

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 WEDNESDAY THE
30TH DAY OF MARCH, 2022

BETWEEN:

SUIT NO: B/104^M/2021

CHUKWUKA JONATHAN ENEGIDE ESQ. -----APPLICANT

AND

- 1. MR. GODWIN ENOGHEGHASE OBASEKI
(The Executive Governor of Edo State)*
- 2. MR DENNIS OLORIEGBE
(The Managing Director Edo State
Traffic Control and Management Agency)*
- 3. IRYN OMOROGIUWA
(Secretary /Head Legal Services Edo State Traffic
Control and Management Agency)*
- 4. ERO SYDNEY
(An Operative of Edo State Traffic Control and
Management Agency)*
- 5. EDO STATE TRAFFIC CONTROL AND
MANAGEMENT AGENCY*

RESPONDENTS

RULING

This is a Ruling in respect of an application for the enforcement of Fundamental Rights brought pursuant to Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and under the inherent jurisdiction of this Court.

The Applicant is seeking the following reliefs:

a) ***A DECLARATION that every Nigerian (including the Applicant) is entitled to inalienable Rights to respect for the dignity of his person, Fair Hearing and Property as guaranteed under Sections 34, 36 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and Articles 5, 7, (1) (a — e) and 14 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act CAP A 9 Laws of the Federation of Nigeria 2004.***

b) ***A DECLARATION that the abhorrent acts of the Respondents in constituting the Edo State Traffic Control and Management Agency coupled with the grant of absolute powers to compulsorily take possession of citizens' vehicles at will, impound same indefinitely, impose fines, penalties and to auction same thereafter (ostensibly for increase in the internally Generated Revenue of the Edo State Government) without affording them any opportunity of a hearing let alone fair hearing, is unconstitutional, illegal and void abinitio.***

c) ***A DECLARATION that the Respondents' illegal acts of extortion, humiliation, unlawful forcible seizure and compulsory acquisition of the Applicant's vehicle (Toyota Camry car with Registration Number; AGB 166 RK, Chassis Number; 41BF2K6TU135777 and Engine Number; 2M70059059 and its detention since on the 10th of May, 2021 till date remain unconstitutional and constitutes flagrant violation of the Applicant's Rights to Dignity of his person, Fair Hearing and Property as guaranteed by the said relevant Sections of the 1999 Constitution and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.***

d) ***This Honourable Court is called upon to determine whether the relevant Sections of the Edo State Traffic Control and Management Agency Law granting absolute powers to impound and auction vehicles or demand payment of penalties without recourse to the courts is not inconsistent with Sections 1, 3, 35, 36, 44 and 272 of the said 1999 Constitution and ought to be voided to the extent of the inconsistency.***

e) ***This Honourable Court is also called upon to determine whether the said Edo State Traffic Control and Management Agency being an agency of Edo State Government has the requisite competence to regulate, control, Manage and delve into alleged traffic violations occurring on Sapele Road, Benin City which is Federal High Way within the exclusive legislative jurisdiction of the Federal Government and or regulated by applicable Federal High Ways Acts.***

f) The sum of N 10,000,000.00 being Aggravated/Exemplary Damages for the wanton infraction of the said constitutional and inalienable Rights of the Applicant to the dignity of his person, fair hearing and property.

g) Any Order the Honourable Court may deem expedient in the interest of justice.

The application is supported by an affidavit of 16 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.J.Enegide Esq.* adopted his written address as his arguments in support of the motion.

According to the Applicant, on the 10th day of May, 2021 he was driving his Toyota Camry car with Registration Number; AGB 166 RK along the Benin-Sapele Road when he encountered a chaotic traffic grid lock on the Ikpokpan round about. He alleged that he passed through the chaotic traffic situation, got to the point of diverting from Sapele Road to the Murtala Mohammed Way where he encountered some aggressive staff of the Edo State Traffic Control and Management Agency who rushed unto the centre of the road and ordered him to park his car inside the roundabout.

He alleged that some other motorists were also arrested by the officials but after negotiating with them and paying them tips, they were allowed to go. He said that due to his refusal to give them any tip, they simply jumped into his vehicle and ordered him to drive to their office opposite the Magistrates Courts Premises on Sapele Road, Benin City.

Upon getting to their said office, the Applicant alleged that it was raining and the 4th Respondent told him to come out from his vehicle while one of his subordinates was directed to deflate the tyres of his car.

He said that at this stage, he was drenched with the rain and he called a colleague and they drove to the Head office of the Edo State Traffic Control and Management Agency where they tried to seek audience with the Managing Director but they were not allowed to see him. He said that they also went to see the 3rd Respondent but she was said to be out of the office.

The Applicant alleged that he was not allowed to take any of his valuable documents from his vehicle which the Respondents forcibly impounded.

The Applicant maintained that he never committed any offence and that the Respondents never disclosed any charge nor afforded him any hearing. That they

only used their executive office and privileged positions to continue to intimidate and oppress him by seizing and depriving him of his property rights to his car with impunity thereby occasioning him huge losses and grave embarrassment in the circumstances.

In opposition to this application, the Respondents filed a Counter-Affidavit and a written address of their counsel.

In the Counter-Affidavit deposed to by the 4th Respondent, the Respondents narrated their own version of the incident.

According to the Respondents, on the day in question, between the hours of 10 a.m. – 11 a.m., the Applicant drove his vehicle against the traffic light while coming from Murtala Mohammed Way going to Sapele Road. They accosted the Applicant and directed him to park his vehicle inside the Round About.

They alleged that after parking his car, the applicant informed them that they have no right to park him or control traffic flow along Sapele Road because the road is a Federal Road and not a State Road. They allegedly informed him that they accosted him because he drove against the traffic light on the Murtala Mohammed Way which is a State Road.

That in the cause of trying to find out why he drove against the traffic light, the Applicant allegedly told the 4th Respondent that he knows his right and that he was the one who stopped Vehicles Inspection Officers from operations in Edo State Road, that he will also ensure that Officials of the Edo State Traffic Control & Management Agency are stopped from carrying out their activities on our roads.

That upon the insistence of the applicant that (EDSTMA) has no power to operate on our roads, the applicant was instructed to drive down to their Zonal Office at Sapele Road and he was asked to come along with his vehicle particulars and driver's license to see their boss for the resolution of the matter.

According to the 4th Respondent, at their Zonal Office the applicant parked his vehicle and left without talking to anybody. They alleged that on the 11th day of May, 2021, the applicant went to where he parked his car in their Zonal Office, opened same, picked his valuables including his car battery and made some verbal threats against the Agency that they will soon hear from him.

They maintained that the Agency did not book or contravene the Applicant for any offence before he walked away leaving his car. They alleged that the tyres

of the vehicle were not deflated by any of the EDSTMA officials and that the car has been released to him.

Upon receipt of the Respondents' Counter-Affidavit, the Applicant filed a Further Affidavit of 20 paragraphs and a Written Reply.

In his Further Affidavit, the Applicant denied some paragraphs of the Counter-Affidavit and maintained that Sapele Road including the said Ikpokpan Roundabout up to Ring Road and the entire Murtala Mohammed Way are Federal High Ways and none of them is an Edo State owned Road as alleged by the Respondents.

