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IN THE FEDERAL HIGH COURT NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

ON MONDAY THE 21ST DAY OF FEBRUARY, 2022
BEFORE THE HONOURABLE JUSTICE A. O. FAJI
JUDGE

SUIT NO. FHC/L/CS/147/2020

IN THE MATTER OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES, 2009

IN THE MATTER OF AN APPLICATION BY DR. (MRS.) SEINYE LULU-BRIGGS FOR THE ENFORCEMENT OF HER FUNDAMENTAL RIGHTS TO THE DIGNITY OF HER HUMAN PERSON, PERSONAL LIBERTY, FAIR HEARING, PRESUMPTION OF INNOCENCE, RIGHT TO FREEDOM OF MOVEMENT AS ENSHRINED UNDER SECTIONS 34,35,36,37,41 AND 44 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED) AND ARTICLES 5,6,7 AND 12 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (RATIFICATION AND ENFORCEMENT) ACT.

DR. (MRS.) SEINYE O.B. LULU-BRIGGS --- APPLICANT

AND

1. COMPTROLLER-GENERAL OF NIGERIA IMMIGRATION SERVICE
2. NIGERIA IMMIGRATION SERVICE
3. ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) --- RESPONDENTS

JUDGMENT

By an Originating Motion dated the 31st day of January, 2020 but filed on 3rd day of February, 2020, the Applicant commenced this suit seeking the following reliefs against the Respondents:

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1. **A DECLARATION** that the consistent and persistent interception, arrest, detention and interrogation of the Applicant at the immigration desk and border control unit of any of the Nigerian airports by the officers and men of the 1st and 2nd Respondents is in flagrant breach and violation of the Applicant's right to personal liberty, the right to the dignity of her human person, personal liberty, fair hearing and freedom of movement as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 LFN, 1990 and, therefore, unconstitutional and illegal.

2. **A DECLARATION** that the consistent and persistent seizure and/or confiscation of the international passport and other travel documents of the Applicant at the immigration desk and border control units of any airport in Nigeria without any justifiable reason, infringes on the Applicant's right to personal liberty and freedom of movement which are incidental to the possession of her passport and to that extent, is unlawful, illegal and unconstitutional.

3. **A DECLARATION** that the placing of any travel ban on the Applicant either by any of the Respondents herein or by any other security agency in Nigeria without any order of Court to that effect or without first affording the Applicant the right to make any representation in that regard is a blatant violation of the due process of law and in flagrant

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Date 22/02/22

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breach of the Applicant's right to fair hearing as guaranteed under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the African Charter on Human and Peoples' Right (Ractification and Enforcement) Act Cap 10 LFN, 1990 and, to that extent, such travel ban or restriction of movement howsoever described is illegal, unlawful, unconstitutional, null and void.

4. **A DECLARATION** that the alleged directives by the 3rd Respondent to the 1st and 2nd Respondents to place a travel ban on the Applicant and to restrict her movement in and out of Nigeria is in flagrant breach of the Applicant's right to freedom of movement as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 LFN, 1990 and, therefore, unconstitutional and illegal.

5. **AN ORDER** vacating the purported travel ban allegedly placed on the Applicant by any of the Respondents herein or by any of the security agencies in Nigeria.

6. **AN ORDER** of perpetual injunction restraining the Respondents whether by themselves, their officers, agents, operatives, personnel acting through any person or persons howsoever described from further intercepting, harassing, arresting, interrogating or detaining the Applicant at any of the land, sea or air border control or immigration desk in Nigeria.

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7. **AN ORDER** of perpetual injunction restraining the Respondents from interfering with, intercepting or restricting the movement of Applicant either at the seaport, airport or land borders in Nigeria and from restricting the free movement of the Applicant within and out of Nigeria.

8. **AN ORDER** preserving the fundamental rights of the Applicant against the consistent assaults and attacks by the Respondents.

9. The sum of N1,000,000,000.00 (One Billion Naira) against the Respondents jointly and severally on the footing of aggravated and/or exemplary damages for the violation of the Applicant's fundamental rights.

10. Any other consequential order as the Honourable Court may consider appropriate to make pursuant to Section 46(2) of the Constitution of the Federal Republic of Nigeria (as amended)

In support of the Originating Motion is a 38 paragraph affidavit with exhibits attached and a Written Address. Counsel formulated two issues for determination to wit:

1. ***"Whether the persistent and consistent, interception, arrest, interrogation, detention, seizure and/or confiscation of the international passport and other travel documents of the Applicant by the Respondents is constitutional and not in violation of the Applicant's fundamental rights as enshrined in the 1999 Constitution (as amended)?***
2. ***Considering the entire circumstances of this case, whether the Applicant is not entitled to aggravated/exemplary damages?"***

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On issue one, Learned Senior Counsel referred to Sections 35(1) and 36(1) of the Constitution; Articles 6 and 7 of the Africa Charter on Human and Peoples' Right; ***NAU v. NWAFOR (1999) 1 NWLR (Pt. 585) 116 @ 136-137 and FRN v. IFEGWU (2003) 15 NWLR (Pt. 842) 113 @ 214*** and submitted that the Applicant has not committed or suspected to have committed any crime cognizable under any law in Nigeria and the Respondents are therefore in breach of her fundamental rights.

Reference was made to Sections 6, 7 and 46 of the Economic and Financial Crimes Commission Act, 2004 (EFCC Act); ***AJAO v. ASHIRU & ORS (1973) 8 NSCC 525 @ 533; AFRIBANK (NIG) PLC v. ONYIMA (2004) 2 NWLR (Pt. 858) 654 @ 679-680 and EFCC v. DIAMOND BANK PLC (2018) 8 NWLR (Pt. 1620) 61*** among other cases and Senior Counsel submitted that the law enforcement like the Respondents are not meant or permitted by law to delve into civil or commercial matters as debt recovery agents. The subject and reliefs in ***EFCC v. DIAMOND BANK PLC (supra)*** are in all fours with the instant suit. Despite not being indicted of any crime, the Respondents have continued to harass the Applicant till date which is an encroachment on the powers of the Courts as provided for in Section 6(6) of the Constitution.

