

**IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA**  
**IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP, HONOURABLE JUSTICE E . F. IKPONMWEN - JUDGE**

**FRIDAY 5TH DAY OF DECEMBER, 2014**

**BETWEEN:**

**SUIT NO. B/375/12**

**K. O. OBAMOGIE ESQ.,**

.....

**CLAIMANT**

**AND**

- |  |   |                   |
|--|---|-------------------|
| <b>1. EDO STATE TRAFFIC MANAGEMENT AUTHORITY</b> | } | <b>DEFENDANTS</b> |
| <b>2. COMMISSIONER FOR TRANSPORT, EDO STATE</b>  |   |                   |
| <b>3. ATTORNEY-GENERAL OF EDO STATE</b>          |   |                   |

**JUDGMENT**

The Claimant commenced this action via a Writ of Summons filed on 12/6/12, along with statement of claim wherein the Claimant claims as per paragraph 18 as follows:-

- a. A declaration that the judgment of the High Court of Edo State in suit N0. B/318/06 delivered on 10<sup>th</sup> December, 2010 is subsisting and binding on the Defendants.
- b. N10,000,000.00 (Ten million naira) general damages for the defendants unlawful interference with the claimants fundamental right to freedom of movement in Benin City on Saturday 2<sup>nd</sup> June, 2012.
- c. N1,000,000.00 (One million naira) general damages for 1<sup>st</sup> defendant's trespass to the plaintiff's Mercedes Benz car with Registration N0. Edo CY 103 BEN vide the action of her agents adumbrated above.
- d. N5,000 (Five thousand naira) Special damages being money extorted from claimant by 1<sup>st</sup> Defendant's agents on Saturday, 2<sup>nd</sup> June, 2012.

The Claimant, Kingsley Osabuohien Obamogie Esq., opened his case on 11/12/13 by adopting his statement on oath filed on 18/2/13 in which he deposed that on Saturday, 2<sup>nd</sup> June, 2012 at about 4 p.m as he drove his Mercedes Benz car with Registration No. CY 103 BEN along Sapele Road, Benin City exercising due care

and attention on getting to Murtala Muhammed Junction he met that there was a traffic gridlock. That whilst he was held up in traffic, agents of the 1<sup>st</sup> Defendant suddenly jumped into his car and falsely alleged that he had violated traffic instruction. He denied the allegation and pointed out to the agents of the 1<sup>st</sup> Defendant that the green light still had fifteen seconds to go when he crossed the zebra crossing before being held up by the traffic build-up from Murtala Muhammed end of the junction. The agents of the 1<sup>st</sup> Defendant insisted that he must follow them to their office at Ministry of Works premises. In order to avoid compounding the chaotic traffic situation, he complied with the instruction of the 1<sup>st</sup> defendant's agents and drove to the 1<sup>st</sup> defendant's office at Ministry of works, premises, Benin City with one of the 1<sup>st</sup> defendant's agents in his vehicle against his will. When he entered the premises of the Ministry of Works, his vehicle was impounded. He was taken to a building within the premises of the Ministry of Works where he was served with a charge sheet Exhibit A accusing him of traffic light violation. He instantly denied the allegation. By this time the agent of the 1<sup>st</sup> Defendant who took him to the Ministry of Works premises had disappeared. The 1<sup>st</sup> defendant's agent insisted that he must pay an illegal fine of N5,000 (Five thousand naira) even though there was no investigation or trial of the alleged offence. To save himself from further embarrassment, he paid the illegal fine of N5,000 (Five thousand naira) which was endorsed on the illegal charge sheet served on him. He was put to great pain, inconvenience and discomfort. He went to the 1<sup>st</sup> Defendant's office on Tuesday, 5<sup>th</sup> of June, 2012 to obtain receipt for the payment he had made to the 1<sup>st</sup> Defendant's agents on Saturday, 2<sup>nd</sup> June, 2012. After much time wasting he was issued an official receipt Exhibit B. That the

Defendants have no legal or constitutional powers to usurp the statutory functions of the Federal Road Safety Commission and the Nigeria Police Force as already determined by a court of competent jurisdiction in suit N0. B/318/06. That at the material time when he encountered the 1<sup>st</sup> Defendant's agents on 2<sup>nd</sup> June, 2012 there were police traffic wardens and men present who seeing that he was right, did not utter a word to him. That the Defendants' acts adumbrated above are a gross violation of his fundamental rights to property, fair hearing and freedom of movement, and more importantly a contemptuous violation of the terms of a subsisting judgment in suit N0.B/318/06 delivered on 10<sup>th</sup> December, 2010. Wherefore the claimant claims against the Defendants jointly and severally as per paragraph 18 of his statement of claim.

Under cross examination by Okojie Esq. Claimant denied beating the traffic light at Sapele Road, Benin City and thereby causing a traffic grid lock resulting in the agent of the 1<sup>st</sup> Defendant accosting him. According to Mr. Obamogie, that day the agents of the 1<sup>st</sup> Defendant accosted other persons by jumping into their cars. He stated that a lot of Nigerians sleep on their rights. The Federal Government fixed the street lights and traffic lights on the road which is a Federal Road. It was not a traffic warden that accosted him but an agent of the 1<sup>st</sup> Defendant. When he was taken by them to the Ministry of Works premises a charge sheet was slammed on him without any investigation, without a statement and insisted that he pays the fine before the release of his vehicle. A senior Officer intervened and asked him to pay N5,000 instead of N10,000.00, since his car had been brought into the premises. The work of the agent of the 1<sup>st</sup> Defendant is a usurpation of the function of the duty of the Federal Road Safety Corp and the

Nigeria Police on the Federal Road which they have been prohibited from by the judgment of a court in Exhibit C.

