

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

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

ON MONDAY THE

10TH DAY OF JULY, 2023.

SUIT NO. B/204^M/2022

**IN THE MATTER OF AN APPLICATION BY NOBLE VENTURES LIMITED FOR
THE ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS.**

AND

**IN THE MATTER OF FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE
RULE, 2009 MADE BY THE CHIEF JUSTICE OF NIGERIA PURSUANT TO
SECTION 46 OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC AS
AMENDED.**

BETWEEN:

NOBLE VENTURES LIMITED ----- APPLICANT

AND

- 1. CHIEF FRIDAY EGHAGHE**
- 2. FRED EGHAGHE**
- 3. NOSA EGHAGHE**
- 4. HENRY EGHAGHE**
- 5. SHINO EGHAGHE**
- 6. THE NIGERIA POLICE FORCE**
- 7. THE POLICE SERVICE COMMISSION**
- 8. THE INSPECTOR GENERAL OF POLICE,
NIGERIA POLICE FORCE.**
- 9. THE DEPUTY INSPECTOR GENERAL OF POLICE,
GENERAL ADMINISTRATION, FORCE CID,
AREA 10, ABUJA.**
- 10. THE O/C GENERAL ADMINISTRATION, FORCE CID,
AREA 10, ABUJA**
- 11. MR. JAMES OZ
INVESTIGATIVE POLICE OFFICER,
GENERAL ADMINISTRATION,
FORCE CID, AREA 10, ABUJA.**
- 12. MR. ENYEJO AUGUSTINE
INVESTIGATIVE POLICE OFFICER,**

RESPONDENTS

**GENERAL ADMINISTRATION,
FORCE CID, AREA 10, ABUJA.**
13. MR. GESHUA (Other name unknown)
**TEAM LEADER, GENERAL ADMINISTRATION,
FORCE CID, AREA 10, ABUJA.**

JUDGMENT

This judgment is in respect of an application brought pursuant to section 34(1) & 43 of the 1999 Constitution of Federal Republic of Nigeria as amended, Order 2 Rules 2, 3, 4, & 5; and Order 11 Rule 4 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and under the inherent jurisdiction of this Honourable Court.

In this application, the Applicant is seeking the following reliefs:

- 1. A DECLARATION** that the Applicant is entitled to the right to dignity of it's cooperate image and not to be subjected to any form of inhuman or degrading treatment, it's cooperate liberty and freedom to function as provided for by the constitution of the Federal Republic of Nigeria 1999, as amended (sic);
- 2. A DECLARATION** that the continuous forceful interference with the Applicant's possession of the property located at Ward 34/F Egba, Idogbo Area, Benin City by the 7th – 13th Respondents in collusion with the 1st to 5th Respondents, is without probable or just cause, illegal, unlawful and in violation of the Applicant's property rights as enshrined in Section 43 and 34(1), of the Constitution of the Federal Republic of Nigeria (1999) as amended and therefore actionable;
- 3. AN ORDER** of perpetual injunction, restraining the Respondents whether by themselves, agents, servants, privies, assigns, successors-in-office or whosoever connected with them in any manner whatsoever and howsoever from further harassing, intimidating, interfering with the property right of the Applicant and/or arresting, inviting for questioning or interrogating of the Applicant's staff or doing anything overtly or covertly inconsistent with the Applicant's Fundamental Rights as encapsulated in the Constitution of the Federal Republic of Nigeria (1999) as amended on account of false allegations by the 1st - 5th Respondents against the Applicant, save only if the Applicant commits any offence; and

4. **AN AWARD** of N100, 000,000.00 (One Hundred Million Naira), only as general and exemplary damages jointly and severally against the Respondents for the pains, discomfort and inconveniences suffered by the Applicant as a result of the incessant, harassment, intimidation, interference and deprivation by the 6th – 13th Respondents on the instructions and instigation of the 1st - 5th Respondents.

In support of the application, the Applicant filed a 29 paragraphs affidavit and a written address of their counsel.

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

The salient facts in support of this application can be gleaned from the affidavit of one Rosemary Atoe who is a Legal Practitioner and the Human Resource Personnel of the Applicant.

According to the deponent, the Applicant is a Limited Liability Company engaged in engineering and construction work. She alleged that sometime in 2009, the Applicant purchased a property at Ward 34/F, Egba Village, Idogbo Area, Benin City from a financial institution known as Circular Community Bank Limited (now defunct).

The said Community Bank had earlier acquired the property vide a judgment of the High Court of Justice Edo State in Suit No: B/638/99 delivered on the 9/6/99. From the facts, one Mr. Eghaghe, the late father of the 1st – 5th Defendants used the said property as collateral for a loan which he obtained from the defunct bank.

