

**IN THE HIGH COURT OF RIVERS STATE OF NIGERIA**  
**IN THE PORT HARCOURT JUDICIAL DIVISION**  
**HOLDEN AT PORT HARCOURT**  
**BEFORE HONOURABLE JUSTICE COMFORT I. ADANGOR**  
**SITTING ON MONDAY THE 14<sup>TH</sup> DAY OF JULY, 2025**  
**AT HIGH COURT 26, PORT HARCOURT.**

**SUIT NO: PHC/1968/FHR/2024**

**NOTICE OF AN APPLICATION FOR AN ORDER ENFORCING**  
**FUNDAMENTAL RIGHT (ORDER II RULE 1)**  
**IN THE MATTER OF BELEMA IYALLA FOR AN ORDER FOR THE**  
**ENFORCEMENT OF HIS FUNDAMENTAL RIGHT TO LIFE, LIBERTY AND**  
**DIGNITY OF HIS HUMAN PERSON**

AND

IN THE MATTER OF:

BELEMA IYALLA

}

APPLICANT

AND

1. POLICE SERVICE COMMISSION
2. THE COMMISSIONER OF POLICE,  
RIVERS STATE
3. MRS. GRACE UWUNWU,  
COMMANDER, COMMISSIONER OF POLICE  
MONITORING UNIT,  
OLD GRA, PORT HARCOURT.
4. INSPECTOR ADE
5. BARRISTER EKE ONYINYECHI GODSTIME  
(also known as Gift Godstime Eke)

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RESPONDENTS

**JUDGMENT**

By a Concurrent Originating Motion marked to be served out of Rivers State and at the Federal Capital Territory, Abuja dated the 3<sup>rd</sup> day of June, 2024 and filed on the 20<sup>th</sup> day of June, 2024, brought pursuant to Order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, Sections 33(1), 34 and 34 (A) and 35 (1) respectively of the 1999 Constitution of the Federal Republic of Nigeria (As amended) and Articles 1, 5, 6 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act CAP. A9 L.F.N. 2004, and under the inherent jurisdiction of this Honourable Court, the Applicant prays this Court for the following relief:

- i. AN ORDER for the enforcement of the Applicant's Fundamental Rights to life, personal liberty and dignity of his human person in terms of the reliefs sought in the statement in support of the application

**AND TAKE FURTHER NOTICE** that on the hearing of this application, the Applicant will rely on the affidavit in support of this application and all the exhibits attached.

In the Statement in support filed pursuant to Order II Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 also filed on 20<sup>th</sup> June, 2024, the Applicant seeks the following reliefs:

1. A DECLARATION that the beating and severe torture of the Applicant on the 10<sup>th</sup> of May, 2024 while been(sic) arrested alongside his sister Christine Alalii Iyalla and his subsequent detention in the police cell in his battered state with wounds all over his body even after been(sic) placed on an oxygen support throughout the night of the 10<sup>th</sup> of May, 2024 till the 11<sup>th</sup> of May, 2024 without any adequate medical care, at the office of the Commissioner of Police Monitoring Unit, Old GRA, Port Harcourt, Rivers State by the 1<sup>st</sup> to 4<sup>th</sup> Respondents at the instigation of the 5<sup>th</sup> Respondent is atrocious, wrongful, unlawful, unconstitutional and constitutes an infringement of the Applicant's fundamental right to life, personal liberty and right to personal dignity as enshrine in sections 33 (1) 34, 34 (A) and 35(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 1, 5, 6 and 12 (1) of the Africa Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.
2. A DECLARATION that the continuous harassment of the Applicant by the 2<sup>nd</sup> Respondent through her officers, the 2<sup>nd</sup>(sic) to 4<sup>th</sup> Respondents on the instigation of the 5<sup>th</sup> Respondent, over an alleged breach of the terms of a tenancy agreement by the Applicant's sister Christine Alali Iyalla is barbaric, inhuman, inhumane, unlawful, unconstitutional and constitutes a breach of the Applicant's fundamental rights to the dignity of his person and freedom from unlawful torture and degrading treatment guaranteed by section 34 (1)(a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Article 5 of the Africa Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004.
3. A DECLARATION that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are not empowered by the Nigeria Police Act, to enforce civil obligations on the Applicant in any tenancy agreement existing between the 5<sup>th</sup> Respondent and a third party or the Applicant's sister Christine Alali Iyalla.
4. AN ORDER of perpetual injunction restraining the 1<sup>st</sup> to 5<sup>th</sup> Respondents whether by themselves, their agents, privies, servants, hirelings or any person acting for or on their behalf from further infringement on or from further taking steps in whatsoever manner to infringe on the Applicant's fundamental right to life, personal liberty, freedom from unlawful torture and dignity of his person, as

