IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

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

ON WEDNESDAY THE

1ST DAY OF JULY, 2026.

BETWEEN: ***SUIT NO: B/316M /2024***

MR. KINGSLEY OHENHEN--------------------------------------APPLICANT

AND

1. ***THE NIGERIAN ARMY***
2. ***THE CHIEF OF ARMY STAFF, NIGERIAN ARMY***
3. ***INSPECTOR GENERAL OF POLICE***
4. ***DR. ROLAND E. EHIGIAMUSOE***
5. ***MR. PEACE OMORHIENRHIEN***

---------RESPONDENTS

JUDGMENT

In this suit the Applicant came by way of an Originating Motion brought pursuant to the ***Fundamental Rights (Enforcement Procedure) Rules, 2009 Order 11, Rules 1, 2, 3, 4 & 5, Sections 34(1)(A), 35, 44(1) and 46 Of The 1999 Constitution of the Federal Republic Of Nigeria (As Amended); Articles 5, 6 And 14 of the African Charter on Human and Peoples' Rights (Ratification And Enforcement) Act, Cap A9 Laws of The Federation of Nigeria, 2004 and the inherent jurisdiction of this Honourable Court*** seeking the following reliefs:-

a) A DECLARATION that the invasions of the Applicant's hometown — Evboyare Community — on the 6th of June, 2024 and 6th of December, 2024 and the threats of further invasions by armed officers of the 1st

Respondent who are agents of the 1st and 2nd Respondents on the instigation of the 4th and 5th Respondents over a civil land dispute/matter in Suit No.: HCE/17/2024 between the 4th Respondent and the leadership of Applicant hometown – Evboyare community – is unconstitutional, unlawful and illegal as it offends Sections 34 (1) (a) and 41 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended);

b) *A DECLARATION that the persistent harassment, intimidation and threats to arbitrarily arrest, torture, indefinitely detain the Applicant till he rot in prison/detention and publicly parade the Applicant as a criminal/terrorist by officers who are agents of the 1st, 2nd and 3rd Respondents on the instigation of the 4th and 5th Respondents over a civil land dispute/matter in Suit No.: HCE/17/2024 between the 4th Respondent and the leadership of Evboyare Community, is unconstitutional, unlawful and illegal as it offends Sections 34 (1) (a) and 35 (1) and did not come under any of the exceptions stated in Section 35(1) (a) & (f) of the Constitution of the Federal Republic of Nigeria, 1999 and also infringed Article 6 African Charter on Human and Peoples Rights (Ratification and Enforcement) Act;*

c) *A DECLARATION that the Nigeria Police or/and the Nigerian Army are not a court of law to handle/adjudicate civil matters/disputes nor an arbitration agency;*

d) *AN ORDER OF PERPETUAL INJUNCTION RESTRAINING the 1st, 2nd and 3rd Respondents either by themselves, their agents, servants, functionaries, assigns representatives, whatsoever or howsoever described from further harassing or intimidating; arresting or/and inviting, threatening to arrest, detaining or threatening to detain, torture or publicly parade the Applicant or act in such manner as to interfere with the Applicant's Fundamental Rights to Personal Liberty and Freedom and Human Dignity as protected by Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) in connection with the land dispute/matter in Suit No.: HCE/17/2024 between the 4th Respondent and the leadership of Evboyare Community;*

e) *AN ORDER OF COURT MANDATING the 1st, 2nd, 3rd, 4th and 5th Respondents to issue an apology in writing to the Applicant within 7 days of making the Order for the persistent intimidation, harassment and threats of arbitrary arrest, indefinite detention and publicly parade of the Applicant in breach of his constitutionally guaranteed Fundamental Rights;*

f) *The sum of N5,000,000:00 (Five Million Naira Only) as compensation to the Applicant against the Respondents, jointly and severally, for the persistent harassment, intimidation and threats to arbitrarily arrest, indefinitely detain him till he rots in prison/detention and publicly parade*

the Applicant in breach of the Applicant's fundamental rights constitutionally guaranteed pursuant to the Constitution of the Federal Republic of Nigeria, 1999 by the Respondents;

g) ***The sum of N50, 000,000.00 (Fifty Million Naira Only) against the 1st, 2nd 3rd, 4th and 5th Respondents as Exemplary Damage; and***
h) ***And for such further Order(s) as this Honourable Court may deem fit to make in the circumstance.***

The application is supported by an affidavit of 38 paragraphs and a written address of the learned counsel for the Applicant.

From the facts deposed to in the supporting affidavit, in summary, the Applicant's case is that he and the 4th and 5th Respondents are indigenes of Evboyare Community, Edo State.

He alleged that decades ago, the 4th Respondent was licensed to use some communal farmlands for some largescale agricultural ventures involving some promising foreign investments and development, which never materialized.

He said that sometime in 2016, the community began reallocating the aforesaid land for development projects, initially with the 4th Respondent's consent.

He said that later, the 4th Respondent opposed further allocations and filed a civil suit (Suit No. HCE/17/2024) against the Community.

He alleged that subsequently, the 4th and 5th Respondents used their political and military connections to mobilise the 1st, 2nd and 3rd Respondents to harass and intimidate the community.

According to him upon the instigations of the 4th and 5th Respondents, the 1st, 2nd and 3rd Respondents carried out multiple invasions of their community by armed soldiers between June and December 2024 culminating in the alleged arrests, torture, and detention of indigenes of the community. He alleged that there were several threats to arrest him and he is not sure of his security within the community anymore.