She alleged that subsequently, after the Applicant was put in possession of the property, Mr. Eghaghe filed an Appeal at the Court of Appeal which was struck out on the 7th Day of July, 2004.

After the purchase of the property, the late Mr. Eghaghe and his children (the 1st – 5th Defendants) continued to instigate and use the 7th – 13th Respondents to interfere with the Applicant's peaceable possession of the property.

That as a result of the interference, the Applicant wrote several petitions to the police, complaining about the violation of its property rights by the 1st – 6th Respondents.

That sometime in 2015, the 1st – 6th Respondents and their late father invaded the site with some hired armed thugs, inflicted serious bodily injury on the Applicant's workers and set ablaze a cart 980B pale loader which the Applicant hired to do some work on the site.

Sequel to the alleged violation of the Applicant's rights by the 1st – 6th Respondents, the Applicant wrote a petition to the 8th Respondent complaining of the lawlessness and impunity of the 1st – 6th and the 11th, 12th and 13th Respondents.

That owing to the alleged incessant interference with the property rights of the Applicant by the Respondents, the Applicant filed a suit against the Respondents in Suit No: B/4/2016 and the Court made an order restraining the Respondents.

The Applicant maintains that the continuous interference of the Respondents' with the Applicant's right of possession is a violation of its property rights and dignity to its corporate image. That in continuation of the Respondent's violation of the Applicant's property right, some workmen hired from Macfranklyn Engineering Services Limited by the Applicant to carry out construction work at the Applicant's property under reference were arrested and detained at the Edo State Police Command, Benin City on the 19th day of October, 2022.

That when the staff of the Applicant and a lawyer got to the Edo State Police Command, the 11th and 12th Respondents gave them some stringent conditions to be met before they would grant bail to the detained persons.

That when they could not meet the stringent conditions for bail demanded by the 11th and 12th Respondents on the alleged instructions of the 13th Respondent and the instigation of the 1st to 5th Respondents, the said workmen were detained in a police cell at the Edo State Police Command and subsequently taken to Abuja on the 20th of October, 2022 for further detention.

The Applicant maintain that if the Respondents are not restrained, the 1st - 5th Respondents would have succeeded in using the 6th – 13th Respondents as tools to have jurisdiction over a matter that has a civil correlation, assuming there was any case at all.

Furthermore, that if the Respondents are not restrained, the 1st - 5th Respondents will succeed in using a concocted and manufactured criminal investigation to infringe on the Applicant's property right and dignity to its corporate image.

The 1st to the 5th Respondents' version of the events appear slightly different in certain regards. From the facts disclosed in their counter-affidavit, which the 1st Respondent deposed to, they denied most of the facts contained in the Applicant's supporting affidavit.

According to them, their late father, Chief S.I. Eghaghe owned two landed properties at Ward 34/F, Egba Village, Idogbo, Benin City covered by certificate of occupancy No. EDSR12392 which is the larger land and EDSR12393 which is the smaller land respectively.

They alleged that their late father used the smaller land as collateral to secure a loan from Circular Community Bank Ltd. in which one Dele Edokpayi, Esq. is the founder, Chairman and Managing Director.

They said that in Suit No. B/638/99, the said Circular Community Bank Ltd. sued their late father as the 1st Defendant amongst other claims for the smaller land which was used as collateral for the loan. According to them, in the Court's Judgment, it was held that their late father was the owner of the aforesaid had two parcels of land.

Furthermore, they alleged that sometime in 2014/2015, the Applicant and Dele Edokpayi Esq., purportedly acting in execution of the judgment in Suit No: B/638/99 forcibly entered the larger land measuring 300 feet by 500 feet and destroyed their father's water factory, equipment, buildings and other items on the land and attempted to excise 300 feet by 200 feet from the 300 feet by 500 feet instead of going to the smaller land measuring 300 feet by 200 feet and their father chased them away.

They said that their father reported the alleged forcible entry, criminal trespass, malicious damage and conduct likely to cause a breach of the peace to the police and filed Suit No: B/530/2014 against the Applicant and Dele Edokpayi Esq. in order to determine the ownership of the two parcels of land. They said that the suit is pending before High Court 3, Benin City and they attached a copy of the Amended Statement of Claim as Exhibit D to their Counter-Affidavit.

They said that the Applicant and Dele Edokpayi, Esq. also reported a case of assault and setting ablaze a Cart 980B bulldozer to the police. That the police investigated the case, made their findings and recommended the prosecution of Dele Edokpayi Esq. but in order to avoid prosecution, the said Dele Edokpayi allegedly filed Suit No: B/4/2016 and obtained an order of injunction restraining the police from arresting and prosecuting him in the matter. They attached a copy of the Police Report and the originating process in Suit No: B/4/2016 as Exhibits E and F respectively.

