

**IN THE HIGH COURT OF JUSTICE**  
**OF EDO STATE OF NIGERIA**  
**IN THE UROMI JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**

**BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,**

**ON THURSDAY THE**  
**30<sup>TH</sup> DAY OF JANUARY, 2025**

**BETWEEN**

**SUIT NO: HCU/19/2010**

**1. MR. CHRISTOPHER ODION AYENGBE**

**2. MR. TIMOTHY UKPOZI**

**CLAIMANTS**

**AND**

**1. MR ANTHONY IBHAGBANLOBHOR**

**2. MR. OBAZE OZIGHO**

-----DEFENDANTS

**3. MR. FRIDAY EHIGHE**

**4. MR. JOSEPH IBHAGBANLOBHOR**

**JUDGMENT**

The Claimants' claims against the Defendants, jointly and severally, are as follows:-

- 1) A declaration that the imprisonment of the Claimants by the Defendants from the 18<sup>th</sup> day of October to the 23<sup>rd</sup> day of October 2009 and from the 19<sup>th</sup> of November to 21<sup>st</sup> of November 2009 at the Esan Area Police Command Irrua and the Divisional Police Headquarters Uromi respectively, is false, oppressive, lawless and unjustifiable;***
- 2) The sum of N100,000,000.00 (One hundred Million Naira) being general and exemplary damages for false imprisonment of the Claimants by the Defendants from the 18<sup>th</sup> day of October to the 23<sup>rd</sup> of***

*October 2009 and from the 19<sup>th</sup> November to 21<sup>st</sup> of November 2009, without lawful justification;and*

- 3) A perpetual injunction restraining the Defendants from further interfering with the Claimants' liberty in any manner whatsoever without reasonable cause.*

The Defendants on their part filed their Statement of Defence to the Claimants' Claims and Counter-Claimed against the Claimants individually as follows:

**1) COUNTER-CLAIM BY 2<sup>ND</sup> DEFENDANT I.E. MR. OBAZE OZIGHO**

- a) Declaration that the arrest and detention of the 2<sup>nd</sup> Defendant at the Area Police Command, Irrua, from the 26<sup>th</sup> to the 27<sup>th</sup> day of October, 2009 at the instance of the 1<sup>st</sup> Claimant was unprovoked, unlawful and unjustified;*
- b) The sum of N10,000,000.00 (Ten Million Naira) being general damages for the unlawful arrest, detention and/or false imprisonment of the 2<sup>nd</sup> Defendant at the Police Area Command, Irrua from 26<sup>th</sup> to 27<sup>th</sup> day of October, 2009 at the instance of the Claimants on the aforesaid date and time; and*
- c) An order of injunction restraining the Claimants and their agents from further harassing, terrorizing, unlawful imprisoning and interfering with the 2<sup>nd</sup> Defendant's rights to freedom and personal liberty in any way whatsoever.*

**2) COUNTER-CLAIM BY 3<sup>RD</sup> DEFENDANT I.E. MR. FRIDAY EHIGHE**

- a) Declaration that the arrest and detention of the 3<sup>rd</sup> Defendant at the Area Police Command, Irrua, from the 26<sup>th</sup> day to 27<sup>th</sup> day of October, 2009 at the instance of the Claimants was unprovoked, unlawful and unjustified;*
- b) The sum of N10,000,000.00 (Ten Million Naira) being general damages for the unlawful arrest, detention and/or false imprisonment of the 3<sup>rd</sup> Defendant at the Police Area Command, Irrua from the 26<sup>th</sup> to 27<sup>th</sup> day of October, 2009 at the instance of the Claimants on the aforesaid date and time;*
- c) A declaration that the assault and battery inflicted upon the 3<sup>rd</sup> Defendant by the 1<sup>st</sup> and 2<sup>nd</sup> Claimants on 19/11/2009 is unprovoked, unlawful and unjustified;*

- d) The sum of N10,000,000.00 (Ten Million Naira) being general damages for the assault and battery inflicted on the 4<sup>th</sup> Defendant by the 1<sup>st</sup> and 2<sup>nd</sup> Claimant at Uromi on the 19/11/2009 as stated above; and*
- e) An order of injunction restraining the Claimants and their agents from further harassing, terrorizing, unlawful imprisoning and interfering with the 3<sup>rd</sup> Defendant's rights to freedom and personal liberty in any way whatsoever.*

