

**IN THE HIGH COURT OF JUSTICE**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP, HON.JUSTICE P.A. AKHIHIRO**  
**ON WEDNESDAY THE**  
**10<sup>TH</sup> DAY OF DECEMBER, 2025.**

**BETWEEN:** **SUIT NO. B/83<sup>M</sup>/2025**  
**IN THE MATTER OF AN APPLICATION FOR THE ENFORCEMENT OF**  
**A FUNDAMENTAL RIGHT BROUGHT PURSUANT TO THE**  
**FUNDAMENTAL RIGHTS ENFORCEMENT**  
**PROCEDURE RULES 2009**

**SOLOMON ADUN ASEMOTA SAN -----APPLICANT**  
**AND**  
**MEDIA TRUST LTD -----RESPONDENT**

**JUDGMENT**

This judgment in respect of an application for the enforcement of Fundamental Rights brought pursuant to *Order 11 Rule 1 Of The Fundamental Rights (Enforcement Procedure) Rules (2009), Sections 39(1) and 42(1) of the Constitution Of The Federal Republic Of Nigeria 1999 as amended; and Article 9(2) of the African Charter on Human and Peoples Rights (Ratification Enforcement) Act, Cap A9, Laws of the Federation of Nigeria (2004).*

In this Application, the Applicant is praying this Honourable Court for the following Orders:

- 1) A Declaration that despite payment of the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) by the Applicant, being the amount charged by the Respondent, the refusal of the Respondent to*

*publish in its Daily Trust Newspaper, Applicant's article titled "Special Goodwill Message in Honour of General (Dr.) Yakubu Gowon GCFR At 90" as a paid advertisement, constitutes an unjustifiable prior restraint on the Applicant's enjoyment of his freedom of expression, as guaranteed by Section 39(1) of the Constitution of the Federal Republic of Nigeria (1999) as amended and Article 9(2) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation Of Nigeria (2004);*

- 2) A Declaration that the insistence of the Respondent that certain portions of the Applicant's write up, titled "Special Goodwill Message in Honour of General (Dr.) Yakubu Gowon GCFR At 90" be removed or altered, before same can be published by the Respondent, amounts to an unjustifiable censorship of the views and opinions of the Applicant, contrary to the Applicant's right to hold an opinion and share same with other persons, guaranteed by Section 39(1) of the Constitution of the Federal Republic of Nigeria (1999) as amended;*
- 3) A Declaration that the insistence of the Respondent on the removal of certain portions of the Applicant's "Special Goodwill Message in Honour of General (Dr.) Yakubu Gowon GCFR At 90" before same can be published, amounts to discrimination against the Applicant, on the basis of the Applicant's political opinion, contrary to Section 42(1) of the Constitution of the Federal Republic of Nigeria (1999) as amended; and*
- 4) The sum of N250,000,000.00 (Two Hundred and Fifty Million) being damages for the psychological trauma and emotional distress suffered by the Applicant on account of the rejection and unfair judgment passed by the Respondent on the Applicant's opinion, in restraint of the exercise of the Applicant's freedom of expression and the right to hold an opinion and impart his idea on the members of the public, contrary to Section 39(1) and 42(1) of the Constitution of Federal Republic of Nigeria (1999) herein made the subject matter of this application.*

In support of the application, the Applicant filed a 29 paragraphs affidavit and a written address of his counsel.

In the Applicant's affidavit in support of this application, the Applicant narrated the events that culminated in the filing of this application.

Succinctly put, the Applicant's complaint is that recently when General Yakubu Gowon (GCFR) turned 90 years old, he resolved to write a Tribute in his honour,

titled: ***“Special Goodwill Message in Honour of General (Dr.) Yakubu Gowon GCFR At 90” BUILDING A GLOBAL NIGERIA.***

The full text of the Tribute was attached to his affidavit in support of this application as Exhibit “A”.

He stated that he has a constitutional right to freedom of expression, the right to hold an opinion and impart same on other persons, as well as freedom from discrimination on account of the opinion which he holds.

He alleged that sometime in November 2024, he forwarded the aforesaid Tribute to the Respondent for publication in their Daily Trust Newspaper.

He said that he was shocked that after payment of the fee charged, in the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira), the Respondent embarked on censorship of some parts of the Tribute and insisted that certain portions should be amended while some other portions should be deleted.

The Applicant said that he found the Respondent’s prior restraint and censorship of the exercise of his views to be disrespectfully dismissive, most unjustifiable, distasteful, and a source of emotional distress and psychologically traumatic. He attached the side commentaries by the Respondent on the text of his Tribute and the correspondence exchanged between them as Exhibits “B”, “C” and “D” to his supporting affidavit.

In his supporting affidavit he made copious references to the portions of the Tribute which the Respondent found objectionable and explained how the Respondent’s position was infringing on his fundamental rights.

The Applicant asserted that the Respondent as a member of the Press, otherwise recognized as the 4<sup>th</sup> Estate of the Realm, has a peculiar role to play in the exercise and enjoyment of the citizens’ rights to free speech, and to hold an opinion and to disseminate same.