When the Claimant's case closed the defendant's case opened on 18/3/14 with DW1 Mr. Vincent Osarodion Ikponmwon (no relation to the court) adopting his statement on Oath filed on 6/6/13. According to him, on 2<sup>nd</sup> June, 2012 at about 3.57 p.m., the Claimant and one of their staff, Mr. Obaseki Oghogho drove to their office premises (Annex) along Sapele Road in one Mercedes Benz Car with Registration Number CY 103 BEN belonging to the Claimant. As an administrative Officer, he inquired about what transpired between the claimant and their officers on duty. Mr. Obaseki Oghogho explained that the claimant ran through the traffic while the light was on red (stop sign) thus violating the traffic Regulations. The claimant denied violating the traffic light but pleaded for a reduction of the fine from N10,000 to N5,000, which he paid.

He stated that the usual procedure is that any vehicle that violates the traffic light regulation is impounded and taken to the Ministry of Works, Sapele Road, where the Edo State Traffic Management Agency has its office annex.

The original charge sheet is usually retrieved from the offender for record purposes after the payment of the fine indicated on the charge sheet. That the claimant was never embarrassed or intimidated in any form on that day. The claimant who as a lawyer ought to be the first to obey a simple traffic regulation actually embarrassed the Defendants.

Under cross-examination, DW1 testified that Sapele Road, Benin City is a Trunk A Federal Highway. He is not aware that anything pertaining to traffic on Federal Highway is reserved only for the Federal Government and its agencies.

There is usually no written complaint from an arresting officer. When an officer brings an offender to the office, he is taken before a booking officer who will enquire from him the offence committed and this will be ticked on the charge sheet. The booking officer then gives the charge sheet to the offender and the offender and officer go before the administrative officer who will ascertain what happened. When a motorist denies committing the offence he listens to his officer and not the offender. Based on his officer's narration, he does not impose a fine but the fine is already stated against the traffic offence in the charge. He then directs the payment of the fine as stated in the charge sheet Exhibit A. The agency does not permit the version of the offending motorist in writing.

D.W. 2 Mr. Obaseki Oghogho on 22/5/14 adopted his statement on Oath filed on 6/6/13. He stated that on the 2<sup>nd</sup> June, 2012, the claimant drove his Mercedes Benz with Registration Number CY 103 BEN along Sapele Road by Murtala Mohammed Road, junction and ran through the traffic while the light was on red (stop sign) thus violating traffic regulations. That the claimant was stopped, informed as to the violation but he denied running through the traffic light while the stop sign was still on. The Claimant was reminded that he was the only one who ran through the traffic light while the other vehicles behind him stopped before the zebra crossing. That to avoid causing traffic gridlock on the busy Sapele Road, the claimant was asked to drive to the 1<sup>st</sup> Defendant's office on Sapele Road, Benin City. That at the office he reported the incident to the other staff of the Agency on duty i.e the administrative officer, Mr. Vincent Osarodion Ikponmwun. He stated further that the claimant was given opportunity to explain what happened but he kept denying committing the offence. The claimant was

issued a charge sheet wherein the offence of traffic light violation was ticked. That after the charge was issued the claimant then pleaded for reduction of the fine which is officially N10,000.00 (Ten thousand naira). Based on the plea of the claimant the fine was reduced to N5,000.00 (five thousand naira) which he paid and was issued an Edo State Government receipt on the 5<sup>th</sup> June, 2012 because the receipt was not available on the day of the incident. The plea for reduction is an admission that he violated the traffic regulation.

Under cross-examination, DW2 stated that he is not aware that Sapele Road, Benin City is a Federal Highway. He knows the round about at the Murtala Mohammed Road/Sapele Road Junction, Benin City. At that junction there are only traffic wardens not police officers. On 2/6/12 he was present as well as the traffic wardens at that junction/roundabout. The duties of traffic wardens are different from his. He does not know their duties because he is not in their team. He was the person that contravened the claimant. He cannot remember the colour of the claimant's car but he knows it is Mercedes Benz car. He entered the claimant's car while he (claimant) drove the car to their office which is close by. He was in the car for about 5 minutes. He entered the car with the claimant's permission. The claimant said he was in a haste and he did not take note that there was traffic light there. They drove to the office, it was when the claimant got to the office that he denied the violation. After explaining to the officer in charge in the office, he went back to his duty post. No payment was made in his presence.

At the close of the defendant's case, both learned counsel adopted their respective written address on 31/10/14.

In his written address filed on 25/6/2014, learned counsel for the State M.E. Okojie Esq., raised four issues for determination viz:-

1. Whether the claimant violated traffic regulations on the date in question.
2. If the answer to the first issue is yes, whether the claimant is liable to pay a fine.
3. Whether the judgment in suit N0.B/318/06 delivered on the 10<sup>th</sup> December, 2010 by the High Court, alluded to by the claimant is not distinguishable from this case.
4. Whether the claimant has proved his claim on the balance of probabilities.