**3) COUNTER-CLAIM BY 4<sup>TH</sup> DEFENDANT I.E. MR. JOSEPH IBHAGBANLOBHOR**

- a) Declaration that the arrest and detention of the 4<sup>th</sup> Defendant at the Area Police Command, Irrua, on the 28<sup>th</sup> day of October, 2009 at the instance of the 1<sup>st</sup> Claimant was unprovoked, unlawful and unjustified;*
- b) The sum of N10,000,000.00 (Ten Million Naira) being general damages for the unlawful arrest, detention and/or false imprisonment of the 4<sup>th</sup> Defendant at the Police Area Command, Irrua on 28<sup>th</sup> day of October, 2009 at the instance of the Claimants particularly the 1<sup>st</sup> Claimant on the aforesaid date and time; and*
- c) An order of injunction restraining the Claimants and their agents from further harassing, terrorizing, unlawful imprisoning and interfering with the 4<sup>th</sup> Defendant's rights to freedom and personal liberty in any way whatsoever.*

At the hearing, the 1<sup>st</sup> and 2<sup>nd</sup> Claimants testified and called two witnesses. The Defendants called one witness O.M Okoekoh Esq. and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants testified on their own behalf and called one witness.

In a nutshell, the Claimants' case as can be deduced from the evidence at the trial is that on the 18th day of October, 2009 the Defendants wrote a petition against the 2<sup>nd</sup> Claimant and himself, to the Esan Area Police Command, Irrua over threat to life in respect of a land dispute between the Claimants and the Defendants.

They alleged that arising from the said petition; the Claimants were arrested and detained in the cell from 18th to 23rd October, 2009 before they were released at the Esan Area Police Command Irrua.

According to them, at the Area Command at Irrua, the police discovered that it was a land matter so the parties were advised to seek the intervention of the elders of the Umonkhomon Quarters for them to mediate and settle the parties.

The Claimants alleged that subsequently, the Defendants wrote another petition to the State Criminal Investigation Department, Benin-City against them accusing them of having committed some offences.

They alleged that on the basis of the said petition by the Defendants, some policemen came to Uromi from Benin-City for the purpose of effecting their arrest and when they did not meet them, they arrested three of their relations to wit: Godday Odion Ayengbe (CW1), Stanley Okitikpikpa (CW2) and Peter Okitikpikpa and they were detained for three days in police cell before they were eventually released on bail.

The Claimants alleged that the Defendants further wrote a petition against them to the office of the Inspector-General of Police, Abuja alleging threat to life, intimidation and harassment and on the basis of the petition, policemen from the IGP's monitoring Unit Abuja sent a signal to the Divisional Police Headquarters, Uromi through the State Police Headquarters, Benin-City for the arrest and detention of the Claimants.

They said that as a result of the said signal, the Claimants and some other persons were detained at the Divisional Police Headquarters, Uromi from the 19<sup>th</sup> to the 21<sup>st</sup> of November, 2009.

The Claimants alleged that they were eventually released on bail by the Policemen from the Inspector-General's Monitoring Unit Abuja on the 21st of November, 2009 after searching their various houses without anything incriminating found therein.

The Claimants maintain that the Defendants had no reasonable cause to instigate their aforesaid arrests and detentions over a land dispute and that the arrests and detentions at the instance of the Defendants are false, oppressive and unjustifiable.

Furthermore, they alleged that they have suffered unjust humiliation and confinement as a result of the actions of the Defendants.

In defence of this suit and in proof of their counter-claim, the Defendants led their own evidence.

Summarily, in their evidence, the Defendants maintained that they did not cause the arrest and detention of the Claimants at the Police cell of the Esan Area

Police Command, Irrua and at the Divisional Police Headquarters, Uromi as alleged by the Claimants.

Furthermore, they maintained that they do not have any land dispute or direct personal conflict with the Claimants that would have warranted them to be arrested and detained by the Defendants. They denied writing any petition against the Claimants to the Area Command, Irrua or to the I.G.P's Office in Abuja.

They alleged that it was the Elders of Umonkhomhon Quarters/Community, Efandion, Uromi and not the Defendants who forwarded a complaint to the Esan Police Area Command, Irrua, dated the 22/10/2009 against the 1st Claimant and his gangs whom they alleged were terrorizing the members of the community.

The Defendants alleged that the Elders' complaint to the Police was never acted upon by the Police before the Claimants used the Office of one (A.S.P Igboji 2 i/c) at the Esan Area Police Command, Irrua to effect the arrest of some of the Defendants on the 26th of October, 2009.