According to him, the Police Traffic Officers and the Road Safety Officers who were allegedly present at the said Ikpokpan Roundabout were agents of the Federal Government saddled with the constitutional responsibility of enforcing violation of any traffic law occurring at the relevant time on the said Federal High Ways.

Furthermore, he consistently denied driving against any traffic light or committing any traffic offence on the day in question.

In his written address in support of this application, the Applicant formulated 4 issues for determination as follows:

- 1) Whether the Applicant (being a Nigerian citizen) is entitled to his inalienable rights to dignity of his person, fair hearing and property which is alleged to have been breached by the Respondents;***
- 2) Whether the Applicant is entitled to the Reliefs sought in this Application;***
- 3) Whether the provisions of the Edo State Traffic Control and Management Agency Law relied on by the Respondent to impound, demand payment of penalties and also attempt to auction the Applicant's vehicle without recourse to the Court of Law is not inconsistent with Sections 1, 3, 35, 36, 44 and 272 of the said 1999 Constitution and ought to be voided to the extent of the inconsistency; and***
- 4) Whether the Agents of Edo State Traffic Control and Management Agency have the competence to exercise absolute powers over regulation, control, Management and to delve into alleged traffic violations occurring on Sapele Road, Benin City which is a Federal High Way regulated by applicable Federal High Ways Acts.***

The Applicant thereafter articulated his arguments on the issues for determination.

ISSUES 1, 3 AND 4 TAKEN TOGETHER

Arguing Issues 1, 3 and 4 together, the learned counsel submitted that by virtue of *Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)* any person who alleges that any of the provisions of Chapter IV of the Constitution (relating to fundamental rights) has been breached or is likely to be breached in any State may apply to a High Court in that State for redress.

He submitted that from the content of the Statement and the evidence contained in the Affidavit as well as the exhibits attached thereto, the Applicant has copiously alleged and proved that the Respondents' acts complained about, has contravened Chapter IV of the said Constitution and indeed the said African Charter on Human and Peoples' Rights.

He posited that the Applicant has shown that his vehicle was impounded and vandalized with ignominy while he remained helplessly humiliated all through. He submitted that the misconduct of the 3rd and 4th Respondents at the material time was harrowing and stupefying and he cited the case of *ZENON PETROLEUM AND GAS LIMITED VS. IDRISIYYA NIGERIA LIMITED (2006) 8 NWLR PT 928 AT 248 D-F 251 A-D*. Learned counsel referred to the case of *UZOUKWU VS. EZEONU II (1991) 6 NWLR PT 200 PAGE 708*, cited with approval in his text *Guide to Fundamental Rights Litigation by IKE D. UZO ESQ. 2005 publication at page 6* where the Court stated thus:

“The court defined and interpreted certain terms thereby throwing some light on the extent to which a violation under this section may ground a cause of action. “Torture” was defined to include mental harassment as well as physical assault. Inhuman treatment” means treatment which is devoid of feelings for the suffering of others. Degrading treatment was defined to mean the element of lowering the societal status, character value or position of a person” while slavery” and “servitude” was interpreted to include lowering somebody to a state of drudgery”

Counsel submitted that the dastardly acts of the said Respondents are condemnable and shameful. He posited that it is unimaginable that such could happen in the 21st century in a civilized and democratic society. He cited the cases

of ***IJEOMA ANAZODO VS ALL STATES TRUST BANK PLC & 2ORS (2007) CHR 117*** and ***RASAK OSAYANDE ISENALUMHE VS JOYCE AMADIN & 3ORS. 2001 I CHR 468.***

He further submitted that the Applicant has made out a case of deprivation of his rights in the manner the Respondents impounded his vehicle for no just cause and exposed him to disgrace, dishonour and contempt. He posited that the Applicant is a legal practitioner and the deprivation of his vehicle and the degrading treatment meted to him by the said Respondents gravely affected his dignity. That if the assault was to a motor 'park tout', the impact may not be as grave as upon a lawyer whose public estimation may be more than that of a motor park tout.

He submitted that the 1st Respondent is vicariously liable for the misconduct and violation of the Applicant's rights by the 2nd, 3rd and 4th Respondents and he cited the case of ***MISS UZOMA OKERE & ANOR VS REAR ADMIRAL AROGUNDADE AND 5ORS (2009—10) CHR22.***

He further submitted that the Applicant's right to fair hearing is guaranteed under ***Section 36 of the Constitution of the Federal Republic of Nigeria 1999 as Amended and Article 7(1) (a-e) and (2) of the African Charter on human and Peoples Rights (Ratification and Enforcement) Act CAP A9 laws of the Federation of Nigeria 2004.***

He contended that the 1st Respondent (under the guise of the Edo State Traffic Law) illegally empowered and authorized the 2nd to 4th Respondents to impound citizens vehicles, impose and collect fines and indeed auction the said seized vehicles without recourse to their owners ostensibly for generation of internal revenue for Edo State Government.

He said that the Applicant has established through affidavit and documentary evidence that his vehicle was illegally impounded for a none existent and unproved allegation. That the said vehicle was kept with the Respondents simply because the Applicant refused to yield to their extortion and demand for gratification.

He posited that the question that calls for determination is whether the Respondents are permitted by law to purport to execute traffic laws and also impose and compel payment of fines and penalties purportedly in respect of the

none existent offences and without affording the Applicant a hearing let alone fair hearing in the circumstances? He said that the answer must be in the negative.

Counsel submitted that Edo State of Nigeria is an integral part of the Federation called Nigeria which is under the said Constitution and it is not and can never be a “banana republic” within the federation. He referred to Section 36(1) of the Constitution which provides thus:

“In the determination of his civil rights and obligations, including any question or authority, a person shall be entitled to a fair hearing within a reasonable time by a court constituted in such manner as to secure its independence and impartiality”

He posited that the Respondents failed to act within the said mandatory provision of the constitution, usurped the constitutional functions of the court and made themselves accusers and judge in the same cause. That in the process, the Applicant was not afforded any hearing or access to court to be heard.

He emphasised that the Edo State Government cannot be allowed to convert suspicion of perceived violation of traffic occurring on a Federal High Way into a commercial venture or an internally generated revenue source. He said that they are trying to coerce defenseless Nigerian citizens like the Applicant to pay fines and penalties without being heard contrary to the provisions of ***Sections 36(1) (2) (a) (b) (3), (4) (5) and (6) of the said 1999 Constitution.***

He maintained that the Applicant has established a violation of his constitutional rights to be heard and indeed to be fairly heard. That fair hearing means a trial conducted according to all the ‘legal rules formulated to ensure that justice is done.

He submitted that fair hearing under Section 36 of the Constitution is an entrenched fundamental right which encompasses not only the compliance with the rules of natural Justice: ***Audi alteram partem and Nemo judex in causa sua*** but entails doing in the course of trials whether civil or criminal trials, all things which will make an impartial observer believe that the trial has been balanced and fair to both sides of the trial. He said that fair hearing implies that the subject matter must be heard by the authority charged with the determination of the Applicant’s rights before any decision is reached. That the independent authority is the Judiciary and not the Respondents who are of the executive arm wielding executive powers. See: ***INAKOJU VS ADELEKE, RASHIDI LADOJA AND ORS. 200 VOL. 29 (PT2)***

NSCQR 958 AT1089 – 1090; OLUMESAN VS OGUNDEPO (1996)2 NWLR PT433 628 AT 645; NWONGO VS AKU & ORS (1983) II S.C129 AT 152; and OBEM VS C.O.P (2013) AFWLR PAGE 941.

