

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 MONDAY THE
7TH DAY OF MAY, 2018.

SUIT NO: HCU/MISC/2F/2016

IN THE MATTER OF AN APPLICATION BY THE APPLICANT, MR.
SUNDAY ADDEH FOR AN ORDER FOR THE ENFORCEMENT OF HIS
FUNDAMENTAL RIGHTS TO PERSONAL LIBERTY PURSUANT TO
ORDER XI OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT
PROCEDURE) RULES 2009

BETWEEN

MR.SUNDAYADDEH í í í í í í í í í í í í í í í APPLICANT

AND

- | | | |
|--|---|-----------------------|
| 1. CORPORAL ABUDU SHERIFAT
2. CSP NICODEMUS N. NICKSON
3. COMMISSIONER OF POLICE
EDO STATE COMMAND
4. MRS. HELEN OKODUWA | } | í í í í í RESPONDENTS |
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RULING

This is a Ruling in respect of an application for the enforcement of Fundamental Rights brought pursuant to Order 2 rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Section 46 (1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

By his amended application, the Applicant is seeking the following reliefs:

- (A) A DECLARATION that the arrest by proxy of the applicant by the 1st ó 3rd respondents at the instance of the 4th respondent over a civil transaction between the applicant's son, Gideon Addeh and the 4th respondent's son, Mr. Joel Sunday Okoduwa on the 15th of April, 2016, is unlawful, arbitrary and a violation of the applicant's fundamental rights guaranteed under Section 41 of the Constitution of the Federal Republic of Nigeria, 1999 as amended;
- (B) A DECLARATION that the detention of the applicant by the 1st to 3rd respondents at the Area Command cell Irrua, from the 15th to the 19th of April, 2016 over a money lending transaction between the applicant's son and the 4th respondent's son, is illegal, oppressive, unjustifiable and a flagrant breach of the applicant's fundamental rights to the dignity of the human person and his personal liberty guaranteed under Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 as amended;
- (C) A DECLARATION that the 1st to 3rd respondents have no statutory powers to enforce civil contracts between private citizens under Section 4 of the Police Act, Volume 13 Cap p19 Laws of the Federation of Nigeria, 2004;
- (D) A DECLARATION that the arrest of the applicant by the 1st to 3rd respondents at the instance of the 4th respondent for the offence of obtaining under false pretence without a warrant of arrest, is illegal, unlawful and a brazen violation of the applicant's fundamental rights to personal liberty and the dignity of the human person; and
- (E) THE SUM of ₦500, 000,000.00 (five hundred million naira) being general and exemplary damages for unlawful arrest and illegal detention of the applicant by the respondents from the 15th to 19th of April, 2016 without any lawful justification.

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

- I. That the applicant's arrest and detention by the 1st ó 3rd respondents at the instance of the 4th respondent over the enforcement of a civil transaction between the children of the applicant and the 4th respondent, are against the clear provisions of Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 as amended;

- II. That the arrest by proxy of the applicant by the 1st to 3rd respondents in place of his son, Gideon Addeh over a civil contract between Gideon Addeh and Sunday Okoduwa is an invasion of the fundamental rights of the applicant guaranteed under Section 41 of the Constitution of the Federal Republic of Nigeria, 1999 as amended;
- III. That the statutory duties of the Police under the Constitution of the Federal Republic of Nigeria 1999 as well as Section 4, 23 and 30 of the Police Act, do not include the enforcement of simple contract between private citizens to warrant the arrest and detention of the applicant between the 15th and 19th of April, 2016;
- IV. That the arrest and detention of the applicant by the 1st to 3rd respondents from the 15th to the 19th of April, 2016 without bail, are inhuman, oppressive, degrading and a violation of the applicant's rights guaranteed under Articles 5 and 6 of the African Charter on Human and People's Rights; and
- V. That the arrest of the applicant by the 1st to 3rd respondents without a warrant of arrest for the offence of obtaining under false pretence is illegal and contrary to the mandatory provisions of Section 419 of the Criminal Code, Cap 48 Laws of the defunct Bendel State of Nigeria 1976 as applicable in Edo State.

The learned Counsel for the Applicant, P.E.Ayewoh Odiase Esq. also filed a supporting affidavit of 42 paragraphs, a Further Affidavit of 22 paragraphs and a Written Address. At the hearing, he relied on the supporting affidavits and adopted his written address.

The Respondents were duly served with all the Court processes and one Simeon Ozabor Esq. filed a Counter Affidavit and a Written Address on behalf of the 1st to 3rd Respondents. On behalf of the 4th Respondent, C.O.Aimionowane Esq. filed a Counter Affidavit and a Written Address of Counsel.

