

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON TUESDAY THE
5TH DAY OF JUNE, 2018.

SUIT NO: HCU/MISC/3F/2017

IN THE MATTER OF AN APPLICATION BY THE APPLICANTS, MR.
MONDAY EDONMHEN AND MR. JOSEPH IBOI FOR AN ORDER FOR THE
ENFORCEMENT OF THEIR FUNDAMENTAL RIGHTS TO PERSONAL
LIBERTY PURSUANT TO ORDER XI OF THE FUNDAMENTAL RIGHTS
(ENFORCEMENT PROCEDURE) RULES 2009

BETWEEN:

1. MR. MONDAY EDONMHEN
2. MR. JOSEPH IBOI

AND

1. ASSISTANT INSPECTOR GENERAL
OF POLICE, ZONE 5, BENIN CITY
2. INSPECTOR MOMOH BRAIMAH
3. MR. AUGUSTINE IYERE
4. MR. ODION IMOISILI
5. MR. CHRISTOPHER OKOKHERE

} í í í í í í í ..APPLICANTS

} í í í ..RESPONDENTS

JUDGMENT

This is an application for the enforcement of Fundamental Rights brought pursuant to Order 2 rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Sections 34, 35, 41 and 46 of the Constitution of the Federal Republic of Nigeria, 1999 as amended and Articles 5 and 6 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 2004.

By their application, the Applicants are seeking the following reliefs:

- (A) **A DECLARATION** that the invasion of the applicants' houses at Ukoni, Uromi on the 20th of February 2017 and 1st of March 2017 by the 1st and 2nd respondents at the instance of the 3rd, 4th and 5th respondents over a pending law suit between the 1st applicant and Mr. Thomas Ukoni Eigbibhalu & 2 others, is oppressive, unconstitutional and a breach of the applicants' rights to private and family life as guaranteed under **Section 37 of the Constitution of the Federal Republic of Nigeria, 1999;**
- (B) **A DECLARATION** that the threatened arrest of the applicants by the 1st and 2nd respondents at the instance of the 3rd, 4th and 5th respondents over a civil dispute between the 1st applicant and Thomas Ukoni Eigbibhalu and 2 others, is unlawful and a violation of the said applicants' rights as guaranteed under **Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999;**
- (C) **A DECLARATION** that the continuous harassment and intimidation of the applicants by the 1st and 2nd respondents at the instance of the 3rd to 5th respondents without any reasonable cause and/or offence known to law other than a civil dispute between the 1st applicant and Mr. Thomas Ukoni Eigbibhalu and 2 others pending at the High Court of Justice Uromi, is arbitrary, vindictive and a gross violation of the said applicants' right as guaranteed under sections **34, 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999;**
- (D) **A DECLARATION** that the 1st and 2nd respondents have no statutory powers to dabble into a pending civil dispute (between private citizens for the purpose of usurping judicial functions) under **Section 4 of the Police Act, Volume 13 Cap P.19 Laws of the Federation of Nigeria, 2004;**
- (E) **A declaration** that the harassment and intimidation of the applicants by the respondents over the said pending Suit No. HCU/32/2014, is contemptuous of this Honourable Court and amount to usurpation of judicial functions under **Section 6 of the constitution of the Federal Republic of Nigeria, 1999; and**

- (F) **The sum of ₦5, 000,000,000.00 (five billion naira)** being general and exemplary damages for the threatened arrest, harassment, invasion and intimidation of the applicants by the respondents without any lawful justification.

The grounds upon which the reliefs are sought are as follows:

- (i) That the threatened arrest of the applicants by the 1st and 2nd respondents as well as the invasion of their houses by the 1st and 2nd respondents on the 20th of February and 1st of March 2017 at the instance of the 3rd to 5th respondents over a pending civil suit are a breach of their fundamental right to the dignity of the human person and their right to private and family life as guaranteed under **Sections 34 and 37 of the Constitution of the Federal Republic of Nigeria, 1999.**
- (ii) That the statutory duties of the Police under the **Constitution of the Federal Republic of Nigeria 1999** as well **Section 4, 23 and 30 the Police Act**, do not include dabbling into civil disputes between private citizens to warrant the threatened arrest and investigation of a pending civil suit.