guaranteed under sections 33 (1), 34, 34 (A) and 35(1) of the 1999 Constitution of the(sic) Nigeria (as amended) and articles 1, 5, 6, 12 (1) and 5 of the Africa Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004.

5. The sum of ₦100,000,000.00 (One Hundred Million Naira Only) as general, exemplary and punitive damage(sic) jointly and severally against the 1<sup>st</sup> to 4<sup>th</sup> Respondents.
6. The sum of ₦50, 000, 000.00 (Fifty Million Naira Only) as general, exemplary and punitive damage(sic) jointly and severally against the 5<sup>th</sup> Respondent in favor of the Applicant for the gross, and reckless violation of his right to life, liberty, freedom from unlawful torture and dignity of his person.
7. Ten percent post Judgment annual interest on the judgment sum(s) until same is liquidated.
8. And for such order or further orders as this Honourable Court may deem fit to make in the circumstances.

The Applicant also filed in support of his application an Affidavit setting out the facts consisting of thirty-three (33) paragraphs, five (5) exhibits marked, Exhibits, 1, A to D and the Written Address of the Applicant's Counsel, G. O. Tamuno, Esq.

Upon service of the Applicant's Originating process on all the Respondents, only the 5<sup>th</sup> Respondent filed a process in reaction. The 1<sup>st</sup> to 4<sup>th</sup> Respondents chose to stay away and filed no process, and never entered appearance in this case.

The 5<sup>th</sup> Respondent in reaction to the Applicant's suit, filed a Counter-Affidavit of thirty-four (34) paragraphs on the 26<sup>th</sup> of February, 2025 together with six (6) exhibits marked Exhibits OG1 to OG6 and the Written Address of her Counsel, V. C. Ubochi, Esq. The 5<sup>th</sup> Respondent also filed a Notice of Preliminary on the 5<sup>th</sup> of March, 2025 praying this Court to dismiss the Applicant's suit for constituting an abuse of Court process and for fraudulent service of the Originating process.

The Applicant upon being served with the 5<sup>th</sup> Respondent's processes filed a Further-Affidavit of 16 paragraphs and a Reply on Points of Law on the 16<sup>th</sup> of March, 2025.

On the 26<sup>th</sup> of May, 2025, when this matter came up for hearing, only the Applicant and the 5<sup>th</sup> Respondent were represented. The 1<sup>st</sup> to 4<sup>th</sup> Respondents, despite service on them did not file any process before this Court. This suit is therefore fought only between the Applicant and the 5<sup>th</sup> Respondent. However, as earlier highlighted in this Judgment, the 5<sup>th</sup> Respondent filed a Notice of Preliminary Objection. So, on the 26<sup>th</sup> of May, 2025, the Preliminary Objection was first argued before both parties adopted their respective processes in respect of the substantive suit.

In response to the Notice of Preliminary Objection filed by the 5<sup>th</sup> Respondent, the Applicant filed a Counter-Affidavit of 21 paragraphs and accompanying same is the Written Address of the Applicant's Counsel.

Upon service of the Applicant's Counter-Affidavit and Written Address on the 5<sup>th</sup> Respondent, Counsel to the 5<sup>th</sup> Respondent on the 9<sup>th</sup> of April, 2025 filed a Reply on Points of Law.

The facts relied upon in support of the Applicant's application are that the 1<sup>st</sup> Respondent is a statutory body and a Federal Government Agency, while the 2<sup>nd</sup> Respondent is in charge of the general command and all the operatives of the Nigeria Police Force in Rivers State. The Applicant stated that the 3<sup>rd</sup> Respondent is the Commander in charge of all the men and operations of the Commissioner of Police Monitoring Unit, Old GRA, Port Harcourt, Rivers State and the 4<sup>th</sup> Respondent is a Police officer in the Commissioner of Police Monitoring Unit, Old GRA, Port Harcourt, Rivers State, holding the rank of an inspector under the employment and command of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The Applicant stated that the 4<sup>th</sup> Respondent is the officer, who was in mufti and armed and led other persons also in mufti and armed to beat, torture and arrest him on 10<sup>th</sup> of May, 2024, which according to the Applicant is one of the facts leading to this application.

