

**IN THE HIGH COURT OF JUSTICE**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO,**  
**ON THURSDAY THE**  
**3<sup>RD</sup> DAY OF AUGUST, 2023.**

**SUIT NO: B/147M/2022**

***IN THE MATTER OF THE APPLICATION BY AKIOYAMEN EHISUORIA FOR AN  
ORDER TO ENFORCE HIS FUNDAMENTAL RIGHT***

**AND**

***IN THE MATTER OF FUNDAMENTAL RIGHT (ENFORCEMENT PROCEDURES)  
RULES 2009, MADE BY THE CHIEF JUSTICE OF NIGERIA PURSUANT TO SECTIONS  
46, 34, & 37 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA  
1999 AS AMENDED***

**BETWEEN:**

**AKIOYAMEN EHISUORIA -----APPLICANT**

**AND**

- 1. EX-SGT. SYLVESTER EGUAKHIDE**
  - 2. ASP. OBIDI EMEKA**
  - 3. THE COMMISSIONER OF POLICE, EDO STATE**
  - 4. THE INSPECTOR GENERAL OF POLICE**
  - 5. THE POLICE SERVICE COMMISSION**
  - 6. CHARITY OWUEKA**
  - 7. BENJAMIN OWUEKA**
- RESPONDENTS**

**JUDGMENT**

This is a judgment in respect of an application for the enforcement of Fundamental Rights brought pursuant to *Order 11, Rules 1, 2, 3, 4, & 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009; Sections 34, 37 and 46 of the Constitution of the*

*Federal Republic Of Nigeria 1999 (as amended); Articles 1, 2, 3, 4, 5, 6, 7, 10, 11, 12 & 14 of the African Charter on Human And Peoples Rights (Ratification and Enforcement) Act Cap A9 Laws Of The Federation Of Nigeria 2004; and under the inherent jurisdiction of this Honourable Court.*

By this Application, the Applicant is seeking the following reliefs:

1. *AN ORDER of this Honourable Court for the enforcement of the Applicant's fundamental right under the Charter IV of the constitution of the Federal Republic of Nigeria 1999 as amended in terms of the reliefs sought in the statement in support of this application.*
2. *A declaration that the acts of the 1<sup>st</sup> Respondent on the 16/6/2022 while working for the agent of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents at Iyekogba Police Division Benin City Edo State for beating up, torturing the Applicant by hitting him with his gun butt with which he forcefully collected the Applicant's infinix note 10 phone and seizing same till date amounts to torture, inhuman and degrading treatment which is a violation of section 34 of the constitution of the Federal Republic of Nigeria 1999 as amended.*
3. *A declaration that the acts of the 1<sup>st</sup> Respondent while in the service or working as agent of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents on the 16/06/2022 at Iyekogba Police Division tortured him with gun. collected and seized the Applicant's infinix note 10 phone valued at N110,000.00 (One Hundred and Ten Thousand Naira Only), with further forcing him to release his password with which the 1<sup>st</sup> Respondent had unlawful access to the said phone, in the process he illegally transferred the Applicant's Bitcoin wallet worth \$6,380.00 US Dollars equivalent of the sum of N3,828,000.00 (Three Million, Eight Hundred and Twenty-Eight Thousand Naira Only) and thereafter chatted with the friends his phone is a violation of the Applicant's right of his privacy, correspondence, telephone conversations, and telegraphic communications, protected under section 37 of the constitution of the Federal Republic of Nigeria 1999 as amended.*
4. *AN ORDER of this Honourable Court commanding the respondents jointly and severally to pay the sum of N750,000,000.00 (Seven Hundred and Fifty Million Naira Only) to the Applicant being special, general, aggravated and exemplary damages for the aforesaid breaches of the Applicant's constitutionally protected fundamental rights which acts culminated in this Application.*
5. *AN ORDER on the Respondents jointly and severally to tender an written apology published in 4 (four) National Newspapers to the Applicant not later than 30days after the judgment of this Honourable Court for the breach of his fundamental rights aforesaid.*
6. *AN ORDER of this Honourable Court on the Respondents to tender and publish a letter of apology in writing jointly signed by them to the Applicant to be published full page in 4 (four) leading newspapers in Nigeria to wit:-*
  - a. *THE NIGERIAN NEWSPAPER;*
  - b. *THE NIGERIAN OBSERVER;*
  - c. *VANGUARD &*
  - d. *DAILY TRUST not later than 30 days after the judgment of this Honourable Court in this suit.*
7. *AN ORDER of perpetual injunction restraining the Respondents by themselves, servants, agents, and privies from further violations of the Applicant's fundamental*

*rights as guaranteed under the constitution of the Federal Republic of Nigeria 1999 as amended.*

**8. AND any consequential order or orders this Honourable Court may deem fit to make in the circumstances of this case.**

This application is supported by a 27 paragraphs affidavit deposed to by the Applicant herein and a written address of his counsel. In the Applicant's affidavit in support of this application, the Applicant narrated the events that culminated in the filing of this application.