According to the Applicant, he was arrested by the 1st, 2nd and 3rd respondents on the instigation of the 4th respondent over a civil transaction between the 4th respondent's son and his (Applicant's) son.

On his arrest by the 1st and 2nd respondents at the Police Area Command, Irrua, he was confronted with a petition written by the 4th respondent in respect of a transaction between his son and the 4th defendant's son.

The applicant denied any knowledge of the transaction but despite his denial, the 2nd respondent allegedly ordered him to pay the loan sum of ₦250, 000.00 or produce his son to enable him secure his freedom. That when he maintained his innocence, the 2nd respondent ordered his detention without bail pending the payment of the loan sum or the production of his son.

That while spending the third day in the 1st and 2nd respondents' custody, the applicant contacted his Solicitor to apply for his arraignment and consequently seek redress in Court.

On the part of the 1st to the 3rd Respondents, they alleged that the applicant specialized in duping and defrauding people of various sums of money on the pretence, that he has a piece/parcel of land measuring 300ft by 300ft lying and situate at Unokoibheli Atani Village for sale.

They maintained that the applicant has used the same land to obtain money from several persons including the 4th respondent.

That the 4th respondent wrote a petition against the applicant to the Area Commander's office Irrua, for the offence of obtaining money under false pretence. That before the 4th respondent's petition, there were other similar complaints against the applicant pending at the Area Commanders office and other police stations.

That the police invited the applicant for interrogation over the multiple cases against him but instead of allowing the police to conduct a thorough investigation, and arraign him properly, the applicant brought this allegation of unlawful detention

against the respondents to stop them from further investigation of the various cases against him.

On the part of the 4th Respondent, she denied violating the rights of the Applicant and alleged that sometime on the 30th day of July, 2015 the Applicant, his son, Mr. Gideon Addeh and his wife, Mrs. Esther Addeh, came to her and requested for money to secure the release of their son who was detained in Libya.

The Applicant allegedly offered to sell his land measuring 300feet by 300feet, lying and situate at Unokoibhili Atani Village Uromi.They bargained with him and settled for N250, 000.00 (two hundred and fifty thousand naira) and a Deed of Transfer was executed by the parties.

She alleged that the applicant used a fake document of title dated the 2nd day of August 2007 between one Mr. Monday Ebhohimen Otobohu and himself.

That she purchased the parcel of land for her second son, Joel Sunday Okoduwa who is abroad and used his name as the purchaser.

That the Applicant also instructed his wife Mrs. Esther Addeh to sign the deed of transfer for him and his son Mr. Gideon Addeh signed as a witness.

That after four days of purchase of the land, when she went to clear the land, she was informed that the applicant had no land there and that he had earlier sold the same piece of land to two other persons.

That she made several attempts to retrieve her money from the applicant but he refused. That she instructed a lawyer to write a petition against the applicant to the Area commander of the Nigeria Police Force Esan Area Command, Irrua for their investigation.

That the applicant was invited by the Police at Irrua and was thereafter charged to court by the Police after investigations.

In his Written Address, the learned counsel for the Applicant, P.E.Ayewoh Odiase Esq. relied on all the paragraphs of the supporting affidavits and identified three Issues for Determination as follows:

1. *Whether from the affidavit evidence and the Statement of facts in this application, the 1st, 2nd and 3rd 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 to detain the applicant for four days over a purely civil matter between the applicant's son and the 4th respondent's son?;*
2. *Whether the arrest and detention of the applicant by the 1st, 2nd and 3rd respondents at the behest of the 4th respondent over a purely civil matter, do not amount to the violation of the applicant's Fundamental Rights as enshrined in Sections 34, 35(1) (6) 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?;*
3. *Whether the arrest of the applicant by the 1st to 3rd respondent without a warrant of arrest for the offence of obtaining under false pretence, is not illegal?*

Learned counsel thereafter argued the Issues *seriatim*.

ISSUE 1:

On issue one; counsel submitted that the transaction between the applicant's son, Gideon Addeh and 4th respondent's son, Joel Sunday Okoduwa is contractual in nature and does not constitute a crime within the ambit of Sections 4, 23 and 30 of the Police Act.

He submitted that the powers of Police Officers are provided for in Sections 4, 23 & 30 of the Police Act 2004 and arresting and detaining persons over a purely civil matter is *ultra vires* their powers and therefore unlawful.

