IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 45 WUSE ZONE 2

BEFORE HIS LORDSHIP: THE HON. JUSTICE ELEOJO ENENCHE

SUIT NO: FCT/HC/CV/2443/2022

DELIVERED ON 16TH DAY OF DECEMBER, 2022

BETWEEN

Shamsudeen Musa.. **APPLICANT**

AND

1. Mr. Usman Alkali Baba (Inspector General of Police)
2. Mr. Johnson Babatunde Kokumo (DIG FCIID, Abuja)
3. Mr. Samaila Shuaibu Dikko (CP, CID Kano State Command)
4. Mr. Muhammed Umar Abba (DCP, CID Kano State Command)
5. Mr. Danila Amah (DPO, Nasarawa Divisional Police Station, Kano Command)
6. Abbas Aliyu (DSP, DCO, Nasarawa Divisional Police Station, Kano State)
7. Inspector Abdulahi IbrabimAtallawa (IPO, NDPS Kano state)
8. Inspector Jacob Joseph (IPO, FCIID, Abuja)
9. Abdulrazak Sani Umar (AKA Director)

}..**RESPONDENTS**

JUDGEMENT

This is a matter initially commenced during the Court's 2022 annual vacation. At that time, I heard the matter to conclusion but could not render a decision before the vacation ended.The matter was however sent back to this court consequent upon which I requested parties to address me on a salient issue which I believed was not properly addressed in their respective addresses. That issue was whether a Magistrate Court sitting in Masaka, Nasarawa State could validly issue orders and directives

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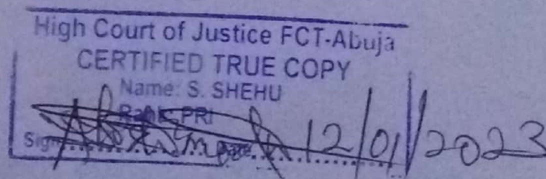
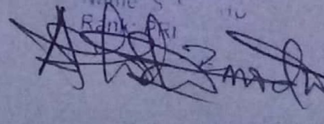


under the provisions of the Administration of Criminal Justice Act (ACJA) 2015. The parties addressed me on this point on 1st December 2022 and I consequently adjourned for judgement.

The 9th Respondent did not enter any appearance. Save for the orders made, reference to the Respondents in the body of the judgement shall be to the 1st -8th who entered appearance.

Having laid that foundation, this is a matter commenced under the FundamentalRights Enforcement Procedure Rules2009 seeking to enforce the fundamental rights of one Shamsudeen Musa. The process indicates that Mr. Shamsudeen Musa is a Legal Practitioner based in Kano. As I can make out from the affidavit in support of the Originating Motion, the he is a Legal Practitioner of good standing with the kano Branch of the NBA. The story continues that one Yusuf Sabo, who is a client of the Applicant introduce him to Aliyu Abdulahi Zaki who in August 2021 signified his interest to buy a house. Thetransaction was not concluded until April 2022 precisely on the 27th day of April 2022.

That upon conclusion of the transaction he received the sum of ₦450,000(Four Hundred and Fifty Thousand Naira) as his professional fees. On the 4th of May 2022, the Applicant received a text message from the 6thRespondent inviting him to the Divisional Police Station Nasarawa, Kano. he responded to the invitation on the 5th of May. At the police station he was requested to comment on events that occurred in the evening of the 28th April 2022. To cut the long story short, it would appear that the professional fee paid and in fact the entire sum paid for the property was suspected to be proceeds of a criminal enterprise which the Applicant had consistently maintained he knows nothing about. It was averred that the police insisted that he must pay the sum of ₦2,800,000 (Two Million Eight Hundred Thousand Naira) being the total agency and legal fees despite his insistence that he only received the sum of ₦450,000(Four Hundred and Fifty Thousand Naira). He eventually paid the sum of ₦2,800,000 (Two Million Eight Hundred Thousand Naira) yet, they failed to release



him He was detained in Kano until the 8th of May 2022 when he was moved along with others to Abuja. The affidavitcontinues that owing to this detention, the Applicant suffered untold hardship. The Applicant remained incarcerated until he was released on bail on the 18th of August 2022 following an order of this court. As at that day, he had spent 105 days in detention. It is worthy of note that the Applicant was told that there was a directive from the 5thRespondent to release him on bail only if he is able to produce a Civil Servant of Grade Level 14 with a C of O within the jurisdiction of the police station.

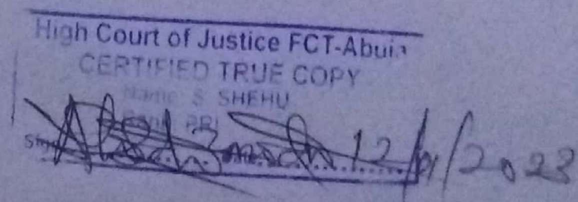
It was on the basis of these facts that the Applicant sought the following reliefs,

A. A DECLARATION that the detention of the Applicant by the 1st, 2nd 3rd, 4th, 5th, 6th, 7th and 8th Respondents from the 5th day of May, 2022 to date is unlawful, unconstitutional, illegal and a violation of the Applicant's fundamental rights guaranteed by section 35(1) & (4) of the 1999 Constitution of the Federal Republic of Nigeria (As amended).

B. A DECLARATION that the restriction/confinement placed on the Applicant by the Respondents is unlawful, unconstitutional and a direct infraction of the rights of the Applicant to freedom of movement as guaranteed by Section 41 of the constitution of the Federal Republic of Nigeria 1999 (As amended).

C. A DECLARATION that the detention of the Applicant by the Respondents without informing him of his offence in writing is unlawful, unconstitutional and an infraction of the Applicant's rights as guaranteed by section 35 (3) of the Constitution of the Federal Republic of Nigeria 1999 (As amended).