The Defendants alleged that it was when the Police at Esan Area Command refused to respond to their complaint that the Umonkhonmhon Elders and one Anthony Egbadon made a complaint dated 29th day of October, 2009 titled: **“A call to rescue the Umonkhonmhon community now”** to the Commissioner of Police, Edo State Police command.

According to the Defendants, based on a petition to the AIG Zone 5, Benin City, by the Claimants, the matter was transferred to the office of the A.I.G Zone 5 Benin City.

The Defendants alleged that at the AIG's office, they were arrested and detained at the instance of the Claimants and this prompted the Elders of Umonkhonmhon and one Anthony Egbadon to petition to the Inspector General of Police in Abuja for his intervention and rescue.

The Defendants maintain that the petitions to the police were all by the Elders of the Umonkhonmhon Community and not by themselves personally.

They alleged that the 1<sup>st</sup> and 2<sup>nd</sup> Claimants were arrested and detained by the Policemen at Uromi in the evening of the 19th day of November, 2009, when they waylaid and assaulted the 4<sup>th</sup> Defendant along Convent Road, Uromi.

The Defendants alleged that the Police at Abuja invited some of the parties excluding the 1<sup>st</sup> and 4<sup>th</sup> Defendants for interview. They said that the Police investigators from Abuja visited the scene of crime where the 1<sup>st</sup> and 2<sup>nd</sup> Claimants allegedly chased some of the Defendants and Umonkhonmhon people with cutlasses from their farms with the help of hired thugs using lethal weapons.

The Defendants maintained that the Claimants were never arrested and detained at their instance, but that the Claimants caused the arrest and detention of the Defendants.

They alleged that they were the ones who were wrongfully and unlawfully assaulted, battered, humiliated, harassed, arrested and detained by the Claimants.

They said that they suffered damages and incurred monetary expenses, resulting in economic losses, emotional pains and psychological distress.

Upon the conclusion of their evidence, the learned counsel for both parties filed their final written addresses which they adopted as their final arguments in support of their respective cases.

In his final written address, the learned counsel for the Defendants/Counter-Claimants, *R.E. Orukpe Esq.* formulated two issues for determination which he argued seriatim.

**ISSUE 1:**

***Whether the Claimants have proved their case on the balance of probabilities or on the preponderance of evidence as required by law as to entitle them to the grant of the reliefs sought by them as per their claim in this suit?***

Arguing this first issue, learned counsel submitted that the Claimants have failed to prove their claims to enable the Court to grant their reliefs.

He submitted that in a claim for damages for false imprisonment, where the Claimants alleged that they were arrested and detained by the Police pursuant to a complaint by the Defendants, the Claimants must prove amongst other things:-

1. That he or she was arrested and detained by the Police;
2. That his/her arrest and detention was at the instance of the defendant(s);  
and

3. That the alleged report to the Police by the Defendant was not based on reasonable and probable cause.

He posited that the Claimant(s) must prove that it was the Defendants, as in this case, who were actively instrumental in setting the law in motion against the Claimants. For this proposition, he relied on the case of *Totor vs. Aweh (2000) 2 NWLR (Pt. 644) at page 309 – 321*.

He submitted that Claimants must prove that the Defendants took more steps in ensuring that the Police detained the Claimants and he relied on the case of *MANDILAS & KARABERIS VS APENA (1969) ALL NLR 382 at 385*.

He submitted that in the instant case, the Claimants were unable to demonstrate by credible evidence that it was the Defendants who were actively instrumental in setting the law in motion against them, or show that apart from lodging the complaint against them with the Police, the Defendants took more steps in ensuring or directing the Police to arrest and detain them.

Furthermore, learned counsel submitted that the facts contained in the Claimant's pleadings and written statements on oath are manifestly contradictory and at variance with their oral evidence before this Honourable Court and therefore cannot support their claim as formulated.

He submitted that the Statement of Claim and the evidence adduced by the Claimants did not prove that the Defendants caused the Police to arrest and detain the Claimants as alleged by the Claimants in their claim.

He submitted that the kernel of the Claimants' Claim for damages for false imprisonment in this case is that the Defendants wrote petitions to the Police and caused the Police to arrest and detained the Claimants. He contended that the pieces of evidence adduced by the Claimants and their witnesses were contradictory and do not support the Claimants' case.