He alleged that the hostile activities of the Respondents in their community have resulted in fear, economic decline, and disruption of farming and business activities. He said that many members of the community are presently hiding to avoid harassments and arrests.

The Applicant alleged that the land dispute between the 4th Respondent and the community is purely civil and that the involvement of the police and the military is in breach of their fundamental rights.

In a nutshell, the Applicant's complaint is that a civil land dispute has been escalated into violent military invasions and unlawful detentions instigated by the 4th and 5th Respondents, causing widespread fear and human rights violations in his community.

In opposition, to this Application, the Respondents filed their respective Counter-Affidavits.

The 1st and 2nd Respondents filed a 36 paragraphs Joint Counter-Affidavit deposed to by one Lt. Musa Suleiman Okah, a legal officer of the 1st and 2nd Respondents.

In the said Counter-Affidavit, the deponent admitted some facts and denied some of the salient facts contained in the Applicant's affidavit. In a summary, the deponent stated that some officers of the 4 Brigade were deployed to Evboyare Community after a distress call, when the police did not respond swiftly.

He said that some individuals were arrested in the community to prevent breakdown of law and order and handed over to the Nigerian Police within 24 hours.

He asserted that no torture or inhumane treatment occurred and that the suspects were treated lawfully and humanely.

He stated that the Nigerian Army is a Federal Agency which is not subject to control by individuals and cannot be used to satisfy personal whims.

He also maintained that the Commissioner of Police, Edo State, is not under the authority of the 1st Respondent. He said that the officers of the Respondents have not re-entered Evboyare Community after the incident.

He denied the allegations of abduction, threats, conspiracy, or harassment of the Applicant or his community. He maintained that the Respondents' officers never threatened the Applicant or his family. He denied the claims of the Army being compromised or manipulated by civilians and affirmed that the Army's role is to protect Nigerian citizens and not to harm them.

He acknowledged the fact that every Nigerian citizen, including the Applicant, is entitled to fundamental rights, but also subject to investigation if laws are violated.

He pointed out that the Applicant himself admitted that there was a criminal allegation arising from the community conflict.

He concluded that the Applicant's case is in bad faith, aimed at tarnishing the reputation of the Nigerian Army and urged the Court to refuse his reliefs.

The 3rd Respondent filed a Counter-Affidavit of 27 paragraphs deposed to by one Inspector Ayo Augustine, a Litigation Officer with the 3rd Respondent.

He denied most of the Applicants' averments and alleged that Applicant avoided Police invitations and resisted investigation.

He alleged that the Police received a complaint from the 4th Respondent, Dr. Ehigiamusoe Roland, alleging forcible entry, land takeover, crop destruction worth ₦574,084,000, and threats to his life.

He said that when the police attempted to invite the suspects, they resisted violently with weapons and threatened the police officers.

He alleged that while they were almost overwhelmed by the suspects, they sought the assistance of the Nigerian Army who promptly responded and the following three suspects were arrested: Osamuyi Sunday, Osaretin Ehigiamusoe and Ogie Ebose. He said that they obtained statements from the arrested suspects and they were released on bail. He said that later, two more suspects (Blessing Aimuamwonsa and Osaiyekemwen Edosa) were arrested and charged to Court.

The deponent alleged that Charges were filed against some of the suspects in Criminal Court 5, Benin Division. He said that Bench warrants were issued after the suspects jumped bail and failed to appear in Court to stand trial. He said that the charges were subsequently amended to include some additional suspects.

In conclusion, the Deponent alleged that the Applicant is a violent land grabber who is trying to mislead the court with false claims and he urged the court not to grant his application.

The 4th and 5th Respondents filed a Joint Counter-Affidavit of 52 paragraphs deposed to by the 4th Respondent. In summary, the Deponent stated that in 1975, after returning from studies in the UK, he applied for land through his community and the Oba of Benin, Oba Akenzua II, approved 1,000 acres for his Nature Restoration and Conservation Project, later known as Crest Nature Park Limited.

He said that he also inherited some parcels of land from his father, obtained Certificates of Occupancy, and compensated indigenes for crops on the allocated land.

He said that the Park has been developed for over 45 years, housing medicinal plants, palm trees, a palm mill, staff quarters, a school, and worship center, with plans for tourism and research facilities.

He denied being a mere licensee of the land and maintained that the land was formally allocated to him by the Oba of Benin.

He said that the Applicant, his father (the Odionwere of Evboyare), and their committee are engaged in land grabbing and violent trespass in the community.

According to him, on the 19th of February 2024, the Applicant and some armed thugs invaded the Park, destroyed crops, partitioned land, and threatened lives.

He said that he filed Suit No. HCE/17/2024 and obtained an interim injunction to restrain further trespass.

He said that he also petitioned the Police, who commenced investigation but were resisted by armed thugs. He said that the Army was mobilized to support the police and they arrested five culprits and handed them to the Police.

He maintained that the arrests were lawful, targeted at criminals, and not against innocent villagers.

He said that those who were arrested were released on bail, but they later jumped bail, and the police are trying to re-arrest them.

He denied threatening the community or instigating Army invasion and he alleged that the Applicant has not complied with court orders and continues destruction.

He emphasized that while the civil suit concerns trespass, the Applicant's violent acts introduced a criminal dimension which justifies the intervention of law enforcement agents.

He urged the Court to dismiss the action with costs.

Upon the receipt of the Respondents' Applicant filed a marathon Further Affidavit in support of the application. The Further Affidavit restated most of the facts already contained in the Applicant's original affidavit.