He maintained that the Respondent has acted in breach of his constitutional rights as highlighted above and he has suffered some damages as a result of the Respondent’s action.

In opposition to this Application, the Respondent filed a Counter-Affidavit of nine paragraphs.

In their Counter-Affidavit, the Respondent denied some of the allegations of the Applicant and gave their own version of the transaction.

According to the Respondent, the transaction between the Applicant and the Respondent was simply an attempt to enter a contract. They said that there was

no agreement that a fee of N1,500,000.00 (One Million Five Hundred Thousand Naira) was to be paid for the publication.

According to them, after the Applicant presented its advertorial as worded in his Exhibit “A”, the Respondent sent the publication to their Regional Manager in its Lagos office and from there to their Company Secretary/ Legal Adviser who scrutinized same and suggested the need to edit same before publication as contained in Exhibit “B” attached to the Applicant’s affidavit.

The Respondent explained that the Applicant unilaterally forwarded a cheque in the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) purporting to make payment for the publication and requesting that the advertorial be published as he had initially submitted it.

They said that no fee or multiple of the Respondent’s fee for advertorials amounts to N1,500,000.00 (One Million, Five Hundred Thousand Naira). They attached a copy of the current advert rate of the Respondent as Exhibit “A” to their Counter-Affidavit.

They stated that in response to the Applicant’s letter of 1<sup>st</sup> November 2024, the Respondent on the 12<sup>th</sup> of November 2024 wrote to the Applicant reiterating that it could not publish the advertorial without the amendment as it was of the considered view that some words contained therein were actionable.

They further told him they would go ahead with the publication if he agreed to the suggested amendment and if he was willing to fill their indemnity form to shield them from liability if there was any occasion by the publication of the advertorial. They attached a copy of the Respondent’s letter of 12<sup>th</sup> November, 2024 as Exhibit “B” to their Counter-Affidavit.

They alleged that while awaiting the Applicant’s response, the Respondent did not present the Applicant’s cheque for payment to its bankers and never took value for same. The copy of the unpresented banker’s cheque was attached as Exhibit “C” to their Counter-Affidavit.

Furthermore, they alleged that by the said letter of 12<sup>th</sup> November, 2024, the Applicant was also advised to contact one Taofeek Oyeniya a branch regional manager of the Respondent for further enquiry and to fill their indemnity form but he never did.

They maintain that the filling of the indemnity form by the customer is a prerequisite for accepting the customer’s advertorial for publication.

He said that there was no *consensus ad idem* between the Applicant and the Respondent as regards publishing the advertorial. He said that the parties never agreed on the amount to be paid for the advertorial, neither did they agree on or the suggested portions to be edited.

The Respondent stated that by the Applicant's letter dated 1<sup>st</sup> November, 2024, attached to his supporting affidavit as Exhibit "C", the Applicant submitted the same write-up to Vanguard and Leadership newspapers, and they published same on 26/10/24.

They said that the internal checks of the Respondent prior to its publication of any advertorial are unique to it. They denied any infringement on the Applicant's right to freedom of opinion and free speech, and they maintained that the Respondent has a right to accept or reject any material submitted to it for publication.

Upon receipt of the Respondents' Counter-Affidavit, the Applicant filed a Further Affidavit and a Reply on Points of Law.

In his Further Affidavit, the Applicant denied some paragraphs of the Respondents' Counter-Affidavit and maintained that the Respondent violated the Applicant's fundamental rights.

The learned counsel for the parties articulated their arguments in their written addresses.

In his written address in support of this application, the learned counsel for the Applicant, **Dr. O.O. Obayuwana** formulated three issues for determination as follows:

- 1) Whether the insistence by the Respondent that certain portions of the Applicant's article titled "Special Goodwill Message in Honour of General (Dr.) Yakubu Gowon GCFR At 90" be removed or altered before same can be published by the Respondent, does not amount to a violation of the Applicant's right to freedom of expression and the right to hold an opinion and share same with other persons, as guaranteed under Section 39(1) of the Constitution of the Federal Republic of Nigeria (1999) as amended;***
- 2) Whether the refusal of the Respondent to publish the Applicant's article titled "Special Goodwill Message in Honour of General (Dr.) Yakubu Gowon GCFR At 90" does not amount to discrimination against the Applicant on the basis of his political opinion, contrary to Section 42(1) of the Constitution of the Federal Republic of Nigeria (1999) as amended; and***

**3) Whether the Applicant is not entitled to the damages sought.**

Thereafter, the learned counsel argued the three issues seriatim.