He further submitted where there is an allegation of crime against a person which is civil in nature, jurisdiction to determine the allegation is vested in the Court and exercise of such jurisdiction cannot be usurped by an administrative tribunal or the Nigeria Police. For this, he referred the Court to the case of: *Ifeayi Amayo V Commissioner of Police, Delta State & 4 ors (2007) cases on Human Rights pg. 138 @ 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.*

He maintained that the act of the 1st to 3rd respondents in detaining the applicant for four days without bail or trial even when a Court of competent

jurisdiction is less than twenty kilometers from his place of detention at Area Command Irrua, amounts to degrading treatment and infringement on the applicant's fundamental rights to personal liberty and the dignity of the human person. He referred to the case of: **Uzokwu Ezeomu II, (1991)6 NWLR (pt 200), 78**, where the Court defined the term "**degrading treatment**" as:

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

Again he referred to the case of: **Razak Osayiande Isenalumhen V Joyce Amadinand ors (2001) 1 CHR 458**, where the Court also defined the term "**degrading treatment**" as: ***Revilng, holding one up to public Obloquy, lowering a person in the estimation of the public, exposing to disgrace, dishonor or contempt***".

Learned counsel submitted that the facts of **Isenalumhe's case** are on all fours with the applicant's case in the sense that in **Isenalumhe's case**, the Police assaulted and dragged the applicant to the Police Station where he was further assaulted. In that case, the Court held that the applicant's rights to human dignity and liberty, were violated by the Police and this gave the applicant the right to compensation and apology.

He therefore submitted that since the respondents, particularly the 1st to 3rd respondents have no justification to dehumanize and detain the applicant, issue one should be resolved in his favour.

ISSUE 2:

On issue two, counsel submitted that the arrest of the applicant by the 1st, 2nd and 3rd respondents at the behest of the 4th respondent violated the applicant's fundamental right to personal liberty. That the Police in the discharge of their duties must conform to the provisions of the Police Act and referred to Section 4 of the Police Act. That the act of the respondents in arresting and detaining the applicant without bail or trial for four days over a non capital offence and/or civil transaction, amounts to a breach of his fundamental rights as guaranteed under Sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999.

He submitted that where the applicant's fundamental rights have been violated as in the instant case, the Court is enjoined to uphold the provisions of the Constitution. See the cases of: **Federal Republic of Nigeria V Ifegwu (2003) 15 NWLR part 842, p. 113 and 132**; and **A.G. Federation V Ajayi (2002) NWLR (part 682) p. 509 at 517**.

Counsel further submitted that the Court is enjoined in law to grant quick relief against unlawful detention as in the instant case and relied on the case of: ***Nwana V A.G. Federation (2010) 15 WRN 178 AT 182.***

He urged the Court to hold that the respondents jointly and severally, infringed upon the fundamental rights of the applicant by subjecting him to unlawful arrest and detention for four days which resulted in the flagrant violation of his rights to personal liberty and the dignity of the human person.

ISSUE THREE:

On Issue three, learned counsel submitted that the arrest of the applicant by the 1st ó 3rd respondents at the instance of the 4th respondent for the offence of obtaining by false pretence under section 419 of the Criminal Code without a warrant of arrest, is illegal and contrary to the mandatory provisions of the Criminal Code. Section 419 of the Criminal Code, Cap 48 laws of defunct Bendel State of Nigeria, 1976 now applicable in Edo State which provides as follows:

“Any person who by false pretence and with intent to defraud, obtains from any other person, anything capable of being stolen or induces any other person to deliver to any person anything capable of being stolen, is guilty of a felony and is liable to imprisonment for three years.

If the thing is of the value of one thousand naira or upwards, he is liable to imprisonment for seven years. It is immaterial that the thing is obtained or its delivery is induced through the medium of a contract induced by the false pretence.

“The offender cannot be arrested unless found committing the offence”.

He submitted that the provision of section 419 of the Criminal Code regarding the issue of warrant of arrest is mandatory and not discretionary. That where a particular law as in the instant case makes the procedure for carrying out an act mandatory, failure to comply with the law amounts to flagrant disregard for due process which renders the act of arrest as in the instant case, illegal.

On the meaning of illegality, Counsel referred the Court to the case of: ***Attorney-General, Ekiti State V Daramola (2003) 10NWLR part 827, page 104 (P. 162 paras. C – D)*** where the Supreme Court stated thus:

“illegality connotes an infraction of the law. It means that which is contrary to the principles of law as contradistinguished from mere rules of procedure”.

He also referred to the case of: ***Ebe V. Commissioner of Police (2011) 9 LRCNCC page 282*** where the Court held that where the provision of the law is clear, the Court has no discretion to depart from the intendment of the Law.

