

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

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

ON MONDAY THE

28TH DAY OF FEBRUARY, 2022.

BETWEEN:

SUIT NO. B/142^M/2021

IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF
FUNDAMENTAL HUMAN RIGHT BROUGHT PURSUANT TO
ORDER 11 OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT
PROCEDURE) RULES, 2009.

K.O. OBAMOGIE, ESQ -----APPLICANT
(Carrying on Legal Practice as
K.O. Obamogie & Co.)

AND

- | | |
|--|--------------------|
| 1. <i>ECONOMIC AND FINANCIAL CRIMES</i> | } -----RESPONDENTS |
| COMISSION (EFCC) | |
| 2. <i>MUHTAR S. BELLO</i> | |

RULING

This is a Ruling in respect of an application for the enforcement of Fundamental Rights brought pursuant sections 34(1)(a), 35(1), 36(1) & (12) and 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and under the inherent jurisdiction of this Honourable Court.

The Reliefs sought from this Honourable court are as follows:

- 1. A declaration that the Respondents' invitation to the Applicant to report to the Respondent's office vide the Respondents' letter dated 15th June, 2021 in a matter that is totally unconnected with the Applicant is contrary to sections 34(1)(a), 35(1), 36(1) & (12) and 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and consequently unconstitutional, illegal, null and void and of no effect whatsoever;*
- 2. An order setting aside the aforesaid Respondents' letter dated 15th June, 2021 written to the Applicant;*
- 3. An order directing the Respondents to tender an unreserved written apology to the Applicant for the Respondents' unprovoked, unjustified and unwarranted actions against the Applicant and his firm.*

AND for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the application, the Applicant filed a 17 paragraphs affidavit and a written address of counsel.

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

Succinctly put, the Applicant through his Law Firm: *K.O. Obamogie & Co.* represented a company, SARNERPFM RESORTS LIMITED in Suit No. EHC/132/2014: SARNERPFM Resorts Limited v. Fast Approach Konstruction Limited at the High Court of Delta State sitting at Effurun.

Sometime in April, 2021 the Applicant received a telephone call from an operative of the Respondents who disclosed that one Princess Abiodun Oyefusi, the Managing Director of SarnerpFM Resorts Limited who is resident in the United Kingdom supplied the Applicant's telephone number to the said Respondents' operative.

The aforesaid operative of the Respondents requested for the contact address of the Applicant's Chambers, which the Applicant readily supplied to the said Respondents' operative.

Subsequently, the Respondents vide a letter dated 27th April, 2021 wrote to SARNERPFM Resorts Limited through the Applicant's Law Firm, K.O. Obamogie & Co., inviting Princess Abiodun Oyefusi to its office in Benin City in respect of an investigation relating to the alleged issuance of a dud cheque.

Upon receipt of the aforesaid letter, the Applicant through his Law Firm, K.O. Obamogie & Co. returned the letter to the Respondents vide a letter dated 6th May, 2021 on the ground that the Applicant's Law Firm is not a courier service company and since SarnerpFM Resorts Limited has closed its operations

in Delta State and the Applicant's firm does not have the company's address or that of the Managing Director either in Nigeria or overseas.

On 11th of June, 2021 the Respondents sent a letter to the Applicant's firm inviting one Miss Mercy Erhunmwun, the Counsel in the Applicant's Chambers who signed the aforesaid letter returning the Respondents' letter of 27th April, 2021 to report at the Respondents' office.

The Applicant caused O.L. Edeko, Esq of Counsel in the Applicant's Chambers to accompany Miss Mercy Erhunmwun to honour the above Respondents' invitation on 15th June, 2021.

According to the Applicant, when Miss Mercy Erhunmwun and O.L. Edeko, Esq got to the Respondents' office on the said 15th June, 2021 the Head of the Fraud Section of the Respondents' office at Benin City was very rude and hostile to O.L. Edeko, Esq and practically sent him out of his office.

He said that the said operatives of the Respondents then told Miss Mercy Erhunmwun that it is her principal in Chambers that they want to interrogate and deal with for daring to return their letter to them. The said operatives delivered to Miss Mercy Erhunmwun the letter dated 15th June, 2021 inviting the Applicant to report at the Respondents' office on 21st June, 2021.

The Applicant emphasized that the Respondents had already established contact with the said Princess Abiodun Oyefusi before writing their letter dated 27th April, 2021 referred to above. He alleged that the said Respondents' letter dated 15th June, 2021 inviting him to the Respondents' office is a flagrant threat to his right to dignity of human person, fair hearing, personal liberty and privacy as enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Furthermore, the Applicant maintained that the Respondents' invitation to him with respect to a matter that is totally unconnected to him is an abuse of power and that there is no criminal complaint whatsoever lodged against him by anybody either in Nigeria or elsewhere.