**ISSUE ONE**

***Whether the insistence by the Respondent that certain portions of the Applicant's article titled "Special Goodwill Message in Honour of General (Dr.) Yakubu Gowon GCFR At 90" be removed or altered before same can be published by the Respondent, does not amount to a violation of the Applicant's right to freedom of expression and the right to hold an opinion and share same with other persons, as guaranteed under Section 39(1) of the Constitution of the Federal Republic of Nigeria(1999) as amended.***

Arguing the first issue, the learned counsel submitted that the right to freedom of expression and to hold an opinion and share same with other persons without interference, is a constitutionally guaranteed right of every Citizen of Nigeria, including the Applicant and he referred the Court to the provisions of **Section 39(1) of the Constitution of the Federal Republic of Nigeria (1999)** as amended, which provides as follows:

***Section 39(1): "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference."***

He also referred the Court to **Article 9(2) of the African Charter on Human and Peoples Rights (Ratification Enforcement) Act, Cap A9, Laws of the Federation of Nigeria (2004)** on the right to freedom to express and disseminate opinions, which also provides thus:

***Article 9(2): "Every individual shall have the right to express and disseminate his opinions within the law"***

Learned counsel contended that the Respondent violated the Applicant's right, when it refused to publish in its Daily Trust Newspaper, the Applicant's Tribute to General Yakubu Gowon titled **"Special Goodwill Message in Honour of General (Dr.) Yakubu Gowon GCFR At 90"** on the theme: **"Building a Global Nigeria"**.

Furthermore, he said that the Respondent had charged the Applicant the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira), as advertisement fee, to publish the said article, which the Applicant paid.

He said that despite this payment made by the Applicant, the Respondent insisted that the Applicant must delete certain portions of the article, which are the

Applicant's opinions, before same will be published. He submitted that this is a clear unjustified breach of ***Section 39(1) of the Constitution of the Federal Republic of Nigeria (1999)*** as amended, and ***Article 9(2) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria (2004)***.

Learned counsel referred the Court to paragraphs **23 (A) – (F)** of the Applicant's Affidavit in Support where they identified the six alleged acts of suppression by the Respondent of the Applicant's constitutionally guaranteed right to his freedom of expression, to hold an opinion and disseminate same.

He posited that the opinions of the Applicant were hinged on his assessment of past occurrences in the Nigerian polity, and a quest for a better Nigeria. Furthermore, he said that the opinions of the Applicant on the pervasiveness of corruption were totally justified.

He said that the said statements made by the Applicant, were not attributed to any specific person, and no name of any past or present leader or leaders were mentioned. He maintained that the Applicant's opinion did not in any way put the Respondent in a situation where a lawsuit against it would be anticipated after publication. Even then, he said that the Applicant told the Respondent that he was ready to indemnify the Respondent should any lawsuit arise. He said that despite this, the Respondent still refused to publish the opinions of the Applicant.

He submitted that the Respondent's refusal prevented the Applicant from exercising his fundamental right to freedom of expression and he relied on the case of ***Shaibu & Ors v. Utomwen & Ors (2022) LPELR – 58237 (CA) (Pp. 43 – 44) paras. F*** where the Court held thus:

***“...the right to freedom of expression and the press, as recognised and guaranteed by law, is geared towards the safeguarding of the right of the citizen to impart and receive ideas and information as permitted by law. It therefore, exists to protect the right to seek and receive information for the purpose of disseminating such information and ideas as well as the right to freely express opinions orally or through publications. The real essence of this right therefore, is to guarantee to each citizen the right within the purview of the law to express himself freely without unjustifiable interference.”***

Learned counsel referred to ***Section 39(3) and Section 45(1) of the 1999 Constitution*** which provide as follows:

***Section 39(3) “Nothing in this Section shall invalidate any law that is reasonably justifiable in a democratic society.***

- a. For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of Courts or regulating telephone, wireless broadcasting, television or the exhibition of cinematograph films; or*
- b. Imposing restrictions upon persons holding office under the Government of the Federations or of a State, members of the armed forces of the Federation or member of the Nigeria Police Force or other Government security services or agencies established by law.”*

*Section 45(1) “Nothing in Sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society,*

- a. in the interest of defence, public safety, public order, public morality or public health; or*
- b. for the purpose of protecting the rights and freedom of other persons.*

Counsel maintained that a cursory examination of **Exhibit A** and specifically paragraphs **23(A) – (F)** of the Applicant’s Affidavit in Support, would reveal that there is no part of the article censored by the Respondent, that can be said to be violative of the provisions of *Section 39(3) and 45(1) of the 1999 Constitution* and he urged the Court to so hold.

## **ISSUE TWO**

*Whether the refusal of the Respondent to publish the Applicant’s article titled “Special Goodwill Message in Honour of General (Dr.) Yakubu Gowon GCFR At 90” does not amount to discrimination against the Applicant on the basis of his political opinion, contrary to Section 42(1) of the Constitution of the Federal Republic of Nigeria (1999) as amended*

Arguing this second issue, learned counsel submitted that the refusal of the Respondent to publish the Applicant’s article titled *“Special Goodwill Message in Honour of General (Dr.) Yakubu Gowon GCFR At 90”* amounts to discrimination against the Applicant on the basis of his political opinion, which offends *Section 42(1) of the Constitution of the Federal Republic of Nigeria (1999)* as amended.



He submitted that the Constitution prohibits the discrimination of any person, solely because of his or her political views and/or opinions and he relied on the case of *NMCN v. Adesina (2016) LPELR – 40610 (CA) Pp. 18 – 19, paras. F-D*.

