IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP :		**HON. JUSTICE Y. HALILU**
COURT CLERKS	**:**	**JANET O. ODAH & ORS**
COURT NUMBER	**:**	**HIGH COURT NO. 14**
CASE NUMBER	**:**	**SUIT NO: CV/2705/2022**
DATE:	**:**	**WEDNESDAY 13TH MARCH, 2024**

BETWEEN:

CECIL OSAKWE ..... **APPLICANT**

AND

1. ASABE WAZIRI

2. INSPECTOR GENERAL OF POLICE (IGP) **RESPONDENTS**

3. DEPUTY INSPECTOR GENERAL OF POLICE, CID, ABUJA

4. ASSISTANT COMMISSIONER, SPECIAL ENQUIRY BUREAU (SEB)

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Seal No:- BS 200395
Date:- 14/3/2024

JUDGMENT

In the matter of an application by Cecil Osakwe for an Order for the enforcement of his Fundamental Right.

The Applicant vide Originating Motion dated 16th August, 2022 and filed on same date, approached this Honourable Court for the following:-

1. A Declaration that the acts of the 3rd and 4th Respondents who invited the Applicant and continued to harass, intimidate and threaten to arrest and detain the Applicant at the prompting, behest and instigation of the 1st Respondent over purely civil matters for which the subject matter is pending before Courts as follows:

   a. FCT High Court before Hon. Justice Babangida Mohammed: Suit No. CV/927/2022.

   b. Court of Appeal, Appeal No.: CA/ABJ/CV/246/2022, is unlawful, illegal, abuse of office and an infringement of the Applicant's Right to Personal Liberty and Right to own property as enshrined in the 1999 Constitution of the Federal Republic of Nigeria (as amended).

2. An Order of Perpetual Injunction restraining the 2nd and 3rd Respondents, their officers, servants and agents from further inviting and threatening to arrest and detain the Applicant's right to personal liberty, freedom of movement and Right to property, on purely civil matter a subject of litigation.

3. An Order of this Honourable Court directing the payment of the sum of N100,000,000.00 (One Hundred Million Naira) as damages against the 1st Respondent, and N50,000,000.00 (Fifty Million Naira) against 2nd and 3rd Respondents in favour of the Applicant for the breach of the Applicant's fundamental right to personal liberty and right to property.

4. And for such Orders or further Orders as this Honourable Court may deem fit to make in the circumstance of this case.

The Reliefs sought are predicated upon the following grounds:-

1. The unlawful invitation of the Applicant by the 2nd and 3rd Respondents, continuous threats of arrest and detention of the Applicant by the 3rd Respondent on matter that is subject of litigation before Hon. Babangida Mohammed FCT High Court with Suit No.: **CV/927/2022** and the Court of Appeal with Appeal No.: **CA/ABJ/CV/246/2022** and the

Court of Appeal with Appeal No.: **CA/ABJ/CV/246/2022** at the instigation of the 1st Respondent is unconstitutional, illegal and abuse of office and amounts to a breach of the Applicant's Right to personal liberty and Right to property.

2. The use of the 2nd and 3rd Respondents to settle civil disputes between the Applicant and the 1st Respondent is unconstitutional, illegal and abuse of office.

In support of the application is a 46 paragraph affidavit deposed to by Cecil Osakwe, the Applicant in this suit. It is the deposition of the Applicant, that sometime in February, 2021 the 1st Respondent indicated her interest in the purchase of Two (2) bedroom flats within his properties situated at Maitama for the sum of N260,000,000.00 (Two Hundred and Sixty Million Naira).

That the 1st Respondent was brought to him by agent inquiring about the purchase and rent of one of his properties in Maitama.

That the 1st Respondent later agreed for the purchase of the property – 2 Units of 3 bedroom flat at the rate of N130,000,000.00 (One Hundred and Thirty Million Naira) each.

That the 1st Respondent paid an initial sum of N50,000,000.00 (Fifty Million Naira) and other subsequent installment which

amounted to nearly N140,000,000.00 (One Hundred and Forty Million Naira) and pleaded with him to allow her move into the property pending her completion of payment of the purchase price.

That he informed the 1st Respondent that the said property is strictly residential and its use does not permit for commercial purposes as contained in the covenants.

That he handed over the keys to 2 flats to the 1st Respondent base on the believe that the 1st Respondent could be trusted, and that the Applicant also handed to the 1st Respondent the covenants regulating the occupiers of the property.

That immediately the Applicant granted the request of the 1st Respondent and allowed her to move into the property, the 1st Respondent became abusive, and violated all terms of covenants regulating their transaction.

That the 1st Respondent started using one of the flats unknown to her company as hotel/chalets and advertise same in a website called AB & B, and that the said covenants regulating the occupants of the premises are attached and marked as Exhibit "A".