The Applicant further stated that the 5<sup>th</sup> Respondent is a Legal Practitioner and his sister's co-tenant at their residence at N0 10 Shehu Close, off Rumunduru-Eneka Road, Rumuosunwo Town, Eneka in Obio-Akpor LGA, Rivers State and that she was also the lawyer who prepared the tenancy agreement, which was signed by his sister, Christine Alali Iyalla and the owners of the property, Mr Rufus Ngozi Nwagbara and Mrs. Eke Rufus Roxanne Nnebihe and the period of the tenancy was from the 1<sup>st</sup> of December, 2023 and was to expire on the 30<sup>th</sup> of November, 2024. A copy of the tenancy agreement was attached as Exhibit 1. That he lives with his sister and that they have occupied the rented apartment peacefully till the morning of the 4<sup>th</sup> of May, 2024, when they woke up and discovered that someone had burgled their apartment and made away with 3 mobile phones consisting of his sister's iPhone 11, a Samsung galaxy A02 and another Samsung galaxy phone belonging to his sister's partner, who visited and passed the night in the apartment. That in an attempt to search for their phones, his sister immediately commenced tracking the IP address of her iPhone 11 and they discovered that it was active and its location shown to be within their compound and in the apartment of a co-tenant, where three young men live.

That in order to have the said apartment searched, they quickly rushed to the nearest police station, which is Eneka Police Station, where his sister made a report, after which some police men were detailed to accompany them to the compound to conduct the search in the particular apartment where the phones were tracked to, but that when the officers arrived and were about to enter the apartment, the 5<sup>th</sup> Respondent who also lives within the compound and in a different apartment, approached and demanded that the officers produce a search warrant before they conduct the search, which made the officers to leave the premises back to their station to obtain the search warrant. That the officers were only able to obtain the warrant at about 4pm and when they finally conducted the search, the IP address of his sister's iPhone 11 had been deactivated and untraceable and nothing was found in the apartment. That the officers had to leave while the complaint was transferred to Mini-Okoro Police division for further investigation. That it happened that on the 10<sup>th</sup> of May, 2024, while he was in their apartment with his

friend, Soki Gillis and his sister's partner, Vitus Chimaize, they heard his sister screaming for help prompting all of them to rush out of their apartment to know what was happening. That immediately they got to the gate of their compound, to their shock, he saw the 4<sup>th</sup> Respondent in mufti kicking and punching his sister while she was lying on the ground screaming.

That he alongside his friend and his sister's partner immediately accosted the 4<sup>th</sup> Respondent to know who he was, what his sister did and why he was beating her. That instead of getting any response from the 4<sup>th</sup> Respondent, some men also in mufti entered the compound with guns and ordered them to lie down on the ground. That the 4<sup>th</sup> Respondent came to him while he was on the floor and started kicking and punching him and threatened to kill them all. That he was screaming and pleading with him to tell him what he did wrong, as he has not wronged anybody to warrant him beating him. But that while he was still pleading with the 4<sup>th</sup> Respondent, he brought out his gun and hit him on the face with it and he fainted. That he woke up later on that 10/05/2024 on the Police clinic's bed with an oxygen mask on his face. That at the Police Clinic, while he was being attended to by a doctor on duty, the 4<sup>th</sup> Respondent came to the police clinic and dragged him back to the police station against the pleas of the Doctor to allow him to be admitted in the clinic, but the 4<sup>th</sup> Respondent refused and still locked him up against the advice of the Doctor on duty. That he even met his sister in the same police cell with her wounds still bleeding and untreated.