He referred the Court to *Section 42 (1) of the 1999 Constitution* which provides as follows:

***“42 (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person – (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinion are not made subject; or (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.”***

He submitted that the refusal of the Respondent to publish the Tribute amounts to discrimination against the Applicant by the Respondent, on the basis of the Applicant’s political opinions, which the Constitution forbids, and he urged the Court to so hold.

### **ISSUE THREE**

***Whether the Applicant is not entitled to the damages sought***

Learned Counsel submitted that it is trite that where it can be shown that rights have been infringed upon, the person whose rights have been violated shall be entitled to damages on the principle of *“ubi jus, ibi remedium”*.

On the guiding principle for awarding damages for the infringements of rights he referred to the very recent case of *Okibe v. N.D.L.E.A (2024) 5 NWLR (Pt. 1931) 291* where the Court held as follows:

***“In fixing an amount for the infringement of fundamental rights, the following factors, inter alia, may be taken into consideration.- the frequency of the type of violation in (a) times; (b) the continually depreciating value of naira; (c) the motivation for the violation; (d) the status of the Applicant; the undeserved embarrassment meted out to (e) the Applicant including pecuniary losses; and the conduct of the parties generally, particularly (f) the Respondent.”***

He said that the Applicant is 87 years old, a Lawyer of 55 years standing at the Bar, and a Senior Advocate of Nigeria of 39 years standing, who has served this country in many capacities and earned by his status every level of respect for his person and his views.

He maintained that the Respondent did not only humiliate the Applicant, but also subjected him to psychological trauma and distress, which he still suffers from till date.

He relied on the following decisions to press for damages: *G.S.S (Nig) Ltd v. Okpa (2024) 18 NWLR (Pt. 1969) 79 (P. 117, paras. C – D*; and *Arulogun v. C.O.P Lagos & Ors (2016) LPELR – 40190 (CA) (Pp. 20 – 21, paras. D – B)*

Finally, he urged the Court to grant the Applicant's reliefs.

In his written address in opposition to this application, the learned counsel for the Respondent *Olusegun O. Jolaawo SAN*, formulated a sole issue for determination as follows:

***Whether the case made out by the Applicant in this suit is one cognisable under the Fundamental Rights Enforcement Procedure Rules 2009 and whether the reliefs sought are grantable in the circumstances.***

Arguing the sole issue for determination, the learned counsel submitted that it is trite law that an applicant for the enforcement of his fundamental rights under Chapter IV of the Constitution has the initial onus of showing that his claim falls under the purview of the fundamental rights as provided for in Sections 30 - 41 of the *Constitution of the Federal Republic of Nigeria 1999* as amended and he relied on the case of *NWANGWU V DURU (2002) 2NWLR PT 751 CA 265 at 280 PARAS C-G*.

He posited that the following facts are not in dispute between the parties in this suit:

- a) ***The applicant is a private citizen who approached the respondent, a newspaper publisher to engage the Respondent to publish an article as an advertorial in its newspaper, Daily Trust.***
- b) ***The respondent suggested that certain changes be made before it could adjust the article for publication.***
- c) ***The applicant refused to allow the amendments, and the respondent did not publish the article.***

- d) *The applicant got the same article published in two other newspapers but is aggrieved that the respondent did not publish it.*

He maintained that from the above, it is apparent that the relationship between the parties is grounded in contract. He said that the Applicant wanted the Respondent to do a publication for it, but both parties could not agree on what exactly should be published. He said that because of this lack of a *consensus ad idem*, the Respondent did not publish.

He posited that the Respondent being a business venture, they have a right to decide whom to do business with, same as the Applicant. He said that the Respondent also has a right to ensure that whatever it publishes is up to a certain standard or within certain parameters.

He maintained that it is not automatic that the Respondent must publish everything that is submitted to it for publication.

He said that it is after both parties have agreed on all aspects of the publication, particularly the content and the price, amongst other things that the duty to publish becomes binding on the Respondent since there is now a contract between the parties.

He said that in the instant case, the Respondent did not agree to publish the Applicant's article as an advertorial because the Applicant did not agree to the suggested edits and did not fill the Respondent's indemnity form.

He referred to the Applicant's letter of 1<sup>st</sup> November, 2025, (Exhibit C in the Applicant's application) to show that the parties were not *ad idem* as to the terms of their commercial transaction for the publication of the advertorial.

He maintained that the Respondent's letter of 12<sup>th</sup> November, 2025 was not an acceptance of the Applicant's offer that the advertorial be published without amendment or modification.

He posited that there was no agreement to publish because of the following:

- a) The Applicant did not agree to the suggested edits of his advertorials as shown in the contents of his 1<sup>st</sup> November, 2024 letter.
- b) The forwarding of the bank's cheque for N1,500,000.00 (One Million, Five Hundred Thousand Naira) by the Applicant was unilaterally done.

- c) The Respondent in its letter of 12<sup>th</sup> November, 2025 did not accept to publish the advertorial without its suggested edits.
- d) The Respondent in its 12<sup>th</sup> November, 2025 letter also stated that the Applicant had not filed its indemnity form which is mandatory for all customers and asked him to contact one Taofeek Oyeniyi, General Editor of the Respondent for any further enquiries. The Applicant however never bothered to contact Mr. Oyeniyi and so did until the indemnity form.