According to them, while these cases were pending in court, the Applicant, Dele Edokpayi Esq. and their workers on 19/10/2022 again went with a Bulldozer caterpillar to the larger parcel land measuring 300 feet by 500

feet and started to destroy the properties on the land such as cassava crops, vegetables, plantain etc. They reported to the police and they apprehended the workers while Dele Edokpayi Esq. allegedly failed to honour the police invitation.

They alleged that the 1st – 5th Respondents only reported a case of forcible entry, malicious damage and conduct likely to cause a breach of the peace to the 11th – 12th Respondents.

That while their father was alive and the suits were pending in court, the Applicant and Dele Edokpayi Esq. stayed away from the land but upon the demise of their father, he allegedly returned to the land on 19/10/2022 with bulldozer caterpillar and started to destroy their properties on the land.

The 1st to 5th Respondents maintain that the matter is purely a land matter in which the Applicant and Dele Edokpayi Esq. are trying to acquire their land by refusing to await the determination of Suits No: B/530/2014 and Suit No: B/4/2016. They maintain that this matter has nothing to do with the enforcement of fundamental human rights.

Upon receipt of the 1st to the 5th Respondents' Counter-Affidavit, the Applicant filed a Reply to the Counter-Affidavit and a Reply on Points of Law.

In its Reply to the Counter-Affidavit, the Applicant deposed to some further facts to explain the various transactions involving the disputed properties with particular reference to the suits in the courts.

At this stage, it is pertinent to observe that the 6th to the 13th Respondents who are officers and agents of the Nigerian Police Force did not file any process in respect of this application.

The learned counsel for the Applicant and the 1st to 5th Respondents filed their written addresses in support of their clients.

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

- (i) Whether the Applicant has some constitutional rights which the Court can protect; and***
- (ii) Whether Applicant's constitutional rights have been and is still being violated by the 6th – 13th Respondents particularly where the 6th – 13th Respondent acted outside their constitutional defined power through the instigation of the 1st -5th Respondents.***

Thereafter, the learned counsel argued the two issues seriatim.

ISSUE ONE:

Whether the Applicant has some constitutional rights which the Court can protect?

Arguing this issue, learned counsel submitted that the Applicants by the provisions of ***Section 43 and 34(1) of the 1999 Constitution*** has a constitutional right that needs to be protected by this Honourable Court, if it is glaring that such rights has been violated or are about to be violated.

He posited in paragraphs 5 to 21, the Applicant stated the facts which constitutes the acts of harassment, intimidation and continuing interference with the Applicant's right of possession of property which the Applicant acquired for valuable consideration without justification. He maintained that the Applicant was subjected to such degree of intimidation and harassment by the 6th – 13th Respondents under the influence of the 1st - 5th Respondents.

Counsel submitted that if there is any criminal allegation properly established against the Applicant, the Applicant will not be calling on this Honourable Court to intervene since the 6th - 13th Respondents have the constitutional powers to deal with issues of crime.

He maintained that the Applicant is a law abiding corporate entity engaged in engineering and construction work and he urged the Court to carefully look into the conduct of the Respondents and the subject matter of this application in order to protect the constitutional rights of the Applicant.

Counsel submitted that the 6th – 13th Respondents ought to have made a proper preliminary investigation before subjecting the Applicant to inhuman treatment in violation of its constitutional rights guaranteed by the law. He referred to the following decisions on the protection of fundamental rights: ***MBADIKE & ORS V. LAGOS INT'L TRADE FAIR COMPLEX MANAGEMENT BOARD & ORS (2017) LPELR – 41968 (CA) AT PP. 30-31, PARAS. A-E; GRACE JACK V. UNIVERSITY OF AGRICULTURE, MAKURDI (2004) 5 NWLR (PT. 865) 208; GEORGE ADUMU V. THE CONTROLLER OF PRISONS FEDERAL PRISONS, ABA & ORS (2013) LPELR – 22069 CA; OLUTOLA V. UNIVERSITY OF ILORIN (2004) 18 NWLR (PT. 905) 416; ZAKARI V. IGP (2000) 8 NWLR (PT. 670) 666.***

He submitted that the continuous interference with the Applicant's right to property and the continuing arrest and detention of the Applicant's staff by the 6th – 13th Respondents is a breach of the Applicant's fundamental right to its corporate image and dignity as enshrined in the 1999 Constitution of the Federal

Republic of Nigeria and he cited the case of *NAWA V. A.G. CROSS RIVER STATE (2008) A.F.W.L.R part 401 ratio 16 page 807 particularly at page 818.*

ISSUE TWO

Whether the Applicant's Constitutional rights were violated by the Respondents particularly where the 6th – 13th Respondents acted outside their constitutional defined power through the instigation of the 1st -5th Respondents.