All the learned counsel for the parties filed their written addresses which they adopted as their arguments in support of their respective cases.

In his written address, the learned counsel for the Applicant, ***Abraham Oviawe Esq.*** formulated two issues for determination as follows:

1) ***Whether the rights of the Applicant as protected by <u>Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) particularly as it concerns Rights to dignity, liberty, and movement under Sections 34(1) and 35(1) of the Constitution</u> as well as provided under the***

African Charter for Human and Peoples Right have been infringed or likely to be infringed upon by the Respondents; and

2) ***If the Answer to Issue No. 1 is completely or partly in the affirmative, whether the Applicant is entitled to Constitutional Remedies of protection/enforcement of his fundamental rights, monetary compensation and apology in writing as provided for in Section 46(2) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).***

Thereafter, the learned counsel argued the two issues seriatim.

ISSUE NO. 1

Whether the rights of the Applicant as protected by Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) particularly as it concerns Rights to dignity, liberty, and movement under Sections 34(1) and 35(1) of the Constitution as well as provided under the African Charter for Human and Peoples Right have been infringed or likely to be infringed upon by the Respondents.

Arguing the first issue, the learned counsel submitted that the provisions of ***Section 34*** *of the* ***Constitution of Nigeria, 1999 (as amended)*** which provides that every individual is entitled to respect for the dignity of his person is explicit regarding the right of every human person to be treated with some dignity. He said that the Section outlawed the infliction of torture (psychological or otherwise) or inhuman or degrading treatment against anybody and he cited the case of ***EZEIGBO V. ASCO INV. LTD (2022) 8 NWLR (Pt. 1832) 367, Ratio 1 (SC)***.

He posited that the facts of this case are well stated in the supporting affidavit and he referred to the case of ***NNSC Vs ESV (1990) 7 NWLR (PT 164) PG 526*** where the Court reiterated that in an application for the Enforcement of Fundamental Rights the Court must consider the supporting affidavit of the Applicant and the counter-affidavit of the Respondent with the Exhibits.

He submitted that from the totality of the facts stated in the supporting affidavit, the 1st to 5th Respondents have infringed or/and are likely to infringe on the Constitutional rights of the Applicant. He said that there were persistent harassment, intimidation and threats of unlawful/arbitrary arrest/abduction, torture and indefinite detention of the Applicant by the officers of the 1st, 2nd and 3rd Respondents in resolving or attempting to determine the civil land disputes involving the 4th Respondent and the leadership of Evboyare Community.

He maintained that the Applicant has established that the relationship between the Applicant and the 4th and 5th Respondents is purely civil. He said that the Applicant did not commit any offence so the persistent intimidation, harassment and threats of arrest and detention of the Applicant by the 1st-5th Respondents is unwarranted and unconstitutional.

Counsel submitted that under the ***Section 46(1) 1999 Constitution and Order 2 Rule 1 of the Fundamental Rights Enforcement Procedure Rules, 2009***, the Applicant is entitled to the protection of his rights once same is breached, threatened or likely to be breached and he cited the following cases: ***DIAMOND BANK V. OPARA (2018) 7 NWLR (Pt. 1617) 92 Ratio 4 (S.C.); EFCC V. DIAMOND BANK PLC (2018) 8 NWLR (Pt. 1620) 61 Ratio 8 (SC)*** and ***DASUKI VS. F.R.N (2021) 9 NWLR (Pt. 1781) 249, RATIO 3.***

Learned counsel referred to the case of ***UZOUKWU V. EZEONU II (1991) 6 NWLR (PT.200) 708*** where the Court defined **"torture"** to include **mental harassment** as well as physical assault.

He referred to the case of ***JIM-JAJA V. COP (2011) 2 NWLR (pt 1231) page 389 para-C-D*** where the court held that a Nigerian citizen is absolutely entitled to his freedom and cannot be deprived of it until and unless due process of law is meticulously observed nor can he be harassed by the instrument of the state created to protect him.

He contended that the connection of the Applicant to the 1st to 3rd Respondents is arising from the land dispute between the 4th Respondent and the leadership of the Evboyare Community and nothing more. He referred to the case of ***OMUMA MICRO-FINANCE BANK (NIGERIA) LTD v. VINCENT N. OJINNAKA (2018) LPELR-43988(CA)*** where the Court exposited *inter alia* thus:

"We have held, several times, that one who procures the Police or any law enforcement agency, to dabble in a purely civil contract, to recover debt for the party to an agreement, must be ready to bear the consequences of such unlawful act of the Police/law enforcement agency, acting in abuse of their powers.

He also relied on the case of ***OKAFOR & ANOR v. AIG POLICE ZONE II ONIKAN & ORS (2019) LPELR-46505(CA)*** where the court exposited on the law regarding the powers/duties of the police in relation to civil matters/transactions.

He urged the Court to resolve issue one in favour of the Applicant.

ISSUE NO. 2

If the Answer to Issue No. 1 is completely or partly in the affirmative, whether the Applicant is entitled to Constitutional Remedies of* protection/enforcement of his fundamental rights, *monetary compensation and apology in writing as provided for in* Section 41(2) *of the* 1999 Constitution *of the Federal Republic of Nigeria as Amended).

Arguing this second issue, learned counsel submitted that the Applicant has shown that his persistent and reckless harassment, intimidation and threat of arrest and indefinite detention as well as threats to publicly parade him as a common criminal or terrorist are unlawful and unconstitutional.