The Respondents' version of the events appear slightly different in certain regards. From the facts disclosed in their counter-affidavit, on the 18th day of March 2021 the 1st Respondent received a petition written by one Eze Onyolugo (Esq) on behalf of one Ekokodje Desmond. In the petition, the Petitioner alleged that sometime in 2014 the Applicant's client; SPFM International Limited awarded a contract to the Petitioner for the supply of Laterite, Sharp sand and Granite valued N9, 528,000.

It was further alleged that upon completion of the supply and certification of the quantity supplied, the Managing director of the said SPFM Ltd; Princess Abiodun Oyefusi issued the Petitioner three Diamond Bank Cheques covering the said contract sum of N9.528M. That upon presentation of the Cheques, they were returned unpaid due to insufficient funds.

That upon receipt of the Petition, the officers of the 1st Respondent commenced investigations on the allegations contained in the Petition and all efforts to reach the suspect: Princess Abiodun Oyefusi, who is the managing Director of SPFM LTD proved abortive.

That the said Princess Abiodun directed the Respondents via email to channel all their grievances through the Applicant who is her lawyer.

That the invitation written to the Applicant was merely for him to aid the investigations, more so when his name featured in the email shown as a purported middleman to the Suspect.

The Respondents denied any infringement of the Applicant's fundamental rights and maintained that the letter of invitation was written to the Applicant based on evidence that he had contact with the suspect and to enable him to aid their investigations to clarify certain issues.

The Respondents also denied being rude or hostile to the lawyers from the Applicant's chambers. According to them, they only invited the Applicant after the lawyer from his Chamber; Miss Mercy informed them that it was only the Applicant who can speak on the whereabouts of the wanted suspect. They denied threatening to deal with the Applicant. According to them, the suspect is still on the run and is yet to be found.

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

In his Further Affidavit, the Applicant denied some paragraphs of the Respondents' Counter-Affidavit and stated that he is not a "middleman" in respect of the alleged transaction between the Respondents' Petitioner and Princess Abiodun Oyefusi. He also maintained that he is not a surety for Princess Abiodun Oyefusi or any other person.

In his written address in support of this application, the learned counsel for the Applicant, *K.O.Obamogie Esq* formulated a sole issue for determination as follows:

“Whether the invitation to the Applicant to appear before the Respondents without just cause or legal justification is not in violation of Applicant’s

fundamental rights guaranteed by sections 34(1)(a), 35(1), 36(1) & (12) and 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).”

Arguing the sole issue for determination, the learned counsel submitted that the Fundamental Human Rights of a citizen or any person are a significant component of liberty, encroachment on which is rigorously tested by Courts to ascertain the soundness of purported governmental justifications.

He said that it triggers strict scrutiny to determine whether the act complained of violates the due process clause. See the case of ***Gov. Borno State v Gadangari (2016) 1 NWLR (Part 1493) page 396 @ 417 paras. B – C.***

He submitted that the laid down procedure for the enforcement of an individual’s fundamental human rights has been encapsulated in the Fundamental Rights (Enforcement Procedure) Rules, 2009. Specifically he referred to Order II Rule 1 which provides as follows:-

“Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples’ Rights (Ratification and Enforcement Act) and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the court in the State where the infringement occurs or is likely to occur, for redress;.”

He further relied on the case of ***Gov. Borno State v Gadangari (supra) pg 417 – 418 paras F – F.***

Learned counsel submitted that ***sections 34, 35, 36 and 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)*** guarantees a person’s right to dignity of the human person, personal liberty, fair hearing and privacy. He submitted that the above stated sections of the Constitution of the Federal Republic of Nigeria 1999 (as amended) are plain and unambiguous and the Courts ought to give effect to the said provisions.

On the Courts giving effect to the plain and literal meaning of statutes he referred to the following decisions on the point: ***Arua v Ugwu (2016) LPELR – 40930 (CA) at pages 23 – 24 paras. D – A;*** and ***Abubakar & Ors v Nasamu & Ors (2012) LPELR – 7826 (SC) at pages 34 – 35 paras. E – A.***

Counsel submitted that this Honourable Court is well empowered under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to give effect to the above constitutional provisions in order to protect the fundamental rights of the Applicant from being brazenly breached by the Respondents. He

again referred *sections 34(1)(a), 35(1), 36(1) & (12) and 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)*.

