

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON THURSDAY THE
30TH DAY OF MARCH, 2023.

BETWEEN:

SUIT NO: B/253M /2021

MR. EHICHIOYA OKOIDEGUN - - - - - APPLICANT

AND

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION**
- 2. COMMISSIONER OF POLICE, EDO STATE COMMAND**
- 3. INSPECTOR GENERAL OF POLICE**
- 4. NIGERIA POLICE FORCE**
- 5. POLICE SERVICE COMMISSION**

RESPONDENTS

BETWEEN:

SUIT NO: B/254M /2021

MR. IMHODIBIE LUCKY - - - - - APPLICANT

AND

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION**
- 2. COMMISSIONER OF POLICE, EDO STATE COMMAND**
- 3. INSPECTOR GENERAL OF POLICE**
- 4. NIGERIA POLICE FORCE**
- 5. POLICE SERVICE COMMISSION**

RESPONDENTS

BETWEEN:

SUIT NO: B/255M /2021

MR. EBHOTEMEN DONALD - - - - - APPLICANT

AND

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION**
- 2. COMMISSIONER OF POLICE, EDO STATE COMMAND**
- 3. INSPECTOR GENERAL OF POLICE**
- 4. NIGERIA POLICE FORCE**

RESPONDENTS

5. POLICE SERVICE COMMISSION

BETWEEN:

SUIT NO: B/256M /2021

MR. OSAYAMWEN GODFREY - - - - - - - - APPLICANT

AND

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION**
- 2. COMMISSIONER OF POLICE, EDO STATE COMMAND**
- 3. INSPECTOR GENERAL OF POLICE**
- 4. NIGERIA POLICE FORCE**
- 5. POLICE SERVICE COMMISSION**



RESPONDENTS

BETWEEN:

SUIT NO: B/257M /2021

MR. OKOIDIGUN JERRY - - - - - - - - APPLICANT

AND

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION**
- 2. COMMISSIONER OF POLICE, EDO STATE COMMAND**
- 3. INSPECTOR GENERAL OF POLICE**
- 4. NIGERIA POLICE FORCE**
- 5. POLICE SERVICE COMMISSION**



RESPONDENTS

BETWEEN:

SUIT NO: B/258M /2021

MR. AKELE NATTY EROMONSELE - - - - - - - - APPLICANT

AND

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION**
- 2. COMMISSIONER OF POLICE, EDO STATE COMMAND**
- 3. INSPECTOR GENERAL OF POLICE**
- 4. NIGERIA POLICE FORCE**
- 5. POLICE SERVICE COMMISSION**



RESPONDENTS

BETWEEN:

SUIT NO: B/259M /2021

MR. EHSI OWOBUR - - - - - - - - APPLICANT

AND

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION**
- 2. COMMISSIONER OF POLICE, EDO STATE COMMAND**
- 3. INSPECTOR GENERAL OF POLICE**
- 4. NIGERIA POLICE FORCE**
- 5. POLICE SERVICE COMMISSION**

RESPONDENTS

BETWEEN:

SUIT NO: B/260M /2021

MR. OSAHON PETER ALFRED - - - - - APPLICANT

AND

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION**
- 2. COMMISSIONER OF POLICE, EDO STATE COMMAND**
- 3. INSPECTOR GENERAL OF POLICE**
- 4. NIGERIA POLICE FORCE**
- 5. POLICE SERVICE COMMISSION**

RESPONDENTS

BETWEEN:

SUIT NO: B/261M /2021

MR. OBOH OSAYAMEN - - - - - APPLICANT

AND

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION**
- 2. COMMISSIONER OF POLICE, EDO STATE COMMAND**
- 3. INSPECTOR GENERAL OF POLICE**
- 4. NIGERIA POLICE FORCE**
- 5. POLICE SERVICE COMMISSION**

RESPONDENTS

BETWEEN:

SUIT NO: B/262M /2021

MR. JIM AYANRU - - - - - APPLICANT

AND

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION**
- 2. COMMISSIONER OF POLICE, EDO STATE COMMAND**
- 3. INSPECTOR GENERAL OF POLICE**

RESPONDENTS

- a. ***A DECLARATION that the arrest and detention of the Applicant by the Respondents and their officers, particularly by the 2nd to 5th Respondents' officers and men of the Anti-Cultism Unit, Edo State Police Command, State CIID, Benin City, Edo State from on the 22nd to 26th May 2020 without any legal basis is illegal***

and in gross violation of the Applicant's right to liberty and freedom of movement as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as amended) and therefore actionable.

- b. A DECLARATION that any further arrest and detention of the Applicant by the Respondents and their officers, particularly by the 2nd to 5th Respondents' officers and men of the Anti-Cultism Unit, Edo State Police Command, State CIID, Benin City, Edo State without any legal basis is illegal and in gross violation of the Applicant's right to liberty and freedom of movement as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as amended) and therefore actionable.*
- c. A DECLARATION that any further arrest and detention of the Applicant by the Respondents and their officers, particularly by the 2nd to 5th Respondents' officers and men of the Anti-Cultism Unit, Edo State Police Command, State CIID, Benin City, Edo State without any Court order will be illegal, unlawful and a likely gross violation of the Applicant's right to liberty and freedom of movement as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as amended) and therefore actionable.*
- d. A DECLARATION that any further torture, harassment, intimidation and humiliation of the Applicant by the Respondents and their officers particularly by the 2nd to 5th Respondents' officer and men of the Anti-Cultism Unit, Edo State Police Command, State CIID, Benin City, Edo State is malicious, unwarranted, unreasonable and a gross violation of the Applicant's fundamental rights to dignity of human person and personal liberty as protected under sections 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)*
- e. AN ORDER of perpetual injunction restraining 1st Respondent either by themselves, their agents, servants, officers and personnel from releasing the Applicant who is a staff of the Independent National Electoral Commission to the 2nd to 5th Respondents for any criminal prosecution without the hearing and determination of the substantial suit by this Honourable Court.*
- f. AN ORDER of perpetual injunction restraining the Respondents either by themselves, their agents, servants, officers or privies or any person deriving power from or through them from further harassing, intimidating, humiliating, arresting, detaining and torturing the Applicant in any manner relating to or connecting with the facts of this application.*
- g. ₦50, 000,000.00 (Fifty Million Naira) as damages against the Respondents for the harassment, intimidation, humiliation and unlawful violation of the Applicant's fundamental rights.*