Counsel submitted that the right to fair hearing cannot be waived by a party nor statutorily taken away from a party. He said that in the instant case, there is ample evidence establishing that the Respondents breached, the Applicant's rights by forcefully demanding for payment of monies into the Edo State Government Internally Generated Revenue Account and sundry acts of extortion of undisclosed sums being imposed as condition for the release-of his said vehicle illegally impounded by them. He posited that this is an appropriate case where this Honourable Court can intervene in the interest of Justice.

He referred the Court to the decision of the Federal High Court, Lagos Division in ***SUIT NO. FHC/L/CS/653/2011 MR. JONATHAN ODUTOLA VS CORP. EDMUND OGWU & OTHERS*** in the judgment delivered by Hon. Justice G.E. Abang published in Guardian Law Report, Tuesday 14th January 2012, wherein the said Court ordered the unconditional release of the Applicant's vehicle, nullified the relevant similar sections of Lagos State Traffic Management Agency (LASTMA) law as being unconstitutional and also granted monetary compensation against the Respondents based on related facts and circumstances as in this case.

He maintained that the Courts have reiterated that agencies of government have no such powers to impose penalties and fines or compel payment of related imposed administrative charges without recourse to the court of law. That to this extent the acts of the Respondents are illegal. He relied on the decisions in the cases of ***FEDERAL ROAD SAFETY COMMISSION VS GIDEON (2015). AFLR PT. 803 PAGE 1778;*** and ***ALABI VS NATIONAL ASSEMBLY (2015). AFAR PT. 803 PAGE 1830.***

Counsel further contended that the Respondents also acted in breach of ***Section 44(1) of the 1999 Constitution*** which states that;

“.....No. moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things.

(a) requires the prompt payment of compensation there for; and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria....”

He contended that the Respondents are driven by desperation to raise revenue and perhaps meet the ambitious revenue targets envisaged under the internally generated revenue scheme of Edo State Government. That the 2nd to 4th Respondents are also emboldened by the protection given to them by the said 1st Respondent. He posited that the judiciary has always existed to check the executive lawlessness of Government officials who hide under the cloak of executive and administrative powers to wreak havoc on the society just as in the instant case.

He referred to the case of ***RAZAK OSAYANDE SENALUME VS JOYCE AMADIN & 3 ORS*** (*supra*).

He submitted that by virtue of Sections 1(1) and (3) of the said 1999 Constitution, if any law is inconsistent with the constitutional provisions, the constitution shall prevail and that other law shall to the extent of the inconsistency be rendered void and of no effect whatsoever. He therefore submitted that the provisions of the Edo State Traffic Control and Management Agency Law is inconsistent with Sections 35, 36 and 272 of the Constitution and ought to be voided to the extent of the inconsistency. He said that the provisions of the statute derogate from the binding and overriding provisions guaranteeing fair hearing, right to property and the sole powers of the Judiciary to hear and determine civil proceedings.

He urged the Court to declare the provisions a nullity together with the acts flowing therefrom. See ***IGP VS ANPP (2008) 12 WRN PAGE 65***; and ***AG. ABIA STATE VS AG. FEDERATION (2002) AFWLR PT81 PAGE 1***.

He submitted that the obnoxious provisions of the Edo State Traffic Control and Management Agency Law should be declared null, void and of no effect whatsoever.

He urged the Court to resolve Issues 1, 3 and 4 in favour of the Applicant.

ISSUE 2

On this issue counsel posited that the Applicant has shown that his complaints are genuine and the Honourable Court as the last hope of the common man, ought to protect the Applicant against the whims, caprices and indeed the

unjustified oppression of the Applicant who is constrained and helpless in the circumstances.

He further submitted that having established that the conduct of the Respondents are reprehensible and bereft of due process, this Honourable Court is entitled in law to accede to the Applicant's plea for the enforcement of his fundamental rights in conformity with Sections 46 (1&2) of the said Constitution.

See: *NDULUE VS MADUKAIFE (2006)4 FWLR PT334 PAGE 5839 USHAE VS C.O.P (2005) 1 NWLR PT937 PAGE 499*; and *RASAK OSAYIANDE ESENALUME VS JOYCE AMADIN & 3ORS (supra)*.

He therefore urged the Court to resolve Issue 2 in favour of the Applicant.

In opposition to the application, the learned counsel for the Respondents *E.E.Akhimie Esq.* formulated three issues for determination as follows:

- I. *Whether the right of the Applicant to the dignity of his person, fair hearing and property was breached?*
- II. *Whether the 2nd Respondent is a juristic person that can sue and be sued?*
- III. *Whether the applicant's application is competent before this Honourable Court?*

Thereafter, learned counsel argued the three issues seriatim.

ISSUE 1:

WHETHER THE RIGHT OF THE APPLICANT TO THE DIGNITY OF HIS PERSON, FAIR HEARING AND PROPERTY WAS BREACHED?

Arguing this issue, counsel submitted that the Respondents did not breach the Applicant's right to the dignity of his person, fair hearing and his right to own property as contained in Section 34, 36 and 44 of the Constitution of the Federal Republic of Nigeria 1999 as (amended).

He referred to Section 34(1) of the Constitution which provides thus:-

“(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*".

He submitted that for an applicant to contend that his right to the dignity of his person is breached, he must show through his affidavit evidence that the Respondents subjected him to torture or to inhuman or degrading treatment; that he was held in slavery or servitude and that he was subjected to forced or compulsory labour. He said that there is no evidence from the applicant that he was beaten, assaulted and tortured when the 4th Respondent intercepted or apprehended him for driving against traffic light on the 10th day of May, 2021. Also he maintained that there is no evidence that he was held in slavery or servitude and/or subjected to forced or compulsory labour by the Respondents on the 10th day of May, 2021.

He submitted that onus of proof in civil cases and in an application for the enforcement of fundamental Human Right lies on the applicant who will fail upon failure to prove same and it does not shift to the Respondents. He relied on the case of *ORLU V GOGO-ABITE (2010) 41 NSCQR page 458 at 461 particularly at page 472*.

He submitted further that the action of the 4th Respondent in stopping; intercepting and or apprehending the applicant upon the reasonable suspicion of the applicant driving against traffic light for questioning and explanation does not amount to torture, inhuman or degrading treatment. He posited that the provisions of *Section 35(1)(c) of the Constitution (Supra)* excuses the Respondents from any form of liability because the 4th Respondent stopped, intercepted and or apprehended the applicant on the 10th day of May for questioning and explanation upon his reasonable suspicion of the applicant having committed a traffic offence.