Counsel submitted that the crux of the instant application borders on the fact that the Respondents, despite establishing contact with Princess Abiodun Oyefusi, the Managing Director of SarnarPFM Resorts Ltd, prior to their letter dated 27th April, 2021 (Exhibit B) delivered their letter meant for the Managing Director of SarnarPFM to the Applicant's Law Firm.

He posited that the Applicant vide Exhibit C, through his Law Firm adequately responded by returning Exhibit B to the Respondents. He submitted that the Applicant's Law Firm, K.O. Obamogie & Co, is not, in anyway, a courier service company. He pointed out that the Respondents had, prior to Exhibit B, established contact with the said Princess Abiodun Oyefusi. Furthermore, he explained that the Applicant merely made legal representation in Suit No. EHC/32/2014: SARNERPFM Resorts Limited v Fast Approach Konstruction Limited for the Claimant therein.

That this particular fact is to the knowledge of the Respondents who has gone further to harass the Applicant vide Exhibits B and E respectively. According to him, there is no basis for Exhibit E since there has been no criminal complaint lodged against the Applicant. He submitted that the 1st Respondent is merely a law enforcement agency and it does not lie within the Respondents' power to harass innocent citizens who have no connection whatsoever with the complaints being investigated by them.

Counsel submitted that the 1st Respondent has a duty to observe the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and he relied on the case of *Danfulani v E.F.C.C. (2016) 1 NWLR (Part 1493) page 223 @ 246 – 247 paras G – B* wherein the Court of Appeal per Adefope-Okojie, JCA held thus:

“I must, however, express a word of caution. In investigating any complaint, the 1st respondent, is bound to observe the provisions of the Constitution in which it is stated in section 35 as follows:

Section 35 of the Constitution of the Federal Republic of Nigeria 1999 –

- 1. Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases 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;”

He submitted that a public officer or a public body ought not to exceed or abuse its power and he relied on the case of *FUT, Minna & Ors v Okoli (2011) LPELR – 9053 at page 56 paras. D – F*, where the Court of Appeal, per Garba, JCA held thus:-

“This Court in the case of SULE v. ORISAJINMI (2006) ALL FWLR (343) 1686 at 1730, had defined abuse of office as follows:- “Abuse of office is use of power to achieve ends other than those for which power was granted, for example gain, to show undue favour to another or to wreak (sic) vengeance on an opponent.”

He further relied on the case of *Offoboche v Ogoja LG & Anor (2001) LPELR – 2265 (SC)*.

He submitted that by virtue of the facts deposed to in the affidavit and also reiterated above, the Respondents have grossly exceeded the powers conferred on them by their own enabling statute thereby constituting abuse of their office. He said that the Applicant has stated that there is no criminal complaint lodged against him and same has not been provided by the Respondents.

He therefore urged the Court to grant the application.

In opposition to the motion, the Respondents filed a 9 paragraphs counter-affidavit and a written address of their counsel.

In his written address, the learned counsel for the Respondents, *I.M.Elodi Esq.* formulated a sole issue for determination as follows:

WHETHER THE APPLICANT HAS MADE OUT A CASE AGAINST THE RESPONDENTS TO ENABLE THIS HONOURABLE COURT TO GRANT THE RELIEFS BEING SOUGHT?

Arguing the issue for determination, the learned counsel submitted that the 1st Respondent has its duties, special powers, functions and responsibilities provided for by *Sections 6(b) and (h); 7(1), (2)(f); 8(5) and 41 of the ECONOMIC AND FINANCIAL CRIMES COMMISSION (ESTABLISHMENT) ACT, 2004* which provides as follows:

“6(b)- The Commission shall be responsible for the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud. Fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc;”

“(h)- the examination and investigation of all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies or groups involved;”

“7(1)- The Commission has power to-

(a) cause investigations to be conducted as to whether any person, corporate body or organisation has committed an offence under this Act or other law relating to economic and financial crimes;”

(2) In addition to the powers conferred on the Commission by this Act, the Commission shall be the co-ordinating agency for the enforcement of the provisions of-

(f) Any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code.

“8(5)-For the purpose of carrying out or enforcing the provisions of this Act, all officers of the Commission involved in the enforcement of the provisions of this Act shall have the same powers, authorities and privileges (including power to bear arms) as are given by law to members of the Nigeria Police.”

