IN THE COURT OF APPEAL OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

ON TUESDAY THE 30TH DAY OF AUGUST, 2022

BEFORE THEIR LORDSHIPS

JUSTICE IGNATIUS IGWE AGUBE - - JUSTICE COURT OF APPEAL
JUSTICE D.Z. SENCHI - - - JUSTICE COURT OF APPEAL
JUSTICE MUSLIM SULE HASSAN - - JUSTICE COURT OF APPEAL

APPEAL NO. CA/IB/373/2021

BETWEEN

1. ATTORNEY GENERAL OF THE FEDERATION
2. STATE SECURITY SERVICE **APPELLANTS**
3. DIRECTOR STATE SECURITY SERVICE
OYO STATE

AND

CHIEF SUNDAY ADEYEMO
(a.k.a SUNDAY IGBOHO OOSA) - - - - RESPONDENT

JUDGMENT
(DELIVERED BY HON. JUSTICE MUSLIM SULE HASSAN, JCA)

This is an appeal against the decision of the Oyo State High Court sitting at Ibadan delivered by Hon. Justice A. I. Akintola in Suit No. M/435/2021, on the 17th day of September, 2021, wherein the Trial Court entered judgment

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H.O.D. LITIGATION
COURT OF APPEAL
IBADAN DIVISION

in favor of the Respondent and awarded the sum of Twenty Billion Naira as damages to the Respondent against the Appellants for breach of Fundamental Human Rights.

The Appellants were the Respondents to the fundamental right action, while the Respondent was the Applicant at the trial Court. The Appellants being aggrieved with the decision of the Trial Court had lodged this appealed against same to this Court vide his Notice of Appeal dated 15th day of November, 2021 and filed on the 16th of November, 2021. The Notice of Appeal is found at pages 396 to 414 of the Record.

The Record of Appeal was compiled and transmitted to this Court on the 21st of December, 2021, but deemed proper before this Court on the 22nd of June, 2022. The Appellants' brief was filed on the 4th of February, 2022, while the Respondent's brief of argument was filed on the 22nd of June, 2022 and deemed as proper before the court on that date. The Appellants equally filed a reply brief of argument on the 5th of May, 2022, and same was deemed properly filed on the 6th of May, 2022.

At the hearing of the Appeal, counsel to both Appellants and Respondent adopted their respective briefs. Upon which this Court reserved the Appeal for judgment.

The Respondent who was Applicant at the Trial Court commenced this suit by way of Originating Motion under the Fundamental Rights (Enforcement Procedure Rules) 2009, dated 22nd of July, 2021, and filed on the 23rd day of July, 2021, against the Appellants who was tagged as Respondents at the Trial Court. The reliefs sought by the Respondent against the

in favor of the Respondent and awarded the sum of Twenty Billion Naira as damages to the Respondent against the Appellants for breach of Fundamental Human Rights.

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Delivered by Hon. Justice M.S. Hassan, JCA

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lants which is copiously on the face of the motion paper and by the statement accompanying the Respondent's Motion are as follows:

***A DECLARATION** that the invasion and malicious damage of the Applicant's residence, lying and being situate at Ighoho Villa, I, Dalag Street, off Soka Bus Stop, Soka Area, Off Lagos-Ibadan Express way, Ibadan, and properties therein at about 1.00 a.m to 3.00 a.m of 1st July, 2021, by the 2nd and 3rd Respondents is a violation of the Applicant's fundamental right to privacy and that of his home as guaranteed and protected by Sections 37, 43 & 44 of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended) and African Charter on Human and Peoples Rights (Ratification and Enforcement), Act, LFN, 2010.*

***A DECLARATION** that the invasion of the Applicant's house, lying and being situate at Ighoho Villa, I, Dalag Street, off Soka Bus Stop, Soka Area, Off Lagos-Ibadan Express way, Ibadan, and properties therein at about 1.00 a.m to 3.00 a.m of 1st July, 2021, thus for two hours and shooting through the ceiling of same unto its roof in raining season*

by the 2nd and 3rd Respondents deprived the Applicant of ownership and quiet enjoyment of his house for the period of armed invasion of the said property thereby violating his fundamental right against compulsory acquisition of his property and privacy of same as guaranteed, inter alia by Section 44 of the CFRN, 1999 (as amended) and African Charter on Human and Peoples Rights (Ratification and Enforcement, Act) LFN, 2010.

A DECLARATION that it is oppressive, malicious, arbitrary and grossly unconstitutional for the 2nd and 3rd Respondents to invade the residence of the Applicant situate, lying and being situate at Ighoho Villa, I, Dalag Street, off Soka Bus Stop, Soka Area, Off Lagos-Ibadan Express way, Ibadan without announcing who they were and ask the Applicant to open his gate but rather shot their way through killing two people including an elderly Imam doing Tahjud (Night Vigil), shooting at cars thereby destroying them and not sparing animals like cats and dogs in total violation of the

intendments of fundamental Human Rights provision in CFRN 1999 and African Charter on Human and Peoples Right (Ratification and Enforcement) Act LFN, 2010, protecting the dignity of Human person, sanctity of human life and privacy of citizens and their homes.

A DECLARATION that the statement by the agents of the 2nd and 3rd Respondents to the hearing of everybody during the invasion of the Applicant's home situate, lying and being situate at Ighoho Villa, I, Dalag Street, off Soka Bus Stop, Soka Area, Off Lagos-Ibadan Express way, Ibadan that the Applicant's life should not be spared leading to their killing the guest of the Applicant they mistook for him, shooting at every objects in sight including ceilings, cars and even cats that they thought he turned to with a view to escaping their bullets is a violation of the fundamental right of the Applicant to life.

A DECLARATION that apart from violating the fundamental right of the Applicant fair hearing, it is unequitable and unfair for the 2nd & 3rd Respondents to exhibit guns,

ammunitions and other dangerous weapons and incriminating documents in public and claim that same belongs to the Applicant when the officers in actual fact shot their way into the house of the Applicant situate, lying and being situate at Ighoho Villa, I, Dalag Street, off Soka Bus Stop, Soka Area, Off Lagos-Ibadan Express way, Ibadan, without subjecting themselves and their convoy of vehicles to prior search by the Applicant who neither sign any inventory nor search warrant containing inventory to that effect.

A DECLARATION that the media trial of the Applicant by the 2nd & 3d Respondents in exhibiting prohibited and/or illegal items as Applicant's before the press and live television is usurpation of judicial powers reserved by CFRN, 1999, for courts and violently violates the fundamental right of the Applicant to be presumed innocent until proven guilty by a court of law recognized by the said Constitution and properly constituted for that purpose.

A DECLARATION that the Respondents resolute in preventing the Applicant from

propagating his belief in association with other like minds in creating a Yoruba Nation and/or Oduduwa Republic for his Indigenous Yoruba people and hunting him with gun, with view to arresting him dead or alive when he had not called for war in achieving same against his fundamental rights to freedom of thought, conscience and association since campaign for self determination is recognized by Nigerian Law and international treaties of organization to which Nigeria belongs.

A DECLARATION that the Applicant and his Yoruba Indigenous people have unquestionable and/or inalienable fundamental right to peacefully campaign and seek for self determination of Yoruba tribe in Nigeria and lobby the legislature to amend the CFRN 1999 as guaranteed by Article 20 of African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Laws of Federation, 2010, and Article 3, 4, 7, & 18 of the United Nations Declaration on the Rights of the Indigenous People made at its 107th Plenary Meeting of Thursday 13th September, 2007; thereby

insulating campaign of self determination from criminal culpability.

A DECLARTION that invading and/or blocking the assets of the Applicant and putting debit order on his bank accounts is violation of his fundamental right to own property and wealth guaranteed by CFRN 1999, and Article 21 of African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Laws of Federation, 2010.

AN ORDER OF INJUNCTION restraining the Respondents, their agents, privies and associates in other security forces and/or anybody acting on their behalf and/or instructions from arresting, detaining, molesting, harassing and/or in any way interfering with his personal liberty, freedom of movement and peaceful enjoyment of his property without fear of invasion of his home by the Respondents and their agents.

AN ORDER OF INJUNCTION restraining the Respondents, their agents, privies and/or associates in other security forces including Amotekun and/or anybody acting on their

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behalf and/or instructions from blocking the accounts of the Applicant in any bank and/or placing no debit thereon directing them to lift same where they had so acted.

AN ORDER OF THIS HONORABLE COURT directing the Respondents to return all the items legally belonging to the Applicant seized from his house at Ighoho Villa, I, Dalag Street, off Soka Bus Stop, Soka Area, Off Lagos-Ibadan Express way, Ibadan, by the Respondents to wit:

1. N2 million cash (Two Million Naira);
2. 1,000 (One Thousand Euro);
3. Travel documents including international passports belonging to the Applicant's family members;
4. Gold jewelries and wrist watches;
5. I-phone 12 mobile phone;
6. Samsung fold mobile phone;
7. Other items yet unknown to the Applicant and carted away by the 2nd and 3d Respondents in the course of their illegal invasion and/or raid of the Applicant's house at Ighoho Villa, I, Dalag Street, off Soka Bus Stop, Soka Area, Off Lagos-Ibadan Express

way, Ibadan; save guns and ammunitions harvested by them from their armouries including two (2) guns belonging to police escorts of one of the guests of the Applicant and purporting same to be Applicant's.

AN ORDER OF THIS HONORABLE COURT compelling the Respondents jointly and severally to pay the Applicant the sum of N500,000,000.00 (Five Hundred Million) as special damages for the damage done to his car and residence situate lying and being situate at Ighoho Villa, I, Dalag Street, off Soka Bus Stop, Soka Area, Off Lagos-Ibadan Express way, Ibadan.

AN ORDER OF THIS HONORABLE COURT awarding the sum of N500,000,000,000.00 (Five Hundred Billion Naira) being exempliary and/or aggravated and/or malicious invasion of his residence situate lying and being situate at Ighoho Villa, I, Dalag Street, off Soka Bus Stop, Soka Area, Off Lagos-Ibadan Express way, Ibadan.

AN ORDER OF THIS HONORABLE COURT directing the Respondents to tender public

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apology in two (2) national dailies, to wit The Nation and Punch newspapers, for breaching the fundamental rights of Applicant.

AND for such other and/or further equitable and/or legal reliefs as the court may deem necessary in the circumstance of this Application. See pages 2 to 5 of the Record of Appeal.