He urged the Court to hold that the Respondents did not breach the provisions of Section 44 of the Constitution (Supra) against the applicant as he contended and he referred to paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Respondents counter affidavit. He referred to Section 36(1) of the Constitution (Supra) and submitted that the contention of the applicant that he was denied fair hearing by the Respondents is unfounded based on the facts and circumstances of this case. He said that the 4th Respondent requested the applicant to come along with him with his vehicle particulars and his driver's license for interview or questioning before 4th Respondent boss; that instead the applicant parked his car and walked away with verbal threats against the Agency. He said that the applicant was given the opportunity to present his case before the 4th Respondent's boss but he chose to walk away probably because he had no vehicles

particulars and driver's license to present to the 4th Respondent boss. He maintained that the applicant was given opportunity to present his case before the authority concerned but he failed to utilize the opportunity. He referred to the case of *CHAMI VS UBA (2010) 41 NSCQR page 656 at page 675*, where the Supreme Court held thus:

“fair hearing is based on opportunity to meet the case of the other party. Where a party decides not to utilize the opportunity so offered, he cannot later be heard to complain of lack of fair hearing”.

Counsel referred to paragraphs 2 of the applicant's affidavit and exhibit “A” attached to same. Exhibit “A” attached to the applicant's application shows clearly that as at the 10th day of May 2021, the applicant had no valid vehicles particulars. He said that the documents that constitute exhibit “A” in the application were obtained on the 11th day of May 2021, for the purpose of this case. He referred to Section 83 of the Evidence Act which provides that documents made in contemplation of a case are inadmissible and he urged the Court to hold that Exhibit A was made by the Applicants in contemplation of this case. He further submitted that failure of the Applicant to present the purported expired vehicle particulars which he claimed expired on the 10/5/202 which he now renewed on 11/5/2021 is fatal to his case. He said that the implication is that as at 10/5/2021 the applicant had no vehicle particulars, hence he walked away when he was asked to come and have talk with the 4th Respondent's boss. He posited that it is trite law that he who seeks equity must do equity; and he who comes to equity must come with clean hands.

He submitted that before the Court can come to the aid of an applicant; such an applicant must have acted right in the eyes of the law. He submitted that driving on the high way without a driver's license and vehicles particulars is an offence and he cited the SECOND SCHEDULE of the Edo State Traffic Control and Management Agency Law 2010, Sections 2 and 7 thereof and Section 48(1) of the Road Traffic Law of Bendel State 1976.

He urged the Court to hold that the Respondents did not deny the applicants fair hearing but rather he chose not to utilize the opportunity offered him to be heard by the Respondents.

Counsel referred to Section 44(1) of the Constitution (Supra) which provides thus:

“No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that; among other things”

He submitted that Section 44(1) clearly guarantee Nigerian citizens the right to acquire and own property and that the only ground where such a citizen will be denied of this right is if same is done in accordance with a prescribed law. He submitted that the Edo State Traffic Control and Management Agency Law 2010 is a prescribed Law by virtue of the provision of Section 90 and 100 of the Constitution (Supra) as same was duly passed by Edo State House of Assembly.

Counsel posited that assuming but not conceding that the applicant Toyota Camry Car with Registration No. AGB 166 RK was impounded by officials of EDSTMA on the 10/5/21; same was done in line with the provision of Section 9(1) (b) of the Edo State Traffic Control and Management Agency Law 2010 a prescribed Law. See Section 44(1) of the Constitution (Supra).

He also referred to Section 48(1) of the Road Traffic Law of Bendel State 1976 which provides thus:

“any vehicle found plying the roads without any of the particulars enumerated in subsection (4) of this section may be impounded and kept in an approved place by any member of the police force, Armed Forces or any person duly authorized in that behalf”

He posited that *Subsection (4) provided thus:*

“for the purpose of this section, the term – “Particulars” include driving license; hackney and State carriage license, road-worthiness certificate, certificate of insurance and vehicle license;....”

Furthermore, he submitted that the ***Road Traffic Law of Bendel State 1976*** is a prescribed Law and by the combined provisions of ***Section 9(1) (b) of the Edo State Traffic Control and Management Agency Law 2010*** and ***Section 48(1) & (4) of the Road Traffic Law of Bendel State 1976***, the Officials of EDSTMA acted within the confines of the law. He therefore posited that the applicant was not unjustly deprived or denied right to own and enjoy his property as he contended in this application and he urged this Honourable Court to so hold.

He submitted that the Applicant drove against the Traffic Light in Murtala Muhammed Way axis of the Round About. That the Murtala Mohammed Way is a State Road, and as such officials of the Edo State Traffic Control & Management Agency have power to control and manage traffic on it. See *Section 8 of the Edo State Traffic Control and Management Agency Law 2010*. He also referred this Honourable Court to paragraph 6, 7, 8 and 9 of the Respondents' Counter Affidavit.

Counsel submitted that the *Edo State Traffic Control and Management Agency Law 2010* derived its authority from the Constitution (Supra) because the said law was duly passed by the Edo State House of Assembly in 2010, the organ that has the power to make law for the good governance of the people of Edo State in accordance with the provisions of *Sections 90 to 100 of the Constitution of the Federal Republic of Nigeria 1999 as (amended)*.

He therefore urged this Court to resolve issue I in favour of the respondents and hold that the Respondents did not in any way breach the rights of the applicant to dignity of his person; his right to fair hearing and his right to acquire and enjoy his property as provided for in Section 34, 36 and 44 of the Constitution.

ISSUE II

WHETHER THE 2ND RESPONDENT IS A JURISTIC PERSON THAT CAN SUE OR BE SUED?

Counsel submitted that the law which created the office of the 2nd Respondent is Section 3(3)(a) and Section 6(1) of the Edo State Traffic Control and Management Agency Law 2010. That there is nowhere in the law where the power to sue or be sued was given to the 2nd Respondent. That it is only the Edo State Traffic Control & Management Agency that is a body corporate with perpetual succession and a common seal with the power to sue and be sued in its corporate name. See Section 3(2) of the Edo State Traffic Control and Management Agency Law 2010. He submitted that legal personality was not conferred on the Managing Director of Edo State Traffic Control and Management Agency. That it is trite law that only natural or juristic persons can sue or be sued. He submitted that if the applicant intended to sue the Managing Director of Edo State Traffic Control and Management Agency, he should have sued him in his name and added his position if he so desires. That having not sued the Managing

Director of the Agency in his name, the 2nd Respondent as sued by the Applicant is not a juristic person. He relied on the cases of ***AGBOMAGBE BANK LTD V GENERAL MANAGER, G. B. OLLIVANT LTD (1961) 1 ALL N.L.R. page 116; REGISTERED TRUSTEES OF THE AIRLINE OPERATORS OF NIGERIA VS AIRSPACE MANAGEMENT AGENCY 2014 VOL. 57 (PT 2) NSCQR 687.***

He urged the Court to resolve issue 2 in favour of the Respondents and strike out the name of the 2nd Respondent he being not a juristic personality.

ISSUE III

WHETHER THE APPLICANT'S APPLICATION IS COMPETENT BEFORE THIS HONOURABLE COURT.