That his friend, Soki Gillis informed him on the 11<sup>th</sup> of May, 2024 at about 4pm at their home and he believed him that when the 4<sup>th</sup> Respondent hit him with his gun, he became unconscious and was rushed to the Police Clinic and placed on oxygen and that he took a picture of him while on the clinic bed with the oxygen mask with his Samsung S8 smart phone and also took pictures of his battered face and lips with the said phone. The pictures were attached and marked as Exhibits A and B. That he was further informed by his friend on the same date and time that while he was unconscious and while his sister, her partner and his friend were pleading and asking to be told what they did, the 5<sup>th</sup> Respondent alighted from the same car that brought the officers, entered the compound, locked the gate and on her instruction, the officers placed two tiny handcuffs on his sister's wrist and she was dragged through the floor like a common criminal, the handcuffs cutting deep into her flesh with bloods gushing out from her hand. The pictures of his sister's wrist with deep cuts were attached as Exhibit C. That the officers, including the 4<sup>th</sup> Respondent kicked, hit and dragged his sister through the floor until she fainted and that it was the screams for help by their family members and his sister's partner that attracted their neighbours who rushed to his compound and were banging on the gate, which forced the officers to unlock the gate. That notwithstanding that she was unconscious, the 5<sup>th</sup> Respondent caused the officers, including the 4<sup>th</sup> Respondent to also take her to their police station and locked her up in the police cell, where she regained consciousness. That it was on the next day, the 11<sup>th</sup> of May, 2024 and upon the intervention of the rest of his family members, including his mother that the 3<sup>rd</sup> Respondent, the commander of the CP monitoring Unit interviewed him, his sister, the 5<sup>th</sup> Respondent and the officers, including the 4<sup>th</sup> Respondent. That the 3<sup>rd</sup> Respondent thereafter ordered that he and his sister be released and the matter closed. That he has since the 11<sup>th</sup> of May, 2024 been admitted in several hospitals for severe bodily injuries,

eye treatment and internal bleedings. Copies of the payment receipts were attached and marked as Exhibit D. That he still feels pains all over his body, especially on his back, neck and head and he has suffered so much inconvenience, his eyes have been impacted due to the kicks he received from the 4<sup>th</sup> Respondent and his co-officers at the instigation of the 5<sup>th</sup> Respondent and he is still not strong enough. That the Respondents by their actions on the 10<sup>th</sup> of May, 2024 meant to kill him to take away his constitutional right to life and/or humiliate him which they did by beating and dragging him on the floor with handcuffs on his wrists while his neighbors and the members of the public watched. That he was never informed of any offence he committed on or before the 10<sup>th</sup> of May, 2024. That on the 11<sup>th</sup> of May, 2024 in the interview by the 3<sup>rd</sup> Respondent, he was told that the 5<sup>th</sup> Respondent wrote a petition against his sister over an allegation of a breach of the tenancy agreement between her and the owners of the property where she lives. That prior to the beating and arrest, which was due to his sister's tenancy to which he is not a party and because he is her brother, he was never invited by the 1<sup>st</sup> to 4<sup>th</sup> Respondents to any police station. That the officers of the 1<sup>st</sup> to 4<sup>th</sup> Respondents are still being instigated by the 5<sup>th</sup> Respondent, as they still call to threaten him. That unless his right to life, personal liberty and right to personal dignity are enforced by this Court, the Respondents will continue in their evil machination to infringe on his right to right to life, personal liberty and right to personal dignity.

Applicant's Counsel, G. O. Tamuno, Esq., in his Written Address formulated two (2) issues for determination as follows:

- 1. Whether given the facts of this case, the treatment meted on the Applicant is not a breach of the Applicant's fundamental right to life, dignity of his human person, freedom from degrading treatment and torture as enshrined under sections 33 and 34 (1)(a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 1 and 5 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004?*
- 2. Whether given the facts of this case, the beating of the Applicant into a state of coma in the public view and the severe injuries inflicted on the Applicant on 10/05/2024 in the course of arresting him and his subsequent detention in the police cell after he regained his consciousness from the 10/05/2024 to 11/05/2024 at the police cell of the Commissioner of Police Monitoring Unit, Old GRA, Port Harcourt, Rivers State is not an infringement of the Applicant's fundamental human right to life, dignity of his human person, freedom from degrading treatment and torture as enshrined under sections 33 and 34 (1)(a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 1, 6 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. A9 L.F.N. 2004?*

In arguing his issue one, Applicant's Counsel submitted that the Courts in Nigeria have stressed the importance of the inalienable rights of every citizen of Nigeria and the need for the protection of same. He referred the Court to the cases of **ARIORI & ORS V. ELEMO & ORS (1983) 14 NSCC 1**, **SAUDE V. ABDULLAHI (1989) 4 NWLR (PT.**