Learned counsel submitted that where there is clear evidence as in the present case that the constitutional right of the Applicant has been breached or is about to be breached, the Applicant is entitled to compensation and a public apology.

He posited that the Applicant has stated its ordeal in the hands of 6th – 13th Respondents having regard to the continuous interference with the property rights of the Applicant and more particularly the arrest and continuing detention of the Applicant's hired workmen which adversely affected the Applicant's corporate image and dignity and he urged the Court to declare the conduct of the 6th – 13th Respondent as unlawful.

Counsel maintained that every person in Nigeria has the right to go about his/her normal business unmolested or unhampered by anyone whether a Government functionary or a private individual. He said that the Court will frown at any manifestation of arbitrary power by any person or authority over the life or property of another person.

He posited that people cannot take the laws into their hands by attempting to enforce what they consider to be their right or entitlement particularly where there is a judgment/order of Court evidencing the Applicant's right over the property, subject of this application. He urged the Court to condemn the conduct and activities of the Respondents in violation of the Applicant's right guaranteed by the law and referred to Exhibits "A", "B", "C" and "D" attached to the affidavit in support of this application

He submitted that it is settled law that where persons such as the 1st - 5th Respondents makes a report to the police which is found to be false, they should be made liable and he referred to the decision of the Supreme Court in the case of *OKAFOR v. ABUMOFUANI (2016) LPELR – 40299 (SC)*.

He submitted that the powers of the 6th – 13th Respondents has been improperly used because they allowed themselves to be used in a matter where

the 1st -5th Respondents cannot categorically establish or possess any material evidence for the allegation levied against the Applicant.

Counsel submitted that although the police have a duty to prevent crime, such powers should not be abused and he relied on the case of *NZEGBUNA & ANOR V. OKOYE & ANOR (2018) LPELR – 43943 (CA) P. 21, paras. C-F.*

He posited that in the circumstances of this case, the Applicant is entitled to substantial damages for the injury to the dignity of its corporate image, discomfort and inconveniences. He submitted that damages flow naturally from injuries suffered by an Applicant in a Fundamental Human Rights Application and he urged the Court to grant the reliefs sought by the Applicant against the Respondents.

In his written address in opposition to this application, the learned counsel for the 1st to 5th Respondents, *Nosakhare Obaizamomwan Esq.* formulated a sole issue for determination as follows:

“Whether the Applicant’s application is competent to enable this Honourable court exercise jurisdiction to hear and determine same?”

Arguing this sole issue, learned counsel submitted that this application is incompetent and this Honourable court lacks the requisite jurisdiction to hear same.

Firstly, he submitted that the Applicant lack the locus standi to bring this application. He submitted that locus standi is the legal right of a party to an action to be heard in litigation before a court of law or tribunal. That the issue of locus standi is a condition precedent to the determination of a case on merit and where a party lacks the locus standi to bring a suit, the suit becomes incompetent and the court should dismiss same. In support, he relied on the following cases:

(a) Ajayi v. Adebisi (2012)11 NWLR (Pt. 1310) 137 at 175 – 176 paras E – H;

(b) Owodunmi v. Registered Trustees of C.C.C. (2000)10 NWLR (Pt. 675) 315;

(c) P.M. Ltd. v. The “M.V. Dancing Sister” (2012)4 NWLR (Pt. 1289)169 at 189 paras C – F.

Furthermore, he submitted that the test for determination of the locus standi are that the action must be justiciable and there must be a dispute between the parties. In support, he cited the cases of *Ajayi v. Adebisi*

*(supra)*176 paras A – C; and *Inakoju v. Adeleke (2007)4 NWLR (Pt. 1025) 423.*

Learned counsel posited that in this application, the Applicant stated that they acquired the property in 2009 and exhibited the receipts of purchase as Exhibit A. He said that Exhibit A is a Deed of Assignment made on 25th May, 2010 by which the Applicant assigned/sold the property situate in Ward 34/F, Idogbo Area, Benin City covered by certificate of occupancy No: EDSR12393, which is the property in issue in this case, to one Sheri Lawal.

He said that in their affidavit, the Applicant went further to state that in 2015 the Applicant hired a Cart 980 Pale Loader and other workmen to clear the property and the 1st – 5th Respondents inflicted serious bodily injury on them and that on 19/10/2022 some workers hired by Applicant to work on the property were arrested and detained by the 6th – 13th Respondents upon report by the 1st – 5th Respondents.