Learned counsel posited that with respect to the alleged arrest and detention of the Claimants from the 18<sup>th</sup> to 23<sup>rd</sup> October, 2009, that the 2<sup>nd</sup> Claimant under cross examination stated that himself and other Claimants in this case were arrested and detained in Police cell at the Esan Area command Irrua from 18<sup>th</sup> day of October to the 23<sup>rd</sup> day of October, 2009 and that their arrest and detention was consequent upon the petition written against them by one Monday Obuebhor. He said that by that piece of evidence, the 2<sup>nd</sup> Claimant exonerated the Defendants from any liability with respect to the alleged arrest

and detention of the Claimants by the Police from the 18<sup>th</sup> to the 23<sup>rd</sup> October 2009 at the Esan Area Police Command, Irrua.

Furthermore, with respect to the alleged arrest and detention of the Claimants at the Divisional Police Headquarters, Uromi from the 19<sup>th</sup> day of November to the 21<sup>st</sup> day of November, 2009, learned counsel submitted that the 1<sup>st</sup> Claimant in his testimony under cross examination stated that he was arrested and detained in Police Cell at A.I.G. Zone 5, Benin City from the 18<sup>th</sup> to 23<sup>rd</sup> November, 2009 and that he was never arrested and detained by the Police either at Abuja or Uromi and that he was only arrested and detained by the Police at Irrua and Benin City. He said that the above evidence of the 1<sup>st</sup> Claimant contradicted the evidence of the 2<sup>nd</sup> Claimant and the Claimants' witness in this case where they stated that the Claimants were all arrested and detained together at the Divisional Police Headquarters, Uromi from the 19<sup>th</sup> day of November to the 21<sup>st</sup> day of November 2009.

He maintained that the implication of the above stated evidence of the 1<sup>st</sup> Claimant is that the Claimants' claim as per the relief in their claim to the effect that they were all detained in Police cell at the Divisional Police Headquarters Uromi from the 19<sup>th</sup> to 21<sup>st</sup> of November, 2009 cannot be sustained in the face of the evidence of the 1<sup>st</sup> Claimant that within the said period of time, he was in detention at A.I.G. Zone 5, Benin City.

On the issue of the alleged arrest and detention of the Claimants, he posited that the Claimants witness, the CWI stated under cross examination that the Police that came from Uromi to effect the arrest of the Claimants on the 20<sup>th</sup> November, 2009 said that they were acting under the directive and signal from Inspector General of Police Office, Abuja to arrest the Claimants. He said that the evidence of the CWI contradicted that of the 1<sup>st</sup> and 2<sup>nd</sup> Claimants under cross-examination where they both stated that the 1<sup>st</sup> Defendant called Police from Irrua to arrest the Claimants in this case.

Furthermore, counsel submitted that beyond the bare assertion by the Claimants that they were arrested and detained by the Police at the behest of the Defendants, the Claimants never called any witness or tendered any document including bail bond to prove the fact of their alleged arrest and detention by the Police as stated above.

He submitted that the evidence of the Claimants does not accord with common course of business because it is most unlikely that persons who were allegedly



detained for about 3 – 4 days for an alleged felony were released without filling or signing a bail bond.

He therefore urged the Court to dismiss the Claimants' case with respect to their alleged arrest and detention.

On the Claimants' claim for the sum of N100, 000,000.00 (One Hundred Million Naira) for damages for false imprisonment, counsel submitted that the claim should be refused since the Claimants have failed to prove any unlawful arrest.

**ISSUE 2:**

This issue relates to the Defendants' counter-claim. Counsel submitted that the evidence adduced by the Defendants in support of their respective counter claims were very convincing and remained unshaken and unchallenged even under cross-examination.

He posited that the evidence of the arrest and detention of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants were corroborated first by the 1<sup>st</sup> Claimant when he admitted under cross examination that he called the Police from the Esan Area Command to arrest and detain the Defendants for the alleged destruction of his crops.

Furthermore, he maintained that the 2<sup>nd</sup> Claimant stated under cross examination that it was the 1<sup>st</sup> Claimant that arrested the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants in this case with Police at Esan Area Police Command, Irrua.

He submitted that the evidence of the Claimants with respect to the arrest and detention of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants respectively in this case amounts to an admission of liability and it is trite law that facts admitted need no further proof. For the above proposition of the law, he relied on the case ***OGAR & OTHERS vs IGBE & OTHERS (2019) LPER – SC. 275/2009 at P. 11 PARAS A – B.***

He further submitted that the Claimants who were duly served with the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants' counter-claim in this suit did not bother to respond to the Counter-Claim by filing a Reply in Defence to the said Counter-Claim by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants' Counter-Claimants in this suit.