- h. ***₦50, 000,000.00 (Fifty Million Naira) as compensation for the unconstitutional, illegal and unlawful arrest, torture and restriction of the movement of the Applicant for no just reason.***
- i. ***₦2, 000,000.00 (Two Million Naira) against the Respondents in favour of the Applicant as cost of litigation.***
- j. ***AN ORDER mandating and directing the Respondents to tender a letter of apology in writing to the Applicant for any further unconstitutional, illegal and unlawful arrest, torture and detention and to publish same in two leading Newspapers in the Country.***

The application is supported by an affidavit and a written address of the learned counsel for the Applicant. In his written address, the learned counsel, ***G.M. Umolu Esq.*** formulated three issues for determination as follows:

1. ***WHETHER THE APPLICANT'S FUNDAMENTAL HUMAN RIGHT HAS BEEN BREACHED AND/OR LIKELY TO BE BREACHED BY THE RESPONDENTS;***
2. ***WHETHER THE DEPRIVATION OF THE APPLICANT'S LIBERTY AND THE INHUMAN AND DEGRADING TREATMENT METED ON THE APPLICANT FROM ON THE 22ND TO 26TH MAY 2020 BY THE RESPONDENTS IS UNCONSTITUTIONAL AND UNLAWFUL; and***
3. ***WHETHER THE APPLICANT IS ENTITLED TO THE DAMAGES.***

Thereafter, the learned counsel articulated his arguments on issues one and two together while issue three was argued separately.

ISSUES ONE AND TWO:

Arguing these two issues, learned counsel submitted that by virtue of ***section 46 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)***, any person can apply to any High Court of a State or Federal High Court when his fundamental Rights have been infringed or likely to be infringed or contravened and it is the duty of the Court to protect the constitutionally guaranteed rights of that citizen. For this view, he relied on the cases of ***Grace Jack v. University of Agriculture Makurdi (2004) 5 N.W.L.R. (Pt. 865) 208 at 226; Igwe v. Ezenochie (2012) 7 N.W.L.R. (Pt. 1192) 61, and Chief (Dr.) Mrs. Funmilayo Ramsome-Kuti & Ors v. A.G, Federation & Ors (2001) F.W.L.R. (Pt. 80) 1637 at 1677.*** He also relied on the provisions of ***Order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009.***

Counsel submitted that the Applicant is entitled to the reliefs sought by virtue of ***sections 34 and 35 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)*** which provides for right to dignity of human person and right to person liberty.

He posited that ***section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)*** and ***Article 5 of the African Charter on Human and Peoples' Rights*** provides that no person shall be subjected to torture or to cruelty, inhuman or degrading treatment like the Applicant in this case who as a result of the instant case has been subjected to torture and degrading treatment by the Respondents who violated the dignity his person.

He also referred the Court to the cases of ***Alhaji Abibatu Mogaji v. Board of Customs and Excise & Anor (1982) N.C.L.R. Pg.349*** and ***Alaboh v. Boyles & Anor (1984) 3 N.C.L.R. Pg.30;*** and ***section 3 (2) of the Anti-Torture Act 2017.***

Counsel submitted that from the above judicial exposition and definition of torture, inhuman and degrading treatment, the acts of the Respondents including the unlawful arrest, detention, torture, inhuman and degrading treatment and humiliation of the Applicant constitute a flagrant violation of the fundamental rights of the Applicant to the dignity of his person as well as his personal liberty as guaranteed by *the 1999 Constitution of the Federal Republic of Nigeria (as amended), the African Charter on Human and People's Rights and the Universal Declaration on Human Rights*.

Counsel posited that paragraphs 3 to 24 of the affidavit in support of this application, chronicled the incident leading to the arrest and detention of the Applicant and he maintained that there was no justification for the Applicant's arrest and detention.

He contended that the Respondents, their men and officers are agencies created by law and are expected to operate strictly within the ambits of the law that created them. He emphasized that the arrest, detention, torture, humiliation, inhuman and degrading treatment meted out on the Applicant from on the 22nd to 26th May 2020 by the Respondents' officers constitute a gross violation of the Applicant's rights as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria (as amended).

He referred the Court to the case of *I.G.P v. Ikpila (2016) 9 N.W.L.R. (Pt. 1517) 236* where the court stated thus:

"The very enormous powers vested in the police do not give it carte blanche to exercise powers with impunity or in reckless disregard and in contravention of the laws of the land to infringe upon the inalienable fundamental rights of the citizens as constitutionally guaranteed in Nigeria"

He also relied on the case of *Dr. Patrick Nwangwu & Anor v. Barrister John Duru & Anor (2002) 2 N.W.L.R. (Pt. 751) 279* where the court held thus:

"Personal liberty is one of the fundamental rights guaranteed under the Constitution of the Federal Republic of Nigeria 1979 as provided for in section 32 of the said constitution. This right is crucial and an infraction of the right including unlawful arrest and detention will attract the sanction provided for in section 32(6) of the Constitution and an apology from the appropriate authority or person"

Learned counsel pointed out that *section 32 of the 1979 Constitution is now section 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)* and in line with the statement and pronouncement in the above mentioned case, he urged the court to hold that the humiliation, arrest, detention, torture, inhuman and degrading treatment of the Applicant by the Respondents constitute infractions of the Applicant's rights to inhuman and degrading treatment and personal liberty as guaranteed by *sections 34 and 35 of the Constitution* and he urged the Court to invoke the sanction as stipulated in *section 35(6) of the 1999 Constitution (as amended)*.

