IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON THURSDAY THE
4TH DAY OF FEBRUARY, 2021.

SUIT NO: HCU/MISC/1F/2019
IN THE MATTER OF AN APPLICATION BY THE APPLICANT FOR AN ORDER FOR THE ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS PURSUANT TO ORDER XI OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009.

BETWEEN

MR. DANIEL OTOR ----------APPLICANT

AND

MR. GODWIN UWADIALE ----------RESPONDENT

RULING

This is a Ruling in respect of an application for the enforcement of Fundamental Rights brought pursuant to Order XI of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. By this application, the following reliefs are being sought by the Applicant:-

a) A declaration that the assault, physical molestation, dehumanization and curtailment of the applicant's liberty by the respondent on the 8th day of march 2019 at the Area Command of the Nigeria Police Uromi, are unlawful, unconstitutional and a gross violation of the applicant's constitutional rights guaranteed under **sections 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 as amended;**
b) A declaration that the physical attack on the applicant by the respondent over a purely civil matter which caused him severe injury on his eye at the Area Command of the Nigeria Police Command of

the Nigeria Police on the 8th of March 2019, is inhuman, degrading, humiliating, oppressive and a flagrant breach of **Section 35(4) of the Constitution of the Federal Republic of Nigeria 1999 as amended;**

c) The sum of N500, 000,000.00 (five Hundred Million Naira) being general and exemplary damages for acts of assault, molestation, physical attack and false imprisonment of the applicant by the respondent without any justifiable cause.

The application is supported by an affidavit of 31 paragraphs and a written address of the Applicant's counsel.

According to the Applicant, he is a Businessman who deals on phones, recharge cards and GSM accessories and the Respondent is a staff of the Esan South East Local Government Council, Ubiaja.

He stated that sometime in December 2015, he rented shop No. 2 at Neccessitiz Plaza Ubiaja Road, from one Obehi, who was the caretaker of the said plaza. That he also rented shop No. 4 Ubiaja Road, Uromi from its owner owing to expansion in his business.

He said that the relationship between himself and the caretaker of Shop No. 2, Neccessitiz Plaza was very cordial until sometime in December 2018 when he wanted to renew his rent and the Respondent surfaced and introduced himself as the new caretaker of Neccessidtiz Plaza. He said that the Respondent then warned him not to pay any rent to Mr. Obehi and that he was not going to allow him renew his tenancy.

The Respondent allegedly verbally gave him one week notice to vacate his shop in January 2019 and all efforts to plead with him to give him six months quit notice considering the fact that he was a yearly tenant, fell on deaf ears.

He said that on the 8th of February 2019, the Respondent locked his shop at No. 2 Necessitiz Plaza Uromi with a padlock thereby denying him access to his business premises whereupon he reported to the Police Area Command, at Uromi.

He said that when the Respondent came to the Police Area Command, at Uromi, the Police ordered him to comply with the one week verbal notice issued by the Respondent.

That upon the expiration of the said ultimatum, the Respondent allegedly stormed his shop on the 8th of February 2019, threw away his goods including phones, recharge cards and GSM accessories from No. 2 Nicessitiz Plaza and locked up the shop containing his iron safe.

That while he was yet to recover from the Respondent's action, some policemen from the Police Area Command Uromi came with the Respondent to my shop at No. 4 Ubiaja Road, Uromi which he had reluctantly opened after sometime, to arrest him on the 8th of March 2019.

That at the Police Area Command Uromi, which is situate at the Divisional Police Headquarter, Uromi, he was informed by the police that the Respondent's allegation was that he refused to remove his iron safe from shop No. 2 Necessitiz Plaza, Uromi.

He said that he informed the Police that he had no access to his shop owing to the fact that it had been under lock and key by the Respondent who forcefully ejected him. He said that while he was still narrating his ordeal to the police, the Respondent walked up to him and assaulted him by dipping his finger into his left eye which caused him severe injury.