Counsel submitted that a plaintiff lacks the locus standi to institute an action where he has no axe to grind with the defendant in respect of the subject matter of the action and he cited the case of *Ajayi v. Adebisi (supra) at 182 paras C – D.*

He alleged that in the instant case, by the Applicant's affidavit, the Applicant sold the land to Sheri Lawal on 25th May, 2010 whereas the incident referred to by the Applicant occurred in 2015 and 2022. He submitted that in 2010 Sheri Lawal became the owner of the land now in dispute in this case so the Applicant lacks the locus standi to bring this application since he has no axe to grind with the 1st – 5th Respondents in respect of the land in 2015 and 2022. He maintained that Sheri Lawal should be the person to bring this application, where necessary, and not the Applicant who no longer has any interest whatsoever in the property having sold same to Sheri Lawal in 2010.

Secondly, counsel submitted that the Applicant being a limited liability company is an artificial person. That an artificial person is a juristic personality known to law and accorded due rights under our laws but can only act through its agents or servants who are human beings. And as such the Applicant cannot suffer injury as a human person.

He submitted that an artificial person cannot maintain an action for violation of fundamental rights. And as such, the Applicant being an artificial person, the Applicant is incapable of being subjected to inhuman or degrading treatment as claimed by Applicant. He referred to the case of *F.B.N. Ltd. Plc v.*

A.G Fed. (2018) 7 NWLR (Pt. 1617) 121 at 173 paras F – G; 175 para D, the Supreme Court held thus:

“An artificial person cannot maintain an action for violation of its fundamental rights. Thus, in the instant case, the 1st Appellant being an artificial person was incapable of being arrested and detained. The 2nd – 5th appellants, being natural persons, were the ones who could institute an action for the enforcement of their fundamental human rights. The 1st appellant not being a person capable of being arrested and detained was not entitled to damages in this case although it may have its remedy elsewhere.”

Counsel contended that in the instant case, the Applicant being an artificial person is incapable of being subjected to any form of inhuman or degrading treatment, or injury to its corporate liberty and freedom to function as claimed and as such the Applicant cannot maintain an action for violation of its Fundamental human rights.

Thirdly, he submitted that for a matter to be instituted under the Fundamental Rights (Enforcement Procedure) Rules to enforce the constitutional guaranteed rights under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) the enforcement of such rights must be the main/substantive claim before the court not an ancillary claim. In support, he cited the following decisions on the point: *Amale v. Sokoto Local Govt. (2012)5 NWLR (Pt.1292) 181*; and *Kalu v. State (1998)13 NWLR (Pt. 583)531*.

Counsel submitted that in this case, it is clear that the main plank of the claim of the Applicant does not lie in enforcement of fundamental rights. That the main claim is for possession of the property situate at Ward 34/F, Idogbo Area, Benin City covered by certificate of occupancy No: EDSR12392 and not EDSR12393 adjudged for Applicant in Suit No: B/638/99 and for a restoration of Applicant right to the property which property is in dispute between Applicant and 1st – 5th Respondents. He submitted that the appropriate procedure is for the Applicant to ventilate his grievance by a writ of summons or any other appropriate procedure. That this application under the Fundamental Rights (Enforcement Procedure) Rules is incompetent and this court lacks the jurisdiction to entertain it and he cited the following cases:

- (1) Tukur v. Govt; Taraba State (1997)6 NWLR (Pt. 510)549;***
- (2) Jack v. University of Agriculture, Makurdi (2004)5 NWLR (Pt. 865) 208;***
- (3) Emeka v. Okoroafor (2017)11 NWLR (Pt. 1577)411.***

He submitted that the application for enforcement of the Applicants fundamental rights to dignity of the human person and to immovable property is a subtle way to settle the Applicant's land dispute with the 1st – 5th Respondents.

Fourthly, counsel submitted that from the facts, the 1st – 5th Respondents had a reason to report a matter against the Applicant to the 6th – 13th Respondents as the Applicants left the land adjudged for them and forcibly entered and trespassed upon the other land of the 1st – 5th Respondents and destroyed the properties of the 1st – 5th Respondents on the land hence the report to the 6th – 13th Respondents who are law enforcement officials.

In conclusion he urged the Court to dismiss this application with substantial costs in favour of the 1st – 5th Respondents.

In his Reply on Points of Law, the learned counsel for the Applicant submitted that contrary to submissions of the counsel for the 1st to 5th Respondents, the Applicant has the locus standi to bring this application because the Applicant has substantial interest in the property located at Ward 34/F, Idogbo Area Benin City.

