

IN THE HIGH COURT OF JUSTICE  
IN THE BENIN JUDICIAL DIVISION  
HOLDEN IN BENIN CITY  
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,  
JUDGE, ON MONDAY THE 30<sup>TH</sup> DAY OF MAY, 2016.

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

SUIT NO: B/35M/2016

BETWEEN:

MR. JOHNSON OWAMAGBE AIWUYORí í                      APPLICANT

AND

SUNDAY FAMOUS ALUYI    í í í í í í                      RESPONDENT

RULING

This is a Ruling in respect of an application for the enforcement of Fundamental Rights brought pursuant to Orders 11 and 1V of the Fundamental Rights (Enforcement Procedure) Rules, 2009, Articles 5 & 6 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, 1983, Sections 34(1) A, 35(1), 37 & 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended and under the inherent jurisdiction of this Court.

In the said application, the Applicant is seeking the following reliefs:

- a. A declaration that the attack/slapping, brutality and force (sic) imprisonment of the Applicant in his house by the Respondent for no just cause on 17<sup>th</sup> October, 2015 was illegal, oppressive and unconstitutional, as the action violated

the fundamental rights and right to life of the Applicant contrary to Sections 34, 35, 37 and 46 of the Constitution of the Federal Republic of Nigeria (1999) as amended.

- b. An order of Court to restrain the Respondent from further harassing, oppressing, violating and threatening the life and property of the Applicant.
- c. An order of Court to restrain the Respondent, his Agent, Servants and/or privies from further breaching the rights of the Applicant to peaceful life and undisturbed peace and dignity to his person as a citizen of Nigeria.
- d. A declaration that the attack on the Applicant and the bodily injuries inflicted on him by slapping him were unlawful, unconstitutional and oppressive.
- e. An order for general aggravated and exemplary damages in favour of the Applicant against the Respondent in the sum of N10, 000,000.00 (Ten Million Naira) as a reparation for the assault, and derailing human treatment of Applicant

The grounds upon which the reliefs are sought are as follows:

- a. The Applicant is a Nigerian resident at No. 93, Iyamu Street, Off Upper Ekehuan Road, Evbuotubu Quarters, Benin City, Edo State Nigeria, Africa who earns his living from his occupation as a civil Servant (School Principal) a responsible and gentleman.
- b. The Respondent is a Nigerian an African, land speculator and trader.
- c. The Respondent at the time of the attack on the person of the Applicant was armed and leading several people most

of them dressed in the Nigerian Army uniform and also armed with guns and other offensive weapons.

- d. The Respondents and his gang of armed thugs armed with guns and bullets surrounded the house of the Applicant and stationed at every door point both entering and exit of the Applicant's house for the perfection of his surreptitious criminal acts and tendencies of attacking the Applicant a peace loving citizen of Nigeria.
- e. The Applicant on the 17<sup>th</sup> day of October, 2015 at No. 93, Iyamu Street, Off Ekehuan Road, Evbuotubu Quarters, Benin City was in his sitting room with other family members and friends while the Respondent in company of men armed and wearing Nigerian Army uniform without any invitation or just cause entered. Some others at the door points, window points and stationed on every exit point of the house. The Applicant was directed by the Respondent to stand up from where he sat in a discussion with the people in his sitting room at the time and made to sit on the floor. His wife and children were amongst the people in the sitting room.
- f. The Respondent is a land speculator who uses his might, influence, personal relationship with armed thugs and men of the Nigerian Army to carry out his intimidating and oppressive acts. He resides at No. 10, Oloton Street, Off Oba Market Road, Benin City.
- g. That the arbitrary slapping of the Applicant, keeping him forcefully inside his house, making him stand up and sitting on the bare floor by the Respondent are unconstitutional, illegal oppressive and degrading of his human dignity.

The learned Counsel to the Applicant also filed a supporting affidavit of 16 paragraphs together with a written Address. At the hearing, he relied on the supporting Affidavit and adopted his written address dated 29<sup>th</sup>, March, 2016.

In opposition to the application, the Respondent filed a Counter Affidavit of 21 paragraphs together with a Written Address of Counsel, all dated and filed on the 21<sup>st</sup> of April, 2016.