He alleged that while he was under pains, he called his Solicitor, Iyoha Mayor Esq. to plead with the police to allow him seek medical attention. That when Iyoha Mayor came, he saw the condition of his eye. That Iyoha Mayor Esq. tried to caution the respondent against taking laws into his hands but the respondent got infuriated and almost assaulted him at the Police Area Command, Uromi. That he thereafter instructed Iyoha Mayor Esq. to inform his Principal about what transpired and the need to petition the Area Commander Uromi about the conduct of the respondent.

That shortly thereafter, a petition from the office of Ayewoh-Odiase & Co, Legal Practitioners signed by B.E. Emiowe ESQ was submitted to the Area Commander, Uromi against the respondent.

He said that in spite of the said petition, the Respondent is still threatening to deal with him and the Police has remained adamant hence he filed this application.

He said that since the said assault by the Respondent on him, he has been in and out of hospital as an outpatient owing to the Respondent's act. He said that he has suffered psychological torment, mental torture and dehumanization arising from the assault and molestation without any reasonable cause. That he also lost his human dignity and personal liberty arising from the Respondent's actions.

Sequel to the foregoing, the Applicant is claiming the aforementioned reliefs.

In opposition to the application, the Respondent filed a counter-affidavit of 35 paragraphs and a written address of his counsel.

According to the Respondent, contrary to the assertion of the Applicant, he alleged that the Applicant was a yearly tenant and his tenancy at shop 2 Neccessitiz Plaza Ubiaja Road, Uromi ran from January, 2018 – December, 2018. That when the Applicant's tenancy at Neccessitiz Plaza expired in December, 2018, he relocated to No. 4, Ubiaja Road, Uromi.

The Respondent said that he became the caretaker of the Neccessitiz Plaza in January, 2019. That when he took over as caretaker, the Applicant had already relocated from shop 2 at Neccessitiz Plaza to No. 4, Ubiaja Road, Uromi leaving only his safe behind.

He said that he first met the Applicant in January, 2019 and when he asked him why the shop was locked he told him that his tenancy expired in December,

2018 and Obehi told him that there would be no renewal and he had moved to No. 4, Ubiaja Road, Uromi.

He said that he requested the Applicant to open the shop for him to see which he did, and he saw only a safe fixed to the floor and wall of the shop and he told him since he had got a shop somewhere he should try and remove the safe. He said that the Applicant promised to remove the safe before the end of January, 2019 and locked up the shop and took away the key.

He said that he did not warn the Applicant about renewal or giving money to Obehi but only responded to the Applicant's assertion when he said Obehi did not allow him to renew. He said that he told the Applicant that Obehi was only taking instruction from the owner who wanted to make use of the shop.

Furthermore, he stated that he did not give the Applicant one week verbal notice to quit the shop but it was the Applicant who promised to remove the safe from the shop before the end of January, 2019.

He denied locking up the shop at No. 2 Neccessitiz Plaza and shop at No. 4, Ubiaja Road, Uromi and stated that when he waited from the second week of January to the 8th day of February, 2019 and the Applicant failed to open the shop and remove his safe at Shop 2 Neccessitiz Plaza, he went to meet him at his new store at No. 4, Ubiaja Road, Uromi to find out why he has not removed his safe and hand over possession.

That at his shop the Applicant told him that it was difficult for him to remove the safe and that he has been very busy. That he told the Applicant that it was not right for him to deny the owner of shop No. 2 at Neccessitiz Plaza while he is doing his business elsewhere. That the Applicant asked him to leave his shop or else he would have himself to blame. That Applicant left him and went to the Police Station to make a report and he was later invited to the Police Area Command Uromi at the complaint of the Applicant.

That the Area Commander advised the Applicant that since he had gotten a shop in a nearby place he should endeavour to remove his safe for a peaceful resolution of the matter. That before the Police, the Applicant promised to remove the safe before the end of February, 2019.

He maintained that no ultimatum was given to the Applicant, neither did he throw away any goods, phones, recharge cards and GSM accessories belonging to the Applicant or anybody at No. 2 Neccessitiz Plaza or shop No. 4, Ubiaja Road, Uromi.

He said that on the 8th day of March, 2019 he simply went back to the Police to say that contrary to the promise made by the Applicant he had not removed his safe and the door was still under lock and key and the Police also invited him to find out if what he said was true.