Furthermore, on the point raised by the Respondent's counsel that an artificial person cannot maintain an action for the enforcement of fundamental rights, learned counsel cited the case of **FIRST BANK & ORS V. A-G FEDERATION & ORS (2018) LPELR-46084(SC) (PP. 81 PARAS. A)** and submitted that an artificial person can enforce its fundamental rights.

After the learned counsel for both parties had addressed the Court, the learned counsel for the Applicant wrote to this Court to forward two additional authorities on the right of an artificial body to enforce its fundamental right. He forwarded photocopy of the cases of **NAANANG DAWAN VS. EFCC & ORS (2019) LPELR- 48386 (CA)** and **MR. CHARLES OKECHUKWU & ANOR VS. EFCC & ORS (2014) LPELR-24079**.

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 alleged breach of its fundamental rights?

I will proceed to resolve the sole issue for determination.

Essentially, the fulcrum of this application is the Applicants complaint that the continuous forceful interference with the Applicant's possession of the property located at Ward 34/F Egba, Idogbo Area, Benin City by the 7th – 13th Respondents in collusion with the 1st to 5th Respondents, is in violation of the Applicant's right to property as enshrined in Section 43 and the right to the dignity of the human person as enshrined in Section 34(1), of the Constitution of the Federal Republic of Nigeria (1999) as amended.

The critical question to determine at this stage is whether the Respondents were in breach of the Applicant's fundamental human rights as enshrined in *sections 34(1) and 43 of the Constitution* as alleged by the Applicant.

The question of infringement of fundamental rights is largely a question of fact. So it is the facts of the matter as disclosed in the processes filed that are examined, analysed and evaluated, to see if the fundamental rights of the Applicant were actually violated or about to be violated contrary to the provisions of the Constitution.

The law remains rudimentary that he who asserts must prove, so the Applicant has the onus of proving by credible affidavit evidence that its fundamental rights were breached. See the cases of *ONAH vs. OKENWA (2010) 7 NWLR (PT 1194) 512 at 535-536*; and *ONWUAMADIKE vs. IGP (2018) LPELR (46039) 1 at 20-22*.

Furthermore, where the Applicant has discharged his primary duty of adducing cogent and sufficient materials to establish the alleged infringement, the burden would shift unto the Respondents to justify the alleged infringement. See the following decisions on the point: *Fajemirokun V. CIJ (Nig.) Ltd. (2002) 10 NWLR (Pt. 774) 95 @ 110*; *Ekwenugo V. FRN (Supra) @p. 185*; *Skypower Airways Limited V. Olima (2008) 18 NWLR (Pt. 957) 224 @ p. 255*; and *COP Ondo State V. Obolo (1989) 5 NWLR (Pt. 120) 130 @ pp. 137-138*.

Before, I consider the evidence adduced by the Applicant in respect of this application; I want to consider a salient objection raised the learned counsel for the 1st to the 5th Respondents that the Applicant lacks the locus standi to institute this action.

In the case of *Pacers Multi Dynamics Ltd v. M.V. Dancing Sister (2012) 1 SC (Pt. 1) p.75* the apex Court explained locus standi: "*A person has locus standi to sue in an action if he is able to show to the satisfaction of the Court that his civil rights and obligations have been or are in danger of being infringed. There are two tests for determining if a person has locus standi. They are: 1. The action must be justiciable, and 2. There must be a dispute between the parties. In applying the test a liberal attitude must be adopted.*"

Also in the case of ***B.B APUGO & SONS LTD V. OHMB (2016) LPELR-40598(SC)(PP. 85-86 PARAS. B)*** the Court exposted thus: ***“To have locus standi, the plaintiffs statement of claim must disclose sufficient legal interest, and show how such interest arose in the subject matter of the action.”***

In this application, the learned counsel’s objection on locus standi are based on four grounds.

Firstly, is the allegation that the Applicant sold the land to one Sheri Lawal on the 25th of May, 2010 whereas the alleged violation referred to by the Applicant occurred in 2015 and 2022 after the Applicant had sold the land. From the exchange of affidavits, it is not quite certain if the title to the disputed land was actually transferred to the said Sheri Lawal. It is evident that the Applicant is still asserting his right to the land in dispute in some other suits in other courts and in the present application. I do not think I can make any finding on the Applicant’s title in this present application. Thus, the objection on locus standi premised on this ground cannot be upheld.

Secondly, counsel submitted that the Applicant being a limited liability company is an artificial person. That an artificial person cannot enforce fundamental human rights.

My quick response to this objection is that it is settled law that in certain instances companies/artificial persons can enforce certain fundamental rights. See the case of ***Onyekwuluje v. Benue State Govt (2005) 8 NWLR (Pt.928) 614 @ 646***. For instance, assuming a limited liability company is involved in a case where it was denied fair hearing, it has the right to sue for breach of its fundamental Rights to fair hearing. See ***OKECHUKWU & ANOR V. EFCC & ORS (2014) LPELR-24079(CA)(PP. 21 PARAS. B)***.

