

IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

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

**ON MONDAY THE
15TH DAY OF JANUARY, 2024.**

BETWEEN:

SUIT NO: B/78^M/2023

- | | |
|--|---|
| <ol style="list-style-type: none">1. MR. EHIDIAMWEN ODIJIE2. MR. NAPOLEON AMADI3. MARCAULEY OBAZEE4. ULUOMO OMOGIATE OSAGIE5. BLESSING OSAGIE
(FOR THEMSELVES AND ON BEHALF OF
OTHER MEMBERS OF NATIONAL BUTCHERS
UNION OF NIGERIA)6. NATIONAL BUTCHERS UNION OF NIGERIA,
EDO STATE CHAPTER | <div style="font-size: 4em;">}</div> <div>APPLICANTS</div> |
|--|---|

AND

- | | |
|--|--|
| <ol style="list-style-type: none">1. THE ASSISTANT INSPECTOR GENERAL OF
POLICE, ZONE 5 BENIN CITY2. DSP AGESE FESTUS3. ASP SHERRY OMALE4. MR. AKHERE ODIJIE5. EDO PRACTICING BUTCHERS UNION6. THE COMMISSIONER OF POLICE EDO STATE
POLICE COMMAND | <div style="font-size: 4em;">}</div> <div>RESPONDENTS</div> |
|--|--|

RULING

The Applicants instituted this action by an application for the enforcement of their fundamental rights wherein they are seeking the following reliefs:

- 1) ***A Declaration that the Applicants have the Constitutional Rights to freely associate as Members of the National Butchers Union of Nigeria, Edo State Chapter without molestation by the 4th Respondent and his Agents;***
- 2) ***A Declaration that the 4th Respondent, whether by himself, Agents, Privies and Associates cannot impose levies on the Applicants and force the Applicants to belong to his Association Called Edo State Practicing Butchers;***

- 3) *An Order of this Honourable Court Perpetually Restraining the 4th Respondent whether by himself, Agents, Privies, howsoever called or described from Collecting Levies from the Applicants and other Members of the National Butchers Union of Edo State Chapter under the guise of Edo State Practicing Butchers or whatever name;*
- 4) *A Declaration that the Continuous Arrest and threats to Arrest the Respondents by the 1st 2nd and 3rd Respondents and their Officials on matters already being investigated by the 6th Respondent and its officials is Oppressive and an abuse of Powers;*
- 5) *AN Order Perpetually RESTRAINING 1st 2nd and 3rd Respondents and their officials from further arresting the Applicants on matters connected to regulation of Slaughter Houses at the instigation of the 4th Respondent and same also being investigated by the 6th Respondent;*
- 6) *An order MANDATING the 1st 2nd and 3rd Respondents to Return the sum of N40, 000,00 (Forty Thousand Naira) only paid by the 2nd Applicant and N24,00,00 (Twenty Four Thousand Naira) only paid by the 5th Applicant for their Bail;*
- 7) *AN ORDER PEPETUALLY Restraining the 4th Respondent whether by himself or Agents from Molesting and Disturbing/Disrupting the Livestock Slaughtering Businesses of the Applicants and Members of the 6th Applicant in any Government/ Public Abattoirs in Edo State;*
- 8) *AN ORDER Mandating the 6th Respondent to Furnish the Applicants save the 6th Applicant Copies of their extra judicial statements made under caution on the 14/3/2023, and all other documents relating to the Complaint made to the 6th Respondent by the 4th Respondent;*
- 9) *The sum of N50, 000,000 (Fifty Million Naira) Only Damages against the Respondents save the 5th Respondent for the Violation of the Applicants Fundamental Rights;*
- 10) *An Order Mandating the Respondents save the 6th Respondent to Publicly Apologize to the Applicants for trampling on the Fundamental Rights of the Applicants, in two National Newspapers, to wit: The Nation Newspaper and the Vanguard Newspaper; and*
- 11) *For such Order or further Orders as this Honourable court may deem fit to make in the circumstance of this case.*

The application is supported by an affidavit of 25 paragraphs and the written address of the learned counsel for the Applicants.

From the facts contained in their supporting affidavit, the Applicant's complaint is that they are members of the National Butchers Union of Nigeria Edo State Chapter, which is a body registered under Part F of the Corporate Affairs Commission of Nigeria, The Registration Certificate dated 12th February 2014 was attached as Exhibit A to their supporting affidavit.

According to them, the 4th Respondent was a member of the National Butchers Union of Nigeria, Edo State Chapter, and by a letter dated the 1st day of August 2017, he was appointed the Care taker State Task Force Chairman, by the

National President of the National Butchers Union, Chief John Osamede Adun (JP), vide a letter which they attached as Exhibit B.

They alleged that upon the expiration of the tenure of the 4th Respondent as a Care taker Chairman, he and a few other members formed a new association, the Association of Edo Practicing Butchers (5th Respondent) and began to exploit the Applicants and their Members by forcefully collecting levies, seizing livestock, assaulting and disrupting the business activities of the Applicants, which necessitated a suit which they filed against them, pending at High Court No. 5 of Edo State.

They alleged that by an order of the Court in the aforesaid suit, the 4th, 5th Respondents and the Applicants were restrained from disrupting each other's activities. They attached the said Order of Court as Exhibit C.

They alleged that the 4th Respondent acted in breach of Exhibit C by beating up some members of the National Butchers Union of Nigeria, Edo State Chapter, including the 1st Applicant whose head was wounded with a broken bottle by the 4th Respondent because he refused to pay levies and taxes imposed by the 4th and 5th Respondents. The digital photographs showing the injured/broken head of the 1st Applicant as well as the affidavit of Compliance were attached as Exhibit D.