He maintained that he did not lock the shop or forcefully eject the Applicant. That when he said that the safe could not be removed without damage to both the floor and wall he offered to pay for the safe, but he refused and said that he was going to use it in his new shop at No. 4, Ubiaja Road, Uromi.

He said that he did not assault the Applicant or dip his finger into his left eye or cause him any injury. That it was while they were before the Area Commander that the Applicant excused himself and made a call to his lawyer.

That when his lawyer, Iyoha Mayor Esq. came, he met them at the Area Commander's office and demanded to know why a tenancy matter which was a civil matter should be reported to the Police and the Police told the lawyer that it was the Applicant who first reported the matter.

The Respondent asserted that the Applicant is hale and hearty and goes about his business every day and does not go to any hospital as an outpatient. He stated that the Applicant did not suffer any psychological torment, mental torture and dehumanization because he did not assault him.

Upon receipt of the Respondent's counter-affidavit, the Applicant filed a Further Affidavit of 9 paragraphs and a Written Address of his counsel on points of law.

In the Further Affidavit, the Applicant merely reaffirmed his earlier depositions that the Respondent took the laws into his hands by unlawfully ejecting him from the shop.

At the close of the case both counsel adopted their written addresses.

In his written address, the learned counsel for the Applicant, ***Dr. P.E.Ayewoh Odiase*** formulated two issues for determination as follows:

1. ***Whether from the affidavit evidence and the Statement of facts in this application, the respondent was justified in assaulting, molesting, dehumanizing and curtailing the liberty of the applicant without any justification? and***
2. ***Whether the assault, degradation and molestation of the applicant by the respondent, do not amount to gross violation of the Applicant's Fundamental Rights as enshrined in Section 35(1) (6) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.***

Thereafter, the learned counsel marshalled out his arguments on the two issues seriatim.

ISSUE 1:

Whether from the affidavit evidence and the Statement of facts in this application, the respondent was justified in assaulting, molesting, dehumanizing and curtailing the liberty of the applicant without any justification?

Arguing issue one, learned counsel submitted that the assault, molestation, dehumanization and curtailment of the applicant's liberty by the respondent, are not in any way justified and/or justifiable. He submitted that the respondent's aforesaid acts against the applicant, amount to degrading treatment and

infringement on his right to the dignity of the human person. He referred to the case of ***Uzokwu Ezemu 11, (1991) 6 NWLR Pt 200, 78*** where the Court defined the term "degrading treatment" thus: ***"The element of lowering the societal Status, character, value or Position of a person".*** He also referred to the case of ***Razak Osayiande Isenalumhe V Joyce Amadin and ors (2001) 1 CHR 458***, where the Court also defined the term "degrading treatment" as follows: ***"Reviling, holding one up to public Obloquy, lowering a person in the estimation of the public, exposing to disgrace, dishonor or contempt"***.

He submitted that the facts of Isenalumhe's case are on all fours with the applicant's case in the sense that in Isenalumhe's case, the Police assaulted and dragged the applicant to the Police Station where he was further assaulted. In giving judgment in the applicant's favour, the Court held that the applicant's rights to human dignity and liberty, where violated by the Police and this gave the applicant the right to compensation and apology. He therefore submitted that since the respondent has no justification in assaulting, molesting, degrading and curtailing the liberty of the applicant, issue one should be resolved in the negative.

ISSUE 2:

Whether the assault, degradation and molestation of the applicant by the respondent, do not amount to gross violation of the Applicant's Fundamental Rights as enshrined in Section 35(1) (6) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

On issue two, he submitted that the act of the respondent in assaulting molesting, degrading and curtailing the liberty of the applicant over a tenancy issue, amounts to a violation of the fundamental rights of the applicant as enshrined in Sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

He further submitted that the Courts are enjoined to grant quick remedies against gross violation of the fundamental rights of the applicant by the respondent as in the instant case and cited the case of ***Nwana V A G Federation (2010) 15 WRN Page 178 at 182.***

Furthermore, he submitted that where a case of gross violation of the applicant's rights has been established against the respondent as in the instant case, the Court is enjoined to uphold the provisions of the Constitution. See ***F.R.N V Ifegwu (2003) 15 NWLR (Part 842) P. 113 at 132***.