Learned counsel referred to Section 19(1) & (2) of the Edo State Traffic Control and Management Agency Law 2010 provides as follows:

(1) ***“No suit shall be commenced against the Agency or its officials unless a month’s written notice of intention to commence the same has been served upon the Agency by the intending plaintiff or his agent”***

(2) ***“Such notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims”.***

He posited that this section clearly provides that before anyone can institute an action against Edo State Traffic Control and Management Agency or any of her officials, the intending claimant must first of all serve them a month pre-action notice, otherwise, the suit will be incompetent thus robbing the court the power to adjudicate on same. He relied on the cases of ***N.N.P.C. VS EVWORI (2007) 9 WRN 160 particularly at pages 177-179; NTIERO V NPA (2008) 7 M.J.S.C. page 1 particularly at pages 6-7; N.N.P.C. V AMADI (2000) 10 NWLR (PT 674) 76***

He submitted that before a court can validly adjudicate on a matter it must be shown that:

(i) ***the court is properly constituted as regards the numbers and qualification of the members of the panel, and no member is disqualified for one reason or the other.***

(ii) the subject matter of the case is within the jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and

(iii) the case comes by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. See the case of MINI LODGE LIMITED VS NGEI (2010) 41 NSCQR, Page 1 at page 44.

He submitted that from the affidavit evidence before this Court, there is no where it was shown that the applicants before commencing this suit against the Respondents served a pre-action notice on them informing them of his desire to initiate this case against them as provided by Section 19(1) (2) of the Edo State Traffic Control & Management Agency Law, 2010. He therefore submitted that the condition precedent that would make this court to assume jurisdiction in this matter was not fulfilled. Counsel referred to the case of *NETRO V N.P.A. (Supra)* where the court held thus:

“that any action commenced in breach of the provisions will also have been commence without complying with one of the required due process or pre-condition and such action would be incompetent and the trial court was without jurisdiction to entertain the case”.

Again, counsel referred to the case of *W.A.E.C. VS AKINKUMI (2008) 36 WRN page 29 at page 49 lines 20-35/*

He urged this Court to hold that in view of the provision of section 19(1)& (2) of the Edo State Traffic Control & Management Agency, Law 2010 and the judicial authorities cited above that this suit was initiated by the applicant without following the due process of law and as such this court lacks the competency to entertain same.

He therefore urged the Court to resolve the three issues formulated by the Respondents in favour of the Respondent and dismiss this application with punitive cost.

Upon receipt of the Counter-Affidavit and written address, the Applicant filed a Further Affidavit and a Reply.

In his Reply the learned counsel made a marathon submission on several points of law. I will however abridge them.

First, he submitted that the entire Counter Affidavit is grossly incompetent because the Deponent failed to comply with the format prescribed in the Oaths Act 1990 for concluding an Affidavit and he urged the Court to strike it out entirely. See ***N.N.B. PLC VS IBW ENTERPRISES NIGERIA LTD (1998) 6 NWLR PT 554 PAGE 446 AT 454 PARAS. E – H.***

Furthermore, he contended that Paragraphs 23, 24 and 28 of the said Counter Affidavit also contravenes Section 115 (2) of the Evidence Act 2011 as the said paragraphs contain extraneous matters by way of objection, prayer, legal argument or conclusion. In consequence they are incompetent and ought to be struck out.

See: *ORJI VS ZARIA INDUSTRIES LTD (1992) 1 NWLR PT 216 PAGE 124*

MILITARY GOVERNOR, LAGOS STATE VS OJUKWU (2001) FWLR PT 50 PAGE 1779 AT 1986

ABIODUN VS AG FEDERATION (2007) 15 NWLR PT 1057 PAGE 359

BAMAIYI VS THE STATE (2001) FWLR PT 46 PAGE 954

AHMED VS CBEN (2013) 54 PT 2 NSCQR PAGE 1040 AT 1059 – 1060

Again, he submitted that Paragraphs 20, 26 and 27 of the said Counter Affidavit also offends Sections 115 (3) and (4) of the said Evidence Act, 2011 because the facts deposed to were not within the peculiar knowledge of the Deponent who was neither the Managing Director nor the Head Legal Services. He said that he failed to disclose the source of his information as mandatorily required under the said provisions of the Evidence Act. That the paragraphs are thus, incompetent and ought to be struck out.

Counsel posited that the case of ***ORLU V GOGO – ABITE (supra)*** was cited out of context. That the correct position of the law is that where the Applicant has proved his case as required by law, the burden of disproof shifts to the Respondents by virtue of Sections 121 (b) and 133 (b) of the said Evidence Act, 2011. He relied on the cases of ***OYOVBAIRE VS OMAMURHOMU (2001) FWLR PT 68 PAGE 112;*** and ***TEWOGBADE VS AKANDE (1968) NMLR PAGE 404 AT 408.***

Counsel contended that in the instant case, the Applicant has proved that the Respondents breached his fundamental rights to dignity of his person, fair hearing and property as enshrined in Sections 34, 36 and 44 of the 1999 Constitution (as amended) and Articles 5, 7, (1) (a – e) and 14 of the African Charter on Human

and Peoples Rights (Ratification and Enforcement) Act. That the onus has shifted to the Respondents to show that the acts complained about were justified, which onus they have woefully failed to discharge. See the cases of *FAJEMIROKUN VS C.B. (C.I.) NIG LTD (2002) 10 NWLR PT 774 PAGE 95*; *IYERE VS DURU (1986) 5 NWLR PT 44 PAGE 665*; and *ONOGORUWA VS I.G.P. (1991) 5 NWLR PT 195 PAGE 539*

CHUKWUJEKWU VS OLALERE (1992) 2 NWLR PT 221 PAGE 86 AT 93 PARA. A.

Counsel posited that on the admission of the 4th Respondent, no charge for driving against the traffic light or failure to produce vehicle particulars and driver's license was ever preferred against the Applicant either in the office of the Respondents or before any competent court till date to warrant the Applicant answering to them. Therefore he maintained that the said issue is not relevant in this case so the Respondents' Counsel cannot smuggle it into the case through the back door. That the further reliance on *Section 35(1) (c) of the Constitution, Sections 2 and 7 SECOND SCHEDULE of the Edo State Traffic Control and Management Agency Law 2010, and Section 48 (1) of the Road Traffic Law of Bendel State 1976* is rather otiose.

Furthermore, learned counsel contended that Issues (ii) and (iii) raised by the Respondents' Counsel constitute preliminary objections and the Respondents failed to comply with the mandatory provision of Order VIII. Rules 1, 2, 4, 5 and 6 of the Fundamental Rights (Enforcements Procedure) Rules 2009 by failing to file a distinct application. He said that the consequence is that there is no proper Notice of Preliminary Objection disputing the Court's Jurisdiction and same ought to be discountenanced because it is an abuse of the court's process. See *MADUKOLU VS NKEMDILIM (1962) 1 ANLR PAGE 587*.

Furthermore, he submitted that the entire arguments and reliance on the provision of Section 19 (1) and (2) of the Edo State Traffic Control and Management Agency Law is most misconceived. He submitted that Fundamental Rights proceedings are *sui generis* and are not bugged down by statutory limitation and other impediments of pre-action notice as contended by the Respondents' Counsel in his said Issue III. He relied on the cases of *BABARINDE VS OGUN STATE UNIVERSITY (2001) 1 CHR PAGE 156*; *SAMUEL ADEYEMI ADELAKUN VS A. G. OGUN STATE & 2 ORS. 2 NPILR PAGE 864*; and *FRN VS IFEGWU (2003) 45 WRN PAGE 27 AT 69*.