He therefore submitted that it is trite law that where a Claimant is served with a Counter-Claim by the Defendant and the Claimant(s) fail to file a defence or

reply to the said Counter-Claim, the Court is obliged to take it that such a Claimant(s) have either admitted such facts or that he has no defence to the issues thereby raised. For this proposition, he relied on the cases of ***IWOHA & ANOR VS NIPOST LTD & ANOR (2003) 8 NWLR PT. 822 AT P. 308 RATIO 5; USMAN VS GARKE (2003) 14 NWLR PT. 840 AT P. 261 RATIONALES 6, 7 AND 8; and OKOEBOR vs POLICE COUNCIL (2003) 12 NWLR PT 834 at P. 444.***

In conclusion, he urged the Court to grant the Counter-Claims of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants and dismiss the Claimants' claims.

In his final written address, the learned counsel for the Claimants, ***B.E. Emiowe Esq.*** formulated a sole issue for determination as follows:

***Whether the Claimants have proved their case on the balance of probabilities entitling them to the judgment of this Honourable Court?***

Arguing the sole issue, the learned counsel submitted that the Claimants have led cogent and credible evidence in proof of their claim before this Honourable Court.

He posited that the 1<sup>st</sup> Claimant maintained under cross-examination that he was invited to Force Headquarters, Abuja vide Exhibit B and further told the Court that the police from Force Headquarters informed him that there was a petition against him and the said petition was only read to him by the police. He said that the 1<sup>st</sup> Claimant denied knowing Mr. Anthony Egbadon.

He reproduced the evidence of the Claimants at the trial and submitted that the evidence revealed that it was on the basis of the petition written against them by the Defendants that they were detained.

He submitted that the evidence revealed that the 1<sup>st</sup> and 2<sup>nd</sup> Claimants were in the police cell for about five days at Area Command Police Cell Irrua based on the petition of the Defendants.

He posited that the evidence of the 1<sup>st</sup> and 2<sup>nd</sup> Claimants and their witnesses pointed to the irresistible conclusion that the 1<sup>st</sup> and 2<sup>nd</sup> Claimants were actually arrested and detained in the police cell for days through a petition written at the instance of the Defendants over threat to their lives and the Claimants were also portrayed as criminals.

He said that the police investigation later revealed that it was a land dispute between the Claimants and the Defendants. He submitted that **section 4 of the Police Act 2020 Act No. 2** which spelt out the primary functions of the police did not empower them to investigate land matters.

Counsel posited that throughout the evidence of the 4<sup>th</sup> Defendant, he never mentioned that he was arrested. He said that it was the DW1 who alleged that he came to solicit for his bail. He submitted that evidence of DW1 should be taken with a pinch of salt because he is a tainted witness who has his own purpose to serve. He referred the Court to the case of ***Ojo V Gharoro (2006) 2 – 3SC 105 at 124*** on the definition of a tainted witness. He also referred to the case of ***Olaiya V State (Supra) at page 47, ratio 6.***

He urged the Court to hold that the Defendants were never arrested let alone being detained at the instance of the 1<sup>st</sup> Claimant.

He submitted that the arrest and detention of the Claimants over a land matter amounted to a false arrest and false imprisonment which was masterminded and instigated by the Defendants.

He maintained that the arrest of the Claimants was lawless and unjustifiable. He said that the Defendants ought to have instituted a civil action over land against the Claimants instead of using the instrumentality of the Police against them.

He submitted that in an action for false imprisonment, the liability lies not in the fact of a report or complaint to the police simpliciter, but in the consequence and he cited the case of ***FBN PLC. V Onukwugha (2005) 16 NWLR Part 950 page 120 at page 121 ratio 3.***

He maintained that the Defendants did not only make a false report to the police in the various police formations where the Claimants were arrested and detained but were also very instrumental in setting the law in motion as this was ably demonstrated when the CW1 and CW2 went to Police Area Command Irrua to secure the 1<sup>st</sup> and 2<sup>nd</sup> Claimants' bail and the Defendants boasted that the Claimants will not be released on bail until they instruct the police to do so.

He submitted that to succeed in an action for false imprisonment, the Claimant must establish that the Defendant was instrumental in setting the law in motion and he cited the case of ***FBN PLC. V Onukwugha (Supra) ratio 2.***

## **CLAIMANTS' RESPONSE TO THE DEFENDANTS/COUNTER CLAIMANTS' ADDRESS**

Counsel submitted that Claimants led evidence to show that the Defendants boasted that the Claimants will not be released and they were actually not released. He therefore submitted that the Defendants cannot exonerate themselves from liability.