### **ISSUE ONE**

Mr. Okojie submitted that by paragraph 4c to 4f of the Defendants' statement of Defence filed on the 6<sup>th</sup> day of June 2013, paragraph 3 ó 7 of DW2's statement on Oath and paragraph 7 of DW1's statement on Oath it has been proved that the claimant violated traffic regulations. He eventually paid the sum of N5,000 (Five thousand naira) as a result of his plea for a reduction of the stipulated sum of N10,000.00 (Ten thousand Naira) by the Edo State Traffic Management Agency. The copy of the receipt of payment is Exhibit B. He submitted that a careful perusal of the evidence before this court reveals that the claimant contravened traffic laws. Further more upon cross examination the claimant stated that he paid the sum of N5,000 (five thousand Naira) after his protest. However, what was referred to by the claimant was not a protest but a passionate plea made to the officers of the 1<sup>st</sup> Defendant. He submitted that the term "violation" is defined as a breach or infringement of a law or body of rules. The Edo State Traffic Control and

Management Agency Law, 2010 is a law enacted by the Edo State Government for strict adherence by its citizenry and the claimant's action constitutes a breach of same.

## **ISSUE TWO**

Learned Counsel submitted that section 8 of the Edo State Traffic Control and Management Agency Law 2010 provides for the functions of the agency, particularly paragraphs a, b, c, r and s. He submitted further that section 9(1) of the Edo State Traffic Control and Management Agency Law, 2010 empowers the members of the Agency to arrest traffic offenders reasonably suspected of having committed any of the offences specified under the second schedule.

Mr. Okojie submitted that there are various penalties for various offences and the payment of fines is a recognized mode of punishment and the 1<sup>st</sup> Defendant also complied with the rules and procedures for dealing with traffic offenders as stipulated by law and did nothing outside or contrary to the provisions of any existing law. Section 11(2) of the Edo State Traffic Control and Management Agency Law, 2010 states as follows:-

õ11(2). The vehicle of any person who commits any offence under this law shall be detained until the said fine is paid.ö

He submitted that the claimant violated traffic regulations and was liable to pay the said fine as his action was a flagrant disregard of the law.

## **ISSUE THREE**

Mr. Okojie submitted that the facts and circumstances surrounding the judgment in suit N0.B/318/06 delivered by Hon. Justice T. Akomolafe\_Wilson on 10<sup>th</sup> December 2010 are totally different from those in this particular case. From

paragraph 2 of page 5 of the aforesaid judgment the learned trial judge stated as follows:-

“I am not unaware that the Defendant filed a statement of defence dated the 9<sup>th</sup> day of January, 2007 but no evidence was adduced to establish the averments made therein. It is recalled that they were once foreclosed but upon an application, they were allowed to defend this action. Despite this and several fresh hearing notices served on them, they still refused and neglected to defend this action. Consequently, the said statement of Defence is deemed to have been abandoned. The statement of defence filed by the defence is consequently discountenanced.”

The Edo State Traffic Control and Management Agency Law, 2010 was assented to by the Governor on the 5<sup>th</sup> day of August, 2010. He submitted that at the time the learned trial judge considered the case of the claimant, recourse was not made to the existing Edo State Traffic Control and Management Agency Law, 2010 and the case of the defence was not considered at all in arriving at the decision of the court.

Learned Counsel referred to paragraphs 12 and 13 of the Defendants’ statement of defence which states thus:-

- 12) That the said judgment referred to by the claimant in Suit N0. B/318/06 is distinguishable from the present case.
- 13) That in the said case, the judgment was given in favour of the claimant based on his claim and testimony alone.”

He submitted that it is crystal clear that the facts and circumstances in the aforesaid suit are entirely different from the case at hand and he urged the court to discountenance it as this court is not bound by the decision in the aforesaid judgment. He submitted further that the decisions of courts of similar or coordinate jurisdiction are only persuasive authorities and they are not bound to follow each other’s decisions. He relied on **Odutola V. Unilorin (2005) LRCN**

**(Vol. 123) 217 at 237, paragraph K.** He submitted that the Claimant's breach of the traffic regulations on the said date was a deliberate attempt to rely on the said judgment in Suit No. B/318/06. He further submitted that laid down laws and regulations ought not to be flouted simply because reliance is being placed on judicial decisions. Judicial decisions are not be used as instruments or weapons for disregard to laws and regulations made for the good of the society and he urged the Court to so hold.

#### **ISSUE FOUR**

Mr. Okojie submitted that the Claimant has failed to prove his case on the balance of probabilities as required in the proof of civil cases. It is trite law that civil cases are decided on the preponderance of evidence and the balance of probabilities and where a party fails in this, the action fails. This case being a civil case, the onus rests on the Claimant as he who asserts must prove. He relied on the following cases **Nwaocha V. Odoemelam (1995) 1NWLR (Pt. 369) 43 at 59; Kokoroowo V. Ogunbami (1993) 8 NWLR (Pt. 313) 627; Jalico Ltd V. Owoni Boys 4 SCNJ 256 and Section 132 of the Evidence Act 2011.** By the evidence led by DW1 & DW2 which supports their statement of defence, the Claimant violated traffic laws. The payment of N5,000 after much protest/passionate plea according to Counsel is an admission of guilt which the Claimant failed to rebut or challenge even when he had the opportunity to do so. He relied on the cases of **New Breed Organization Ltd V. Erhomosele (2006) 5 NWLR (Pt. 974) 499; Baba V. N.C.A.T.C (1991) 5 NWLR (Pt. 192) 388; Mogaji V. Odofin (1978) 3 S.C 91 at 93.**

In conclusion Mr. Okojie submitted that, the Claimant has failed to prove that the Defendants unlawfully interfered with his right to freedom of movement when he was arrested and taken to the 1<sup>st</sup> Defendant's office for committing an offence. The Claimant also failed to prove that the 1<sup>st</sup> Defendant committed trespass to his Mercedes Benz Car after he committed the offence or that the fine he eventually paid for the offence was extorted from him. Also, the evidence on the side of the Defendants outweighs that of the Claimant in terms of probative value. He further urged the Court to resolve the aforementioned issues in favour of the Defendants and to dismiss this case in favour of the Defendants.