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.***

Before I resolve the sole issue for determination, there are some preliminary issues which were raised by both parties which I need to determine.

First is the salient challenge to this action based on the alleged failure of the Applicant to give the one month pre-action notice as stipulated by ***Section 19(1) of the Edo State Traffic Control and Management Agency Law 2010 which provides as follows:***

“(1) No suit shall be commenced against the Agency or its officials unless a month’s written notice of intention to commence the same has been served upon the Agency by the intending plaintiff or his agent”

In his reply on point of law the learned counsel for the Applicant tacitly admitted that he did not give any pre-action notice. According to him, Fundamental Rights proceedings are, *sui generis* proceedings which are not bugged down by statutory limitation and other impediments of pre-action notice.

My quick response to the above objection is that the issue of non-service of pre action cannot succeed because an application for the enforcement of Fundamental Rights guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as amended) is in a special class of its own. That is why it is governed by special procedural rules made by the Chief Justice of Nigeria pursuant to Section 46 (3) of the Constitution. Section 46(1) of the Constitution gives any person who alleges that any of the provisions of Chapter IV of the Constitution has been, is being or likely to be contravened in relation to him the right to apply to a High Court in the State for redress immediately without any inhibition under any law.

The urgency and the necessity to prevent an infringement of fundamental rights or seek redress for an infringement of the fundamental rights guaranteed by the Constitution overrides the necessity for service of pre-action notice stipulated under any other statute. See ***UMUAHIA CAPITAL DEVELOPMENT AUTHORITY V IGNATIUS & ANOR. 2015 (CA) 24910 AT 19-22 (A-B)***; and

MR. POLYCAP OBASI & ORS v. MUJEEB FADEYI (2020) LPELR-51758(CA).

Based on the foregoing, the objection on the ground of pre-action notice is overruled.

On his part, the Applicant also challenged the competence of the Respondents' Counter-Affidavit on the ground that the Deponent failed to comply with the format prescribed in the *Section 13 of the Oaths Act 1990* for concluding an Affidavit.

Learned counsel also objected to paragraphs 23, 24 and 28 of the said Counter Affidavit on the ground that it contravenes Section 115 (2) of the Evidence Act 2011 as the said paragraphs contain extraneous matters by way of objection, prayer, legal argument or conclusion.

First on the objection on the format of the affidavit, *Section 113 of the Evidence Act 2011*, which governs affidavit evidence provides in clear terms that the Court may permit an affidavit to be used notwithstanding it is defective in form if the Court is satisfied that it has been sworn before a person duly authorized. See, *Atayi Farms Ltd v N.A.C.B Ltd (2003) 4 NWLR (Pt.810) 427, (2002) LPELR - 7076 (CA), Colito (Nig.) Ltd & Anor v Honourable Justice Titi Daibu & Ors (2009) LPELR - 8216 (CA), BAA v Damawa Emirate Council & Ors (2013) LPELR -22068 (CA)*. The Applicant is not contending that the said affidavit was not sworn before a person duly authorized to administer the oath for such an affidavit. There is no contrary evidence to show that the affidavit was not sworn before a person duly authorized. I am satisfied that since the affidavit was signed and sworn before a person duly authorized same can be accepted as valid in the circumstance.

Furthermore on the objection to paragraphs 23, 24 and 28 of the said Counter Affidavit on the ground that they contravene *Section 115 (2) of the Evidence Act 2011* because said paragraphs contain objection, prayer, legal argument or conclusion, I am of the view that the paragraphs contain facts to buttress the point that the Applicant did not serve any pre-action notice on the Respondents. The paragraphs are valid and the objection of counsel is accordingly overruled.

I will now determine the merit of the application.

Fundamental rights are enshrined in Sections 33-46 in Chapter IV of the 1999 Nigerian Constitution, as amended. Section 46 of the Constitution, as amended, empowers every citizen whose fundamental right has been or is being breached, to approach the Court to seek redress, see *Sea Trucks (Nig.) Ltd. v. Anigboro* (2001) 2 NWLR (Pt. 695) 159; *Fajemirokun v. C. B. Nig. Ltd.* (2009) 5 NWLR (Pt. 1135) 588; *W.A.E.C. v. Adeyanju* (2008) 9 NWLR (Pt. 1092) 270; *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517; *Jack v. UNAM* (2004) 5 NWLR (Pt. 865) 278; *Gafar v. Government of Kwara State* (2007) 4 NWLR (Pt. 1024) 375.

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

Essentially, the gravamen of the Applicant's complaint is that on the 10th day of May, 2021 while driving along the Benin-Sapele Road some officials of the Edo State Traffic Control and Management Agency accosted him and impounded his vehicle after subjecting him to a harrowing experience in breach of his fundamental human rights to the dignity of his person, fair hearing and property.

On the part of the Respondents, they maintained that the Applicant was arrested because he drove against the traffic light on the Murtala Mohammed Way which is a State Road.

According to them, the Applicant was instructed to drive down to their Zonal Office at Sapele Road and to come along with his vehicle particulars and driver's license to see their boss for the resolution of the matter. At their Zonal Office, they alleged that the applicant parked his vehicle and left without talking to anybody. They maintained that the Agency did not book or contravene the Applicant for any offence before he walked away leaving his car.

In the cause of arguing this application, the Respondents vehemently contended that the Applicant was in breach of some traffic regulations on the day in question, particularly driving against the traffic light and the alleged expiration of his vehicle particulars.

In his response to the aforesaid criminal allegations, the Applicant consistently denied committing any of the aforementioned traffic offences. He also

raised some technical issues that the roads in question are Federal Roads over which a State Agency has no power to enforce traffic regulations. Counsel also maintained that some of the penal provisions of the *Edo State Traffic Control and Management Agency Law* granting absolute powers to impound and auction vehicles or demand payment of penalties without recourse to the courts is not inconsistent with *Sections 1, 3, 35, 36, 44 and 272* of the said *1999 Constitution* and ought to be voided to the extent of the inconsistency.

These legal submissions involve some weighty constitutional issues which require meticulous consideration.

On the question of whether the roads in question to wit: Sapele Road and Murtala Mohammed way are Federal Roads or State Roads, it is quite unfortunate that neither party led any conclusive evidence to convince the Court on the true position. While the Applicant maintained that the two roads are State roads, the Respondents position is that the Applicant committed the traffic offences while driving along the Murtala Mohammed Way which they maintain is a State road. Clearly there is a conflict in the evidence of the parties on this salient point.

The law is firmly settled that a Court of law has no competence to suo motu reconcile conflicting affidavits without calling for oral evidence. See the following decisions on the point: *Falobi v. Falobi (1976) 9 & 10 SC 1 at Page 15*; *Eboh v. Oki (1974) 1 5C 179*; *Olu-Ibukun v. Olu-Ibukun (1974) 2 SC 41*; *Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (pt.135) 688*; *Nigerian Arab Bank Ltd. v. Ogueri (1990) 6 NWLR (Pt.59) 751 of 760*.