“41. Subject to the provisions of this Act, an officer of the Commission when investigating or prosecuting a case under this Act shall have all the powers and immunities of a Police Officer under the Police Act and any other law conferring power on the police, or empowering and protecting law enforcement agencies.”

Counsel submitted that pursuant to the above-mentioned duties, special powers, functions and responsibilities, on the 18th day of March 2021 the 1st Respondent received a petition written on behalf of one Desmond Ekokodje alleging a case of issuance of dud Cheque against the suspect (the Applicant’s Client now at large).

He said that the 1st Respondent in carrying out its statutory functions and based on investigations invited the Applicant to see if he has any useful information in apprehending, the suspect, his client and nothing more.

He submitted that the letter of invitation extended to the Applicant in the course of investigation does not in any way amount to a breach of Applicant's Fundamental Right to dignity of human person, personal liberty, fair-hearing and right to family and private life. He referred the Court to the case of **OZAH VS EFCC & ORS (2017) LPELR-43386 CA** where the Court explicated thus:

“...in view of the foregoing, my conclusion is that the 1st Respondent's letter of invitation extended to the Appellant after 1st Respondent's preliminary investigation of the petition received as part of its pretrial investigation for an interview cannot be elevated to an infringement of the Appellant's Fundamental Right. Put in other words, mere invitation to appear before the 1st Respondent's officials did not affect the civil rights of the Appellant as to make the matter justiciable before a court.”

He also relied on the case of: **AJAYI VS STATE (2013) 2-3 MJSC Part 1 page 59 at 72-73** explicated thus:

“Apart from the power vested in the Police for prevention and detection of crime and the apprehension of offenders, I am not aware of any law which stipulates the order in which investigations are carried out by the Police based on information at the disposal of the force and the investigator uses his own discretion to determine how to go about the work.”

He submitted that the court has rightly held that it will not hastily interfere with the statutory powers of law enforcement agencies to investigate alleged offences, especially as in the instant case where the Applicant is not even under arrest. See: **DAWAN V. EFCC & ORS (2019) LPELR-48386(CA)**.

He posited that the counsel's submission that the Applicant's fundamental right is being threatened or infringed has no basis or foundation. That he who alleges must prove and whoever fails to discharge the burden of proof placed on him cannot be entitled to the reliefs sought. He referred the Court to **Sections 133 & 134 of the Evidence Act, 2011 (As Amended)**.

He said that merely deposing to facts without proof amounts to an exercise in futility and he urged the Court to discountenance same. He relied on the case of **CHAIRMAN, ECONOMIC & FINANCIAL CRIMES COMMISSION V.**

DAVID LITTLECHILD & ANOR (2015) LPELR-25199(CA), where the Court held thus:

“Affidavit evidence which are clearly and bare allegations and/or conclusions but not supported with facts and documents needed to establish them are omissions which are fatal to any application or assertion before the Court. Thus, where cases are tried upon affidavit evidence, the facts or depositions in such affidavits have to be proven like averments in pleadings. See also: GENERAL & AVIATION SERVICES LTD V. THALIAL (2004) 4 SCM 52; UNION BANK OF NIGERIA PLC V. ASTRA BUILDERS (WA) LTD (2010) 2-3 SC (PART 1) 60.”

Counsel submitted that there is no basis for the award of the reliefs sought by the Applicant, as the Respondents acted within the ambit of their powers in the discharge of their lawful duties and never violated the fundamental rights of the Applicant in any manner whatsoever and he urged the Court to so hold.

Again, he referred to the following cases: ***DIKE V. THE A.G. AND COMMISSIONER FOR JUSTICE, IMO STATE & ORS (2012) LPELR-15383(CA); HASSAN v. MAIDUGURI MGT. COMMITTEE (1991) 8 NWLR (Pt.212) Pg.738; O.S.H.C. v. SHITTU (1994) 1 NWLR (Pt.321) Pg.476; OKEONG v. MIGLIORE (1979) 12 N.S.C.C. Pg.210 and I.B.W.A. v. KENNEDY TRANSPORT (NIG.) LTD. (1993) 7 NWLR (Pt.304) Pg.238. See also OLANLOYE v. FATUNBI (1999) 8 NWLR (Pt.614) Pg.203.***

Learned counsel submitted that the relief of injunction and other declaratory reliefs being sought by the Applicant against the Respondents amount to interfering with the statutory powers, duties and functions of the Respondents and he urged the Court to so hold especially when all actions of the Respondents have not in any way violated any law and more importantly, the rights of the Applicant. He also referred to the case of ***INSPECTOR-GENERAL OF POLICE & ANOR V. DR. PATRICK IFEANYI UBAH & ors (2014) LPELR-23968 (CA) SUIT NO: CA/L/199A/2013*** where the Court held thus:

“The Order of perpetual injunction restraining the appellants is unconstitutional because it is an interference with the powers given by the Constitution to Police Officers to investigate and prosecute crimes. See Attorney-General Anambra State v. Chief Chris Uba (2005) 15 NWLR (PART 947) 44 where Bulkachuwa, JCA held: For a person, therefore to go to court to be shielded against criminal investigation and prosecution is an interference

with powers given by the Constitution to law officers in the control of criminal investigation. The plaintiff has no legally recognizable right to which the court can come to his aid. His claim is not the one the court can take cognizance of for it has disclosed no cause of action. The Plaintiff cannot expect a judicial fiat preventing a law officer in the exercise of his constitutional power. It is indeed trite that no court has the power to stop the Police from investigating a crime and whether to or how it is done is a matter within the discretion of the Police. See FAWEHINMI V. IGP (2002) 7 NWLR (PART 767) 606; AGBIV.OGBE (2005) 8 NWLR (PART 926) 40; CHRISTLIEB PLC V. MAJEKODUNMI (2008) 16 NWLR (PART 1113) 324; ONAH V. OKENWA (2010) 7 NWLR; HASSAN V. EFCC (2013) LPELR (CA).”

On general powers of the Police, the Court also held thus:

“The Police are statutorily empowered by section 4 of the Police Act in these words-“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....There is no fixed or stipulated order of procedure for police investigations of crimes. The established position is that criminal investigations are carried out by the police based on the strength of the information at the disposal of the police investigator. The police investigator then uses his discretion to determine how to carry out the investigation. See Olatinwo v. State (2013) 8 NWLR (PART 1355) 126. The court lacks the powers to issue declaratory and injunctive reliefs with a view to impeding the result of police investigation made pursuant to the statutory duty under section 4 of the Police Act. Similarly, the court lacks the powers to restrain the Police by injunction from investigation of criminal complaints under section 4 of the Police Act.”

Counsel submitted that having not led any evidence to prove that his fundamental rights were violated or infringed upon, the Applicant is not entitled to the reliefs sought against the Respondents as same cannot be justified in the light of the above submissions and he urged the Court to dismiss the application.

As earlier stated, the Applicant filed a Reply on Points of Law. In his Reply on Points of law, the learned counsel posited that upon a calm perusal of the Respondents’ address, it would be seen clearly that the said address is really not in response to the Applicant’s application but rather a specimen address pulled from the computer and filed in these proceedings. He said that his observation is based on the following grounds:-

- a) That contrary to paragraphs 1.3 and 3.8 of the Respondents' written address, Applicant's originating motion does not contain any injunctive relief. That there is nowhere in the Applicant's originating motion dated 18th June, 2021 that contains any injunctive relief. Thus, he posited that the submissions and authorities cited by the Respondents at paragraphs 3.7, 3.8 and 3.9 are misconceived and completely irrelevant to the facts of this case and the reliefs claimed by the Applicant.
- b) The Respondents' written address is incompetent and he cited the case of *Tanimu v. Rabi* (2008) 4 NWLR (Part 1610) 505 at 522 – 523, paras. H – D.

He submitted that the invitation of the Respondents to the Applicant vide Exhibit E is a threat to the Applicant's fundamental human right because the invitation letter contains threat of penal sanction as provided for in *section 38(1) & (2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 and section 21 of the Money Laundering (Prohibition) Act, 2011, as amended* which provides as follows:

“(1) The commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act.

(2) A person who–

- (a) willfully obstructs the Commission or any authorised officer of the Commission in the exercise of any of the powers conferred on the Commission by this Act; or***
- (b) fails to comply with any lawful enquiry or requirements made by any authorised officer in accordance with the provisions of this Act, commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years or to a fine not below the sum of N500,000 or to both such imprisonment and fine.”***

(Underlining supplied by us)

Section 21 (Now section 22) of the Money Laundering (Prohibition) Act, 2011.

“22. A person who willfully obstructs the officers of the Ministry, the Commission, the Agency or any authorised officer in the exercise of the powers conferred on the Ministry, the Commission, or the Agency by this Act commits an offence and is liable on conviction–

(a) in the case of an individual, to imprisonment for a term not less than 2 years and not exceeding 3 years; and

(b)

in the case of a financial institution or other body corporate, to a fine of N1,000,000.”