D. AN ORDER OF INJUNCTION restraining the 1st, 2nd 3rd, 4th, 5th, 6th,7th and 8th Respondents whether by themselves, assigns, privies, agents or whosoever purporting to act on their behalf from violating or further violating the fundamental rights of the Applicant as guaranteed by Section 34 (1), 35 (1) & (4) and 43 of the Constitution of the Federal Republic of Nigeria 1999 (As amended).



E. AN ORDER OR PERPETUAL INJUNCTION restraining the Respondents whether by themselves, assigns, privies, agents or whosoever purports to act on their behalf from violating or further violating the Fundamental Rights of the Applicant or upon such terms as this Honourable Court may deem appropriate in the circumstances, pending the determination of this suit.

F. AN ORDER of Court restraining the Respondents whether by themselves, assigns, privies, agents or whosoever purporting to act on their behalf from re-arresting the Applicant as a result of the 9th Respondent's instigation in respect of the subject matter of this suit as well as restraining the Respondents from interfering with the personal liberty of the Applicant in respect of the alleged offence.

G. AN ORDER directing the 5th, 6th and 7th Respondents to unconditionally refund the sum of ₦2,800,000:00 (Two Million, Eight Hundred Thousand Naira) only unduly collected from the Applicant.

H. AN ORDER directing the 5th, 6th and 7th Respondents to unconditionally release the Applicant's car Lexus Jeep X330, Grey color, Chassis number: ZT2HA31U36CO98986, with plate number, FGE 60 AA and the sum of ₦181,000:00 (One Hundred and Eighty-One Thousand Naira) only cash removed from the car.

I. The sum of N250,000.000:00 (Two Hundred and Fifty Million Naira) only as general, exemplary and aggravated damages jointly and or severally against the Respondents to the Applicant for the unlawful, unconstitutional arrest and detention of the Applicant.

J. AND FOR SUCH FURTHER ORDER (s) as this Honourable Court may deem fit to make in the circumstances of this suit.

The Respondents are as follows,

1. Mr. Usman Alkali Baba (Inspector General of Police)

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2. Mr. Johnson Babatunde Kokumo (DIG FCIID, Abuja)
3. Mr. Samaila Shuaibu Dikko (CP, CID Kano State Command)
4. Mr. Muhammed Umar Abba (DCP, CID Kano State Command)
5. Mr. Danila Amah (DPO, Nasarawa Divisional Police Station, Kano Command)
6. Abbas Aliyu (DSP, DCO, Nasarawa Divisional Police Station, Kano State)
7. Inspector AbdulahiIbrabimAtallawa (IPO, NDPS Kano state)
8. Inspector Jacob Joseph (IPO, FCIID, Abuja)
9. Abdulrazak Sani Umar (AKA Director)

The application was founded on the following grounds,

A. That being a Nigerian Citizen, the rights of the Applicant as guaranteed by the constitution cannot be taken away save in a manner prescribed by the Constitution;

B. Detention of the Applicant as well as the threats, humiliation, insults and psychological torture meted out to the Applicant by the Respondents is unconstitutional and a violation of the Applicant's right as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (As amended)

C. Where any allegation against the Applicant borders on criminality, the Applicant should be arraigned before a court of competent jurisdiction for trial

D. The rights of the Applicant as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (As amended) is sacrosanct and cannot be violated save in a manner prescribed by the law.

E. To keep threatening, insulting and psychologically intimidating and oppressing the Applicant with threats of prolonged detention without trials, without being arraigned nor informed of his offence in writing is unconstitutional, illegal and an infraction of his constitutional rights.

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G. The facts of this case do not disclose any probable cause nor any element of the purported or alleged offence to warrant the Applicant being arrested and taken by the Respondents for detention.

H. The Applicant's right to personal liberty is being threatened by the Respondents jointly and severally.

I will begin my determination of the application by dealing with the Notice of preliminary objection filed by the Respondents. The notice of preliminary objection is dated 18th August 2022 and filed on the 19th of August 2022. Supporting the application isa 10-paragraph affidavit deposed to by Blessing Patrick.From the affidavit, the grouse of the applicant seems to be that, there is no mode of commencement t of action known as "Originating Motion on Notice." It was averred that motion on notice is an interlocutory application which arises in the course of a pending proceeding and as such it cannot commence a substantive suit.

In the argument supporting the application, three issues were submitted for determination to wit;

a. Whether the suit of the Applicant / Respondent amount to abuse of court process.
b. Whether this honourable court can entertain this suit where it lacks requisite jurisdiction to make abiding orders.
c. Whether an application under the fundamental rights enforcement procedure can be commenced by Originating Motion on Notice in view of Order II Rule II of the Fundamental Rights (Enforcement) Procedure Rules 2009 and Order 2 Rule 1 of the High Court of the FCT (civil Procedure) Rules.

Relying on ***TAIWO V. AKINBOLAJI (2012) 2 NWLR (PT. 1284) P 201, AT 212-213***, counsel submitted on the 1st issue that this suit is an abuse of court process. Further in submitting that the suit constitutes an abuse, counsel cited the cases of

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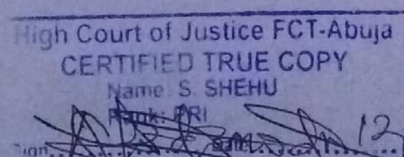
YAKUBU V. AJAKUTA STEEL COMPANY (2002) 10 NWLR (PT. 774) 115 and ***UMEH v. IWU (2008) VOL.41 WRN p. 17 LINES 30-5*** and a host of othersto submit that the court has a duty to prevent the abuse of its process.