In her own written address filed on the 3/10/14, Miss. S.E. Oyemendan of Counsel to the Claimant raised four issues for determination to wit:

- 1) Whether the Claimant has proved his claim on the balance of probabilities.
- 2) Whether the Claimant violated traffic regulations on the date in question.
- 3) If the answer to issue NO. 2 is yes, whether the Claimant is liable to pay a fine.
- 4) Whether the judgment in Suit No. B/318/06 delivered on 10<sup>th</sup> December 2010 by the High Court alluded to by the Claimant is not distinguishable from this case.

#### **ON ISSUES 1 AND 4**

Miss Oyemendan submitted that the Claimant has proved his claim on the balance of probabilities and he is entitled to judgment in this suit as per paragraph 18 of Claimant's extant statement of claim. Firstly, it is noteworthy that there is a subsisting judgment of this Honourable Court in Suit No. B/318/06 delivered on 10<sup>th</sup> December, 2010 restraining the Defendants from operating on Sapele Road,

Benin City and other Federal Highways in Edo State. She submitted that the Defendants have a clear and unqualified obligation to obey the above judgment. The Defendants have no discretion in this matter as it is trite that every party against whom a judgment has been delivered by a Court of competent jurisdiction has a plain duty to obey the said judgment unless and until the judgment is set aside. It is so even in cases where persons affected by the order or judgment believe it to be irregular or even void so long as the judgment subsists. It must be obeyed. She relied on the following authorities.

- 1. Attorney-General of Anambra State V. Attorney-General of the Federation (2005) 9 NWLR (Pt. 931) 572 at 606 Paragraphs D – F.**
- 2. Ojo V. INEC (2008) 13 NWLR (Pt. 1105) 577 at 615.**

She submitted further that Exhibit C was not just tendered as judgment providing mere precedent for the Court to act on, but rather as judgment conclusively establishing estoppel against the Defendants. In other words, Exhibit C is conclusive as far as the issues raised and determined therein are concerned. The Defendants cannot even competently adduce evidence against Exhibit C or attempt to distinguish it as they have tried to do in their written address. She relied on **Ebba V. Ogodo (2000) 10 N.W.L.R. (Pt. 675) 387 at 402 – 407; Fadiora V. Gbadebi (1978) 3 SC 219, 228 – 9.**

Miss Oyemendan posited that after exhaustively examining the important authorities on issue estoppel, the apex Court Coram Ogundare J.S.C. came to the following conclusion:-

It is clear from the authorities I have cited above and many more that for issue estoppel to apply the following ingredients must be present.

- (1) The parties must be the same in the previous and present actions.
- (2) The same question that was decided in the previous action must arise in the present action in respect of the subject matter and
- (3) That question must be a final decision of a competent court.

In the instant case the parties are virtually the same except for the non-inclusion of the then permanent secretary, Prince D.E. Ukato in the instant suit. The issues raised in this suit are similar to those issues determined in suit N0. B/318/06. Finally, the judgment in the previous suit, Suit N0. B/318/06 is final and conclusive with respect to the reliefs claimed. See **Ukaegbu V. Ugoji (1991) 6 N.W.L.R. (Pt. 196) 127 at 146, (1991) 22 N.S.C.C. (Pt. (1) 298 at 309; Oyerogba V. Olaopa (1998) 13 N.W.L.R. (Pt. 583) 509 at 579; Ibezim V. Ibezim (1992) I.N.W.L.R. (Pt. 216) 153 at 171.**

Also, the erroneous contention of the Defendants that the judgment in Suit N0.B/138/06 is a default judgment is misconceived and misleading. The said judgment was delivered on the merit after a fair legal contest. Pleadings were duly filed in the suit. The Claimant in the suit was extensively cross-examined by the Defendants through their counsel.

According to Miss Oyemendan, assuming but without conceding that the said judgment is a default judgment, it nevertheless remains binding and of full effect. She relied on the following authorities:-

**(1) Kulak Trades & Industries Plc V. The Tug Boat M/V Japaul B & Anor (2011) 29 N.W.L.R. (Pt. 1251) 133 at 157 where the Court of Appeal Coram Eko, J.C.A. held as follows:-**

õThe position of the law now in Nigeria is that:-

- (i) A judgment or order of every law Court remains in force and binding until it has been set aside by a Court of competent jurisdiction.
- (ii) To hold otherwise is to clothe a party against whom a judgment has been obtained with discretion to decide, in his wisdom, that the judgment is invalid and not binding on him. This is an invitation to anarchy.
- (iii) A party who is aware that an order is null and invalid should apply to have it set aside.
- (iv) The dictum of Lord Denning in **UAC V. MACFOY (1961) 3 ALL E.R. 1169, 1172, (1962) A.C. 152** often-quoted to the effect that there is no need to set aside an order which is void because it is a nullity is not only an obiter but also per incuriam.