ISSUE THREE:

On the issue of damages, he submitted that where an infringement of a citizen's right has been established, the Court should award such measure of damages as would serve as a deterrent against arrogant, arbitrary and oppressive abuse of power as has been clearly demonstrated in this case. He relied on the cases of *Minister of Internal affairs v. Shugaba Abdurahaman Darman (1982) 3 N.C.L.R. 915 at 955-957; and Ransome-kuti v. A.G. Federation & Anor reported in Bar and Bench in the Defence of Rule of Law in Nigeria 321-322*.

He posited that the Applicant amongst other reliefs prays for the award of exemplary damages and tendering of public apology. He submitted that the remedy of payment of

compensation (damages) and tendering of public apology to a person whose constitutional right to personal liberty and dignity of human person has been infringed or being infringed or likely to be infringed is specially provided under **section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)**. He relied on the maxim: *ubi jus ibi remedium*-where there is a right, there is a remedy. He posited that since the Applicant has established that a wrong has been done to him, there must be a remedy.

He referred to all the depositions contained in the affidavit in support of this application and he urged the Court to award the Applicant the amount of money claimed as damages given his shock, mental and physical agony, trauma, pain and suffering and the scale, manner and gravity of violation and also the need to make the Respondents, their men and officers respect the rule of law and the Constitution and to deter others from copying their bad and wrong examples.

Finally, he urged the Court to grant this application.

Upon receipt of the application, the 1st Respondent filed a Counter-Affidavit; a Written Address in opposition to the application; a Notice of Preliminary Objection and a Written Address in support of the Preliminary Objection.

In his Written Address in support of the Preliminary Objection, one **O.A. Odeyemi Esq.** submitted that the extent of the jurisdiction of courts are expressly defined by the Constitution or the Statutes establishing them, which statutes must not be in conflict but be in tune with the Constitution, the supreme law.

He posited that **Section 254C (1) of the 1999 Constitution (as amended)** is clear unless going outside the law will be permitted. He reproduced the provision as follows:

“Notwithstanding the provisions of section 251, 257 and 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters –

(a) relating to or connected with any labour, employment, trade unions industrial relations, and matters arising from workplace, the conditions of services, including health, safety, welfare of labour, employer, worker and matters incidental thereto or connected therewith;

(b) Relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer’s association or any other matter which the Court has jurisdiction to hear and determine;”

Submitting on the above provisions, learned counsel maintained that it is an established principle of law supported by a plethora of cases that, a Court can only exercise its jurisdiction where:

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

(b) The court is properly constituted as regards members and their requisite qualifications and no member is disqualified for one reason or the other and

(c) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. See the cases of:

(1) Madukolu V. Nkemdilim (1962) 2 SCNLR P. 341;

(2) Skenconsult (Nig.) Ltd V. Ukey (1981) 1 SC P. 6;

(3) Ishola V. Ajiboye (1994) 6 NWLR (Pt. 352 p. 506.)

Counsel contended that it is clear from the motion, affidavit and reliefs sought by Applicants that the suit borders on the enforcement of fundamental human rights against the 1st Respondent. He said that it is not in dispute that the Applicants are employees/servants of the 1st Respondent seeking to enforce their rights under the Chapter IV of the Constitution against their employer.

He submitted that this Honourable Court is not clothed with the jurisdiction to entertain these suits as presently constituted. He posited that the whole issue of the Applicant's case arose from the workplace of the 1st Respondent where the Applicants are security officers. He maintained that the jurisdiction to hear and adjudicate on matters arising from the work place is the exclusive preserve of the National Industrial court. He said that it is trite law that where a Court lacks jurisdiction, any judgment delivered in consequence will be a nullity. He therefore urged the Court to decline jurisdiction to entertain these suits.

In opposition to the main application, the 1st Respondent filed a 7-paragraphed – Counter Affidavit and a Written Address of their counsel.

In her written address, the learned counsel for the 1st Respondent, **Mrs. D.O. Owolabi** formulated three issues for determination as follows:

- I. Whether the 1st Respondent violated the right of the Applicants by reporting the Applicants to the 4th respondent upon a reasonable suspicion that applicants have committed an offence;**
- II. Whether in view of the facts pleaded by Applicants in these applications, the Applicants are entitled to the reliefs sought; and**
- III. Whether a suspect can employ judicial processes to evade criminal prosecution.**

Thereafter, the learned counsel argued issues 1 & 2 together and issue 3 separately.

Arguing the first two issues, she submitted that **Section 88 (1) of the Administration of Criminal Justice Act (ACJA) 2015** provides thus:

“A person may make a complaint against any other person alleged to have committed or to be committing an offence.”

Again she referred to **Section 3 of the ACJA** which also provides thus:

“a suspect or a Respondent alleged or charged with committing an offence established by an Act of the National Assembly shall be arrested, investigated, inquired into, tried or dealt with according to the provision of this Act, except otherwise provided under this Act”.

She posited that similar provisions exists in **Sections 31 and 32 of the Nigeria Police Act, 2020** whereby the 4th Respondent is given power to receive complaints, to investigate and make arrests. She emphasized that the 2nd – 5th Respondents are empowered inter alia, to investigate all reported cases of suspicion, commission and/or attempt to commit any offence. That the police can lawfully invite, arrest and detain any such person for questioning. That in the exercise of this power, they can use their discretion independent of whatever complaint they may have received.

She posited that these statutory provisions confer on any aggrieved person who reasonable suspects that an offence has been committed, the right to lodge a complaint with Police against such a person whom he reasonably suspects to have committed an offence. That such an aggrieved person cannot be held liable for any arrest, false imprisonment or violation of the fundamental right of the person arrested and she relied on the case of **Monday Nwadinobi v. Mary Botu (2002) 15 WRN, P32 @ P40.**

She posited that the 1st Respondent lodged a complaint with the 4th Respondent to the effect that the Applicants who are security Officers in the employment of the 1st Respondent

whose duties among others is to secure properties on the premises of their employer could not give a sufficient explanation about the missing generators under their watch.

She maintained that there was a reasonable suspicion requiring investigation by the 4th Respondent which the 1st Respondent could not do.

She posited that reasonable suspicion is a legal standard that a person has been or is about to be engaged in criminal activity based on specific and particular facts and inference. That this is the basis for an investigation by the 4th Respondent.