In response to the Counter Affidavit, the Applicant filed a Further Affidavit which he titled: REPLY TO THE COUNTER-AFFIDAVIT OF THE RESPONDENT (FURTHER AFFIDAVIT). He also filed an Address which he captioned: WRITTEN ADDRESS IN RESPECT OF REPLY TO RESPONDENT'S ADDRESS.

The facts of the case, as garnered from the Applicant's affidavits, is that on the 17<sup>th</sup> of October, 2015, the Applicant was inside his house, sitting with his family and some friends when the Respondent and some other persons dressed in the Nigerian Army uniform invaded his sitting room.

They slapped him, ordered him to stand on his feet and subsequently made him to sit down on the bare floor. The Applicant maintained that he was seriously injured and was brought very low before his wife, children and friends who had at all times held him in high esteem and respect.

He was forcefully imprisoned by the Respondent and his army of thugs. He could not make any phone calls during the period.

That after the Respondent and his army of thugs left, several neighbours came to the Applicant to sympathise with him. He suffered serious stress to his health, and felt seriously humiliated.

The Applicant vehemently denied the allegation that he refused to obey the court order in respect of the suit instituted against him by the Respondent. According to him, judgment was given in Suit No:

B/97/2002 in favour of Respondent. Thereafter, he (Applicant) filed his processes for leave to appeal against the judgment. That the Respondent was served with the Appeal processes through his Solicitor M. O. Akpodono Esq. and he also filed Motion for Stay of Execution of the judgment. That on the 16<sup>th</sup> of October, 2015, the Respondent and some Court officials came to his house to execute the judgment of the court. That he explained to the Court officials that he had appealed against the judgment with a Motion on Notice for Stay of Execution. His Solicitor showed the Court officials the copies of the Notice of Appeal and the Motion on Notice for stay of Execution.

That when the Court officials saw the Notice of Appeal and Motion for Stay of Execution they requested for copies which he subsequently gave to them and they left. He maintained that the Court officials did not tie any red tape round his house. He stated that on Saturday 17<sup>th</sup> October, 2015, no Court official or Policeman followed the Respondent when he brought thugs to his house.

According to the Applicant, the Respondent was disappointed when the Court officials honoured the Court processes on 16<sup>th</sup> October, 2015 and he took the law into his hands on Saturday 17<sup>th</sup> October, 2015 with the aid of hired thugs dressed in Army Uniform

On the other hand, the Respondent's version as can be gleaned from his affidavits is that he denied ever visiting the Applicant with armed soldiers and thugs. He denied being a land speculator but claimed to be a land owner. He denied harbouring or going about with thugs. He maintained that he has been engaged in a legal battle with the Applicant since 2002 in Suit No. B/97/2002 in which judgment was delivered on the 11<sup>th</sup> day of December, 2014 in his favour.

He stated that on the 16<sup>th</sup> and 17<sup>th</sup> day of October, 2015, when the Chief Bailiff and other Bailiffs and Security men went to execute Court judgment in the said suit, nobody was armed. He said that the Applicant refused to obey the Court Order and removed the red seal placed on his building by the Court officials. He denied assaulting the Respondent. He said that he neither detained him nor made him to sit on the ground in his apartment. He said that the Applicant has still not complied with the order of the Court.

The Respondent maintained that if any Nigerian Army Officer assaulted the Applicant, he should direct his frustration to the Nigeria Army as they are not under his control and if he has any issue with them he should go and sort it out with them. According to him, the Applicant has issues to settle with the numerous people he sold land to and they are now after him for fraudulently obtaining money from them. He posited that the purpose of this application is to stall the contempt proceedings which he instituted against the Applicant. He exhibited Forms 48 and 49 which were issued against the Applicant and attached them as Exhibits 3 and 4 respectively.

Arguing the application, the learned counsel for the Applicant, A.Osayowanbor Esq., referred the Court to a supporting affidavit of 16 paragraphs disposed to by the Applicant himself and a written statement wherein the reliefs and grounds upon which the relief is sought is also attached as required by the rules of the Court.

He submitted that in the Affidavit in Support of the Motion on Notice and the Statement attached thereto, the applicant made it clear that the Respondent abused his fundamental human rights and that clearly puts the matter within the jurisdiction of this Court.