**(2) Nwora V. Nwabueze (2011) 17 NWLR (Pt. 1277) 699 at 719.**

She maintained that this Honourable Court has an abiding duty to so construe the judgment in Suit No. B/318/06 (Exhibit C) to give effect to its orders and directives. She cited **Mba V. Agu (1999) 12 NWLR (Pt. 629) 1 at 14** where the apex court firmly held that a trial court must not interpret a previous judgment in a manner that would defeat its intendment. See also **Ojo V. INEC (2008) 13 NWLR (Pt. 1105) 577 at 628.**

Learned Counsel submitted that item 63 of the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria 1999 (as amended) gives the Federal Government of Nigeria exclusive reserves on all matters pertaining to "Traffic on Federal trunk roads". It is trite that it is only the Federal Government of Nigeria that can legislate on or execute matters placed on the exclusive Legislative list of the Federation. She relied on the following authorities:-

- (1) The State V. Okafor (1981) 2 NCR 232 at Page 239.**
- (2) A.G. Abia State V. A.G Federation (2002) 6 N.W.L.R. (Pt. 763) 264 at 386.**

Assuming but without conceding that the Defendants were properly on Sapele Road, Benin City on the date in question, she submitted that the defendants cannot take laws into their hands by arresting the Claimant, impounding his car and summarily imposing a fine on the Claimant without strict adherence to the due process of law and the time-honoured rules of natural justice entrenched in section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended). Specifically, the 1<sup>st</sup> Defendant cannot at the same time be the accuser, prosecutor and judge in the alleged complaint against the Claimant. She cited:-

- (1) Legal Practitioners Disciplinary Committee V. Fawehinmi (1985) 2 N.W.L.R. (Part 7) 300 at 334.**
- (2) Ezechukwu V. Onwoka (2006) 2 N.W.L.R. (Part 963) 151 at 189.**
- (3) Adeniyi V. Governing Council of Yaba College of Technology (1993) 6 N.W.L.R. (Pt. 300) 426 at 449.**
- (4) Ikeyi V. Crown Realities Plc (2010) 6 N.W.L.R. (Pt. 1189) 114 at 128.**

Further, the allegation of violating traffic light regulation is a criminal offence which the 1<sup>st</sup> Defendant is not constitutionally empowered to investigate, such task is reserved for the Nigeria Police under the Constitution of the Federal Republic of Nigeria 1999 (as amended) and section 4 of the Police Act, Cap P.19, Laws of the Federation of Nigeria 2004. She cited **Garba V. University of Maiduguri (1986) ANLR (Reprint Edition) 149 at 172 – 174.**

Learned Counsel urged the Court to hold that the failure of these Federal agents (i.e the traffic wardens and policemen) to arrest the Claimant is conclusive proof of the falsity of the Defendants' claim that the Claimant 'beat traffic light'. She also urged the Court to hold that defendant's failure to call any of the police traffic wardens or policemen to testify in corroboration of Defendants' claim that Claimant 'beat traffic light' is fatal to their case. She relied on **Philip Omogodo V. The State (1981) 5 S.C. 5 at 28; The State V. Ajie (2007) 7 S.C. (Part 1) 24 at 32 – 34.** The burden to prove that Claimant violated traffic regulation is squarely on the Defendants. She relied on:

- (1) **Zenith Bank Plc V. Ekereuwem (2012) 4 N.W.L.R. (Pt. 1290) 209 at 230.**
- (2) **Agagu V. Mimiko (2009) 7 NWLR (Pt. 1140) 342 at 431**
- (3) **Akubuiro V. Mobil Oil (Nig.) Plc (2012) 14 N.W.L.R. (Pt. 1319) 42 at 70 – 71.**

She submitted that the acts of the 1<sup>st</sup> Defendant and her agents with respect to the Claimant on the 2<sup>nd</sup> June, 2012 amounted to a grave infringement on Claimant's right to freedom of movement, right to fair hearing and right to property guaranteed by sections 41(1), 36 (1) and 44 (1) of the Constitution of the Federal

Republic of Nigeria 1999 (as amended). The act of entering the Claimant's car by 1<sup>st</sup> Defendant's agent without his consent or authority is an act of trespass. Also the detention of Claimant's car at the premises of the Ministry of Works, Sapele Road, Benin City pending the payment of the illegal fine imposed on the Claimant is unlawful detention and a violation of Claimant's right to the car (his property) as guaranteed by the constitution.

It is settled law that in cases involving an infraction of fundamental rights of a citizen, the Court ought to award such damages as would serve as a deterrent against naked, arrogant, arbitrary and oppressive abuse of power as in this case. See **Minister of Internal Affairs & Ors V. Shugaba Abdulrahman Darman (1982) 3 NCLR 915 at 928 and 1006.**

### **ISSUE 2 & 3**

Miss Oyemendan submitted that a charge of violation of traffic regulations is a criminal charge that must be proven beyond reasonable doubt as stipulated in Section 135(1) of the Evidence Act, 2011. The concept of proof beyond reasonable doubt has been judicially recognized as a situation where the evidence offered by the prosecution drowns the constitutional presumption of innocence in favour of an accused person. In other words, it is a factual situation where the evidence adduced by the prosecution is so strong, conclusive and compelling as to leave only a remote possibility in the accused's favour, which can be dismissed with the sentence "of course it is possible but not in the least probable." She relied on

- (1) **Ani V. The State (2009) 16 N.W.L.R. (Part 1168) 443 at 457 – 458.**
- (2) **Jeremiah V. The State (2012) 14 N.W.L.R. (Part 1320) 248 at 284.**

In the instant suit, the evidence adduced by the Defendants in proof of the wild allegation of violation of traffic regulation levelled against the Claimant falls short of the required standard under section 135(1) of the Evidence Act, 2011. DW1 was not present at the scene where the Claimant was arrested and his car impounded. DW2 on the other hand, has been demonstrably shown to be an unreliable witness whose testimony is not worthy of belief. She urged the Court to hold that failure to call these witnesses (i.e traffic wardens and policemen at the scene) is fatal to the Defendants case. The Defendants are not equipped to investigate and prosecute crimes including violation of traffic regulations, that is the function of the Nigeria Police Force.