Furthermore, they alleged that the 4th Respondent and his thugs have on several occasions, forcefully closed the slaughter houses and seized the cattle livestock of the Applicants in the Edo State Government Abattoir, at Ikpoba Slope in Benin City.

According to them, in a bid to intimidate the Applicants and force them to pay unauthorised levies, the 4th Respondent molested the 5th Applicant, seized her cow and prevented her from doing her lawful business in the Government Abattoir in Ikpoba Slope. That consequently, the 5th Applicant made a Criminal Complaint against the 4th Respondent to the Edo State Police Command.

That when the police invited the 4th Respondent for questioning he refused to honour their invitation but he lodged a complaint against the Applicants in the office of the 1st Respondent against the Applicants on an allegation he had previously made to the 6th Respondent that led to the arrest of the 1st to 4th Applicants by the 6th Respondent.

They said that the allegations levelled against the 1st to 4th Applicants for which they were arrested by the 6th Respondents are the same with the allegations the 2nd Applicant was arrested for by the 2nd and 3rd Respondents on the instruction of the 1st Respondent, whilst instigated by the 4th Respondent.

According to them, the 4th Respondent upon discovering that the 1st to 4th Applicants were granted bail by the 6th Respondent on the 14th day of March 2023, decided to instigate the office of the 1st to 3rd Respondents to arrest the 2nd Applicant at his place of Business on the 28th of March 2023. That he was only released on bail after they forcefully collected the sum of Forty Thousand Naira cash from him.

That immediately the 2nd Applicant was granted bail by the 1st, 2nd and 3rd Respondents, he was given a letter of invitation dated the same 28th day of March 2023, to attend the office of the 1st Respondent on the 5th day of April 2023. The letter of invitation was attached as Exhibit F.

That on the 4th of April, 2023 the officials of the 1st and 2nd Respondents led by the 3rd Respondent arrested the 5th Applicant, detained her in the cell of the 1st Respondent and later released her on bail after she was forced to pay the sum of Twenty Four thousand Naira only.

They alleged that even though the Applicants have protested to the 1st Respondent that the case under investigation is still pending before the 6th Respondent, the 1st to 3rd Respondents are still threatening to arrest the Applicants unless they recognise and pay levies to the 4th Respondent. They maintain that the Respondents are threatening the Applicants over a matter which is pending before the High Court No. 5 in Benin City. That it will be in the interest of justice to prevent the 1st to 3rd Respondents from investigating and further arresting the Applicants over the same allegations which are being investigated by the 6th Respondent.

In opposition to this application, the the 1st, 2nd, 3rd and 6th Respondents filed a joint counter affidavit. In their counter affidavit, they alleged that the police are saddled with the responsibility of investigating any allegation of commission of crime made by any person and to ensure peace and security in the society.

According to them, on the 15th of March, 2023, a case of conspiracy, threatening violence to life and conduct likely to cause breach of public peace was reported in the office of the Assistant Inspector General of Police (AIG), Zone '5' Benin City through a petition dated 14/03/2023 and written by the 4th respondent. The petition was annexed as Exhibit AA1 to their counter affidavit.

They alleged that after a preliminary investigation into the petition and the allegations contained therein, they invited the Applicants for questioning in order to prevent the alleged complaint from degenerating into some serious security issues.

They said that the 2nd Applicant honoured the invitation and he made a statement after which he was immediately released on bail without any formal detention. They attached the statement and bail bond as Exhibits AA2 and AA3 respectively.

According to them, after listening to the 2nd Applicant and considering the nature of the case, they advised the 2nd Applicant to come along with others on the next appointed date so that all parties concerned can be heard to enable them arrive at a just conclusion of their investigation. They attached the invitation letter given to the 2nd Applicant as Exhibit AA4.

They alleged that on the appointed date, only the 5th Applicant reported and she made a statement and was released on bail without any formal detention. Her statement and her bail bond were attached as Exhibits AA5 and AA6 respectively.

They alleged that while they were waiting for the other Applicants to report to their office, they filed this suit to frustrate the police investigation. They denied breaching the rights of the Applicants in any form. They maintained that the case which they are investigating is a serious criminal matter which if not properly handled, may degenerate into serious security issues.

In opposition to this application, the 4th Respondent filed a counter-affidavit to explain his own side, According to him, he is the Chairman of the 5th Respondent, a body duly registered in Nigeria and recognized by Edo State Government to manage and control the activities of abattoir and butchers in Edo State. He attached a copy of the Certificate of Incorporation of the 5th Respondent as Exhibit A and the Letter of Recognition given to them by Edo State Government as Exhibit B to his counter-affidavit.

He said that the 2nd, 3rd, 4th, 5th Applicants and himself were members of the 6th Applicant and that there is a dispute between the members of the 6th Applicant and the members of the 5th Respondent which resulted in the pending suit (B/332/2022) at the High Court 5, Benin City, Edo State.

He alleged that he withdrew his membership from the 6th Applicant due to the behavior and attitude of the president of the 6th Applicant (Chief John Osamede Adun) who was acting contrary to the Constitution of the 6th Applicant. He attached a copy of their Notice of Withdrawal as Exhibit C to his counter-affidavit.

He maintained that the members of the 5th Respondent are law abiding citizens who will continue to obey and respect the Applicants' Exhibit C.

He said that while the members of the 5th Respondent including himself are carrying out their functions and duties within the confines of the law and in accordance with the aims and objectives of the 5th Respondent's Constitution, the members of the 6th Applicants are obstructing and preventing them from carrying out their lawful duties/functions.

He alleged that on the 19th day of October, 2022, the Applicants brought policemen from the Force Headquarters (Abuja) and arrested/detained the members of the 5th Respondent who are parties in the pending suit at the High Court 5, Benin City and they were detained in the police cell for over one week.