From the contents of the Applicant's affidavit, on the 16<sup>th</sup> day of June 2022 around 9:00am, the Applicant received a distress call from his brother, Osas Akioyamen that as he was driving his newly purchased vehicle along Ogunmwenyin Area in G. R. A., Benin City some policemen accosted him and were interrogating him about the ownership of the vehicle.

That as a result of the aforesaid, the Applicant quickly drove to the scene to assist his brother. That on getting there he met the 2<sup>nd</sup> Respondent leading the 1<sup>st</sup> Respondent and other policemen at the scene and tried to explain some things to them.

He said that while he was with them, he received a phone call and while answering the call, the 1<sup>st</sup> Respondent allegedly accused him of trying to video what was happening at the scene which he denied. He said that they attempted to collect the phone from him but they could not, so the 2<sup>nd</sup> Respondent called for more policemen and when they arrived at the scene, they arrested them and took them to their office at Iyekogba Police Station.

At the station, the 1<sup>st</sup> Respondent allegedly assaulted the Applicant by hitting him with the butt of the gun in his hand, at the same time calling him a criminal and a scammer. He said that he also forcefully collected his Infinix Note 10 phone from him and threatened to deal with him.

He alleged that the 1<sup>st</sup> Respondent also locked up the Applicant and his brother in their cell, forcefully obtained the password of his cell phone, opened the phone and started chatting with the Applicant's friends and contacts.

That while chatting with the Applicant's Australian girlfriend, the 1<sup>st</sup> Respondent allegedly informed her that the Applicant is a scammer and a fraudster. He allegedly snapped the photographs of the Applicant while he was in their cell, posted them to the Applicant's girlfriend in Australia and threatened to send the Applicant to jail. He alleged that the 1<sup>st</sup> Respondent also requested for money from his girlfriend to facilitate the process of sending the Applicant to jail for his fraudulent activities. The Applicant attached copies of the print out of the pictures and the text messages as Exhibits 'B', 'C' & C1' attached to his supporting affidavit.

The Applicant alleged that the 1<sup>st</sup> Respondent transferred all the Bitcoins in his electronic wallet to another account to the tune of \$6,380 equivalent to N3, 828,000.00 (Three Million, Eight Hundred and Twenty-Eight Thousand Naira Only) at that time. He attached the evidence of the alleged Bitcoin transfer from his Bitcoin wallet as Exhibits 'D' & 'E' respectively.

The Applicant alleged that he and his brother were detained in the 1<sup>st</sup> Respondent's cell till in the midnight of 16/06/2022 when one of his relations who is also a serving police officer came to apply for their bail after serious and long discussions with the Divisional Police Officer.

He alleged that he demanded for his cell phones but the 1<sup>st</sup> Respondent refused to release same to him.

The Applicant alleged that upon his release, he complained to the Divisional Police Officer and the DPO gave the 1<sup>st</sup> Respondent one hour to produce his phone otherwise necessary actions will be taken against him. That when the 1<sup>st</sup> Respondent could not produce his phone, the Applicant used his brother's phone to access his e-mail and Bitcoin wallet where he discovered all the fraudulent activities of the 1<sup>st</sup> Respondent relating to his fraudulent transfer from his Bitcoin wallet and the chats with his girlfriend in Australia and other places.

The Applicant alleged that the 1<sup>st</sup>, 2<sup>nd</sup> Respondents and other officers made statements under caution during the investigations of his complaints against them. That the 1<sup>st</sup> Respondent was subjected to an orderly room trial where he was found guilty and subsequently dismissed from the police force. He alleged that the 2<sup>nd</sup> Respondent was recommended to be issued a serious query for failing to properly supervise the 1<sup>st</sup> Respondent and other police officers he led on that day.

According to him, the 1<sup>st</sup> Respondent is presently remanded at the Nigerian Correctional Centre, Benin City pending the legal advice of the Director of Public Prosecutions having been charged to court for armed robbery. He attached copies of the court processes with the Charge Sheet and Enforcement of Order as Exhibit F1, F2 & F3 to his supporting affidavit.

He said that the investigation further revealed that it was the 7<sup>th</sup> Respondent who owned the fraudulent Bitcoin wallet into which the 1<sup>st</sup> Respondent illegally transferred the contents of his Bitcoin wallet, through his mother (the 6<sup>th</sup> Respondent's Airtel phone number 09044963602) which he alleged was confirmed by the investigating police officer after same was tracked through investigation process which led to the 6<sup>th</sup> Respondent's arrest at Sapele, in Delta State.

The Applicant alleged that the breaches of his above-mentioned constitutionally guaranteed rights by the 1<sup>st</sup> Respondent on the 16/06/2022 has caused him emotional, psychological, financial losses and serious reputational damage both within Nigeria and far away Australia.

The Applicant alleged that since the 1<sup>st</sup> Respondent committed the aforesaid breaches of his fundamental human rights in the course of his duties and in the employment of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents, they are therefore vicariously liable for the consequences of the 1<sup>st</sup> Respondent's actions. That throughout his ordeal in the hands of the 1<sup>st</sup> Respondent in their police cell, he sustained injuries and developed serious health challenges.