On the second issue,counsel submitted that the law has been settled and for all times that one cannot put something on nothing and expect it to stand. He submits that any purportedexercise of any function being without any legal or constitutional authority is null and void and of no effect. To so submit, he relied on the cases of ***MACFOY V. UAC CO. LTD (1961) 3 WLR AT 1409*** and***NIWOCHA V. MTN (NIGERIA) COMMUNICATION LTD (2008) 11 NWLR (PT. 1099) 4439***.

On thirdissue, it was the contention of learned counsel for the Respondent that by Order II R.2 of the Fundamental Rights Enforcement Procedure Rules , actions are commenced by way of any originating process accepted by the court. Counsel argued that consistent with Order 2 R.1 of the High Court of the FCT Civil Procedure Rules, actions in the High Court are commenced by Originating Summons, Originating Motion, Writ and Petition. It is his argument that the Rules of Court does not recognize Originating Motion on Notice used in the instant case as a form of commencing a fundamental rights action. Citing the authority of ***C.C. (OIL & GAS) CO. SAL V. MASIRI (2011) NWLR (PT. 1234)***counsel urged me to, as did the court in that case find that, where a statute specially stipulates the manner of commencing or initiating an action in relation to specific reliefs, that procedure must be followed and where it is not complied with, anything done will be a nullity. -***SPDC V. AGBARA (2019) 6 NWLR (PT. 1668) 310 AT 326***. Furthermore, in his submission for the Respondents, counsel contends that the validity of an originating process is vital and where it fails to comply with the requirement of law, the process is incompetent and the court cannot assume jurisdiction. To buttress this submission, counsel relied on the case of ***OKPE V. FARM MILK PLC (2013) 2 NWLR (PT. 1549) 282***.

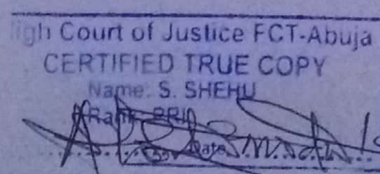


Finally, in urging me to find that the application was incurably defective I was urged to consider the provision of Order IX R. 1 which provides that where at any stage in the course of or in connection with any proceedings there has, by any reason of anything done or left undone, been failure to comply with the requirement as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify such proceedings except as they relate to mode of commencement of the application.

In replying to the preliminary objection, counsel for the Applicant filed a reply on points of law. In the said reply, he adopted the issues raised in the preliminary objection. Al- Bashir Lawal Likko in his argument took issues one and two together when he submitted that the affidavit and the written address of the Respondent failed to show how this suit constitutes an abuse of court process. He submitted that the cases cited by the learned counsel were totally unrelated to the objection raised as much as the facts were also unable to disclose which other suit was pending or what acts were done to ground an abuse of court process.

Furthermore, it was contended that even when the preliminary objection was on jurisdiction, the Respondent in all his argument failed to show how the court lacked the requisite jurisdiction to entertain this matter and that consequently, this issue should be discarded.

On the 3rd issue, counsel for the Applicant submitted that a plethora of authorities suggest that a victim of infraction of fundamental rights has a right to be protected theprocedure to be adopted for obtaining redress irrespective. Counsel relied on the case of ***SEA TRUCK NIG, LTD VS ANIGBORO (2001) 2 NWLR, PT. 696, 159*** and ***BASSEY &ANOR V. AKPAN &ORS (2018) LPELR -44341 (CA)*** to argue that the proper approach in determination of a fundamental rights matter is not the commencement but the reliefs sought. Once the reliefs disclose a breach of fundamental rights then, resort may be sought through the rules. Premised on the above, it was canvassed that the originating process adopted the format of an



Originating Motion onNotice and that on the face of it, it was shown clearly the provision of the fundamental rights enforcement procedure rules, the African chatter on human and people's rights (Ratification and Enforcement) under which it was brought.

Learned counsel anchored his argument on note that the new movement in the enforcement of fundamental rights is that there is no single mode of initiating an action asthe person feeling aggrieved can commence an action by initiating an ordinary civil claimunder the relevant rules of court. ***FRN V. IFEGWU (2003) 15 NWLR (pt. 842) 113*** was cited as authority for this view.

Three issues were raised and I will take them as they were argued by the Respondent in his submission in support of this application.

It was argued firstly that this suit is an abuse of court process. To deal with this issue it is apposite to ask what constitutes an abuse of court process then also to look at the facts herein with the view to determine if an abuse exists. It has been held time and again thatan abuse of the court process is a concept; it is an idea or a general notion formed by generalization from particular examples. It is a concept that is imprecise. It involves circumstances and situations of infinite variety and conditions.

A common feature of all the cases on abuse of process is that the concept describes the improper use of the judicial process by a party in litigation to interfere with the efficient and effective administration of justice to the irritation and annoyance of his opponent. An abuse of process does not lie in the right to use a judicial process but rather in the manner of the exercise of the right. It consists of the intention, purpose or aim of the person exercising the right to harass, irritate and annoy the adversary, and interfere with the administration of justice; it is the inconveniences and inequities in the aims and purposes of the action – see ,***OGOEJEOFO VS OGOEJEOFO (2006) 3 NWLR (PT. 966) 205***, ***ALI VS ALBISHIR (2008) 3 NWLR (PT. 1073) 94***; ***IGBEKE VS OKADIGBO (2013) 12 NWLR (PT. 1368) 225***.

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As I noted earlier,the concept of abuse of process has been dealt with in a myriad of cases in our Courts. In several cases, the Courts have looked at the concept from the perspective of what amounts to an abuse and have itemized certain circumstances that will give rise to an abuse of judicial process as:

(a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues, or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.

(b) Instituting different actions between the same parties simultaneously in different Courts, even though on different grounds.