He maintained that where the provisions of a particular law are so clear and unambiguous as in the instant case, they call for no interpretation and relied on the case of: ***Calabar Central Co-operative Thrift & Credit Society Ltd. V Ekpo (2008) 25 WRN 1 at P. 29 lines 40-45.***

Counsel submitted that since the 1st to 3rd respondents refused and/or defaulted in complying with the condition precedent for carrying out an arrest under Section 419 of the Criminal Code by not executing a warrant and considering the fact that the applicant was not found committing the alleged offence when he was arrested on the 15th of April 2016 over an offence allegedly committed on the 30th of July 2015 as shown in the charge sheet, the arrest of the applicant by the 1st to 3rd respondents, is unlawful and amounts to undue and unwarranted interference and abridgement of his fundamental rights to personal liberty and dignity of the human person under sections 35 and 34 of the constitution of the Federal Republic of Nigeria 1999.

On measure of compliance, he referred to the case of: ***Ojukwu V. Yar'Adua&ors (2010) Vol. 186 LRCN 24*** and on the condition precedent, he relied on the case of: ***Shelim V. Gobang (2009) Vol. 175 LRCN 1.***

On the need to comply with the mandatory stipulation of a Law, learned counsel referred to the Court of Appeal's decision in the case of: ***Oju Local Government V Independent National Electoral Commission (2007) 38 WRN, page 31 at pp. 48 – 49, lines 45 – 5*** where they held as follows:

“It is trite law that where an Act makes a mandatory stipulation, the operators of the Act must comply strictly with such provisions. In the case at hand, the constitutional provisions being mandatory must be complied with exactly”.

In response to the 1st to 3rd respondents' written address particularly on the issue of powers of the Police to prevent commission of crimes and arrest offenders under Sections 53(1) and (2), 54, 55 and as 10 of the Criminal Procedure Law as well as Section 4 of the Police Act, Counsel submitted that the powers of the Police cannot be exercised over civil matters. See: ***Ahua V Commissioner of Police (1999)2 LRCNCC page 54 at 56;*** and ***Mclaren V. Jennings (2003) 3 NWLR part 808, page 410 at 475.***

He maintained that in the instant case, the transaction between the 4th respondent's son and the applicant's son does not constitute an offence and the 4th respondent who had no enforceable rights in the transaction had no right to petition the police. That the act of the 4th respondent in that regard, amounted to instigating the Police to arrest the applicant even when she had no personal rights to enforce against him. See the case of: *United Bank for Africa V Folarin (2003) 7 NWLR part 818, page 18 at 28.*

He submitted that the authorities relied upon by the respondents' Counsel in justifying the arrest and detention of the applicant, do not substantially relate to the facts and circumstances of this case as the respondents have failed in their counter affidavits to justify the rationale behind the applicant's arrest by proxy or otherwise as well as his unlawful detention for four days.

He posited that the case of: *Inspector-General of Police V Ogbomo (1957) WRNLR 200 and Ikonne V Commissioner of Police (1986) 4NWLR (Part 36) page 473 at 663, paras, C – D*, cited by 1st to 3rd respondents' Counsel reinforces his position on the issue of arrest without warrant.

He therefore urged the Court to resolve issue three in the negative.

He finally urged the Court to grant all the reliefs sought by the applicant in this application.

In his written address, the learned counsel for the 1st to 3rd Respondents, Simon Ozabor Esq. identified two Issues for Determination as follows:

(1) Whether the Respondent can investigate any allegation of crime/offence as in this case involving Applicants, by virtue of powers conferred on them by the Constitution/Police Act and Regulation; and

(2) Whether the arrest, investigation and arraignment carried out by the respondents on the applicant in this suit, violates his fundamental right as contained in the FREP Rules 2009 and under the 1999 Constitution (as amended).

The learned counsel argued the two issues *seriatim*.

ISSUE ONE:

On issue one, he submitted that Section 53 (1) and (2) of the CPA empowered the police to prevent offences and injury to public property and Sections 54 and 55 empowered the police to arrest to prevent such offences, and the powers of arrest by police officers as contained in Section 10 of the CPA, and all other laws in that behalf.

Counsel referred to the case of: **FAWEHIMI V. AKILU AND TOGUN (1987) 4 NWLR 797** where the Supreme Court emphasized that a citizen has a personal and private right under the constitution to see to it that a crime is not committed and if committed, to lay a criminal charge against the offender or the person whom he reasonable suspects to have committed the offence.