From the foregoing, the learned counsel submitted that the issue between the parties had nothing to do with fundamental rights but was a commercial transaction in which both parties failed to reach an agreement.

He submitted that the essential requirements of a valid offer are (a) offer (b) Acceptance (c) Intention to create legal relations (d) Consideration (e) capacity to contract. He said that all the five fundamental requirements must be present before there can be a valid contract in law and he relied on the case of *P.T. I. V. VS UWAMU (2001) 5 NWLR (PT 705) CA 112*.

He maintained that in the instant case, there was no acceptance and no consideration.

He submitted that a Fundamental Right is a basic or primary right and a suit by a party to enforce his Fundamental Rights must be backed by cogent facts necessary for the determination of the suit.

He maintained that the enforcement of rights of the Applicant can only be possible when there exist rights which can be breached, and the said claim of an infringement must be prima facie proved by the Applicant.

He said that it is trite law that Applications to enforce Fundamental Right are by the Fundamental Rights (Enforcement Procedure) Rules, determined by Affidavit evidence. He said that it is the affidavit evidence before this Honourable Court that will be relied upon for the determination of the matter, and he relied on the following cases: *ATAKPA V. ETEBOR (2015) 3 NWLR (PT 1447) PG 549 PP 575-576 PARAS H-A; MAINSTREET BANK & ORS V. AMOS & ORS (2013) LPELR 23361 99 26-27, PARAS E-D; ONWUAMADIKE V. IGP & ORS (2018) LPELR-46039(CA) (PP 18 - 27 PARAS E - E); and ONAH VS. OKENWA (2010) 7 NWLR (PT. 1194) 512, AT 535 –536*.

He said that in the instant case, the Applicant has not deposed to facts to show how his right was infringed upon and violated by the Respondent.

He said that the assertions or allegations of the Applicant will only amount to speculation because what has been presented before this Court by the Applicant for consideration is nothing but communication between two parties for the purpose of entering a contract which never materialised.

He submitted that courts do not act on speculation and relied on the decision of the Supreme Court in the case of ***IKENTA BEST NIG. LTD V. A.G. RIVERS STATE (2008) 6 NWLR (PT. 1084) PG. 612***. He also relied on the case of ***OSAYOMI & ORS V. GOVERNMENT OF EKITI STATE & ORS (2013) LPELR-21124, PP. 13-14 PARAS F-A***

He maintained that the provision of ***Section 39 of the Constitution*** is not without a proviso as seen in ***section 45(1) of the Constitution*** which states that nothing in the said ***Section 39*** shall invalidate any law that is reasonable justifiable in a democratic society for the purpose of protecting the rights and freedom of other persons.

He said that in the instant case, the Respondent is entitled in law as regards contract, that is, to decide which advertorial it would accept or setting words it would not accommodate to protect its interest and shield itself from litigation.

He contended that the Respondent is protected by the provisions of ***section 45(1) of the Constitution*** and has the right to decide whether to accept for publication, the advertorial as presented by the Applicant.

On the allegation of the breach of ***Section 42 of the Constitution***, learned counsel submitted that the Respondent has its terms and conditions which applies to any prospective client seeking the publication of its advertorial. He maintained that the Respondent reserves the right to reject an advert or any publication where such is considered distasteful for public opinion or libelous.

He referred the Court to the following decisions: ***CBN V OKEMUO & ANOR (2016) LPELR-41405 (CA) PARA E-G; ONWUAMADIKE V. IGP (SUPRA) AT PG 27***; and ***ADEGOKE MOTORS LTD vs. ADESANYA (1989) 5 SC 92. EZEMBA V IBENEME (2004) 14 NWLR (PT 894) PG 617 P 672-673 PARAS F-E*** and submitted that the Applicant has not discharged the burden of proof placed on them by law.

He urged the Court to dismiss this application.

As earlier stated, the Applicant filed a Reply on Points of Law. In his Reply on Points of law, the learned counsel emphasised that the Applicant's action is squarely within the ambit of fundamental rights in ***Chapter (iv) of the Constitution***.

The learned counsel made some further submissions which I think were beyond points of law and amounted to a reopening of his arguments in support of his application. That is not permissible under the rules.

I have carefully examined all the processes filed in this application together with the submissions of the learned counsels for the parties. The issues formulated by both counsel are quite germane to the just determination of this application.

In the event I have condensed the issues into a sole issue for determination as follows:

***Whether the Applicant is entitled to the Reliefs claimed in this Application for the breach of his fundamental rights.***

I will proceed to resolve the sole issue for determination.

Essentially, the fulcrum of this application is the Applicant's complaint that the insistence of the Respondent that certain portions of the Applicant's write up, titled: ***"Special Goodwill Message in Honour of General (Dr.) Yakubu Gowon GCFR At 90"*** should be edited before same can be published by the Respondent, amounts to a breach of the Applicant's right to freedom of expression as guaranteed by ***Section 39(1)*** and the right to freedom from discrimination as guaranteed by ***Section 42(1) of the Constitution of the Federal Republic of Nigeria (1999)*** as amended.