Furthermore, he maintained that the Applicant stated in the supporting affidavit and the Statement attached to the Affidavit that he is a Nigerian subject to the constitution of the Federal Republic of Nigeria and the African Charter on human rights and enforcement thereof.

According to him, the right to life, personal liberty, human dignity, and freedom of movement are guaranteed by the provisions of Chapter 1V of the 1999 Constitution of the Federal Republic of Nigeria(as amended).He cited the case of: *Odogwu vs. A.G. Federation (2002) 2 HRLRA 82 (paras B – C at page 102)*.

Counsel submitted that by virtue of the provisions of the 1999 Constitution of Federal Republic of Nigeria (as amended),the Applicant is entitled to the right to life, human dignity, personal liberty, private and family life, right to freedom of movement and right to freedom from discrimination. He argued that from the affidavit evidence, the above rights granted the Applicant and guaranteed by the constitution were grossly violated by the Respondent. He maintained that the Applicant

had no inhibition of any kind against him to give the Respondent any opportunity to violate any of his constitutionally guaranteed rights.

He submitted that the fundamental human rights of the citizens of Nigeria, including the Applicant are sacrosanct and nobody can deprive the other of such a right except in accordance with the Constitution and the due process of law. He referred to the case of: *Fawegunu vs. Babangida (2002) 2 HRLRA 144 at 156 paras E – H*.

Furthermore, he submitted that the actions of the Respondent against the Applicant were dehumanizing and derogatory of his personality. The personal deprivation and false imprisonment are clear evidence of torture and dehumanization. He relied on the case of: *Ekpu vs. A.G. Federation (1998) 1 HRLRA 391 at 421 paras E-H*

He submitted that the unlawful attack on the person of the Applicant was unconstitutional, illegal, and unlawful and that the Applicant is entitled to the award of compensatory damages for the attack and infringement of his constitutionally guaranteed rights. According to him, it is settled law that damages flow naturally from injuries and deprivation suffered by an Applicant in matters of this nature. He cited the case of: *Abiola vs. A.G. Federation (1998) 1 HRLRA 447 at 486 paras C-E 470 paras G – H*.

In the circumstance, Counsel urged the Court to grant this Application as it is the law that where rights are shown to have been breached and/or violated, the Applicant is entitled to compensation as will assuage the breach. In the present case, the Applicant was slapped, imprisoned and made to stand and sit on the bare floor. He relied on the following decisions: *Ajayi vs. A.G. Federation (1988) 1HRLRA 373 at 388- 389 paras H – C; Odogwu vs. A.G. Federation (2000)2 HRLRA 82 at 96 paras E – F and; Fawehimi vs. Babangida (2000)2 HRLRA 144 at 155 Para E*.

Responding, the learned counsel for the Respondent, A.M.Okoh Esq. informed the Court that he was opposing the application. He relied on his Counter Affidavit of 21 paragraphs and the documents exhibited therein. He also relied on his Written Address and adopted same as part of his arguments in this application.

He submitted that in the grant of an application of this nature, the Applicant must place before Court materials upon which the court will grant his reliefs and that it is only when he has discharged this burden that the onus will shift to the Respondent. He quoted from the dictum of the Court in the case of: *Fajemirokun V. CB Nig Ltd (2012) 10 NWLR Pt. 774 95 at 110 Para. F – G* thus: *“for an Applicant alleging infringement of his Fundamental rights to succeed, he must place before the court all vital evidence regarding the infringement or breach of such rights. It is only thereafter that the burden shifts to the Respondents. Where that has not been done or where scanty evidence was put in by the Applicant, the trial court can strike out such application for being devoid of merit”*. He submitted that the facts deposed to in the affidavit and the grounds upon which this application is brought are sketchy and not enough to sustain the reliefs before court.

Counsel informed the Court that they were served with a Reply to the Counter Affidavit filed by the Applicant. He took objection to the said document on the ground that by virtue of the provisions of Order 11, Rule 7 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, the Applicant is only entitled to file a Reply on points of Law. According to him, the Reply filed by the Applicant is not on law but on facts. He therefore urged the Court to discountenance same.