Counsel submitted that the Constitution of the Federal Republic of Nigeria (1999) as amended frowns at violations of the applicant's rights. See the case of ***A.G. Federation V Ajayi (2000)12 NWLR (Part 682) P. 509 at 517.***

He submitted that the curtailment of the applicant's liberty by the respondents for over three hours at the Police Area Command, Uromi, amounts to false imprisonment of the applicant. He referred the Court to the case of ***Okafor V Abumofuani (2006) 2 FWLR part 310, page 2253, paras. E-F*** where false imprisonment was defined to mean the total restriction of another person's

liberty for however short a time by the use of threat or force or by confinement without lawful justification. He also referred to the case of ***Attorney-General of the Federation V Ajayi (2000) 12 NWLR part 682, 509 at 517*** where the Court held that ***"freedom of movement is guaranteed under the Nigerian Constitution. It is a right to which every citizen is entitled when he is not subject to the disabilities enumerated in the constitution".***

Finally learned counsel submitted that where the conduct of the respondents 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, as in the instant case, exemplary, punitive, vindictive or aggravated damages, should be awarded. For this view, he cited the case of ***G.F.K. Investment Nigeria Ltd. V. Nigeria Telecommunications PLC, (2009) 45 WRN Page 36 at Pp 67 – 68, lines 15 – 5.***

He urged the Court to resolve issue two in the affirmative and to grant the applicant's reliefs as contained in his application.

In his written address, the learned counsel for the Respondent, ***O.M. Okoekoh Esq.*** formulated three issues for determination as follows:

1. ***Whether the arrest of the Respondent by the Police at the instance of the Applicant on the 8th day of February, 2019 and 9th day of March, 2019 was not the propelling force that brought about Police intervention in the matter between the Respondent and the Applicant;***
2. ***Whether the Applicant from his affidavit evidence and statements of facts has proved acts of molestation, assault, dehumanization and curtailment of his liberty;***
3. ***Whether the alleged lock of Applicant's stores and dipping of finger into his eye by the Respondent constitute cause of action under the (fundamental rights enforcement procedure) rules.***

The learned counsel articulated his arguments on the three issues seriatim.

ISSUE ONE:

Arguing Issue 1, learned counsel submitted that the provisions of section 35 of the constitution of the Federal Republic of Nigeria, 1999 as amended and Articles 5 and 6 of the African Charter on human and Peoples' Rights are in respect of all Nigerian Citizens and as such guaranteed, the freedom, liberty human dignity of all and not the exclusive preserve of any single individual in this case, the Applicant alone. See: ***Section 35(i) of the Constitution of Federal Republic of Nigeria 1999 as amended. See Arab Contractors (Nig) Ltd v Umanah (2012) Vol. 28 WRN pg 85 at 89.***

He said that the Applicant deposed to the fact in paragraph 9 of his affidavit in support of his application ***"that the Respondent who is neither owner of shop No. 4, Ubiaja Road, Uromi also locked up the said shop whereupon he reported to the Police Area Command Uromi".*** That in paragraph 10 of his affidavit, he

stated thus: ***"the Respondent came to the Police Area Command Uromi"***. He said that the question that one must ask is: at whose instant did the Respondent come to the Police Area Command? He submitted that the Applicant set the Police action in motion that snowballed into the Respondent's subsequent report of 8th day of March, 2019 as to the development in the case earlier reported by the Applicant.

He referred the Court to Exhibit "B" which is a petition to the Area Commander written at the instance of the Applicant against the Respondent. That based on this petition, the Respondent was picked up by the Police for interrogation. See ***Attorney General of the Federation v Ajayi (2000) 12 NWLR part 682, 509 at 517***. He said that it beats ones imagination why the Applicant is complaining of being arrested by the Police when the Respondent merely went to the Police Station on the 8th day of March, 2019 to report the development in the case to the Police. He said that the Applicant cannot be heard asking for the enforcement of his Fundamental Rights as he cannot benefit from his own wrong.