He submitted that the Respondents are under obligation to investigate allegation of crime by virtue of the powers conferred on them by Section 4 of the Police Act. That by Section 315 of the 1999 Constitution, the Police Act is an existing law. Learned counsel went ahead to quote extensively from the decision of the Supreme Court in the case of: **CHIEF GANI FAWEHIMI V. IGP ORS (2003) 1 NCC PG. 414 AT 416 RATIOS 1, 2 AND 4.**

ISSUE TWO:

Counsel submitted that if the answer to issue one above is in the affirmative, he urged the Court to hold that the Respondents did not violate the Applicant's Fundamental Rights. He relied on the cases of: **A.G ANAMBRA STATE VS UBA (2005) VOL. 33 WRN PG 191 AT 196 RATIO 5;** and **DR. CHIEF OLADELE FAJEMIROKUN V. C.B. (C.L) (NIG.) LTD & ORS (2002) 10 NWLR (PT. 774) PG 95 AT 98 – 99 RATIOS 2 AND 4.**

He again quoted extensively from the two decisions and urged the Court to resolve Issue Two in favour of the Respondents.

He urged the Court to dismiss this application with substantial costs.

In his written address, the learned counsel for the 4th Respondents, C.O.Aimionowane Esq. identified a sole Issue for Determination as follows:

WHETHER THE APPLICANT ESTABLISHED THAT THE 4TH RESPONDENT BREACHED OR VIOLATED ANY OF HIS FUNDAMENTAL RIGHTS AS ENSHRINED IN THE CONSTITUTION?

Arguing the sole Issue for Determination, learned counsel submitted that the Applicant has not successfully established a case against the 4th Respondent for the breach of the Applicant's fundamental rights.

He contended that from the Applicant's affidavit and the 4th Respondent's counter affidavit, it is crystal clear that the 4th Respondent did not in any way participate in the alleged violation of the Applicant's right. He said that there is no evidence before the Court to prove that the 4th Respondent arrested the Applicant or participated in the alleged violation of his right.

He referred to the dictum of Niki Tobi, J.C.A in the case of: *Ezeadukwa V. Maduku (1997) 8 NWLR (Pt. 518) 635 at para A* thus:

“it is most elementary law that there cannot be agency relationship between a private citizen and a police officer in the performance of his police duties under Section 4 of the police Act, Cap. 20, Laws of the federation of Nigeria, 1990 or any other enabling law to the same effect. The transient relationship between a complainant and the police officer in the course of arresting, investigation and prosecuting a case does not in law, ripen into an agency relationship”.

He submitted that it is the duty of the police to investigate and arrest citizens who are suspected to have committed one offence or another and that the facts before this Court did not disclose any breach of the Applicant's fundamental right by the 4th Respondent.

He maintained that the 1st ó 3rd Respondents are men of the Nigeria police, they are not under the control of the 4th Respondent and the 4th Respondent is not an agent of the 1st ó 3rd Respondents (sic).

He quoted the provisions of **Section 4** the police Act and posited that the 4th Respondent could not and did not give any order to the 1st ó 3rd Respondents to exercise the powers conferred on them by the enabling laws.

He further submitted that where a private citizen witnessed the commission of an offence or has cause to believe that his rights or person is facing imminent threat of violation and reports to the police in good faith, if a suspect is arrested, an action in false imprisonment will not lie against such a private citizen. See: *Ejofor V. Okeke (2000) 7 NWLR (PT. 665) 363 at 380 Paras C-F.*

He submitted that a private person like the 4th Respondent who has simply laid a complaint or reported a matter to the police cannot be held liable for breach of the fundamental rights of the person arrested. See also the case of: *Gbafor V. Ogunburegui (1961) ALL NLR Pg 882 R 885.*

Counsel submitted that in enforcing fundamental rights of a citizen, the duty to establish breach of same squarely rests on the applicant. See the case of: *FAJEMIROKUN V COMMERCIAL BANK NIGERIA LIMITED (2009) VOLUME 175 LRCN99 AT 106 RATIO 9.*

He maintained that the 4th respondent is not in a position to account for the applicant's arrest and he urged the Court to dismiss the application with costs.

I have examined the issues for determination as formulated by learned counsel for the parties. Although the issues formulated by them appear quite germane to the application, I observed that each counsel appears to have formulated his issues to suit his own case.

In the event I have condensed the issues into two as follows:

- 1. WHETHER THE APPLICANT ESTABLISHED THAT THE 4TH RESPONDENT BREACHED HIS FUNDAMENTAL RIGHTS TO PERSONAL LIBERTY AND THE DIGNITY OF THE HUMAN PERSON AS GURANTEED BY THE 1999 NIGERIAN CONSTITUTION?; and**
- 2. WHETHER THE APPLICANT ESTABLISHED THAT THE 1ST TO 3RD RESPONDENTS BREACHED HIS FUNDAMENTAL RIGHTS TO PERSONAL LIBERTY AND THE DIGNITY OF THE HUMAN PERSON AS GURANTEED BY THE 1999 NIGERIAN CONSTITUTION?**

I will resolve the Issues for Determination *seriatim*.