Counsel exposted on the extent and limit of the right to personal liberty as has been succinctly captured in the celebrated case of *Dokubo Asari V. FRN (2008) 2 CCLR SC 450*.

She referred to *Section 135 of the Evidence Act, 2011* which stipulated that whoever desires any Court to give judgment on any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See also *N.I.A V. Ayanfalu (2007) 2 NWLR (pt 1018) pg 246; and UAC (NIG. PLC) V. Sobodu (2007) 6 NWLR (pt 1030) pg 368*.

She maintained that an Applicant alleging infringement of his fundamental right must place all the vital evidence regarding the infringement of such rights before the Court. That thereafter, the burden shifts to the Respondent to either disprove the allegation or justify the infringement, more so, since the Applicant is seeking declaratory reliefs. She relied on the case of *Adama V. K.S.H.A. (2019) 16 NWLR (pt. 1699) 501 at 518 – 519 paras G-B* where the Court exposted thus: “*The reliefs sought by the appellants and other plaintiffs at the trial court have been reproduced earlier in this judgment. They sought declaratory reliefs. It was held in International Textile Industries Nig. Ltd. V. A. D. Aderemi & Ors. (1999) 8 NWLR (Pt. 614) 268; (1999) LPELR – 1527 (SC) @ 34 – 35 F – B, per Uwaifo, JSC, that:*

“*A declaration, In other words, a declaration claimed must relate to some legal right to a legal interest of which the law will take cognizance..... A plaintiff who seeks a declaratory relief must show that he has an interest or right which forms a foundation for that declaration....*”

She submitted that the burden becomes more stringent since the allegations of harassment, continuous threat to arrest and detain the Applicants were expressly denied by the 1st Respondent in the instant case and she cited the case of *FAJEMIROKUN V. C.B (C.B) (C.L) (NIG) LTD (2002) 10 NWLR (PT. 774) PG 95 at 99 R. 3*.

She posited that assuming without conceding that the Applicants were arrested and detained, she contended that the 1st Respondent is not responsible for any exercise of discretion by the 4th Respondent as they cannot be said to be an agent of the 1st Respondent.

She submitted that throughout the gamut of evidence and all the exhibits attached by Applicants, none has been linked to the 1st Respondent with the purported infringement of their fundamental rights.

She urged the Court to resolve these issues in favour of the 1st Respondent.

ISSUES 3

Whether a suspect can employ judicial process to evade criminal prosecution?

Learned counsel submitted that the Applicants did not approach this Honourable Court with clean hands. That the Applicants were entrusted with securing the missing generators and admitted that the generators were stolen. That the said stolen properties of the 1st Respondent were at all material time placed under the watch of the Applicants who are Security Officers that have a duty to protect them. That by the 4th Respondent’s investigation, a prima facie case of conspiracy and stealing is made out against the Applicants who merely rushed to this Honourable Court to shield themselves from prosecution.

She emphasized that he who comes to equity must come with clean hands and relied on the case of *Attorney General Anambra vs. Chief Christ Uba (2005) 33 WRN. 191*. She urged the Court to dismiss the application for lacking in merit.

In opposition to this application, the 2nd -4th Respondents relied on a 39 paragraphs counter-affidavit and the written address of their counsel. In his written address, the learned counsel, *I.E. Ekibade Esq.* formulated three issues for determination as follows:

1. *Whether the 1st 2nd and 3rd Respondent are empowered to receive complaint from the nominal complainant INEC and investigate an allegation of crimes and commence prosecution against the applicant, and whether the 2nd 3rd and 4th respondent can be restrained from performing its statutory duties when an offence of this nature has been committed by the applicant.*
2. *Whether the performance of the legitimate duties imposed on the 2nd 3rd and 4th Respondents is a violation of the Fundamental Right of the Applicants as to entitle them to damages.*
3. *Whether the 2nd 3rd and 4th respondents have violated the Applicants Rights considering the circumstance of this case as to entitle him to the reliefs sought against the 2nd 3rd and 4th Respondents haven regards to the nature of the offence committed within the absolute Jurisdiction of the Federal High Court exclusive list of the 1999 constitution.*

AUGUMENT OF ISSUES:

Issue 1:

Arguing issue one, learned counsel submitted that the 2nd 3rd and 4th Respondents are empowered by law to receive complaints from the nominal complainant, INEC over allegations of offences and to investigate same including prosecution in any court of law in Nigeria and the 2nd 3rd and 4th Respondents are empowered to receive complaints of alleged offences of Conspiracy, Burglary Store Breaking, public official corruption and Stealing of Fifty-Two (52) 5.5 KVA Generators and printer cartridge at INEC Annex office No. 70 Sapele Road, Benin City, Edo State reported against the Applicant by the Representative of the 1st Respondent assigned for discreet investigation.

He referred to **SECTION 214 (1) (2) (A) (B) OF THE 1999 CONSTITUTION AS AMENDED 2010** which provides that there shall be a police force for Nigeria and that members of the Nigeria police force shall have such powers and duties as may be conferred upon them by law.

He also referred to **SECTION 1, (a) (b) (c) , 4 (a) (b) (c) (d) (e) (f) (g) (h) (i), of the Nigeria Police Act, Laws of the Federation, 2020** which also provides that the police force shall inter alia, prevent and detect crimes; Maintain public safety, law and order; Protect the lives and property of all persons in Nigeria etc, etc.

He submitted that the Applicant committed a felony which necessitated the investigation of the police. That upon the conclusion of the police investigation, a duplicate copy of the official report was sent to the 1st Respondent for necessary action accordingly. Counsel referred to Section 35 (1) (C) (3) of the 1999 constitution of Nigeria as amended 2010 which authorized the arrest of the Applicant for the purpose of bringing him before a court in execution of the order of a court or upon reasonably suspicious of his having committed a criminal offence.

He submitted that the 2nd 3rd and 4th Respondents duly complied with the constitutional provision in the performance of their statutory duties without breach of the Applicant's Fundamental Rights and he relied on the case of **DR. CHIEF OLADELE FAJEMIROKUN Vs**

C3 NG LTD & ORS (2002) 10 NWLR (PF774) pg 95-99 Ratio 4; and EZEAKA VS NWANKWO (2002) 2 HRLR AP E 172.