In the circumstance, she urged the Court to resolve issues 2 and 3 in favour of the Claimant and against the Defendants. Learned Counsel to Claimant submitted that the arguments of Counsel to the Defendants cannot take the place of evidence as there was no pleading in support of his submission. Also the Defendants acted outside the scope of their powers and are therefore in conflict with the provision of the Constitution and the Federal Highway Act.

In conclusion, Miss. Oyemedan submitted that premised upon the foregoing the Court is urged to enter judgment for the Claimant and grant his claims set out at paragraph 18 of his statement of claim dated 11<sup>th</sup> June, 2012.

In his reply filed on 22/10/14 M.O. Airende Esq. submitted on the issue of estoppel that there are three conditions to be met before estoppel can apply in this matter. **See Igbeke V. Okadigbo (2013) 225 LRCN Pt. 1 Page 38 at 58 where the Supreme Court per Galadima JSC stated the conditions as follows:**

- “(i) The parties
- (ii) The issues; and
- (iii) The subject matter in the previous action were the same as those in which the plea was raised”

He submitted that the parties in the instant case are not the same with the parties in Exhibit C. In Exhibit C there are 4 Defendants with the Permanent Secretary being the 1<sup>st</sup> Defendant. This is not the case in this instant case as there are 3 Defendants. The issues are not also the same as the provisions of the Edo State Traffic Management Authority Law was considered where the Claimant was given a charge sheet wherein the provision of ESTMA the Claimant breached was stated. He submitted that on the whole, the principle of estoppel is not available for the Claimant to invoke as estoppel is a shield and not a sword. The Claimant's case does not fall within the category of cases that can use estoppel as a sword as Claimant's case is not based on contract which is supported with consideration. He urged the Court to so hold.

On the issue of lack of fair hearing, he submitted that the principle of fair hearing was not breached as enshrined in S.36 (1) of the 1999 Constitution as amended. The traffic officer who contravened the Claimant was not the person that presided over the case in the office and the Claimant had adequate opportunity as well to explain himself before he was given the charge sheet indicating the traffic offence Claimant breached.

He submitted that the prosecution need not call a host of witnesses in a matter, but to call relevant witnesses to establish his case. The officer who contravened the Claimant was enough to prove the case for the Defendant. He also

submitted that traffic offence is not a criminal offence that only the Police can handle. Garba V. University of Maiduguri is not relevant as cited by the Claimant, on the whole Mr. Airende urged the Court to dismiss the claim of the Claimant.

The evidence led by both parties has been carefully examined by me. I have also read the legal submissions of both counsel. On the preliminary objection to the written address filed by the defendants' counsel on the signatory therein, I quite agree with Miss. Oyamendan of Counsel to the Claimant that it is not quite clear who actually signed it. However since the address is not such that has to do with evidence led but to assist the court in arriving at a decision, it will not be expedient to ignore same as it is signed by one of the counsel for the Hon. Attorney General and Commissioner for Justice, Ministry of Justice Benin City (Counsel to the Defendants). I am therefore not in any doubt that the written address was filed for and on behalf of the Attorney-General for Edo State and if it is used no miscarriage of justice would arise, in the circumstance the preliminary objection is dismissed.

The third issue formulated by the Claimant is the issue arising for determination in this case as the defendants did not file any issues. The issue is simply whether the Claimant has proved his claims on the preponderance of evidence. Without much ado, the claim in paragraph 18(a) of the Claimant's statement of claim, is simply for a declaration that the judgment in Suit No. B/318/06 delivered by the Edo State High Court on 10/12/10 is subsisting and binding on the Defendants.

In support of this position the Claimant relied on arguments which had earlier been reviewed by me and cited authorities on estoppel. The Defendants on

the other hand argued that this case is distinguishable from that delivered on 10/12/10 by Akomolafe-Wilson (J) as she then was. It is their contention that, that case was a default judgment as it was only the Claimant's case that was considered. It is urged by Learned Counsel that the Honourable Court to discountenance it as this court is not bound by the decision of the aforesaid judgment.

It is further submitted by Mr Okojie that the decisions of Courts of similar or co-ordinate jurisdiction are only persuasive authority and they are not bound to follow each others decisions. In this regard, what calls for examination on the issue of the judgment of Akomolafe-Wilson J. in Suit No. B/318/06 of 10/12/10 is the question of judicial precedent. Chambers twentieth century dictionary defines a precedent as "that which precedes, a past instance and may serve as an example. On the other hand, Black's Law Dictionary, 8<sup>th</sup> Edition by Garner P. 1214 states that "in law, a precedent is an adjudged case or decision of a court of justice, considered as furnishing a rule or authority for the determination of an identical or similar case afterwards arising, or of a similar question of law. The only theory on which it is possible for one decision to be an authority for another is that the facts are alike or if the facts are different that the principle which govern the first case is applicable to the variant facts". William M. Lile et al, Brief Making and the Use of Law Books 288 (3<sup>rd</sup> Edition 1914) stated that :-

"A precedent is a judicial decision which contains in itself a principle. The underlying principle which thus forms its authoritative element is often termed the ratio decidendi. The concrete decision is binding between the parties to it, but it is the abstract ratio decidendi which alone has the force of

law as regards the world at large. John Salmond, Jurisprudence 191 (Glanville Williams ed; 10<sup>th</sup> Edition 1947).