This Court has a duty to protect the rights guaranteed by the Constitution. The judgment of Abdulmalik J. in ***Suit No: FHC/IB/CS/77/2018; Between ELDER FRANCIS MORAKINYO AFOLABI v. ECONOMIC AND FINANCIAL CRIMES COMMISSION & ORS @ 31*** was referred to. The position of the law is that any attempt by a competent authority to take away a citizen's guaranteed rights must be done in strict compliance with the law and any laid down procedure thereof. See ***OYEYEMI v. COMM. FOR LOCAL GOVT. (1992) 2 NWLR (Pt. 226) 661 @ 684***. Where the law enforcement like the

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Date 22/02/22

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Respondents act outside the purview of the law establishing it, such act will amount to derogation of due process and antithetic to democracy. The Court in that instance can invoke its powers under Sections 6 and 41 of the Constitution to check such reckless and excess use of executive powers. See paragraphs 28-38, 46-57 and 59-71 of the verifying affidavit and ***CHINEMELU v. COP (1995) 4 NWLR (Pt. 390) 467 @ 483***.

The Respondents have not made out any case or crime against the Applicant. There is thus no basis or justification for the frequent arrest and detention which is aimed at crippling the Applicant by preventing her from enjoying her legitimate right to free movement. By virtue of Section 41 of the Constitution and Article 12 of the African Charter on Human and People's Right, the right to freedom of movement is held sacrosanct and same is available to every individual despite where he or she resides. It therefore follows that every member who abides by the law is entitled to same and cannot be denied of such right. The Applicant has shown through affidavit in support that she is a law abiding citizen of this Country and has not been found to have breached any law in force.

The substratum of any meaningful democracy and healthy national life cannot thrive on the infringement of the liberty of the citizens, whatever the magnitude of the alleged offence. See ***ODO v. COP (2004) 8 NWLR (Pt. 874) 46 @ 61***. The Court was urged to hold that the act of the Respondents in subjecting the Applicant to a perpetual restraint of her personal liberty, constant harassment and interrogation, treating the Applicant like common criminal in respect of purely commercial dispute, undermines the right and liberty of the Applicant. The Applicant through her affidavit in support and exhibits attached has established a prima facie case of infringement of her constitutionally guaranteed rights. The onus therefore shifts to the Respondents to satisfactorily justify their acts of infringement

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of Applicant's rights. Senior Counsel placed reliance on ***A.G. FEDERATION v. AJAYI (2000) 12 NWLR (Pt. 682) 509 @ 537 and DIRECTOR SSS & ANOR v. AGBAKOBA @ 357.***

The impounding and confiscation of the Applicant's international passport and the travel ban is an infringement of her fundamental right to acquire and own properties as provided in Section 43 of the Constitution. See ***DIRECTOR SSS & ANOR v. AGBAKOBA (supra); A.G. FEDERATION v. AJAYI (supra) and NWANGWU v. DURU (2002) 2 NWLR (Pt. 751) 265***. The Court was urged to resolve issue one in favour of the Applicant.

As regards issue two, Senior Counsel submitted that the essence of awarding exemplary damages is to vindicate the strength of law as against arbitrariness and not primarily to compensate the injured party. See ***ABN LTD v. AKABUEZE (1997) 6 NWLR (Pt. 509) 37 @ 406 and WILLIAMS v. DAILY TIMES (1990) 1 NWLR (Pt. 124) 1 @ 30-31***. Exemplary damages are awarded where Defendant's action is oppressive, arbitrary or unconstitutional. See ***ELIOCHIN (NIG) LTD v. MBADIWE (1986) 1 NWLR (Pt. 14) 47 @ 65 and SHUGABA ABDULRAHMAN DARMAN v. MINISTER OF INTERNAL AFFAIRS (1981) 2 NCLR 459 @ 460 and 520*** among other cases. This case is an appropriate one to award damages against the Respondents who have shown to be arbitrary in breaching the rights of the Applicant without justification.

The Court was urged to resolve all issues against the Respondent and grant the reliefs sought in the instant suit.

In response to the Originating Motion, 1st and 2nd Respondents filed a 15 paragraph Counter Affidavit with exhibits attached and a Written Address on 17/2/2020. Counsel formulated two issues for determination to wit:

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1. ***"Whether the 1st and 2nd Respondents' power to arrest persons and seize their international passports and prevent them from travelling outside the Country is unconstitutional or in violation of Chapter 4 thereof?***
2. ***Whether the Applicant is entitled to the reliefs sought?"***

On issue one, Counsel referred to Section 2 of the Immigration Act and submitted that the powers and responsibilities of the 1st and 2nd Respondents in the said section which are akin to police powers, have been defined as being essential for the maintenance of public order and recognized by Section 45 of the Constitution. See ***NZEWI & ORS v. COP & ORS (2000) 2 HRLRA 156 @ 164***.

Section 31 of the Immigration Act empowers the 1st and 2nd Respondents to prohibit the movement of any person where there is a valid Court order or warrant of arrest. Exhibit 1 is a warrant of arrest issued by the EFCC in line with its power under the EFCC Act, directing the 1st and 2nd Respondents to effect the stoppage of the Applicant from travelling pending the completion of investigations in a criminal matter (alleged fraud and money laundering) involving the Applicant. This actions taken by the 1st and 2nd Respondents by prohibiting the movement of the Applicant are in line with the letter from 3rd Respondent and the directives contained in the Presidential Executive Order No. 6 of 2018.

The letter from 3rd Respondent is comparable to a warrant of arrest in line with the provisions of Executive Order No. 6. By Section 4 of the said order, all enforcement agencies listed in first schedule which 3rd Respondent is number one on the list, are enjoined to co-operate with the Hon. Attorney General of the Federation and with one another to ensure that efforts to recover suspicious assets are successful. The letter from the 3rd Respondent specified the name and offences for which the

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Applicant was being investigated. The 1st and 2nd Respondents therefore have no other option than to place the Applicant on the watch list pending the conclusion of investigations in her case.

Sometimes in June 2019 when the Applicant was arrested by the 1st and 2nd Respondents, exhibit B was written to the 3rd Respondent requesting clarification on the status of the Applicant to enable the 1st and 2nd Respondents maintain her name on the watch list or vacate the order. The said letter though delivered, was not acknowledged or responded to till date. Having not received response and with due regard to Applicant's rights, the 1st Respondent directed the release of Applicant's passport to her. However, the 1st Respondent is not in a position to unilaterally remove her name from the watch list. It is therefore clear from the above that the Applicant is aware she is under investigation and on administrative bail but insist on travelling outside the Country against the clear wishes of her investigators and without taking the steps to secure their permission or clearance to travel.

Answering issue one in affirmative, Counsel urged the Court to dismiss the Applicant suit for failure to establish interference with her fundamental rights by the Respondents.

With respect to issue two, Counsel submitted that since the first issue was answered in affirmative, it follows that the claims based on the said question must fail. The claims of the Applicant which are based on the legality or otherwise of the powers of the 1st and 2nd Respondents to prevent her from travelling out of the Country therefore must fail.