But, it is not every conflict in affidavit evidence that the trial Court must call oral evidence to resolve. The law has made some exceptions. Such exceptional circumstances include inter alia a situation where there is sufficient documentary evidence upon which the Court shall rely to resolve the conflict. See: *Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (Pt.135) 688 at 718*; *Ezegbu v. First African Trust Bank Ltd. (1992) 1 NWLR (Pt.220) 699 at 720*; and *Kanno v. Kanno (1986) 5 NWLR (Pt.40) 138*.

It is an elementary rule of evidence that he who alleges must prove. In a situation of conflict such as we find in the instant application, I expected both counsel to tender sufficient documentary evidence such as the relevant legal instrument contained in a government gazette designating the roads as alleged. In the absence of any documentary evidence to resolve the conflict, the issue of the status of the roads remains unresolved.

However, there is a more serious issue bordering on the legality of the conduct of the officials of the agency who in the exercise of the powers vested in them under the *Edo State Traffic Control and Management Agency Law* are authorised to impound and auction vehicles, or demand payment of penalties from alleged offenders without recourse to the courts.

In the first place it is worthy of note that a charge of violation of traffic regulations is a criminal charge that must be proved beyond reasonable doubt as stipulated by *Section 135(1) of the Evidence Act, 2011*. See: *Ani V. The State (2009) 16 N.W.L.R. (Part 1168) 443 at 457 – 458*. (2) *Jeremiah V. The State (2012) 14 N.W.L.R. (Part 1320) 248 at 284*.

Furthermore, the burden to prove that the Applicant violated traffic regulations is squarely on the Respondents. He who alleges must prove. See the following decisions on the point: *Osuji v. Ekeocha (2009) 52 WRN P.1, Mini Lodge Ltd V. Ngei (2010) 10 WRN 58; Bunge v. Gov. Rivers State (2006) 6 SC P. 81, Jonason Triangles Ltd V. C.M & P Ltd (2002) 15 NWLR (Pt. 759) 194; Jolugbo & Anor v. Aina & Anor (2016) LPELR-40352 (CA); and OWOR V. CHRISTOPHER & ORS (2008) LPELR 4813*

In the instant case, although the Respondents attempted to give the impression that the Applicant abandoned his vehicle in the Respondents' premises, it is clear that the Respondents impounded the vehicle for the alleged breaches of some traffic regulations. The salient question is what were the traffic offences which the Applicant was charged with? We are not quite certain about the charges against him. There are speculations that he drove against the traffic light, whatever that means, and there is also the allegation of driving without valid particulars.

But going through the entire gamut of the evidence adduced by the Respondents in proof of the allegations of violation of traffic regulations leveled against the Applicant, I am of the view that they fall far short of the standard of proof under *section 135(1) of the Evidence Act, 2011*.

Curiously, in paragraph 21 of the Counter-Affidavit in opposition to this application, the Respondents stated that the Agency did not even book the Applicant or contravene him for any offence before he allegedly abandoned his car in their premises. It is a constitutional provision that a person cannot be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law. See *Section 36(12) of the 1999 Constitution*. See also the cases of *AOKO V. FAGBEMI & ANOR (1961) 1 ALL NLR 400;*

ATTORNEY GENERAL (FEDERATION) V. ISONG (1986) 1 QLRN 75; and BODE GEORGE V FRN (2011) 10 NWLR (PT 1254) 66.

The Applicant's contention in this application also revolves essentially around the fact that the Respondents action in levying penalties under the provisions of the *Edo State Traffic Control and Management Agency Law*. At this stage, I need to determine whether the Edo State Traffic Control and Management Agency can lawfully impose fines and penalties in the light of the fact that the powers to make such impositions belong to the judicial arm of the Government and the Courts specifically.

By the provisions of *Sections 1(1) and (3) of the 1999 Constitution of the Federal Republic of Nigeria*, the Constitution is supreme and its provisions are binding on all authorities and persons in Nigeria. Therefore, if any law is inconsistent with any provisions of the Constitution, the Constitution shall prevail and the other law shall to the extent of that inconsistency be void.

The same Constitution in Section 6(6) vests Judicial Powers on the Courts. A sentence can safely be pronounced after a conviction for an offence has been made by a Court of competent jurisdiction.

The Apex Court in *MFA v. INONGHA (2014) 4 NWLR (Pt.1397) 343 at 375* held as follows:

"Fair hearing within the meaning of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 means a trial or hearing conducted according to all legal rules formulated to ensure that justice is done to the parties. It requires the observance of the twin pillars of the rules of natural justice, namely: audi alteram partem and nemo judex in causa sua"

Nemo judex in causa sua simply means that no Judge should preside over a matter in which he has personal interest or involvement. In the instant case, the officials of the Edo State Traffic Control and Management Agency arrested the Applicant for violation of some alleged traffic offences, the same officials took him to their Zonal office where they impounded his vehicle without any trial.

By so doing, the officials of the Agency constituted themselves into a Court with judicial or quasi-judicial powers. By impounding the Applicant's vehicle, the Respondents acted in a judicial capacity which they are not imbued with under the Constitution. By so doing, the Respondents became the Prosecutor and the Judge in their own cause contrary to the maxim *nemo judex in causa sua*". The conduct

of the Respondents amounted to *a naked usurpation of the powers of the Court as enshrined in the Constitution*. I am of the view that the proper procedure should have been that upon arresting the Applicant, the officials of the agency should have carried out a proper investigation of the alleged traffic offences and if a prima facie case was disclosed against him, he should have been charged to a court of competent jurisdiction where he would be tried according to the due process of law.

In the case of *NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY v. MOBIL PRODUCING NIGERIA UNLIMITED (2018) LPELR-44210(CA)* where the Appellant imposed a fine and penalty on the Respondent consequent upon its powers in Section 6(2) and (3) of the Act Establishing the NOSDRA, the Court held thus: *“On the facts and circumstances of this case, I am of the firm but humble view that the imposition of penalties by the Appellant was ultra vires its powers, especially where no platform was established to observe the principles of natural justice. Penalties or fines are imposed as punishment for an offence or violation of the law. The power as well as competence to come to that finding belong to the Courts and the Appellant is not clothed with the power to properly exercise that function in view of the law creating the Appellant (NOSDRA). There is therefore a Lacuna in that law creating the Appellant.”*

Furthermore, in the case of *ABDULLAHI VS. KANO STATE (2015) LPELR-25928 (CA), Abba Aji, JCA*, emphasised that awarding a fine is a judicial act and it is the sole prerogative of a Court of law under Section 6 of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended). No other organizations or bodies can usurp that power. Any law that would consign to anybody other than the Courts the power to award fine is unconstitutional.

Sequel to the foregoing, it is evident that the Courts will not allow any authority or body to act ultra vires its powers under the Constitution. To this end, *Sections 1(3) and 6(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)* empowers the Courts to declare any statute which is inconsistent with the provisions of the Constitution, null and void. See *SHELL PETROLEUM DEVELOPMENT COMPANY NIGERIA V. AJUWA (2015) 14 NWLR (Pt.1480) 403 at 473*.

On the facts and circumstances of this case, I am of the firm view that the imposition of penalties by the *Edo State Traffic Control and Management*

Agency without recourse to the Courts are clearly ultra vires their powers, especially where no platform was established to observe the principles of natural justice. Consequently, any provision of the *Edo State Traffic Control and Management Agency Law* which authorises the agency to impose penalties without recourse to the Courts are unconstitutional null and void.