The learned Counsel for the Applicants, Iyoha Mayor Esq. from the Law Firm of P.E.Ayewoh Odiase & Co. filed a supporting affidavit of 32 paragraphs. Attached to the affidavit are **Exhibits ‘A’, ‘A1’ and ‘B’.**

The 1st and 2nd Respondents were served with the Court processes in respect of this application but there was no response from them.

With the leave of this Court, the 3rd to 5th Respondents filed a joint Counter Affidavit of 40 paragraphs with two exhibits attached as Exhibits 010 and 020 together with a written address of their counsel.

In response to the 3rd to 5th Respondents counter affidavit, the Applicants also filed a 26 paragraph affidavit of Reply dated 5/2/18 wherein they attached two Exhibits: Exhibit -CC0 and -DD0 together with a Written Address on point of law.

Thus in this application, issues were only joined between the Applicants and the 3rd to 5th Respondents.

In a nutshell, the Applicants complaints against the Respondents is that they have been facing a series of threats, intimidation, molestation and violation of their fundamental rights by the respondents in relation to Suit No.HCU/32/2014 between the 1st applicant and one Thomas Ukoni Eigbibhalu, and 2 others which is pending before this Court.

In the said suit, the 2nd applicant is alleged to be a witness to the 1st applicant. According to them, when one Obiye Okeshan and Thomas Ukoni Eigbibhalu had issues over ownership of a pear tree at Ukoni village, Uromi, the 3rd to 5th respondents decided to embarrass, humiliate and intimidate the applicants for supporting Obiye Okeshan.

That while the harassment and intimidation of the applicants by the respondents continued unabated, Obiye Okeshan wrote a petition to the Inspector-General of Police before instituting a civil suit against the respondents at the Federal High Court, Benin City which said suit was later discontinued.

That before the said dispute between Obiye Okeshan and Thomas Eigbibhalu arose; the 1st applicant had instituted Suit No. Ho. HCU/32/2014 in this Court. That in spite of the pending suit, the respondents have continued to intimidate the applicants with incessant police arrests which they allege are in violation of their Fundamental rights.

On the part of the 3rd to 5th Respondents, they denied most of the averments of the Applicants and stated that sometime in the year 2014 a dispute arose between the 1st Applicant and one Thomas Ukoni Eigbibhalu regarding the person entitled to occupy the position of Chief Priest of Egbaken juju shrine in Idumu-Odion, Ukoni, Uromi and the ownership of the parcels of land and various economic trees including the duca-nuts trees which forms part of the estate of the Chief Priest of the Egbaken juju shrine.

According to them, the said dispute went before the Onojie of Uromi for customary arbitration and the matter was decided in favour of Thomas Ukoni Eigbibhalu.

That after the Onojie's verdict, one Omoike Iboi, the grandson of one Mrs. Egheghene Okoduwa was found unlawfully harvesting the fruits of the ducanuts tree earlier adjudged to belong to Thomas Ukoni Eigbibhalu.

Thomas Ukoni Eigbibhalu lodged a complaint of stealing against the said Omoike Iboi at the Nigeria Police Station Uromi and the 3rd to 5th Respondents were invited to the Nigeria Police, Station, Uromi to make statements to the Police as witnesses for the said Thomas Ukoni Eigbibhalu.

That while the matter was still pending for investigation at the Nigeria Police Station, Uromi the Applicants herein, acting in concert with and in collaboration with one Obiye Okeshan wrote a petition to the Police and got the matter transferred to Police Area Command, Irrua.

That at the Area Command, Irrua, at the behest of the Applicants herein, the 3rd and 5th Respondents, Thomas Ukoni Eigbibhalu and Obhiozele Okouromi were arrested and detained by the Police at Area Command, Irrua and later released on bail.

That while the matter was still pending for investigation at the Police Area Command, Irrua, the Applicants herein and others mentioned above allegedly wrote another petition to the Commissioner of Police, Edo State Command, Benin City in order to have the matter further transferred from Area Command Irrua to the State's Criminal Investigation Department, Benin City.

The 3rd to 5th Respondents maintained that it was the improper use of Police formations by the Applicants that prompted them to write a petition to the office of the Assistant Inspector General of Police, Zone 5, Benin City for discreet investigation of the report of the Applicants herein at the Police Area Command Irrua.