He alleged that as a result of his ordeal, he was referred to the hospital for medical attention and treatment for which he was issued a medical report which he attached as Exhibit 'G' to his supporting affidavit.

Upon receipt of the Applicant's processes, the 1<sup>st</sup> Respondent filed a Counter-Affidavit of 4 paragraphs deposed to by the wife of the 1<sup>st</sup> Respondent and a written address of his counsel.

In her Counter-Affidavit the wife of the 1<sup>st</sup> Respondent narrated how her husband was with a team of policemen on the day of the incident when they accosted the Applicant's brother driving an un-numbered vehicle. She alleged that the Applicant later arrived at the scene and

started to insult the policemen and when he became violent; they arrested him, collected his phone from him and obtained his statement under caution.

She alleged that her husband inadvertently forgot the Applicant's phone in the vehicle when they went into the station. That when he went to the vehicle to retrieve the phone, he discovered that it was missing. She said that her husband did not chat with any person with the phone; neither did he transfer any money from the Applicant's Bitcoin wallet. She said that the Applicant was surprised when he was charged with armed robbery and stealing.

On behalf of the 2<sup>nd</sup> to the 5<sup>th</sup> Respondents, one Inspector Daniel Ayuba deposed to a Counter-Affidavit of 30 paragraphs wherein he explained their involvement in the matter. According to the deponent, a case of serious Assault was reported against the Applicant and his brother, one Osas Akioyamen at Iyekogba Police Station on the 16<sup>th</sup> day of June, 2022 and was later transferred to the Anti-Fraud Section of the State Criminal Investigation Department for discreet investigation.

The deponent stated that the Applicant's brother did not produce any document to show that the car belongs to him or that the plate number was being processed at the licensing office. He said that on the day in question, the Applicant came to the scene and without asking any question he assisted his brother to attack the 2<sup>nd</sup> Respondent which caused him bodily harm.

That the 2<sup>nd</sup> Respondent had to call the Divisional Headquarter at Iyekogba for a backup. He said that arising from the alleged attack, the 2<sup>nd</sup> Respondent was at the Police Cottage Hospital receiving treatment for the injuries which he sustained and he attached the photocopy of the introduction letter with, REF NO: Av:3940/EDS/IYG/VOL.2/242 dated 16<sup>th</sup> day of June, 2022 as Exhibit "CS01" to his affidavit. He also attached an official Receipt for the payment of his hospital bills as Exhibit "CS02".

He maintained that the 2<sup>nd</sup> – 5<sup>th</sup> Respondents did not breach the Applicant's Constitutional rights neither are they vicariously liable for the breaches of the Applicant's Fundamental right because the 1<sup>st</sup> Respondent acted outside his police duties.

The deponent stated that it was the 1<sup>st</sup> Respondent who gave the Applicant the injuries hence the 1<sup>st</sup> Respondent was punished and is presently in the Oko Correctional center.

Upon the receipt of the Counter-Affidavit of the 1<sup>st</sup> Respondent, the Applicant filed a Further-Affidavit and Reply on point of law. In his Further-Affidavit, the Applicant stated that his brother did not have a set of number plates in his car when they accosted him. He also denied fighting for his brother on that day nor injuring any person. He denied being a Yahoo Boy.

The processes in this application were served on the 6<sup>th</sup> and 7<sup>th</sup> Respondents but they did not file any process in response.

The learned counsel for the Applicant, the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> to 5<sup>th</sup> Respondents filed written addresses which they adopted as their arguments in respect of this application.

In his written address, the learned counsel for the Applicant, *J.I. Iyobhebhe Esq.* formulated two issues for determination as follows:

- 1) *Whether or not the Applicant's fundamental human right have been violated by the Respondents; and*
- 2) *Whether or not the Applicant is not entitled to compensation in form of damages claimed.*

Thereafter, learned counsel articulated his arguments on the two issues seriatim.

### **ISSUES 1:**

*Whether or not the Applicant's fundamental human rights have been violated by the Respondents.*

Arguing this issue, learned counsel submitted that the Applicant's fundamental human rights to respect for the dignity of the person and the right not to be subject to torture or to inhuman or degrading treatment; the Applicant's right to privacy, to his home, correspondence, telephone conversations and telegraphic communications as enshrined in *sections 34 (1) (a) and 37 of the constitution of the Federal Republic of Nigeria 1999 as amended* was breached by the Respondents when the 1<sup>st</sup> Respondent tortured, brutalized and hit the Applicant with his gun butt in their office at Iyekogba Police Division on the 16<sup>th</sup> day of June 2022 while working as agent or servant in the service of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents.

He further submitted that it is the above breaches of the Applicant's fundamental human rights that warrant the Applicant to approach this Honourable Court for redress. That by virtue of *section 46 of the constitution of the Federal Republic of Nigeria 1999 as amended*, the Applicant can apply to the High Court of a state where his fundamental human rights have been infringed or likely to be infringed or contravened. He posited that fundamental human rights stands above the ordinary laws of the land, that they take precedence over and above all other laws and statutes and its infringement must be looked at without any restricted access to the Court. He said that *Chapter IV of the constitution of the Federal Republic of Nigeria 1999 (as amended)* guarantees the citizens certain basic rights, simply for being human being as was held in the case of *IGWE V EZEANOCHIE (2010) 43 WRN 135*.