**116) 387 AND RANSOME-KUTI V. A.G. FEDERATION (1985) 2 NWLR (PT. 6) 211.** Counsel further submitted that by the domestication of the African Charter on Human and Peoples Rights, an Applicant who relies on the Constitutional provisions on the breach of his fundamental rights is also at liberty to rely on the provisions of the African Charter. Counsel further submitted that these fundamental human rights as guaranteed under the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which includes right to dignity of person, freedom from degrading treatment and freedom from torture cannot be subverted in any form whatsoever, as done in the extant case. He cited in aid the cases of **FAWEHINMI V. SANI ABACHA (1996) 9 NWLR (PT. 475) 710; OGUGU V. THE STATE (1996) 9 NWLR (PT. 366), NEMI V. THE STATE (1994) 1 SCNJ, 106 COMPTROLLER-GENERAL NIGERIAN PRISONS SERVICES V. DR. FEMI ADEKANYE & ORS (2003) 1 WRN, 30, ADEFARASIN C.J.IN ABIBATU MOGAJI & ORS V. BOARD OF CUSTOMS AND EXCISE & ORS (1982) 3 NCLR 552 AT 560-562 AND UZOUKWU V EZEONU II (1991) 6 NWLR (PT. 200) 708;** and also Order I Rule 2 and Order II RULE 1 of the Fundamental Rights (Enforcement Procedure) Rule, 2009, Section 34(1)a of the 1999 Constitution, Article 5 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and The Law Text Book by S.T.O. Amatonjie, Esq., No fair hearing for Garba, Reprint Edition, Dee-Joe Publishers and Printers, Port Harcourt, 2013 at page 60.

Applicant's Counsel submitted that the beating as well as the inflicting of severe injuries on the Applicant as shown in Exhibits A, B and C by the officers of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents as led by the 4<sup>th</sup> Respondent himself and on the instigation of the 5<sup>th</sup> Respondent, which put the Applicant into coma while arresting the Applicant and the subsequent detention of the Applicant in the cell at the office of the Commissioner of Police Monitoring unit, Old GRA, Port Harcourt, Rivers State after he regained his consciousness from the 10/05/2024 to 11/05/2024 is barbaric, inhumane, unlawful, unconstitutional and constitutes a breach of the Applicant's fundamental rights to the dignity of her person and freedom from unlawful torture and degrading treatment guaranteed by section 34 (1)(a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and article 5 of the Africa Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004 and contended that the Applicant is entitled to the award of damages. He referred the Court, to the case **I.G.P. V. IKPILA (2016) 9 NWLR (PT. 1517) 236.**

On issue two, Applicant's Counsel referred the Court to sections 33(1) and 35 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 4 and 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004 and argued that the fundamental right to personal liberty of an individual is crucial and it is reinforced by the guarantee of freedom of movement and that in the extant case the fundamental human rights to life and personal liberty of the Applicant were grossly violated by the Respondents, despite not being a party to the tenancy agreement. Counsel contended that the police has no right dabbling into contractual disputes and breach of tenancy agreement, as alleged by the 5<sup>th</sup> Respondent.

He referred the Court to the cases **OF UWANGWU V. DURU (2002) 2 NWLR (PT. 751) 279**, **FASEHUN V. A.G. FEDERATION (2006) 6 NWLR (PT. 975) 141**, **OKAFOR V. LAGOS STATE GOVERNMENT (2017) 4 NWLR (PT. 1556) 404**, **KURE V. C.O.P (2020) 9 NWLR (PT. 1729) 296**, **IBIYEYE V. GOLD (2012) ALL FWLR (PT. 659) 1074**, **MCLAREN V. JENNINGS (2003) FWLR (PT. 154) 528: (2003) 3 NWLR (PT. 808) 470** AND **OKAFOR & ANOR V. AIG POLICE ZONE II ONIKAN (2019) LPELR-4565** and **Section 32 (2) of the Nigeria Police Act 2020** and **Section 7 of the Administration of Criminal Justice Act 2015**