That before the office of the Assistant Inspector General of Police, Zone 5, Benin City could act on their petition, the Applicants instituted Suit No FHC/B/CS/33/2017 against the 3rd to 5th Respondents and others at the Benin Federal High Court.

They maintained that the allegations of facts contained in this application were the same set of facts set out and deposed to by the Applicants herein and used in pursuing that said Suit No FHC/B/CS/33/2017.

That on the 21st day of September, 2017 the Applicants in the said Suit No FHC/B/CS/33/2017 filed a notice of discontinuance and the said action was struck out on the 26th day of September, 2017.

That the subject matter of litigation in that action i.e. FHC/B/CS/33/2017 i.e. enforcement of fundamental rights of the Applicants herein is the same as the subject matter in the present action and all the parties in this instant case except the 2nd Respondent are parties in Suit No FHC/B/CS/33/2017.

They stated that on the 17th day of February, 2017 the Applicants acting in collaboration with Mr. Obiye Okeshan who was the 1st Applicants in Suit No. FHC/B/CS/33/2017 wrote a petition to the Inspector General of Police against the 3rd to 5th Respondents herein and a copy of the said petition was attached to their counter affidavit as ~~Exhibit~~ **‘2’**.

They alleged that the office of the Inspector General of Police investigated the said petition and found that there was no evidence of the commission of any crime by the 3rd to 5th Respondents.

They maintained that it was the Applicants, Obiye Okeshan and some others who have been harassing and intimidating the 3rd to 5th Respondents with the Police because they decided to bear witness for Thomas Ukoni Eigbibhalu in Suit No HCU/32/2014. That the Applicants got them arrested and detained at the Police Area command Irrua between February, 26th and March, 2017.

At the hearing of the application, the lead counsel, P.E. Ayewoh Odiase Esq., relied on the supporting affidavits, adopted his written addresses and made further oral submissions.

In his first Written Address dated and filed on the 26th of September, 2017, the learned counsel for the Applicants formulated two Issues for Determination as follows:

ISSUES FOR DETERMINATION

1. ***Whether from the affidavit evidence and the Statement of facts in this application, the 1st and 2nd respondents acted within their powers as enshrined in Section 4 of the Police Act, Volume 13 Cap P19, Laws of the Federation of Nigeria, 2004 in threatening the arrest and detention of the applicants over a pending civil matter between the 1st applicant and Thomas Ukoni Eigbibhalu and 2 others?***
2. ***Whether the continuous intimidation and harassment of the applicants by the respondents over a pending civil matter between the 1st applicant and Thomas Ukoni Eigbibhalu do not amount to a***

violation of the applicants' fundamental rights as enshrined in Section 34, 35(1) (6), 37 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 as amended and under Section 4, 23 and 30 of the Police Act?

The learned counsel argued the two issues *seriatim*.

ISSUE ONE:

Arguing Issue 1, counsel submitted that the dispute between the 1st applicant and Thomas Ukoni Eigbibhalu over the rightful Chief Priest of Egbaken Shrine, which is the subject matter of the pending suit, is civil in nature and does not constitute a crime within the ambit of **Section 4, 23 and 30 of the Police Act**.

He further submitted that the powers of Police Officers are provided for in **Sections 4, 23, and 30 of the Police Act 2004**.

He quoted **Section 4** of the Police Act which provides as follows:

“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”.

He contended that from the above provisions, any threat to arrest and detain any person over a purely civil matter is *ultra vires* the powers of the Police and therefore unlawful and illegal.

Again, he submitted that the law is trite that where there is an allegation of crime against a person which is civil in nature, jurisdiction cannot be usurped by an administrative tribunal or the Nigeria Police. For this, he referred the Court to the cases of: ***Ifea Amayo V Commissioner of Police, Delta State & 4 ors (2007) cases on Human Rights pg. 183@186-187 Ratio 2, Dangote V Civil Service Commission Plateau State (2001) 9 NWLR Part 717 page 133 at Rationales 2, 6, 12 and 13.***

Counsel submitted that in as much as the law permits the Police to investigate allegations of crime that duty does not extend to dabbling into civil matters and pending Court cases.