He said that on the face of it, the Applicant's contention makes a whole lot of sense, but a closer look shows a mix up of wrong and rights that do not go together. He said that Except the Applicant is saying that the arrest and detention of the Respondent is of no moment and only his rights are guaranteed and protected under Chapter IV of the constitution of the Federal Republic of Nigeria 1999, as amended and this of course is not the intent and spirit of the constitution. See Section 35(i) of the constitution of the Federal Republic of Nigeria 1999, as amended.

He urged the Court to hold that the arrest and detention of the Respondent on the 8th day of February, 2019 and 9th day of March, 2019 respectively at the instance of the Applicant amounts to curtailment of the Respondent's liberty and false imprisonment of the Respondent and dismiss the case of the Applicant.

ISSUE 2:

On Issue 2, he submitted that the Applicant has not been able to prove his case on the preponderance of evidence to be entitled to the reliefs sought. See ***Section 34 Evidence Act 2011***.

He said that Exhibit "C" is the photograph purportedly taken after Respondent allegedly dipped his finger into the left eye of the Applicant. He said that a closer look at both eyes reveals no difference. That there is nothing to indicate that the Applicant sustained injury in his left eye. He said that the Applicant merely closed his eyes and posed for a photograph to deceive the Court. He said that Exhibit "C" was made for this case. That in furtherance of his deception, the Applicant is planning to produce a doctored medical report for his treatment.

Furthermore, he said that the Applicant deposed to the fact that the alleged assault took place in the Area Commander's Office and in his presence. He said that it stands to reason whether a Police Officer of the rank of Area Commander would tolerate and approve of such blatant and barbaric act from anybody

irrespective of his position in the society. Besides, he said that the Applicant did not allude to the response/reaction of the Police at the incident. He posited that if the Applicant had said that it was the Police that committed that act, it would have been a different ball game. But he said that it was the Respondent.

He said that surprisingly, the Applicant from the 8th day of March, 2019 when he said the injury to his eye took place has been doing his business with his two eyes open without any impairing condition on his eyes.

He submitted that Respondent in the presence of the Police or/and any other time did not assault the Applicant but Applicant cooked up the story of assault for the purpose of this case. He cited the case ***of U.T.C Nigeria Plc v Lawal (2014) 232 LRCN pg 185 at 188 r. 2***

He further submitted that the Applicant through his affidavit evidence and exhibits failed to establish infringement on his rights for this Honourable Court to give judgment in his favour and urged the Court to dismiss his case.

ISSUE 3:

On Issue 3, he submitted that the acts of the Respondent complained of by the Applicant are purely wrongs/torts which ought to have been initiated/commenced in Court by writs of summons and not under the (Enforcement of Fundamental Rights Procedure) Rules. He said that the Enforcement of Fundamental Rights Procedure Rules is sui generis, peculiar and of its own class and cannot be mixed with other procedures.

He submitted that where the main or principal claim in an action is not the Enforcement of Fundamental Rights, but tort or breach of contract, it is not competent to pursue the action under (Fundamental Right/Enforcement procedure) Rules ***see Attah v IGP (2015) All FWLR part 805 pg 108 at 115, Madu v Neboh and anor (2002) 2 CHR 67 at pg 86***.

Similarly, he posited that where the enforcement of the fundamental rights of an individual is subsidiary, ancillary or incidental to the main claim, the action cannot be commenced by the Fundamental Rights (Enforcement Procedure) Rules, but must be instituted by the writs of Summons as prescribed by the rules of Court. He referred to the case of ***Madu v Neboh and anor Supra*** which he said is on all fours with this present case. In the said case, the Applicant's landlord forcefully removed the door to his room whereupon he lost some of his property, the Applicant filed a suit under the fundamental rights (Enforcement Procedure) Rules and the suit was struck out. In dismissing the appeal, the Court of Appeal held that when an alleged infringement of a fundamental rights arises from conduct giving rise to a trespasser action, the fundamental rights (enforcement procedure) Rules are inappropriate framework for enforcing the violated right.