BRIEF STATEMENT OF FACTS

The case of the Respondent against the Appellants by his originating Motion for the enforcement of his fundamental right by his affidavit accompanying the statement is that on the 1st of July, 2021, the men of the 2nd and 3rd Appellants invaded and ransacked his home at Ibadan Express way, Ibadan, killing two persons who were his guest and destroying his property all in the bid to capture him dead or alive.

That after the attack on his person, his life was threatened and he is in danger of being killed as declared by the 2nd and 3rd Appellants. That the actions of the 2nd and 3rd Respondent led to his hiding and resorting to the court of law through his solicitors. That after the ransacking of his home, his property was destroyed and his vehicle and mobile phones taken which the Appellant engaged in doing media trial for him by displaying same at Abuja to the media to see.

The case of the Respondent was that he has a right to self determination and to protect the indigenous people of Yoruba land just like how it is

obtained in other climes of the world. That his Accounts were frozen and his mobile phones seized and carted away with by the men of the 2nd and 3rd Appellant. Thus it is only by an order of court guaranteeing his fundamental rights and safety that the Appellants could be stopped from the declaring for his life. See page 6 to 13 of the Record of Appeal

The Appellants on the other hand by their counter affidavit of the 2nd and 3rd Appellant stated that they went to the residence of the Respondent base on critical intelligence and on getting there they were engaged by the men of the Respondent on a gun battle. That the Respondent is a known person for inciting violence and he is suspected of pilling armed at the southwest and he is a gun runner. That the Respondent has plan for the collapse of the present government hence he must be stopped. The 1st Appellant equally argued a preliminary objection that the trial court lack jurisdiction to entertain the Respondent's claims.

Respondent's Preliminary Objection

The Respondent in this appeal while filing the Respondent's brief of argument gave notice of his intention to raise preliminary objection to the competent of the appeal at page 9 of his respondent's brief thus:

> 1. ***That Grounds and/or particulars Error of GROUNDS 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15 and 17 are incompetent for being argumentative, prolix, vague and general in terms and ought to and should be struck out with issue 1, 2, 3, 4, 5, and 6 formulated from the said incompetent grounds.***

2. *That the record of appeal was transmitted by the Registrar of the Lower Court outside the time stipulated by paragraphs 13 (2) of the Court of Appeal (Fast Track) practice Directions, 2021, thereby rendering the appeal incompetent.*

The grounds for which the Respondent is raising the said preliminary objection is that the affected grounds are narrative and or argumentative and clustered together with same particulars of errors, and that the Record of Appeal was transmitted out of time on the 21st of December, 2021, and same was signed by a person who lacks competence to sign the record.

Counsel to respondent on this Preliminary Objection submitted that all the grounds of appeal filed with Appellants' Notice of appeal on the 16th of November, 2021, except grounds 6 and 14 are argumentative, general, prolix and vague. According to counsel the other grounds being verbose and unnecessarily argumentative ought to be expunged from the record of this court.

According to Respondent's counsel the choice of words of the Appellants in the issues highlighted are uncalled for from a senior counsel as counsel cast aspersion on the person of the learned trial judge who is not in position to defend himself, and counsel urged this Court to expunge same from the appeal. Counsel cited the cases of **Akinbode v. Oyebanji (2014) LPELR 24410 (CA); Ikedama v. Oritseje (2020) LPELR 51261 (CA); Adeokin Records v. Musicial Copyright Society of Nigeria (2018) LPELR 45300 (SC).**

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of as the appeal becomes incompetent. Counsel relied on the case of **Total E & P (Nig) Ltd v. Jonathan (2018) LPELR 44691 (CA).**

On the part of the Appellants, Counsel while filing the reply address, responded to the preliminary objection of the Respondent from pages 4 to 7 of the Reply brief submitted that the Preliminary Objection is not competent same having failed to challenge all the grounds of appeal formulated by the Appellants, as according to counsel a preliminary objection can only be filed where the Respondent challenges all the grounds of appeal. Counsel relied on the findings of **Ajuwon v. Gov. Oyo State (2021) 16 NWLR (Pt. 1803) 485 at 518 5-9 paras B – B.**

The Appellants counsel equally submitted that the Preliminary objection does not have merit as the grounds formulated by the Appellants are not argumentative, general, prolix or vague, but are in strict compliance with Order 7 of the Rules of this Court. That the Respondent failed to state particularly which of the grounds amongst grounds 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17 and 18 are argumentative, vague, prolix or verbose to show and link how the grounds are incompetent.

That the Respondent cannot just lump argument and expect my lords to search for which ground is incompetent because it is argumentative or not. Thus, Counsel urged the court to dismiss the preliminary objection having failed to link the grounds complained about with the deficiencies noted.

RESOLUTION OF NOTICE OF PRELIMINARY OBJECTION

Preliminary objection is a special procedure whereby the respondent contests the competence of a suit and jurisdiction of the Court and if

upheld has the effect of terminating the life of the suit by its being struck out. See **Okereke v. Yar'Adua (2008) 12 NWLR (Pt. 1100) 95 at 134.** The purpose is to determinate the proceedings 'in limine' at the time it was raised. See **A.G. Federation v. Fafunwa-Onikoyi (2006) 18 NWLR (Pt. 1010) 51 at 66.**

In the instant appeal the learned senior counsel for the Respondent choose to use a preliminary objection instead of a motion on notice to challenge the appeal. The position is not a statutory one but that of judicial pronouncement that when a party wants to challenge some grounds of appeal, then, a motion on notice is best suited method to adopt. However where the challenge is against the whole appeal, then a preliminary objection is the method to adopt. In **SPDC (NIG) LTD. v. AMADI & ORS (2011) LPELR-3204 (SC) Per RHODES-VIVOUR, JSC** (as he then was) at page 6-7, paragraphs F-B Stated:

> **"Preliminary objection are filled against the hearing of an appeal and so once it succeeds the appeal no longer exists. All too often we see preliminary objections filled against one or more grounds of appeal. Once there are other grounds that can sustain the appeal, a preliminary objection should not be filed. Instead a Notice of Motion seeking to strike out the defective grounds of Appeal should be filled."**

In **Ajuwon v. Gov. Oyo State (2021) 16 NWLR (Pt. 1803) 485 at 518** cited by learned Senior Counsel to the Appellant it was held that:

> "A preliminary objection is only raised to the hearing of an appeal, and not to a few grounds of appeal. The purport of preliminary objection is determination or truncation of an appeal in limine. A preliminary objection should only be filed against the hearing of an appeal and not against one or more grounds of appeal when there are other grounds to sustain the appeal; such a purported preliminary objection is therefore, not capable of truncating the hearing of the appeal. In such a situation, a preliminary objection is not the appropriate procedure to deploy against defective grounds of appeal when there are other grounds, not defective, which can sustain the hearing of the appeal. In the instant case, the 1st-6th Respondents' preliminary objection challenge the competence of some specific grounds of appeal; namely: grounds 2, 3, 4 and 5; and only particular (II) of grounds 7 of the Appellant's grounds of appeal. The purported preliminary objection did not challenge the competence of grounds 1 & 6 and 7 (except its particular (ii). The purported preliminary objection, being incompetent, was discountenanced."

In the present case it is correct as stated by learned senior counsel to the Appellant that a preliminary objection can only be filed where the Respondent challenges all the grounds of appeal of the Appellant and not

where the objection is in relation to one or some of the grounds of appeal leaving other grounds that can sustain the appeal.

The method use by the learned senior counsel for the Respondent is an abuse of Court process it renders the preliminary objection incompetent this is because his preliminary objection only challenged grounds 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, and 17, leaving grounds 6 and 14 of the Notice of Appeal.

My lords, permit me to take the liberty of this leading judgment to consider and resolve the issues raise in the Respondent purported preliminary objection on merit. Learned Senior Counsel for the Respondent argued that all the grounds of appeal filed with Appellants' Notice of Appeal on the 16th of November, 2021, except grounds 6 and 14 are argumentative, general, prolix and vague. He urged the court to expunge them from the record.

The grounds of appeal being attack by the Respondent are herein reproduce without their particulars:

GROUND ONE

The learned Trial Judge erred in law when he assumed jurisdiction over reliefs, 1, 2, 3, 5, 6 & 12 claimed by the Respondent as a subject under chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) when Section 46 of the Constitution only permits enforcement of rights under the Fundamental Right (Enforcement Procedure) Rules, 2009 on issues covered under Chapter IV of the Constitution.

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GROUND TWO

The learned Trial Judge erred in law when he assumed jurisdiction over the suit, the Respondent having commenced the suit via a wrong mode of commencement.

GROUND THREE

The learned Trial Judge erred in law when he assumed jurisdiction and wrongly affirmed the purported right of the Respondent to campaign for the creation or establishment of Yoruba nation or Oduduwa Republic in Nigeria, when the Constitution prohibit the divisibility of Nigeria.

GROUND FOUR

The learned trial Judge erred in law and acted without jurisdiction when he entertained the Respondent's suit initiated without due process of law; the Originating Motion having been supported by two affidavits as opposed to an affidavit as stated by the Fundamental Rights (Enforcement Procedure) Rules, 2009.

GROUND FIVE

The learned trial Judge erred in law when he heavily relied on the affidavit of Hamza Bashiru Ariyo which was an improperly admitted evidence, thereby occasioned a miscarriage of justice against the Appellants.

GROUND SEVEN

The learned trial Judge erred in law when he assumed jurisdiction to hear and determine the Respondent's suit on the ground that by virtue of Section 46 of the Constitution, the Applicant is at liberty to approach the Federal High Court or State High Court to enforce his Fundamental Right

when the provision of Section 46 are made subject to other provisions of the Constitution.

GROUND EIGHT

The learned trial Judge erred in law when he held that even if there are contentious matters in an affidavit in support of Fundamental Right Enforcement matter, no oral evidence is required, and in that error proceeded to enter judgment in favour of the Respondent, thereby suppressed the revelation of valuable evidence and occasioned a miscarriage of justice against the Appellants.

GROUND NINE

The learned trial Judge erred in law when he exhibited bias and believed the case of the Respondent without evaluating the documentary and affidavit evidence adduced by the 2nd and 3rd Appellants before the Court which evidence clearly established that there was suspicion of commission of serious crime against the Federation by the Respondent.

GROUND TEN

The learned trial Judge erred in law when he disbelieved the weighty allegations of commission of serious treasonable felony against the Respondent when the Respondent did not deny any of the allegations made by the 2nd and 3rd Appellants directly against him.