Counsel contended that from the above statutory provisions, the Respondents’ letter of invitation (Exhibit E) was an invitation with dire consequences.

He submitted that the authorities cited by the Respondents in their written address are distinguishable and inapplicable to the instant suit. He said that the fact that the 1st Respondent is a law enforcement agency does not give it the license to interfere with the fundamental rights of citizens against whom there is no complaint and that the 1st Respondent must operate within the ambit of the law.

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

I have carefully examined all the processes filed in this application together with the submissions of the learned counsels for the parties. The issues formulated by both counsel are quite germane to the just determination of this application. In the event I have condensed the issues into a sole issue for determination as follows:

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

I will proceed to resolve the sole issue for determination.

Essentially, the fulcrum of this application is the Respondents' letter of invitation to the Applicant dated the 15th of June, 2021 which the Applicant contends is in breach of his fundamental human rights as enshrined in ***sections 34(1)(a), 35(1), 36(1) & (12) and 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)***.

For the avoidance of doubt ***sections 34(1) (a), 35(1), 36(1) & (12) and 37 of the 1999 Constitution*** guarantees the ***rights to dignity of the human person, personal liberty, fair hearing and privacy*** respectively.

From the exchange of affidavits in this application, the following facts are not in dispute:

- I. The Applicant who is a Legal Practitioner, represented one SARNERPFM RESORTS LIMITED in Suit No. EHC/132/2014: SARNERPFM Resorts Limited v. Fast Approach Konstruction Limited at the High Court of Delta State sitting at Effurun;
- II. The 1st Respondent is investigating a case of issuing a dud cheque involving one Princess Abiodun Oyefusi, the Managing Director of SarnerPFM Resorts Limited who is now at large;
- III. The Respondents vide a letter dated 27th April, 2021 wrote to SARNERPFM Resorts Limited through the Applicant's Law Firm, K.O. Obamogie & Co., inviting Princess Abiodun Oyefusi to its office in Benin City in respect of the aforesaid investigation;
- IV. Upon receipt of the aforesaid letter, the Applicant through his Law Firm, K.O. Obamogie & Co. returned same to the Respondents vide a letter dated 6th May, 2021;
- V. When the Applicant returned the letter to the Respondents, the Respondents caused a letter of same date to be delivered to Applicant's firm inviting Miss Mercy Erhunmwun, of Counsel in Applicant's Chambers who signed the aforesaid letter returning the Respondents' letter of 27th April, 2021 to report at the Respondents' office;
- VI. Subsequently, the Respondents sent a letter to the Applicant dated the 15th of June, 2021 inviting him to be interviewed by the Head of Bank Fraud Section on the 21st of June, 2021 at 10.00 am prompt;

- VII. The letter specifically stated that the invitation was made pursuant to *Section 38 (1) & (2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004* and *Section 21 of the Money Laundering (Prohibition) Act, 2011 as amended*; and
- VIII. The Applicant did not honour the Respondent's invitation letter, rather he filed this application to enforce his fundamental human right.

The critical question to determine at this stage is whether the Respondents were in breach of the Applicant's fundamental human rights as enshrined in *sections 34(1)(a), 35(1), 36(1) & (12) and 37 of the Constitution* when they sent him that letter of invitation acting pursuant to the provisions of *Section 38 (1) & (2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004* and *Section 21 of the Money Laundering (Prohibition) Act, 2011 as amended*.

For the avoidance of doubt, *Section 38 (1) & (2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004* and *Section 21 of the Money Laundering (Prohibition) Act, 2011 as amended* provide as follows:

“Section 38(1) & (2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004:

- (1) The commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act;*
- (2) A person who—*
- (a) willfully obstructs the Commission or any authorised officer of the Commission in the exercise of any of the powers conferred on the Commission by this Act; or*
- (b) fails to comply with any lawful enquiry or requirements made by any authorised officer in accordance with the provisions of this Act, commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years or to a fine not below the sum of N500,000 or to both such imprisonment and fine.”*

Section 22 of the Money Laundering (Prohibition) Act, 2011 provides as follows:

“22. A person who willfully obstructs the officers of the Ministry, the Commission, the Agency or any authorised officer in the exercise of the powers conferred on the Ministry, the Commission, or the Agency by this Act commits an offence and is liable on conviction–

(a) in the case of an individual, to imprisonment for a term not less than 2 years and not exceeding 3 years; and

(b)

In the case of a financial institution or other body corporate, to a fine of N1, 000,000.”