The Court was urged to dismiss the instant action with substantial costs.

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The 3rd Respondent filed a 12 paragraph Counter Affidavit with exhibits attached, Notice of Preliminary Objection and a Written Address on 9/3/2020. The Preliminary Objection is seeking for an order striking out the suit for being incompetent. The grounds are:

1. The suit is incompetent for non-compliance with Section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 (FREP Rules).
2. That by the provisions of Section 46 of the Constitution and Order II Rule 1 of FREP Rules, an Applicant suing for enforcement of his fundamental rights must initiate his action in the State where the alleged infringement took place.
3. That the Applicant in this suit alleged that her rights were infringed upon both in Abuja and Lagos. Therefore, the Applicant ought to have initiated two separate actions both in Abuja and Lagos for the enforcement of her rights and not to lump up all the alleged infringements that took place in Abuja and Lagos in a single suit initiated in Lagos.
4. That the suit as presently constituted is incompetent.

A sole issued was raised for determination in respect of the Preliminary Objection to wit:

"Whether the suit as presently constituted is not liable to be struck out for being incompetent?"

Counsel submitted that in view of Section 46 of the Constitution and Order II Rule 1 of FREP Rules, an Applicant seeking to enforce his/her fundamental rights must initiate the action in the State in which the infraction occurred. Paragraphs 6,9,12 and 14 of the Applicant's affidavit in support reveal that the alleged breach of the fundamental rights of the Applicant occurred in Abuja and Lagos. The Applicant therefore, ought to have instituted separate actions in both Abuja and Lagos where alleged infractions occurred as required by Section 46 of the

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Constitution and Order II Rule 1 of FREP Rules. Where the provisions of a statute are plain, clear and unambiguous, the Court will ascribe to them, in their ordinary interpretation, the unambiguous, ordinary grammatical meaning. See ***EJIOGU v. IRONA (2009) 4 NWLR (Pt. 1132) 513 @ 554 @ 554.***

The only instance where an action for enforcement of fundamental right will be instituted outside the State of breach is where there is no division of the Court in that State. There is a division of this Court in Abuja. This suit instituted in Lagos and comprising of all the breaches in both Abuja and Lagos is therefore incompetent and robs the Court of jurisdiction to entertain same. See ***MADUKOLU v. NKEMDILIM (1962) 2 SCNLR 341 and NYAME v. FRN (2010) 7 NWLR (Pt. 1193) 344 @ 393***. Where a suit is found to be incompetent, the Court will lack jurisdiction to entertain same and where a Court lacks jurisdiction to hear a matter, the case should be struck out. See ***DINGYADI & ANOR v. INEC & ORS (2011) LPELR-950(SC) and ACTION CONGRESS v. JANG (2009) 4 NWLR (Pt. 1132) 475 @ 509***. The Court was urged to uphold the submissions of 3rd Respondent and accordingly strike out the instant suit.

A lone issue was raised in the substantive suit to wit:
"Whether the Applicant has made out a good case to be entitled to the reliefs sought from this Honourable Court?"

Counsel submitted that the Applicant has not made out a good case to be entitled to the grant of the reliefs sought from the Court. From the Counter Affidavit of the 3rd Respondent and the exhibits attached, it was shown that the Applicant is undergoing criminal investigation with the 3rd Respondent and was granted bail but she jumped the administrative bail granted to her when the investigation has not been completed. See exhibit EFCC2 and Applicant's refusal to report to 3rd Respondent since 3/2/16.

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All efforts made to reach her proved abortive, hence her placement on watch list.
The officers of 1st and 2nd Respondents acted on the letter by the 3rd Respondent placing the Applicant on watch list when they intercepted her at various occasions at the Nnamdi Azikiwe International Airport in Abuja and Murtala Mohammed International Airport in Lagos. In all the occasions she was intercepted, she was asked to go and report to the 3rd Respondent where she is undergoing investigation but she never did.

By virtue of Section 35(1) of the Constitution, a person's liberty can be curtailed if such person is reasonably suspected to have committed a crime. The Applicant and Moni Pulo Limited (a company in which she is the Chief Executive Officer) are being investigated for forgery and tax evasion of which she had volunteered statement under caution to the officers of the 3rd Respondent. The interception of the Applicant by the 1st and 2nd Respondents is therefore in line with the law having acted under the instructions of the 3rd Respondent and same does not amount to an infringement of the Applicant's fundamental rights. Counsel placed reliance on ***HASSAN & ORS v. EFCC & ORS (2013) LPELR-22595(CA).***

A person's freedom of movement can also be curtailed pursuant to Section 41(2)(a) of the Constitution. See ***OKAFOR v. LAGOS STATE GOVT. & ANOR (2016) LPELR-41066(CA) @ 41-42.***

The Court was urged relying on Sections 35(1(c) and 41(2(a) of the Constitution to resolve the sole issue in favour of the 3rd Respondent, hold that the Respondents have not breached the Applicant's fundamental rights and accordingly strike out and/or dismiss the suit for being incompetent and lacking in merit.

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The Applicant on 11/1/2020 filed a composite 19 paragraph Further Affidavit with an exhibit attached and a Reply on Points of Law to the Respondents' Counter Affidavits and Written Addresses.

As regards the 3rd Respondent's Preliminary Objection, Senior Counsel submitted that the grounds upon which the objection is premised and the entire arguments in support are misconceived, frivolous, mischievous and completely absurd. This Court has jurisdiction to entertain this suit and there is nothing within the law that affects same. See Order 1 Rule 2 of FREP Rules. Senior Counsel referred to paragraphs 6, 8, 9, 11, 12 and 14 of the affidavit in support and submitted that though the infringements complained by the Applicant started in Abuja, the major one that triggered the filing of a suit happened at the Murtala Muhammed International Airport, Lagos. Based on the facts as contained in the said paragraphs of the supporting affidavit, the Respondent's objection is bound to fail.

There is nothing in Order II Rule 1 FREP Rules that provides that in cases of multiple infringements, different cases must be instituted in different divisions of the Court. The law is that in the interpretation of statute, where the words are clear and unambiguous, they should be given their natural and ordinary meaning and the Courts are not allowed to go outside the words. See ***ARAKA v. EGBUE (2003) LPELR-532(SC) and ALHAJI SHEU ABDUL GAFAR v. GOVT. OF KWARA & ORS (2007) LPELR-8073(SC)***. The Court was urged to reject the contentions of the 3rd Respondent that the Applicant ought to file suits in Lagos and Abuja as to hold otherwise will imply that where the Applicant's right is being infringed in all States of the Federation, he must file separate suits in all the States.