GROUND ELEVEN

The learned trial Judge erred in law when he held thus:

"On reflection, it seems to me that it is the invidious interpretation of the 2nd and 3rd Respondents of the activities of the applicant as contained in the said video a peaceful propagation of the pan Yoruba beliefs of the

Applicant that perhaps fueled the arbitrary aggression and prejudice with which the agents of the 2nd and 3rd Respondent visited the residence of the Applicant on the fateful night wreaking mayhem and havoc threat."

GROUND TWELVE

The learned trial Judge erred in law when he held thus:

> **"This Court observed that the 2nd and 3rd Respondents were silent on the manner or procedure by which the alleged arms and ammunitions were allegedly recovered from the residence of the applicant e.g. no forensic evidence was shown to pin the said weapon to the Applicant by the 2nd and 3rd respondent or their agent.**
>
> **In the absence of a claim that the requisite protocol for conducting or executing a search warrant was observed by the agent of the 2nd and 3rd Respondents, it is difficult to believe that the Cache of Arms and ammunitions allegedly recovered from the residence of the applicant really came from there."**

GROUND THIRTEEN

The learned trial Judge erred in law, when he allowed himself to be guided by sentiment in the case of the Respondent and showed clear bias against the Appellants when he held that even if the case of the 2nd and 3rd Appellants was believed to the effect that the arms and ammunition shown to have been recovered from the Respondent's house were actually recovered from the said premises, the style used should be condemned and in this grave error proceeded to enter judgment in favour of the

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Respondent in the face of the uncontradicted evidence adduced by the 2nd and 3rd Appellants.

GROUND FIFTEEN

The learned trial Judge erred in law when he granted the Respondent the sum of Twenty Billion (₦20,000,000,000.00) Naira as exemplary damages without considering the legal principle for the grant of exemplary damages and without considering the evidence before the court and weight of the allegation made by the 2nd and 3rd Appellants against the Respondent.

GROUND SIXTEEN

The learned trial Judge erred in law when he granted the Respondent's reliefs 12 and 13 which is a claim for special damages which cannot be proved by affidavit evidence.

GROUND SEVENTEEN

The learned trial Judge erred in law and wrongly held that the action of the 2nd and 3rd Appellants in trying to arrest and intimidate the Respondent on account of the cause of defending Yoruba Interest in their quest for self-determination amount to a violation of the right of the respondent to propagate the ideas of Yoruba self-determination which right is protected by Article 20 (1) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and Articles 3 and 4 of the United Nation Declaration on the Rights of Indigenous People, and in this grave error proceeded to enter judgment for the Respondent. See pages 396-414 of the record of appeal.

Notice of Appeal is a very important document and the very foundation of an appeal. It is an originating process. If it is defective, the Court of Appeal

in the exercise of its inherent jurisdiction to protect itself would most likely strike it out on the ground that the appeal is incompetent. See **Nwanwata v. Esumei (1998) 8 NWLR (Pt. 563) 650 at 667 CA, Anadi v. Okoli (1977) 7 SC 57.**

A Notice of Appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively, it should not be verbose. See **N.S. Eng. Co. Ltd v. Ezenduka (2002) 1 NWLR (Pt. 748) 469 at 486. CA.** According to Order 7 Rule 2 (3) of the Court of Appeal Rules, 2021 neither a ground of appeal nor the particulars in support thereof should contain any argument or narrative otherwise its validity could be called to question. A Notice of Appeal shall set forth concisely and under distinct heads, the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively. It is plain that neither a ground of appeal nor the particulars in support should contain any argument or narrative. See **Adah v. Adah (2001) 5 NWLR (Pt. 705) 1 SC.**

Grounds of Appeal are supposed to represent an appellant's complaint of a decision he is not satisfied with and which he has grouse against and wants an appellate court to correct and remedy. See **the judgment of Mukhtar, JSC in Abubakar v. B.O. & A.P. Ltd. (2007) 18 NWLR (Pt. 1066) 319 SC.**

In the instant appeal an examination of the judgment of the learned trial Judge vis-à-vis the Notice of Appeal clearly show that the grounds of appeal formulated by the Appellant arise from the judgment of the Court below, it provide the mirror through which this Court takes a peep at the appeal. It is worthy to note that the grounds of appeal are not barometers for the initial determination of the strength of the appeal, but however provide some useful information as in the instant case on the likely trend or outcome of the appeal and as rightly observed by learned senior for the Appellant that the Respondent having fail to link each of the grounds to the alleged incompetence is fatal to his case, the Respondent is not permitted to lump arguments before the Court and expect the Court to search for which of the grounds of appeal is incompetent and link same to the alleged deficiency, that would amount to the Court arguing the case of the Respondent on his behalf for this reasons the argument of learned senior counsel to the Respondent is hereby discountenance being untenable in law.

On the issue of compilation of record outside the time stipulated argued by the Respondent.

Records of appeal is made up of the proceedings and relevant documents tendered during the proceedings in a particular matter. See **Adesina v. Adeniran (2006) 18 NWLR (Pt. 1011) 359 CA.**

By virtue of Paragraph 13 (2) and (3) of the Court of Appeal (Fast Track) Practice Directions, 2021 the Registrar of the Trial Court has thirty (30) days after filing of notice of Appeal to compile and transmit the records of

Appeal to the Court of Appeal. By the same provisions the appellant has been empowered to compile the record and transmit same to the Court of Appeal within Fifteen (15) days after expiration of the thirty (30) days allowed the Registrar to compile and transmit the records to the Court of Appeal. The appellant who prepares records shall serve such records on the respondent (s) within Fifteen (15) days. The respondent is also at liberty to compile additional records if he feels there are additional records which may be necessary in disposing the appeal. He has to do this within Seven (7) days. See Paragraph 13 (5) hereof.

The complain of the Respondent is that the Notice of Appeal was filed on the 16th day of November, 2021 and the Record of Appeal was transmitted on the 21st day of December, 2021 which was 35 days from the date the Notice of Appeal was filed which according to him is a violation of the provision of Paragraph 13 (2) of the Court of Appeal (Fast Track) Practice Direction 2021. Apart from the fact that the extra five days taken by the Registrar in compiling and transmitting the records is mere procedural irregularity, the Respondent has not shown to the satisfaction of this Court that he has suffer miscarriage of justice furthermore the Respondent use the same transmitted record in preparing and filing respondent brief having taken steps he cannot be heard to complain. The Appellant also took steps to remedy the situation by his motion on notice for extension of time to compile and transmit records which was not oppose by the Respondent and was granted on the 22nd day of June 2022.

The said Motion on Notice filed on 8th day of June 2022 was brought pursuant to Order 6 Rules 4, Order 8 and Order 25 Rules 2, 3 (1) and (2)

of the Court of Appeal Rules, 2021 and under the inherent powers of the Court.

It prays for the following Orders:

1. An Order granting extension of time for the Appellants/Applicants to apply to this Honourable Court for leave to depart from the rules of the court in Appeal No: CA/IB/373/2021 Between Attorney General of the Federation & 2 Ors vs. Sunday Adeyemo as it relates to compilation and transmission of additional records of appeal.
2. An Order of this Honourable Court, granting leave to the Appellant to depart from the Rules of this Honourable Court, in Appeal No: CA/IB/373/2021 relating to compilation and transmission of records of Appeal to this Honourable Court.
3. An Order of this Honourable Court deeming Exhibit DSS1, DSS2 and ORO DD9A (in Suit No: M/435/2021) as additional records of Appeal in Appeal No: CA/IB/373/2021 Between Attorney General of the Federation & 2 Ors vs. Sunday Adeyemo.
4. An Order of this Honourable Court deeming the additional Records of Appeal (Exhibits

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DSS1, DSS2 and ORO DO9A) as properly compiled and transmitted before this Honourable Court.

5. Any other Order or Further Orders(s) this Honourable Court will deem fit to make in the circumstances.

The above motion was moved by the Appellant without objection by the Respondent and was granted on 22nd day of June 2022 upon which the record of appeal was deemed transmitted on 21st day of December, 2021. The argument of the Respondent on this issue has no substance, it is hereby dismissed.

In conclusion this preliminary objection lacks merit, it ought to be dismissed by this Court, it is hereby dismissed.

Having dismissed the Respondent preliminary objection, I can now proceed to determine the substantive appeal.

ISSUES FOR DETERMINATION

The Appellants' brief of argument distilled six issues for determination by this Court as follows:

> ***Whether the learned trial judge was right to have assumed jurisdiction to determine the Respondent's suit under the fundamental Rights Enforcement Procedure Rules when the major claims of the Respondent was not founded under chapter IV of the Constitution.*** *(Distilled from grounds 1, 2, and 6 of the Notice of Appeal).*

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Whether in view of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the learned trial judge was right to have assumed jurisdiction to hear and determine the Applicant's suit when the complaint was purely against the decision of a Federal Government agency. (Distilled from grounds 7 of the Notice of Appeal).

Whether having regard to order II Rule 3 of the Fundamental Rights Enforcement Procedure Rules, 2009, the Respondent's originating process which was supported by two affidavits was not incompetent. (Distilled from grounds 4 & 5 of the Notice of Appeal).

Whether the learned trial Judge was right to have held that the Respondent has the statutory and Constitutional right to propagate the establishment of the Yoruba or Oduduwa Nation in Nigeria contrary to Section 2 (1) and 1 (2) of the Federal Republic of Nigeria 1999 (as amended). (Distilled from grounds 3 and 17 of the Notice of Appeal).

Whether the learned trial judge rightly entered judgment for the Respondent in view of the serious allegations of commission of crime leveled against the Respondent. (Distilled from grounds 9 and 12 of the Notice of Appeal).

Whether the learned trial judge was right when he entered judgment in favor of the

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Respondent when there was no evidence on record in support of the Respondent's claims. (Distilled from grounds 8, 10, 11, 13, 14, 15, 16 and 18 of the Notice of Appeal).

The Respondent however in his brief of argument only formulated a single issue for determination for all the 18 grounds of Appeal in the Notice of Appeal to wit:

Whether the reliefs sought for by the Respondent is deeply rooted in chapter IV of the Constitution of the Federal Republic of Nigeria and African Charter on People & Human Rights Enforcement Act and whether the application based thereon in consonance with fundamental Rights Enforcement Procedure Rules without any credible defence against same by the Appellant save conjectures, suspicions and speculations.

I have considered the facts and circumstances of this Appeal, the Judgment of the Oyo State High Court, and the submissions of both Counsel in their respective briefs, and I shall adopt the six issues distilled in the Appellant's brief as the proper issues arising for the just determination of this Appeal and determine same on the merit. On that note, I shall proceed to consider and resolve these issues serially commencing with issue one.