Learned counsel referred the Court to the provisions of *Order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009* and the following cases:

*CHIEF AUSTINE A NAWA V A.G. CROSS RIVER STATE & 2 OTHERS (2008) ALL FWLR (PT. 401) 807 @ 840 E – F ; GABRIUEL JIM-JAJA V COMMISSIONER OF*

***POLICE, RIVERS STATE (2013) ALL FWLR (PT. 665) 203 @ 215 G – H, 216 B, D – F; 223 – 224, F – A.***

Counsel contended that the acts of the 1<sup>st</sup> Respondent as deposed to by the Applicant in paragraph 11, 12, 13, 14, 15, 16 and 17 of the Applicant's affidavit in support are acts of torture and an infringement of the Applicant's right to dignity of human person and against torture as enshrined in ***section 34 (1) of the Constitution of the Federal Republic of Nigeria 1999 as amended.***

He referred the Court to the ***8<sup>th</sup> Edition of the Black Law Dictionary*** on the definition of torture. He also referred to ***James Health's book on "Torture and English Law" (1992).***

Finally on this issue, he submitted that once an applicant shows that any of his fundamental human rights has been or is likely to be breached, the onus automatically shifts to the breaching authority or person like the Respondents herein to justify the breaches or infringements complained of. On this point, he referred to the case of: ***DIRECTOR OF SSS V AGBAKOGBA (1999) 3 NWLR (P. 595) 314 @ 339 Ratio 16.***

He therefore urged the Court to resolve issue 1 in favour of the Applicant.

## **ISSUE 2:**

***Whether the applicant is entitled to the damages claimed?***

On this issue, counsel submitted that it is trite law that where an Applicant has shown that his fundamental human rights have been violated as in this case, he need not show the damages he has suffered; proof of the violation is enough to entitle him to a remedy in law. On this point, he relied on the following authorities: ***GABRIEL JIM-JAJA V COMMISSIONER OF POLICE RIVERS STATE (2013 ALL FWR (PT. 665) @ 216 Para D – E 223 – 224 Para H – A; MOHAMMED V I.G.P. (2019 4 NWLR (PT. 1663) 492, 516 – 517, 518; I.G.P. V IKPILA (2016 9 NWLR (PT. 1517) 236.***

He submitted that in the present case, the Applicant has in addition to the affidavit evidence before the Court, supported same with relevant exhibits such as Exhibit 'A' which is the purchase receipt of the Infinix Note 10 phone which was forcefully taken from him at gun point by the 1<sup>st</sup> Respondent at Iyekogba Police Division which he failed and refused to return to the Applicant till date. Furthermore, the Applicant's Bitcoin wallet transfer receipts in Exhibits D & E and Exhibit G which is the medical report issued to the Applicant by the medical doctor who treated him as a result of the physical and mental torture he passed through in the 1<sup>st</sup> Respondent's hand.

He further submitted that the arraignment of the 1<sup>st</sup> Respondent for the offences of armed robbery by 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents has satisfactorily confirmed the veracity of the facts stated by the Applicant in his affidavit in support of the originating motion on notice. He

therefore submitted that this is an appropriate case for which aggravated or exemplary damages can be rightly awarded by this Honourable Court as was held in the case of *ODIBA V MUEMUE (1999) 6 S.C. Para 35 – 40*.

He therefore urged the Court to award exemplary damages as such an award will meet the justice of this case to punish the condemnable conduct of the Respondents. He relied on the cases of: *CENTRAL BANK OF NIGERIA V OKOJIE (2015) ALL FWLR (PT. 807) 478 @ 506 (Para B – C)*; *ELLOCHIN NIG. LTD. V MBADIWE (1986 1 NWLR (PT. 14 47 @ 67)*; and *ROOKES V BARNARD & ORS Supra at Pages 1221*.

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

In his written address, the learned counsel for the 1<sup>st</sup> Respondent, *A.A. Bello Esq.* formulated two issues for determination as follows:

- 1) *Whether the applicant has provided proof to back up his assertions that his rights have been breached?;and*
- 2) *Whether the subject matter of the suit is within the jurisdiction of the Fundamental Rights Enforcement Procedure Rules?*

Thereafter, the learned counsel argued the two issues seriatim.

### **ISSUE 1:**

*Whether the applicant has provided proof to back up his assertions that his rights have been breached?*

Arguing this first issue, learned counsel submitted that the Applicant has failed to support his assertions with proofs which could have been easily accessible and available if the assertions contained in his affidavit were true. He maintained that “he who asserts must prove” and he relied on *Section 131 of the Evidence Act, 2011*. He said that the Applicant orchestrated the supposed beating and torture which he received in the hands of the 1<sup>st</sup> Respondent in the interrogation room of the station and inside the police cell, yet he did not say what the several other police officers majority of whom are senior to the 1<sup>st</sup> Respondent were doing when the 1<sup>st</sup> Respondent was allegedly torturing him.