Furthermore, Counsel attacked the further affidavit of the Applicant and some of the documents exhibited therein. According to him, Exhibits *“A”* to *“D”* therein are false. He argued that contrary to paragraph 4 of the Further Affidavit, Exhibit *“A”* is not a Notice of Appeal but a Motion for Extension of Time to Appeal. He further argued that the Ruling on the said Motion was not attached to enable us know the outcome. He maintained that it was erroneous for the Applicant to state that they have filed an appeal. He also submitted that Exhibit *“B”* on stay of execution is equally erroneous because there is no appeal. He submitted that exhibits *“A”* and *“B”* are conflicting and he urged the Court to discountenance all the facts contained in the Further Affidavit.

Counsel submitted that for an application of this nature to succeed, the fundamental right allegedly breached must fall within the rights mentioned in Sections 33 to 44 of the Constitution of the Federal

Republic of Nigeria 1999 as amended. He relied on the case of: *Amale vs. Sokoto Local Government Council (2012) 1 KLR Pt. 3014, 99 R.I.* He quoted *Fabiyi JSC* thus: *“Let me state it right away that it is now glaring that a trial court will only have jurisdiction to proceed to enforce a fundamental right of an applicant guaranteed under chapter iv of the Constitution if the main relief discloses a breach of the Fundamental right of the Applicant”*. He submitted that the main claim here is self contradictory. He also cited the case of: *Chukwuogor vs. Chukwuogor (2007) All FWLR Pt. 349, 1154 R. 2.*

He submitted that from the Applicant's affidavit and the grounds upon which the reliefs are sought, there is nothing suggestive of any infringement of the fundamental rights contained in chapter IV of the 1999 constitution as amended. He argued that the offence of slapping if any is covered by the law of Tort and criminal liability and still subject to proof beyond reasonable doubt. He argued that because the Applicant knows that he cannot prove these allegations, hence, the need to hide under the fundamental human right procedure because no such assault ever took place.

Counsel submitted that the application is not supported by a succinct statement in support of the application as required by Order II rule 3 of the Fundamental Rights Enforcement Rules, 1999(sic). According to him, this requirement is mandatory and the Court has no discretion in this respect to treat same as an irregularity. He relied on the case of: *Chukuogor vs. Chukwuogor (supra) R.6: “Non compliance with a condition precedent is not a mere technical rule of procedure but it goes to the root of the case” p. 1168 para.F. “...If the non-compliance with the rules affects the root foundation or props of the case the court will not treat it as an irregularity but as nullifying the entire proceedings ... Moreover, where the law prescribes the doing of a thing as a condition for the performance of another, failure to do such thing renders the subsequent act void” P. 1160 per NIKI TOBI.* He submitted therefore that failure to comply with the mandatory provisions of Order II rule 3 is not a mere technicality but a fundamental vice that affects the root of this application.

Counsel also submitted that the Respondent having denied the Applicant's fabricated story in the counter affidavit and in paragraphs 10, 11, 13, 14, 15, 16, 17, 18 and 19, informed the court of what actually transpired, that the purpose of this application is to mislead the court. He submitted that the Applicant is not entitled to the reliefs sought from the same court which he has flagrantly disobeyed. He relied on Exhibits A, B, C and D and submitted that anybody in contempt of court cannot expect any favour from the court because anybody that comes to equity must come with clean hands. He referred the Court to the cases of: *SFLK VS International Bank (2004) All FWLR Pt. 206* and *Odogwu Vs Odogwu (1992) 2 NWLR pt. 225*.

Finally, he submitted that the grounds upon which the reliefs are sought are speculative and the Applicant has not been able to show or place before the Court materials to show how the rights under sections 34, 35, 37 and 46 of the constitution of the Federal Republic of Nigeria (1999) as amended violates the Applicant's fundamental right to life as contained in the Applicant's reliefs/orders. He submitted that the reliefs sought do not flow from the grounds relied upon. For this, he again relied on the case of: *Amale Vs Sokoto Local Government Area (supra)*.

I have carefully examined all the processes filed in this application together with the arguments of both counsel on the matter. Before considering the merits of this application, I think it is expedient for me to first address some of the salient objections raised by the Respondent's Counsel in his submissions.