For ease of reference, ***Section 39 of the 1999 Nigerian Constitution*** provides as follows:-

***"Section 39(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.***

***(2) Without prejudice to the generality of Subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:***

***Provided that no person, other than the Government of the Federation or of a State or any other person or body authorized by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish***

*or operate a television or wireless broadcasting station for, any purpose whatsoever.*

*3. Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -*

*a. for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of Courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or*

*b. imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.”*

Furthermore, *Section 42 of the 1999 Constitution*, as amended, provides thus:

*“(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such as person -*

*(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject;*

*(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.”*

The critical question to determine at this stage is whether the Respondent was in breach of the Applicant’s fundamental human rights as enshrined in *sections 39(1) and 42(1) of the Constitution* when they refused to publish the Applicant’s Tribute under the circumstances of the transaction between the Applicant and the Respondent.

Before, I determine this salient point, it is pertinent to address a more serious point raised by the learned counsel for the Respondent on the competence of this application to enforce the fundamental rights of the Applicant.

In his written address, the very learned Senior Advocate earnestly contended that from the exchange of affidavits in this application, it is evident that the issue between the parties had nothing to do with fundamental rights but was a commercial transaction in which both parties failed to reach an agreement.

He submitted that a Fundamental Right is a basic or primary right and a suit by a party to enforce his Fundamental Rights must be backed by cogent facts necessary for the determination of that right.

He maintained that the enforcement of the rights of the Applicant can only be possible where they exist. He contended that the alleged rights would have been enforceable under the law of contract but that the elements of a valid contract are absent from this transaction.

In his response, the very learned counsel for the Applicant submitted that the Applicant's rights are both cognisable under the law of contract and by way of enforcement of fundamental human rights.

It is settled law that before matters can be brought under the ***Fundamental Rights (Enforcement Procedure) Rules, 2009***, as fundamental rights actions, the main claims and reliefs must be based on the breach of fundamental rights as guaranteed by ***Chapter IV of the Constitution*** and not other branches of the law such as tort, contract, labour and such like.

The Supreme Court restated the proper approach to determining whether a matter falls under fundamental rights enforcement procedure in the case of ***SEA TRUCKS (NIGERIA) LTD. V ANIGBORO (2001) LPELR-3025(5C)***, (Pp. 28-29, paras. G-C), *Per Karibi-Whyte, J.S.C.*, thus:

***"The correct approach in a claim for the enforcement of fundamental rights is to examine the relief sought, the grounds for such relief, and the facts relied upon. Where the facts relied upon disclose a breach of the fundamental right of the applicant as the basis of the claim, here there is a redress through the enforcement of such rights through the Fundamental Rights (Enforcement Procedure) Rules, 1979. However, where the alleged breach of right is ancillary or incidental to the main grievance or complaint, it is incompetent to proceed under the rules. This is because the right, if any, violated, is not synonymous with the substantive claim which is the subject-matter of the action. Enforcement of the right per se cannot resolve the substantive claim which is any case different."***

See also the following cases: ***EFCC v. DIAMOND BANK PLC & ORS (2018) LPELR-44217(SC)***; ***OANDO PLC v. FARMATIC BIOGAS WEST AFRICA LTD & ANOR (2018) LPELR-45564(CA)***; and ***COP. ABIA STATE & ORS V. OKARA & ORS (2014) LPELR-23532(CA)***.



A careful examination of all the facts of this case reveals that from the outset, the transaction between the Applicant and the Respondent was based on their negotiations to enter a contract whereby the Applicant requested the Respondent to publish a Tribute on General Yakubu Gowon.

However, as a result of their disagreement during the negotiations, at the end of the day, the Applicant's grouse with the Respondent is not on any alleged breach of contract but on the alleged breaches of his fundamental rights by the Respondent during the transaction.

A careful examination of all the Applicant's reliefs show clearly that it is based on his complaints that the action of the Respondent constitutes a breach of his fundamental rights, particularly his rights to freedom of expression and freedom from discrimination as enshrined in *sections 39(1) and 42(1) of the 1999 Nigerian Constitution* as amended.

From the foregoing analysis, I am of the view that the main claims and reliefs of the Applicant fall within the purview of rights that can be enforced under the *Fundamental Rights (Enforcement Procedure) Rules, 2009*.

The objection of the learned Senior Advocate in this regard cannot be sustained.

I will now consider the merits of the Applicant's claims on the alleged breaches of his fundamental rights.

Like in all civil matters, the rule is that he who alleges must prove. See: *Section 131 (1) and (2) of the Evidence Act, 2011*.

It is clear that the burden of proof lies on the Applicant in a fundamental right enforcement proceeding and it is only after the Applicant has successfully proved the existence of the facts which he alleges that the burden will shift to the Respondent. See *GROUP CAPTAIN BENJAMIN BATON SABIYI (RTD) v. ATTORNEY GENERAL & COMMISSIONER FOR JUSTICE, KADUNA STATE & ANOR (2022) LPELR-57019(CA)*.

