

**IN THE HIGH COURT OF JUSTICE**  
**OF EDO STATE OF NIGERIA**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO,**  
**ON TUESDAY THE 29<sup>TH</sup>**  
**DAY OF MARCH, 2022**

**BETWEEN:**

**SUIT NO: B/54<sup>M</sup>/2021**

**MRS. CHINASA UGWOKE.....APPLICANT**  
**AND**  
**MR. IGHO IGBINOVIA.....RESPONDENT**

**RULING**

This is a Ruling in respect of an application for the enforcement of Fundamental Rights brought pursuant to Sections 34, 5, 1 and 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Order 11 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and under the inherent jurisdiction of this Honourable Court.

The Applicant is seeking the following reliefs:

- 1. A Declaration that the detention, harassment, intimidation and torture of the Applicant by the Respondent and his thugs on the 5th day of March, 2021 is a violation of the Applicant's fundamental rights to personal liberty, dignity of human person and freedom of movement;**
- 2. An Order of this Honourable Court awarding the sum of N20,000,000.00 (Twenty Million Naira) as damages against the Respondent for the breach of the Applicant's fundamental rights;**
- 3. An Order of this Honourable Court restraining the Respondent from further detaining, harassing, intimidating and torturing the Applicant; and**

#### **4. Cost of this action.**

The application is supported by an affidavit of 28 paragraphs and the written address of the learned counsel for the Applicant. At the hearing of this application, the learned counsel for the Applicant, *C.O. Erhabor Esq.* adopted his written address as his arguments in support of the motion.

According to the Applicant, the Respondent is his former landlord and the owner of a Guest House known as PLAY HOUSE. They entered into a tenancy agreement dated 7th day of April, 2020 for a period of one year and the said Tenancy Agreement was attached to the supporting affidavit in this application as Exhibit A.

She said that before the end of the tenancy, the Respondent forcefully evicted her from the said premises and she instituted an action against the Respondent at the Oredo Area Customary Court in suit No. ORACC/102R/2021. She exhibited the Claim as Exhibit B.

According to Applicant, before her eviction, she was using the said premises as a Guest House and during the period of running the Guest House, one of her sales representatives stole her money with some of her properties and equipment from the Guest House.

She allegedly confronted the suspect who admitted and pleaded that she would pay the money before the end of January, 2021. When she defaulted in making the payment, the Applicant wrote a petition to the Police to report the incident.

She alleged that before writing the petition to the Police, the Respondent had been threatening to deal with her if he found her near Airport Road.

On the 5th day of March, 2021, the Applicant took two police officers to effect the arrest of her former sales representative based on her petition. That on getting to her house, she was absent and as they were about to leave, the Respondent came in the company of several of his community thugs and prevented them from leaving.

That the Respondent and his thugs allegedly overpowered the policemen and subjected the Applicant to physical assault. They seized her vehicle and detained her in the premises for over two hours while the policemen escaped from the scene to save their lives.

The Applicant stated that the act and conduct of the Respondent and his thugs in detaining, harassing and torturing her on the 5th day of March, 2021 was

unlawful, unconstitutional and a violation of her fundamental rights guaranteed under the Constitution.

In his written address in support of this application, the learned counsel for the Applicant, *C.O. Erhabor Esq.* formulated two issues for determination as follows:

- 1. Whether the Applicant's fundamental rights to dignity of human person, personal liberty and freedom of movement have been breached by the Respondent; and*
- 2. Whether the Applicant is entitled to damages for the breach of her fundamental rights by the Respondent.*

Thereafter, the learned counsel for the Applicant argued the two issues seriatim:

### **ISSUE ONE:**

Arguing issue one, the learned counsel submitted that the act and conduct of the Respondent amounts to a violation of the Applicant's fundamental rights to dignity of human person, personal liberty and freedom of movement as guaranteed under *Sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999(As Amended)* and he urged the Court to so hold. To buttress his point, he referred to the provisions of section 34 of the Constitution which provides as follows:

*Section 34 "Every individual is entitled to the dignity of his person, and accordingly no person shall be subjected to torture or to inhumane or degrading treatment"*

Counsel submitted that the act and conduct of the Respondent amounts to torture, inhuman and degrading treatment. He said that in her affidavit in support of this application, the Applicant deposed to the fact that she was beaten by the Respondent and his thugs, kicked and pushed to the ground while the Respondent ordered his thugs to descend on her. He submitted that such a treatment amounts to torture which lowered the reputation of the Applicant in the estimation of the persons who were present at the scene. He relied on the case of *AHURUONYE v IKONNE (2015) ALL FWLR (Pt 811) 1233 at 1293* where the Court defined torture as follows:

*"Torture includes mental harassment as well as physical assault"*

He also referred to the cases of *UZOUKWU v EZEONU 11 (1991) 6 NWLR (Pt 200) 708 and ISENALUMBE v AMADIN (2001) 1 CHR 456*.