He said that assuming but not conceding that all the police officers including the DPO kept quiet when he was being tortured, what about the other suspects and their family members who were at the station at the time, did they also collude in such terror?

Finally on this point, he posited that no single photograph of blood stained cloths while he was at the station or so soon thereafter was shown to this court as exhibit. He said that the medical report attached to the charge sheet shows injuries consistent with a person who fought with police officers just like the 1<sup>st</sup> Respondent deposed to in his counter affidavit.



He said that the Applicant alleged specifically that while inside the cell, the 1<sup>st</sup> Respondent hit him with the butt of the gun at his back, yet there was no single mention of an injury to the Applicant's back in the medical report, which buttresses the fact that nobody assaulted the Applicant after he was arrested and brought to the station.

On the issue of the stolen phone, he posited that the easiest way to locate a phone is by tracking, yet there no tracking report and failure of the Applicant to attach a tracking report is fatal to this application and he relied on *Section 167 (d) of the Evidence Act* which provides as follows: ***“The court may presume the existence of any fact ... and in particular, the court may presume that... evidence which could be and is not produced would, if produced, be unfavourable to the person, who withholds it.”***

On the issue of the 1<sup>st</sup> Respondent using the Applicant's phone to chat, send pictures etc, he submitted that no evidence has been supplied to back up this claim. Firstly he said that there is no certificate of compliance as required by *Section 84 of the Evidence Act, 2011* for documents produced by a computer since the Applicant stated that the exhibits listed as Exhibits B, C and C1 respectively were generated from his social media accounts through a computer. He submitted that those exhibits are not properly before court and should be rejected in totality.

Furthermore, on the alleged conversations in exhibit B, C, and C1 with a certain Robert Carey and Ellen Matthey, he pointed out that no single identification document has been submitted before this court to link those persons in the conversation with any of the parties in this suit. He submitted that those exhibits were simply dumped on the Court and are not connected with the facts of this case. He relied on the authority of *CAN V. Nyako (2015) 18 NWLR (Pt. 1491) 352 at-395 G-H, A-C SC* where the apex court stated that a witness must breadth life into the documents he is bringing to court for any weight to be attached to such documents.

Furthermore, on Exhibits B, C, and C1 attached to the Applicant's motion, counsel contended that there is nothing before this court to show that those conversations were carried out on the 16<sup>th</sup> of June, 2022 or that they were conducted on the missing Infinix mobile phone. He said that a simple report from the applicant's mobile SIM service provider would have sufficed to show the social media conversations carried out from that sim card on that day and the time of those conversations. Again, he relied on the provisions of *Section 167(d) of the Evidence Act* and urged the Court not to attach any weight to exhibits B, C and C1.

On the issue of transfer of bitcoins from the Applicant's wallet, he submitted that there is no evidence before this court to show that the Applicant owned any bitcoins wallet before going into the issue of transfer. He said that a bitcoin wallet is like a bank account for bitcoins and the holder of a bitcoin wallet can always access his wallet KYC and history of transactions from any phone as the applicant has deposed that he used his brother's phone to access his bitcoin wallet and found that a transfer was made. He submitted that the first duty of the Applicant is to show

that he owned a bitcoin wallet with his names and details showing clearly on the KYC of that wallet, then go ahead to show the transaction history, plus the transaction done on the 16/6/2022 where he claimed that the 1<sup>st</sup> Respondent made the transfer from his bitcoin wallet and the SIM internet ID from where the transaction was done to show that it was the particular sim on the missing phone that was used to make the transfer. He said that having failed to do all these; the Applicant is guilty of making assertions without proof.

Again, he submitted that the Exhibits D and E relied upon by Applicant runs foul of **Section 84 of the Evidence Act**, being documents generated by means of a computer.

On Issue 2 which is whether the subject matter of this suit is one under the fundamental Rights Enforcement Procedure Rules. He submitted that the main issue complained of by the Applicant is armed robbery and there is no **Section in Chapter 4 of the Constitution of the Federal Republic of Nigeria or under the African Charter of Human and People's Rights** where a person who claims that he was robbed at gunpoint can also now claim that his Rights were breached in the process. He relied on the case of **IHENACHO V NPF (2017) 12 NWLR (PT. 1580) CA 424**.

He contended that the whole gamut of the Applicant's allegations are criminal in nature and it is settled law that if in a civil suit a party makes an allegation against another party which is criminal in nature, that criminal allegation must be proved beyond reasonable doubt. See **Section 135 (1) of the Evidence Act 2011**. He finally urged the Court to dismiss the application.

In his final written address, the learned counsel for the 2<sup>nd</sup> to 5<sup>th</sup> Respondents, **C.S.O. Nnamdi Esq.** formulated three issues for determination as follows:

- 1) **Whether the arrest of the Applicant and his brother was lawful?**
- 2) **Whether the 2<sup>nd</sup> – 5<sup>th</sup> Respondents are vicariously liable for the actions of the 1<sup>st</sup> Respondent?**
- 3) **Whether the Applicant is entitled to the relief sought by him.**

Thereafter, learned counsel argued the three issues seriatim.