The law is settled that filing separate suits to seek the same reliefs against the same party constitutes an abuse of Court process. See

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CONOIL v. VITOL S.A (2018) 9 NWLR (Pt. 1625) 463 @ 496-497 and INTEGRATED REALITY LTD v. ODOFIN (2018) 3 NWLR (Pt. 1606) 301 @ 330-331.

Assuming without conceding that Order II Rule 1 of FREP Rules requires the Applicant to file two separate suits to complain of the infringements that occurred in the two different places, this suit will still not be incompetent because it complains about the infringement of the Applicant's right at the Murtala Mohammed International Airport in Lagos. The Court was urged to reject the 3rd Defendant's Preliminary Objection for lacking in merit.

In response to 1st and 2nd Respondents' Written Address, Senior Counsel referred to paragraph 4 of the 1st and 2nd Respondents' Counter Affidavit and submitted that they admitted paragraphs 5,6,7,9,11,14 and 15 of the Applicant's affidavit in support. The 1st and 2nd Respondents also admitted paragraphs 1-3,8,10,16-23,28-32,35 and 37 of the affidavit in support because the facts in those paragraphs were not denied by the 1st and 2nd Respondents. The law is settled that to state in a pleading or a Counter Affidavit that a deponent is not in position to deny or admit a fact is not a denial of such fact and if not a denial, then the facts are admitted. See ***EREBOR & ANOR v. ERAMEH & ANOR (2020) LPELR-496471 46; NIPCO PLC v. HENSMOR NIG. LTD (2011) ALL FWLR (Pt. 587) 785 and OLA v. UNILORIN & ORS (2014) LPELR-22781(CA) 18-19.***

The said paragraphs of the affidavit in support which were not denied and contains facts establishing the breach of the Applicant's fundamental rights, are deemed admitted by the 1st and 2nd Respondents and the Court is bound to act on them and give judgment in favour of the Applicant as same require no further proof. Senior Counsel relied on ***OWURU & ANOR v.***

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ADIGWU & ANOR (2017) LPELR-SC.197/2016 and HON. MINISTER, FCT & ANOR v. OLAYINKA OYELAMI HOTELS LTD (2017) LPELR-CA/A/568/2015.

Contrary to the submissions of the 1st and 2nd Respondents in respect of Sections 2 and 31 of the Immigration Act, Senior Counsel submitted that there is nothing in those sections that gives the 1st and 2nd Respondents the power to unlawfully arrest, seize passports and prevent a Nigerian like the Applicant from travelling. The word used in Section 2(a) of the Act is "control" of persons entering or leaving Nigeria not unlawful arrest, detention, harassment, intimidation and breach of the rights of persons entering or leaving Nigeria. Though the Immigration Act provides for the circumstance where the 1st and 2nd Respondents will be able to prevent a person from leaving the Country, such prevention must be in compliance with the said Immigration Act and no other documents. The law is that where an Act or statute provides a method for doing an act, it is only that method that must be adopted to carry out such act. See ***ABUBAKAR v. A.G FEDERATION (2007) 3 NWLR (Pt. 1022) @ 643-644 and ADESANYA v. ADEWOLE (2006) 27 NSCQR 783 @ 800-801.***

It is only in circumstances provided by the Immigration Act that the 1st and 2nd Respondents can lawfully prevent a person from travelling. There is no provision in Executive Order that gives the 1st and 2nd Respondents powers to prevent a person from travelling out of the Country. It is not also stated anywhere in the Executive Order that the 3rd Respondent can direct the 1st and 2nd Respondents to unlawfully deprive the Applicant or any other citizen of the Country their fundamental right of freedom of movement, dignity of their person or personal liberty on the basis of a letter from the 3rd Respondent.

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Date 22/02/22

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Senior Counsel referred to Section 31 of the Immigration Act and submitted that for the 1st and 2nd Respondents to lawfully prevent the Applicant from travelling, it is either they have knowledge of an unsatisfied order of a Court of competent jurisdiction or warrant of arrest against the Applicant. It is clear from the evidence before the Court that the 1st and 2nd Respondents do not have Court order or warrant of arrest against the Applicant. The 1st and 2nd Respondents therefore unlawfully infringed on the fundamental rights of the Applicant. The argument by the 1st and 2nd Respondents that the letter from the 3rd Respondent is comparable to a warrant of arrest is fallacious and the Court should discountenance same. What the 1st and 2nd Respondents attempted to do is to give the 3rd Respondent the power it does not possess. A warrant is a warrant and a letter is a letter. Senior Counsel relied on the meaning of warrant of arrest in Black's Law Dictionary.

Relying on ***A.G OF KANO STATE v. A.G OF THE FEDERATION (2007) 6 NWLR (Pt. 1029) 164 @ 188-189 and ADISA v. OYINWOLA & ORS (2000) 10 NWLR (Pt. 674) 116 @ 202***, the Court was urged to give the ordinary grammatical meaning of the clear and unambiguous provisions of Section 31 of the Immigration Act and hold that the 1st and 2nd Respondents breached the fundamental rights of the Applicant. The fact that the 1st and 2nd Respondents wrote two different letters to 3rd Respondent but without response should have been a clear indication to the 1st and 2nd Respondents that the 3rd Respondent's actions are unlawful and they should immediately stop infringing on the rights of the Applicant. Stating before the Court that they will continue infringing the right of the Applicant until the 3rd Respondent replies its letter is absurd and the Court should act on this by stopping such unjust and unlawful acts of the Respondents.

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Date 22/02/22

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Senior Counsel submitted in reply to the 3rd Respondent's Written Address in support of its Counter Affidavit that the 3rd Respondent admitted in its Counter Affidavit that it infringed and instructed the 1st and 2nd Respondents to infringe the fundamental rights of the Applicant. Exhibit EFCC 1 comprises of two letters. In the first letter dated 20/1/2016, there is no allegation of crime against the Applicant as an individual and her name was never mentioned in the said letter. On the second one dated 2/12/2009, although the name of the Applicant was mentioned, there was no wrong or allegation of crime committed by the Applicant. The issue there is about shareholding in Moni Pulo Limited. There is thus no allegation of crime against the Applicant in exhibit EFCC 1 that warrant the placing of the Applicant on a watch-list by the 3rd Respondent.

