the mere invitation of the applicant without more to answer to a criminal allegation of issuance of dud cheques cannot amount to a breach or likely breach of applicant fundamental right. I therefore agree with the

respondents' submission that the applicant failed to prove with compelling and cogent facts disclosing a violation or likelihood of breach of any of the applicant fundamental right to grant him his reliefs.

ISSUE TWO: Whether the failure of the applicant to join the Nigeria Police Force in this application or suit renders the applicant's application/suit a non-starter and incompetent and therefore liable to be dismiss or struck out. The argument of the 3rd – 5th Respondents on this is that the action of the applicant is incompetent for failure to join the Nigeria Police Force considering that the 3rd – 5th respondents sued are mere agents of the Nigeria Police Force who should be vicariously responsible for whatever its agents did officially. To that extent they considered the Nigeria Police Force a necessary party in any suit against the operations of the Nigeria Police Force. They placed reliance in the case of **Sampson v. Uwak (2017)10 NWLR (PT.1574) 491 at 504** and **Commissioner of Police Kaduna State Police Command & Anor v. Dauda & Ors (2020) LPELR-512 (CA).**

In Sampson v. Uwak (supra) the Court held thus: "... By virtue of SS. 214 & 215 of the CFRN 1999 (as amended) and SS. 3, 4, 5 Police Act, there is a clear distinction between the Nigeria Police Force as an entity and its functionaries. Accordingly, where the intention is to hold the Nigeria Police Force vicariously responsible for Its operatives' action, it is not negotiable that it must be made a party to the action…." The case of Commissioner of Police Kaduna State Police Command & Anor v. Dauda & ors heavily relied on by the 3rd – 5th Respondent is distinguishable from the present cause. In the former, there is a claim of damages, so the Nigeria Police Force must be joined because it will be vicariously liable for the action of its agents and claim of the damages if granted will be paid by the Nigeria Police Force, to that extent the Nigeria Police Force must be made a party. But where there is no intention as in this case to hold the

Nigeria Police vicariously liable for the action of the 3rd – 5th respondents because there is no claim for damages, there will be no need to make the Nigeria Police Force a party. It is also my opinion that suing the 3rd – 5th respondents is like suing the Nigeria Police Force by different names because they are acting on behalf of the Nigeria Police Force. But it all depends on the circumstances of each case.

Having come to this conclusion and in view of the aforementioned I hereby make the following declaration/order:

1. A Declaration that the Respondents lack the power and authority to inquired and/or investigate a purely civil commercial transaction involving the applicant, 1st and 2nd Respondents as per the contract friendly loan agreement between the applicant, the 1st and 2nd respondents.
2. A Declaration that the 3rd – 5th Respondents lacks the power and authority to meddle over civil commercial transaction involving the Applicant and the 1st and 2nd respondents as per the contracts friendly loan agreement between the parties.
3. The 1st and 2nd Respondents are hereby advised to seek redress for the claim their money in civil suit.
4. The applicant is hereby ordered to submit himself to 3rd – 5th respondents for questioning in respect of the allegation on issuance of dud cheques against him. If prima facie case is found, he should be charge to court within 7 days from the date of submitting himself to 3rd – 5th respondents.

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HON. JUSTICE A. I. AKOBI
18/12/2020