He maintained that the right of an aggrieved party to approach the Court for the determination of his civil rights and obligations, is contained in **Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 as amended** and the powers of the courts to determine the rights and obligations of an aggrieved party

is contained in **Section 6 of the Constitution of the Federal Republic of Nigeria 1999 as amended.**

He posited that the action of the 1st and 2nd respondents showed disdain for due legal process and referred the Court to the case of: ***Ekaete Etim V. Ogbogifiok reported in Daruaku V. Nwoke (2015) 28 WRN, Page 115***, where it was held that the mere allegation of crime or wrong doing against a suspect (irrespective of its seriousness) cannot operate to curtail the fundamental rights of the suspect.

Similarly he referred to the case of: ***Ogor V. Roland & COP***, also reported in ***Daruaku's case***, where it was held that an arrest pending investigation is unconstitutional and that while the Police has a duty to infract a citizen's right based on allegation of crime, it must first investigate such allegation and establish a prima facie evidence that will tantamount to either the commission of same or reasonable suspicion of the commission of crime as this is the universally accepted practices among policemen.

Counsel submitted that the 1st and 2nd respondents did not follow the foregoing procedures before they embarked on an endless voyage of harassing, intimidating, molesting and threatening the applicants with arrest and detention when they did not commit any offence known to law.

He submitted that the planned arrest, intimidation and harassment of the 2nd applicant over a pending suit at the High Court of Justice Uromi is *ultra vires* the powers of the Police and therefore, illegal.

Learned counsel questioned why the 1st and 2nd respondents went about harassing, molesting and threatening the arrest of the applicants when no complaint was made against them? He submitted that this was a clear violation of their fundamental rights under the 1999 Constitution. He further submitted that Exhibit 6, the petition written to the 1st respondent by the 3rd, 4th and 5th respondents amongst others, was actuated by malice and that from the heading of Exhibit 6, the 1st applicant was the main target.

He submitted that the issue of who is the rightful Chief Priest of Idumu-Odion Community is the subject matter of Exhibits 7 and 8 which is still pending at the High court of Justice, Uromi. He maintained that the 1st and 2nd respondents have no authority to interfere with any judicial proceedings as that would amount to subversion of the Constitution under which the Courts derive their authority. Thereafter, he quoted *in extenso* from the case of: ***Incorporated Trustees of the Nigerian Baptist Convention V. Kolawole (2015) 13 WRN, page 113 at P. 141, lines. 15-45.***

He submitted that the petition of the 3rd to 5th respondents to the 1st respondent against the 1st applicant was meant to intimidate the applicant in respect of his pending suit which revolves around the rightful Chief Priest of Egbaken Shrine of Idumu-Odion, Uromi. He further submitted that the act of the

respondents in intimidating the applicants is a deliberate disobedience and affront to the authority of the High Court of Justice Uromi where the said suit is currently pending. He therefore urged the Court to hold that the act of the respondents in undermining judicial authority amounts to contempt of Court and a violation of the fundamental rights of the applicants, as enshrined in **Chapter IV of the 1999 Constitution**.

He urged the Court to resolve issue one in the negative.

ISSUE TWO:

On issue 2, learned counsel submitted that the threatened arrest of the applicants over the subject matter of a pending litigation and the continuous invasion of their houses by the 1st and 2nd respondents and their agents, amount to gross abridgment of their fundamental human rights to private and family life, inhumane and degrading treatment. He referred to the case of: *Uzokwu Ezeomu II, (1991)6 NWLR pt 200, 78*, where the Court defined the term “*degrading treatment*” thus:

“The element of lowering the societal status, character, value or position of a person”.

He submitted that the Constitution of the Federal Republic of Nigeria gives protection for the fundamental rights of an applicant against unlawful violation and cited the case of: *A.G. Federation V Ajayi (2002) NWLR (part 682) p. 509 at 517*.

He urged the Court to hold that the respondents jointly and severally, infringed upon the fundamental rights of the applicants by subjecting them to intimidation, harassment and oppressive acts which resulted in the flagrant violation of their rights to personal liberty and the dignity of the human person.

He submitted that where there is threatened violation of the fundamental rights of the applicants as in the instant case, the applicants are enjoined to seek redress. See: **Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999**.