ISSUE ONE

Whether the learned trial judge was right to have assumed jurisdiction to determine the Respondent's suit under the fundamental Rights Enforcement Procedure Rules when the major claims of the Respondent was not founded under chapter IV of the

Constitution. (Distilled from grounds 1, 2, and 6 of the Notice of Appeal).

APPELLANTS' COUNSEL SUBMISSION

The Appellants contention here is that the trial court has no jurisdiction to entertain the action of the Respondent because part of his action though commenced by way of Fundamental Rights enforcement has elements of tort, thus same cannot come under fundamental rights enforcement even though there are allegation of violation of fundamental rights in the matter as held in **Nmanwuna v. Nwaebili (2011) 4 NWLR (Pt. 1237) 290 at 315 – 316, paras H – B and Abdulhamid v. Akar (2006) 13 NWLR (Pt. 996) 127 at 146 paras B – F.**

However, the trial court held that the Respondent may go by principle of choice where the action leads to tortuous damages and breach of fundamental right, and it is counsel's contention that it is wrong under the FREP for Respondent to come under the fundamental rights enforcement rules to claim alleged violation of his fundamental rights where the claim is tortuous, as Chapter IV of the constitution is clear that only matter under Section 46 of the Constitution which deals with the violation of fundamental rights of a party that can be brought under the Rules.

Counsel while relying on the authority of **Dangote v. C.S.C Plateau State (2001) 9 NWLR (Pt. 717) 132** submitted that the unambiguous interpretation of Section 46 of the Constitution is that no action outside fundamental rights claims guaranteed by Chapter IV of the Constitution may be entertained by the court as any exercise outside the provision is without jurisdiction. Counsel relied further in the cases of **Ransome Kuti**

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v. A.G Federation (1985) 2 NWLR (Pt. 6) 211 at 258 – 259, paras H – C; and Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517.

Counsel contended that the main claim of the Respondent are not the enforcement of his fundamental rights as guaranteed by Chapter IV of the Constitution, as reliefs 1, 2, 3, 5, 12, 13 are purely founded on tort and reliefs 5, 6, 7, 8, 9 have no foundation under Chapter IV of the constitution of the Federal Republic of Nigeria, as there is nowhere in the constitution where the right to form association to break-up the country is guaranteed.

Counsel submits that there is nowhere that the court endorse attempts to break up the Country, as same are treasonable felony as in the case of **Kanu v. F.R.N.** Therefore, the right to break-up the country is not contemplated by Chapter IV of the Constitution and cannot be enforced under the fundamental rights enforcement Rules. Counsel relied on Order IX of the Rules on the issues of non- compliance, and submitted that at best what Respondent could do is to institute two suits were the claim involved several claims.

ISSUE TWO

Whether in view of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the learned trial judge was right to have assumed jurisdiction to hear and determine the Applicant's suit when the complaint was purely against the decision of a Federal Government agency. *(Distilled from grounds 7 of the Notice of Appeal).*

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APPELLANTS' COUNSEL SUBMISSION

Counsel on the issue submitted that the trial Court ought to decline jurisdiction since the matter concerns federal government agencies taking into considerations the opening paragraphs of Section 46 and 251 of the Constitution. According to counsel Section 46 is subservient to Section 251 of the constitution and Counsel referred to the cases of **KLM Airlines v. Kumzhi (2004) 8 NWLR (Pt. 875) 231 at 265, paras B – B, A.G Lagos State v. A,G Fed. (2014) 9 NWLR (Pt. 1412 217 at 320, paras E – F and Tukur v. Govt. of Gongola State (Supra).**

According to counsel, the implication of the authorities cited is that for a State High Court to have jurisdiction on fundamental right action, the action must not be within the exclusive reserve of the Federal High Court as provided by Section 251 of the Constitution. See **Titiloye v. O.S.B.I.R (2020) 4 NWLR (Pt. 1715) 445 at 485, paras C – G.** According to counsel the present case for which the respondent sought protection of his fundamental right is the running of gun and attempt to break up the country to form Oduduwa Yoruba Nation which is an attempt on the sovereignty of the Country and there was no way the trial Court will decide the right of the Respondent without pronouncing on the ammunition allegedly recovered from the Respondent's house.

Plus the act of the 2nd and 3rd Appellants trying to arrest the Respondent is an act of the federal government or its agency, and by Section 251 of the Constitution, it is only the Federal High Court that has power to determine the Respondent's Fundamental Human Right and not the State High Court. This is so according to counsel as for a court to have jurisdiction to

determine a matter, both parties and the subject matter must be within the jurisdiction of the court in the case. See **Emenike Mbanugi Co. v. F.B.N Plc (2014) 16 NWLR (Pt. 1641) 621 at 636, paras A and Angadi v. P.D.P (2018) 15 NWLR (Pt. 1641) 1 at 22, Para F – H.**

ISSUE THREE

> ***Whether having regard to order II Rule 3 of the Fundamental Rights Enforcement Procedure Rules, 2009, the Respondent's originating process which was supported by two affidavits was not incompetent.*** *(Distilled from grounds 4 & 5 of the Notice of Appeal).*

APPELLANTS' COUNSEL SUBMISSION

Counsel contention under this issue which arose from grounds 4 & 5 of the grounds of appeal is that the Respondent had two separate affidavits supporting his originating motion, that is, one deposed to by Samuel Ojebode, a legal practitioner in the law firm of Respondent's counsel, and another deposed to by Hamzat Bashiru.

According to Counsel, the two affidavits are contrary to the provision of Order II Rules 3 f the Fundamental Rights Enforcement Procedure Rules, 2009, and therefore, this robs the trial court of jurisdiction to entertain the Respondent's application. According to counsel, the Applicant is not at liberty to depose to multiple affidavits as where the law provides for how a thing should be done, same must be done is such manner as prescribed. See **Ogualaji v. A. G Rivers State (1997) 6 NWLR (Pt. 509) 209 at 234 – 235 paras G – A.**

According to Counsel the Fundamental Rights Enforcement Procedure Rules have the flavor of the constitution since same was made pursuant to Section 42 of the Constitution, therefore, the innovation of the Respondent in filing two affidavits in support of one originating motion had made the origination motion incompetent.

Counsel submit that this also affects the mode of commencing of Fundamental Rights actions provided by Order IX of the Fundamental Rights Enforcement Procedure Rules, and the failure of Respondent to comply to the prescribed form of the rules makes the processes incompetent as failure to comply with the mode of commencement is one of the situation that nullifies a process under the FREP Rules.

That the introduction of the additional affidavit is like a virus that has affected the competence of the Respondent's application and consequently, the jurisdiction of the trial court to have heard and determine the respondent's suit. Counsel referred to the authority of **Obasanjo v. Yusuf (2004) 9 NWLR (Pt. 877) 144 at 221.**

ISSUE FOUR

Whether the learned trial Judge was right to have held that the Respondent has the statutory and Constitutional right to propagate the establishment of the Yoruba or Oduduwa Nation in Nigeria contrary to Section 2 (1) and 1 (2) of the Federal Republic of Nigeria 1999 (as amended). (Distilled from grounds 3 and 17 of the Notice of Appeal).

According to counsel, the trial Court's granting of Reliefs 7 & 8 of the Respondent meant that the court has sanctioned the breakup of Nigeria and the creation of Oduduwa Yoruba Nation which the Respondent has set out to achieve. Counsel submits that the relief were ab initio illegal, unlawful and unconstitutional as the provisions of Chapter IV of the Constitution which guarantees the fundamental right of the Respondent is subject to some provisions of the constitution itself and any other law passed by the National Assembly.

Counsel submits that this reliefs are anchored under the guise of freedom of association, even though the respondent has not present any article or seminar or workshop to show the peaceful nature of his campaign. This according to counsel gravely unconstitutional by Section 40 of the Constitution, as this will be giving the Respondent the license to lead secessionist movement in Nigeria with a view to breaking same.

Counsel contends that the interest which the people may come under by the provisions of Section 40 is one that must be legal, and constitutional, thus, any association which has no constitutional interest is not covered by Section 40 of the Constitution or any provision of Chapter IV of the Constitution. Counsel referred to the case of **Mbanefo v. Molokwu & Ors (2009) 11 NWLR (Pt. 1153) 431 at 454 Paras D – F.** on that note counsel submitted that the constitution does not support people to come together to secede from Nigeria, as same is prohibited by the constitution by Section 2(1) which clearly stated that Nigeria as a sovereign Nation is indivisible and indissoluble.

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Counsel contended that if the provisions of Section 2 (1) above is read together with Section 1 (2) of the constitution, it is clear that Applicant cannot govern Nigeria or any part thereof except as provided by the constitution. Therefore, the action of the Respondent in trying to become an acclaimed leader of the Indigenous people of Yoruba Nation over a territory which is still part of Nigeria is already a violation of the provision of the Constitution he is seeking so hard to benefit from. Thus Counsel maintained that the trial court erred in granting prayers 7 and 8 of the Respondent as the corporate existence of Nigeria is non-negotiable. See the case of **Asari v. Federal Republic of Nigeria (2009) 37 vol 2 NSCQR 1146 per I.T Muhammad JSC at page 1184.**

Counsel submits that the trial court erroneously relied on Article 20 of the African Charter on People and Human Right (Ratification) Act, and Articles 3, 4, 7, and 18 of the United Nation Declaration on the Right of Indigenous People in isolation to Articles 27, 28, and 29 of the same Charter. As the right for self-determination does not include the taking up of arms to break up Nigeria as the Respondent is doing.

According to counsel unlike the African Charter, the United Nations Declaration on the Right of Indigenous People is not domesticated in Nigeria so same is not enforceable in Nigeria as Section 12 (1) of the constitution prohibits the enforcement of any treaty which has not been enacted into law by the National Assembly. This position of the law has backing in the authority of **Abacha & Ors v. Fawehinmi (2000) 6 NWLR (Pt. 660) 247.** Counsel also refer to the construction of

undomesticated statute in the case of **Barrister Ray Nnaji v. Nigeria Football Association & Anor (2010) LPELR 4262 (CA).**

Counsel urged this Court to hold that the trial court was wrong to grant reliefs 7 and 8 by erroneously sanctioning the illegal actions of the Respondent.

ISSUE FIVE

Whether the learned trial judge rightly entered judgment for the Respondent in view of the serious allegations of commission of crime leveled against the Respondent. (Distilled from grounds 9 and 12 of the Notice of Appeal).