He said that the Applicant has equally shown that his rights constitutionally guaranteed were likely to be infringed upon by the Respondents and that he has been subjected to mental torture which has caused him trauma, economic hardship and depression.

He said that the Applicant is therefore entitled to not only an order of court restraining the Respondents from further breaching his fundamental rights but also compensation and apology.

On damages, he referred the Court to the case of ***RAZAK OSAYANDE ISENALUMHE Vs JOYCE AMADIN & 3 ORS (2001) 1 CHR 458*** where the Court held that ***"where the arrest was wrong or unlawful i.e. where the arresting authority was not acting on reasonable grounds, the arrest and detention, no matter the length of detention (even for couple of minutes) would be held to be wrongful and a breach of right to liberty which the Court would redress"***. He also cited the case of ***AGBAKOBA V THE DIRECTORS SSS (1994) 6 NWLR (pt. 351) 1692.***

Again, he relied on the case of ***OKONKWO VS OGBOGU (1996) 37 NWLR 580,*** where the Supreme Court held that:-

"When the Applicant's rights have been interfered with, damages are given to vindicate the Applicants rights even though he has not suffered pecuniary damage."

He said that the above decision of the Supreme Court is in line with the provisions of ***Sections 35(6) and 46(2) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).***

He cited the case of ***ABIOLA VS ABACHA & ORS (1998) H.R.L.R.A Pg 477@462*** and submitted that damages need not be proved. He therefore urged the Court to grant the N5, 000,000.00 monetary reliefs and compel the Respondents to issue an apology in writing to the Applicant.

He also urged the Court to award the sum of N50, 000,000.00 against the Respondents as exemplary damages while relying on the very recent case of ***OKAFOR & ANOR v. AIG POLICE ZONE II ONIKAN & OORS (supra)*** where the court ***Per OGAKWU, J.C.A. (Pp. 32-33, Paras. E-F)*** stated *inter alia* thus: ***"…Such conduct of the police which portrays disregard of the law and is aimed at using the coercive powers of the State to punish a contracting party in a purely civil matter ought to be mitigated in exemplary damages."***

In conclusion he urged the Court to grant all the reliefs of the Applicant.

In his written address, the learned counsel for the 1st and 2nd Respondents, ***S.O Okebukola Esq*** formulated two issues for determination as follows:

1) ***Whether Applicant's processes are proper before this Honourable Court?***
2) ***Whether from the facts of this case, the Applicant has been able to prove a breach of his fundamental rights against the 1st and 2nd Respondents?***

Thereafter, he argued the issues seriatim.

ISSUE 1:
Whether Applicant's processes are proper before this Honourable Court?
Arguing this first issue he submitted that the process commencing this suit, the motion on notice being the originating process was not signed as prescribed by law, hence, the said suit is defective which he said makes the action void *ab initio*.

He submitted that a void act like in this case makes the entire action a nullity and he relied on the case of ***MARWA v. NYAKO (2012) ALL FWLR (PT.622)1621 @ 1668*** Furthermore, he submitted that if a procedure is provided for the doing of a thing, any contrary procedure thereto makes such act void. Hence, a process prepared by a lawyer must be signed by such lawyer. He said that the Originating motion was signed by a group of lawyers to wit: ***Abraham Oviawe Esq. Endurance O. Osamwonyi Esq. of A. I Oviawe Legal Consults, Applicant's Counsel 126b, New Lagos Road, Opposite Iheya Junction, Benin City, Edo State. 08038974994, 08069712910.*** He said that the signature cannot in law be attributed to anyone and he relied on the case of ***IBEKWE & ORS v. ISIDORE (2021)16 W.R.N 175 @ 188-189, Lines 38 – 50, Lines 5 – 7***.

He urged the Court to declare the Application incompetent and resolve this issue in favour of the 1st and 2nd Respondents.

ISSUE 2

Whether from the facts of this case, the Applicant has been able to prove a breach of his fundamental rights against the 1st and 2nd Respondents?

He submitted that before any court of law can give judgment in favour of a party, the party must prove every material allegation contained in his claim otherwise the case will fail and he relied on ***Sections 131(1) and 132 of the Evidence Act 2011 (As amended in 2023).***

He submitted that the issue of enforcement of fundamental rights is strictly a matter of fact which must be proved through affidavit evidence of the Applicant. See

OKAFOR v. LAGOS STATE (2017)4 NWLR (PT. 1556) 404 @ 433.

He said that the Applicant has failed to show by cogent and credible evidence the purported wrongful act or action done by officers of the 1st and 2nd Respondents against him.

He said that the Applicant's affidavit is merely speculative and fishing. For instance, he referred to **paragraph 21** where he stated thus:

"That every indigenes abducted by the officers of the 1st and 2nd Respondents and further arrested and detained without reasonable or just/probable cause by the officers under the 3rd Respondent has informed me upon their release that my name is always mentioned during their interrogation and torture with the army officers threatening to brutally deal with me, indefinitely detain me and publicly parade me as a terrorist when they eventually catch/abduct me."

He also referred to the Applicant's paragraph 22 where he stated thus:

"That I have received and continued to receive phone calls from unknown callers identifying themselves simply as military personnel of the 4th Mechanized Brigade of the 1st and 2nd Respondents vividly describing details of the armed officers of the 1st and 2nd Respondents various invasions of Evboyare community as well as threatening to soon capture/abduct me and to brutally deal with me even worse than they have done to other people of my community they have abducted and detained in the past as well as publicly parade me as a terrorist in violation of my human rights."