Upon a careful examination of the above statutes, it is evident that any person who wilfully refuses to honour the invitation of the officials of the EFCC will be liable to a criminal sanction. For example, ***Section 38 (2) (b) of the Economic and Financial Crimes Commission (Establishment) Act, 2004*** stipulates that any person who fails to comply with any lawful enquiry or requirements made by any authorised officer in accordance with the provisions of this Act, commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years or to a fine not below the sum of N500, 000 or to both such imprisonment and fine.

Section 22 of the Money Laundering (Prohibition) Act, 2011 also contains a similar provision.

Putting it quite plainly, it is apparent that the Respondents were invoking their powers under the two statutes to compel the Applicant to honour their invitation. The failure or refusal of the Applicant to honour the letter of invitation will make him liable on conviction to imprisonment for a term of not less than 2 years and not exceeding 3 years. Clearly, the letter was a subtle threat to his right to personal liberty.

Section 35(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended which is one of the provisions under which the Applicant instituted this application provides as follows -

“35(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:-

(a) in execution of the sentence or order of a Court in respect of a criminal offence of which he has been found guilty;

(b) by reason of his failure to comply with the order of a Court or in order to secure the fulfillment of any obligation imposed upon him 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;

(d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;

(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.”

In this application, the onus is on the Applicant to prove that his right to personal liberty has been, is being or likely to be contravened by the Respondents. See *Section 46(1) of the 1999 Constitution*.

It is settled law that the deprivation of the personal liberty of a citizen should be based 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 or under Section 35(1)(a)-(b) or (d)-(f) of the Constitution . The deprivation is to be based on a suspicion of committing not a civil wrong but must have arisen in a criminal cause or matter. See the case of *ANDREW AYABAM v. COMMISSIONER OF POLICE, BENUE STATE (2019) LPELR-47283(CA)*.

In the instant case, it is pertinent to observe that the Applicant is not a suspect in the case under investigation by the EFCC. The only link that he appears to have with the case is that the prime suspect in the case who is now at large is the Managing Director of a Company that he represented as counsel in a previous suit. From the available facts, the Respondents have made contact with the alleged suspect and according to them, the suspect allegedly directed them to liaise with the Applicant who is her lawyer.

Curiously in an attempt to liaise with the suspect’s lawyer, the Respondents vide a letter dated 27th April, 2021 wrote to the suspect’s company, SARNERPFM Resorts Limited through the Applicant’s Law Firm, inviting the

suspect, Princess Abiodun Oyefusi to its office in Benin City in respect of their investigation. The letter is attached as Exhibit B to the Applicant's motion

Upon receipt of the aforesaid letter, the Applicant returned the letter to the Respondents vide a letter dated 6th May, 2021 on the ground that he is not a courier service company and that the suspects company had closed its operations in Delta State. This appears to be the genesis of the problem between the Respondents and the Applicant. From the subsequent conduct of the Respondents, it appears that the act of the Applicant returning the letter did not go down well with the Respondents.

Upon the return of their letter, the Respondents promptly invited one Miss Mercy Erhunmwun, the Counsel in the Applicant's Chambers who signed the letter returning the Respondents' letter of 27th April, 2021 to report at the Respondents' office. When the said Miss Mercy Erhunmwun went to the Respondent's office, the Respondents insisted that the Applicant must come in person to assist them with their investigation.

Since the Applicant was not involved in the matter under investigation, I think the Respondents should have left him alone after he returned their letter to them. They cannot force a citizen to assist them in their investigation. That will be tantamount to an abuse of power. To the extent that the Respondents are insisting that the Applicant must appear personally at their office to assist them in their investigation, I think the Applicant is entitled to approach the Court to seek the protection of the Court to prevent any infringement of his fundamental right to personal liberty and the dignity of his person.

Going through the entire facts relating to this application, the pertinent question that is agitating my mind is whether it was reasonable or proper for a reputable Law enforcement agency like the 1st Respondent to send an invitation letter with an inherent threat of sanction to a Legal Practitioner simply because his erstwhile client who is now on the run, directed them to liaise with him.

Moreover, in circumstances where there appears to be no nexus whatsoever between the Legal Practitioner and the crime under investigation, I think the 1st Respondent and its officials should have restrained themselves from inviting the Applicant with a threat of sanction. They should have exercised proper discretion to avoid this type of approach which appears to be infringing on the private rights of a citizen.

The Respondents are giving the impression that any person can be invited under threat of punitive measures at the whims and caprices of the Agency acting under the directive of a suspect who is at large. Is it proper for a the law

enforcement agency to set the machinery in motion to interrogate a lawyer when there is nothing linking him with the subject matter of the investigation other than the fact that a fugitive suspect directed them to liaise with the lawyer? I do not think that is the intendment of the law which empowers them to invite people to their office during investigation.