That when any staff of the Applicant approach the 1st Respondent to call her attention to the breaches, the 1st Respondent assaults the staff and threatens to lock them up using officers of the 3rd and 4th Respondents, and that 1st Respondent assaulted one of the staff of the company by slapping him and tearing his clothes. The picture of the staff named Sam is attached.

That when Applicant intervened, the 1st Respondent threatened to arrest and detain him and his staff as she boasted that she knows a particular Assistant Inspector General of Police willing to do her bidding and that nothing can ever be done to her.

That sometime in August, 2021, the 1st Respondent requested for permission to repaint a section of the premises she occupies to a different colour.

That the Applicant refused her request because one of their company policies contained in the terms and covenants which the 1st Respondent was aware of has always been that all their properties must have a uniform colour and they duly communicated this to the 1st Respondent. Strangely and surprisingly, upon their refusal, the 1st Respondent proceeded to engage the services of a painter who commenced work.

That efforts made by their staff to halt the repainting process were met with acts of physical abuse as they were pushed to the ground and beaten. Pictorial evidence of the physical abuse is attached herewith and marked Exhibit "B".

That the 1st Respondent further barricaded the gate of the property preventing the Applicant, his staff and other occupiers of the premises from going out or coming into the premises for a period of 5 hours, and that shortly after this incident and bearing in mind that the 1st Respondent was in breach of the terms and conditions of the premises, the Applicant informed her of is desire to discontinue the transaction with her and refund the purchase price she had earlier paid. The 1st Respondent became infuriated and threatened to deal mercilessly with him.

That Applicant approached the FCT High Court coram Hon. Justice Musa Othman to terminate the transaction and vacate the 1st Respondent and that the FCT High Court in suit No. CV/2435/2021 per Hon. Justice Othman Musa delivered judgment wherein he terminated the transaction between the 1st Respondent and the Applicant and ordered that the 1st Respondent vacate the premises and that the Applicant refund

the 1st Respondent. The judgment was delivered on the 15th February, 2022. The said judgment is attached as Exhibit "AA".

That Applicant issued a cheque of N150,000,000.00 (One Hundred and Fifty Million Naira) in favour of the 1st Respondent immediately. However, to their consternation the 1st Respondent refused to collect the cheque arguing that she is going on appeal. The copy of the cheques are attached as Exhibit "B".

That the 1st Respondent was vacated from the premises on the 20th April, 2022 and her belonging taken out of the premises in compliance with the Court Order, and that 1st Respondent had opposed her vacation from the premises and instead the 1st Respondent had employed the use of senior police officers to harass and intimidate the Applicant and his staff.

That the 1st Respondent is employing the use of Police particularly, 2nd, 3rd and 4th Respondents to harass and intimidate him, and that the 1st Respondent writes frivolous petitions to the 2nd – 4th Respondents against the Applicant just to engage the 3rd and 4th Respondents to invite, detain to allow her carry out illegal activities in his premises.

That the 1st Respondent sometimes in June, 2022 had employed thugs, armed with machete to forcefully gain entry into his

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premises thereby destroying properties worth millions of naira. The destroyed properties are marked as Exhibit "C".

That the 1st Respondent is now using the 3rd and 4th Respondents to achieve her illegal motive, and that it is in the bid of the 1st Respondent to use the 3rd and 4th Respondents to achieve her aim that the 1st Respondent incidented a petition against him and his lawyer alleging threat to life, trespass to property and criminal intimidation.

That the 3rd and 4th Respondents had arrested his counsel Victor Giwa, Esq. without calling him to answer of any allegation and detained him without hearing from him, and that the 3rd and 4th Respondents have in continuous of the same action invited the Applicant even after his counsel Giwa has informed the 3rd and 4th Respondents that the subject matter is before the FCT High Court and Court of Appeal. The copy of the process is attached as Exhibits "DD"

That the 1st Respondent is now using officers of the 3rd and 4th Respondents to intimidate and threaten the Applicant. The said letter of invitation by the 3rd and 4th Respondents is hereby attached and marked as Exhibit "E". That the 3rd and 4th Respondents have invited and has threaten her in pretext of

spurious petition against her, just to arm-twist the Applicant to surrender title document of the Estate to the 1st Respondents.

That the actions of the 2nd, 3rd and 4th Respondents have caused the Applicant, his staff serious psychological trauma and is currently affecting the Applicant's business as the other tenants in the property are threatening to vacate the premises and get a refund of their money. And that he has written series of petition against the 1st Respondent to the 3rd Respondent and nothing has been done on the Petitions.

That the transaction between the Applicant and the 1st Respondent is strictly civil which is before Court. That he knows the Respondents will not be prejudiced by the grant of this application as the interest of justice weighs heavily in Applicant's favour.