See also the cases of ***NAANANG DAWAN VS. EFCC & ORS (2019) LPELR-48386 (CA)*** and ***MR. CHARLES OKECHUKWU & ANOR VS. EFCC & ORS (2014) LPELR-24079*** which were aptly cited by the learned counsel for the Applicant.

Thus, the objection of locus standi cannot also be upheld on this ground.

Thirdly, learned counsel objected on the ground that in the present application, the Applicant’s main relief is in the enforcement of fundamental rights but for possession of the property situate at Ward 34/F, Idogbo Area, Benin City and for a restoration of the Applicant’s right to the property which property is in dispute between Applicant and 1st – 5th Respondents.

Strictly speaking, this objection is not on locus standi but on the competence of the entire application. It is trite that when an application is brought under the Fundamental Right (Enforcement Procedure) Rules, a condition precedent to the exercise of the Court’s jurisdiction is that the enforcement of fundamental right or the securing of the enforcement thereof should, be the main claim and not an ancillary claim. Enforcement of fundamental right or securing the enforcement thereof should form the applicant’s claim as presented be the principal claim or fundamental claim and

where the main or principal claim is not the enforcement or securing the enforcement of a fundamental right the jurisdiction of the Court cannot be properly exercised and will be incompetent. See *Tukur vs. Government of Taraba State (1997) 6 NWLR (PT 510) 549; B.R.T.C. vs. Egbuonu (1991) 2 NWLR (PT.171) 81.*" *Per ABBA AJI, J.C.A in eronini & ors v. eronini & ors (2013) LPELR-20651(CA) (Pp. 27 paras. A).*

Upon a careful consideration of the Applicant's Claims, it is apparent that the first two reliefs are for declaratory reliefs for the alleged infringement of the Applicant's rights to human dignity and the right to immovable property. The other two reliefs are ancillary or consequential reliefs for perpetual injunction and damages. Thus, I am of the view that the main reliefs are for the enforcement of the Applicant's alleged fundamental rights as enshrined in the Constitution. Thus this objection is also incompetent.

The fourth ground of the alleged objection on locus standi is that from the facts, the 1st – 5th Respondents had a reason to report a matter against the Applicant to the 6th – 13th Respondents because the Applicants left the land adjudged for them and forcibly entered and trespassed upon the other land of the 1st – 5th Respondents and destroyed the properties of the 1st – 5th Respondents on the land.

Clearly, this is not an issue of locus standi but an attempt by the 1st to the 5th Respondents to justify their action of making a report to the Respondents who are law enforce agents for the alleged offences committed by some people who forcibly entered their land and destroyed their properties on the land.

The crucial question to determine at this stage is whether the 1st to the 5th Respondents were justified in making the report against the aforesaid individuals and whether the 6th to the 13th Respondents were justified in the steps they took to investigate the report of the alleged offences.

In respect of the 1st to the 5th Respondent, it is evident that they actually made a report to the police against the Applicant and certain persons who appear to be acting on behalf of the Applicant. In paragraphs 11 to 16 of their Counter-Affidavit, the 1st to 5th Defendants explained the reasons for making the report. In the aforesaid paragraphs, they chronicled the events culminating in the police report as follows:

"11. That our father reported the forcible entry, criminal trespass by the Applicant and Dele Edokpayi, Esq. on the land covered by certificate of occupancy No: EDSR12392 malicious damage and conduct likely to cause a breach of the peace to the police and filed Suit No: B/530/2014 against Noble Venture Ltd. and Dele Edokpayi, Esq. as Defendants to determine which of the two (2) lands measuring 300 feet by 200 feet and having an area of 5789.713 square metres covered by certificate of occupancy No: ESR12393 and measuring 300 feet by 500 feet containing an area of 1.422 Hectres covered by certificate of occupancy No: EDSR12392 was adjudged to them by the Judgment and damages and the suit is pending before High Court 3,

Benin City. Attached herewith is a copy of the Amended statement of claim marked as Exhibit D.

12. That the Applicant and Dele Edokpayi, Esq. also reported a case of assault and setting ablaze a Cart 980B bulldozer to the police.

13. That the police investigated the case and made their findings and recommended the prosecution of Dele Edokpayi, Esq. but Dele Edokpayi, Esq. in order to escape/avoid prosecution, filed Suit No: B/4/2016 and obtained an order of injunction restraining the police from arresting and prosecuting him in the matter. A copy of the Police Report and the originating process in Suit No: B/4/2016 is attached herewith and marked as Exhibits E and F respectively.