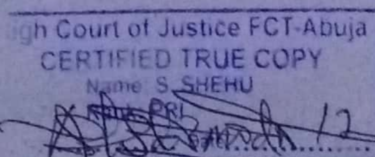
(c) Where two similar processes are used in respect of the exercise of the same right, for example, a cross appeal and a respondent's notice.

(d) Where an application for adjournment is sought by a party to an action to bring an application for leave to raise issues of fact already decided by Courts below.

(e) Where there is no iota of law supporting a Court process or where it is premised on frivolity or recklessness.

See the cases of ***JADESIMI VS OKOTIE-EBOH (1986) L NWLR (PT 16) 264***, ***SARAKI VS KOTOYE (1992) 9 NWLR (PT. 264) 156***; and more recently ***WING COMMANDER JIBRIL BALA ADAMU (RTD) v. NIGERIAN AIRFORCE & ANOR. (2022) LPELR-56587(SC)***.

I have looked at the affidavit in support of this application andnowhere in all the paragraphs did counsel make refence to any fact that supports this issue. To properly prove abuse, the party who has alleged it must point the court to concrete facts or processes that define the abuse. The barebone facts here in are not in any wayrelevant to what can constitute abuse as none whatsoever has even been raised. I therefore hold the consideredview that the Respondent has failed on this issue.



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On the second issuewhich is on jurisdiction, itis prime that an issue of jurisdiction can be raised at any time or stage even on appeal. I may add, it can be raised any how whether in the pleading, in address or by way of preliminary objection. When raised midstream in a case, it should not be brushed aside but must be considered by the court and decided upon. If it is raised in such a way that the opposite party may be taken by surprise, the Court should adjourn and give both parties the opportunity to address it fully and a decision given thereon. The Court has to satisfy itself that it has jurisdiction before proceeding further with the case. The point is that if it is found that the Court has no jurisdiction all the exercise in adjudicating in the matter will be an exercise in futility. -- Per UBAEZONU ,J.C.A in ***IBEAGWA & ORS V. NZEWI (2001) LPELR-12098(CA) (PP. 32-33 PARAS. E)***.

This point only re-emphasizes the importance of jurisdiction in the adjudicating processes of Courts. It is so radical that if the Court has no jurisdiction to adjudicate on a matter, the proceedings no matter how well conducted and the decision no matter how brilliant they remain a nullity for all times and purposes. Thus, no matter how raised and in respect of which Court, the issue of jurisdiction must be looked into once it is raised and in looking at this, there is little or nothing to say as the issue raised no facts supporting it neither were points of law raised. Counsel's argument on this point was only a rehash of decided cases defining jurisdiction and what the court should do when it is adjudged that it lacks jurisdiction.

As I know it, a party who alleges that a court lacks jurisdiction should as a matter of necessity clearly and unequivocally point the court to the direction it goes by raising issues of law or matters of fact that can be adjudged to rub the court of its jurisdiction. As in this case the formation of an issue touching on jurisdiction cannot deny the court of jurisdiction without more. it is on this note that yet again I resolve this issue against the Respondent and do hold that this court does in fact have the necessary jurisdiction to hear and determine this matter.

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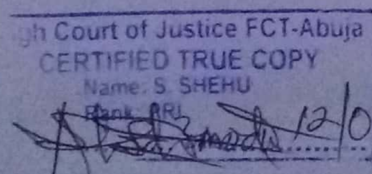
Now to the 3rd issue which dwelt extensively on the manner the process was commenced.

The compliant around which this issue was formulated is that this action was brought under a wrong originating process to wit: by Originating Motion on notice. Indeed, in this instant application, the Applicant had sought for certain reliefs by way of an Originating Motion on Notice bearing the suit number CV/ 2443/22. The instant rule under which fundamental right matters are heard is The Fundamental Rights (Enforcement Procedure) Rules, 2009 pursuant to Section 46(3) of the Constitution of the Federal Republic of Nigeria, 1999. The commencement and mode of application of enforcement of fundamental rights actions have been stipulated in the 2009 Rules. Order II Rule 2 of the 2009 Rules provides that: ***"An application for the enforcement of the Fundamental Right may be made by any originating process accepted by the Court which shall, subject to the provisions of these Rules, lie without leave of Court."*** From the above, an Applicant seeking to enforce his rights under Chapter IV of the 1999 Constitution has the option to come by way of any process accepted by the court. Order 2 Rule 1 of the High Court of the FCT Civil Procedure Rules 2018 provides for the way by which a suit can be instituted as by a Writ, Originating Summons, Originating Motion and Petition. I am of the view that while an Originating Motion on Notice is not one of the ways stipulated in Order 2 Rule 1, the process that was filed in initiating this action though headed as an originating motion on notice was not rejected by the registry upon filing and was even allocated a suit number and not a motion number. The fact of allocation of a suit number and in this case CV/244392022 goes a large extent to show that the process had been "Accepted" within the context of the fundamental rights rules specifically Order II Rule 2 thereof. I therefore do not agree with the learned counsel for the Respondents that the Court lacked jurisdiction to determine the case because the action was commenced by an Originating Motion on Notice. I hold that the mode of commencement of this action which is not in disconformity with Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 having not been rejected by the Court was a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proper originating process for the commencement of the Applicant's action for the enforcement of his right guaranteed by the Constitution. See ***IHEME V. CHIEF OF DEFENCE STAFF & ORS (2018) LPELR-45354(CA)***.