He denied disobeying any court order but alleged that the Applicants did by arresting and detaining members of the 5th Respondent on the same facts pending in the suit which is pending at the High Court 5, Benin City. He attached a copy of their Solicitor's Letter dated the 20th day of October, 2022 to the Applicants' lawyer as Exhibit D.

He said that their lawyer also informed His Lordship in the Court about the ugly development and the attitude of the Applicants using the police at the Force Headquarters (Abuja) to arrest and harass members of the 5th Respondent over the issues pending in the High Court 5, Benin City. He denied ever assaulting any of the Applicants.

He also maintained that he did not seize or forcefully impose and collect levies from the 1st Applicant or any other person neither did he seize anybody's livestock.

He said that he only reported the criminal acts of certain persons who threatened to kill him and blocked his business premises to prevent customers from doing business with him.

He alleged that the present suit is the same with the pending suit (B/332/2022) at the High Court 5, Benin City, Edo State and the Notice of Consequences of Disobedience to Court Order (Form 48) filed by the Applicants and that it amounts to an abuse of court's process. He attached a copy of the Writ of Summons, the Joint Statement of Claim and Form 48 as Exhibits E, F, and G respectively to his counter-affidavit.

Upon receipt of the counter-affidavit of the 1st, 2nd, 3rd, and 6th Respondents, the Applicants filed a Further Affidavit in response.

In their Further Affidavit, the Applicants alleged that the Petition annexed to the 1st, 2nd, 3rd and 6th Respondents Counter-Affidavit is on all fours with the Petition that formed the basis for the arrest and detention of some of the Applicants by the 6th Respondent's officials.

They alleged that the Petition referred to as Exhibit AA1 written by the 4th Respondent gave clear directives for the arrest of the 1st to 5th Applicants, and that the 1st to 3rd Respondents did not use their discretion to investigate the allegations before making the arrests.

Furthermore, they stated that as at the time this Fundamental Right suit was filed, there was no human being acting in the capacity of the 1st Respondent as the then A.I.G Zone 5, Tanko Jimeta was deceased.

All the learned counsel representing the parties filed their written addresses which they adopted as their arguments in support of their respective cases.

In his written address, the learned counsel for the Applicants, **A.O. Osagie Esq.** formulated a sole issue for determination as follows:

“Whether or Not the Applicants Fundamental Rights have been breached for them to be entitled to the Reliefs Sought in their Statement in Support of The Fundamental Right Application?”

Arguing the sole issue, the learned counsel posited that the Applicants in paragraphs 3, 5, 6, 7, and 23 have alluded to the fact, that they are members of the 6th Applicant, but that the 4th Respondent engaged in some acts to undermine their right to association.

He submitted that by the Provisions of ***Section 40 of the Constitution of Nigeria, 1999 (as amended), and Article XVIII of the Universal Declaration of Human Rights and Article X (1) and XI of the African Charter of Human and People's Right LFN 2004***, the Applicants have the Right to associate and belong to any legitimate organisation of their choice and the attempt by the 4th Respondent and his thugs to force and intimidate the Applicants to be members of the 5th

Respondent is unlawful and unconstitutional. He also relied on the cases of **ELESIE AGBAI & ORS V. SAMUEL OKUGBUE (1991) LPELR 225 (SC)**, **MBANEFO V MOLOKWU (2014) LPELR 2225**; and **COMFORT ALI . V. SENATOR PATRICK OSAKWE (2010) LPELR 3743 (CA)**.

Counsel submitted that , the 4th and 5th Respondents do not have the powers to forcefully demand levies from the Applicants, and that by paragraphs 5, 6, 7, and 23 of the affidavit in support of this application the Respondents' acts are reprehensible.

Again, he submitted that the 1st to 3rd Respondents and their officials abused their powers as Public officers, when they were fully aware that the 4th Respondent had already made the same complaints to the 6th Respondent who had arrested the 1st 2nd, 3rd and 4th Applicants, previously and taken their statement. He referred the Court to paragraphs 11, 12, 13, 14, 15, and 17 of the Affidavit in Support in this Application.

Counsel submitted that it is settled law that the Nigeria Police Force is one and he referred to the case of **FIICHARLES ORGAN & ORS V NIGERIAN LIQUEFIED NATURAL GAS LTD (2013) LPELR 20942 SC**, and **NUFORO V THE STATE (2015) LPELR 25994, (CA)** where the Court held thus: “...*There is one Nigeria Police, whether at Divisional level , State, Zonal or Force Headquarters Commands, and investigation done at one level should be taken as the act of the Police as a whole...*”

He also referred to the decision of the Supreme Court in the case of **DIAMOND BANK PLC V H.R.H EZE PETER OPARA& ORS (2018) LPELR 43907 SC** where they held that it was an abuse for a security agency to be investigating matters already being investigated by another security agency.

He contended that the prayer of the Applicants is not meant to stop police investigation but to prevent the 1st, 2nd and 3rd Respondents and their officials from arresting and detaining them on matters already being investigated by the 6th Respondent.

He said that the 1st, 2nd and 3rd Respondents having arrested and exploited the 2nd and 5th Applicants in the past and collected monies from them for bail, cannot reasonably go on with a discreet and impartial investigation most especially when the 4th Respondent has resorted to using the office of the 1st 2nd and 3rd Respondents as his most convenient forum to harass the Applicants with impunity, and to hide under and disobey an order of Court referred to as Exhibit C in the affidavit in support of this application.

In relation to the act of collecting money for bail, as alluded to in paragraphs 14 and 16 of the affidavit in support, he said that apart from being a breach of the Applicants Fundamental Right, he posited that it is also unlawful and he relied on the case of **NDA & ORS V OBOT & ORS (2009-10) CHR 190 AT 207**.