In the case of **EMMANUEL UKPAI v. MRS. FLORENCE OMOREGIE & ORS (2019) LPELR-47206(CA)**, Oseji JCA (as he then was) gave the following admonition:

“I must add by way of emphasis that it behoves the Courts as the veritable agency for the protection and preservation of rule of law to ensure that persons and institutions operate within the defined ambit of constitutional and statutory limitations. Where agencies of government are allowed to operate at large and at their whims and caprices in the guise of performing their statutory duties, the end result will be anarchy, licentiousness, authoritarianism and brigandage leading to the loss of the much cherished and constitutionally guaranteed freedom and liberty.”

In his written address, the learned counsel for the Respondents tried to justify the invitation by relying heavily on two authorities, to wit: the cases of **OZAH VS EFCC & ORS (2017) LPELR-43386 CA**; and **DAWAN VS. EFCC & ORS (2019) LPELR-48386 (CA)**. However, I think those decisions are easily distinguishable.

The case of **OZAH VS EFCC & ORS (2017) supra** relied upon by the Respondents can be distinguished from the present case because in the said case, the Applicant was a suspect in the case of fraud which was being investigated by the EFCC, hence the invitation by the body was justified. According to the Court, his invitation was based on the undisputed criminal allegation made against him in that case. In the said case, the Court of Appeal explained the position thus:

“In view of the foregoing, my conclusion is that the 1st Respondent's letter of invitation extended to the Appellant after 1st Respondent's preliminary investigation of the petition received as part of its pre-trial investigation for an interview cannot be elevated to an infringement of Appellant's right based on the undisputed criminal allegation made against the Appellant.(underlining, mine)”

In the same vein, in the case of **DAWAN VS. EFCC & ORS (2019) LPELR-48386 (CA)** which was also relied upon by the Respondents, the Applicant was a prime suspect in the case of fraud being investigated by the EFCC hence the Court justified the invitation.

In the instant case, the Applicant is not a suspect in the case under investigation. There is nothing to show that the 1st Respondent's preliminary

investigation into the petition revealed anything connecting the Applicant. The only link that he appears to have had with the suspect now at large is that he was her counsel in a previous suit. From the available facts, the Respondents are already in contact with the alleged suspect who is said to be at large. There is no basis whatsoever for the Respondents to insist that the Applicant must appear personally at their office under threat of punitive sanction.

If lawyers are subjected to such invitations with inherent punitive sanctions for default, simply because their former clients have directed the law enforcement agents to liaise with them, I think legal practice will become extremely cumbersome and that will not augur well for both the legal profession and the society at large.

I think the Respondents exceeded their powers when they sent the letter of invitation, Exhibit E to the Applicant. It was a flagrant abuse of power to invite him to their office under threat of sanction if he failed to honour the invitation. Law enforcement agents must operate within the ambits of the law they cannot be allowed to use the instrumentality of the law to intimidate or harass innocent citizens. The Courts must curtail such misuse of power. This is what the fundamental rights enshrined in the Constitution are meant to protect. I am satisfied that the Applicant has led sufficient evidence to prove that his rights to personal liberty and the dignity of the human person are about to be infringed by the Respondents.

On the whole I am of the view that the Applicant has discharged the onus to prove that his fundamental human rights are likely to be contravened by the Respondents. See *Section 46(1) of the 1999 Constitution*. I therefore resolve the sole issue for determination in favour of the Applicant and grant the following reliefs:

- 1. A declaration that the Respondents' invitation to the Applicant to report to the Respondent's office vide the Respondents' letter dated 15th June, 2021 in a matter that is totally unconnected with the Applicant is contrary to sections 34(1)(a), 35(1), 36(1) & (12) and 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and consequently unconstitutional, illegal, null and void and of no effect whatsoever;***
- 2. An order setting aside the aforesaid Respondents' letter dated 15th June, 2021 written to the Applicant;***

3. *An order directing the Respondents to tender an unreserved written apology to the Applicant for the Respondents' unprovoked, unjustified and unwarranted actions against the Applicant and his firm.*

I award the sum of N200, 000.00 (two hundred thousand naira) as costs in favour of the Applicant.

Hon. Justice P.A.Akhihero

JUDGE

28/02/2022

COUNSEL:

1. K.O.Obamogie Esq.....Applicant

2. I.M.Elodi Esq..... Respondents