On the first issue, learned counsel submitted that the arrest of the Applicant and his brother was lawful as the Respondents were only performing their lawful duty as conferred on them by **Section 4 of the Nigeria Police Act, 2020**.

He further submitted that **Section 49 of the Nigeria Police Act, 2020** also gives the Police the power to stop and search. He urged this Court to hold that the Applicant's Fundamental Rights have not been breached and that his arrest was lawful.

On issue 2, he submitted that the 2<sup>nd</sup> – 5<sup>th</sup> Respondents are not vicariously liable for the actions of the 1<sup>st</sup> Respondent against the Applicant, since the 1<sup>st</sup> Respondent's actions were not Constitutional and against the Police Act and Regulations. He referred the Court to the **section**

**341 of the Police Act and Regulations Cap p 19 and Pursuant to the Nigeria Police Establishment Act 2020** which provides thus: **“In the individual exercise of his powers as a police officer, every police officer shall be personally liable for any misuse of his power or for any act done in excess of his authority”**.

On Issue 3, counsel submitted that the Applicant is not entitled to the reliefs sought by him from the 2<sup>nd</sup> – 5<sup>th</sup> Respondents because a Police officer who a reasonable grounds effect an arrest is not liable for false Imprisonment and he cited the case of **DALLISON VS. CAFFREY (1964) 2 ALL E. R. 1203**.

Finally, he urged the Court to dismiss the application.

In response to the counter affidavit of the 1<sup>st</sup> Respondent, the Applicant’s counsel filed a Reply on points of law.

In his reply on point of law, learned counsel submitted that contrary to the submissions of the 1<sup>st</sup> respondent’s counsel that that the Applicant’s case is for a case of armed robbery, he maintained that the main case or reliefs of the applicant as disclosed on the face of his application are for the enforcement of his fundamental rights protected and guaranteed under **sections 34, 46 & 37 of the constitution of the Federal Republic of Nigeria 1999 as amended**. He reproduced the reliefs contained in the application and submitted that on the face of the Applicant reliefs, mention armed robbery is not mentioned.

He submitted that the issue of jurisdiction raised by the 1<sup>st</sup> respondent’s counsel in his issue two is a misconception of the determinant of what Fundamental Rights Enforcement procedure entails which has been settled in the case of **F. B. N. V A. G. FEDERATION(2014) 12 N.W.L.R (PT. 1422) P. 470 @ PAGES 502-503**.

He submitted that a careful look at the Applicant’s reliefs would show that the principal reliefs are breaches of the Applicant’s Fundamental Rights protected and guaranteed under **chapter IV of the 1999 Constitution as amended and sections 34 & 37 of the 1999 Constitution**. He therefore urged this Court to resolve this issue in favour of the Applicant.

In conclusion, counsel submitted that the prosecution of a criminal offence which arose in the cause of the breaches of the Applicant’s fundamental right does not foreclose the Applicant from seeking redress in a court of competent jurisdiction for the enforcement of his fundamental rights that were breached and he relied on the case of **OURUAKU V NWOKE (2016) ALL FWLR (PT. 815) 351 @ P. 395, PARA. E-F** and urged the Court to grant the application.

I have carefully examined all the processes filed in this application together with the submissions of the learned counsel for the parties. The issues formulated by all the counsel are quite germane to the just determination of this application. However, I will condense 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.***

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 the 1<sup>st</sup> Respondent on the 16/6/2022 while working for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents at Iyekogba Police Division Benin City Edo State subjected the Applicant to torture, inhuman and degrading treatment in violation of ***section 34 of the Constitution*** and collected his cell phone and forcefully accessed the contents of the phone in violation of his right to privacy, correspondence, etc of the Applicant in violation of ***section 37 of the Constitution of the Federal Republic of Nigeria 1999 as amended.***

From the contents of the affidavits of all the parties, the following facts appear to be undisputed:

- (i) On the 16<sup>th</sup> day of June 2022, the Applicant was arrested by the 1<sup>st</sup> Respondent and his team when he went to assist his brother who was being interrogated by the team of policemen;
- (ii) The 1<sup>st</sup> Respondent accused the Applicant of trying to video what was happening at the scene with his cell phone and forcefully collected the phone from him;
- (iii) At the station, the 1<sup>st</sup> Respondent also locked up the Applicant and his brother in their cell;
- (iv) The police authorities clearly dissociated themselves from the conduct of the 1<sup>st</sup> Respondent on the day in question and subjected him to an orderly room trial and dismissed him from the police force;
- (v) Presently the 1<sup>st</sup> Respondent is facing criminal charges for armed robbery in relation to his forceful seizure of the Applicant's phone on the day in question.

I will want to start with the allegations against the 1<sup>st</sup> Respondent. In this application, the 1<sup>st</sup> Respondent actually admitted collecting the Applicant's phone from him but alleged that he lost it when he inadvertently left it inside the car when they got to the police station.

In civil proceedings like this, the standard of proof is on the balance of probability or preponderance of evidence; see *Arowolo v. Olowokere (2012) All FWLR (Pt. 606) 398*.