Learned counsel further referred the Court to *Section 35 of the Constitution* which provides as follows: “*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*”.

He submitted that the act and conduct of the Respondent is a breach of the Applicant’s fundamental right to personal liberty. That in her affidavit in support of this application, the Applicant stated that she was detained by the Respondent and his thugs who detained her for over two hours while torturing her. He submitted that the detention of the Applicant by the Respondent was unlawful, illegal, unjustifiable, malicious, harassing, intimidating and totally uncalled for. He submitted that the detention of a person even for a short period amounts to a breach of the person’s fundamental right to personal liberty.

He therefore submitted that the act of the Respondent in detaining, intimidating, harassing and torturing the Applicant for over two hours was unlawful, malicious and unconstitutional and he urged the Court to so hold.

Counsel also referred to *Section 41 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)* which guarantees the right to freedom of movement and submitted that the detention of the Applicant also amounts to a breach of her fundamental right to freedom of movement.

On the duty of the Court to protect persons against any breach of their fundamental rights, counsel referred to the dictum of *BALOGUN J.* in the case of *LADOJOBI v A.G FEDERATION (1982) 3 NCLR 563* where he stated that “*it is the duty of all Courts to play the role of protectors of cherished freedom from erosion in our society*”.

Concluding his submissions on issue one, he submitted that by the act and conduct of the Respondent, he has breached the fundamental rights to dignity of the human person, personal liberty and freedom of movement of the Applicant.

## **ISSUE TWO:**

Arguing issue two, learned counsel submitted that the Applicant is entitled to the award of damages for the breach of her fundamental rights. He referred the Court

to the case of **FEDERAL MINISTER OF INTERNAL AFFAIRS v SHUGABA DARMAN (1982) 3 NCLR 915** where the Court stated thus: *“The purpose of the Fundamental Rights Enforcement Procedure Rules is to facilitate the enforcement of infringement of fundamental rights...it will be depriving the citizen of the right of action legitimately due to him if the only remedy he gets is the quashing of the illegal order constituting the infringement ... it is well settled that wherever a right is infringed there is a remedy.... Ubi jus ibi remedium”*.

Again, he referred to the case of **BRITISH AIRWAYS v ATOYEBI (2014) 13 NWLR (1424) 253 at 286**, where the Supreme Court held thus:

*“The primary object of an award of damages is to compensate the Plaintiff for the harm done to him; while a possible secondary object is to punish the Defendant for his conduct in inflicting the harm”*

He also cited the case of **ODIBA v AZEGE (1998) 9 NWLR (Pt 566) 370**.

Counsel further submitted that the award of damages is automatic upon the proof of breach of the right to personal liberty and he urged the Court to so hold. He therefore urged the Court to hold that the Applicant is entitled to the award of damages against the Respondent.

The Respondent was duly served with all the Court processes in respect of this application but he did not come to Court to contest the application. Neither did he file any response. In essence, this application is uncontested.

However, the failure of the Respondent to file any response cannot prevent the Court from proceeding with the substantive application. Once there is proof that the Respondent has been given opportunity to react to the application, the Court is at liberty to proceed. See: **Nice v. Attorney General of the Federation (2007) CHR 218**. Furthermore, it is now settled law that a Respondent who fails to file a written address is deemed to have admitted the issues raised in the Applicant’s written address. See the case of **Omowunmi v. Ogunsiji (2008) 3 WRN 115**.