APPELLANTS' COUNSEL SUBMISSION

Counsel submits on this issue that while the Respondent has not shown any article or campaign he has undertaken for the establishment of the Yoruba Nation, it is clear that his campaign is to break up Nigeria, as the 2nd and 3rd Respondent had alleged that the Respondent is running gun trade which is evidence from the ammunitions recovered from the home of the Respondent. Thus the actions of the respondent constitutes threat to National security which is squarely with the statutory mandate of the 2nd and 3rd Appellants.

According to counsel since the 2nd and 3rd Appellants have the duty of protecting the national security of Nigeria, it is settled law that when national security is threatened, the fundamental right of individuals stand suspended or take a second place. Counsel referred to the cases of **Alhaji Mujahid Dokubo Asari v. Federal Republic of Nigeria (Supra) and**

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Ogwuche v. FRN (2021) 6 NWLR (Pt. 1773) 540 at 556 paras E – F. This is so according to counsel as there is not human right that is sacrosanct, and every human right enjoys a limitation placed by the constitution.

Counsel submitted that it is settled law that even death arising from situation covered by the limitations placed on the fundamental rights cannot amount to violation of right to life of the individual involved. Counsel relied on Section 271 of the Oyo State Criminal Code Act, and the Supreme Court decision of **Aminu v. State (2020) 6 NWLR (Pt. 1720) 197 at 229, paras C – E; Ikem v. Nwogwugwu (1999) NWLR (Pt. 633) 140 at 149 – 150 paras G – A.**

Counsel submitted that the 2nd and 3rd Appellants challenged the facts in affidavit of the Respondent and it is their case that they are empowered by the Administration of Criminal Justice Act, to break and enter where necessary in carrying out their duties, therefore the trial judge erred when he held that the procedure provided by law was not adhered to by the 2nd and 3rd Respondents.

Counsel on the whole submitted that in view of the unchallenged evidence presented by the Appellants in their counter affidavit and the video evidence which were not challenged, it was wrong for the learned trial judge to casually state that he doesn't believe the evidence placed before the court by the Appellants and proceeded to enter judgment in favor of the Respondent.

Delivered by Hon. Justice M.S. Hassan, JCA

ISSUE SIX

Whether the learned trial judge was right when he entered judgment in favor of the Respondent when there was no evidence on record in support of the Respondent's claims. (Distilled from grounds 8, 10, 11, 13, 14, 15, 16 and 18 of the Notice of Appeal).

According to Counsel, the evidence required to grant Respondent's relief by the trial court is affidavit evidence and same must meet the requirement of the law, and the evidence of the Respondent before the trial court first violates Section 115 of the Evidence Act as he filed three affidavits to prove his case, and the Affidavit of Hamzat Bashiru Ariyo did not emanate from the Respondent thus it has no evidential value since same did not in the further affidavit response to the allegations of the 2nd and 3rd Appellants against the Respondent.

That the further affidavit of the Respondent by Hamzat Bashiru Ariyo did not create any nexus between himself and the respondent as he did not mention that he was informed by the Respondent, and if the trial court was not beclouded by sentiment, it would had properly evaluated the evidence of Hamzat Bashiru Ariyo and came to the right conclusion that it did not meet up with the criteria provided by Section 115 of the Evidence Act. See the case of **Okegbu v. NBC (2007) 14 NWLR Pt. 1055 at 551 at 579 – 580.**

Counsel submits that the affidavit of Samuel Ojebode is questionable as the fact that the Respondent explained what happened after the invasion in his home where he claimed he escaped from raises questions as to how the Respondent became aware of all the things he mentioned to Samuel

Ojebode, who told the respondent that his passport, monies and other valuables were carted away with, how did the Respondent become aware that his visitors were killed, and how did the Respondent hide in the corner in the massive house during the invasion and observed all that happened?

Counsel submitted that so many unanswered questions show that the judgment of the trial court was purely out of his imagination and sentiment but not based on evidence before the court. Counsel referred to the authority of **Nigeria Deposit Insurance Corporation v. Chief Elder Ita Onoyom Ette (2015) LPELR 40607 CA** where the court held that even in affidavit evidence proceedings, the court is bound to accept only cogent and verifiable affidavit evidence

Counsel submits that the trial judge erred when he held that Order II of the FREP Rules is above the requirement of proving a civil matter as provided by Section 131 of the Evidence Act. That Hamzat did not say anywhere that he spoke with the Respondent after receipt of the counter affidavit, therefore, he could not respond as he did in the further affidavit. Counsel referred to the authority of **Okoye & Anor v. Center Point Merchant Bank Ltd (2008) LPELR 2505 (SC)** where the court held that the courts are not bind by affidavit evidence.

Counsel submit that the trial judge was wrong not to believe the affidavit evidence of the 2nd and 3rd Appellants on the ammunitions recovered from the respondent on the ground that forensic evidence is required, but in another breathe, he condemned the 2nd and 3rd Appellants of killing, taking

the properties of the Respondent without any proof by way of documentary evidence such as the birth and death certificates of the persons allegedly killed during the invasion.

Counsel submits that reliefs 1 to 9 of the Respondent which are declaratory in nature needed a high degree of proof and same ought not be granted only on the weakness of the Appellants affidavit, thus the trial court was wrong. Counsel referred to the case **of I.N.E.C v. Atuma (2013) 11 NWLR (Pt. 1366) 494 at 520 – 521; Onah v. Okenwa (2010) 7 NWLR (Pt. 1194) 512 at 535 – 536.** Counsel submit that all allegations of jewelries taken, monies missing, and a host of allegations ought to be proved by documentary evidence.

Counsel submitted that the award of ₦20,000,000,000 (Twenty Billion Naira) as exemplary and aggravated damages to the Respondent was wrong as the respondent had failed to prove his case to be entitled to the reliefs sought and the trial judge without any justification granted same. See **Onagoruwa v. I.G.P (2018) 7 NWLR (Pt. 1617) 121 at 649.** Counsel relied also on the case of **G.F. K.I Nig Ltd v. NITEL (2009) 15 NWLR** to submit that the award of ₦20,000,000,000 is gold digging.

Counsel however submitted that however if this court finds that the Respondent's fundamental right was breach and proven, the award of ₦20,000,000,000 as damage is outrageous as how the award of sum amount was arrived has not been explained, thus the award of the amount of twenty billion is humongous and unreasonable.

Counsel rounded up by submitting that the allegations by the Appellants against the Respondent are such that threatened the unity and security of the Nation, and the trial court treated same as if the fundamental rights of the Respondent are absolute, and in this case, there is evidence showing that the Respondent is involved in the campaign to create Oduduwa Nation and gun trading, therefore his fundamental right ought to be suspended. On the whole, the trial court erred in entering judgment for the Respondent having regards to the evidence before the court.

RESPONDENT'S SUBMISSION ON HIS SOLE ISSUE

Whether the reliefs sought for by the Respondent is deeply rooted in chapter IV of the Constitution of the Federal Republic of Nigeria and African Charter on People & Human Rights Enforcement Act and whether the application based thereon in consonance with fundamental Rights Enforcement Procedure Rules without any credible defence against same by the Appellant save conjectures, suspicions and speculations.

Counsel submitted that first, Appellants' issue that the Application of the Respondent was supported by two affidavits was not raised at the trial court, thus, being a fresh issue, the leave of this court ought to be sought and obtain and same was not done, hence, the submission of Appellants should be discountenance by this Court. Counsel referred to the authority of **CGG Nig Ltd case (supra).**

Counsel submitted that the evidence of both deponent whether of Samuel Ojebode or Hamzat Bashiru, can be relied upon by the court because the evidence is that of eye witness and same were not controverted by the Appellants. Counsel submitted that in any case, the only admissible

evidence applicable in fundamental right is affidavit evidence and the Appellants did not deny the facts in the evidence of the Respondents except for their complete speculations and conjectures, and conjectures and speculations are not allowed in law. See the case of **Tilley Gyado & CO Nig Ltd v. Access Bank Nigeria Plc (2019) LPELR 47081.**

Counsel submitted strongly that all fundamental rights in the constitution and African charter are basically civil wrongs mostly situated in law of tort, therefore, the application of the respondent at the trial court complied with the rules of FREP and Chapter 4 of the constitution, contrary to the Appellants submissions that the action of the respondent are actionable tort brought by civil action.

Counsel submits that the submission of the appellants that where there are multiple cause of actions, it is for the Respondent to initiate two suit is misconceived, as the case of the Respondent is that there are threat to his life and the invasion of the Appellants led to the vandalization of his home, privacy and destruction of his property worth over N50 Million and same led the respondent to institute this action under fundamental rights rules as guaranteed under Section 37 of the Constitution. Counsel also referred to the case of **Ojoma v. State (2014) LPELR 22942 CA.**

That the occupation of the Respondent's premises by the 2nd and 3rd Appellants operates as compulsory occupation of same under gun and same violates Section 44 of the CFRN. Counsel submitted that the African Charter is adopted by the Supreme Court as far back as 27th June, 1981, and same is deemed as superior to local legislation and any infringement of

same is null and void. See **Fawehinmi v. Abacha (1996) 9 NWLR (Pt. 475) 710; Adefulu v. Okulaja (1996) 668 and Ubani v. Director SSS (1999) LPELR 11177 CA.**

Counsel submits in responds to the submission of Counsel that Respondent is leading a secession charge out of the Federal Republic of Nigeria is misconceived as Nigeria is a Federating unit compressing of different sovereign people who have the right to join the federation or leave, although peacefully and that is what the African Charter stands for.

Counsel submitted that the whole issue five of the Appellants is conjectures and speculations and falsehood as same is not supported by facts on record, as the CCTV footage of the sting operation of the Appellants which would had helped in determining the gathering of ammunition by the Respondent was held back by the Appellants. Neither did any of the witnesses arrested in the house of the Respondent made to sign the inventory of the ammunitions recovered.

Counsel submitted that there is averment and video evidence showing the Respondent campaigning among his people for peaceful self-determination, thus, this makes the gun trading allegation an imagination of the Appellants.

Counsel submitted that the argument that Section 251 overrides the provisions of Section 46 of the Constitution is equally fresh which the trial court did not pronounce on. And it is beyond controversy that Section 46 of the Constitution gives State High Court jurisdiction over FHR notwithstanding whether the respondent is a federal government agent.