From the exchange of affidavits, it is clear that the 1<sup>st</sup> Respondent forcefully dispossessed the Applicant of his cell phone on the spurious allegation that he was videoing the events at the scene of the arrest. Even if the Applicant was using his cell phone to record the event, I do not think that he committed any offence. In this digital age, people are encouraged to use their personal electronic devices to record events for proper recording that is why we now have CCTV cameras everywhere for proper recording. Most of the time, evidence elicited from electronic devices have facilitated effective justice delivery.

*Section 37 of the 1999 Constitution* states that "*the privacy of citizens, their homes, correspondence, conversations and telegraphic communication telephone guaranteed and protected*". It is clear from the text of the provision that it specifically mentioned the types of privacy that it protects. The rights of privacy identified under this section includes: the privacy of their correspondence; the privacy of their telephone conversations; and the privacy of their telegraphic communication. See the case of *Federal Republic of Nigeria V. Daniel (2011) 4 ELR 4152*. Clearly, the forceful seizure of the Applicant's phone was a flagrant breach of his right to privacy as guaranteed by *section 37 of the Constitution*. The 1<sup>st</sup> Respondent exceeded his authority as a police officer by forcefully dispossessing the Applicant of his cell phone on the spurious allegation that he was videoing the events at the scene of the arrest.

I will not go further to determine whether the 1<sup>st</sup> Respondent used the phone to chat with some of the Applicant's contacts as alleged by the Applicant because the fact that the 1<sup>st</sup> Respondent took possession of the Applicant's phone without his consent and up till now has failed/refused to return same to the Applicant is a flagrant breach of the Applicant's right to privacy as enshrined in the 1999 Nigerian Constitution.

Flowing from the foregoing, I am of the view that the points canvassed by the counsel for the 1<sup>st</sup> Respondent about noncompliance with the provisions of section 84 of the Evidence Act, 2011 and proof beyond reasonable doubt for the alleged stealing of the Applicant's bitcoins are quite irrelevant to this proceedings. Such issues may be relevant at the hearing of the criminal trial of the 1<sup>st</sup> Respondent for the offences of armed robbery and stealing which are allegedly pending against him.

On the alleged infringement of the Applicant's right to the dignity of his person contrary to *section 34 of the Constitution*, the aforesaid section provides as follows:

***"Section 34: Every Individual is entitled to respect for the dignity of his person, 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 labour or compulsory labour."*

It is trite law that in interpreting the provisions of the Constitution, where the words used therein are clear, plain and unambiguous, there is no need to give them any other meaning than their ordinary, natural and grammatical construction would permit. See *Peoples Democratic Party Vs Okorocho (2012) 15 NWLR (Pt.1323) 205 and Abubakar Vs Nasamu (No 1) (2012) 17 NWLR (Pt.1330) 407*.

The portion of the above stated provision relevant to the complaint of the Applicant is that no person shall be subjected to torture or to inhuman or degrading treatment. The authors of the *5th Edition Black's Law Dictionary* defined the word "torture" as "*to inflict intense pain to body or mind for purposes of punishment, or to extract a confession or information, or for sadistic pleasure*", "*inhuman treatment*" as "*such mental or physical cruelty or severity as endangers the life or health of the party to whom it is addressed or creates a well founded apprehension of such danger*" and "*degrading*" treatment as "*reviling; holding one up to public obloquy; lowering a person in the estimation of the public; exposing to disgrace, dishonor or contempt*".

Thus, any action which inflicts intense pain to the body or mind of a person of any act of physical cruelty which endangers the life or health of a person or creates a well founded apprehension of such danger or an act done in such a manner as to bring a person to public ridicule, disgrace, dishonor or contempt comes within the provision of *Section 34(a) of the 1999 Constitution*. See *Uzuokwu vs Ezeonu II (1999) 6 NWLR (Pt.200) 778; Alhaja Mogaji & Ors Vs Board of Customs and Excise & Anor (1982) 2 NCLR 522*.

The complaint of the Applicant in this application before this Court is that he was beaten and humiliated by the 1<sup>st</sup> Respondent and his cohorts and subsequently detained in their custody without committing any offence. The assertion of the 1<sup>st</sup> Respondent that the main claims as formulated by the Applicant did not touch on the violation of any of the fundamental rights guaranteed under Chapter IV of the 1999 Constitution is quite unfounded. *Section 34 (1) (a) of the Constitution* provides as an incident of the right to dignity of human person, that no person shall be subjected to inhuman or degrading treatment. The 1<sup>st</sup> Respondent clearly violated this right. See *OKAFOR V. LAGOS STATE GOVT & ANOR (2016) LPELR-41066(CA) (PP. 30-31 PARAS. C)*.

Coming to the 2<sup>nd</sup> Respondent, upon a careful examination of the facts disclosed in this application, apart from the fact that he did not appear to have exercised proper supervision over the 1<sup>st</sup> Respondent, I do not see how he infringed on the rights of the Applicant. The 1<sup>st</sup> Respondent appears to have been the black sheep in the team, little wonder the police authorities

quickly dissociated themselves from his ignoble acts and promptly dismissed him from the force. From the available facts, the 2<sup>nd</sup> Respondent is not liable.