It is well settled law that an applicant for the enforcement of his fundamental rights under Chapter 1V of the 1999 Constitution must first establish that his relief comes within the purview of the fundamental rights enshrined in the said chapter. In the case of *Uzoukwu Vs Ezeonu 11(1991) 6 NWLR (Pt.200), 708, Nasir P.C.A* reiterated that an applicant must show that: "he is entitled to a fundamental right and must (a) allege that any of the provision of the fundamental rights under Chapter IV has been contravened or (b) is likely to be contravened, and (c) the contravention is in relation to him". See also the cases of: *Peterside Vs I.M.B (1993) 2 NWLR (Pt.278), 712. and Nwangu Vs Duru (2002) 2 NWLR (Pt.751) 265 at 280*.

A major objection raised by the Respondent's Counsel is that the reliefs sought by the Applicants do not fall within the ambit of the Fundamental Rights provisions. According to him the reliefs lie in the law of Torts and Criminal law.

It is settled law that in order to determine whether the relief sought falls within the provision of the Fundamental Rights Rules, the determining factor is how the relief is framed or formulated. See the case of: *Aig-Imoukhuede Vs Ubah (2015) 8 NWLR (Pt.1462) 399 at 406*. The question therefore is: What are the reliefs which the Applicant is seeking from this Court? The principal relief was formulated thus:

*“a. A declaration that the attack/slapping, brutality and force (sic) imprisonment of the Applicant in his house by the Respondent for no just cause on 17<sup>th</sup> October, 2015 was illegal, oppressive and unconstitutional, as the action violated the fundamental rights and right to life of the Applicant contrary to Section 34, 35, 37 and 46 of the Constitution of the Federal Republic of Nigeria (1999) as amended.”*

In a nutshell, my understanding of the above quoted relief is that the Applicant is seeking redress for the alleged violation of his right to life, and the rights as guaranteed by sections 34, 37 and 46 of the 1999 Constitution. Section 34 guarantees the right to dignity of the human person, section 37 guarantees the right to personal liberty and section 46 provides for the jurisdiction of the High Court in respect of matters relating to the enforcement of fundamental rights. With this exposition, it is clear that the application properly falls within the ambit of the Fundamental Rights provision.

It is settled law that where a breach of the provisions of Chapter 1V is the principal claim, the Fundamental Rights procedure can be invoked even though there are other ancillary reliefs claimed. See the cases of: *Okechuku Vs EFCC (2015) 18 NWLR (Pt.1490) 1 at 11*; *Din Vs A.G.of the Federation (1988) 4 NWLR (Pt.87) 147* and *Borno Radio Television Corporation Vs Basil Egbuonu (1991) 2 NWLR 81 at 89*.

In the event, I am unable to accede to the submission of the learned counsel to the Respondent that the matter cannot be brought under the Fundamental Rights procedure.

Another objection was that by virtue of the provisions of *Order 11, Rule 7 of the Fundamental Rights (enforcement Procedure) Rules, 2009*, the Applicant is only entitled to file a Reply on points of Law. According to the counsel to the respondent, the Reply filed by the Applicant is not on law but on facts. I have studied the said Reply. It is a very brief document. The Applicant's counsel used it as a platform to introduce his further affidavit which addressed some new issues raised in the Respondent's counter affidavit. By virtue of the said Order 11 Rule 7, the Applicant is entitled to accompany his Reply with a further affidavit dealing with new matters arising from the Respondent's counter affidavit. It is difficult to separate the Reply on points of law from the further affidavit which is clearly on facts. There appears to be a nexus between the two under the said rule. The filing of the further affidavit is predicated on the Reply on point of law.

Next is the attack on the contents of the further affidavit. The Respondent's counsel argued that the documents exhibited do not show that the Applicant has actually filed an appeal. I think it will be premature and prejudicial for me to pronounce on the alleged appeal processes attached to the further affidavit. The documents which the applicant classified as "processes for the appeal" were attached as Exhibit "A". They comprise of: a Motion for extension of time and leave to appeal and a Motion for Stay of Execution of the judgment. Counsel's grouse is that the rulings on these applications were not exhibited to show the outcome. I do not think the failure to exhibit the ruling is of any moment. According to the applicant, when he showed the said documents to the Court officials who accompanied the Respondent to his house on the 16th of October, 2015, they withdrew from his house without executing the judgment. He exhibited the processes to show how he convinced the Court officials on that day. Notwithstanding the failure to exhibit any ruling, I am satisfied that Exhibit "A" can be classified as appeal processes.