14. That while these cases were pending in court, the Applicants, Dele Edokpayi, Esq. and their workers on 19/10/2022 again went with Bulldozer caterpillar to the larger land measuring 300 feet by 500 feet covered by certificate of occupancy No: EDSR12392 and began to destroy the properties on the land which include crops like cassava, vegetables, plantain etc. and we reported the case to the police.

15. That when the 11th – 12th Respondents got to the land on 19/10/2022, they saw the Applicant workers on the land with bulldozer caterpillar destroying our properties on the land and the police apprehended the workers and invited the Applicant and Dele Edokpayi, Esq. but they refused and/or failed to answer to the police.

16. That the 1st – 5th Respondents only reported a case of forcible entry, malicious damage and conduct likely to cause a breach of the peace to the 11th – 12th Respondents.”

From the facts stated above, it is apparent that the 1st to the 5th Respondents who believed that the Applicant and its agents have committed certain offences, reported the matter to the law enforcement agents to enable them investigate the matter. It is settled law that when a citizen believes that a crime has been committed, or is in the process of being committed, or that there is likelihood of an offence being committed, such a citizen is under a duty to report the matter to the Police or other security apparatus or agency. The report could be made via a petition or personally and the Police have no right to ignore such a report.

See the cases of **CHIEF (DR) FAJEMIROKUN VS COMMERCIAL BANK (CREDIT LYONNAS LTD) & ORS (2009) 5 NWLR (PART 1135) 588 AT 600**; and **CHIEF PETER OGUEBE V FBN PLC & ANOR (2020) 4 SCM 119 AT 134H TO 135A-B**.

Sequel to the foregoing, I am of the view that the 1st to 5th Respondents had a civic duty to report the suspected offenders to the law enforcement agents. It is in exercise of this civic duty that they made the report against the Applicant and their agents. What happened after they made their report is entirely the

responsibility of the Police. The 1st to 5th Respondents cannot be held responsible for the method or manner of investigation adopted by the police after the report. Moreover, there is nothing to show that the 1st to 5th Respondents were frivolous, reckless or acted in bad faith in reporting the Applicant to the police. In the event they cannot be liable for any breach of the alleged fundamental rights of the Applicant.

On the part of the 6th to the 13th Respondents, although they did not file any Counter-Affidavit to this application, I observed that the 1st to the 5th Respondents attached the Police Investigation Report as Exhibit “E” to their Counter-Affidavit. I am of the view that from the facts disclosed in Exhibit “E”, the police were carrying out their constitutional duties to investigate allegations of crime.

It is settled law that by virtue of *Section 4 of the Police Act*, the 6th to 13th Respondents have extensive powers of maintaining law and order. By that Section, the Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the Preservation of law and order, the Protection of life and property and the due enforcement of all laws and regulations with which they are directly charged. See *Fawehinmi V. Inspector General of Police (2002) 7 NWLR (Pt 767) 606; Ozah V. Economic and Financial Crimes Commission & Ors (2017) LPELR 43386 and Azuka V. Inspector General of Police (2007) CHR 69.*

The point must be made that the duties of the police are both statutory and constitutional. By seeking some protective reliefs from the Courts, the Applicant is by implication trying to stop the police from performing their lawful and constitutional duties. It is not right and it is not healthy for the Courts to afford a shelter to people being investigated by the police for crimes.

Where the Courts accede to these types of requests, then investigating crimes in this country would become difficult because the simple way to frustrate police investigation is for every suspect to rush to the Court to obtain protective and prohibitive orders. The Courts cannot and should not stop the police from performing their lawful and constitutional duties. See *Oguejiofor & Ors V. Ibeabuchi (2017) LPELR 43590 and Attorney General Anambra State V. Uba (2005) 33 WRN 191.*

In the instant case, it is clear that the police were investigating the Applicant and some other suspects in respect of the allegations of crimes leveled against them by the 1st to 5th Respondents. I do not think it would be fair and just to grant the reliefs in this application which are directed at frustrating the police investigation and possible prosecution of the Applicant and their cohorts.

From the foregoing, I hold that *the Applicant has failed to prove that it is entitled to the reliefs which it seeks in this application. The sole issue for determination is resolved against the Applicant. Consequently, this*

application is dismissed with N100, 000.00 (One Hundred Thousand Naira) in favour of all the Respondents.

*Hon. Justice P.A. Akhiero
JUDGE
10/07/23*

COUNSEL:

- 1. Pius Oiwoh Esq.....Applicant*
- 2. Nosakhare Obaizamomwan Esq.....1st to 5th Respondents*
- 3. Unrepresented.....6th to 13th Respondents.*