Upon being invited as the Managing Director of Moni Pulo Limited by the 3rd Respondent, the Applicant honoured the invitation and appeared as the Executive Vice Chairman of the said company. It is Senior Counsel's submission that there is clear difference in law and in fact between the Applicant and Moni Pulo Limited especially as it relates to acts done before she became a director and Executive Vice Chairman of the company. See ***ONAGORUWA v. THE STATE (1993) 7 NWLR (Pt. 303) 49 @ 88 and NEW RESOURCES INT. LTD v. ORANSI (2011) 2 NWLR (Pt. 1230) 102 @ 124***. The Applicant is not the same as Moni Pulo Limited and the allegation of fraud and forgery was against other persons other than the Applicant in her personal capacity. EFCC 1 therefore does not touch on the personality of the Applicant as an individual and 3rd Respondent does not have sufficient ground to trample upon the fundamental rights of the Applicant.

It is Senior Counsel's further submission that the Applicant was at 3rd Respondent's office in her capacity as the Executive Vice Chairman of the company and provided detailed answers to all

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Date 22/02/22

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the heads of the investigation of the 3rd Respondent in the course of its investigation. Senior Counsel referred to exhibit EFCC 2 and submitted that the Applicant not only denied the allegations based on the documents available to her, she also stated that she was not a shareholder of the company at the time forgery was allegedly committed. The assertion that the Applicant was to bring documents evidencing payment of tax and royalties contradicts exhibit EFCC 2 as the Applicant submitted all the documents evidencing payment of taxes and royalties for the company. See pages 12-13 of exhibit EFCC 2.

Reference was made to Sections 8, 33 and 34 of the Federal Inland Revenue Services (Establishment) Act and Senior Counsel submitted that FIRS is not complaining or alleging that Moni Pulo Limited is owing or not paying taxes and has not solicited the assistance of the 3rd Respondent in any form. The investigation of the 3rd Respondent is therefore questionable and unlawful and there is no justification in keeping the name of the Applicant in watch-list.

It is wrong and out of place to assert that the Applicant who honoured the invitation and made statements since 2016, absconded and refused to report to the 3rd Respondent's office. It was two years after the Applicant made statements to the 3rd Respondent that it wrote a letter to put the Applicant's name on the watch-list. It is surprising that four years into the purported investigation, the 3rd Respondent has still not finished investigation by charging anybody to Court rather it continued to infringe on the rights of the Applicant. There is no proof that the Applicant received invitation from the 3rd Respondent and refused to honour same. If the 3rd Respondent wants the presence of the Applicant, it would have gone to the 1st and 2nd Respondents who had arrested and detained her for three years now and pick the Applicant up. The 3rd Respondent is exercising the powers it does not possess by infringing on the rights of the

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Date 22/02/22

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Applicant just as it was doing in freezing people's account by mere letter before the Court intervened to deter it from that. See ***GTB v. ADEDAMOLA (2019) 5 NWLR (Pt. 1664) 30 @ 43.***

The position of the law is that the 3rd Respondent's powers to investigate is no license to contravene the fundamental rights of the citizens and investigations are not to last forever. See ***DANFULANI v. EFCC (2016) 1 NWLR (Pt. 1493) 223 @ 247 and JIM-JAJA v. COP (2011) 2 NWLR (Pt. 1231) 375 @ 398.***

The Court was urged to grant the reliefs sought in the Applicant's Originating Motion.

Applicant filed an 8 paragraph Further and Better Affidavit with an exhibit attached on 26/2/2021. Applicant's 2nd Further Affidavit of 6 paragraphs with exhibits attached was filed on 19/07/2021. Applicant also filed a 12 paragraph 3rd Further Affidavit with exhibits attached on 29/11/2021, all in support of its Originating Motion.

The 1st and 2nd Respondents on 17/2/2020 filed a Notice of Preliminary Objection seeking to strike out the suit for lack of proper service on the 1st and 2nd Respondents. The ground of the application is that the Applicant failed to comply with the statutory condition precedent to commencement of the suit in line with Section 109(2) of the Immigration Act and Order 5 Rule 2 of the FREP Rules by serving the originating processes upon the Headquarters of the 1st and 2nd Respondents. A 9 paragraph affidavit and a Written Address were filed in support of the Preliminary Objection. Counsel raised a sole issue for determination to wit:

"Whether this Honourable Court has jurisdiction to entertain the suit of the Applicant (as presently constituted) in view of his manifest

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failure to comply with the statutory condition precedent to the commencement of the suit?"

Counsel referred to Section 109(1) & (2) of the Immigration Act and Order 5 Rule 2 of FREP and submitted that service effected on the agent does not amount to personal service. It must be served at the Headquarters of the 1st and 2nd Respondents for it to constitute proper service. The Applicant failed to serve the originating processes or deliver same by post to the addresses of the 1st and 2nd Respondents' Headquarters. The Applicant served the originating processes at the Lagos State Command which is not the Headquarters of the 1st and 2nd Respondents. The Court was urged to hold that the service of the originating processes by the Applicant is incompetent and the Court is robbed of jurisdiction to entertain the instant suit.

The law is trite that where the commencement of a suit is dependent on the satisfaction of a statutory condition, such condition must be compulsorily observed. See ***JIDE ALADEJOBI v. NIGERIAN BAR ASSOCIATION (2014) MRSCJ Vol. 3 23 page 111 @ 120 and CROSS RIVER STATE UNIVERSITY OF TECHNOLOGY v. MR. LAWRENCE O. OBETEN (2011) 15 NWLR (Pt. 1271) 588 @ 608.***

The failure of the Plaintiff to observe a statutory condition precedent to the commencement of a suit renders such suit incompetent and robs the Court of jurisdiction. See ***MADUKOLU v. NKEMDILIM (1962) 1 ALL NLR 587 @ 594; EGUAMWENSE v. AMAGHIZEMWEN (1993) 9 NWLR (Pt. 315) 1; IKUEPENIKAN v. STATE (2015) 9 NWLR (Pt. 1465) 518 @ 550 and ALADEJOBI v. NBA (supra).***

The Court was urged to strike out the suit as one cannot place something on nothing and expect it to stand.

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Date 22/02/22

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In response to the 1st and 2nd Respondents' Preliminary Objection, the Applicant/Respondent filed a 9 paragraph Counter Affidavit with exhibits attached and a Written Address on 21/2/2020. Learned Senior Counsel formulated a sole issue for determination to wit:

"Having regard to the facts and circumstances of this suit as well as the settled position of the law, whether the service of the Originating Processes and the Order of this Honourable Court on the 1st and 2nd Respondents is not regular so as to make the suit competent, valid and duly constituted before this Honourable Court?"