Learned counsel submitted that by the authorities of **section 46 of the Constitution of Nigeria 1999 (as amended)** and the cases of **ENWERE V COP (1993) 6 NWLR (PT 229) 333** and **ANOGWIE & ORS V ODOM (2016)**

LPELR 40214 CA, this Honourable Court is empowered to prevent the 1st to 5th Respondents from further illegal and unconstitutional detention.

Finally, he cited the case of ***JIM JAJA V COP RIVERS STATE (2012) NSCQLR VL 52 PT 2, PAGE 337 AT PAGES 353***, and urged the Court to hold that an Applicant whose Fundamental Rights have been breached is entitled to public apologies and compensation.

In his written address, the learned counsel for the 1st, 2nd, 3rd and 6th Respondents, ***Y. Musa Esq.*** formulated five issues for determination as follows:

- (1) Whether the applicant's fundamental rights to personal liberty freedom of movement, dignity of human person, arbitrary arrest, detention, fair hearing as guarantee by section 34,35,36,37 and 46(1) of the 1999 constitution of the Federal Government of Nigeria and Articles 3, 5 and 12(10) of the African Charter on Human and people's Right (Ratification and Enforcement Act Cap 10 Laws of Federation of Nigeria 1990 has been breached or violated by the 1st, 2nd, 3rd and 6th Respondents as alleged;***
- (2) Whether any person(s) accused of a felony can hide under fundamental right to shield him from investigation;***
- (3) Whether or not Police can investigate the allegation of crime against the applicant;***
- (4) Whether the applicant is entitled to the relief's sought; and***
- (5) Whether the 1st respondent is a juristic person known to law and whether this suit is competent considering the joining of the 1st respondent and the multiple applicants on the suit.***

Thereafter, the learned counsel argued the five issues seriatim.

ISSUE 1:

Arguing his first issue, the learned counsel posited that the invitation of the Applicants to answer some questions in respect of the petition of conspiracy, threatening violence to life and conduct likely to cause a breach of public peace against the Applicants was not unlawful and that the Applicants' rights were not violated in any way, going by facts and the circumstances leading to this case.

He submitted further that the 1st, 2nd, 3rd and 6th Respondents are enjoined under section 4 of the Police Act and section 18, 50 and 51 of the Administration of Criminal Justice Act, 2015 to without an order from a magistrate or a warrant to arrest any person whom he reasonably suspected to have committed an indictable offence.

He submitted that the facts of this case are as averred in paragraphs 5 to 16 of the 1st, 2nd, 3rd and 6th respondents' joint counter affidavit. That by Section 35 of the 1999 constitution (as amended) under which the Applicant have come, no citizen shall be deprived of his personal liberty. However, he said that by ***section 35 (1) (c) of the same constitution*** the right of a citizen can be impaired or curtailed upon reasonable suspicion that he has committed a criminal offence. He said that by paragraphs 7 to 16 of the 1st, 2nd, 3rd and 6th Respondents' joint counter affidavit, the 1st, 2nd, 3rd and 6th respondents averred that the Applicants

have a case to answer for the offences of conspiracy, threatening violence to life and conduct likely to cause a breach of the peace as contained in Exhibits AA1 of the 1st, 2nd, 3rd and 6th Respondents' joint counter affidavit. He said that these are offences known to Law and the Police have the power to investigate but the Applicant is trying to use the court to shield themselves from been investigated.

He further submitted that no citizen's right is absolute, that the constitution that guarantees the rights also provided for circumstance under which the rights can be curtailed and he referred to *section 35(1) (c) of the 1999 constitution (as amended)* and the case of *Emeka Ekwenugo vs. FRN (2001) NWLR Pt 708 page 171 at 177 paragraph 14*.

Also he submitted that by *section 4 of the Police Act*, the Police have a statutory duty to arrest and detain any person who is reasonably suspected to have committed an offence for the purpose of investigation and in so doing, they exercise a discretion. He referred to the cases of *Fawehinmi vs. IGP (2002) vol.98, Laws Report of court of Nigeria LRCN pg 1165 A-P 1187 EE-OO; and Fajemirokun vs. C.B (CL) Nigeria Ltd (2002) 10 NWLR Pt 774 pg 95 at 100 paragraph 1169 Ratio 5*).

He submitted that the Applicants in their affidavit gave a totally different version of what transpired and a clear case that the Applicants have come to lie to this court with the intention to mislead this Honourable court.

He urged the Court to believe the account as given by the 1st, 2nd, 3rd and 6th Respondents and disbelieve the Applicants' account.

He submitted that in view of the foregoing, the Applicant's right under sections 34, 35, 37 and 46(1) of the constitution of the Federal Republic of Nigeria 1999 and Articles 4,5, and 6 of the African Charter on Human and People's Right (Ratification and Enforcement Act Cap 10 Laws) Laws of the Federation of Nigeria 1990 have not been violated and the invitation of the Applicants to react to the allegation against them is not unlawful or unconstitutional as alleged.

ISSUE 2:

WHETHER ANY PERSON ACCUSED OF A FELONY CAN HIDE UNDER FUNDAMENTAL RIGHT.

He submitted that fundamental rights are not a canopy for any person who is reasonably suspected to have committed an offence to hide and he referred to the case of *Dokubo-Asari Vs. F.R.N (2007) Vol. 152 LRCN pg 116 at pg 150 paragraph F-K*).

He submitted further that if the Court grants this application, it will defeat the aims of justice because whoever commits an offence will run for cover under fundamental human rights action. He therefore urged the Court not to grant the relief sought by the Applicants, especially when the Applicants were only invited to react to the petition against them and others, the said invitation which many of them failed to honour and the two that honoured the invitation were immediately released to go without any formal detention, therefore granting this application

may encourage members of the society to resort to self-help, thereby taking the laws into their hands.