ISSUE 1:

WHETHER THE APPLICANT ESTABLISHED THAT THE 4TH RESPONDENT BREACHED HIS FUNDAMENTAL RIGHTS TO PERSONAL LIBERTY AND THE DIGNITY OF THE HUMAN PERSON AS GURANTEED BY THE 1999 NIGERIAN CONSTITUTION?

I have carefully gone through the affidavits and counter affidavit in this application together with the documentary exhibits attached and I have observed that there was a commercial transaction between the Applicant and the 4th Respondent relating to the purchase of a parcel of land.

The Applicant allegedly offered to sell his land measuring 300feet by 300feet, lying and situate at Unokoibhili Atani Village Uromi. They bargained and settled for N250, 000.00 (two hundred and fifty thousand naira) and a Deed of Transfer was executed by the parties. During the transaction, the 4th Respondent alleged that the applicant tendered a fake document of title dated the 2nd day of August 2007 between one Mr. Monday Ebhohimen Otobohu and himself.

That after four days of purchase of the land, when she went to clear the land, she was informed that the applicant had no land there and that he had earlier sold the same piece of land to two other persons. She felt she had been defrauded and made a report to the police which culminated in the arrest and detention of the applicant by the police.

The Applicant is now challenging the arrest and detention on the ground that it amounts to a breach of his fundamental rights.

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.

Coming to the instant case, I observed that there were documentary exhibits to show that there was a transaction relating to the sale of land whereby the Applicant was accused of presenting fake title documents in order to obtain the purchase price from the 4th Respondent. The 4th Respondent made a statement to the police as a witness during the investigation of the case. The police considered her complaint to be meritorious and eventually charged the Applicant to court for the offences of conspiracy and obtaining under false pretences punishable under sections 516 and 419 of the Criminal Code respectively.

I am of the view that the 4th Respondent acted within her rights when she made her complaints to the police, which was not shown to be frivolous or without foundation.

I agree entirely with the learned counsel for the 4th Respondent that the 1st ó 3rd Respondents are not under the control of the 4th Respondent; neither are they the agents of the 4th Respondent. A private person like the 4th Respondent who has simply laid a complaint or reported a matter to the police cannot be held liable for breach of the fundamental rights of the person 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.***

On the basis of my above findings, I am of the view that the 4th Respondent did not breach the Applicant’s fundamental human rights.

I therefore resolve Issue 1 in favour of the 4th Respondent.

ISSUE 2:

WHETHER THE APPLICANT ESTABLISHED THAT THE 1ST TO 3RD RESPONDENTS BREACHED HIS FUNDAMENTAL RIGHTS TO

PERSONAL LIBERTY AND THE DIGNITY OF THE HUMAN PERSON AS GURANTEED BY THE 1999 NIGERIAN CONSTITUTION?

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 has not been not shown to be frivolous or without foundation. The 1st to 3rd Respondents made very spirited efforts to justify the arrest of the Applicant.

However, the main thrust of the Applicant's counsel's complaint appears to be on the procedure adopted by the police during the arrest. According to learned counsel, the police should have produced a warrant of arrest to validate the arrest of the suspect for obtaining under section 419 Of the Criminal code.

For the avoidance of doubt section 419 Of the Criminal code provides as follows:

“S.419 Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a felony, and is liable to imprisonment for three years.

If the thing is of the value of one thousand naira or upwards, he is liable to imprisonment for seven years. It is immaterial that the thing is obtained or its delivery is induced through the medium of a contract induced by the false pretence. The offender cannot be arrested without warrant unless found committing the offence.”(Underlining, mine).

In paragraph 3 of the Applicant's further affidavit made on 22nd of January, 2018, the Applicant stated as follows:

“3. That while affirming and relying on the said affidavit of 19/4/2016, I wish to add the following depositions in further support of my application and in response to the counter-affidavits of the respondents:

- (i) *That the 1st to 3rd respondents who arrested me at the instance of the 4th respondent for the offence of obtaining by false pretence under Section 419 of the Criminal Code, did not execute any warrant of arrest before I was arrested and detained at the Area Police Command, Irrua for four days without bail.*
- (ii) *That it was after my counsel's letter to the Police Area Commander Irrua that the 1st to 3rd respondents charged me to the Area Customary Court Uromi in Charge No: ENEACC/10C/2016 which was thereafter withdrawn before I was arraigned along with my wife, Esther Addeh by the 1st to 3rd respondents at the Magistrate Court Uromi in Charge No: MCU/55C/2016 attached to the 1st to 3rd respondents' counter affidavit as Exhibit Legal 6.*
- (iii) *That during trial in Charge No: MCU/55C/2016, the Investigating Police Officer, PW5 admitted that he did obtain the mandatory warrant of arrest before the 1st – 3rd respondents arrested me. (Attached as Exhibit "AA" is the record of proceedings containing the evidence of the Investigating Police Officer.*
- (iv) *That at the conclusion of the prosecution's case in respect of Charge No: MCU/55C/2016, my Counsel, P.E. Ayewoh-Odiase ESQ made a no case submission which was upheld by the Magistrate Court Uromi whereupon, I was discharged alongside my wife, Esther Addeh on the 21st of September 2017.*
- (v) *That I know as a fact that the Police cannot arrest any person alleged to have committed the offence of obtaining under false pretence without executing a mandatory warrant of arrest."*