On the complaint of counsel that the application is not supported by a succinct statement in support of the application as required by Order II rule 3 of the Fundamental Rights Enforcement Rules, I deem it expedient to quote the said rule: "3. An application shall be supported by a Statement setting out the name and description of the applicant, the relief sought, the grounds upon which the reliefs are sought and supported by an affidavit setting out the facts upon which the application is made. I have examined the application filed in this suit. I observed that the application was carefully drafted in line with the said rule. The statement in support of the application was filed according to the rules. It set out the name and description of the Applicant, the relief sought and the grounds upon which the reliefs are sought. This is fully in compliance with Order 11 Rule 3.

I will now consider the merits of this application based on the facts disclosed in the affidavits. According to the respondent's counsel, the facts deposed in the affidavit and the grounds upon which this application is brought are sketchy and not enough to sustain the reliefs before the Court.

The Applicant deposed to a supporting affidavit and a further affidavit to buttress his allegation that the Respondent infringed on his right to personal liberty and personal dignity. According to him, on the 16th of October, 2015, the Respondent came with Court bailiffs to execute a judgment. On that day he showed the bailiffs his appeal processes and they left without executing the judgment. According to him, the infringement occurred on Saturday the 17th of October, 2015 when the respondent returned with some men dressed in army uniform. The Respondent denied the alleged acts of infringement but admitted that he went to the house of the Applicant twice, to wit: on the 16th and 17th of October. The issue to be resolved is whether the Applicant has satisfied this Court that the Respondent actually carried out the alleged acts during his second visit without bailiffs and in the company of the men dressed in army uniform.

Some salient questions which must be asked at this stage are: why did the Respondent return to the Applicant's house on Saturday the 17th of October, 2016? Did any Court bailiff accompany the respondent on

this second visit? What happened on this second visit? These salient questions must be answered.

There are some conflicts between the affidavits adduced by the Applicant and the counter affidavit of the Respondent. The general rule is that where there are conflicts in affidavit evidence of the parties before the Court, oral evidence would be adduced to resolve the conflict. See the cases of: *Falobi vs. Falobi (1976) 9-10 S.C.1*; and *Nwosu vs. I.S.E.S.A (1990) 2 NWLR (Pt.135) 688*.

However, it is now settled law that it is not in every case that you must call for oral evidence to resolve the conflict. Where there is documentary evidence from which the Court can resolve the conflict, then there is no need to call oral evidence, See the cases of: *Momoh vs. V.A.B Petroleum Inc. (2000) 4 NWLR (Pt.654) 534*; *Falola vs. U.B.N Plc. (2005) 7 NWLR (Pt.924) 405*; and *Ezechukwu vs. Onwuka (2016) 5 NWLR (Pt.1506) 529 at 537*.

Applying the aforesaid principles to the instant application, apart from the depositions of the parties, there are some documents which appear to shed some light on the incident. For example, in the further affidavit of the Applicant, he exhibited the affidavit of facts deposed to by some of his neighbours who witnessed the incident of 17th, October, 2015. They were annexed as Exhibits C and D in the Further affidavit. These witnesses substantially corroborated the Applicants account. Curiously, the respondent did not obtain any affidavit from any of the bailiffs who accompanied him. Rather, in his Counter Affidavit, he exhibited a Certificate of Execution of Judgment, signed by a Bailiff annexed as Exhibit A. Incidentally, the said Exhibit A states that the execution was done on the 16th of October, 2015. This further corroborates the applicant's account that the bailiffs came on the 16th.

The Applicants account appears more credible than that of the Respondent. Moreover, the documents referred to above gives us a clear picture of what transpired. The Respondent came with Court bailiffs on the 16th of October, 2015. Not satisfied with the result of the visit on the 16th, he came back with some other people to carry out the alleged acts on the 17th. Incidentally, the 17th of October, 2015 happens to have

been a Saturday which perhaps explains why he could not come with Court bailiffs.