Assuming I am wrong on this I find a strong ally in dispensing with undue and unnecessarytechnicalities in the case of ***THE FEDERAL REPUBLIC OF NIGERIA & ANOR v. LORD CHIEF UDENSI IFEGWU (2003) LPELR-3173(SC)*** cited by counsel for the Applicant where the supreme court per Uwaifo JSC held rightly that ***"The manner in which the court is approached for the enforcement of a fundamental right is hardly objectionable once it is clear that the originating court process seeks redress for the infringement of the right so guaranteed under the Constitution. The court process could come by the Fundamental Rights (Enforcement Procedure) Rules or by originating summons or indeed by writ of summons. That seems to underline the concerns in regard to redressing a contravention of a fundamental right by liberalising the type of originating process without the person affected being inhibited by the form of action he adopts. It is enough if his complaint is understood and deserves to be entertained."***

The law lord himself has spoken, need I say more. My answer is in the negative as I have nothing else to add or to remove from the holden of the Supreme Court other than to rely on it and dismiss this preliminary objection inits entirety.

The 1-8th Respondents entered appearance and filed a 28-paragraph counter affidavit dated 19th August2022. In denying the allegations, it was deposed that the 2nd Respondent received a direct complaint from the Commissioner of Police in Kano State alleging that the Applicant and other suspects were suspected of having committed the offence of Armed Robbery and conduct likely to cause breach of peace. According to facts deposed in the counter affidavit, the Applicant and other suspects were transferred from Kano to Abuja on the 8th of May 2022 and that after his statement was taken, he was granted bail but was unable to meet the terms. The averments continue that as he was unable to meet the terms of the bail granted to

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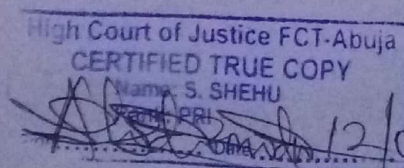
him a court order was obtained to remand him in custody which order was subsequently renewed on three occasions. Other averments speak to the circumstances leading to the alleged crime but I shall not dwell on those as, what is before me is a Fundamental Rights proceeding.

In the written address of learned counsel for the Applicant, a single issue was argued in support of the Applicant's case. That issue was "***whether the Respondents' arrest, intimidation, harassment and continuous detention of the Applicant constitute a violation of his fundamental right to liberty as guaranteed under Section 35 of the 1999 Constitution of the Federal Republic of Nigeria.***"

Counsel opened his argument on the note that Order II Rule 1 of the fundamental Rights Enforcement Rule allows for the Applicant to bring this action. Counsel called me to see the case of ***ONYIRIOHA V. IGP (2009) 3 NWLR (PT. 1128) PG. 362*** and to find that by the provision of Section 35(1) of the 1999 Constitution as amended every citizen is entitled to his personal liberty. In the same vein, Article 6 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Chapter A9 LFN 1990 protects the right to liberty of person.

It was submitted that the Applicant had not committed any offence to warrant his arrest and detention which could be justifiable under Sec. 35 (1) C. He contended that it is the duty of the court to safeguard rightswhen infringed upon or even when it is merely likely to be breached. – ***NAMA V. AG CROSS RIVER STATE (2008) All FWLR PT. 401 pg. 818*** and ***Akeluga V. BSCSC (2002) ALL FWLR (pt 123) pg. 262***.

While urging this court to rise up to the occasion counsel posited that the courts have always ensured citizens rights are protected andprevented from being abused- ***INUSA V. THE STATE (1982) 4 SC PG. 41 AT 66-70***and ***COMPTROLLER OF NIGERIA PRISONS v. ADEKANYE (1999) 10 NWLR (PT. 623) pg. 400 at 426***.



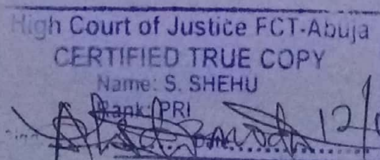
In conclusion counsel submitted that the actions of the 1-8th Respondents who are servants of government were oppressive, arbitrarily and an abuse of office and powers.

For the Respondent, Wisdom Madaki of counsel raised three issues of determination and I shall deal with his 2nd and 3rd issues together before I return to the issues of the Applicant which I will take together with the 1st issue of the Respondent.

The issues to be taken together are whether the investigation of the Applicant for criminal conspiracy, Armed robbery and conduct likely to cause breach of public peace constitute a violation of his fundamental right and, whether this court can restrain the 1st -8th Respondents from the performance of their statutory duties.

Outrightly, I will agree with the learned counsel for the Respondents that the investigation of any crime at all does not amount a violation of fundamental rights. I agree also that the court would not restrain the Respondents from the performance of their statutory duties .

The provision of Section 4 of the Police Act has become notorious for giving the Police wide discretionary powers. Deciding on the Scope of Police duty under SECTION 4 OF THE NIGERIA POLICE ACT, it was held that "***The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act***." The Supreme Court in interpreting the above Section in ***OLATINWO V. THE STATE (2013) LPELR-19979 (SC)*** held thus: ***"Section 4 of the Police Act stipulates that - "The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property..."*** Per AKA'AHS, J.S.C The primary duty of the Police by Section 4 of the Police Act is the prevention, detection and investigation of crime; and the prosecution of offenders. It is

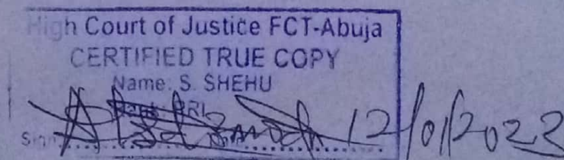


however trite that in the exercise of this powers the police must do so with restrain and in strict compliance with the law. The facts of this case are that they arrested the Applicant and others. Going by the powers of the Police under the Police Act , I am of the considered view that the Nigeria Police sure does have powers to invite suspects in the course of investigation. On this score it has been held time and again that the Court lacks the powers to issue declaratory and injunctive reliefs with a view to impeding the result of police investigation made pursuant to the statutory duty under Section 4 of the Police Act. Similarly, the Court lacks the powers to restrain the police by injunction from investigation of criminal complaints under Section 4 of the Police Act. See ***INSPECTOR GENERAL OF POLICE & ANOR v. DR. PATRICK IFEANYI UBAH & ORS (2014) LPELR-23968(CA)***. On the strength of the above it will be out of place and a clear abuse of my judicial powers if I make any order at this time restraining the police from carrying out their legitimate duty of law enforcement. If in the process of carrying out these functions the right of the Applicant is violated then of course, the court will be here willing and able to provide the necessary redress.