From the e record of proceedings attached to the Further Affidavit as Exhibit ðAAö, the Investigating Police Officer (PW5) admitted that he did not obtain the mandatory warrant of arrest before they arrested the Applicant. Thus, it is crystal clear that the Applicant was arrested without a warrant, in breach of the provisions of *Section 419 of the Criminal Code*.

The crucial question to be answered at this stage is: What is the effect of this breach and how does this affect the validity of the arrest *eo ipso* the detention?

The duties and powers of the Police are clearly circumscribed by law. Section 214(2)(b) of the 1999 Constitution provides that: "*The members of the Nigeria Police shall have such powers and duties as may be conferred upon them by law*"

The implication of the above provision is that, unless a power or duty is prescribed or conferred by law such duty is not obligatory nor is the power exercisable by the police. The dominance of law over the police can be stretched to the fact that even the procedure for performing certain duties are to a great extent, prescribed by law. The provision of **Section 419 of the Criminal Code** is an example of where the law has stipulated the procedure for enforcing the offence of obtaining under false pretences. The preliminary procedure is that ***the offender cannot be arrested without warrant unless found committing the offence.*** In the instant case, the police did not follow the procedure stipulated by law.

It is settled law that irregularities in summons, warrants or arrests cannot vitiate criminal proceedings. In the old case of: ***IGP vs. Ehiguase (1957) WRNLR 129***, the appellant was convicted for obtaining money under false pretences contrary to section 419 of the Criminal Code. On appeal, he sought to set aside the conviction on the ground that he was arrested without a warrant before his trial. The appellate court held that summons, warrants and arrests are mere machinery for securing the attendance of an accused in court and any irregularity cannot vitiate conviction. However the Court observed that: "***Where it is not observed, it only makes the arrest unlawful.***"

In the instant case, the Applicant is not trying to fault any conviction based on an irregular arrest. In fact, from the record of proceedings of the lower court, the Applicant was discharged on a no case submission. What he is challenging now is the validity of his initial arrest without a warrant. On the authority of ***IGP vs. Ehiguase (1957) WRNLR 129***, the arrest was clearly unlawful since it was procedurally defective.

I agree entirely with the learned counsel for the Applicant that the provision of section 419 of the Criminal Code regarding the issue of warrant of arrest is mandatory and not discretionary. Where a particular law as in the instant case makes the procedure for carrying out an act mandatory, failure to comply with the law amounts to flagrant disregard for due process which renders the act of arrest as in the instant case, illegal. See the cases of: ***Attorney-General, Ekiti State V Daramola (2003) 10NWLR part 827, page 104 (P. 162 paras. C – D): and Ebe V.***

Commissioner of Police (2011) 9 LRCNCC page 282, aptly relied upon by the learned counsel.

Since the 1st to 3rd respondents failed to comply with the condition precedent for carrying out an arrest under Section 419 of the Criminal Code by not executing a warrant and considering the fact that the applicant was not found committing the alleged offence when he was arrested, the arrest of the applicant by the 1st to 3rd respondents, was unlawful and amounts to a violation of his fundamental rights to personal liberty and dignity of the human person under sections 35 and 34 of the constitution of the Federal Republic of Nigeria 1999.

In the event, I resolve Issue 2 in favour of the Applicant.

On the issue of damages, the Applicant is claiming the sum of ₦500,000,000.00 (five hundred million naira) being general and exemplary damages for unlawful arrest and illegal detention of the applicant by the respondents from the 15th to 19th of April, 2016 without any lawful justification.