Senior Counsel submitted that the arguments of the 1st and 2nd Respondents to the effect that the Applicant failed to observe the statutory condition precedent and the Court is robbed of jurisdiction to entertain the suit is erroneous and do not represent the true position of facts in the suit. The Applicant complied with the statutory requirement as to service, the originating processes having been duly served at the Headquarters of the 1st and 2nd Respondents in compliance with Section 109(1) & (2) of the Immigration Act. Senior Counsel referred to paragraphs 6 and 8a of the Applicant/Respondent's Counter Affidavit and exhibit OE1 attached thereto. The Court was urged to hold that the instant application is of no moment and ought to be dismissed.

The Court in open Court also confirmed to the 1st and 2nd Respondents' Counsel that there is proof in Court's file that the 1st and 2nd Respondents have been served in their Headquarters in Abuja. The law is trite that the issue of service of Court process is basic and fundamental as it is the foundation of a valid Court action. Where there is no proper service, the action will be without jurisdiction. See ***B.B. APUGO & SONS LTD v. O.H.M.B.***

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Date 22/02/22

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(2005) 17 NWLR (Pt. 954) 305 @ 334 among other cases. The Applicant suit has been initiated by due process of law and the conditions precedent to the exercise of Court's jurisdiction against the 1st and 2nd Respondents fulfilled in accordance with the enabling law.

Assuming without conceding that the originating processes were not duly served at the Headquarters but at the Lagos State Command as alleged by the 1st and 2nd Respondents, the 1st and 2nd Respondents have waived rights they have to object to the mode of service by the Applicant. The 1st and 2nd Respondents were represented in Court by one Omoluabi Esq. at the proceedings of 12/2/2020 and he participated actively at the said proceedings. The 1st and 2nd Respondents also took active steps by filing their Counter Affidavit and Written Address in opposition to the suit. Senior Counsel relied on ***N.B.C. PLC v. UBANI (2009) 3 NWLR (Pt. 1129) 512 CA @ 536 and UBA PLC & ANOR v. UGOENYI & ANOR (2011) LPELR-5065(CA) 50***.

Mr. Kannap was present, participated actively in the proceedings of 18/2/2020 and stated on behalf of the 1st and 2nd Respondents that he was not opposing the grant of the Applicant's Ex-parte Motion after having been ordered by the Court to show cause why the orders should not be granted.

The Court was urged to dismiss the 1st and 2nd Respondents' Preliminary Objection with substantial cost for lacking in merit.

A 6 paragraph affidavit of removal from watch-list was filed by the 1st and 2nd Respondents on 30/11/2021.

Those were the submissions of counsel.

I will first consider the preliminary objections starting with that of 1st and 2nd defendants.

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The gravamen of this objection is that the 1st and 2nd defendants were not properly served because they were not served at their registered office in Abuja.

Applicant however contends that the 1st and 2nd respondents were duly served and there is an affidavit of service. Same was exhibited. The 1st and 2nd respondents did not dispute the said affidavit of service which is prima facie proof of service. Indeed, the affidavit of service of the Court's bailiff to wit: Mr Oluwole O Samuel was deposed to on 17th of February, 2020. There is no contrary evidence. There is also the same affidavit of service in the Court's record showing that the originating Motion, hearing notice dated 10th february, 2020 and Court order dated 7th February 2020 were indeed served on the 1st and 2nd respondents on 13th February 2020. The service was at the Headquarters of 1st and 2nd respondents in Abuja. There is no contrary evidence disputing the stamp of the 1st and 2nd respondents on the said endorsement copy. What is more, the Court in open Court checked the service file in open Court and confirmed that there is indeed an affidavit of service of the said processes on the 1st and 2nd respondents. The said affidavit is still in the court's file.

I must therefore find that the 1st and 2nd respondents were properly served at their headquarters in Abuja.

The 1st and 2nd respondents also contend that they were not served with pre-action notice.

The court asked if pre-action notice should be served in fundamental rights cases. Counsel promised to supply the relevant authority but did not do so.

Applicant's Senior counsel however submitted that there is no requirement for a pre-action notice in fundamental rights matters. Counsel referred to ADAMU v CONTROLLER OF

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PRISONS (2013) LPELR. It would seem that the correct name of the case is ADUMU v CONTROLER OF PRISONS ABA & ORS.

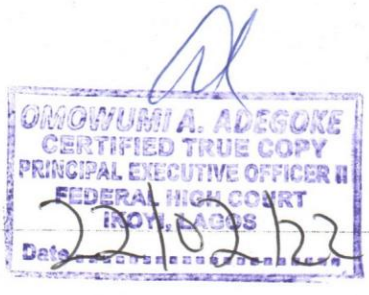
It would however seem that by the very nature of fundamental rights matters, they are urgent cases which should be treated with utmost dispatch. That probably informs the provisions of order 3 rule 1 of the fundamental rights enforcement procedure rules which states:

> An Application for the enforcement of Fundamental Right shall not be affected by any limitation Statute whatsoever.

These provisions are special provisions with constitutional flavor. See: ADUMU v COMPTROLLER OF PRISONS, ABA & ORS (2103) LPELR 22069 CA where the Court of Appeal held:

> The provisions of Order 1 Rule 2, Fundamental Rights (Enforcement Procedure) Rules defined Court to mean the Federal High Court or the High Court of a State. What this means is that both the Federal High Court and the High Court of a State have concurrent jurisdiction in matters of enforcement of fundamental right. **It is also pertinent to state that it is trite that Rules made pursuant to the Constitutional provisions also possess Constitutional flavor, that is why they are special provisions.**

These provisions being special and with constitutional flavor, I do not think the provisions of any other legislation can override same.



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I therefore hold that in view of the provisions of Order 3 Rule 1 aforesaid, no limitation law can curtail access to justice in fundamental rights cases. The provisions of the Immigration Act on service of pre-action notices do not therefore apply in this case.

The instant preliminary objection must therefore fail and is accordingly hereby dismissed.

The preliminary objection filed by the 3rd respondent posits that the infringement having taken place also in Abuja, the applicant ought to have filed this action in Abuja or at best filed separate cases for each infringement.

It however seems that section 46 requires anyone who believes he is entitled to relief to file his action in a High Court in the State where the breach occurred.

In the instant case, the breach occurred in two places over a period of time. It has not been contended that there was no breach in Lagos. It thus seems to me that since there was a breach which occurred in Lagos, the Federal High Court Lagos is properly seised of jurisdiction.

There is the suggestion that separate suits can be filed in Lagos and Abuja respectively for the breaches which occurred there.
It however seems to me that this will be an abuse since the injuries arose to the same person and by the same persons as alleged. So there is no need to pursue the claim in two different Courts.

The 3rd defendant's objection therefore also fails.