From the foregoing, it is evident that the acts of the Respondents on the day in question which culminated in the impounding of the Applicant's vehicle was unlawful and a flagrant violation of the Applicant's fundamental rights to dignity of his person, fair hearing and property as enshrined in the Constitution. The Applicant was put through the ordeal of being arrested, his vehicle was impounded and he was never given any opportunity to be heard on the nebulous charges of alleged traffic offences. The tortuous experience he was subjected to was a clear infringement to the dignity of his person. The impoundment of his vehicle infringed his right to property and the deprivation of any hearing in Court was a breach of his right to fair hearing.

It is trite that once an infringement of fundamental right is proved or established the award of compensation in form of monetary damages, whether claimed or not, follows. Where a specific amount is claimed, it is for the Court to consider the claim and in its opinion, the amount that would be justified to compensate the victim of the breach. In this respect, the common law principles on the award of damages do not apply to matters brought under the enforcement of the Fundamental Human Rights procedure. The procedure for the enforcement of the Fundamental Human Right was specifically promulgated to protect the fundamental rights of individuals from abuse and violation by authorities and persons. When a breach of the right is proved, the victim is entitled to compensation even if no specific amount is claimed. See the case of *HERITAGE BANK v. S & S WIRELESS LTD & ORS (2018) LPELR-46571(CA)*.

Furthermore, there is nothing like categorisation and particularisation of damages in an action for the enforcement of fundamental rights.

Under *Section 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 has proved the violation of his fundamental right by the Respondents, damages in form of compensation and even apology should follow. See *Jim-Jaja v. C.O.P. Rivers State (2013) 6 NWLR (pt.1350) 225 at 254*.

In this application, the Applicant is claiming the sum of N10, 000,000.00 (Ten Million Naira) as *Aggravated/Exemplary Damages* for the flagrant violation of his fundamental rights. It is settled law that in cases involving an infraction of fundamental rights of a citizen, the Court ought to award such damages as would serve as a deterrent against naked, arrogant, arbitrary and oppressive abuse of power as in this case. See *Minister of Internal Affairs & Ors V. Shugaba Abdulrahman Darman (1982) 3 NCLR 915 at 928 and 1006*.

Exemplary damages has been described as an inter-mix of general and punitive damages. While speaking on the nature of exemplary damages, the Supreme Court in the case of *Eliochin (Nig) Ltd & Ors v. Mbadiwe (1986) LPELR-1119 (SC), (1986) 1 NWLR Pt. 14, Pg. 47 SC* held as follows: "*The primary object of an award of damages is to compensate the plaintiff for the harm done to him or a possible secondary object is to punish the defendant for his conduct in inflicting that harm. Such a secondary object can be achieved by awarding, in addition to the normal compensatory damages, damages which go by various names to wit; exemplary damages, punitive damages; vindictive damages, even retributory damages can come into play whenever the defendant's conduct is sufficiently outrageous to merit punishment as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like.*" The Court in *Kabo Air Ltd v. Mohammed (2014) LPELR-23614 (CA), (2015) 5 NWLR Pt. 1451, Pg.38 (CA)* also said: "*Punitive damages which are also referred to as exemplary damages are intended to punish and deter blame worthy conduct and thereby prevent the occurrence of the same act in the future. They are awarded whenever the conduct of the defendant is sufficiently outrageous to merit punishment as where, for instance, it discloses malice, fraud, cruelty, insolence or flagrant disregard of the law - University of Calabar v. Orji (2012) 3 NWLR (Pt. 1288) 418 and Zenith Bank Plc v. Ekereuwem (2012) 4 NWLR (Pt. 1290) 207.*"

Exemplary damages, otherwise known as punitive damages is usually awarded to meet the end of punishment. A claim for exemplary damages need not be expressly pleaded. It is sufficient if the facts pleaded supports the award of exemplary damages. See *CBN & Ors v. Okojie (2015) LPELR-24740 (SC), (2015) 14 NWLR Pt. 1479 at 321 SC*. Thus, the claim for exemplary damages must be shown to have resulted from the malicious act of a party before it can be awarded.

On the assessment of damages, I will take into consideration, the standing of the Applicant who is a Legal Practitioner. He was subjected to a harrowing and humiliating experience by the officials of the agency. Furthermore, his vehicle was impounded and remained in the custody of the Respondents for about 178 days. It took the intervention of this Court through an interim order before the Respondents released the vehicle to the Applicant on the 4th of November, 2021 vide the document of release attached as Exhibit “C” to the Applicant’s Further and Better Affidavit. The Applicant is entitled to some reasonable compensation to assuage all his suffering.

On the whole, I am satisfied that the Applicant has discharged the burden on him to prove that the Respondents violated his fundamental human rights to the Dignity of his person, Fair Hearing and his Property as guaranteed by the relevant Constitution and other relevant statutes. The Applicant is entitled to the Reliefs claimed in this Application for the breach of his fundamental rights. The sole issue for determination is resolved in favour of the Applicant.

Accordingly, the Applicant is granted the following reliefs:

- a) ***A DECLARATION that every Nigerian (including the Applicant) is entitled to inalienable Rights to respect for the dignity of his person, Fair Hearing and Property as guaranteed under Sections 34, 36 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and Articles 5, 7, (1) (a — e) and 14 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act CAP A 9 Laws of the Federation of Nigeria 2004;***
- b) ***A DECLARATION that the abhorrent acts of the Respondents in constituting the Edo State Traffic Control and Management Agency coupled with the grant of absolute powers to compulsorily take possession of citizens’ vehicles at will, impound same indefinitely, impose fines, penalties and to auction same thereafter, without affording them any opportunity of a fair hearing, is unconstitutional, illegal and void abinitio;***
- c) ***A DECLARATION that the Respondents’ illegal acts of extortion, humiliation, unlawful forcible seizure and compulsory acquisition of the Applicant’s vehicle (Toyota Camry car with Registration Number; AGB 166 RK, Chassis Number; 41BF2K6TU135777 and Engine Number; 2M70059059 and its detention since on the 10th of May, 2021 till the 4th of November, 2021 was unconstitutional and constitutes a flagrant violation***

of the Applicant's Rights to Dignity of his person, Fair Hearing and Property as guaranteed by the said relevant Sections of the 1999 Constitution and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act;

- d) *The relevant Sections of the Edo State Traffic Control and Management Agency Law granting absolute powers to impound and auction vehicles or demand payment of penalties without recourse to the courts are inconsistent with Sections 1, 3, 35, 36, 44 and 272 of the said 1999 Constitution and are declared null and void to the extent of the inconsistency; and*
- e) *The sum of N5, 000,000.00 (Five Million Naira) being Aggravated/Exemplary Damages for the wanton infraction of the said constitutional and inalienable Rights of the Applicant to the dignity of his person, fair hearing and property.*

The Respondents shall pay the sum of N200, 000.00 (Two Hundred Thousand Naira) as costs to the Applicant.

P.A.AKHIHIERO

JUDGE

30/03/2022

COUNSEL:

C.J.ENEKIDE ESQ.....APPLICANT

E.E.AKHIMIE ESQ.....RESPONDENTS