He submitted that the 2<sup>nd</sup> Claimant never stated that it was one Monday Obuebhor that wrote a petition against them.

Furthermore, he maintained that the 1<sup>st</sup> Claimant never stated that he was arrested and detained in the police cell at A.I.G Zone 5, Benin City from 18<sup>th</sup> to 23<sup>rd</sup> November, 2009.

He submitted that the address of counsel cannot be a substitute for evidence and cited the following cases: *Oyekan V Akinwumin (1996) 40/41 LRON Page 1387 at 1391 ratio 2. See also Usman Dan Fodio University, Sokoto V Balogun (2006) ALL F.W.L.R (Part 325) Page 166 at ration 2 and Citizens International Bank Ltd V SCOA (Nig) Ltd (2006) ALL FWLR (Part 323) Page 1686 ratio 8.*

Counsel posited that the submissions of the Defendants are misleading. He said that the Claimants never called any witness named Godday Ukpozi.

He submitted that although he is not conceding that the 1<sup>st</sup> Claimant caused the arrest of the 4<sup>th</sup> Defendant, his arrest was justified because he was arrested for destroying the 1<sup>st</sup> Claimant's crop which is a criminal offence.

Furthermore, he posited that the Defendants have nothing to show that they were actually arrested. He said that they did not tender any bail bond to that effect.

Counsel submitted that the evidence of the Defendants/Counter-Claimants are at variance with one another. That while the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Counter-Claimants stated that they were arrested from the 26/10/2009 to 27/10/2009, the 4<sup>th</sup> Defendant told the court that he was arrested to the Esan Police Area Command, Irrua on the 28<sup>th</sup> of October, 2009 with other defendants except the 1<sup>st</sup> Defendant. He referred the Court to paragraph 4 of the 4<sup>th</sup> Defendant's statement on oath dated and filed on the 12/11/2020.

Again, he posited that the 4<sup>th</sup> Defendant in paragraph 3 of his statement on oath told the court that he was arrested on the 28/10/2009 and he was taken on bail same day but in paragraph 19(b) of the Amended Joint Statement of Defence/Counter-claim, they pleaded that he was arrested and detained on 27/10/2009 and was only released on 28/10/2009.

He submitted that the Court cannot pick and choose from such conflicting evidence and he cited the case of *Ikpeazu V Otti & Ors (2016) Vol. 254 LRCN Page 1 at 14 ratio 15*.

On the issue of the alleged assault and battery allegedly inflicted on the 3<sup>rd</sup> Defendant by the Claimants, he submitted that the 3<sup>rd</sup> Defendant/Counter Claimant failed to prove same.

He urged the Court to dismiss the Counter-Claim for being frivolous and lacking in merit.

I have carefully considered the evidence adduced by the parties in this suit, the issues for determination formulated by them and the arguments of the learned counsel for the parties. The issues for determination formulated by the parties appear quite germane to the determination of this suit so I will condense them into two issues as follows:

- 1. WHETHER THE CLAIMANT HAS PROVED HIS CLAIM ON THE BALANCE OF PROBABILITY TO ENTITLE HIM TO THE RELIEFS SOUGHT; and**
- 2. WHETHER THE DEFENDANTS/COUNTER-CLAIMANTS HAVE PROVED THEIR COUNTER-CLAIMS ON THE BALANCE OF PROBABILITY TO ENTITLE THEM TO THE RELIEFS SOUGHT.**

I will proceed to resolve the two issues *seriatim*.

**ISSUE 1:**

**WHETHER THE CLAIMANT HAS PROVED HIS CLAIM ON THE BALANCE OF PROBABILITY TO ENTITLE HIM TO THE RELIEFS SOUGHT.**

It is settled law that in civil actions, the burden of proof is on the party who asserts a fact, to prove same. The standard of proof required is on the preponderance of evidence and the balance of probabilities. See the cases of:

***Longe vs. F.B.N. Plc. (2006) 3 NWLR (Pt.967) 228; and Udo vs. Essien (2015) 5 NWLR (Pt.1451) 83 at 87.***

It is trite that in a claim for unlawful arrest and detention, the burden is on the Claimant to establish that the Defendant made a report against him and that there was no reasonable and probable cause for making such a report. See the cases of ***EMERE VS. ANACHUNA (2018) LPELR - CA/E/34/2012 at 16 - 17 Paragraphs F - A; SPDC VS. PESSU (2014) LPELR - CA/B/356/2006 at 97 Paragraphs A - D; and GUSAU VS. UMEZURIKE (2012) 28 WRN 111 at 140 - 141.***