It is instructive that the 1st and 2nd respondents filed an affidavit of removal from watch list on 30th November, 2021. The exhibit

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Date 22/02/22

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attached to the affidavit states that the Applicant was placed on watch-list by 1st and 2nd Respondents at the behest of the 3rd respondent. The applicant's name is thus vacated from the watch-list of the Nigerian Immigration Services.

This seems to make prayer 5 academic. The prayer refers to the Respondents and any other security agencies in Nigeria. Since the respondents are the only security agencies that are parties to this suit and 1st and 2nd respondents having vacated the said watch-list which was placed at the behest of the 3rd respondent, it seems to me that prayer 5 is now spent and is accordingly hereby struck out.

This application is premised on the various acts of the 1st and 2nd respondents towards applicant when she arrived at the airports in Lagos and Abuja on her way to and from foreign travel respectively. On an occasion, she was actually detained overnight by the 1st and 2nd respondents.

The reason for these various arrests is the purported exercise of powers conferred on the 1st and 2nd respondents to stop the movement of anyone who is the subject of an arrest warrant form travelling outside the Country. The various arrests and delays were premised on these facts. The reason was that the 3rd respondent had by letter dated 11th December, 2018 notified the 1st and 2nd respondents that applicant was being investigated for fraud and money laundering.

The letter exhibited requested the 1st and 2nd respondents to arrest the applicant at any entry/exit border. The reason is that she is currently at large and had evaded several invitations by the Commission. It seems clear that the said latter-annexure A- is not a warrant of arrest, as will be demonstrated anon.

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Date 23/02/22

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The 1st and 2nd respondents have the powers to control the ingress and egress of any person in and out of Nigeria. Section 31 of the Immigration Act empowers the 1st and 2nd respondent to prohibit the movement of any person where there is a warrant of arrest.

It provides:

> (1) The Minister, if he thinks it fit to be in the public interest, may by order prohibit the departure of any person from Nigeria.
>
> (2)The Comptroller-General of Immigration may prohibit departure of any person under the following conditions-
>
> > (a) if there is to his knowledge an unsatisfied order of a court of competent jurisdiction; or
> > (b) if there is a warrant of arrest relating to that person,
>
> an immigration officer may refuse to allow such person to leave Nigeria, or in his discretion, he may refer the case to the Comptroller-General of Immigration for further consideration.
>
> (3) Nothing in this section shall apply to any person entitled under any rule of law or enactment to immunity in respect of things done or omitted to be done in the course of his duty.

The Immigration Act 2015 does not define warrant of arrest. The respondents contend that annexure A is a warrant of arrest. I agree with the definition of warrant of arrest proffered by the applicant as shown in Black's law dictionary. It also seems that a warrant of arrest can only be issued by a Judge or Magistrate.

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Date 22/02/22

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Furthermore, the restraint of the applicant was meant to be an arrest because it was being done pursuant to a purported request for her arrest.

It also seems that the reference to the Executive Order No. 6 does not avail much. The collaboration amongst the various arms of government ought to be in accordance with the applicable law. In this instance the Immigration Act requires that there must be an arrest warrant before any person's movement out of Nigeria can be restrained.

Section 115(1) of the Administration of Criminal Justice Act-ACJA deals with issuance of warrants of arrest.

It provides:

> (1) Subject to the provisions of section 89 of this Act, a person who believes from a reasonable or probable cause that an offence has been committed by another person whose appearance a Magistrate has power to compel may make a complaint of the committing of the offence to a Magistrate who shall consider the allegations of the complainant and may:
>
> > (a) in his discretion, refuse to issue process and shall record his reasons for such refusal; or
> >
> > (b) issue a summons or warrant as he shall deem fit to compel the attendance of the defendant before a Magistrates' court in the district.

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Date 22/02/22

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> (2) The Magistrate shall not refuse to issue a summons or warrant only because the alleged offence is one for which a suspect may be arrested without warrant.

The law also prescribes the contents of the warrant.

Section 117 ACJA states:

> Where a complaint is made before a Magistrate as provided in section 115 of this Act and the Magistrate decides to issue a summons, the summons shall be directed to the suspect, stating concisely the substance of the complaint and requiring him to appear at a certain time and place not less than forty-eight hours after the service of the summons before the court to answer to the complaint and to be further dealt with according to law.

Annexure A is not near these requirements in any form or manner.

I must therefore hold that annexure A cannot be a basis for the activities of the respondents as regards the applicant herein.

It also seems that the law only permits the 1st and 2nd Respondents to prevent such a person from leaving Nigeria not to prevent him from entering or delay his entry into the country.

The acts of the respondents inhibiting the applicant's movements as claimed were thus done without any justification.

It also seems to me that the references to the various litigations involving the company Moni Pulo have no relevance to this suit. The major and only question is:

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did the respondents comply with the provisions of the law in inhibiting the movements of the applicant to and from Nigeria?

The answer clearly is:

The law does not allow the exercise embarked upon by the respondents.

I do not also think the 1st and 2nd respondents can contend that they were acting at the behest of the 3rd respondent. The 1st and 2nd respondents are expected to act based on a warrant of arrest duly issued and it is clear that they did not. Indeed, they could have done the acts lawfully even without the intervention of the 3rd respondents so long as the person seeking assistance provides a warrant of arrest.

It is also a bit intriguing that the watch list was revoked even in the face of annexure A. This shows clearly that all along, the 1st and 2nd respondents had a discretion to exercise in accordance with the law but they chose to exercise same in defiance of the law. The 1st and 2nd respondents are therefore as liable if not more culpable than the 3rd respondent. That the 3rd respondent urged the doing of an illegal act on the 1st and 2nd respondents does not give the 1st and 2nd respondents the cover for illegality. The placing of a travel ban and the constant seizure of the applicant's passport cannot be justified.

The actions are therefore in clear violation of section 35 of the constitution and are hereby declared null and void.