Again, in the case of **Olisa Agbakoba v. Director, State Security Service (1994) 7 NWLR (Pt.351) 353 at 500**, the Court of Appeal opined thus:

*“It will work injustice and defeat the whole purpose of enforcement of fundamental rights were a complainant to be deprived of a declaration of infringement of his right merely by reason of the fact that the other parties to the*

***proceedings failed, despite all opportunities given them, to offer either affidavit or any evidence or appear to be heard on the application.”***

However, the Applicant still has the burden to prove that the Respondent breached his fundamental rights. In the case of *Agbakoba v. Director, State Security Service (1994), supra*, the Court reiterated thus:

***“...the court will not declare a right to be infringed merely because the other party to the application has neither filed an affidavit nor come forward to be heard on the application if the affidavit and materials placed before him in support of the application show that the right claimed does not exist or, if it exists, has not been infringed.”***

I have carefully considered the facts contained in the supporting affidavit together with the submissions of the learned counsel for the Applicant. The facts are uncontroverted. It is settled law that when a respondent fails to file a counter affidavit, he is deemed to have admitted the facts contained in the affidavit in support of the application. See: *Nwosu V Imo State Environmental Protection Agency 1990 2 NWLR (Pt.135), 688; and Egbuna V Egbuna 1989 2 NWLR (Pt. 106) 773, 777.*

On the above authorities, the Respondent is deemed to have admitted all the facts as contained in the Applicant’s affidavit in support of the application. The facts reveal very clearly that on the 5th day of March, 2021, the Respondent and his thugs physically assaulted the Applicant, seized her vehicle and detained her for over two hours while subjecting her to severe humiliating treatment.

The sole issue for determination in this application is whether the Applicant is entitled to the reliefs which she seeks in this application.

The Applicant has maintained that her fundamental human rights to personal liberty, dignity of human person and freedom of movement has being violated by the Respondent.

As a foundation, every citizen of Nigeria has a constitutionally guaranteed right to his personal liberty which cannot be interfered with or violated except as may be permitted by the Constitution or a law made pursuant thereto. ***Section 35 (1) of the 1999 Constitution (as altered)*** has made the following provisions on the personal liberty of a Nigerian:-

***“Section 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; 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.”*

*Section 35(6) of the Constitution* provides for the consequences against the authority or person responsible for violation of the personal liberty of a citizen. It stipulates thus:- *"Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, 'the appropriate authority or person' means an authority or person specified by law."*

Section 35(1) of the Constitution guarantees to every person his/her personal liberty. In the instant case, the Applicant has shown that the Respondent and his thugs detained her for over two hours while physically assaulting her and humiliating her.

On his part, the Respondent did not make any attempt to justify his action by coming under any of the exceptions stipulated in *section 35(1) (a) to (f) of the Constitution*. Again, *Section 35(6) of the Constitution* provides thus: *“Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or Person...”*

Furthermore, *sections 46(1) and (2) of the Constitution* provide as follows:  
*“46. (1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.*  
*(2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or*

*securing the enforcement within that State of any right to which the person who makes the application may be entitled under this Chapter.”*

A community reading of *Sections 35(6) and 46 (1) and (2) of the Constitution (Supra)* will give effect to the principle of *Ubi jus Ibi remedium* (where there is a right, there is a remedy). By *Sections 35 and 46 of the Constitution*, Fundamental Right matters are placed on a higher pedestal than ordinary civil matters in which a claim for damages resulting from a proven injury has to be made specifically and proved. Once the Applicant as in the instant case has established that the Respondent has violated his right to personal liberty, damages in form of compensation and even apology would follow.

Next is on the infringement of the right to dignity of the human person.

*Section 34(1) of the 1999 Nigerian Constitution* provides as follows:

**“34. (1) Every individual is entitled to respect for the dignity of his person, and accordingly –**

- a) no person shall be subjected to torture or to inhuman or degrading treatment;**
- b) no person shall be held in slavery or servitude; and**
- c) no person shall be required to perform forced or compulsory labour.”**

The facts revealed that the Respondent and his thugs tortured the Applicant on the day in question. Torture is forbidden under *Section 34(1) (a) of the Constitution of the Federal of Nigeria, 1999*. It is a violation of one of the fundamental rights of every individual in Nigeria. See the following decisions on the point: *ODIONG v. ASST. IGP (2013) LPELR-20698(CA)*; and *OKONKWO v. EZEONU & ORS (2017) LPELR-42785(CA)*.

In the case of *Eric Chukwuemeka Igweokolo V. Mr. Marvel Akpoyibo & Ors (2017) LPELR-41882(CA)*, *Ogakwu JCA*, reading the lead judgment of the Court defined "torture" with the aid of dictionaries, to mean **“to intentionally inflict severe pain or suffering....the infliction of intense pain to the body or mind to punish, to extract a confession or information, or obtain sadistic pleasure”**. The Respondent appears to have intentionally inflicted pain and suffering on the Applicant on the day in question.