In line with procedure, written address was filed wherein three (3) issues were formulated for determination to-wit;

1. ***Whether from the facts and circumstances of this case the Applicant has established a case of violation of his Fundamental Right?***

2. ***Whether the 2nd Respondent acted within the scope of powers conferred on them by law.***

3. ***Whether from the facts and circumstances of this case, the Applicant is entitled to the award of damages?***

On issue 1, learned counsel submits, that the crux of this suit is that the Applicant's right to personal liberty as a person as well as right to property enshrined in Sections 34 and 44, of the constitution of the Federal Republic of Nigeria 1999 (as amended) has been grossly eroded by the Respondents.

Learned counsel further submits, that the Applicant's affidavit reveal that the ceaseless harassment of the Applicant by threats occasioned serious trauma to the Applicant, his staff business which ipso facto violates the Applicant's fundamental rights guaranteed under Section 35 of the 1999 Constitution.

Learned counsel submits, that the Applicant who is a victim of the violation shows a violent and sustained abuse of the Applicant rights of the victims when he was unlawfully arrested and forcefully coerced into handing over the title documents of his property to the 1st Respondent with respect to an evidently failed civil transaction.

Section 35(1) of the 1999 Constitution as amended was cited.

On issue 2, it is the submission of learned counsel, that the facts as stated in the affidavit in support of this application show clearly that the issues between the Applicant and the 1st Respondent are purely civil which do not require the attention of the 2nd Respondent, and the Applicant had mentioned this to the agents of the 2nd and 3rd Respondents during their incessant calls, the Respondents at this point should have restrained themselves having observed that it was a civil transaction that had no criminal elements.

Learned counsel also submits, that the law does not confer the function of settlement of civil disputes on the 2nd Respondent and where this is done like in this case, it's a violation of law.

On issue 3, learned counsel submits, that this Honourable Court is empowered to secure the rights of the Applicant. For this counsel rely on the case of ***NAWA VS. A.G. CROSS RIVER STATE (2008) ALL FWLR (Pt. 401) at 807*** was cited.

On the authority of ***NAWA VS. A.G. CROSS RIVER STATE (Supra),*** counsel submits that the Applicant is entitled to monetary compensation of N50,000,000.00 (Fifty Million Naira) only.

Learned counsel concludes by urging this Court by virtue of the foregoing to exercise his discretion in favour of the Applicant and grant this application.

Whereas the 1st Respondent filed counter affidavit and written address in opposition to the Originating Motion, 2nd, 3rd and 4th Respondents challenged the jurisdiction of this court by filing Preliminary Objection.

I shall proceed with the said process in that order.

1st Respondent filed 10 paragraph counter affidavit deposed to by Emmanuel Elisha, litigation secretary in the Law Firm of counsel to 1st Respondent in this suit. It is the deposition of the 1st Respondent, that paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42m, 43, 44, 45 and 46 of the said Affidavit are false, misleading and concocted. There is no iota of evidence attached to the Applicant's Affidavit in support of these wild and spurious allegations. The Applicant is hereby put to the strictest proof of the false depositions in his affidavit.

That contrary to the false deposition in the Applicant's Affidavit, the 1st Respondent purchased the property known as Flat 3c and Flat 3b, Abeh Signature Apartments, Maitama, Abuja in February,

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2021 from the Applicant who is the developer and seller of the property. The 1st Respondent was in possession of the said property until the 18th day of March, 2022, when the Applicant illegally and forcefully broke into her house and made away with her properties using self-help and without the approval of the Enforcement Development of the FCT High Court. The illegal action of the Applicant is the subject matter of Suit No. FCT/HC/CV/927/2022 – ***ASABE WAZIRI VS. ABEH SIGNATURE LIMITED & 3 ORS*** currently being heard by the FCT High Court 22, Jabi, Abuja.

That the 1st Respondent paid the purchase price of the property in several tranches through bank transfers to the Applicant who is the MD/CEO and alter ego of Abeh Signature Ltd. in February, 2021 and upon completion of her payment of the purchase price, she was put into possession by the Applicant and was living in the property from February, 2021.

That when the 1st Respondent requested for her receipts of payment, having fully purchased her property, the Applicant failed to hand over same to her for no just cause. The 1st Respondent's letters to the Applicant requesting for her receipts of payment are attached as Exhibit "A1".

That instead, the Applicant maliciously and falsely accused the 1st Respondent of making cash payment of $40,000 (Forty Thousand

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Dollars) to the 2nd Respondent in contravention of the Money Laundering Act. The matter was investigated by the Economic and Financial Crimes Commission (EFCC) and the 1st Respondent was exonerated and vindicated.