One may often accord respect to a precedent not by embracing it with frozen logic but by drawing from its thought the elements of a new pattern of decision. It is trite that there are binding precedents and persuasive precedents. Whereas binding precedents are precedents that a court must follow, for example a lower court is bound by an applicable holding of a higher court in the same jurisdiction persuasive precedent is not binding on a court but it is entitled to respect and careful consideration. In his book *What Next in the Law?* P. 5 Lord Denning, M.R. on the origin of precedent stated *if however similar things happen to take place, they should be adjudged in a similar way, for it is good to proceed from precedent to precedent.*

This doctrine of precedent is now also widely known as *stare decisis*, the effect of which is that judicial decisions have binding force and enjoy law quality *per se*. Bindingness however depends on hierarchy of Courts. Law quality relates essentially to the principle behind a decision, otherwise known as its *ratio decidendi* as stated by **Jessel M.R. in *Osborne V. Rowlett (1880) 13 Ch DP 774 at 785*** thus:

*The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided.*

Glanville Williams in the book *Learning the Law* (5<sup>th</sup> Edition) at P. 64 stated that

*English courts make a habit of following their previous decisions within more or less well defined limits. This is called the doctrine of precedent.*

Dr. Goodhart in "Precedent in English and continental law (1934) 50 LQRP40 at 41 stated that "All legal systems follows precedents, for it is a natural practice of the human mind, whether legal or non legal, to accept the same pattern in similar or analogous cases".

Thus to be useful as precedent, the material facts of the precedent case must be similar to the material facts of the case in which the precedent is being invoked so that the same principle of decision will apply. See P.U. Umoh, Precedents in Nigerian Courts P. 8; Obilade, A.O. The Nigerian Legal system (Sweet & Maxwell) P. 111.

After all the above legal reviews, it is pertinent to refer to the case at hand. The parties no doubt are agreed that the Claimant was driving along Sapele Road, Benin City which they also agree is a Federal Trunk Road. The decision in B/318/06 had to do with the Plaintiff therein driving along the same Sapele Road, Benin City which the Learned trial Judge in the judgment Exhibit C in that suit at page 6 found as follows

"I also find and hold that the Defendants had no right to carry out their illegal and brigandry activities on Sapele Road, Benin City which is strictly a Federal Highway exclusively reserved for Federal Road Safety Commission and Nigeria Police Force".

The above finding is persuasive on me but to deviate from the principle, the Defendant must show that the road is not a Federal Highway and that the defendants have a right to enforce the Edo State Traffic control and Management Agency Law 2010 there. The defendants have admitted that the Sapele Road is a

Federal High Way. By chapter F.13, Federal High Ways Act 1971 Section (1) thereof provides thus:-

“subject to the provisions of this Act all Federal Highways shall on the commencement of this Act, be under the Management direction and control of the Minister charged with responsibility for Roads.”

With the above clear and unambiguous provision, it is clear that the authority over and control of traffic along Sapele Road, Benin City which is admitted by the Defendants to be a Federal Highway can not be within the purview and contemplation of the Edo State Traffic Control and Management Agency law 2010. The charge emanating from a traffic offence purportedly committed on that Road, and for which the Claimant was fined was ultra vires the Defendants powers.

The Supreme Court has made it clear and loud when it stated in **Garba V. University of Maiduguri (Supra)** that judicial powers are not vested in private persons, administrative tribunals or other authorities. Any purported exercise of judicial powers by these bodies is a denial of fair hearing under the constitution. I cannot therefore deviate from the finding of Akomolafe-Wilson (J) as there is no good reason to deviate there from rather I am guided by her Lordships sound reasoning. The mere fact that it was a default judgment has not eroded from the principle in Law that is contained in the said judgment.

There is no doubt that the drafters of the Edo State Law in question by including the Highways in Section 8 (n) and (o) without taking into cognizance the 1999 Constitution of the Federal Republic of Nigeria, apparently have misled the Defendants into assuming rights to implement the law over users of the Federal

Highway. Section 28 of the Federal Highways Act clearly defines a Federal Highway. I am also satisfied that by item 63 of part 1 of the second schedule to the 1999 Constitution as amended, the issue of Traffic on Federal trunk road is in the exclusive list. This invariably leads to the conclusion that the activities of the defendants along Sapele Road Benin City on the 2/6/12 leading to the arrest and charge of the Claimant was illegal and outside their area of jurisdiction. There is therefore no difficulty in finding that the decision of 10/12/10 has to be followed in this regard. Kutigi JSC as he then was in the case of **Ishola V. Ajiboye (1994) 4 NWLR (Pt. 352) 506, 533** stated that "in the administration of justice, you need certainty and consistency". Oputa JSC in *Gani Fawehinmi V. NBA No. 2 (1989) 2 NWLR (Pt. 105) 134-135* stated inter alia thus:

"the justification for the doctrine of judicial precedence is that it ensures some amount of certainty of the law. This means then that a judicial authority must be applied in relation to the facts of a case. Cases with similar facts will more readily admit of the same legal principles".