ISSUE 3:

WHETHER OR NOT POLICE CAN INVESTIGATE THE ALLEGATION OF CRIME AGAINST THE APPLICANTS?

He submitted that *section 50 (1) and (2) of Administration of Criminal Justice Act, 2015* empowered any police officer to interpose for the purpose of preventing the commission of any offence while *section 51* of same Act empowered every police officer on receiving such information to be relayed to the police officer to whom he is subordinate and to any other officer whose duty is to prevent or take cognizance of the commission of any such crime and the powers contained in *section 4 of the Police Act* and all other laws in that behalf.

Counsel referred to the case of ***CHIEF FAWEHIMI VS AKILU AND TOGUN (1987) 4 NWLR 797*** where the Supreme Court emphasized that a citizen has a personal and private right under the constitution to see to it that a crime is not committed and if committed to lay a criminal charge against the offender or the person whom he reasonably suspected to have committed the offence.

He submitted that the 1st, 2nd, 3rd and 6th Respondents are under an obligation to receive complaints and investigate any allegation of crime committed by *section 4 of Police Act*. He posited that by virtue of *section 315 of the Constitution of the Federal Republic of Nigeria 1999* (as amended), the Police Act forms part of the constitution as an existing law. That allegation of criminal charge of conspiracy, threatening violence to life and conduct likely to cause breach of peace of this magnitude against the Applicants are offences for which the police have the power to investigate and prosecute.

He reiterated that for a person to go to court to be shielded against investigation amounts to interference of powers given by the constitution to law officers in the control of criminal investigation. He maintained that the Applicants have no legally recognizable rights to which the court can come to their aid because they cannot expect a judicial fiat preventing law officers from exercising their constitutional powers. See the case of ***AG ANAMBRA STATE VS UBA (2005) VOL.33 WRN PG 191 AT RATIO 5.***

He submitted that the allegations against the Applicants are serious criminal offences which the 1st, 2nd, 3rd and 6th Respondents have powers to investigate. He emphasised that the Police do not go out of their way to invite people except upon reasonable suspicion that a person has committed or is likely to commit a criminal offence. He said that the 1st, 2nd, 3rd and 6th Respondents only performed their statutory duties. He relied on the case of ***FAWEHIMI VS IGP (2007) 7 NWLR part 767 at 606.***

ISSUE FOUR:

WHETHER THE APPLICANTS ARE ENTITLED TO THE RELIEF'S SOUGHT?

He submitted that unless the Applicants are arrested and detained beyond constitutional provision, the action of the 1st, 2nd, 3rd and 6th Respondents cannot be said to be unlawful or unconstitutional, so the Applicants are not entitled to the reliefs sought. He referred to ***section 35 (1)(c) of the 1999 Constitution (as amended)*** and pointed out that most of the Applicants were only invited. That the same lawful invitation which they failed to honour cannot be said to be breach of their right.

He submitted that the application lacks merit and should be refused. That Exhibit 'AA1 of the 1st, 2nd, 3rd and 6th Respondents' joint counter affidavit alleged that a crime has been committed and it is the duty of the Police to investigate if such a crime was actually committed. Thus the 1st, 2nd, 3rd and 6th Respondents cannot be held liable while carrying out their lawful/civic duty in a lawful manner and within the confines of the law.

ISSUE 5:

He submitted that the Court should discountenance this application in view of the fact that the 1st Respondent is not a juristic person known to law. He posited that the officers of the Nigeria police force that are known to law that can sue and be sued in their respective names are the Inspector General of Police and Commissioners of Police in charge of respective states, every other officers sued as Assistant Inspector General of Police as shown in the instant case are not known to any statutes as the offices were only created for administrative convenience, hence he cannot sue and be sued. He relied on the cases of ***COP Ondo State Vs. Obolo (1989) 5 NWLR (Pt 120)130 at 132 R 6; Nkpormwi Vs. Ejire (2009) 9 NWLR (Pt 1145)131 at 145; and Section 251 (1) A and B of 1999 Constitution of FRN (as amended).***

Furthermore, he urged the Court to discountenance this application in view of the multiple applicants on the face of the motion paper as fundamental rights are personal and not collective rights.

Finally, he urged the Court to dismiss the application.

In his written address, the learned counsel for the 4th Respondent, ***O.G. Odaze Esq.*** formulated a sole issue for determination as follows:

“Whether or not the Applicants' originating motion on notice is competent to be entitled to the reliefs sought in view of the circumstances of this case?”

Arguing the sole issue for determination, learned counsel submitted that this originating motion on notice is grossly incompetent thereby affecting the jurisdiction of this honourable court to hear and determine this case. He said that Black's Law dictionary defined jurisdiction as the power of the court to decide a matter in controversy and proposes the existence of a duly constituted court with control over the subject matter and the parties.

He also referred to some cases on the point such as ***AG ANAMBRA v .AGF (1993)7 SCNJ AT 249; OBETA V.OKPE (1996) 9 NWLR (PT.473);and LAWANI v. SHETTIMA (2001)11NWLR (pt. 723) at 168, particularly at 173 and 174.***

Counsel posited that this application amounts to an abuse of judicial process in view of the suit No: B/332/2022 pending at the High Court 5, Benin City, Edo State between the same parties, the same subject matter and the same reliefs. He said that an abuse of Court process occurs where a claimant institutes multiple actions on the same subject matter against the same opponent on the same issues. He said that the abuse lies in the multiplicity and manner of the exercise of the right than the exercise of the right per se.