And also according to counsel, every section of the constitution is supreme and no section is superior than the other, thus the section on fundamental human rights cannot be subject to another provision of same constitution. See **Opara & Or v. Amadi & Or (2013) LPELR 20747 (SC).**

According to counsel, the award of damages made by the trial court is not outrageous as no amount can be too much to compensate the Pespondent for the destruction of his house, killing two persons and even cats thinking they are human beings. Counsel submitted that the search of the Respondent's house was done with no conformity with the ACJL which mandate that an inventory form must be signed when a search is done. But the action of the Appellant by invading the house of the Respondent at night is a declaration of guilty without being tried. Thus the award of the exemplary damages on the government the Respondent having shown that their action was without merit is justified. See **Bassey v. A.G Akwa Ibom (2016) LPELR, ANowu v. Ulu (2020) LPELR 50754 CA; and Eliochin Nig Ltd v. Mbadiwe (1986) LPELR 1119 (SC).**

RESOLUTIONS

ISSUE ONE:

Whether the learned trial Judge was right to have assumed jurisdiction to determine the Respondent's suit under the Fundamental Rights Enforcement Procedure Rules when the major claims of the Respondent were not founded under Chapter IV of the Constitution. (Distilled from grounds 1, 2, and 6 of the Notice of Appeal).

The trite position of the law as regards whether or not a matter falls or is properly that which belongs to the enforcement of fundamental rights procedure is as clearly stated by the Supreme Court in the case of **SEA TRUCKS NIGERIA LTD v. ANIGBORO (2001) LPELR -3025 (SC) Per KARIBE-WHYTE, JSC** (as he then was) stated at page 28-29 that:

> **"The correct approach in a claim for the enforcement of fundamental rights is to examine the relief sought, the grounds of such relief, and the facts relied upon. Where the facts relied upon disclose a breach of the fundamental right of the applicant as the basis of the claim, there is here a redress through the enforcement of such rights through the Fundamental Rights (Enforcement Procedure) Rules, 1979. However, where the alleged breach of right is ancillary or incidental to the main grievance or complaint, it is incompetent to proceed under the rules. This is because the right, if any, violated, is not synonymous with the substantive claim which is the subject-matter of the action. Enforcement of the right per se cannot resolve the substantive claim which is any case different."**

In the instant appeal I have carefully examine the originating processes at the lower Court contained in pages 1-26 of the record of appeal the principal reliefs of the Respondent is for invasion and malicious damage of his properties, killing of two of his guest, tort of trespass, assault, and battery. See reliefs 1, 2, 3, 4, 5, 6, 7, 8, 12 and 13 of the Originating

Motion at pages 2-4 of the records. His claim is in the exclusive domain of the law of Torts and not under the Fundamental Rights Enforcement Procedure Rules. This fact was also alluded to by the learned trial Judge in his judgment at page 384 of the record where he stated that "This Court is of the opinion that the facts of this case as contained in the affidavit and further affidavit in support of the originating motion suggested that the 2nd and 3rd respondent and/or their agents invaded the home of the applicant. That interference with the quiet enjoyment of the applicant of his house may well amount in tort to actionable trespass. In the process, the said 2nd and 3rd respondents damaged the applicant's residence and properties which also is a species of trespass and the relief No. 4 about the threat of the 2nd and 3rd respondents that the life of the applicant should not be spared during the invasion may pass as civil assault where the victim is caused to have an apprehension of imminent danger." Having arrived at this decision the learned trial Judge at that stage ought to have decline jurisdiction and strike out the case for want of jurisdiction.

In **NWANWUNA V. NWAEBILI (2011) 4 NWLR (Pt. 1237) 290** cited by the trial Judge Per Ariwoola, JCA (as he then was, now acting CJN) relying on **Abdullamid v. Talal Akar & Anor (2006) 13 NWLR (Pt. 996) 127 SC** held that reliefs which are tortuous in nature cannot be initiated pursuant to the fundamental rights (Enforcement Procedure) Rules even if there exist some fundamental rights infringement or violation. Such reliefs that are tortuous in nature can only be claimed strictly by following the common law procedure by issuance of a writ of summons and filing of pleadings. See also **A.G., Akwa-Ibom State & Anor. v. Udoh (2018)**

LPELR 46080 (CA); Abdullahi & Ors v. Nigeria Army & Ors. (2019) LPELR-46925 (CA); Olusanya v. Abegunde & Ors. (2019) LPELR-47055 (CA).

The principle of choice or election mentioned by the learned trial Judge at page 385 of the record is not applicable to the instant case as this case requires calling of witnesses and tendering of documents to resolve the contentious issues which cannot be resolve by affidavit evidence.

For the foregoing reasons I am unable to agree with the learned trial Judge that this case is for the Enforcement of Fundamental Rights as enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) thus I hold that the learned trial Judge was wrong in deciding to entertain the respondents' application. He has no such jurisdiction. I decide issue one in favour of the Appellant.

Having resolve issue one in favour of the Appellant and decided that the lower Court lack jurisdiction to entertain the case under the fundamental right enforcement procedure rules this case ought to determinate at this point, but that notwithstanding I will proceed to consider and pronounce on the substantive matter. This procedure has been commended by the Supreme Court and followed by this Court. I am guided by the statement of Oguntade JCA (as he then was) in the case of **Senate President v. Nzeribe (2004) 9 NWLR (Pt. 878) CA 251** where he said:

> **"Saying that the issue of jurisdiction should be resolved first however does not mean that it should be resolved separately. It can be taken along with arguments on the merits of**

the case. The important thing is that the Court should first express its views on jurisdiction before considering the merit. The advantage of so proceeding is that in the event of an appeal by any of the parties, it is easy for the appellate Court to express its view on the decision of the lower Court as to jurisdiction and the merit of the case. This removes the necessity for two appeals- one as to jurisdiction and the other as the merit of the case." See also the decision of the Supreme Court in Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) SC 423.

Having said that I will proceed to consider and resolve issues two, three, four, five and six on merit.

RESOLUTION OF ISSUE TWO:

Whether in view of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the learned trial Judge was right to have assumed jurisdiction to hear and determine the Applicant's suit when the complaint was purely against the decision of a Federal Government Agency. (Distilled from ground 7 of the Notice of Appeal).

In determining the jurisdiction of the Federal High Court, notwithstanding the fact that one of the parties is an agency of the Federal Government, the subject matter of the dispute is also relevant. See Per **Shuaibu, JCA in Hon.P. Anselem Eyo v. Federal Road Safety Commission, Uyo & Anor (2019) LPELR-46999 (CA) Page 19.**

In **WEMA Securities and Finance Plc v. Nigeria Agricultural Insurance Corporation (2015) 16 NWLR (Pt. 1484) 93 at 131** Per Nweze, JSC said in considering the issue of jurisdiction of the Federal High Court under Section 251 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) both the status of the parties (that is whether it is the Federal Government or any of its agencies) and the subject matter of the claim (that is whether it relates to any of the enumerated items in the said section) have to be looked into.

In the particular case, it was held that the position taken by the Court of Appeal to the effect that the High Court of the FCT (and by implication, State High Court, cannot entertain any matter against Respondent (NAIC) (again and by implication, any agency of the Federal Government) irrespective of the subject matter was wrong. See also **Obinwuebi v. CBN (2011) 7 NWLR (Pt. 1247) 465; Oloruntoba-Oju v. Abdul-Raheem (2009) 13 NWLR (Pt. 1157) 83; James v. I.N.E.C. (2015) 12 NWLR (Pt. 1474) 538.**

In the present appeal the answer to this issue can very easily be found in the case of **Abubakar Umaru Abba Tukur v. The Government of Taraba State & Ors (1997) LPELR-3273 (SC) Per Ogundare, JSC** (as he then was) at page 35, paragraphs B-D stated that

> **"It is not in doubt that a High in a State has jurisdiction under Section 42 of the Constitution of the Federal Republic of Nigeria, 1979, to entertain an application for enforcement of fundamental rights. However,**

> **where the main or principal claim is not the enforcement or securing the enforcement of a fundamental right, the jurisdiction of the Court cannot as has been pointed out above be properly exercised as it will be incompetent by reason of the foregoing feature of the case."**

In essence both the State High Court and the Federal High Court have concurrent jurisdiction in the enforcement of Fundamental Rights. An application may therefore be made either to the judicial Division of the Federal High Court in the State or the High Court of the State in which the breach occurred, is occurring or about to occur. See **Grace Jack v University of Agriculture, Makurdi (2004) LPELR- 1587 (SC) Pages 11-12.** Thus this issue is resolved against the Appellant.

RESOLUTION OF ISSUE THREE

> **Whether having regards to Order II Rule 3 of the Fundamental Rights Enforcement Procedure Rules 2009, the Respondent's originating process which was supported by two affidavits was not incompetent.** (Distilled from grounds 4 & 5 of the Notice of Appeal).

The summary of the argument of the Appellants on this issue is that the Respondent's Originating Motion which was supported by two affidavits contrary to the provision of Order II Rules 3 and 4 of the Fundamental Rights Enforcement Procedure Rules 2009 is incompetent and therefore robbed the court of the jurisdiction to hear and determine the Respondent's suit.

For ease of reference I reproduce the said Order II Rules 3 and 4 of the Fundamental Rights (Enforcement Procedure) Rules, 2009:

Rule 3.

> **"An application shall be supported by a Statement setting out the name and description of the applicant, the relief sought, the grounds upon which the reliefs are sought, and supported by an affidavit setting out the facts upon which the application is made."**

Rule 4.

> **"The affidavit shall be made by the Applicant, but where the applicant is in custody or if for any reason is unable to swear to an affidavit, the affidavit shall be made by a person who has personal knowledge of the facts or by a person who has been informed of the facts by the Applicant, stating that the Applicant is unable to depose personally to the affidavit."**

The issue is whether a breach of the Rules will nullify a fundamental rights enforcement proceeding, the breach in this case is the filling of two affidavits in support of the Originating Motion.