Finally he submitted that where the conduct of the respondents is sufficiently outrageous to merit punishment as where for instance, it discloses malice, fraud, cruelty, insolence or flagrant disregard of the law and the likes, as in the instant case, exemplary, punitive, vindictive or aggravated damages, should be awarded. See the case of: **G.F.K. Investment Nigeria Ltd. V. Nigeria Telecommunications Plc, (2009) 45 WRN page 36 at Pp. 67-68, lines 15-5**.

He therefore urged the Court to resolve issue 2 in the affirmative.

The Applicant filed a 26 paragraph Reply to the 3rd to 5th Respondentsø Counter Affidavit and a Written Address on points of law dated and filed on the 5th of February, 2018.

In the Reply to the 3rd to 5th Respondents' Counter Affidavit, the Applicants controverted some of the facts contained in the 3rd to 5th Respondents' Counter Affidavit.

In his Written Address on points of law, the learned counsel for the Applicants submitted *inter alia* that in as much as the Police are at liberty to investigate any allegation of crime, such liberty does not extend to matters already under litigation such as the matter contained in Exhibits A and A1 which is still pending before this Court.

He submitted that the legal authorities relied upon by the 3rd to 5th respondents' Counsel in his written address, are of no moment and irrelevant to the facts and circumstances of this case.

He maintained that although the 3rd to 5th respondents filed a counter-affidavit, the affidavit evidence of the applicants has not been challenged and/or effectively challenged and cited the case of: ***Central Bank of Nigeria V Igwuillo (2007) 147 LRCN page 913 at 944.***

On the refusal of the 1st and 2nd respondents to respond to the applicants' application, counsel submitted that their indifference to this suit amounts to admission of material facts contained in the applicants' affidavit evidence. See the case of: ***Asaba Textile Mill Plc V Bona V. Textile Ltd (2007) 1 FWLR part 348, page 146 at P. 170 paras D.G.***

On effect of impliedly admitted facts as in the instant case, he referred to the case of: ***Agagu V Mimiko (2003) 9 NWLR part 824, page 49 at 69 – 70, paras G – D.***

He posited that arising from the failure and/or default of the 1st and 2nd respondents to challenge the affidavit evidence of the applicants, this Court is left with no other option than to act on the available evidence before it. See the case of: ***Cappa & D' Alberto Ltd V Akintilo (2003) 9 NWLR part 824, page 49.***

In his final Address, the learned counsel for the Applicants adopted his two written addresses as his arguments and proffered further oral arguments in support.

In his oral submissions, he referred the Court to paragraphs 21, 29 and 30 of his supporting affidavit and submitted that the act of the 3rd to 5th Respondents amounted to contempt of Court. See: ***Ejembi V A.G. Benue State (2003) 16 NWLR (Pt. 846) 337 at 356 paragraphs G – H; Best Weston Co. Ltd. V Udomisor (2002) FWLR (Pt. 97) 744 at 761 par. D – E.***

Responding to the above submissions, in his Written Address, the learned counsel for the 3rd to 5 Respondents, R.E.Orukpe Esq. formulated a sole issue for determination as follows:

Whether the Applicants’ fundamental rights as enshrined in the Nigerian Constitution has in any way been violated or is in danger of being violated by the 3rd – 5th Respondents in this case judging by the facts and circumstances of this case?

Arguing the sole issue, learned counsel submitted that the answer to the issue for determination in this case is in the negative.

He submitted that every citizen of Nigeria has a duty to report to law enforcement agencies, including the Police, any alleged commission of a crime. He said that the Police are empowered by virtue of Section 4 of the Police Act, Cap P. 19, Laws of the Federation of Nigeria 2004 to investigate any report bordering on an alleged commission of crime in the society. He said that their duties include the prevention and detection of crime, the apprehension of offenders, and the preservation of law and order amongst others.

Counsel submitted that in a plethora of cases, the Courts have held that the Police are at liberty to investigate any allegation of crime reported to them. He referred to the English case of: ***WITSHIRE vs. BARRET (1965) All E.R. 271*** where the Court held that the duty of the Court is not to inquire if the offence was later committed or not but whether the arrest for purposes of enabling the police to conduct an investigation into the alleged complaint at the particular time was lawful and reasonable.

He also referred to the case of: ***FAWEHIMI vs I.G.P (2007) LRN 1165 at 1189*** where the Supreme Court held thus.