That not still satisfied, the Applicant approached the FCT High Court vide Suit No. FCT/HC/CV/2435/2021 – ***ABEH SIGNATURE LIMITED VS. ASABE WAZIRI*** and obtained judgment on the 17th day of February, 2022 to refund the 1st Respondent's money and for the 1st Respondent to vacate from her own house duly purchased with her hard earned money.

That, being dissatisfied with the Judgment of this Honourable Court, the 1st Respondent quickly filed an Appeal at the Court of Appeal and a Motion for Stay of Execution on the 17th day of February, 2022, and served the Applicant's solicitor same day. The Notice of Appeal filed at the Court of Appeal is attached as Exhibit "A2".

That on the 19th day of February, 2022, despite being fully aware of the Notice of Appeal and Motion for Stay of Execution, the Applicant sent one of his Directors, one Victor Giwa in the company with about seven hefty thugs and an electrician to the 1st Respondent's house where they forcefully entered into her

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house, beat up her security guards, disconnected her electricity supply, water supply and plumbing pipe, and physically assaulted her when she tried to resist the illegal and forceful invasion of her house without any Order of Court.

That the 1st Respondent's Motion for Stay of Execution was argued before the FCT High Court on the 1st of March, 2022 and reserved for Ruling to the 14th day of March, 2022, while her Records of Appeal was compiled and transmitted and her Appeal was duly entered in the Court of Appeal and was assigned with Appeal No.: CA/ABJ/CV/246/2022 on the 11th day of March, 2022 and same was duly served on the Applicant's counsel. The docket acknowledgment evidencing the transmission and entering the 1st Respondent's Appeal at the Court of Appeal is attached as Exhibit "A2".

That on the 14th day of March, 2022, this Honourable Court delivered its ruling and refused the 1st Respondent's Motion for Stay of Execution.

That following the refusal of her Motion for Stay of Execution by this Honourable Court on the 14th day of March, 2022, the 1st Respondent quickly filed a Motion for Stay of Execution at the Court of Appeal on the 14th of March, 2022. The 1st Respondent

Claimant's Motion for Stay of Execution filed at the Court of Appeal is attached as Exhibit "A3".

That despite full knowledge of the pending Appeal and Motion for Stay of Execution at the Court of Appeal, the Applicant accompanied by some thugs and his Director, Victor Giwa, still proceeded to carry out an illegal execution of the Judgment on the 18th day of March, 2022 through self-help and without the Enforcement Department of the FCT High Court, and forcefully broke into the 1st Respondent's house in her absence, and made away with all her properties.

That the Applicant carried out his illegal and criminal actions while the 1st Respondent's Appeal and Motion for Stay of Execution is still pending before the Court of Appeal.

That the 1st Respondent promptly wrote letters to the Chief Judge, FCT High Court, the Chief Registrar, FCT High Court, the O/C/Legal, FCT Police Command and the Force Legal, Nigeria Police Force Headquarters seeking clarification on the authorization for the illegal execution that took place on the 18th day of March, 2022, despite the service and acknowledgment of receipt of the pending Appeal and Motion for Stay of Execution. The above referenced letter from the 1st Respondent's solicitor to

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the Chief Registrar dated 18th March, 2022, is attached as Exhibit "A4".

That the High Court of the FCT, Abuja did not authorize the levying of any execution in respect of the Claimant's property on the 18th day of March, 2022.

That the Court cannot levy execution without taking the original file which includes original copies of the Warrant of Possession and/or Writ of Execution to the venue for sighting by the Claimant.

That the Chief Judge of the FCT, Abuja did not authorize any execution against the Claimant's property on the 18th day of March, 2022. The letter from the Chief Registrar dated 21st March, 2022 is attached as Exhibit "A5".

That following the above response of the Chief Registrar, the 1st Respondent immediately filed Suit No. FCT/HC/CV/927/2022 – **ASABE WAZIRI VS. ABEH SIGNATURE LIMITED & 3 ORS** against the wrongful, illegal, malafide and tortious execution carried out against her property by the Applicant while her Appeal and Motion for Stay of Execution is before the Court of Appeal.

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That the Court of Appeal made an Order on the 4th day of April, 2022 directing a return to the status quo ante bellum (i.e the position before the dispute over the property arose). The Order of the Court of Appeal made on 4th April, 2022 is attached as Exhibit "A6".

That in other to give effect to the Order of the Court of Appeal, this Honourable Court, per Hon. Justice Othman Musa also made an Order on the 16th day of May, 2022 directing that the 1st Respondent should be returned back to her property. The Order made by this Honourable Court on 16th May, 2022 is attached as Exhibit "A7".