When a person approaches the Court based on the alleged breach of his fundamental rights, he must produce reasonably sufficient and credible evidence to establish a factual breach or contravention of the alleged rights. See *ABUJA ELECTRICITY DISTRIBUTION COMPANY PLC & ORS v. LT. COL. C. AKALIRO & ORS (2021) LPELR-54212(CA)*.

The critical question to determine at this stage is whether the Applicant has established that the Respondent was in breach of the Applicant's fundamental human rights as enshrined in *sections 39(1) and 42(1) of the Constitution* when

they refused to publish the Applicant's Tribute under the circumstances of the transaction between the Applicant and the Respondent.

First on the alleged breach of the Applicant's right to freedom of expression, ***Section 39 (1) of the Constitution of the Constitution of Nigeria 1999 (as amended)*** provides as follows:

***"(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference."***

The right to freedom of expression and the press, as recognized and guaranteed by law, is geared towards the safeguarding of the right of the citizen to impart and receive ideas and information as permitted by law. It is meant to protect the right to seek and receive information for the purpose of disseminating such information and ideas as well as the right to freely express opinions orally or through publications. The real essence of this right, therefore, is to guarantee to each citizen the right within the purview of the law to express himself freely without unjustifiable interference. See the case of ***Ukegbu V. NBC (2007) 14 NWLR (Pt. 1055) 551 @ p. 578.***

It is also not in doubt that, such right to freedom of expression is not absolute or without limit. This is particularly so, to protect the society from anarchy. It therefore means that, circumstances may arise when there will be the need to curtail or put a limit to the right to freedom of expression, in the interest of peace and order in the society. See the cases of ***President of the Federal Republic of Nigeria & Ors v. Isa & Ors (2017) 3 NWLR (Pt. 1553) 347*** and ***The Amalgamated Press (of Nigeria) Ltd. & Anor v. The Queen (1961) LPELR - 25124 (SC).***

The right to comment freely on matters of public interest is one of the fundamental rights of free speech guaranteed to the individual in our Constitution. However, that right to discuss matters of public concern, does not confer liberty to make defamatory statements; however honestly made. See the case of ***DIN V. AFRICAN NEWSPAPERS OF (NIG) LTD (1990) LPELR-947(SC) (PP. 25 PARAS. D).***

The right to freedom of expression is not absolute. One of its notable limitations arises in the context of defamation, which seeks to protect individuals' reputations from false and damaging statements.

In a country like Nigeria, where free speech is a fundamental right, the line between what constitutes defamation and what is protected under freedom of expression has become increasingly blurred.

Defamation laws, both civil and criminal under Nigerian law aim to prevent reputations from being damaged by false information.

It is settled law that fundamental rights of a citizen are not absolute. See: *Ukaegbu Vs National Broadcasting Corporation* (2007) 14 NWLR (Pt 1055) 551 and *Ukpabio Vs National Film and Video Censors Board* (2008) 9 NWLR (Pt 1092) 219.

The rights can be curtailed by the appropriate authorities where there are grounds for doing so. See the cases of *Dokubo-Asari Vs Federal Republic of Nigeria* (2007) 12 NWLR (Pt 1048) 320 and *Onyirioha Vs Inspector General of Police* (2009) 3 NWLR (Pt 1128) 342.

The Late Hon. Justice CHUKUNDIFU OPUTA, JSC (of Blessed Memory) in the case of *OSAWA & 2 ORS VS REGISTRAR OF TRADE UNIONS* (1985) 3 NWLR (PAR7J127, dealt with the provisions of 34, 35, 37 and 38 of the 1979 Constitution, which are in pari materia to this present Constitution, in regard to Fundamental Human Rights as set out under Chapter IV of the 1999 Constitution, stated thus: "*One has to bear in mind that the rights guaranteed under Sections 34, 35, 37 and 38 of the 1979 Constitution are 'Qualified Rights'. They are Subject... to any Law that is reasonably justifiable in a Democratic Society; (a) in the interest of Defence, Public Safety, Public Order, Public morality or Public Health; or (b) for the Purpose of protecting the Rights and Freedom of other people.*" See also the following cases: *DIRECTOR, SSS VS AGBAKOBA* (SUPRA) *DOKUBO ASARI VS FRN* (2007) 5 6 SC, 150, (2007) ALL FWLR (PART 375) 558 AT 586 - 587, *UKAEGBU VS NATIONAL BROADCASTING CORP* (2007) 14 NWLR (PART 1055) 551, *ONYIRIOHA VS IGP* (2009) 3 NWLR (PG 1 128) 342.

Clearly from the foregoing authorities, the right to freedom of expression is subject to the law of defamation.

In the instant case, the Respondent informed the Applicant that they were apprehensive that some portions of the Tribute contained some potentially defamatory materials which they urged the Applicant to either modify or delete. The Applicant insisted that the said materials must remain in the Tribute and the Respondent declined to publish the Tribute on that ground.