I resolve the issues above in favour of the Respondent but I note that the grouse of the Applicant is mainly that he was detained illegally.

I now proceed to deal with the live issue bothering on the infringement of the fundamental rights of the Applicant. I had earlier on in this judgment narrated the facts leading to this application. The crux of the matter is that he was detained unlawfully for 105 days. The fact of the detention was not denied and in fidelity with the judicial tradition, what is admitted demands no further proof. What the Respondents tried to assert is that the detention was pursuant to a valid order of court. I now move to determine the validity of that order as it seems to me to be the fulcrum of the entire claim.

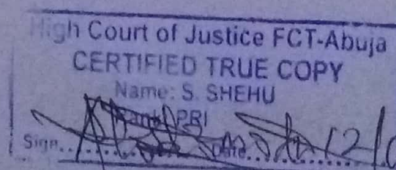
The story of the Respondent and depositions are fraught with half-truths and inconsistencies. Firstly in justify the detention of the Applicant, it was averred in the counter affidavit that this case was transferred from Kano State command via letter



No. CR: 3100/KST/VOL. 8/165 dated the 8th of May 2022. It was further averred that the statement of the Applicant was recorded voluntarily and a copy of the statement was attached. In justifying the detention, it was deposed that the Applicant was granted bail but because he could not perfect the bail terms, they approached a court of competent jurisdiction for a remand order.

This will presuppose that the order was sought and obtained after the taking of the statement. I have looked at the statement in contention and note with concern that it was taken on the 11th of May 2022 while the 1stCourt order was obtained on the 6th of May 2022. This to me clearlycontradicts thedepositions of the Respondents and the facts that can be made out from their affidavit. This will further mean that the applicant had been in the custody of the Respondents for two days before his statement was obtained. one will only wonder what he was doing in those two days.

Further to this, I can see that the letter referring the Applicant and others accused to Abuja was dated the 8th of May 2022. It is not certain when they were transferred to Abuja but since the letter was dated 8th of May, which is consistent with the date in the Applicant's supporting affidavit, I will assume they were transferred on the 8th of May but not before. Now, the 1st remand order was issued on the 6th of May. Putting aside my conclusion above that from the deposition of the Respondents themselves that remand order could not have been issued before the 8th of May2022, one is left to wonder if the remand order was obtained ahead of the transfer of the suspects. Learned counsel had tried to argue that the remand order was issued before the transfer but then, the evidence before me suggest otherwise.There is nothing in the process to suggest in the slightest possibility what counsel has said, thus, suchpostulations by learned counsel for the Respondentin his address does not by any stretch of imagination become evidence upon which this Court can act. The law is settled that no amount of brilliant address of counsel can make up for lack of evidence to prove or defend a case in Court. See ***SEGUN OGUNSANYA V. THE STATE***



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(2011) 12 NWLR (PT. 1261) 401, and more recently ***ELVIS EZEANI v. FEDERAL REPUBLIC OF NIGERIA (2019) LPELR-46800(SC).***

On the contradictions pointed out above between the exhibited statement of the Applicant and averments in the counter affidavit, our case law is replete with authorities that where a matter is being tried on affidavit evidence and a Court is confronted with conflicting or contradictory evidence relied on by parties on a material issue before the Court, it is the law that the Court cannot resolve such conflict by evaluating the conflicting evidence but is obliged to call for oral evidence in order to achieve resolution of the conflict. See ***FALOBI V. FALOBI (1976) 10 SC 1*** and ***Akinsete v. Akindutire (1966) 1 All NLR 147***.

In the case in hand, the contradictions or conflicts in affidavit evidence does not relate to affidavit evidence filed by the Applicant, on the one hand, and that filed by the Respondent, on the other; rather, the contradiction arose only in the respect of the Respondent's counter affidavit and the documents attached to it. Clearly, as in this case where the Respondent's case is plagued by inconsistencies or contradictions, there is no obligation, in such circumstances, on the Court seized of the matter to arrange for oral evidence to be called for the purposes of making or resolving the contradictions. The law frowns on a party who approbates in one breath and reprobates in another. But having said that, I must hurry to state that the onus is undoubtedly on the Respondent confronted with its self-created contradictions to fully and properly explain away the contradictions to the satisfaction of the Court. Failure to do so is bound to leave an indelible dent on the case and the strenuous attempt by the Respondent's counsel to orally offer explanations from the Bar goes to no issue.

To state it clearly, In the instant case, as pointed the date the statement of the accused was taken and the date he was moved from kano to Abuja contradicts the averment in the counter affidavit that after his statement was taken, he was released on bail and when he could not perfect the conditions a court orders was obtained (see paragraphs 5 B-D of the counter affidavit).

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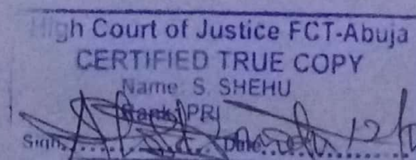
The dictum of Achike JSC in the case of ***MOMAH V. VAB PETROLEUM INC (2000) 4 NWLR PART 654 PAGE 534 AT 556-557 PARA G-D***, must accordingly come to play, to the effect that where a party's case is plagued by inconsistencies or contradictions, there is no obligation, in such circumstances, on the Court seised of the matter to arrange for oral evidence to be called for the purposes of making or resolving the contradictions. See also ***ABDULKADIR AHMED V. MINISTER OF INTERNAL AFFAIRS OF THE FEDERAL REPUBLIC OF NIGERIA & ORS (2017) LPELR-43150(CA)***.