The case on hand and that of the 10/12/10 on principles are very similar except that in the earlier case the defendants threw in the towel. The issue estoppel dealt with by the Claimant is well grounded and I agree with all the submissions therein. Consequently, it is declared that the decision of the Edo State High Court in Suit NO. B/318/06 delivered on 10<sup>th</sup> December 2010 is subsisting and binding on the Defendants in that it held that the Sapele Road Benin City is a Federal Highway and the Defendants have no right to carry out their activities on the said Federal Highway. From the above declaration, there is no gain saying that based

on the evidence adduced by both parties especially Exhibits A and B, it is crystal clear that the Defendants unlawfully (as they were the Accusers, the prosecutor and the Judge) interfered with the Claimant's fundamental right to freedom of movement on Saturday 2<sup>nd</sup> June 2012 along Sapele Road, Benin City. In the circumstance, the Claimant is entitled to general damages which is assessed at N2 million.

The Claim for N1 million general damages against 1<sup>st</sup> Defendant for trespass to the Claimant's Mercedes Benz car with Registration No. Edo CY 103 BEN vide the action of her agents is hereby granted to serve as a deterrent as the agency and its staff have no right to enter the Claimant's vehicle without his permission.

The claim for N5000 being money extorted from the Claimant by 1<sup>st</sup> Defendant is granted in that they had no right to impose a fine under any guise. By section 9(7) of the Edo State Traffic Control and Management Agency Law 2010 which provides thus:

Persons suspected to have committed an offence under this law may be prosecuted in any Magistrate's Court or Mobile Court in the State.

Also section 9(10) of the aforesaid law provide for the establishment of mobile court. I note the provision in Section 9(10)(3) for an offender to waive his right to be tried before a mobile court and opt to pay fines. In this case there is no indication that the Claimant waived his right to stand trial as there is an agreement that the Claimant vehemently denied the offence. Be that as it may, in view of the finding that the road is a Federal Highway over which the defendants have no right to their activities of the 2/6/12 culminating in the payment in Exhibit B, the fine

imposed by the 1<sup>st</sup> defendant is declared illegal and the sum of N5000 is ordered refunded to the Claimant forthwith.

I hasten to add that it bothers on contempt of court for a Defendant to have knowledge of the judgment of a competent Court which is subsisting and to ignore same. It is more so when the Attorney-General argues in court that because the judgment is a default judgment it is of no moment.

It is trite that default judgements whether regular or irregular until set aside remain valid and as effective as any other judgement of court. See **Mohammed V. Husseni (1998) 12 SCNJ 136 at 152. In Evans V. Baham (1937) AC415 at 480** where it was held that there will be no point in setting aside the judgment, if there is no tenable defence to the claim

In the case of the **Military Governor of Lagos State & Ors V. Chief Emeka Odumegwu Ojukwu & Anor (1986) 1NWLR Pt. 18) 621** where the Supreme Court held inter alia as follows:-

1. It is a very serious matter for anyone to flout a positive order of a court
2. It is a more serious contempt when the act of flouting the order of the court is by the Executive.
3. Under the constitution of the Federal Republic of Nigeria, the Executive, the Legislature and Judiciary are equal partners in the running of a successful Government.
4. None of the three organs of Government must exist in sabotage of the other or else there is chaos

5. Executive lawlessness tantamount to a deliberate violation of the constitutioní í í í ..

In the aforesaid judgment, Obaseki; JSC stated that:

“The Nigeria Constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the frame-work of recognized rules and principles which restrict discretionary power which coke colourfully spoke of as “golden and straight met ward of law as opposed to the uncertain and crooked cord of discretioní .. the rule of law means that disputes as to the legality of acts of government are to be decided by Judges who are wholly independent of the executive.

That is the position in this country where the judiciary has been made independent of the executive by the constitution. The judiciary can not shirk its sacred responsibility of the nation to maintain the rule of law.

It is both in the interest of the government and all persons in Nigeria. The law should be even handed between the government and citizens.ö

Uwais JSC stressed the issue by stating that “If Governments treat court order with levity and contempt the confidence of the citizen in the courts will be seriously eroded and the effect of that will be the beginning of anarchy in replacement of the rule of law. If any one should be wary of the orders of court it

is the authorities; for they more than anyone else, need the application of the rule of law in order to govern properly and effectively (under lining mine).

Oputa JSC put the issue more succinctly when he added by stating thus:-

“The court system cannot be maintained without the willingness of parties to abide by the findings and orders of a competent court until reversed on appeal. This presupposes that no party and no court of subordinate or even co-ordinate jurisdiction.”  
can say:- “I do not like the order made and I will not obey it.” And that is exactly what the Lagos State Government is doing in this case and that posture has to be condemned in the strongest of terms.  
if we are not to say good-bye to the Rule of Lawí ..”

It is the same feeling of disgust and distain I feel for the submission of the learned Counsel on behalf of the Attorney-General in asking this court not to consider the order of Akomolafe-Wilson of 10/12/10 because it was a default judgement.

I am constrained to gloss over this issue of the flagrant disobedience of Court judgement because the Claimant failed to raise it as an issue in his claim. I however warn that judgments of court must be obeyed by all and sundry until set aside by a higher court.

Consequently, I order that all designated Federal Highways which include the Sapele Road Benin City must be devoid of the operations of the 1<sup>st</sup> Defendant henceforth, as the Edo State Traffic and Management Agency Law 2010 cannot supersede the constitution of Nigeria.

Hon. Justice E. F. Ikponmwen

JUDGE

**Counsel:-**

M.O. Airende Esq., with P. O. Osagie-Ojo Esq., For Defendants

K. O. Obamogie Esq., with S. E. Oyemedan (Miss)

And R. A. Yinusa Esq., For Claimant