In paragraphs 17 to 25 of her supporting affidavit, the Applicant narrated her ordeal as follows:

***“17. That the Respondent told the police officers that nobody has the right to bring a Police officer to the community for any reason.***

***18. That in the process, the Respondent used his right leg to hit me and pushed me to the ground and started hitting me.***

***19. That the Respondent's thugs also descended on me and started hitting me. One of the thugs was referred to as "DONGO" by the Respondent.***

***20. That the police officers with me in fear of their lives could not help me as the Respondent and his thugs were too many in number.***

***21. That the two police officers in a bid to avoid been beaten too started pleading with the Respondent and his thugs to stop beating me that they were not aware of any Court case between me and the Respondent and that they did not come for the Respondent.***

***22. That the Respondent and his thugs beat me, hit me with their legs while I was crying on the ground.***

***23. That the Respondent also ordered his thugs to seize my car (we went there with my car).***

***24. That it took the diplomacy of the two Police Officer before I was eventually allowed to go and for more than 2(two) hours, the Respondent and his thugs refused to allow me leave while torturing me.***

***25. That I was detained, harassed and tortured by the Respondent and his thugs at about 7: 20pm and was eventually allowed to leave at about 9:50pm.”***

The law is settled that the onus is on the person alleging a breach of his fundamental right to prove same by cogent and credible evidence which in my view the Applicant has done in the instant application. See ***FAJEMIROKUN v. COMMERCIAL BANK (CREDIT LYONIYAIS) NIG LTD & ANOR (2009) 5 NWLR (PT. 1135) 558 AT 600, 605 606, GUSAU & ORS. V. UMEZURIKE & ANOR (2012) LPELR - 8000 (CA)***. There was a clear violation of the Applicant’s right to the dignity of his person as guaranteed by section 34 of the Constitution.

Next is on the infringement of the Applicant’s right to freedom of movement. ***Section 41(1) of the Constitution*** stipulates that every citizen of Nigeria is entitled

to move freely throughout Nigeria. It is clear that the right to freedom of movement relates to all corners, nooks and crannies within Nigeria. Therefore it was a violation of the Applicant's right to freedom of movement when the Respondent forcefully detained her for over two hours under excruciating condition and prevented her from leaving that place.

In the case of ***OKAFOR v. LAGOS STATE GOVT & ANOR (2016) LPELR-41066 (CA)***, the Court of Appeal held that it was a violation of the Appellants right to freedom of movement when the Respondents arrested her, kept her for five hours and prevented her from proceeding with her mission of going to buy drugs since she was not feeling well.

On the whole, I am satisfied that the Applicant has discharged the burden to prove that the Respondent breached her fundamental human rights as enshrined in the Constitution. In assessing the compensation payable to the Applicant, cognizance should be taken of the pain and suffering occasioned to the Applicant by deprivation of her personal liberty, freedom of movement as well as the indignity and emotional stress arising from the said detention. The amount to be awarded as compensation must reflect the abhorrence of society and the law for the violation of fundamental rights to personal liberty since personal liberty is a commodity of inherently high value. See the case of ***Odogu v. AG Federation (1996) LPELR - (2228) 1 at 15-16; Igweokolo v. Akpoyibo & Ors (2017) LPELR-41882 (CA); and GABRIEL JIM-JAJA VS. COMMISSIONER OF POLICE, RIVERS STATE & ORS. (2013) 6 NWLR (PART 1350) 225 at 245 F - H to 846.***

Sequel to the foregoing, the sole issue for determination is resolved in favour of the Applicant. I hold that the Applicant is entitled to the reliefs which she seeks in this application and they are granted as follows:

- 1. A Declaration that the detention, harassment, intimidation and torture of the Applicant by the Respondent and his thugs on the 5th day of March, 2021 is a violation of the Applicant's fundamental rights to personal liberty, dignity of human person and freedom of movement;***
- 2. An Order of this Honourable Court awarding the sum of N3,000,000.00 (Three Million Naira) as damages against the Respondent for the breach of the Applicant's fundamental rights;***
- 3. An Order of this Honourable Court restraining the Respondent from further detaining, harassing, intimidating and torturing the Applicant; and***

**4. Cost of this action is assessed at N200, 000.00 (Two Hundred Thousand Naira) in favour of the Applicant.**

**P.A.AKHIHIERO  
JUDGE  
29/03/22**

**COUNSEL:**

**C.O.ERHABOR ESQ.....APPLICANT**

**UNREPRESENTED.....RESPONDENT**