He said that in the instant case, the subject matter, the parties and the issues in the Applicants' earlier suit and the present suit are the same. He said that the employment of judicial process is regarded as an abuse when a party improperly uses the issue of judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. He relied on the case of **BUKOYE V.MAGAJI (2017) ALL FWLR (PT. 877) at page 338 RATIO 4-5.**

He submitted that an abuse of court is not a mere irregularity but constitutes a fundamental defect, the effect of which will lead to a dismissal of the process which is abusive. Issues of abuse of court process have been identified as an issue of jurisdiction, hence, the court reserves the prerogative and inherent jurisdiction to undo what has been done by a party in abuse of court process. We rely on FRN V. NWOSU (2017) ALL FWLR (pt. 883) pg 1505 Ratio 16. In SARAKI v. KOTOYE (1992)9 NWLR (PT.264) 156, the Supreme Court seems to have set out 5 situations which give rise to abuse of court process:

- I. Instituting a multiplicity of action on the same subject matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action;***
- II. Instituting different actions between the same parties simultaneously in different courts even though on different grounds;***
- III. Where two similar processes are used in respect of exercise of the same right;***
- IV. Where an application for an adjournment is sought by a party to an action to bring an application to court for leave to raise issues of facts already decided by lower courts; and***
- V. Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness.***

Furthermore, counsel posited that where a procedure for initiating a legal process is laid down it must be followed strictly and any legal process instituted without complying with such law is incompetent and same shall be dismissed by the court. He said that in the instant case, the Applicants failed woefully to comply with **Section 46(1) and (2) of the 1999 Constitution** as Amended. That from the wordings of the section, only a person whose fundamental rights has been abridged or infringed upon may apply to the enforcement of his or her fundamental rights.

He submitted that Fundamental Rights are personal to every individual and it is improper for two or more persons to file one application for the purpose of securing the enforcement of their fundamental rights in one application. He referred to the case of ***R.T.F.T.C.I.N v. IKWECHEIGH (2000)1 WRN 124 at 140***, where the court held that if an individual feels that his fundamental or human rights has been violated, he should take out action personally for alleged infraction as rights differ in content and degree from the complaints of the other. He maintained that it is a misjoinder of action and incompetent for all the Applicants to file a single application. He also relied on ***Section 115 of the Evidence Act, 2011***.

Again he submitted that for an action to be properly brought under Fundamental Rights Enforcement (Procedure Rules) 2009, the claims must show an infringement of core fundamental rights and the main claim in an action must be within the jurisdiction of the court in order for the court to properly assume jurisdiction over the matter. He said that a court cannot adjudicate over the ancillary claims if it has no jurisdiction to entertain the main claim and if the ancillary claim will inevitably involve a discussion of the main claim. He relied on the following decisions on the point: ***TUKUR v. GOVERNMENT OF GONGOLA STATE (1988) 1 NWLR (PT.68) 39; ABUJA ELECTRICITY DISTRIBUTION COMPANY PLC AND ORS v. AKALIRO AND ORS 2021 LPELR 54212(CA)***.

Finally, he urged the Court to dismiss the application.

Upon receipt of the Counter-Affidavit and the written address of the 1st, 2nd, 3rd and 6th Respondents Counter-Affidavit, the Applicants filed a Further Affidavit and a further written address. In his further written address, the learned counsel formulated the following issues for determination:

- a. Whether the 1st, 2nd, 3rd and 6th Respondents and their Officials have acted in good faith in the discharge of their constitutional duties;***
- b. Whether the 1st Respondent can be sued and sue and whether this suit is competent; and***
- c. Whether this suit seeks to prevent Police investigation and arrest or rather the prevention of Abuse of power by the Police.***

Arguing the first issue for determination, learned counsel submitted that the 1st, 2nd, and 3rd Respondents have not acted in good faith. He said that they were aware of the fact that the 6th Respondent and her officials were investigating and had arrested and granted the 1st, 2nd, 3rd, 4th and 5th Applicants bail on the same allegations reported against them by the 4th Respondent, yet they went ahead to abuse the fundamental Rights of the Applicants.

He submitted that the Police Power to investigate and arrest should and cannot be taken to a ridiculous extent and he posited that ***Section 4 of the Police Act*** is not superior to the provisions of the Constitution and he relied on the cases of ***IGPV.IFEANYI UBAH(2014)LPELR-23968(CA)*** and ***OHANEDUM & ANOR V.C.O.P IMO STATE & ORS (2015) LPELR-24318(CA)***.

He submitted that the 1st, 2nd and 3rd Respondents willfully failed to take caution and maintain some discretion before violating the rights of the Applicants on the basis of a forum-shopper in the person of the 4th Respondent.

On issue number two he submitted that the 1st Respondent is a juristic person that can sue and be sued. He said that the 1st Respondent is a creation of Statute, particularly *part IV Section 11(1) (2) a of the Police Act 2020*. He submitted that the powers given to the 1st Respondent by the Police Act 2020 are quite enormous.

He submitted that the law was well stated in the cases of *PHCN PLC 7 ANOR V. AG SOKOTO STATE & ANOR (2014) LPELR-23825(CA)*, *CARLEN (NIG) LTD V. UNIJOS (1994) 5NWLR (PT 323) 631* and *ABIA STATE UNIVERSITY V. ANYAIBE (1996) 3 NWLR (Pt. 439) 646 at 662*, that when a Legislature has created a thing that can own property and which can employ servants and which can inflict injuries done by its authority, then that thing so established is a Juristic Person. He therefore submitted that the 1st Respondent by reason of being a Statutory Creation, with powers to cause injury is therefore a Juristic Person.

However, he submitted that assuming but not conceding that the 1st Respondent is not a Juristic Person, the proper order to make is to strike out the name of the 1st Respondent and his absence in the Suit is not fatal to the existence and determination of this suit and he relied on the case of *AKPAN & ORS V. UMOREN & ORS (2012) LPELR 7909(CA)*.