That instead of complying with the Order of this Honourable Court, the Applicant and his Director, one Victor Giwa, engaged in various acts calculated to undermine the Orders of the FCT High Court and the Court of Appeal by refusing her access to her house, stealing her properties and taking them away to an unknown location.

That the 1st Respondent then filed a complaint to the Police against the criminal and illegal actions of the Applicant whereupon the Police in the exercise of their investigatory

powers, commenced investigation into the matter and invited all parties to the purported execution, including the Applicant.

That the Applicant quickly ran to Court vide Suit No. FCT/HC/CV/286/2022 – CECIL OSAKWE VS. ASABE WAZIRI & 3 ORS wherein he sought to restrain the Police from inviting him for the purpose of investigation into the complaint made against him.

That the Applicant's Suit was dismissed on 29th June, 2022 by this Honourable Court per Hon. Justice Muhammad S. Idris. The judgment dismissing the Applicant's suit is attached as Exhibit "A8".

That in the course of investigation, it was discovered that the Enforcement Department of the FCT High Court was not involved nor authorized the purported execution carried out by the Applicant on 18th March, 2022, and also that the 1st Respondent's properties were not in the custody of the Court.

That the Applicant's Director and lawyer, Victor Giwa was thereafter invited by the Police for investigation and he led the Police to a hideout in Mpape where they had hidden the 1st Respondent's properties.

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That during investigation, the Applicant's Lawyer, Victor Giwa mentioned the Applicant as his boss and on whose directives the illegal actions were carried out.

That the Police thereafter issued an invitation to the Applicant to come and respond to the complaints made against him. The Police invitation to the Applicant is attached as Exhibit "A9".

That the Applicant refused to honour the Police invitation claiming that he was outside of the country, but quickly proceeded to file this instant suit in a mischievous attempt to get this Honourable Court to make an Order restraining the Police from inviting him for the purpose of investigation into his alleged criminal and illegal actions.

That this instant suit is an abuse of Court Process as it is surreptitious attempt to use this Honourable Court as a shield to avoid being invited by the Police for investigation into his alleged criminal actions.

That this Honourable Court cannot be used as a forum to avoid Police investigation into any alleged offence committed by the Applicant.

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That the Applicant has not produced any evidence of bad faith against the 1st Respondent and has not shown any evidence of any of his right that was infringed by the mere invitation letter from the Police.

That the Applicant has been dodging and refusing to honour the Police invitation for reasons best known to him.

That any Order made by this Honourable Court will be futile and an academic exercise as the Applicant is still yet to honour the Police invitation and respond to the criminal allegations against him.

That it will therefore serve the interest of justice to refuse the reliefs sought in the Application as they are premature, speculative and an abuse of the Court process.

In line with procedure, written address was filed wherein lone issue was formulated for determination to-wit;

"Whether the Applicant is entitled to the reliefs sought in this application?"

It is the submission of learned counsel, that a mere invitation does not translate to a breach of fundamental rights. It is the constitutional responsibility of the Police to invite and interrogate

any person who is not covered by immunity over suspected breach of the law. Rushing to Court on mere Police invitation to file application on breach of Fundamental Rights is against the constitutional role of the Police.

Fundamental rights actions are based on facts connected with the claim thereon. No right can be said to have been infringed upon or perceived on mere invitation. It is premature for the Applicant to rush to Court when he refuses to answer or obey the invitation served on the Applicant. If in the course of investigation, the Applicant feels that his rights have been infringed upon or likely to be infringed upon, then the Applicant can freely knock on the doors of the Court for intervention.

The case of ***DR. ALOYSIUS OZAH VS. EFCC 920170 LPELR – 43386 (CA)*** was cited.

Learned counsel further submits, that it is clear that the law frowns at the practice of Applicants rushing to Court on mere invitation by the Police in other to use the Court as a shield to avoid police investigation. It is an abuse of the Court for the Applicant to attempt to use the instrumentality of the Court to fetter the statutory powers of the Police.

Learned counsel contends, that what the Applicant is asking from this Court is that the Police should be restrained from inviting him for investigation. In other words, he wants this Honourable Court to act as a shield against investigation and interrogation by the Police. The Applicant has coined his prayers to reflect a speculative breach of right to liberty, whereas in the real sense he is asking the Court to stop security and law enforcement agencies from investigating the complaint brought against him.

Learned counsel also submits, that the Applicant cannot maintain this fundamental rights action against the 1st Respondent in the absence of cogent and vital evidence of bad faith.