Again, in paragraph 27, the Applicant stated as follows:

"That a police officer who refused to reveal his name but identified himself as an officer of the Edo State Police Command Headquarters had also reached out to me on phone call that since the leadership of my hometown-the Evboyare Community-doesn't want to cooperate with them and desist from challenging the 4th Respondent over the said communal farmland, then the detainees including

Osamwonyi Omoregbe will never be released and that I am next in line to be arrested and that I will be publicly paraded as a criminal and thereafter indefinitely detained till I rot in prison/detention."

He said that the Applicant who claimed to have received several calls of threat from alleged officers of the 1st and 2nd Respondents could not reveal a single number of the purported callers.

He submitted that this court cannot speculate and or act on conjecture and he relied on the cases of ***OKADIGBO v. OJECHI (2011) ALL FWLR (PT. 601)1556 @ 1562***; and ***ODOM v. P.D.P (2013) ALL FWLR (PT. 698)816 @ 989***.

He submitted that it is trite law that facts admitted need no further proof. He said that the Applicant in his paragraph 6 admitted that there has been disagreement within the community over communal land, even during a pending court case.

He said that there was a serious problem in the Applicant's community and he was in the middle of the crisis culminating in the arrest of some persons by officers of the 1st and 2nd Respondents who came pursuant to a distress call.

He submitted that the law authorizes the Respondents or any person for that matter to arrest anyone committing a crime or reasonably suspected of committing a crime and he referred the Court to the case of ***AGUNDI v. COMMISSION OF POLICE (2013) ALL FWLR (PT.660)1247 @ 1296.***

He submitted that it is trite law that where a court of law lacks jurisdiction to grant a principal claim, all other ancillary or incidental claims together with the principal claim thereto, are all bound to fail and he relied on the case of ***PDP v. SYLVA (2012) ALL FWLR (PT. 637)606 @ 644.***

He submitted that the Applicant is not entitled to any of the ancillary reliefs.

He urged the Court to dismiss the Application.

In his final written address on behalf of the 3rd Respondent, their learned counsel, ***Edosa Samuel Esq.*** formulated two issues for determination as follows:

1) ***Whether the Applicant has proved the infringement of his fundamental rights against the 3rd Respondent to warrant relief sought; and***
2) ***Whether the 3rd Respondent has constitutional and statutory power to arrest, detain, investigate and interrogate any person or individual who have committed or alleged to have committed an offence, with the combine effect of Section 214 and 215 of the Constitution of the Federal Republic of Nigeria (1999) (As Amended) and Section 4, 31 and 32 of the Police Act 2020.***

Thereafter, the learned counsel argued the two issues seriatim.

<u>ISSUE NO 1:</u>

Arguing the first issue, the learned counsel referred to the case of ***EZEANOUCHIE v. IGWE (2020) 7 NWLR (P. 462) Paras. F-G*** where the apex Court stated that for a claim to qualify under the Fundamental Rights (Enforcement Procedure) Rules, 2009, it must be clear that the principal relief sought is for the enforcement or for securing of a fundamental right, and not to address a grievance that is ancillary to the principal reliefs.

He submitted that from the Applicant's supporting affidavit, there is no reasonable cause of action against the 3rd Respondent. He said that the Applicant was never arrested or detained by the 3rd Respondent.

He referred to the decision of the Court of Appeal in the case of ***ITILOYE v. ONDO STATE BOARD OF INTERNAL REVENUE (2020) 4 NWLR (PT.1715) P. 453 H.5*** and emphasized that, the 3rd Respondent has not in any way infringed on the fundamental human rights of the Applicant.

He said that the Applicant in his affidavit merely stated that he was being sought for to be arrested without any concrete evidence to establish his case. He said that it is not in dispute that there was a complaint of forcible entry, malicious damage and forceful takeover of land made against the Applicant by the 4th Respondent which the 3rd Respondent acted upon to invite the Applicant.
He submitted that the 3rd Respondent is vested with power to receive complaints, arrest, investigate and prosecute same and he relied on ***Section 4, 66, 84 and 86 of the Police Act 2020.***
He urged the Court to dismiss this application.

<u>ISSUE 2:</u>
Arguing the second issue, learned counsel submitted that, the fundamental rights guaranteed under ***Chapter IV of the Constitution*** are not sacrosanct or absolute but are rights which under certain recognized circumstances may be curtailed and circumscribed and he cited the following cases: ***EKWENUGO vs. F.R.N (2001) NWLR (Pt 708) 171 at 185, Para. H;*** and ***KALU vs. ORS (2012) LPELR – 9287 (CA) Pp. 44 – 45, Paras. F.E.***
He said that in this case, the Applicant alleged that some persons who are not even parties to this suit were detained by the Respondents. He submitted that by virtue of the combined provisions of ***Section 214 (2) (b) of the 1999 Constitution*** and ***Section 4 of the Police Act***, the Police is empowered to prevent, investigate and detect crime, apprehend offenders and preserve law and order. He also relied on the case of ***FAWEHINMI vs. IGP (2002) 7 NW2R (Pt 767) 645 RATIOS 6 – 9; ADEFUMILAY VS. ODUNTAN (1958) WNLR 31; MCLAREN VS. JAMMING***

(2003) FWLR (Pt. 154) 529; and ***MRS. NGOZI CHILE OPARAOCHA & ANOR VS. BARR. EMEKA OBICHERE & ORS (2016) LPELR – 40615***.
He submitted that it is settled law that a court of law should not interfere with the powers of the police to investigate or to restrain any other security agency from the performance of its constitutional duty and he relied on the case of ***Mallam Abdullahi Hassan & Ors vs. EFCC (2014) 1 NWLR (Pt 1389) 607 at 631, Para G.***
He urged the Court to dismiss this application.