“Indeed the Police are the outward civil authority. The generality of the public is potentially affected one way or another by their action or inaction. I think it will be a denigration of the aura of authority they represent and a disservice to society to suggest that they can exercise no discretion in their duty of maintenance of law and order, or to be specific, in their investigation of a particular allegation of crime, even if it were to be an obvious wild-goose chase. I am satisfied that in the performance of their duty, to be specific, arrest, investigate and detain, the Police have and can exercise some measure of discretion...”

Again he referred to the case of: ***DOKUBO ASARI vs F. R. N. (2007) 12 NWLR PT 1048 Pg. 320 at 333*** where the Court held that the right to personal liberty governed by Section 35 of the Constitution of the Federal Republic of Nigeria, 1999 is not an absolute right and that a person accused of or suspected of having committed a felony cannot hide under the canopy of Section 35 of the Constitution as an escape route to avoid arrest or investigation by the Police of the report made against him.

Learned counsel submitted that the Applicants have not established that the 3rd to 5th Respondent have in any way violated or threatened to violate their fundamental rights as enshrined in the Constitution.

He submitted that there is no were in the Applicants Affidavit in support of the motion that they were at any time arrested by the police at the behest of the 3rd to 5th Respondents.

He contended that assuming, without conceding, that the Applicants deposition in paragraphs 22, 23, 24, 25, 28, 29 and 30 of the Affidavit in support of motion are correct, the Applicants have only disclosed a case of contempt of court which ought to be reported to the trial court.

He therefore urged the Court to dismiss the application as same is lacking in merit.

In his further oral submission, learned counsel In addition to his written address, submitted that from **Exhibit 2** attached to their counter affidavit the Applicants conceded that a report was made at the police Station in Uromi and on the strength of the said exhibit, the application should be dismissed.

I have examined the issues for determination as formulated by learned counsel for the parties. The issues formulated by both counsel appear quite germane to the application.

However I will condense the said issues and distill them into two issues as follows:

1. ***Whether the Applicants' fundamental rights as enshrined in the Nigerian Constitution have in any way been violated or are in danger of being violated by the 3rd – 5th Respondents in this case?***
2. ***Whether the Applicants' fundamental rights as enshrined in the Nigerian Constitution have in any way been violated or are in danger of being violated by the 1st and 2nd Respondents in this case?***

I will resolve the Issues for Determination *seriatim*.

ISSUE 1:

Whether the Applicants' fundamental rights as enshrined in the Nigerian Constitution have in any way been violated or are in danger of being violated by the 3rd – 5th Respondents in this case?

From the totality of the evidence before me, it is an established fact that the Applicants and the 3rd ó 5th Respondents have been engaged in a series of disputes relating to the person entitled to occupy the position of Chief Priest of Egbaken juju shrine in Idumu-Odion, Ukoni, Uromi and the ownership of the parcels of land and various economic trees which forms part of the estate of the Chief Priest of the shrine.

In the course of the disputes there have been allegations and counter allegations of offences committed. Both parties petitioned the police at certain stages and the police was invited to investigate the allegations.

It is settled law that every citizen has a right to make a report to the police when he reasonably believes that an offence has been committed. Thereafter, it is the duty of the police to investigate the complaint. See the cases of: ***Owomero vs. Flour Mills Nig, Ltd. (1995) 9 NWLR (Pt.421) 622; and Ezeadukwa vs. Maduka(1997) 8 NWLR (Pt. 518) 635.***

In the petition of the 3rd to 5th Respondents to the Assistant Inspector General of Police attached as ***Exhibit B*** to the affidavit in support of this application, they raised some allegations of offences like stealing against the Applicants which necessitated their subsequent arrest by the police.

I am of the view that the 3rd to 5th Respondents acted within their rights when they made their complaints to the police, which was not shown to be frivolous or without foundation.

The evidence revealed that during the conflict, the Applicants also petitioned the police at different levels even to the level of the Inspector General of Police *vide* ***Exhibit 2*** annexed to the Counter Affidavit of the 3rd to 5th Respondents.

In essence, both parties resorted to the police when they felt it was expedient for the police to investigate any alleged offence. This is entirely within their constitutional rights.