Learned counsel argued, that there is need for such evidence to be produced before the Court otherwise, the application becomes a waste of the Court's judicial time and resources. The burden of proof is on the party who alleges, and in this instant case, the burden of proof has not been discharged by the Applicant. The case of ***ONAH VS. OKENWA (2010)7 NWLR (Pt. 1194) 512 at 535 – 536, Paragraphs H – A.***

Learned counsel concludes, that the sole issue arising for determination is evidently answered in the negative. The material evidence placed before the Court has not disclosed any bad faith

against the 1st Respondent. The Applicant cannot use the Court as a shield to avoid police invitation for investigation. There is no basis for the Court to grant the injunctive reliefs sought in this application as it amounts to an abuse of Court process and counsel urge the Court to so hold.

On their part, Applicant filed 12 paragraph further affidavit deposed to by Cecil Osakwe, the Applicant in this suit. It is the deposition of the Applicant;

That all the paragraphs of the Counter Affidavit are incorrect except where expressly stated otherwise.

That Applicant knows of a fact that the contract between him and the 1st Respondent was voided by the High Court of the Federal Capital Territory and Judgment given in his favour.

That sequel to the Judgment referenced in paragraph 5 above, he enforced the Judgment alongside officers of the 2nd Respondent in exercise of his right to the fruit of his Jugement. That the appeal of the 1st Respondent challenging my judgment has not been heard, hence his judgment is still subsisting.

That there was no criminality or fraud in the manner he executed his Jugement. That his application before this court is seeking the

protection of the Court from constant harassment by officers of the 2nd to 4th Respondents on a purely civil matter at the instance of the 1st Respondent pending the determination of the appeal filed by her.

That it will be in the interest of justice to discountenance the counter affidavit in its entirety. That the 1st Respondent will not be prejudiced and the interest of justice will best be served if my application is granted.

In line with procedure, Reply on point of law was filed.

Learned counsel submits, that all the authorities cited by the 1st Respondent in support of the issues raised for the determination of this Honourable Court are inapplicable as they are not on all fours with the facts of this case.

A suspect shall not be arrested merely on a civil wrong or breach of contract. Section 8 (2) of the Administration of Criminal Justice Act, 2015 was cited.

Learned counsel further submits, that Applicant's constant invitation by the 2nd to 4th Respondents pursuant to the petition of the 1st Respondent violates his constitutional right to freedom of

movement which is sacrosanct in our laws. ***OKAFOR VS. LAGOS STATE GOV. (2016) NWLR (PT.1556) 404*** was cited.

In conclusion, learned counsel urged this court to hold in the interest of justice that the transaction being civil and contractual without any form of criminality, the actions of the 1st Respondent through her petition has violated the Applicant's right to freedom of movement and liberty hence he is entitled to all the reliefs therein.

On the part of the 2nd, 3rd and 4th Respondent, Preliminary Objection dated 30th January, 2023 was filed, praying the court for the following:-

1. An Order of this Honourable striking out/dismissing suit No. CV/2705/2022 for same simile suit has been decided and Judgment delivered by his Lordship Hon. Justice Muhammad S. Idris on the 29th June, 2022 in suit No. FCT/HC/CV/286/2022 and therefore this court lacks jurisdiction.

2. And for such further Order(s) as this Honourable court may deem fit to make in the circumstances of this case.

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The grounds upon which this application is brought are as follows:

1. That there is a similar Suit No. FCT/HC/CV/286/2022 between ***MR. CECIL OSAKWE VS. ASABE WAZIRI & 4 ORS*** the same prayers/relief or declarations which the Respondents defended the suit and judgment was delivered in favour of the Respondents on the 29th June, 2022 by Hon. Justice Muhammed S. Idris.

2. That this court is not a Court of Appeal.

3. That this matter has been adjudicated by a competent court and therefore may not be pursued further by the same parties (Res judicata).

4. That this Honourable court lacks jurisdiction to entertain this suit as it is an abuse of court process.

5. That the suit of the Applicant/Respondent amount to abuse of court process on the grounds that the suit is wanting in bonafide, frivolous and vexatious.

The application is supported by a 9 paragraph affidavit deposed to by N. A Akpene, Police Officer attached to FCID Legal Section Abuja.

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It is the deposition of the 2nd, 3rd and 4th Defendants that the matter had been adjudicated by FCT High Court in Suit No. FCH/HG/CV/286/2022 and Judgment was delivered by His Lordship Muhammad S. Idris on the 29th June, 2022; attached is the copy of the judgment marked as Exhibit "IGP I".

That the facts contained in the Applicant/Respondent declaration relief sought and affidavit in support of his process are the same.

That this matter is Res Judicata, the matter cannot be raise again or reconsidered to avoid unnecessary waste of judicial resources and multiplying judgment and confusion.

That the Applicant/Respondent should go on appeal if not satisfied with the judgment of Hon. Muhammad S. Idris. That striking out the Applicant/Respondent application will not occasion miscarriage of justice.