Applicant's Counsel further submitted that the entire actions of the Respondents on the 10/05/2024, the beating, torture of the Applicant into a state of coma, his subsequent detention, which are totally unjustifiable and unlawful and the further acts to compel the Applicant's appearance in their office constitute a likely breach of the Applicant's fundamental right to life, personal liberty and freedom of movement, which rights are not supposed to be interfered with and the Court has the power to curb the excesses of the security agencies. He referred the Court to the cases of **LONGE V. FBN PLC (1992) LPELR-2882 (SC) 1**, **FEDERAL CIVIL SERVICE COMMISSION V. LAOYE (1989) 4 SC (PT. 11) 1**, **OKAFOR V. LAGOS STATE GOVERNMENT (2017) 4 NWLR (PT.1556) 404**, **ALAMIEYESEIGHA V. F.R.N. (2006) 16 NWLR (1004) 1** AND **OYEYEMI V. COMMISSIONER FOR LOCAL GOVERNMENT, KWARA STATE (2010) LPELR-1793 (SC) 1**.

Applicant's Counsel finally submitted that the Applicant having proved the violation of his fundamental rights by the Respondents, is entitled to compensation from the Respondents, whether compensation is sought or not. He further urged the Court to grant punitive and exemplary damages having regard to the circumstances of this case, where the Respondents' actions against the Applicant were violent and oppressive. He referred the Court to Section 35 (6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the cases of **JIM-JAJA V. C.O.P., RIVERS STATE (2013) 6 NWLR (PT. 1350) 225**, **IBADAN CITY COUNCIL VS. ODUKALE (1972) 8-9 SC, 79**, **F.B.N. PLC V. A-G FED (2018) 7 NWLR (PT. 1617) 121**, **M.M.A. INC. V. NATIONAL MARINE AUTHORITY (2013) ALL FWLR (PT. 678) 790**, **F.B.N. PLC VS A-G FED. (2018) 7 NWLR (PT. 1617) 121**, **ODIBA V. AZEGE (1998) 9 NWLR (PT. 561) 37** AND **ONOGORUWA V. IGP (1991) 5 NWLR (PT. 197) 613**.

The 5<sup>th</sup> Respondent in reaction to the Applicant's suit, filed a Counter-Affidavit of thirty-four (34) paragraphs on the 26<sup>th</sup> of February, 2025 together with six (6) exhibits marked Exhibits OG1 to OG6 and the Written Address of her Counsel, V. C. Ubochi, Esq. The 5<sup>th</sup> Respondent also filed a Notice of Preliminary on the 5<sup>th</sup> of March, 2025 praying this Court to dismiss the Applicant's suit for constituting an abuse of Court process and for fraudulent service of the Originating process.

The facts relied upon by the 5<sup>th</sup> Respondent in her Counter-Affidavit in opposition to the Applicant's application for the enforcement of his fundamental right are that there was no Inspector or any other police officer named Ade who came to arrest, torture or detain the Applicant on the 10<sup>th</sup> of May, 2024 or any other date at all. That the Applicant failed

to disclose to this Court what actually transpired on 10<sup>th</sup> of May, 2024. That the tenancy agreement the Applicant exhibited as Exhibit 1 was concocted and altered as page 3 was removed. The 5<sup>th</sup> Respondent then attached according to her, a copy of the counter signed tenancy agreement by her client being the Landlord of the property and one Ms Christine Alali Iyalla as Exhibit OG1. The 5<sup>th</sup> Respondent stated that sometime on the 4<sup>th</sup> of May 2024, there was a loud noise within the premises where she resides with the Applicant's alleged sister, Christine Alali Iyalla and that upon going out to know the cause of the unrest and noise, she saw about three armed police men in uniform in the compound. That she approached one of the officers who informed her that there was a report of stolen phones at their station by the Applicant's sister. That while she was speaking to one of the officers, she saw the said Christine Alali Iyalla coming out from the back side of one of the three-bedroom flat occupied by another tenant, and when the officer she was talking with asked the said Christine Alali Iyalla, if she, the 5<sup>th</sup> Respondent, was the one she made a complaint against, the said Christine Alali Iyalla said that she, the 5<sup>th</sup> Respondent, was a nursing mother, so cannot steal. That while she was still engaging the armed police officer with further queries of their visit, one of the occupants (Mr Emmanuel Ndoni) of the three-bedroom flat mentioned above entered into the compound and was immediately arrested by the armed Police officers at the instruction of the said Christine Alali Iyalla, who thereafter directed the Police officers to break-in and search the three-bedroom flat occupied by the said Mr Emmanuel Ndoni and two others.