General Damages are presumed by law as the direct natural consequences of the acts complained of by the Claimant against the Defendant. The assessment of general damages is not predicated on any established legal principle. Thus, it usually depends on the peculiar circumstances of the case. See: *Ukachukwu vs. Uzodinma (2007) 9 NWLR (Pt.1038) 167; and Inland Bank (Nig.) Plc vs. F & S Co. Ltd. (2010) 15 NWLR (Pt.1216) 395.*

The fundamental objective for the award of general damages is to compensate the Claimant for the harm and injury caused by the Defendant. See: *Chevron (Nig.) Ltd. vs. Omoregha (2015) 16 NWLR (Pt.1485) 336 at 340.*

Thus, it is the duty of the Court to assess General Damages; taking into consideration the surrounding circumstances and the conduct of the parties. See: *Olatunde Laja vs. Alhaji Isiba & Anor. (1979) 7 CA.*

The principle of exemplary damages is also similar. In the old English case of: *Rooks vs. Barnard (1964) 1 All E.R. 367*, the Court opined thus:

“The fact that the injury to the plaintiff has been aggravated by the malice or by the manner of doing the injury, that is the insolence or arrogance by which it is accompanied, is no justification for an award of exemplary damages: aggravated damages can do in this type of case what otherwise could be done by exemplary damages.”

The Nigerian Supreme Court followed that view in the case of *Bakare vs. Olumide (1969) All N.L.R 755 at 764 to 765.*

Also, in the case of: *K. F. INVESTMENT NIGERIA LTD vs. NIGERIA TELECOMMUNICATIONS PLC. (2009) Vol.39 NSCQR p.426 at 459, I.F. Ogbuagu, JSC* explained thus:

“Exemplary, punitive, vindictive or aggravated damages where claimed, are usually awarded, whenever the defendant or defendants' conduct, is sufficiently, outrageous to merit punishment as where for instance, it discloses malice, fraud, cruelty, insolence, or flagrant disregard of the law and the like.”

Going through the facts of this case, I cannot see any aspect of the conduct of the 1st to the 3rd Respondents to warrant the award of exemplary damages. General damages will suffice.

However, the quantum of damages will depend on the evidence of what the Applicant has suffered from the acts of the 1st to the 3rd Respondents. According to him, he was detained between the 15th and 19th of April 2016 by the 1st to 3rd respondents in excess of the period allowed by law over a purely civil matter. He however did not give a comprehensive report of what he actually suffered in the course of his arrest and detention.

The true position of the law is that General Damages demands the same standard of proof as Special Damages and must not be arbitrary. The only distinction is that there is no specific value on particular losses; areas of losses must be identified; motive and conduct of the Defendant would be taken into consideration where they aggravate the Claimant's injury. See: *UBA Plc. vs. Samba Petroleum Co. Ltd. (2003) FWLR (Pt.137)1199 at 1225, 1229.*

It is usual in cases such as this, where the Applicant has not shown that any particular loss was suffered for the Court to award nominal damages. See: *Artra Industries (Nig.) Ltd. vs. N.B.C.I (1998) 4 NWLR (Pt.546) 357; Ogbechie vs. Onochie (1988) 4 NWLR (Pt.70) 370.* In the event, I think the Applicant is not entitled to the whooping sum of sum of ₦500, 000,000.00 (five hundred million naira). He is only entitled to nominal damages. Applying the foregoing principles to the instant case I think the sum of N2, 000,000.00 (two million naira) will be adequate compensation for him.

On the whole, the Application partially succeeds and it is granted as follows:

- 1. A DECLARATION that the arrest of the applicant by the 1st – 3rd respondents is unlawful, arbitrary and a violation of the applicant's*

fundamental rights guaranteed under Section 41 of the Constitution of the Federal Republic of Nigeria, 1999 as amended;

2. *A DECLARATION that the detention of the applicant by the 1st to 3rd respondents at the Area Command cell Irrua, from the 15th to the 19th of April, 2016 is illegal, oppressive, unjustifiable and a flagrant breach of the applicant's fundamental rights to the dignity of the human person and his personal liberty guaranteed under Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 as amended;*
3. *A DECLARATION that the arrest of the applicant by the 1st to 3rd respondents for the offence of obtaining under false pretence without a warrant of arrest, is illegal, unlawful and a brazen violation of the applicant's fundamental rights to personal liberty and the dignity of the human person; and*
4. *The sum of ₦2, 000,000.00 (two million naira) being general damages for unlawful arrest and illegal detention of the applicant by the 1st to the 3rd respondents from the 15th to 19th of April, 2016 without any lawful justification.*

Costs is assessed at N10, 000.00 (ten thousand naira) in favour of the Applicant.

P.A.AKHIHIERO
JUDGE
07/05/18

COUNSEL:

1. P.E.Ayewoh Odiase Esq. í í í í í í í í í í í í ..í Applicant
2. Simon Ozabor Esq. í í í í .í í í í í í í í .1st ó 3rd Respondents
3. C.O.Aimionowane Esq. í í í í í í í í í í í í ..4th Respondent