On the complaints of the Applicants that the Respondents are using the police to harass the Applicants over a matter which is pending in court, I must

observe that the said **Exhibit 2** which was written by the Applicant's counsel was written on 17th of February, 2017 during the pendency of the said suit.

If there was any guilt in resorting to the police while the suit is pending in Court, I think both parties are equally guilty. The Latin maxim is: ***in pari delicto potior est conditio defendentis*** (where both parties are guilty, the position of the defendant is stronger). I am in agreement with the learned counsel for the 3rd to 5th Respondents that if the resort to the police was contemptuous of the pending proceedings, it was the duty of the counsel to invoke the powers of the court to sanction the erring party for contempt.

It is settled law that private persons like the 3rd to 5th Respondents who have reported a matter to the police cannot be held liable for breach of the fundamental rights of the persons arrested. In the case of: ***Gbafor V. Ogunburegui (1961) ALL NLR Pg 853 Ratio2***, the court held thus:

“The act of indicating to the Police a person whom one suspects of having committed an offence, is not in itself sufficient to make one liable for false imprisonment, should the police decide, on their own initiative, to arrest that person.”

Again, in the case of: ***Nwangwu vs. Duru (2002) 2 NWLR (Pt.751) 265 at 282 to 283***, the court held that ***where an individual has lodged a complaint to the police by way of petition and the police have on their own proceeded to carry out arrest and detention, the act of imprisonment is that of the police.***

I must point out at this stage that the dispute over the person entitled to occupy the position of Chief Priest of Egbaken juju shrine in Idumu-Odion, Ukoni, Uromi and other reliefs which is part of this crisis is still pending in this Court. Some of these parties are neck deep in that suit. I must be careful not to make far reaching finding of facts in this application which may be prejudicial to the pending suit.

On the basis of my above findings, I am of the view that the 3rd to 5th Respondents did not breach the Applicants' fundamental human rights. I therefore resolve Issue 1 in favour of the 3rd to 5th Respondents.

ISSUE 2:

Whether the Applicants' fundamental rights as enshrined in the Nigerian Constitution have in any way been violated or are in danger of being violated by the 1st and 2nd Respondents in this case?

As earlier stated it is settled law that Police officers are empowered to investigate any criminal allegation or complaint. They may take any action they deem fit to take upon investigation. They may arrest, detain and prosecute an alleged offender by virtue of *section 4 of the Police Act, sections 17 to 20 of the Criminal Procedure Act* and *35(1) (C) of the 1999 Constitution*. See the case of: *Atakpa vs. Ebetor (2015) 3 NWLR (Pt. 1447) 549 at 558*.

In the instant case, I have made a finding that the complaint of the 3rd to 5th Respondents cannot be said to be unjustifiable. The 3rd to 5th Respondents made very spirited efforts to justify the reports which they made to the police. It is evident that the arrests made by the police were made pursuant to the reports.

Although the police did not respond to this application, there are sufficient facts from the affidavit evidence before me to give me a clear picture of the escalation of the dispute between the parties culminating in mutual reports and petitions to the police. As earlier observed, both parties resorted to the use of the police to investigate their complaints. The Applicants cannot complain of police harassment when they themselves went to the extent of channeling their grievances to the Inspector General of Police. The 3rd to 5th Respondents never went that far, they stopped at the level of the office of the AIG Zone 5.

Since, the parties made their reports to the police, the police have a statutory obligation to investigate their complaints. In the course of their investigations, they were entitled to arrest, detain and prosecute any alleged offender pursuant to the powers vested in them under: *section 4 of the Police Act, sections 17 to 20 of the Criminal Procedure Act* and *section 35(1) (C) of the 1999 Constitution*.

A cursory examination of most of the Reliefs in this application reveals that the alleged liability of the 1st and 2nd Respondents is intricately tied to the actions of the 3rd to 5th Respondents. In most of the reliefs, the acts of the 1st and 2nd respondents are repeatedly stated to be *at the instance of the 3rd, 4th and 5th respondents*.

Having justified the actions of the 3rd to 5th Respondents and exculpated them from any blame, I am of the view that the 1st and 2nd Respondents cannot be liable for any alleged breaches of the Applicants' fundamental rights. The Applicants have not established any specific breaches on the part of the 1st and 2nd Respondents.