In his final written address, the learned counsel for the 4th and 5th Respondents, ***Dr. O.O. Obayuwana*** formulated four issues for determination as follows:

i. ***Whether a criminal prosecution cannot run side by side with a civil proceeding.***
ii. ***Whether the power of the Law Enforcement Agency to investigate and arrest a person on suspicion of having committed a crime is not a constitutional and statutory responsibility.***
iii. ***Whether an Applicant can be allowed to use fundamental rights enforcement proceeding as a shield to prevent Police investigation of a very serious crime.***
iv. ***Whether the Court can rely on speculation and hearsay evidence to determine whether a case of the violation or threat of violation of fundamental human right has been made out to justify the grant of the reliefs sought by the Applicant.***

Thereafter, the learned counsel argued the issues seriatim.

ISSUE ONE
Whether a criminal prosecution cannot run side by side with a civil proceeding.
Learned counsel submitted that there is no law that prevents a person from facing a criminal trial as well as contending with a civil claim at the same time and he relied on the case of ***Abaver v. Alaga (2018) LPELR-46566 (CA) (pp. 9-14 paras. C).***
He submitted that the position of the Applicant that there is already a civil suit between them and the 4th Respondent in Suit No. **HCE/17/2024** is of no moment as the civil suit is not a bar to the prosecution of the criminal allegation against them.

He submitted that **Reliefs 2a, (b) and (c)** claimed by the Applicant and **Reliefs (d), (e) (f) and (g)** dependent on same must fail.

ISSUE TWO

Whether the power of the Law Enforcement Agency to investigate and arrest a person on suspicion of having committed a crime is not a constitutional and statutory responsibility.

The submissions under this issue are quite similar to that of the learned counsel for the 1st to 3rd Respondents.

ISSUE THREE

Whether the Applicant can be allowed to use fundamental rights enforcement procedure as a shield to prevent Police investigation of a very serious crime.

The submissions of the learned counsel under this third issue are also like those of the other counsel for the 1st to 3rd Respondents.

ISSUE FOUR

Whether the Court can rely on speculation and hearsay evidence to determine whether a case of the violation or threat of violation of fundamental human right has been made out to justify the grant of the reliefs sought by the Applicant.

Learned counsel submitted that a Court cannot rely on the hearsay evidence put forward by the Applicant to determine the case put forward by the Applicant and he relied on the case of ***Nigerian Breweries v. Nylander & Anor (2017) LPELR-45271(CA) (Pp. 33 paras. D).***

Furthermore, he submitted that a court must avoid speculation and he relied on the case of ***Opeyemi v. State (2019) 17 NWLR (pt. 1702) 403 at page 431 paras G – H, Ratio 4***.

He maintained that paragraphs 16 and 21 of the Affidavit in Support of this Application are basically hearsay while paragraphs 19, 20, 22, 24, 25, 27, 34 and 35 are speculative and are totally irrelevant to this application.

In conclusion, he urged the Court to dismiss the application.

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

However, 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 alleged breach of his fundamental rights.***

Fundamental rights are enshrined in ***Sections 33-46 in Chapter IV of the 1999 Nigerian Constitution***, as amended. ***Section 46 of the Constitution,*** as amended

empowers every citizen whose fundamental right has been or is being, breached, to approach the Court to seek redress, see: ***Sea Trucks (Nig.) Ltd. v. Anigboro (2001) 2 NWLR (Pt. 695) 159; Fajemirokun v. C. B. Nig. Ltd. (2009) 5 NWLR (Pt. 1135) 588; W.A.E.C. v. Adeyanju (2008) 9 NWLR (Pt. 1092) 270; Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517; Jack v. UNAM (2004) 5 NWLR (Pt. 865) 278; Gafar v. Government of Kwara State (2007) 4 NWLR (Pt. 1024) 375.***

The burden of proof of the breach of fundamental right of a citizen resides in an applicant see ***Fajemirokun v. C. B. Nig. Ltd. (2009) 5 NWLR (Pt. 1135) 588;*** and ***Jim-jaja v. C.O.P., Rivers (2013) 6 NWLR (Pt. 1350) 225***. The standard of proof is on the balance of probability or preponderance of evidence, see: ***Arowolo v. Olowokere (2012) All FWLR (Pt. 606) 398.***

Essentially, the gravamen of the Applicant's complaint is that that the persistent harassment, intimidation and threats to arrest, torture and to indefinitely detain the Applicant by the 1st, 2nd and 3rd Respondents who are the alleged agents of the 4th and 5th Respondents over a civil land dispute between the 4th Respondent and the leadership of Evboyare Community, is unconstitutional, unlawful and illegal.

In his supporting affidavit, the Applicant deposed to some facts pertaining to some civil transactions which later escalated into some community crisis between the 4th Respondent and some members of the community.

On the part of the Respondents, they deposed to some facts to show how the land transaction escalated to a conflict with some members of the community culminating in the malicious destruction of the 4th Respondent's valuable economic crops.