Now, I will go into the more fundamental issues of the timelines of the purported remand orders. They were purportedly issued pursuant to Sections 293, 294, 295 and 296 of ACJA 2015.

The Administration of Criminal Justice Act (ACJA) 2015 was enacted for the purpose of dealing decisively with all the issues that bedevilled the criminal justice system prior to its enactment.

The pre- trial detention practice in the pre-ACJA period was often termed **"holding charge"**and it led to the detention of defendants foralmost indefinite periods. This practice was no doubt abused by the police and other law enforcement agencies by using Magistrates to detain suspects accusedof offences albeit the Magistrates had no jurisdiction to try the offences or verify the charges for inordinatelylengthy periods. These issues further led to plethora of challenges in the system ranging from congestion in courts and custodial centres, to sluggish trial processes, even to poor custody management systems and poor remand procedures.

The advent of the ACJA 2015 brought a remarkable improvement in the general criminal justice sector including also the remand procedures. Remand proceedings under the ACJA is pitched toensureadequate judicial control of personsarrested by the law enforcement agencies including the Police on criminal allegations. It allows the investigators and prosecutors adequate time to prepare for the arraignment of the suspect before the appropriate court and ensures compliance with the constitutional



provision of bringing an offender before a court of law within a reasonable time as provided for in Section 35(1), (4) and (5).

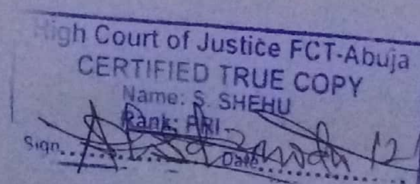
ACJA 2015 provides for Remand orders and procedure. Particularly, s. 293 of the ACJA 2015 provides that a Magistrate has jurisdiction to remand a suspect in custody where he has no jurisdiction to hear or try the offence.

293 to 299 provides step by step guidance on the grant of a remand order. It is to be applied for ex parte in the prescribed remand form contained in Form 8 in the First Schedule of ACJA and it is to be verified by an oath in which the reasons for which the remand order sought should be stated. I shall however restrict myself to Section 296. Which provides that provides as follows:

> ***(1) Where an order of remand of the suspect is made pursuant to section 293 of this Act, the order shall be for a period not exceeding 14 days in the first instance, and the case shall be returnable within the same period.***
>
> ***(2) Where, on application in writing, good cause is shown why there should be an extension of the remand period, the court may make an order for further remand of the suspect for a period not exceeding 14 days and make the proceedings returnable within the same period.***

ACJA 2015 clearly stipulates and establishes proper time limits and protocols for remand orders so as to exhaustively deal with the concerns that remand orders were previously associated with.

S. 296 of the ACJA provides that when a remand order is granted, it shall have a life span of not more than 14 days after which it shall lapse except it is renewed on application in writing to the court showing 'good cause' why such an order should be renewed. In the case of this renewal, the remand period shall not exceed 14 days as in the earlier instance. In both cases, the case must be returnable to the court within the period of remand. Hence the agency or officer who sought the remand order must



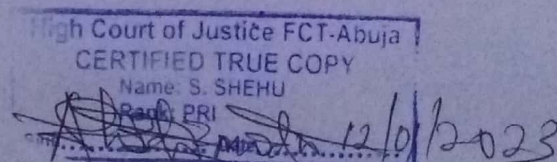
make an appearance in court to brief the court on the continuous detention of the suspect or to let the court know if the suspect has been charged to court.

Where after the expiration of the first two periods of remand, the suspect remanded has not been released or charged to court, the court is directed by virtue **of s. 296(4) to grant bail to the suspect on an application made by him or to issue a hearing notice on any relevant authority in whose custody the suspect is or at whose instance the suspect is remanded to inquire as to the position of the case and for the relevant authority to show cause why the suspect remanded should not be unconditionally released.**

Presently, I shall return to the purportedremand orders annexed to the counter affidavit in opposition to this motion and I note that the dates are as follows: 06-05-22, 06-06-22 and 06-07-22. What this means is that assuming these orders are validly obtained orders which so far I haveevery reason to doubt, they were secured in clear breach of the regulated timelines as provided by ACJA. From the dates above, the purported reviews were done monthly. It will mean therefore that assuming the orders were valid for each period the order was not reviewed within the 14 days allowed by ACJA, the Respondents were in breach of the rights of the Applicant and I so hold.

ACJA 2015 is a unique piece of legislation that was brought into play to revolution is the criminal trial system and even though it is not yet "UHURU" !! for the challenges faced in the criminal justice system, it has made remarkable impact and a bold step towards the promise land.The court therefore will not stand idle and watch any institution of government destroy the utility of this law by such unwholesome and distasteful practices of concocting court orders as has been displayed by the Police in this case. All facts point to one direction only and that is that, these court orders brandished in the counter affidavit were obtained as an afterthought and craftily put together to justify the illegal and unlawful detention of the Applicant and I so hold.As it is with lies, there is always an expiry date.

One more point on this and I will be done. There are over 70 Magistrates courts in the FCT and 58 High courts. I find it curious that the Police will traverse the all these



courts only to get remand orders from a Magistrate Court in Masaka, Nasarawa State. While the Police is one and it has the right to get court orders from anywhere it chooses, I am of the opinion that a court siting in Nasarawa State cannot issue orders pursuant to a law it has no powers to apply. Looking that the purportedorders, one will see that they were issued under Sections 293, 294, 295 and 296 of ACJA 2015. ACJA is clearly a FederalLegislation applicable in Federal Courts and of course, the Magistrate and Area Courts of the FCT definitely not including a Magistrate court sitting in Masaka , Nasararwa sate which has all the powers to apply the Administration of Criminal Justice Law of Nasarawa State 2018.