The end purpose of the Fundamental Rights (Enforcement Procedure) Rules 2009, the Rules of Court is to ensure that where infringement of fundamental rights has been complained of or threatened, there is a speedy enforcement of such rights coupled with simplification of procedure for deciding with such complaints. Breach of a fundamental right is very serious claim that unnecessary technicalities should not be allowed in to

clog the free flow of the stream of justice in protecting human rights. In the instant case it is preposterous for the Appellants to want to impose the duty of seeking leave before additional affidavit can be filed, when the main suit itself does not require leave of Court. The Appellants stretching the issue of filing additional affidavit in support of Originating motion on notice by the Respondent to the question of jurisdiction would be overstepping the boundary. Rules of Court do not bestow jurisdiction on a Court, jurisdiction of the Court is bestowed by the Constitution or Statute. Per Alexander, JSC (as he then was) has this to say in **Dr J.O.J. Okezie v. Federal Attorney-General & Anor (1979) LPELR-2448 (SC) page 3, paragraphs A-B.** that:

> **"The Court also found it necessary to point out that the Supreme Court Rules, 1977 on which counsel relied, in particular Order 5, cannot confer jurisdiction on, or enlarge the jurisdiction of the Supreme Court, since the Supreme Court cannot confer jurisdiction on itself and thereby usurp the function of the constitution-making authority or the legislature." Rules of Court are the handmaid with which to achieve substantial justice and not to control the Court and lead it in to doing injustice. In Adegbite v. Amosu (2016) 15 NWLR (Pt. 1536) Page 405 at 433 paragraphs A-B Per Ngwuta, JSC (of blessed memory) Stated "Rules of practice are meant to be respected and obeyed. See Ezegbu v. F.A.T.B. Limited (1992) 1 NWLR (Pt. 220) 699. Be that as it may, the rules are handmaids of law to**

aid in the due administration of justice and where the strict application of any rule will result to a technicality shackling, instead of enhancing the due administration of justice, the court should exhibit some creativity and get around such rule to do substantial justice to the parties."

Where any part of the Fundamental Rules was breached as long as justice was done, it will not nullify the proceedings nor divest the Court of jurisdiction. See also Order 9 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009. In the light of the above the contention of the Appellant on this issue is without basis and must be discountenanced thus issue three is resolved against the Appellant.

RESOLUTION OF ISSUE FOUR

Whether the learned trial Judge was right to have held that the Respondent has the statutory and constitutional right to propagate the establishment of the Yoruba Nation or Oduduwa Republic in Nigeria contrary to Section 2(1) and 1 (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). (Distilled from ground 17 of the Notice of Appeal).

The learned trial Judge while granting the Respondent's reliefs on self-determination in creating a Yoruba Nation and/or Oduduwa Republic for Indigenous Yoruba People relied heavily on Article 20 (1) of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act and Articles 3 & 4 of the United Nations Declaration on the Rights of Indigenous People. He said at page 394 of the record that

"The action of the 2nd and 3rd Respondents in trying to arrest and intimidate the applicant on account of the cause of defending Yoruba interests in their quest for self-determination amounts to a violation of the right of the applicant to propagate the ideas of Yoruba self-determination which right is protected by Article 20 (1) of the African Charter Human and Peoples Rights (Ratification and Enforcement) Act and Articles 3 & 4 of the United Nations Declaration on the Rights of Indigenous People."

He concluded at page 395 of the record in granting the reliefs sought by the Respondent without any modification as follows: "This court accordingly finds in favour of the applicant and hereby grants all the relief sought by the claimant save the amount claimed as general damages as relief No 14."

Article 20 (1) of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act provides:

"All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their Economic and Social development according to the policy that they have freely chosen."

Article 29 (3), (4) and (5) further provides that the individual shall also have the duty:

(3) "Not to compromise the security of the State whose national or resident he is."

(4) "To preserve and strengthen social and national solidarity, particularly when the latter is threatened."

(5) "To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law."

It is trite law that in the construction of a statute, the entire provisions of the statute should be considered collectively, holistically and no single section should be construed disjointedly or separately. The purpose of this is to give proper interpretation and purposive meaning to the statute in line with the intendment of the law makers. Such a collective interpretation of the section of the statutes would also ensure that the sections are not interpreted in a manner that would be inconsistent with other provisions of the statute and which may lead to absurdity or confusion. Per Oredola, JCA in **Elder C.C. Mbacci & Ors v. Attorney General Anambra State & Anor (2016) LPELR-41020 (CA) Page 27-28.** See also **Action Congress & Anor v. Independent National Election Commission (2007) LPELR-66 (SC) Page 17.**

In the instant appeal the learned trial Judge in his wisdom while considering Article 20 of the African Charter on Human and Peoples Right did not avert his mind to the provisions of Article 29 of the same Charter which also placed a duty on the Respondent not to compromise the unity of this country because the position of the 2nd and 3rd Appellants who are

in charge of National Security of this Country and which cannot be glossed over by this Court is that based on intelligence gathering the action of the Respondent constitutes a threat to National Security which is within their statutory mandate to investigate. That the Respondent is a known advocate of violence and incitement of people against the government of the Federal Republic of Nigeria. See pages 143-144 of the record. A collective interpretation of Articles 20 (1), 27, 28 and 29 of the African Charter on Human and Peoples Right clearly show that the Respondent has no right to take up arms and ammunition to struggle for the breakup of Nigeria. The learned trial Judge in my humble view limited himself only to Article 20 (1) of the Africa charter neglecting Articles 27, 28 and particularly 29 of the same charter this in law is not permitted. The elementary principles of law is that a Statute or Articles should be considered collectively, holistically and no single Section or Articles as the case may be should be construed separately the purpose is to give proper interpretation and purposive meaning to the Statute or Articles.

The learned Trial Judge also relied on Articles 3, and 4 of the United Nations Declaration on the Right of Indigenous Peoples promulgated by the 107th plenary meeting of the United Nations on 13th September, 2007, in arriving at its decision the said Articles provides:

Article 3

> **"Indigenous Peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."**

Article 4

> **"Indigenous Peoples, in exercising their rights to self- determination have the right to autonomy or self- government in matters relating to their internal and local affairs as well as ways and means for financing their autonomous functions."**

The learned trial Judge acted on wrong principle of law by relying on the said United Nations Declaration on the Right of Indigenous Peoples which has not been domesticated and has no force of law in Nigeria, at least no evidence of domestication has been presented to this Court by the Respondent and as rightly submitted by learned senior counsel for the Appellants that unlike the African Charter on Peoples and Human Rights which has been domesticated, the said United Nations Declaration on the Right of Indigenous Peoples is not ratified by the National Assembly and not enforceable in Nigeria. The provision of Section 12 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is apt on this it provides:

> **"No treaty between the Federation and any other country shall have the force of law except to the extent to which such Treaty has been enacted into law by the National Assembly."**

In the same vein the Apex Court in **Abacha & Ors v. Fawehinmi (2000) 6 NWLR (Pt. 660) Page 247 Per Ogundare JSC** (as he then was) at pages 30-31 paragraphs C-F (cited and relied upon by the Appellant) His lordship stated:

"...an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly. See Section 12 (1) of the 1979 Constitution which provides: "12 (1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly (AFRC):" (See now the re-enactment in Section 12 (1) of the 1999 Constitution). See the recent decision of the Privy Council in Higgs & Anor v. Minister of National Security & Ors. The Times of December 23, 1999 where it was held that- "In the law of England and the Bahamas, the right to enter into treaties was one of the surviving prerogative powers of the Crown. Treaties formed no part of the domestic law unless enacted by the legislature. Domestic Courts had no jurisdiction to construe or apply a treaty. Nor could unincorporated treaties change the law of the land. They had no effect upon citizens' rights and duties in common or statute law. They might have an indirect effect upon the construction of statutes or might give rise to a legitimate expectation by citizens that the government, in its acts affecting them would observe the terms of the treaty.

In my respective view, I think the above passage represents the correct position of the law, not only in England but in Nigeria as well. Where however the treaty is enacted into law by the National Assembly as was the case with the African Charter which is incorporated into our municipal (i.e. domestic) law by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. 10 Laws of the Federation of Nigeria 1990 (herein after is referred to simply as Cap. 10) it becomes

binding and our courts must give effect to it like all other laws falling within the judicial powers of the courts."

The point to be emphasis here is that the Respondent is not permitted under the guise of freedom of association to lead a secessionist movement in Nigeria which may lead to the breakup of the Country and as rightly submitted by the Appellant the Constitution of Nigeria has not recognized any right that permits people to come together and form an association for the purpose of breaking up Nigeria or seceding from Nigeria and the establishment of another republic within Nigeria. Section 1 (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides in clear terms that the Federal Republic of Nigeria shall not be govern, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.

Likewise Section 2 (1) of the Constitution further provides that:

"Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria."

Per Muhammad, JSC (as he then was) in **Alhaji Mujahid Dokubo-Asari v. Federal Republic of Nigeria (2007) LPELR-958 (SC) page 38 paragraphs B-E** stated categorically that:

> **"The pronouncement by the court below is that where National Security is threatened or there is the real likelihood of it being threatened, human rights or the individual right of those responsible take second place.**

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Human rights or individual rights must be suspended until the National Security can be protected or well taken care of. This is not anything new. The corporate existence of Nigeria as a united, harmonious, indivisible and indissoluble sovereign nation, is certainly greater than any citizen's liberty or right. Once the security of this nation is in jeopardy and it survives in pieces rather than in peace, the individual's liberty or right may not even exist."

In the light of the above reasons I harbor no hesitation in resolving this issue in favour of the Appellants against the Respondent.

RESOLUTION OF ISSUE FIVE

Whether the learned trial judge rightly entered judgment for the Respondent in view of the serious allegations of commission of crime labeled against the Respondent. (Distilled from grounds 9 and 12 of the Notice of Appeal).

The allegation against the Respondent by the 2nd and 3rd Appellants is that they received intelligence report against the Respondent about movement of arms and ammunition to Lagos and based on the report they went to the area to recover the prohibited arms and ammunition under the control of the Respondent and in the process they were engage in gun battle with the occupants of the Respondent and they recovered seven (7) AK47 Rifles, three (3) pump action Rifles, one (1) stun gun, two hundred and twenty one (221) live rounds of 55.56mm ammunitions, one thousand, two hundred and ninety five (1295) live rounds of 7.62mm ammunitions, one

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jack knife and nineteen (19) walkie talkie from the residence of the Respondent. See page 143 of the record, these allegations are weighty that requires investigation and the 2nd and 3rd Appellants are vested with statutory powers under Section 1 of the National Security Agencies Act to conduct investigation of this nature that constitutes a threat to National Security and when there is a threat to National Security the fundamental rights of individuals is suspended or take a second place. See Per Muhammad JSC (as he then was) in **Alhaji Mujahid Dokubo Asari v. Federal Republic of Nigeria (Supra).** With this weighty allegation of crime against the Respondent along with the exhibits tendered, it is wrong for the learned trial Judge to say that he did not believe the evidence placed before him and proceeded to entered judgment for the Respondent. Thus issue five is resolved in favourt of the Appellants.