The onus lies on a Claimant who alleges that he was arrested and detained to show that the Defendant set the law in motion against him and was actively instrumental to his arrest and detention. See the case of ***DOMINIC OKWECHE v. JAMES OCHICHE & ORS (2022) LPELR-56542(CA).***

In the instant suit, the Claimant's case is that the Defendants were actively instrumental to his arrest and detention at the Esan Area Police Command Irrua and the Divisional Police Headquarters Uromi from the 18<sup>th</sup> day of October to the 23<sup>rd</sup> day of October 2009 and from the 19<sup>th</sup> of November to 21<sup>st</sup> of November 2009.

At the hearing, the Claimants alleged that on the 18th day of October, 2009 the Defendants wrote a petition against them, to the Esan Area Police Command, Irrua over threat to life in respect of a land dispute between the Claimants and the Defendants.

They alleged that arising from the said petition; they were arrested and detained at the Esan Area Police Command Irrua from 18th to 23rd October, 2009 before they were released.

They alleged that subsequently, the Defendants wrote another petition to the State Criminal Investigation Department, Benin-City and to the office of the Inspector-General of Police, Abuja alleging threat to life, intimidation and harassment and on the basis of the petition, policemen from IGP's monitoring Unit Abuja sent a signal to the Divisional Police Headquarters, Uromi through the State Police Headquarters, Benin-City for the arrest and detention of the Claimants. They said that as a result of the said signal, the Claimants and some other persons were detained at the Divisional Police Headquarters, Uromi from the 19<sup>th</sup> to the 21<sup>st</sup> of November, 2009.

In their defence, the Defendants vehemently denied that they instigated the police to arrest and detain the Claimants. They maintained that it was the Elders of Umonkhomhon Quarters/Community in Efandion, Uromi who forwarded a complaint to the Esan Police Area Command, Irrua against the 1<sup>st</sup> Claimant and his gangs whom they alleged were terrorizing the members of the community.

At the trial, it is pertinent to note that under cross examination, the 2<sup>nd</sup> Claimant made some salient statements about one of the complaints to the police which prompted their first arrest and detention. He stated as follows: *“In my deposition, I stated that I was arrested on an allegation of threat to life. The petition was read over to me. I was told that one Monday Obuebhor wrote the petition against me. The petition was against me and the other Claimants at the Area Command, Irrua. It was because of that petition that we were detained from 18<sup>th</sup> of October to 23<sup>rd</sup> of October, 2009.”*

From the above statement, it is apparent that it was one Monday Obuebhor who allegedly made the report and not the Defendants. I agree with the submission of the learned counsel for the Defendant that by that piece of evidence, the 2<sup>nd</sup> Claimant exonerated the Defendants from any liability with respect to the alleged arrest and detention of the Claimants by the Police from the 18<sup>th</sup> to the 23<sup>rd</sup> October 2009 at the Esan Area Police Command, Irrua.

Furthermore, with respect to the alleged arrest and detention of the Claimants at the Divisional Police Headquarters, Uromi from the 19<sup>th</sup> day of November to the 21<sup>st</sup> day of November, 2009, as the Defendant’s counsel rightly pointed out, the 1<sup>st</sup> Claimant in his testimony under cross examination stated that he was arrested and detained by the Police at Irrua and Benin City. There is nothing to substantiate their claim that they were arrested and detained at the Divisional Police Headquarters, Uromi from the 19<sup>th</sup> day of November to the 21<sup>st</sup> day of November 2009. Thus, the claim in respect of the alleged second arrest has not been proved.

Unfortunately, the Claimants did not tender any police extract to show that any of the Defendant made any official report which prompted the police to arrest and detain the Claimants as alleged.

With the state of the evidence, I hold that the Claimants have not discharged the onus on them to prove that the Defendants set the law in motion against them and were actively instrumental to their alleged arrests and detentions. See the case of ***DOMINIC OKWECHE v. JAMES OCHICHE & ORS (2022) supra.***

Issue one is therefore resolved against the Claimants.