From the foregoing I find the detention of the Applicant for 105 days unlawful and a clear breach of his rights which this court will not take lightly. In the case of ***FAWEHINMI v. BABANGIDA (2000) 2 HRLR 144 @ P. 153 PARA E.*** It was held that:

> "The liberty of a citizen is one of grave importance and any attempt to curtail same must be done in strict compliance with the forms and rules of law"

Also, in the case of ***NWEKE & ORS v. IGP & ORS (2013) LPELR-21173 (CA)***,the Court of Appeal held that;

> "Fundamental Rights are not only basic to citizens; they are rights that have been entrenched in Chapter IV of the Constitution. These rights are sacrosanct and very important to everyone within the borders of Nigeria. These rights are molded into freedom blocks that fence the citizens from forces on unbridled aggression, oppression, repression, and authoritarianism. Where these rights are to be enforced in court, the court, within reasonable limit must do all that is necessary to cause a flourishing of these rights"

This Court is convinced that the Applicant on the strength of his affidavit evidence in support of the application and the various unresolved contradictions in the case of the Respondent, has firmly established a clear case of breach of his fundamental rights.

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Therefore, it flows naturally that the Applicant is entitled to damages. Once he has proved the abridgement of his fundamental right, damages accrue automatically. In ***SKYE BANK v. NJOKU & ORS (2016) LPELR-40447 (CA)***the Court of Appeal held at page 31 para D-E that:

> "In fundamental rights action, damages automatically accrue, once the respondent has been adjudged to have violated the applicant's fundamental rights."

Also, in the case of ***JIDE ARULOGUN v. COMM OF POLICE LAGOS STATE & ORS (2016) LPELR 40190 (CA)***, the Court of Appeal held *inter alia* that:

> "For the avoidance of doubt, common law principle on award of damages do not apply to matters brought under the fundamental rights. When a breach is proved, the victim is entitled to compensation even if no specific amount is claimed. The damages automatically accrue."

In view of the foregoing therefore, I hereby resolve the remaining issues in favour of the Applicant. Accordingly, this Court hereby grants thefollowing reliefs sought in this application as follows:

A. **IT IS HEREBY DECLARED**that the detention of the Applicant by the 1st, 2nd 3rd, 4th, 5th, 6th, 7th and 8thRespondents for 105 days from the 5thDay of May, 2022 is unlawful, unconstitutional, illegal and a violation of the Applicant's fundamental rights guaranteed by section 35(1) & (4) of the 1999 Constitution of the Federal Republic of Nigeria (As amended).

B. **IT IS HEREBY DECLARED**that the restriction/confinement placed on the Applicant by the Respondents is unlawful, unconstitutional and a direct infraction of the rights of the Applicant to freedom of movement as guaranteed by Section 41 of the constitution of the Federal Republic of Nigeria 1999 (As amended).

C. **IT IS HEREBY DECLARED**that the detention of the Applicant by the Respondents without informing him of his offence in writing is unlawful,

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unconstitutional and an infraction of the Applicant's rights as guaranteed by section 35 (3) of the Constitution of the Federal Republic of Nigeria 1999 (As amended).

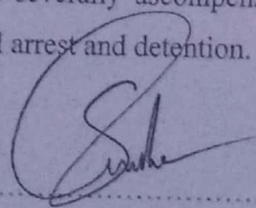
D. **AN ORDER OF INJUNCTION IS HEREBY MADE**restraining the 1st, 2nd 3rd, 4th, 5th, 6th, 7th and 8th Respondents whether by themselves, assigns, privies, agents or whosoever purporting to act on their behalf from violating or further violating the fundamental rights of the Applicant as guaranteed by Section 34 (1), 35 (1) & (4) and 43 of the Constitution of the Federal Republic of Nigeria 1999 (As amended).

E. **AN ORDER OR PERPETUAL INJUNCTION IS HEREBY MADE** restraining the Respondents whether by themselves, assigns, privies, agents or whosoever purports to act on their behalf from violating or further violating the Fundamental Rights of the Applicant.

F. **THE 5TH, 6TH AND 7TH RESPONDENTS ARE HEREBY ORDERED** to unconditionally refund the sum of ₦2,800,000:00 (Two Million, Eight Hundred Thousand Naira) only unduly collected from the Applicant.

G. **THE 5TH, 6TH AND 7TH RESPONDENTS ARE HEREBY ORDERED**to unconditionally release the Applicant's car Lexus Jeep X330, Grey color, Chassis number: ZT2HA31U36CO98986, with plate number, FGE 60 AA and the sum of ₦181,000:00 (One Hundred and Eighty-One Thousand Naira) only cash removed from the car.

H. **I Hereby Award the Sum of ₦10,000,000**(Ten Million Naira) onlyagainst the Respondents, jointly and severally ascompensation to the Applicant for his unlawful, unconstitutional arrest and detention.



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Eleojo Enenche
Judge

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Rank: PRI
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COUNSEL

FOR APPLICANT: Al-Bashir Lawal Likko, I.A. Tanko,IshiakuSaleh, Ibrahim Alhassan & M. M. Ohidaji

FOR 1ST – 8TH RESPONDENTS:Rimamsonte Ezekiel & Wisdom Madaki

FOR 9TH RESPONDENT: NIL

SHAMSUDEEN MUSA V. MR. USMAN ALKALI BABA (INSPECTOR GENERAL OF POLICE) & 8ORS