On the third issue, counsel submitted that the Applicants in their Statement in support of this Fundamental Right Suit are not praying the Court to prevent the Police from investigating and making an arrest but to prevent the 1st, 2nd and 3rd Respondents from arresting and threats to arrest the Applicants on matters connected with the Butchers Union activities and matters already under investigation by the 6th Respondent. He therefore urged the Court to grant the reliefs of the Applicants.

Upon receipt of the counter-affidavit of the 4th Respondent, the Applicants also filed a Joint Further Affidavit and a written address.

In his written address, the learned counsel for the Applicants submitted that the 4th Respondent's objection that this suit is an abuse of Court process is a jurisdictional issue which was not properly raised by the 4th Respondent in accordance with the provisions of Order 8 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009, which provides thus:

"The Respondent's Notice of Preliminary objection must be filed with the Counter- Affidavit to the main application"

He referred to the case of *CHIMA ATHANISIUS V. EWA & ORS (2015) LPELR-40589 (CA)* and *EFCC V. BAYO DADA (2014) LPELR 24256(CA)* and submitted that compliance with the Fundamental Rights (Enforcement Procedure) Rules is strict and failure to so comply is fatal. He therefore urged the Court to discountenance the issues raised by the 4th Respondent on the ground that this

suit is an abuse of Court process and is incompetent by reason of the fact that it was jointly filed.

Again, he submitted that this Fundamental Right suit is not an abuse of Court process and that the elements that constitute an abuse of court process are not present in this suit.

First, he maintained that this suit as presently constituted is different in parties and reliefs from the suit referred to as Exhibit “E” in the 4th Respondent's Counter-Affidavit.

He submitted that to constitute an abuse of Court process, there are certain inherent features that must be clearly present as posited in the case of ***APC V.PDP 70RS (2023) VL 9 W.R.N pg. 36 at pg. 72 Para 15-45.***

He emphasised that the parties in this Suit are not the same as the parties in suit B/332/2022 (Exhibit E), the reliefs sought are not the same and the rights sought are not the same, so also is the subject matter not the same.

He further submitted that the reliefs sought in Suit B/332/2022 are not all reliefs entrenched in Chapter 1V of the Constitution of Nigeria 1999(as amended),but the reliefs sought in this Suit are all under Chapter 1V of the Constitution of Nigeria 1999 (as amended).

Furthermore, learned counsel submitted that a Fundamental Rights Enforcement Suit is Sui Generis and when there are no multiple fundamental Rights Suits of same parties, subject matter and reliefs the issue of abuse of court process does not arise. On the special nature of fundamental rights applications, he relied on the cases of ***CHIEF FRANCIS IGWE & ORS V.MR.GODDY EZEANOCHIE 7ORS (2009) LPELR-11885(CA); NURSING AND MIDWIFERY COUNCIL OF NIGERIA V. BOSE ADESINA (2006) LPELR 40610 (CA); and JIM JAJA V. C.O.P RIVERS STATE (2012) LPELR-20621(SC).***

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 Applicants are entitled to the Reliefs claimed in this Application for the breach of their fundamental rights.***

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

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

Essentially, the gravamen of the Applicants' complaint is that they have their constitutional rights to freely associate as members of the National Butchers Union of Nigeria, Edo State Chapter and they are seeking the order of this Court to restrain the 4th Respondent and his agents or privies from collecting levies from the Applicants and other members under the guise of the newly formed Edo State Practicing Butchers Union. The sum of N50, 000,000 (Fifty Million Naira) Only Damages against the Respondents save the 5th Respondent for the violation of the Applicants Fundamental Rights.

The Applicants maintain that the arrest, detention, intimidation, extortion and threats to arrest the Applicants by the 1st 2nd and 3rd Respondents is a violation of their fundamental rights.

Before I resolve the sole issue for determination, there are some preliminary issues which were raised by both parties which I need to determine.

First is the salient challenge to this application on the ground that it is an abuse of court process.

In this suit the 4th Respondent is seriously contending that the present action is an abuse of the Court's process because it was instituted by the same Applicants who are involved in the suit pending before High Court No. 5, Benin City on the same subject matter.

The *Black's Law Dictionary Ninth Edition at page 11* defined the phrase "Abuse of process" as:-

"The improper and tortuous use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope."

Abuse of Court process means abuse of legal procedure or improper use of legal process. In considering whether an action constitutes an abuse of Court process, the Court is to critically consider the peculiar circumstances of each case in which the issue of abuse of Court is raised to determine whether the act of the party complained of constitutes an abuse of Court process. In arriving at what would constitute an abuse of Court's process, the law has laid down some principles guiding the consideration of whether the process constitutes abuse of Court or not and to sustain the claim of abuse of process, there must co-exist the ***multiplicity of suits between the same opponents; on the same subject matter; and on the same issue***. These preconditions are conjunctive.

In the case of *SARAKI VS. KOTOYE (1992) 9 NWLR (PT. 264) 156*, the Supreme Court expounded thus: ***"The multiplicity of action on the same subject matter between the same parties even where there exists a right to bring the action, is regarded as an abuse. The abuse lies in the multiplicity and manner of exercise of the right, rather than the exercise of the right per se...The abuse consists in the intention, purpose and aim of the person exercising the right to***

harass, irritate and annoy the adversary and interfere with the due administration of justice such as instituting different actions between the same parties simultaneously in different Courts, even though on different grounds". See also the following cases: *OYEYEMI & ORS. VS. OWOEYE & ANOR (2017) LPELR 42903 (SC)*; *CPC & ANOR. VS. OMBUGADU & ANOR. (2013) LPELR 21007 (SC)* and *NWOSU VS. P.D.P. & ORS. (2018) LPELR 44 386 (SC)*.