The Respondents account does not appear to be consistent with the common course of human conduct. See: section 167 of the Evidence Act, 2011. He denied going to the applicant's house to carry out the alleged infringements. He said that he went there with Court bailiffs. He admitted going there on the 16th and 17th. But he did not say why he went there twice. He did not obtain any deposition from any of the bailiffs who accompanied him in order to clear himself. He did not give any explanations of what transpired on the 17th at the Applicant's house. He only threw in a red herring in paragraph 15 of his counter affidavit that *if any Nigerian Army Officer assaulted him, he should direct his frustration toward the Nigerian army as they are not under my control and if he has any issue with them he should go and sort out himself with them*. This half hearted explanation is not enough to exonerate him.

Upon a calm consideration of the facts I am of the view that by his conduct on the 17<sup>th</sup> Of October, 2015, the Respondent violated some of the Applicants fundamental rights. By slapping him, ordering him to stand on his feet and subsequently to sit down on the bare floor, the Applicant was humiliated before his wife, children and friends who had at all times held him in high esteem and respect. This was in contravention of section 34 of the 1999 Constitution which guarantees the right to the dignity of the human person.

Furthermore, the Applicant was forcefully imprisoned by the Respondent and his army of thugs. He could not make any phone calls during the period. This was in violation of section 35 of the Constitution which guarantees the right to personal liberty.

Coming to the aspect of the application relating to the violation of the applicant's right to life, I do not think the acts of the Respondent constituted any threat to the life of the Applicant. Therefore I hold that the Applicant's right to life was not violated. The only rights which were violated are the right to personal dignity and the right to personal liberty as aforesaid.

On the issue of damages, the Applicant is claiming the lump sum of N10,000,000.00 (ten million naira) as general, aggravated and

exemplary damages against the Respondent as reparation for the violation of his rights. There is no doubt that the Applicant is entitled to general damages which flows naturally from the infringement of his rights. The issue of aggravated and exemplary damages must be carefully considered. In the English case of *Rooks vs. Barnard (1964) 1 All E.R. 367*, the Court opined that: *“The fact that the injury to the plaintiff has been aggravated by the malice or by the manner of doing the injury, that is the insolence or arrogance by which it is accompanied is no justification for an award of exemplary damages: aggravated damages can do in this type of case what otherwise could be done by exemplary damages.”* The Nigerian Supreme Court followed that view in the case of *Bakare vs. Olumide (1969) All N.L.R 755 at 764 to 765*.

Also, in the case of: *K. F. INVESTMENT NIGERIALTD vs. NIGERIA TELECOMMUNICATIONS PLC., (2009) Vol.39 NSCQR p.426 at 459*, I.F. Ogbuagu, JSC explained thus: *“Exemplary, punitive, vindictive or aggravated damages where claimed, are usually awarded, whenever the defendant or defendants' conduct, is sufficiently, outrageous to merit punishment as where for instance, it discloses malice, fraud, cruelty, insolence, or flagrant disregard of the law and the like”*

Applying the above principle to the instant case, I am of the view that on the evidence before me and in the light of the insolent conduct of the Respondent, the sum of N500, 000.00 (five hundred thousand naira) will be adequate as general and aggravated damages.

On the whole, this application succeeds and I hereby order as follows:

1. I declare that the attack/slapping, brutality and false imprisonment of the Applicant in his house by the Respondent for no just cause on 17<sup>th</sup> October, 2015 was illegal, oppressive and unconstitutional, as the action violated the fundamental rights of the Applicant contrary to Section 34 and 35, of the Constitution of the Federal Republic of Nigeria (1999) as amended;
2. The Respondent is restrained from further harassing, oppressing, violating and threatening the life and property of the Applicant;

3. The Respondent, his Agents, Servants and/or privies are hereby restrained from further breaching the rights of the Applicant to a peaceful life and the dignity of his person as a citizen of Nigeria; and
4. I award the sum of ₦500, 000.00(five hundred thousand naira) as damages in favour of the Applicant against the Respondent and the sum of N10, 000.00 as costs in this suit.

P.A.AKHIHIERO  
JUDGE  
30/05/16

COUNSEL:

1. A.OSAYOMWANBOR ESQí í í í í í í í .í í í ..APPLICANT
2. A.M.OKOH ESQí .....RESPONDENT