He submitted that assuming though not conceding that the Respondent locked the Applicant's shop, the Applicant ought to go to the appropriate Court through the appropriate procedure to ask for remedy. He urged the Court to dismiss the Applicant's case having commenced same by wrong procedure ***Madu v Neboh and anor Supra.***

He submitted that the false imprisonment and curtailment of his liberty complained of by the applicant is not proved. That the onus is on him to prove what he has alleged. Furthermore, that the allegation of infringement of the Applicant's right to liberty is ancillary/incidental to his invitation by the Police on the 8th day of February, 2019. ***Arab Contractors Nig. Ltd v Umanah Supra pgs 88 & 92.***

He finally urged the Court to dismiss the Applicant's case for lacking in merit.

Sequel to the receipt of the Respondent's counter-affidavit and written address, the Applicant's counsel filed a Reply on Points of Law. Succinctly, in the said Reply the learned counsel for the Applicant submitted that the availability of a special procedure does not extinguish the use of other alternative procedures. For this view he relied on the case of ***Onwo vs. Oko (1996) 6 NWLR (Pt.456) p.548.***

Before I go into the merits of this application, it is expedient for me to first determine the validity of a particular legal objection raised by the learned counsel for the Respondent against this application.

The objection is that that the acts of the Respondent complained of by the Applicant are purely wrongs/torts which ought to have been initiated/commenced in Court by writs of summons and not under the (Enforcement of Fundamental Rights Procedure) Rules. He said that the Enforcement of Fundamental Rights Procedure Rules is sui generis, peculiar and of its own class and cannot be mixed with other procedures.

He seriously contended that the principal claim is not the Enforcement of Fundamental Rights, but for tort. He posited that where the enforcement of the fundamental rights of an individual is subsidiary, ancillary or incidental to the main claim, the action cannot be commenced by the Fundamental Rights (Enforcement Procedure) Rules, but must be instituted by the writs of Summons as prescribed by the rules of Court.

It is settled law that where the alleged breach of a fundamental right is ancillary or incidental to the substantive claim, it is incompetent to institute an action for the enforcement of fundamental human rights. See the cases of: ***Federal Republic Nigeria vs. Ifegwu (2003) 15 NWLR (Pt. 842) 113 at 180; and University of Ilorin vs. Oluwadare (2006) 6-7 S.C. 154.***

The factors to assist the Court to determine the principal claim in a fundamental rights application include: the reliefs sought, the grounds for seeking the reliefs and the supporting affidavit. See the following cases: ***Olawoyin vs.***

Obafemi Awolowo University (2004) 2 FHCLR 166; Chukwuogor vs. Chukwuogor (2006) 49 WRN 183; and Raymond Dongtoe vs. Civil Service Commission of Plateau State (2001) 19 WRN 125 at 147.

Upon a careful examination of the reliefs sought, the grounds for seeking the reliefs and the supporting affidavit, I observed that the main complaints of the Applicant border on the alleged assault, physical molestation, dehumanization and curtailment of the applicant's liberty by the respondent on the 8th day of march 2019 at the Area Command of the Nigeria Police Uromi in violation of ***sections 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 as amended***.

Essentially, the Applicant is challenging the validity of his alleged arrest, detention, assault and dehumanization by the Respondent. These are the principal claims which are clearly within the purview of the Fundamental Rights (Enforcement Procedure) Rules. It is only where an applicant under the Fundamental Rights (Enforcement Procedure Rules) is unable to pigeon hole his complaint within any of the guaranteed fundamental rights, that the jurisdiction of the Court cannot be said to be properly invoked and the action is liable to be struck out on the ground of incompetence. See: ***West African Examination Council Vs Akinkunmi (2008) 9 NWLR (Pt 1091) 151 and West African Examination Council Vs Adeyanju (2008) 9 NWLR (Pt 1092) 270.***

Flowing from the foregoing, I am of the view that the objection cannot be upheld and it is accordingly overruled.

Having disposed of the objection, I will now consider the application on its merits. I have examined the issues for determination as formulated by both learned counsel and upon a careful examination of the issues formulated, I am of the view that the sole issue for determination in this application is ***whether the acts of the Respondent on the 8th day of march 2019 at the Area Command of the Nigeria Police Uromi, were unlawful, unconstitutional and a gross violation of the Applicant's constitutional rights guaranteed under sections 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 as amended***.