A Court is enjoined by law to examine each case predicated on its facts and circumstances in order to ascertain whether it has the elements of an abuse of Court process.

In paragraph 18 of the Counter-Affidavit of the 4th Respondent, the 4th Respondent stated thus:

“18. That the present suit is the same with the pending suit (B/332/2022) at the High Court 5, Benin City, Edo State and the Notice of Consequences of Disobedience to Court Order (Form 48) filed by the Applicants and it amounts to an abuse of court's process. Attached herewith is a copy of the Writ of Summons, the Joint Statement of Claim and Form 48 marked as Exhibit E, F, G respectively.”

Upon a careful examination of the relevant court processes which were referred to in the said paragraph 18, I observed that the said *Suit (B/332/2022)* which is pending before High Court No. 5 Benin City was instituted by ***Chief John Osamede Adun; Mr. Nosa Adun; and The Registered Trustees of National Butchers Union of Nigeria (Suing for themselves and other members of the National Butchers Union of Nigeria, Edo State Chapter) AND Akhere Odijie & 8 Others (Suing for themselves and on behalf of the Body known as Practicing Butchers of Edo State).***

In the aforesaid suit, the Claimants are seeking various reliefs on the rights of the Defendants and their agents to regulate the activities of the Claimants in their abattoirs; to collect levies from the Claimants; or forcing the Claimants to join the newly formed union of practicing butchers of Edo State.

In the said suit, the Claimants claims are predicated on the Fundamental Rights of the Claimants as enshrined in the 1999 Nigerian Constitution and they are seeking the protection of their fundamental rights as guaranteed by the Constitution which they alleged the Defendants are acting in breach of.

Incidentally, in the instant application, the action was instituted by ***Mr. Ehidiamwen Odijie and 3 others suing for themselves and on behalf of other members of the National Butchers Union of Nigeria, Edo State Chapter); and the National Butchers Union of Nigeria, Edo State Chapter AND The Assistant Inspector General Of Police , Zone 5 Benin City; DSP Agese Festus; ASP Sherry Omale ; Mr. Akhere Odijie; Edo Practicing Butchers Union; and Commissioner Of Police, Edo State Police Command.***

Upon a careful examination of the parties it is apparent that apart from the Law enforcement agents and agencies who are parties in the two actions, essentially the suit in High Court 5 and the present action are being litigated by

the members of the Edo State Chapter of the National Butchers Union of Nigeria and the breakaway faction who have constituted themselves into a new union of Edo Practicing Butchers. Thus, the parties in the two suits are the same.

Coming to the reliefs, it is evident that the reliefs in both suits are for the protection of the fundamental rights of the members of the two unions as guaranteed under the 1999 Nigerian Constitution. The difference in the two actions is that whereas the suit (No. B/332/2022) pending at High Court 5 was instituted by a Writ of Summons; the present suit was instituted by Originating Motion under the Fundamental Rights Enforcement (Procedure Rules) 2009.

It is settled law that a party who seeks to enforce his fundamental rights has discretion to seek his remedy by any means. Although the Fundamental Rights (Enforcement Procedure) Rules 2009 provides a procedure for the enforcement of breach of any of the fundamental rights of a citizen guaranteed under the provisions of Chapter IV of the Constitution, it is not the only means by which a person can commence an action for its enforcement. He may initiate an ordinary civil claim by a writ of summons as was done by the Claimants in suit which is pending before High Court No. 5 Benin City or he may come under the Fundamental Rights (Enforcement Procedure) Rules as was done by the Applicants in the present action. See the following decisions on the point: *Sofekun Vs Akinyemi* (1980) 5-7 SC 1; *Saude Vs Abdullahi* (1989) 4 NWLR (Pt 116) 387; *Onwo Vs Oko* (1996) 6 NWLR (Pt 456) 584; *National Union of Teachers & Ors Vs Conference of Secondary School Tutors of Nigeria & Ors* (2006) NWLR (Pt 97) 590; and *AbdulHamid Vs Akar* (2006) All FWLR (Pt 321) 1191.

Thus upon a careful examination of the court processes in the suit pending in Court No.5 and the instant case, I discovered that the present action was instituted *between the same opponents; on the same subject matter; and on the same issue.*

I will emphasise that on the authorities already cited in this judgment, *"the multiplicity of action on the same subject matter between the same parties even where there exists a right to bring the action, is regarded as an abuse. The abuse lies in the multiplicity and manner of exercise of the right, rather than the exercise of the right per se..."*. See the following cases: *OYEYEMI & ORS. VS. OWOEYE & ANOR* (2017) *supra*; *CPC & ANOR. VS. OMBUGADU & ANOR.* (2013) *supra* and *NWOSU VS. P.D.P. & ORS.* (2018) *supra*.

Furthermore, in the case of *ALI V. ALBISHIR* (2008) 3 NWLR (Pt.1073) *pg.94 at 141*, on what constitutes abuse of Court process, the Court of Appeal held as follows: *"Filing two suits between the same parties, on the same subject matter and where the end result of both suits was the same, even though the reliefs in the two suits were worded differently, would constitute abuse of Court process."*

Sequel to the foregoing, I hold that the present Application is not maintainable because it is an abuse of court process. It is settled law that in a case such as this where the abuse as to multiplicity of suits is such that judgment has

not been delivered in the other suit, such an abuse can be stemmed by simply striking out the present case.

Consequently, this Application is struck out with N100, 000.00 (One Hundred Thousand Naira) costs in favour of the Respondents.

P.A.AKHIHIERO
JUDGE
15/01/24

COUNSEL:
A.O. OSAGIE ESQ.....APPLICANTS.
Y.MUSA ESQ.....1ST, 2ND, 3RD & 6TH RESPONDENTS.
O.G. ODAZE ESQ.....4TH & 5TH RESPONDENTS.