There are cases in which unlawful restraint of citizens into or out of Nigeria has been declared illegal. The seizure of the citizen's passport was also declared illegal in DIRECTOR SSS v AGBAKOBA (Supra) as follows:

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Date 22/03/22

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"Thus, the clear intention of the inclusion of Section 38(1) of the 1979 Constitution (the 1960 and 1963 being bereft of similar provisions) was to guarantee every Nigerian freedom of exit or entry into the country, the duty being that of the State to give effect to this right by providing the facility for its enjoyment. Equally, the Nigerian's right to hold a Nigerian passport became an inevitable corollary to his right to foreign travel guaranteed under Section 38(1) (ibid) and Article 12(2) of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap. 10 Laws of the Federation of Nigeria, 1990 which provides that: "Everyone has the right to leave any country, including his own, and to return to his country." See also Article 13(2) of the Universal Declaration of Human Rights which Nigeria ratified and whose provision is that: "Everyone has the right to leave any country including his own and to return to his country." The decision of the court below therefore that the right to travel abroad cannot be effectively exercised without the Nigerian passport, connotes logically and legally that an unjustified denial of the right to hold a passport, is a denial of the right to travel abroad. It is in this wise that I agree with the respondent that the impounding of his passport by the appellants constitute an infringement of this right because by so doing, the respondent cannot leave the country. As the respondent's passport is the only mandatory facility required of him to legally and factually leave Nigeria and enter into foreign land, the immigration laws and practices in this country and indeed those of foreign countries attest to this. For instance, (i) in relation to immigration, Section 4(1) (a) of the Immigration Act, Cap. 171, Laws of the Federation of Nigeria, 1990 provides that a person departing from Nigeria by any means at or from any recognized port, must, as a condition for departure "satisfy

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> the immigration officers that he is the holder of a valid travel document", Though what constitutes "valid travel document" is not statutorily defined, Section 52 of the Immigration Act (the definition section) clearly states that such "valid travel document" must be a document "valid for entry into or travel through any other country as the case may require. It is a notorious fact under the Nigerian immigration rules as well as the requirement of foreign missions in Nigeria, the Nigerian identity that the document on which visas are normally endorsed is the passport. In so far, therefore, as the possession of a national passport is a condition of entry into other countries, the requirement under Section 4(1) (a) of the Immigration Act (ibid) for a "valid travel document" is nothing short of a requirement of possession of a Nigerian passport. Thus, an examination of modern rules of international travel in other countries show clearly that possession of a passport is both legally and factually necessary for entry into, or passage through their territories."

I therefore agree that the seizure of applicant's passport and the travel ban placed on her are violations of the applicant's fundamental rights to personal liberty, dignity of her human person, freedom of movement.

From the affidavits, it is clear that Applicant upon arrival or departure from the particular airport was always singled out and then her passport taken from her. That is not dignifying.

The directive by the 3rd respondent to the 1st and 2nd respondents is also declared illegal null and void. I also find that the placing of a travel ban on the applicant by the 1st and 2nd respondents by way of a watch-list is a violation of the Applicant's right to fair hearing as she was not allowed to make representations before she was placed on the said travel ban.

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I therefore grant reliefs 1,2,3,4,6,7 and 8 as claimed.

There is a claim for aggravated damages.

Once the breach of a fundamental right has been established, damages follow.

The applicant has been arrested and interrogated on several occasions and her passport taken from her at the border post. She was unceremoniously singled out of the queue by officers and men of the 1st and 2nd respondents and her international passport was seized. That was on 18th June, 2019 at the international airport in abuja. That was on her arrival from London. Her release was secured by Counsel but her passport was not returned to her until a week later. It was sent to her through her Counsel.

No explanation was given.

Again, on 14th January, 2020 she was accosted by officials of the 1st and 2nd respondents. Again it was on her arrival from London. One wonders what the travel ban was meant to achieve. It would seem that a travel ban is to prevent a person from leaving the country. Not for one arriving the country. She was on this occasion detained for several hours without explanation. She was again released upon intervention of Counsel.

The applicant was not told what offence she committed. She was not even shown the purported warrant. Learned Senior Counsel then wrote a letter of complaint to the 1st respondent.

Unfortunately, on 27th January, 2020, the applicant was accosted on her departure from Abuja to London. She was prevented

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from travelling even though she explained that she had a medical appointment. She was detained for several hours and only the intervention of Counsel secured her release. She was then told that her travel ban was at the instance of the 3rd respondent.

On 29th January, 2020 she was again prevented from travelling at the Lagos International Airport. She was kept in a solitary room till 2am on 30th January, 2020. She was released without her international passport and other travel documents.

This suit was then filed on 3rd February 2020.

The respondents were ordered to show cause why the Court should not order them to release the applicant's passport to her. It was only on 18th February, 2020 that Applicant's passport was handed over to her.

The conduct of the respondents has to my mind been a deliberate and persistent act of denying the applicant of her freedom of movement and degrading her human dignity.

In OBINWA v COP (2006) LPELR 5333 CA, the Court of Appeal Per Owoade JCA held:

> "...exemplary damages follow the cause, where there is no cause, there will be no damages. See e.g. Tobi, JCA (as he then was) in Dr. Gabriel Olusoga Onagoruwa & 1 Or v. I. G. P. & Ors (1991) 5 NWLR (Pt. 193) 593 at 647. Furthermore, and as was laid down by the Court of Appeal in Onagoruwa v. I. G. P. (supra) at pp 647 648. "Exemplary damages will be awarded against a defendant in three instances. These are: a) Where there is an express authorization by statute. b) In the case of oppressive, arbitrary or unconstitutional action by the servants of the government. c) Where the defendant's conduct had been

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can give rise to exemplary damage without a specific claim for it is a different consideration.

It is not a usual practice for the Courts to award exemplary damages. It is not awarded as of course.

The facts of this case however show some brazenness on the part of the respondents. The applicant was detained three times while on a foreign trip and her passport was seized for no legal reason as shown in this judgment. These seem to be evidence of high-handedness. There is also some brazenness in doing the act three times end despite the intervention of Counsel on two occasions and Senior Counsel on one occasion. What is more, the Respondents acted clearly in excess of their powers in denying or restricting the entry of a citizen into Nigeria without just cause. The law only allows the 1st and 2nd respondents to deny a citizen exit from the country not entry. This should attract some condemnation.

I am therefore satisfied that exemplary damages lie against the respondents jointly and severally.

Once the breach of a fundamental right has been established the applicant is entitled to an award of damages.

In this case, exemplary damages.

In the circumstances and considering the persistence of the multiple breaches of the applicant's fundamental rights, I award the sum of =N=15,000,000= as exemplary damages and compensation to the applicant. This is jointly and severally against each of the Respondents in favor of the Applicant.

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I also order each of the respondents to publish an apology to the Applicant in two insertions of one national newspaper and in particular either the Guardian or the Punch Newspaper.

A. O. FAJI
JUDGE
21/2/2022

COUNSEL:
FUNKE AGBOR (SAN) WITH A. ADEPOJU ESQ. FOR THE APPLICANT.

MALLAM J. A. ADAMU ESQ. FOR THE 1ST AND 2ND RESPONDENTS.

IBRAHIM AUDU ESQ. FOR THE 3RD RESPONDENT.

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