Counsel submitted that the police cannot be restrained from performing their duties and he relied on the case of ***A.G. OF ANAMBRA STATE VS CHIEF CHRIS MBA (2005 33 NWLR PG 191 (a) Ration 5.*** It was held that the police cannot be prevented from performing their duties. He urged the Court to resolve issue one in the favour of 2nd 3rd and 4th Respondents.

ISSUE 11:

Counsel submitted that the performance of the duties of the 2nd 3rd and 4th Respondents are not a violation of the Fundamental Rights of Citizens and residents alike as to entitle the applicants to the award of damages as damages are not awarded in vacuum and he relied on the case of ***OKANU VS IMO STATE COMMISSIONER OF POLICE (2001) ICHR PA 405 (a) 411,*** where the Court of Appeal held that a citizen who is arrested by the police in the legitimate exercise of their lawful duties cannot sue the police.

He therefore urged the Court to resolve issue two in favour of the 2nd 3rd and 4th Respondents.

ISSUE III:

Arguing his issue three, learned counsel submitted that the 2nd, 3rd and 4th Respondents have not violated the Applicant's rights considering the circumstances of this case as to entitle him to the reliefs sought against the 2nd, 3rd and 4th Respondents having regards to the nature of the offence committed within the absolute jurisdiction of the Federal High Court.

He reiterated that the police have the statutory power to effect the arrest of any person upon complaints of having reasonable suspicion that he committed a crime pursuant to ***section 24 (1) (a) (c) (i) (ii) of THE POLICE P19 LFN 2004.***

Again, he maintained that a person accused of committing a felony cannot hide under Fundamental Rights action to defeat the interest of justice as the present Applicant is trying to do and he relied on the case of ***DOKUBO VS FEDERAL REPUBLIC OF NIGERIA (2007) VOL. 152 LRCN PG 150 PARAGRAPH F-K.***

He finally urged the Court to dismiss the application for lack of merit.

In response to the 1st Respondent's Notice of Preliminary Objection, the Applicants filed a Joint Counter Affidavit of eight (8) paragraphs deposed to by Mr. Ehichioya Okoidegun for and on behalf of other Applicants in the consolidated suits and their counsel filed a written Reply on Points of Law.

Arguing the point of law, the learned counsel for the Applicant, ***G.M. Umolu Esq.*** reproduced the provisions of ***section 46 (1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended); Order 1 rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009; Order II rule 1 Fundamental Rights (Enforcement Procedure) Rules 2009;*** and the case of ***Grace Jacks v. University of Agriculture Makurdi (2004) 5 NWLR (Pt.865) 208 at 225*** and submitted that the Federal High Court, the State High Court as well as the High Court of the Federal Capital Territory, Abuja have concurrent jurisdiction to entertain matters on the Fundamental Rights of any person.

However, he posited that in view of ***section 254C of the 1999 Constitution of Nigeria (as amended)*** it is obvious that the section makes provisions for the National Industrial Court with particular or specific jurisdiction in civil matters in connection with employment, labour, industrial relations, trade unionism and employer's association.

He also referred to ***sub section (d) of section 254C of the 1999 Constitution (as amended)*** and submitted that it is clear from the above provisions of the Constitution that the

jurisdiction of the National Industrial Court is on employment, labour, industrial relations, trade unionism, employer's association or any other matter which the court has jurisdiction to hear and determine.

He posited that in the instant case, the Applicants' action which is on fundamental rights was necessitated by the criminal offence reported by the 1st Respondent to the 2nd to 5th Respondents in respect of the theft of the fifty – two (52) generators. He maintained that the Applicants' action was never related to their employment or their suspension from work by the 1st Respondent, rather it is on the unlawful arrest and detention of the Applicants from on 22nd to 25th and 26th May 2020 respectively and a further likely breach of the Applicants' rights.

He submitted that it is settled law that it is the claim of the plaintiff that determines the jurisdiction of the trial court and he relied on the following decisions on the point: *Inah v. Uko* (2002) 9 NWLR (Pt. 773) 563; *Emeka v. Okadigbo* (2012) 7 SC (Pt. 1) 1 and *PDP v. Sylva & 2ors* (2012) 4 – 5 SC 36; *Barclays Bank of Nigeria Ltd v. Central Bank of Nigeria* (1976) 1 All NLR 409; and *Okafor v. A.G., Anambra State* (1991) 6 NWLR (Pt. 201).

Counsel posited that the Applicants are not seeking relief for unlawful dismissal; re-instatement in their employment; declaration that their suspension by the 1st Respondent is illegal, null and void nor are they seeking for payment of their emolument from the 1st Respondent.

He emphasized that since the reliefs of the Applicants do not relate to the employment relationship between the 1st Respondent and the Applicants, the Court should discountenance the arguments of the 1st Respondent and grant the Applicants' application with heavy crushing cost.

Furthermore, in response to the Counter affidavit filed by the 1st Respondent against this application, the Applicants filed a thirteen (13) paragraphs counter affidavit, deposed to by one Mr. Ehichioya Okoidegun, the Applicant in suit No: B/253M/2021, for and on behalf of the other Applicants in suit No: B/254M to No: B/263M/2021. His counsel also filed a written address which he adopted at the hearing of this application.

In his address, learned counsel submitted that it is trite law that *Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria* was enacted with the primary aim of protecting individuals from unlawful deprivation of their freedom through abuse of power from individual, law enforcement and security agencies and he relied on the cases of *Duruaku v. Nwoke* (2015) 15 NWLR (Pt.1483) 417 at 473, paras. G-A ratio 2; *Obiegue v. A. G., Fed.* (2014) 5NWLR (Pt. 1399) 171 at 463 paras. C-F.

He posited that in the instant case none of the evidence (the extra judicial statement of the Applicants and the money N1.100, 000.00 (One Million One Hundred Thousand Naira) collected by the 2nd to 5th Respondents from the Applicants) already placed before the Court has established that the Applicants committed the alleged offence for which they were arrested, detained, tortured and humiliated by the 1st to 5th Respondents and are further seeking to prosecute the Applicants.