I have carefully gone through the affidavits and counter affidavit in this application together with the documentary exhibits attached. It is settled law that any person claiming the violation of his or her fundamental rights must place before the Court all the material evidence regarding the infringement or breach of such right for the claim to succeed. See ***Fajemirokun v. CB (CI) Nig LTD (2002) 10 NWLR (PT. 744) 95.***

In the instant case, the Applicant deposed to some facts to show that the alleged arrest, assault and dehumanization took place in the Area Commander's

Office. However from the facts it is evident that the Applicant initiated the Police action which culminated in the Respondent's subsequent appearance with the Applicant at the Divisional Police Station at Uromi on the 8th day of March, 2019.

According to him, the alleged assault occurred in the presence of the police. Curiously, he did not obtain the deposition of any police officer to support or substantiate his claim. Rather, he relied on his deposition and a photograph which showed his eyes looking a bit strange. There was no medical report to substantiate the alleged assault.

The Respondent has denied the assault so it is a case of oath against oath. It is settled law that where the affidavit of one party is against the counter affidavit of another, it is a case oath against oath from which a judge cannot ordinarily pick and choose. Where there is oath against oath by way of affidavit evidence, the Court is obliged to call oral evidence in order to determine who is telling the truth. See the case of: ***DR OKEZIE VICTOR IKPEAZU v. DR SAMPSON UCHECHUKWU OGAH & ORS (2016) LPELR-40843(CA).***

In the instant case it will be wrong for me to pick and choose from the conflicting affidavit without the benefit of any oral evidence which has been tested by cross examination. The burden of proof of the breach of fundamental right of a citizen rests on the Applicant. See the case of ***Arowolo v. Olowokere (2012) All FWLR (Pt. 606) 398.***

Furthermore, on the alleged curtailment of the Applicant's liberty, the settled position of the law is that a mere allegation or deposition in an affidavit stating that an Applicant was arrested is not sufficient to constitute proof of infringement or infraction on the rights of an applicant, the specific facts of the alleged detention and the duration must be proved in substantial details. See: ***ADESANYA Vs. PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA & ANOR [1981] 5 SC 69; (1981) LPELR-147 Pg.63, Paras. D - E.***

Furthermore in the case of ***UDO & ORS Vs. ESSIEN & ORS (2014) LPELR-22684 Pg.22, Paras. A - F,*** the Court held thus: ***"It is settled law that it is not enough for a plaintiff to merely state that an act is illegal and unconstitutional... In anapplication for the enforcement of Fundamental Human Rights, particularly where arrest is alleged, the Applicant must prove specific detention and duration. It is not a matter of speculation."***

See: also ***OKAFOR Vs. LAGOS STATE GOVERNMENT & ANOR (2016) LPELR-41066 (CA) Pg.28-29, Paras. F - C and the decision in ADEKUNLE Vs. A. G. OF OGUN STATE (2014) LPELR-22569 (CA) Pg, 36-37,Paras. B - D*** where it was held that:

"...Indeed, the Appellant has the burden to prove by cogent convincing and credible evidence, the facts as alleged by him, as construing the breach or infringement of the Fundamental right to freedom from inhuman and

degrading treatment or torture as guaranteed him by Section 34(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria . General and wide allegations of such breach or infringement will not suffice..."

The question of infringement of fundamental rights is largely a question of fact and does not so much depend on the dexterous submissions of counsel on the law. It is the facts as disclosed in the affidavit evidence that is actually examined, analysed and evaluated to see if the fundamental rights have been breached.

In the instant case, I am of the view that ***the Applicant has not discharged the burden on him to establish that his fundamental rights were breached by the respondent on the 8th day of March 2019 at the Area Command of the Nigeria Police Uromi. Consequently, the sole issue for determination is resolved against the Applicant.***

The application is dismissed with N50, 000.00 (fifty thousand naira) costs in favour of the Respondent.

P.A.AKHIHIERO
JUDGE
04/02/21

COUNSEL:

DR. P.E.AYEWOH ODIASE ESQ……APPLICANT

O.M.OKOEKOH ESQ…….…..... RESPONDENT