In line with procedure, written address was filed wherein three (3) issues were formulated for determination to-wit;

1. ***Whether this court can adjudicate and reconsider this matter that has been adjudicated by a court of competent jurisdiction and judgment was delivered in the matter. (RES JUDICATA).***

2. ***Whether the suit of the Applicant/Respondent amount to abuse of Court Process.***

3. ***Whether this Honourable court can entertain this suit where it lacks jurisdiction to make abiding orders.***

On issue 1, it is the submission of learned counsel, that the principle of res judicata is founded upon the principles of justice, equity and good conscience, the purpose of this principle was to inculcate finality in litigation. The cases of ***A.G NASARAWA STATE VS. A.G. PLATEAU STATE (20I2) LPELR-9730;***

DAKILO & ORS VS. REWANE (20II) LPELR -9I5 SC were cited.

Learned counsel further submits, that this matter had been adjudicated and judgment was delivered by Hon. Justice Muhammad S. Idris on the 29th June, 2022. This Honourable court is urged to resolve issue one in favour of the Respondents/ Applicants.

On issue 2, learned counsel submits, that suit No. **CV/2705/2022** by the Applicant constitutes abuse of court process.

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Learned counsel further submits, that duty of court to stop an abuse of court process in a plethora of authority, the court is asked not to allow a litigate to abuse the process of the court or to improperly use the process of the court to irritate and annoy his opponent or otherwise interfere with the efficient and effective administration of justice, the court has a duty to protect itself from abuse of judicial process. ***JOSEPH CORNELIUS LTD. VS. EZENWA (I996) 4 LPELR (950) I...39*** was cited.

On issue 3, learned counsel submits, that this Honourable Court lacks the requisite jurisdiction to entertain this matter as the issue pertaining to this nature is Res judicata.

Learned counsel further submits, that the law has been settle and for all fines that one cannot put something on nothing and expect it to stand any purported exercise of any function being without any legal or constitutional authority is null and void and of no effect. ***MACFOY VS UNITED AFRICAN CO. LTD (I961) 3 WLR 1405 at Page 1409 P.C.*** was cited.

In conclusion, learned counsel submits that based on the legal authorities and several judicial cases canvassed and in their arguments is that the only option available to this Honourable court is not to strike out this suit but to dismiss the suit for being

incompetent and award cost of N30,000,000.00 (Thirty Million Naira) only against the Applicant/Respondent in favour of all the Respondents/Applicants.

On their part, Applicant filed 9 paragraph further affidavit deposed to by Cecil Osakwe, the Applicant in this suit. It is the deposition of the Applicant;

That all the paragraphs of the Counter Affidavit are incorrect except where expressly stated otherwise.

That neither N.A Akpene nor Eristo Asaph were amongst the officers of the 2nd Respondent that interrogated him and therefore are not privy to the facts deposed to in paragraphs 3 to 15 of the Counter Affidavit.

That Eristo Asaph, Esq. did not disclose how he came about the facts deposed to by N.A Akpene in paragraphs 3 to 15 of the Counter Affidavit.

That it will be in the interest of justice to discountenance the counter affidavit in its entirety. That the 1st Respondent will not be prejudiced and the interest of justice will best be served if his application is granted.

In line with procedure, Reply on Point of Law was filed.

Learned counsel submits, that all the authorities cited by the 2nd, 3rd and 4th Respondents in support of the issues raised for the determination of this Honourable Court are inapplicable as they are not on all fours with the facts of this case.

Learned counsel urges this honorable court to hold in the interest of justice that the transaction being civil and contractual without any form of criminality, the actions of the 1st Respondent through her petition and the constant harassment of the Applicant by the 2nd , 3rd and 4th Respondents has violated the Applicant's right to freedom of movement and liberty hence he is entitled to all the reliefs therein.

Learned counsel is also urging this court to strike out the offensive paragraphs 3 to 15 of the Counter Affidavit for violating the provisions of Section 115(3) and (4) of the Evidence Act, 2011. Furthermore, dismiss the Counter Affidavit in its entirety and grant the reliefs in the Applicant's Originating Motion.

COURT:-

I have read and assimilated the arguments of the 2nd, 3rd and 4th Respondent/Applicants as carefully captured in the Preliminary

Objection and the reaction of the Claimant/Respondent to the said objection on the issue of jurisdiction, and abuse of court process.

Indeed, Jurisdiction is the life wire of the court being a legal institution established for the determination of the rights of parties.

Whether a court has jurisdiction or not does not lie in the speculative or conjectural mind of the court or parties either.

The determination of jurisdiction is not a game of chess where there is always the chance element. Since it is not opened to guess, it is not one of the aspects of our law whether the court should use the objective or subjective test.