*Section 45(1) of the 1999 Nigerian Constitution* as amended states that nothing in the said *Section 39* shall invalidate any law that is reasonable justifiable in a democratic society for the purpose of protecting the rights and freedom of other persons.

I am of the view that in the instant case, the Respondent is entitled to decide which advertorial it would accept to protect its interest and shield itself from unnecessary litigation.

Freedom to contract is a foundational concept in contract law, allowing parties the liberty to negotiate terms and create binding agreements. This principle ensures individuals can freely enter contracts without undue interference, fostering economic activity and personal autonomy. Its significance lies in balancing individual freedom with societal interests, shaping how agreements are formed and enforced.

Where there is duress, the contract can be vitiated See the following cases: ***A.G. Rivers State V. A.G. Akwa Ibom & Anor. (2011) 3 SC 1; 1. Mobil Producing Nig. UnLtd. V. Umenweke (2002) 9 NWLR (Pt. 731) 543; Total Nig. Plc V. Morkah (2002) 9 NWLR (pt. 1773) 492.***

I am of the view that since the parties were unable to arrive at a consensus ad idem on the contents of the Tribute, the Respondent was entitled to reject the Applicant's Tribute for publication.

There is no evidence that the Respondent asked the Applicant to pay the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira).

From the available facts, I find that the forwarding of the bank's cheque for N1,500,000.00 (One Million, Five Hundred Thousand Naira) by the Applicant to the Respondent was unilaterally done.

From the foregoing, it is evident that Respondent was acting within its right when they rejected the Applicant's Tribute for publication.

Incidentally in his letter dated 1<sup>st</sup> of November, 2024 which is annexed as Exhibit "C" to the Applicant's affidavit in support of this application, the Applicant made a shocking revelation that the same publication was published by the Vanguard and the Leadership Newspapers of Saturday, October 26<sup>th</sup> 2024.

Now, since the Applicant has succeeded in publishing the same article in two other newspapers, I am of the view that he has exercised his right to freedom of speech and expression through the aforesaid print media. The Respondent is not under any obligation to publish the Tribute. The Applicant cannot compel the Respondent to publish the Tribute.

In their counter-affidavit, the Respondent acknowledged the fact that they received the Applicant's unsolicited cheque, but they pointed out that they did not cash the cheque because there was no contract between them. The Applicant

did not lead any evidence to prove that the Respondent received any value for the cheque.

From the foregoing, I hold that the Applicant has not discharged the burden to prove that the Respondent violated his right to freedom of speech and expression.

Next is on the alleged violation of the Applicant's right to freedom from discrimination.

*Section 42 of the 1999 Nigerian Constitution*, as amended, provides as follows:

***“(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such as person -***

***(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject;***

***(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.”***

Interpreting these provisions, the Apex Court in the case of *Lafia Local Govt v. Executive Govt Nasarawa State & Ors (2012) LPELR-20602(SC) per Rhodes-Vivour, JSC, at pages 18 - 19*, said:

***"A liberal approach must be adopted when interpreting the Constitution and especially the fundamental rights provisions. Section 42 of the Constitution guarantees to every citizen of Nigeria freedom from discrimination on the basis of belonging to a particular community, ethnic group, place of origin, sex, religion or political opinion.***

***The discrimination complained about must emanate from a law in force in Nigeria, or any executive or administrative action of the Government. This includes laws made by the legislative Houses and legislation made by Local Governments, and this includes policy statements. The rights are enforceable against the State, and not against individuals. See Uzoukwu v. Ezeonu II (1991) 6 NWLR pt. 200 p. 708."***

From the foregoing exposition, it is evident that the discrimination complained about must emanate from a law in force in Nigeria, or any executive or

administrative action of the Government. This includes laws made by the legislative Houses and legislation made by Local Governments. Furthermore, the rights are enforceable against the State, and not against individuals.

In the instant case, the complaint of the Applicant is that the insistence of the Respondent that certain portions of the Applicant's write up should be deleted or modified before same can be published by the Respondent, amounts to an unjustifiable censorship of his views and opinions, contrary to his right to hold an opinion and share same with other persons as guaranteed by ***Section 39(1) of the Constitution of the Federal Republic of Nigeria (1999)*** as amended.

Clearly, the alleged discrimination complained about by the Applicant did not emanate from a law in force in Nigeria, or any executive or administrative action of the Government. Furthermore, the rights are enforceable against the State, and not against individuals.

Furthermore, in view of my earlier finding that the Respondent was entitled to reject the publication for the reasons already stated, I am of the view that their rejection was not in breach of the Applicant's right to freedom from discrimination on the basis of his political opinion. The Applicant has therefore failed to prove that the Respondent breached his right in this regard.

On the whole, the sole issue for determination is resolved against the Applicant. I find no merit in this application and the application is dismissed with N200,000,00 (Two Hundred Thousand Naira) costs in favour of the Respondent.

***Hon. Justice P.A. Akhiero***  
***JUDGE***  
***10/12/2025***

**COUNSEL:**

- 1. Dr. Osagie Obayuwana.....Applicant***
- 2. Olusegun O. Jolaawo SAN..... Respondent***