**ISSUE 2:**

***WHETHER THE DEFENDANTS/COUNTER-CLAIMANTS HAVE PROVED THEIR COUNTER-CLAIMS ON THE BALANCE OF PROBABILITY TO ENTITLE THEM TO THE RELIEFS SOUGHT.***

It is settled law that a Counter-Claim is a claim which must be proved to the satisfaction of the Court as required by law, as well. The onus of proof lies on the Counter-Claimant to prove his claim and the standard of proof is on the preponderance of evidence; See *UNOKAN ENT. LTD V. OMUVWIE (2005) 1 NWLR (PT. 907) 293, USMAN V. GARKE (2003) 14 NWLR (PT. 840) 261 an OGBONNA V. A.G. IMO STATE (1992) 1 NWLR (PT. 220) 647.*

In their counter-claims, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants are seeking various reliefs against the Claimants for instigating the police to arrest and detain them unlawfully.

In proof of their counter-claim, the Defendants alleged that the Elders of Umonkhomhon Community forwarded a complaint to the Esan Police Area Command, Irrua against the 1st Claimant and his gangs whom they alleged were terrorizing the members of the community.

According to them, when the Police at Esan Area Command refused to respond to their complaint, the Umonkhonmhon Elders and one Anthony Egbadon made a complaint dated 29th day of October, 2009 titled: “**A call to rescue the Umonkhonmhon community now**” to the Commissioner of Police, Edo State Police command.

According to the Defendants, based on a petition to the AIG Zone 5, Benin City, by the Claimants, the matter was transferred to the office of the A.I.G Zone 5 Benin City.

The Defendants alleged that at the AIG’s office, they were arrested and detained at the instance of the Claimants and this prompted the Elders of Umonkhonmhon and one Anthony Egbadon to petition to the Inspector General of Police in Abuja for his intervention and rescue.

The Defendants/Counter-Claimants maintain that the evidence of the arrest and detention of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants were corroborated first by the 1<sup>st</sup>



Claimant when he admitted under cross examination that he called the Police from the Esan Area Command to arrest and detain the Defendants for the alleged destruction of his crops.

Furthermore, they maintained that the 2<sup>nd</sup> Claimant admitted under cross examination that it was the 1<sup>st</sup> Claimant that arrested the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants in this case with Police at Esan Area Police Command, Irrua.

In his address, the learned counsel for the Defendants/Counter-Claimants seriously contended that the evidence of the Claimants with respect to the arrest and detention of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants respectively in this case amounts to an admission of liability. He maintained that facts admitted need no further proof.

I must observe that the mere fact that the Claimants admitted that they made some reports against some of the Defendants which led to their arrests and detention is not sufficient proof of their liability to the claims for unlawful arrest and detention.

Generally, it is the duty of citizens of this country to report cases of commission of crime to the Police for their investigation and what happens after such report is entirely the responsibility of the Police. The citizens cannot be held culpable for doing their civic duty unless it is shown that it is done mala fide. See the case of **CHIEF (DR.) O. FAJEMIROKUN v. COMMERCIAL BANK NIGERIA LIMITED & ANOR (2009) LPELR-1231(SC)**.

In the instant case, even if the Claimants made a report which resulted in the arrest and detention of the Defendants, in the absence of any evidence of malice on their part, I think they were acting within their civic duties to make a report to the police in respect of the alleged offences.

Furthermore, when a report is made to the police, the police have discretion on how to conduct their investigations. Where the Police used its own initiative on the strength of their investigations to effect arrest and/or detention of a person within the confines of the law, then no liability would lie against the person who made the complaint to the Police. See the cases of **Prince Brian Emonena & Anor V. Inspector General of Police & Ors (2016) LPELR-41489(CA)**; **Mclaren V. Jennings (2003) 3 NWLR (Pt. 808) 470**; **Ezeadukwa V. Maduka (1997) 8 NWLR (Pt. 518) 1**; and **Ejefor V. Okeke (2000) 7 NWLR (Pt. 665) 367**.

Sequel to the foregoing, I hold that the Defendants/Counter-Claimants have failed to prove that the Claimants actively instigated the police to arrest and detain them in relation to the alleged complaints made by the Claimants against them. Issue two is therefore resolved against the Defendants/Counter-Claimants.

Having resolved issues one and two against the respective parties, I hold that the Claimants' claims and the Defendants' Counter-Claims lack merit and both are dismissed.

***P.A.AKHIHIERO***  
***JUDGE***  
***30/01/2025***

**COUNSEL:**

- 1. B.E. EMIOWE ESQ.....CLAIMANTS***
- 2. R.E. ORUKPE ESQ.....DEFENDANTS/COUNTER-CLAIMANTS***