In an application for enforcement of fundamental rights, where the complaint is that the arrest and detention of the applicant arose from a civil transaction as in the instant case, it is the duty of the trial Court to determine whether or not the allegation resulting in the arrest and detention is criminal in nature and whether or not it was without probable cause. In other words, the trial Court is duty bound to determine whether the complainant had genuine belief in the guilt of the Applicant and that the proceedings he had initiated are justified. See the following cases on the point: ***JIM-JAJA v. C.O.P. (2011) 2 NWLR (pt. 1231) PAGE 375 at PAGE 390-391 PARAS H-B; BALOGUN V. AMUBIKANHUN (1989)3 NWLR (Pt. 107) 18;*** and ***USMAN V. EFCC (2017) LPELR-43196(CA) (PP. 18 PARAS C).***

From the totality of the evidence disclosed by the parties, there is no doubt that at the beginning, the transaction between the Applicant's community and the 4th Respondent started on a quite harmonious note whereby, they granted him vast parcels of land for his ambitious agricultural ventures. However, somewhere along

the line, the relationship turned sour and it appears that the community attempted to forcefully reclaim some of the land from the 4th Respondent who resisted their attempts.

Eventually, it appears the crisis escalated to violent conflicts which necessitated the intervention of the law enforcement agents. From the available evidence, the 4th and 5th Respondents lodged their complaints with the Nigerian Police, but when the police appeared to be overwhelmed by some violent members of the community, the police solicited the support of the Nigerian Army to quell the insurrection. This led to the arrest of some members of the community while some others are still wanted. From the available evidence, some of the suspects have been charged to court for several offences relating to the crisis and some of them are alleged to have jumped bail.

It is apparent from the available evidence that the 4th Respondent has a genuine complaint of the malicious destruction of his valuable agricultural crops which necessitated the arrest of several suspects within the community.

In the case of ***OKAFOR VS ABUMOFUANI (2016) LPELR - 40299 (SC),*** the Apex Court held thus: ***"It is trite that where a person makes a genuine complaint against another to the police and the latter is arrested, detained and prosecuted by the police, he cannot be said to have put the law in motion against him.***" See also the cases of ***GBAJOR VS OGUN BUREGUI (1961) ALL NLR 853*** and ***ISHENO VS JULIUS BERGER NIG. PLC (2008) 6 NWLR (PART 1084) 582***.

I am of the view that all the copious explanations being offered by the Applicant in his affidavit evidence are at best possible defences which he can raise if criminal proceedings are eventually instituted against him.

By virtue of ***Section 214 of the 1999 Constitution*** and ***Section 4 of the Police Act, 2020***, the police have a constitutional and statutory duty to prevent and detect crime, apprehend offenders and preserve law and order. The police are also charged with the duty of protection of life and property and due enforcement of all laws and regulations. It is therefore settled that once criminal allegations are made by and against a citizen, the police have a constitutional and statutory duty to investigate the allegations as part of their duty to prevent and detect crime. See the cases of ***ONAH V. OKENWA (2010) 7 NWLR (PT. 1194) 512; OJO V. ABDULAZEEZ & ORS (2023) LPELR- 59557(CA) AT 27-28 (F-C);*** and ***DIDEN V. C.O.P STATE COMMAND, ASABA & ORS (2024) LPELR-61926(CA) (PP. 9-10 PARAS. E).***

It is pertinent to note that the same Constitution which guarantees the Applicant's fundamental rights also limited the enjoyment of those rights under certain circumstances as enshrined in ***Section 35 of the 1999 Constitution as amended*** viz:

"(1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law - (c) for the purpose of bringing him before a Court in execution of the order of a Court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence."

It does not lie in the mouth of the Applicant to determine which kind of criminal allegations the Respondents should intervene to investigate merely because he has some explanations to make. Indeed, all such explanations can only be made by the Applicant to the Respondents upon their intervention. I, therefore, do not find anything untoward in the actions of the 1st to 3rd Respondents in acting upon the report of the 4th Respondent against the Applicant and following due process to take steps to arrest him for the purposes of investigating the complaint of malicious damage made by the 4th Respondent against some members of his community.

From the available evidence, the Applicant and some of the suspects under investigation are trying to prevent the police from carrying out their statutory duties by alleging breach of their constitutional rights. It is settled law that a mere invitation by the Police cannot amount to a breach of fundamental rights. See the case of ***SHEHU & ANOR V. IGP & ORS (2026) LPELR-83508(CA) (PP. 47-49 PARAS. E).***

Judicial pronouncements have made it clear that, in executing the powers donated by the Police Act vis-a-vis the provision of ***Section 35(1)(c) of the 1999 Constitution of the Federal Republic of Nigeria***, as amended, the police cannot be said to be in violation of the fundamental right of a citizen, where such right is necessarily curtailed in order to investigate a criminal complaint, upon reasonable belief that the citizen has committed a criminal offence or is likely to commit a criminal offence. See the following cases on the point: ***IGP v. Agbinone (2019) LPELR-46431(CA), IGP v. Umolo (2022) LPELR-57715(CA)*** and ***Andem v COP (2024) LPELR- 62220(CA).***

It is the well settled position of the law that, in the legitimate discharge of their duties, the police cannot be sued for an alleged breach of fundamental rights. An action for breach of fundamental rights can only be sustained against the police when they are exposed or shown to have stepped out of line in the discharge of their duties. See the following cases: ***EBAK V. EBEY (2013) LPELR-21947(CA); ATAKPA V***

EBETOR (2015) 3 NWLR (PT. 1447) 549; OGAN V. COP RIVERS STATE (2018) LPELR-44293(CA); LUNA V. COMMISSIONER OF POLICE RIVERS STATE POLICE COMMAND (2010) LPELR-8642(CA); UDO V. ESSIEN (2014) LPELR-22684(CA); and ***HAMADADA V. NIGERIAN ARMY & ORS (2024) LPELR-73351(CA) (PP. 32-33 PARAS. C)***

Coming to the 1st and the 2nd Respondents, who are members of the Nigerian Army, I am of they view that from the available facts, they acted as Law Enforcement Agents. In the case of ***HAMADADA v. NIGERIAN ARMY & ORS (2024) LPELR-73351(CA) (Pp. 30-32 paras. A)*** where the 1st and 2nd Respondents who were military officials were classified as "Law Enforcement Agents", the Court of Appeal exposited thus:

"An arrest of a citizen by the Police or Law Enforcement Agents, as in the case of 1st - 5th Respondents herein, in exercise of their duty and upon grounds of reasonable suspicion of having committed a capital offence, cannot sufficiently ground a breach of fundamental rights action."