RESOLUTION OF ISSUE SIX

Whether the learned trial Judge was right when he entered Judgment in favour of the Respondent when there was no evidence on record in support of the Respondent's claims. (Distilled from grounds 8, 10, 11, 13, 14 and 15 of the Notice of Appeal).

The law is trite that an Applicant who complains that the decision of a trial Court or Tribunal is wrong or perverse for lack of adequate or proper evaluation of oral or documentary evidence placed before the trial Court, must prove or establish that the Court of trial made improper use of the opportunity of seeing the witnesses testified before him. The Appellant must demonstrably show that there was misapplication of the oral and documentary evidence tendered and proffered before the trial Court. He

must show that relevant laws or decisions on the subject matter before the trial Court were misapplied or misconstrued. He must show above all that the wrong inferences or wrong evaluation of the pieces of evidence before the trial Court have led to miscarriage of justice making it imperative for the Appellate Court to intervene and re-evaluate the oral and documentary evidence.

In **Mrs. Elizabeth Irabor Zaccala v. Mr. Kinsley Edosa & Anor (2018) 6 NWLR (Pt. 1616) 528 at 545 paragraphs B-D** Per Muhammad, JSC (as he then was) said:

> **"It is trite that the trial court is vested with the primary duty of evaluating evidence and ascribing probative value to same. This primacy in the court's responsibility arises out of the fact of the advantage it has of seeing and, from observation of the witnesses, making impressions as they testified. Thus where the trial court fails to bring the advantage to play in evaluating the evidence of the witnesses or where being documents, as in the instant case, the issue of credibility is not at play, the appellate court is in as good a position as the trial court to re-appraise the evidence and make correct inferences. See Atoyebi & Anor v. The Governor of Oyo State & Ors (1994) 5 NWLR (Pt. 344) 290; Dakat v. Dashe (1997) 12 NWLR (Pt. 531) 46 and Ajibulu v. Ajayi (2013) LPELR- 21860 (SC): (2014) 2 NWLR (Pt. 1392) 483."**

Delivered by Hon. Justice M.S. Hassan, JCA

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In **Nkebisi v. State (2010) 5 NWLR (Pt. 1188) 471** this Court held that "an appellant who appeals on the basis of the lower court's improper evaluation of evidence has the duty of identifying the evidence not evaluated or improperly evaluated and showing convincingly that if the error complained of is corrected, the conclusion reached would have been different and in his favour."

It is imperative to state that it is not every error or slip by a lower Court that will lead to a reversal of the lower Court's decision unless the findings of the said Court are not supported by oral and documentary evidence on record. In the instant case I believe the best starting point towards a just determination of this issue is to examine the allegations the Appellants made against the Respondent, the 2nd-3rd Appellants alleged that based on intelligence report received that the Respondent was in possession of arms and ammunition at his residence and in the process they recovered AK47 Rifles, pump action, live ammunitions, jack knife and walkie talkie from the residence of the Respondent, that the Respondent is a known advocate of violence and incitement of the people against the government of Federal Republic of Nigeria, video exhibits were attached See page 143 of the record, despite these weighty allegations the learned trial Judge dismissed these allegations and wanted the 2nd and 3rd Respondents to call a forensic expert to testify and establish that the arms and ammunitions were actually recovered from the residence of the Respondents and choose to believe the affidavit evidence of the Respondent in prove of allegations of killings and destructions of properties see page 390 of the record and as rightly pointed out by the Appellants there is no single evidence before the trial

Court establishing the birth certificate, death certificate and autopsy report certifying that the persons alleged to have been killed by the officers died of gun shots during the said operation that will satisfy the requirement of law to tie the death of the two persons to the officers of the 2nd and 3rd Appellants. It is, therefore, my finding and I so declare, that the Judgment of the lower Court was not supported by evidence adduced by the respondent in support of his claim.

The Respondent claims at the lower Court was for the sum of ₦500,000.000.00 (Five Hundred Million Naira) as special damages and ₦500,000,000,000.00 (Five Hundred Billion Naira) as exemplary and/or aggravated damages for breach of Respondent's fundamental rights. See page 4 of the record.

The learned trial Judge in his wisdom awarded the sum of ₦20,000,000,000.00 (₦20 Billion Naira) as exemplary and/or aggravated damages against the Appellants for breach of the Respondent fundamental rights.

This Court in **Attah v. IGP & Ors (2015) LPELR-24565 (CA) Page 46 paragraphs D-F** Augie, (JCA as he then was now JSC) Said:

> **"In the well-known case of Ajayi v. A.G. Fed. (1998) 1 HRLRA 373, the Court observed that in fixing an amount for the infringement of fundamental rights, the following factors amongst others, will be taken into consideration.....(a) The frequency of the type of violation in recent times; (b) The continually deprecating value of the Naira;**

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(c) The motivation for the violation; (d) The Status of the Applicant; (e) The undeserved embarrassment meted out to the Applicant including pecuniary losses; and (f) The conduct of the parties generally; particularly the Respondent."

In the present appeal I have again carefully read the judgment of the lower Court contained in pages 367 – 395 of the record and I am of the humble view that the learned trial judge acted on wrong principles of law in awarding the sum of Twenty Billion Naira as damages against the Appellants as there was no evidence presented before him in assessing the damages claimed and the damages awarded is manifestly high and outrageous and as rightly submitted by the Appellants how was the sum of Twenty Billion Naira awarded to the Respondent arrived at? Is it for the damage to the House for which there is no valuation report or assessment of damages? Is it for the cars and jewelries? Where were the cars and jewelries bought to ascertain their value. The learned trial Judge is not permitted to embark upon his own assessment of damages using his own conceived perimeter in place of evidence. In the circumstances the damages awarded by the lower Court against the Appellants have not been proved and the only course open to this Court is to set it aside, it is hereby set aside.

In conclusion, in the light of all that I have said above and for the various reasons given and having decided that the lower Court lack jurisdiction to entertain this case under the Fundamental Rights (Enforcement Procedure) Rules 2009 this appeal is allowed and the Judgment of the lower Court

Delivered by Hon. Justice M.S. Hassan, JCA

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Coram. A. L. Akintola J delivered on the 17th day of September, 2021 in Suit No M/435/2021 is HEREBY SET ASIDE for lack of jurisdiction.

Parties to bear their respective costs.

HON. JUSTICE MUSLIM SULE HASSAN
JUSTICE, COURT OF APPEAL

APPEARANCES:

T.A. GAZALI (SAN) (Acting Director Civil Appeal) Federal Ministry of Justice, Abuja with **T.A. NURUDEEN** (Head of Legal, DSS Oyo State Command) and **T.D. AGBE** (Principal State Counsel Federal Ministry of Justice, Abuja for the Appellants.

CHIEF YOMI-ALLIYU (SAN) and **O.O. OLASOPE(SAN)**, with **OLASOPE OJO, THELMA OTAIGBE-OLULEYE OYERINDE R. ELEJA** and **L.E. NNAKAIHE** for the Respondent.

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COURT OF APPEAL
20 SEP 2022
IBADAN

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BUHARI ANI ESQ
H.O.D. LITIGATION
COURT OF APPEAL
IBADAN DIVISION

PAID
20 SEP 2022

Delivered by Hon. Justice M.S. Hassan, JCA

APPEAL NO: CA/IB/373/2021
IGNATIUS IGWE AGUBE, JCA

I had the opportunity of reading the draft Judgment of my learned brother **HON. JUSTICE MUSLIM SULE HASSAN, JCA**, I have nothing to add to the well researched Judgment which I adopt as mine.

The resultant effect is that this appeal is imoued with merit and therefore allowed.

HON. JUSTICE IGNATIUS IGWE AGUBE
JUSTICE, COURT OF APPEAL

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BUHARI SAN ESQ
H.O.D. LIT. SATION
COURT OF APPEAL
IBADAN DIVISION

APPEAL NO. CA/IB/373/2021
DANLAMI ZAMA SENCHI, JCA

I have had the privilege of reading in draft the lead judgment of my learned brother, ***MUSLIM SULE HASSAN, JCA***. The lead judgment have aptly captured and reflected all my views I expressed during our conference on this matter. I therefore agree with the findings and conclusion arrived in the lead judgment.

I want to chip in however in respect of the complaints of the Appellant against the Trial Court in Grounds 1,2,6,8,10,11,13,14 and 15 of the Notice of Appeal from wherein issues one and six were culled for determination of this appeal.

Now from the Records on Appeal, the Respondent's suit was commenced before the trial Court by Originating Motion under the Fundamental Rights (Enforcement procedure Rules) 2009 supported by an Affidavit and statement of the Respondent filed on the 23/07/2021 against the Appellants. The detail claims or reliefs had been brilliantly set out in the lead judgment. At the conclusion of trial, the trial Court Awarded to the Respondent a whopping sum of ₦20,000,000,000.00 (Twenty Billion Naira) as damages against the Appellants.

A close look at the Affidavit evidence of the Respondent in support of the Originating Motion and the claims thereof particularly reliefs 1,2,3,5,12 and 13, the reliefs cannot be brought under the Fundamental Right (Enforcement Procedure) Rules as contemplated by chapter IV of the 1999 constitution of the Federal Republic of Nigeria (as Amended). In otherewords a close look at the main claims of the Respondent, these claims cannot be brought under chapter IV of the Constitution. And :

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Republic of Nigeria is a treasonable felony. See ***TUKUR V GOVERNMENT OF GONGOLA STATE, (1989)4 NWLR pt 117 page 517, SEA TRUCKS (NIG) LTD V ANIGBORO, (2001)2 NWLR (pt 696)159 at 182, WEST AFRICAN EXAMINATION COUNCIL V AKINOLA OLADIPO AKINKUNMI, (2008) LPELR 3468(SC).***

The action of the Respondent filed at the Lower Court is incompetent having been commenced under the Fundamental Rights (Enforcement Procedure) Rules instead by commencing same by a writ of summons.

Further, the damages as awarded by the Lower Court contained at pages 367-395 of the record is perverse as there is absolutely no evidence to support such award of N20,000,000,000.00 against the Appellants.

Having said the above, I agree with the fuller reasoning and findings made in the lead judgment and I have nothing more useful to add but adopt the lead judgment of my brother HASSAN JCA as mine.

In conclusion, this appeal is meritorious and it is hereby allowed. The Judgment of the High Court of Oyo State sitting in Ibadan in suit No M/435/2021 delivered on 17/09/2021 by A. LAKANTOLA J is hereby set aside.

DANLAMI Z. SENCHI
(JUSTICE, COURT OF APPEAL)

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