On the contrary, it is a matter of raw and hard law which is either donated by the constitution or by the enabling statute or both. See ***AFISI VS. LAWAL (1992) 1 NWLR (Pt. 217) at page 366, Paragraphs D – H.***

A court is generally competent to adjudicate over a matter only when the conditions precedent for its having jurisdiction are fulfilled. A court will be competent when:-

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(i) It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or the other;

(ii) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction;

(iii) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are nullity, however well conducted and decided. Above was stated in the case of ***MINISTER OF WORKS & HOUSING VS SHITTA (2008) ALL FWLR (Pt. 401) 847 at 863 – 864 Paragraphs G – C.***

To resolve the legal impasse, I shall briefly but succinctly consider the issue of abuse of court process.

Abuse of court process, which has no precise definition, occurs, where there is an improper use of Judicial process by one of the parties to the detriment or chagrin of the other in order to circumvent the proper administration of Justice or to irritate or

annoy his opponent taking in due advantage, which otherwise he would not be entitled to. Also constituting multiplicity of action on the same subject matter against the same opponent on the same issues constitutes an abuse of court process.

The rationale of the law is that there must be an end to litigation, and a litigant should not be made to suffer the same rigour/jeopardy for the same purpose twice.

Above was laid down in the case of ***N. I. C. VS. F. C. I. CO. LTD (2007)2 NWLR (Pt. 1019) 610 at 630 – 632 Paragraphs F – H, B - E (C A).***

When then does abuse of court process arise?

Supreme Court of Nigeria, ***per Ogbuagu JSC*** in the case of ***ABUBAKAR VS. BEBEJI OIL AND ALLIED PRODUCT LTD & ORS. (2007) L.P.E.L.R SC. (110/2011) Page 6263 Paragraph D – E*** stated thus;

> ***"There is abuse of process of court where the process of the court has not been use bona- fide and properly, the circumstances in which abuse of process can arise has said to include the following;-***

a. *Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even when there exists a right to bring that 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 same right, for example a cross –appeal and respondent's notice.*

d. *Where an application for adjournment is sought by a party to an action to bring an application to court 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. The abuse lies in the convenience and inequities involved in the aims and purposes of the action.*

Evidence has been led before this court, that this matter had been adjudicated by FCT High Court in Suit No. **FCT/HC/CV/286/2022** and Judgment was delivered by His Lordship Muhammad S. Idris on the 29th June, 2022.

Whereas, it is the contention of Claimant/Respondent that neither N.A Akpene nor Eristo Asaph were amongst the officers of the 2nd Respondent that interrogated him and therefore are not privy to the facts deposed to in paragraphs 3 to 15 of the Counter Affidavit. And it will be in the interest of justice to discountenance the counter affidavit in its entirety. That the 1st Respondent will not be prejudiced and the interest of justice will best be served if his application is granted.

I am minded to observe here, that there is a similar Suit No. **FCT/HC/CV/286/2022** between **MR. CECIL OSAKWE VS ASABE WAZIRI & 4 ORS.** the same prayers/reliefs or declarations which the Respondents defended the suit and judgment was delivered in favour of the Respondents on the 29th June, 2022 by Hon. Justice Muhammed S. Idris.

Thus, making it Res Judicata; the matter cannot be raised again or reconsidered to avoid unnecessary waste of judicial resources and multiplying judgment and confusion.

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I cannot preside over a matter in which my learned brother has already heard and delivered judgment on.

For the purposes of clarity, the said judgment was in Rem and not personam

A judgment in Rem is also referred to as a judgment contramundum – binding on the whole world – parties and non-parties.

It is a pronouncement by a court on the status of some persons or thing.

On the other hand, a judgment in personam is a judgment against a particular person as distinguished from a judgment declaring the status of a person or thing..

See ***NOEKOER VS. EXECUTIVE GOVERNOR OF PLATEAU STATE (2018) LPELR – 44350 (SC).***

The 2nd Respondent has already gone on appeal as a result of dissatisfaction with the judgment of Hon. Muhammad S. Idris. Hearing this matter would amount to sitting on appeal over it. On this, this court does not have jurisdiction to do so.

An abuse of process remains an abuse no matter how well clothed and costumed.. I refuse to be cajoled to see it for anything more than an exercise in futility.

Accordingly, I decline to assume jurisdiction to entertain the present Suit No. **FCT/HC/CV/2705/2022**. Consequently, same is **hereby struck-out.**

I hereby award N2,000,000.00 (Two Million Naira) against the Applicant for the reason adduced in the body of this judgment.

Justice Y. Halilu
Hon. Judge
13th March, 2024

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APPEARANCE

A.K Musa, Esq. – for the Plaintiff.

C.J Abengowe, Esq. – for the 1st Defendant.

2nd, 3rd and 4th Respondents not in court.