I am of the view that the Applicant has no immunity in law from being investigated for allegation of committing any criminal offence. From the available facts, I do not see how his constitutional rights have been infringed. From his depositions, he is merely speculating about what the Respondents may do to him if he is arrested. I do not believe his allegations that some law enforcement agents have been calling him to threaten him. As one of the Respondent's counsel noted, if somebody actually called him, he should supply the phone number of the person.

The powers of the Nigerian Police Force, with regards to crime prevention, detection and prosecution, are very wide. They are empowered to detain and question anyone reasonably suspected of having committed or connected to the crime. The wide nature of the powers of the police is encapsulated in ***Section 4 of the Police Act***, which provides for the general duties of the Police thus: ***"The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act."***

The only qualification is that the power must be exercised in accordance with the law. See the case of ***IGWEOKOLO V. AKPOYIBO & ORS (2017) LPELR-41882(CA) (PP. 18 PARAS. D).***

In the case of ***Fawehinmi v. I.G.P. (2002) 7 NWLR (pt. 767) 606***, the Supreme Court held thus: ***"It is inconceivable that such wide powers and duties of the Police must be exercised and performed without any discretion left to responsible Police operatives. Unless a statute which confers powers or imposes duties expressly or by necessary implication excludes the exercise of discretion, or the duty demanded is such that leaves no room for discretion, it is my view that discretionary powers are implied whenever appropriate, exercised for salutary ends."***

The Police Act has not fixed or stipulated therein how the Police are to conduct their investigative powers. To that end, the Police carry out their investigation based on the strength or weight of information at their disposal. It is therefore the strength of the information at the disposal of the Police that should determine how they exercise their discretion to investigate or not to investigate. See ***Olatinwo v. State (2013) 8 NWLR (pt.1355) 126.***

Thus, so long as the Police properly exercise their discretion, a complaint under the Fundamental Rights (Enforcement Procedure) Rules for breach of fundamental rights may not be sustained. This is because, where a crime has been reported, it is within the discretionary powers of the Police under ***Section 4 of the Police Act*** to decide whether to investigate such crime and to also decide on the strategy or way they will conduct the investigation.

In the instant case, the 1st – 3rd Respondents acted on the complaint of the 4th Respondent against the Applicant and some other suspects and their investigation led to the arrest and detention of some suspects. Eventually, they charged some of the suspects to Court. What is expected of the Applicant at this stage is for him to submit himself to the police investigations and if charges are laid against him, he should go to court and defend himself.

It will be highly prejudicial for this Court to make any finding at this stage that the arrest, investigation and the charges that may be preferred against the Applicant by the police are tantamount to a breach of his fundamental rights. The streams of criminal justice must be allowed to flow freely.

It is thus my view that the 1st – 3rd Respondents having acted on the 4th Respondent's complaint, pursuant to ***Section 4 of the Police Act***, the claim for breach of the Applicant's fundamental rights cannot be sustained. See the following decisions on the point: ***AKANBI & ORS v. C.O.P KWARA STATE & ORS (2018) LPELR-44049(CA);*** and ***MITIN v. C.O.P BAYELSA STATE & ORS (2017) LPELR-43064(CA).***

Furthermore, in respect of the 4th Respondent, it is settled law that every citizen has a right or even a duty to report to the Police anyone suspected of committing a crime and the Police have a corresponding duty to investigate the report in the course of their statutory function of prevention, detection of crimes and generally preservation of law and order. In the case of ***Fajemirokun vs Commercial Bank (Credit Lyonnais) Nigeria Limited (2009) 5 NWLR (Pt. 1135) 558***, the Supreme Court held thus:

"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 duty unless it is shown that it is done mala fide." See also the cases of: ***ONAH VS OKENWA (2010) 7 NWLR (PT. 1194) 512; and MADUKA V. UBAH & ORS (2014) LPELR-23966(CA) (PP. 35-36 PARAS. B).***

Upon a careful consideration of the circumstances culminating in the report made by the 4th Respondent against the Applicant, I think that he acted in good faith when he made the report to the police based on the destruction of his crops by some irate members of his community.

In the event, the 4th Respondent cannot be liable for the breach of the Applicant's fundamental rights.

On the whole, the sole issue for determination is resolved in favour of the Respondents and this application is dismissed with N200, 000.00 (Two Hundred Thousand Naira) costs in favour of all the Respondents.

P.A. AKHIHIERO
JUDGE
01/06/2026

COUNSEL:

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F. IYALOMHE ESQ……………………..1ST & 2ND RESPONDENTS

U. EDOSA SAMUEL ESQ………………..……………..3RD RESPONDENT

DR. O.O. OBAYUWANA………………4TH & 5TH RESPONDENTS