He said that the Applicants in paragraphs 6, 7 and 10 of their joint further affidavit deposed that the 1st Respondent did not only report the crime to the 2nd to 5th Respondents but that the 1st Respondent's officer Dr. Richard Ntui instigated, instructed and procured the 2nd to 5th Respondents, their men and officers to compel the Applicants to pay the sum of N100, 000.00 (One Hundred Thousand Naira) each for the replacement of the stolen generators as a condition for their released on bail.

He referred the Court to the case of *Ezeaduka v. Maduka* (1997) 8 NWLR (Pt. 518) 635 at 666 paras D – E, where the court held as follows:

“Although an action for false imprisonment does not lie only against a party who physically committed the tort of false imprisonment, to succeed in an action for false imprisonment, the plaintiff must show that it was the defendant who was actively instrumental in setting the law in motion against him. In the instant case as there is no evidence that the appellant was so instrumental, he is not liable for false imprisonment”.

He also relied on the following decisions on the point: *Onyedinma v. Nnite* (1997) 3 NWLR (Pt. 493) 333; *Mandilas and Karaberis Ltd v. Apena* (1969) NMLR 199 and *Balogun v. Amubikahun* (1989) 3 NWLR (Pt. 109) 18; *ejemirokun v. C.B. (C.I.) (Nig.) Ltd* (2002) 10 NWLR (Pt. 774) 95 at 112 paras. C-E., P.113-114, paras H-A.

Following the foregoing authorities, he urged the Court to hold that the 1st Respondent was a party to the false imprisonment of the Applicants. Furthermore, he submitted that a proper and thorough investigation was not done by the 2nd to 5th Respondents and their men in respect of this case and referred to the case of *Duruakuv. Nwoke* (*supra*).

Furthermore, he contended that the offences for which the Applicants were arrested and detained are not capital offences punishable with death nor were the Applicants’ prolonged detention based on any court order. Again, he posited that the police do not have any power to release on bail any person who is arrested and detained for a capital offence and referred to the provisions of *sections 32(1) and 161 (1) of the Administration of Criminal Justice Act 2015* and submitted that since the offence was non-capital the Applicants should have been released on bail very promptly.

Counsel submitted that the arrest and detention of the Applicants by the 1st and 5th Respondents from 22nd to 25th and 26th May 2020 respectively are in gross violation of the Applicants’ fundamental rights in view of the “Police investigation Report Case of Stealing CR: 175/2020” which is **exhibit F** (as attached to the Applicants originating process filed on the 3rd December 2021) which clearly proved that the Applicants did not commit the alleged offence.

Counsel pointed out that in their counter affidavits, the Respondents admitted that the Applicant was arrested. He relied on the case of *Obiegue v. A. G., Fed.* (2014) 5 NWLR (Pt. 1399) 171 at 216 paras C – H, where the court held thus:

“In an action for the enforcement of fundamental rights, where the respondent confirms and admits a detention, the burden is on him to justify the detention. In other words, the onus is on the person who admits detention of another to prove that the detention is lawful. In the instant case, the respondents failed to justify the detention of the appellant. There was no valid excuse or justification for his arrest and detention in any respect. It was an infringement of his fundamental rights”

He submitted that the Respondents have failed to justify the detention of the Applicants and he urged the Court to grant this application.

Again, in response to the joint Counter affidavit filed by the 2nd to 4th Respondents, the Applicants filed a 23 (twenty three) paragraphs joint further affidavit and a written address of their counsel.

In his written address, he posited that the Nigeria Police Force was created by the law and it is mandatory that they carry out their functions and operations strictly within the ambit of the law that created them and he relied on the cases of *Duruaku v. Nwoke* (2015) 15 NWLR (Pt.1483) 417 at 473, paras. G-A ratio 2; and *Akila v Director-General S.S.S* (2014) 2 NWLR (Pt.1392) 443, 463, paras A-C.

He posited that in the instant case, the 2nd to 4th Respondents have not justified the arrest, detention and torture of the Applicants. He rehashed the former arguments in this regard and

emphasized that the 2nd to 4th Respondents have failed to justify the arrest and detention of the Applicants.

I have carefully examined all the processes filed in this application together with the submissions of the learned counsel for the parties. The issues formulated by all the counsel are quite germane to the just determination of this application. However, I have condensed the issues into a sole issue for determination as follows: ***Whether the Applicant is entitled to the Reliefs claimed in this Application for the breach of his fundamental rights.***

Before I resolve the sole issue for determination, I intend to determine the preliminary objection raised by the 1st Respondent on the competence of this application.

Essentially, this issue is concerned with whether it is the High Court or the National Industrial Court that has the jurisdiction to determine the main application which is for the enforcement of the Applicant's fundamental human rights.

The issue of jurisdiction is fundamental and pivotal to any proceedings. It has been described as the life blood of any adjudication. It is the fiat, the stamp of authority to adjudicate. See: ***Katto vs. C.B.N (1991) 11-12 S.C 176.***

A Court can claim to have jurisdiction in respect of a matter if:

- (1) ***It is properly constituted as regards members and qualifications of the members of the Bench and no member is disqualified for one reason or another;***
- (2) ***The subject matter of the case is within its jurisdiction and there is no feature of the case which prevents the Court from exercising its jurisdiction; and***
- 3) ***The case comes up before the Court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of the jurisdiction.***

In support of the foregoing, see the following decisions on the point:

Madukolu vs. Nkemdilim (1962) 1 All NLR 587; Dangana & Anor vs. Usman & 4 Ors (2012) 2 S.C. (Pt.111) 103; and WESTERN STEEL WORKS LTD vs. IRON STEEL WORKERS UNION (1986) 3 NWLR Part 30d Pg. 617 D-H, 628.