Coming to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents, it would be observed that these are the police authorities or the bosses of the 1<sup>st</sup> Respondent. The Applicant's counsel has forcefully contended that they are vicariously liable for the acts and omissions of the 1<sup>st</sup> Respondent. It must be observed that the 1<sup>st</sup> Respondent's acts were clearly ultra vires his powers as a police officer. From the facts, the acts of the 1<sup>st</sup> respondent appear to be tainted with elements of criminality hence he is facing charges of armed robbery. It is settled law that there is no vicarious liability in Criminal Law or allegation of Crime. A master or principal cannot be made liable for the Criminal act or activities of his servant or employee. In the case of *APC VS. PDP & ORS. (2015) 4 SCM 48 at 99H per FABIYI JSC* exposted thus:

***"It is basic there is no vicarious liability in the realm of Criminal Law. Anyone who contravenes the Law should carry his own cross."***

In the earlier case of *Adeoye v. Olorunoje (1996) 2 S. A. C. 256 at 262* the court held thus:

***"It is not the Law that a master is responsible for the Crime of his servant."***

See also the case of *ANANABA V. FRI-EL ABA PALM (NIG) LTD & ORS (2016) LPELR-40463(CA) (PP. 27-28 PARAS. D)*.

Flowing from the foregoing, I hold that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents are not vicariously liable for the criminal action of the 1<sup>st</sup> Respondent, they are therefore not liable.

Coming to the 6<sup>th</sup> and 7<sup>th</sup> Respondents, the allegation against them is that they assisted the 1<sup>st</sup> Respondent in the alleged illegal transfer of bitcoins from the Applicant's Bitcoin wallet to another account. As I have already stated in this judgment, the allegations of crime leveled against the 1<sup>st</sup> Respondent are the subject matter of the criminal trial pending against him. I cannot make any findings in respect of those criminal allegations. Incidentally, the Applicant is not seeking to enforce his right to property as guaranteed by the Constitution. Thus in relation to the present application, the 6<sup>th</sup> and 7<sup>th</sup> Respondents are not liable.

Sequel to the foregoing, it is only the 1<sup>st</sup> Respondent who is liable for the breaches of the Applicant's fundamental rights as guaranteed by sections 34 and 37 of the Constitution.

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**.

On the assessment of damages, I will take into consideration, all the surrounding circumstances of this case particularly the fact that up till now, the Applicant has not been given his cell phone. The Applicant is entitled to some reasonable compensation to assuage all his suffering.

In the event, the sole issue for determination is resolved in favour of the Applicant and he is granted the following reliefs:

- 1) ***A declaration that the acts of the 1st Respondent on the 16/6/2022 while working for the 3rd, 4th and 5th Respondents at Iyekogba Police Division Benin City Edo State by beating up, torturing the Applicant by hitting him with his gun butt with which he forcefully collected the Applicant's infinix note 10 phone and seizing same till date amounts to torture, inhuman and degrading treatment which is a violation of section 34 of the constitution of the Federal Republic of Nigeria 1999 as amended;***
- 2) ***A declaration that the acts of the 1st Respondent while in the service or working as agent of the 3rd, 4th and 5th Respondents on the 16/06/2022 at Iyekogba Police Division tortured him with gun. collected and seized the Applicant's infinix note 10 phone valued at N110,000.00 (One Hundred and Ten Thousand Naira Only) is a violation of the Applicant's right of his privacy, correspondence, telephone conversations, and telegraphic communications, protected under section 37 of the constitution of the Federal Republic of Nigeria 1999 as amended;***
- 3) ***AN ORDER of this Honourable Court commanding the 1<sup>st</sup> Respondent to pay the sum of N3,000,000.00 (Three Million Naira Only) to the Applicant being special, general, aggravated and exemplary damages for the aforesaid breaches of the Applicant's constitutionally protected fundamental rights which acts culminated in this Application;***



- 4) ***AN ORDER on the 1<sup>st</sup> Respondent to tender a written apology published in 1 (one) National Newspapers to the Applicant not later than 30days after the judgment of this Honourable Court for the breach of his fundamental rights aforesaid; and***
- 5) ***AN ORDER of perpetual injunction restraining the Respondents by themselves, servants, agents, and privies from further violations of the Applicant’s fundamental rights as guaranteed under the constitution of the Federal Republic of Nigeria 1999 as amended.***

***The sum of N200, 000.00 (Two Hundred Thousand Naira) is awarded as costs in favour of the Applicant.***

***Hon. Justice P.A. Akhiero  
JUDGE  
03/08/2023***

**COUNSEL:**

1. ***J.I. Iyobhebhe Esq.....Applicant***
2. ***A.A. Bello Esq.....1<sup>st</sup> Respondent***
3. ***C.S.O. Nnamdi Esq.....2<sup>nd</sup> to 5<sup>th</sup> Respondents***
4. ***Unrepresented.....6<sup>th</sup> & 7<sup>th</sup> Respondents***