In determining the issue of jurisdiction, it is the Claimant's originating processes that are to be considered. See: ***Okorocho vs. UBA Plc. (2011) 1NWLR (Pt.1228) 348 at 373; and A.G. Federation vs. A.G.Abia (2001) 11NWLR (Pt.725) 689 at 740.***

Furthermore, it is settled law that it is the statute creating the Court that determines the jurisdiction of that court. See: ***Chief Daniel Awodele Oloba vs. Isaac Olubodu Akereja (1998) 7 S.C. (Pt.1) 1 at 21.***

In the instant case the learned counsel for the 1st Respondent/Objector, relying heavily on the provisions of the relevant statutes creating the National Industrial Court, has contended that the said Court has exclusive jurisdiction over this matter.

As earlier stated, in determining the issue of jurisdiction, it is the Claimant's originating processes that are to be considered. See: ***Okorocho vs. UBA Plc. (2011) 1NWLR (Pt.1228) 348 at 373; and A.G. Federation vs. A.G.Abia (2001) 11NWLR (Pt.725) 689 at 740.***

The learned counsel for the 1st Respondent/Objector has submitted that the claims as presently constituted falls within the provisions of ***Section 254 C of the Constitution***, so this Court lacks jurisdiction as same has been expressly taken away by the aforesaid section.

Specifically the jurisdiction of the National Industrial Court is as enshrined in ***Section 254 C (1) (a)-(m) of the 1999 Nigerian Constitution (Third Alteration) Act, 2010 No. 3*** which provides as follows:

254. (1)Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred

upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

- a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;*
- b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;*
- c) relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matters Connected therewith or related thereto;*
- d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine;*
- e) relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;*
- f) relating to or connected with unfair labour practice or international best practices in labour employment and industrial relation matters;*
- g) relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;*
- h) relating to, connected with or pertaining to the application or interpretation of international labour standards;*
- i) connected with or related to child labour, child abuse, human trafficking or any, matter connected therewith or related thereto;*
- j) relating to the determination of any question as to the interpretation and application of any- (i) collective agreement; (ii) award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute; (iii) award or judgment of the Court; (iv) term of settlement of any trade dispute; (v) trade union dispute or employment dispute as may be recorded in a memorandum of settlement; (vi) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place; (vii) dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof;*
- k) relating to or connected with disputes arising from payment or nonpayment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;*

l) relating to- (i) appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith; (ii) appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and (iii) such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;

m) relating to or connected with the registration of collective agreements.

In order to determine whether the reliefs fall within the provisions of Section 254 C (1), we need to examine them closely. For the avoidance of doubt, in the main application for the enforcement of his fundamental human rights, the Applicant is seeking inter alia, some declarations, injunctions and damages arising from his alleged arrest and detention by the Respondents and their officers from the 22nd to 26th May 2020 without any legal basis in violation of his right to liberty and freedom of movement as guaranteed by the Constitution.

A careful examination of the reliefs will reveal that they are all in respect of the enforcement of the Applicant's fundamental human rights.

The salient part of the Constitution on the jurisdiction of the National Industrial Court on the enforcement of fundamental human rights appears to be *Section 254 C (1) (d) of the 1999 Constitution (Third Alteration) Act, 2010 No. 3* which provides thus:

“254. (1) Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

d)relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine.”(Underlining, mine).

Upon a careful examination of the above *Section 254 C (1) (d)*, it is evident that it clearly provides for matters on the enforcement of fundamental rights relating to *any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine.*

In the course of his submissions, the very learned counsel for the 1st Respondent/Objector ingeniously submitted that all the Applicants are employees of the 1st Respondent and that the alleged offences were committed at his place of work. He therefore contended that the alleged breaches were matters incidental to or arising from their workplace within the purview of *Section 254C (1) (d) of the Constitution of the Federal Republic of Nigeria 1999.*

From the available facts, it is clear that even though the alleged violation of the Applicant's fundamental rights occurred during his employment with the 1st Respondent, the alleged violations did not arise from any dispute relating to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the National Industrial Court has the exclusive jurisdiction to hear and determine.

In the case of *SCC (NIGERIA) LIMITED & ANOR v. MR. FIDELIS JOSEPH & ANOR (2020) LPELR-49764(CA)* the *Court of Appeal, Abuja Division* held that the disputes concerning application of Chapter IV of the 1999 Constitution over which the National Industrial Court has exclusive jurisdiction is limited to those connected with a matter which the Court has jurisdiction to hear and determine by virtue of S.254 C-(1) (d) of the 1999 Constitution.

Again, in the case of **FERDINAND DAPAAH & ANOR v. STELLA AYAM ODEY (2018) LPELR-46151(CA)**, the trial court was the National Industrial Court. At the trial court, the principal claim was for wrongful termination of appointment while the ancillary relief was for breach of fundamental human rights. While holding that the matter was within the exclusive jurisdiction of the trial court, the Court of Appeal expounded thus:

“It is crystal clear that Chapter IV provides for right to human dignity and freedom from discrimination which are both human rights amongst other human rights. The trial Court therefore can within a claim arising from employment or a claim related to where those rights are intricately connected and to which workplace related issues arise have jurisdiction.

It is settled that once the alleged breach of human rights is not the principal claim, the Court with complete or fuller jurisdiction usually hears the claim, and therefore, the trial Court can hear a claim for wrongful termination where a breach of human right is alleged as an ancillary issue” (Underlining, mine).

In the instant case, the Applicant’s reliefs are solely on the enforcement of fundamental human rights. There are no ancillary claims on labour related issues. More importantly, the alleged violations of human rights did not arise from any dispute relating to any employment, labour, industrial relations, trade unionism, employer’s association or any other matter within the exclusive jurisdiction of the National Industrial Court as enshrined in the Constitution.

In the event, I am of the view that the matter is within the jurisdiction of this Court and the preliminary objection is therefore overruled.

Having overruled the preliminary objection, I will now determine the merits of the application. In my view, the sole issue for determination in this application is: ***whether the Applicant is entitled to the reliefs which he seeks against the Respondents.***

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

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

Essentially, the gravamen of the Applicant’s complaint is that his arrest and detention by the Respondents and their officers, particularly by the 2nd to 5th Respondents’ officers and men of the Anti-Cultism Unit, Edo State Police Command, State CIID, Benin City, Edo State from the 22nd to 26th May 2020 was a violation of his right to personal liberty and freedom of movement as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as amended). He deposed to the facts leading to his arrest and maintained that he is innocent of the allegation of stealing made against him.

On the part of the Respondents, they maintained that the Applicant was arrested and detained to enable the 2nd to the 4th Respondents investigate the allegation of stealing made against him.

The powers of the Nigerian Police Force, with regards to crime prevention, detection and prosecution, are very wide. They are empowered to detain and question anyone reasonably suspected to have committed or to be connected with the commission of a crime. The wide nature of the powers of the police is encapsulated in **Section 4 of the Police Act**, which provides for the general duties of the Police thus: *"The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act."*

The only qualification is that the power must be exercised in accordance with the law. See the case of **IGWEOKOLO V. AKPOYIBO & ORS (2017) LPELR-41882(CA) (PP. 18 PARAS. D)**.

In the case of **Fawehinmi v. I.G.P. (2002) 7 NWLR (pt. 767) 606**, the Supreme Court held thus: *"It is inconceivable that such wide powers and duties of the Police must be exercised and performed without any discretion left to responsible Police operatives. Unless a statute which confers powers or imposes duties expressly or by necessary implication excludes the exercise of discretion, or the duty demanded is such that leaves no room for discretion, it is my view that discretionary powers are implied whenever appropriate, exercised for salutary ends."*

The Police Act has not fixed or stipulated therein, how the Police are to conduct their investigative powers. To that end, the Police carry out their investigation based on the strength or weight of information at their disposal. It is therefore the strength of the information at the disposal of the Police that should determine how they exercise their discretion to investigate or not to investigate. See **Olatinwo v. State (2013) 8 NWLR (pt.1355) 126**.

Thus, so long as the Police properly exercise their discretion, a complaint under the Fundamental Rights (Enforcement Procedure) Rules for breach of the right to personal liberty may not be sustained. This is because, where a crime has been reported, it is within the discretionary powers of the Police under **Section 4 of the Police Act** to decide whether or not to investigate such crime and to also decide on the strategy or manner in which they will conduct the investigation.

In the instant case, the 2nd - 4th Respondents acted on the complaint of the 1st Respondent against all the Applicants who were supposed to secure the stolen items. Their investigation led to the arrest and detention of the Applicants.

The Respondents alleged that the Applicants admitted committing the offences of conspiracy and stealing the 5.5 KVA Generators and voluntarily paid to the 1st Respondent, the sum of N100, 000.00 (One Hundred Thousand Naira) each, to avoid prosecution for the alleged offences.

Furthermore, the Respondents maintained that upon the conclusion of their investigation, a prima-facie case of conspiracy, Burglary, stealing was established against the Applicants and a charge has been preferred against them at the Federal High Court Holden at Benin City. The charge sheet was exhibited as Exhibit C in support of the 2nd – 4th Respondents' counter affidavit.

They also informed the Court that the sum of Eight Hundred and Sixty Nine Thousand Naira (N869, 000.00) recovered from the Applicants has been registered as an exhibit in the police exhibit record book now attached as Exhibit D.

However, the Applicants vehemently denied committing the alleged offences and maintained that the money which they paid to the police was extorted from them to secure their release on bail.

From the foregoing, it is apparent that the Respondents have set the machinery in motion to prosecute the Applicants for the alleged offences in a court of competent jurisdiction. At this stage, I cannot make any finding on the strength of the evidence against the Applicant. The proof of the alleged offences against the Applicant can only be determined at the trial of the criminal charge.

It is thus my view that the 2nd- 5th Respondents having acted on the 1st Respondent's complaint, pursuant to **Section 4 of the Police Act**, the claim for breach of the Applicant's fundamental rights cannot be sustained. See the following decisions on the point: **AKANBI & ORS v. C.O.P KWARA STATE & ORS (2018) LPELR-44049(CA); and MITIN v. C.O.P BAYELSA STATE & ORS (2017) LPELR-43064(CA).**

It is pertinent to note that the same Constitution which guarantees the Applicant's fundamental rights also limited the enjoyment of those rights under certain circumstance as enshrined in **Section 35 of the 1999 Constitution as amended viz:**

“(1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law - (c) for the purpose of bringing him before a Court in execution of the order of a Court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.”

Sequel to the foregoing, I hold that the actions of the 2nd – 5th Respondents in arresting and detaining the Applicant for the purposes of investigating the allegations against him did not violate his fundamental rights but was in tandem with their powers of investigation of crimes pursuant to **section 4 of the Police Act**. As I mentioned earlier, the right to personal liberty under **Section 35 of the 1999 Constitution** is not absolute.

Furthermore, in respect of the 1st Respondent, it is settled law that every citizen has a right or even a duty to report to the Police anyone suspected of committing a crime and the Police have a corresponding duty to investigate the report in the course of their statutory function of prevention, detection of crimes and generally preservation of law and order. In the case of **Fajemirokun vs Commercial Bank (Credit Lyonnais) Nigeria Limited (2009) 5 NWLR (Pt. 1135) 558**, the Supreme Court held thus:

"Generally, it is the duty of citizens of this country to report cases of commission of crime to the Police for their investigation and what happens after such report is entirely the responsibility of the Police. The citizen cannot be held culpable for doing their duty unless it is shown that it is done mala fide." See also the cases of: **ONAH VS OKENWA (2010) 7 NWLR (PT. 1194) 512; and MADUKA V. UBAH & ORS (2014) LPELR-23966(CA) (PP. 35-36 PARAS. B).**

In the event, the 1st Respondent is not liable for the breach of the Applicant's fundamental rights.

On the whole, the sole issue for determination is resolved in favour of the Respondents and this application is dismissed. I make no order as to costs.

**P.A.AKHIHIRO
JUDGE
30/03/202**

COUNSEL:

G.M. UMOLU ESQ.....APPLICANT

MRS D.O. OWOLABI.....1ST RESPONDENT

I.E. EKIBADE ESQ.....2ND – 5TH RESPONDENTS