That she innocently enquired from the police officers if they came with search warrant and advised them that the matter could get complicated if they break into the apartment to search without a search warrant and the police officers thanked her for the advice and went back to procure a search warrant and returned to search the premises, but could not find any stolen phone or phones at the said apartment or anywhere in the compound, but proceeded to arrest the other two occupants occupying the three-bedroom flat with Mr Emmanuel Ndoni, whom they had earlier arrested and thereafter arrested one Mr. Ganagana S. Roy one of the occupants of the three-bedroom apartment under the guise of accusation of stolen phone, but that he was arrested because of the sour and amorous relationship that existed between the Applicant's sister and the said Mr Emmanuel Ndoni and nothing more. That the said Roy Ganagana has sued the Applicant's sister for breach of his fundamental rights. The 5<sup>th</sup> Respondent attached the application for the enforcement of fundamental right in Suit No: PHC/1526/FHR/2024 as Exhibit OG2. That she lodged a formal complaint against the Applicant sister vide a petition to the 2<sup>nd</sup> Respondent dated the 9<sup>th</sup> day of May, 2024 following her constant criminal acts against her. A copy of the acknowledged copy of the petition was attached and marked as Exhibit OG3. That upon the petition being lodged, in the early hours of 10<sup>th</sup> May, 2024, the 2<sup>nd</sup> Respondent assigned same to the 3<sup>rd</sup> Respondent for investigation, whereupon the 3<sup>rd</sup> Respondent detailed officer Akin and his team to undertake further investigation and get more queries from her (5<sup>th</sup> Respondent). That at no time was the Applicant beaten, arrested, detained or taken to Police clinic and the statements in paragraphs 20 and 24 of Christine Alali Iyalla in her further affidavit in Suit No: PHC/1844/FHR/2024 confirm this. The said Further-Affidavit in Suit No: PHC/1844/FHR/2024 was attached and marked as Exhibit OG4. That her petition of 9<sup>th</sup> May, 2024 was directly against Miss

Christine Alali Iyalla and none other, who was later granted administrative bail pending the conclusion of investigation. That she is not aware and cannot confirm whether the Applicant was unconscious at the time. That she was invited for an interview together with other occupants of the premises (Mr. Ganagana S Roy and Emmanuel Ndonni) by the 3<sup>rd</sup> Respondent on the 11<sup>th</sup> of May, 2024 to get eye witness report of what happened between the officers assigned by the 3<sup>rd</sup> Respondent to her on the 10<sup>th</sup> of May, 2024. The two occupants mentioned, also made a statement at the station. The Counter-Affidavit filed by 1<sup>st</sup> - 3<sup>rd</sup> Respondent in Suit No: PHC/1884/FHR/2024 containing police dairy report was also attached and marked as Exhibit OG5. That her petition against the said Christine Alali Iyalla is still pending and not closed and in fact, the said Christine Alali Iyalla is currently facing a criminal charge pending before his Worship, Queeneth Ihunwo Esq., with Charge No: PMC/1416C/2024. That the Applicant's exhibit attached cannot unmistakably identify the Applicant or any other person as the subject of the ordeal on the 10<sup>th</sup> of May, 2024 by the 4<sup>th</sup> Respondent and two other Police Officers. That she never instigated anyone but exercised her civic right by bringing a formal petition against Christine Alali Iyalla. That the petition and issues surrounding it against Christine Alali Iyalla had absolutely nothing to do with tenancy or tenancy agreement. That on the 4<sup>th</sup> of June, 2024 she reported another incident to the Eneka Police Division of the Nigeria Police, regarding the attack by the Applicant's sister against her and her little baby and thereby causing them serious bodily harm. That the Applicant's sister upon arrest again on the 5<sup>th</sup> of June, 2024, signed an undertaking not to pour her husband acid, to be of good behavior, maintain peace, failure of which she will be prosecuted. A copy of the undertaking was attached and marked Exhibit OG6. That the Applicant was not at the meeting held on the 11<sup>th</sup> of June, 2024 at Old GRA Police station and after the meeting she has not instigated the 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> Respondents to threaten anyone, including the Applicant. That the Applicant's fundamental rights have not been breached neither are they likely to be breached. That the Applicant should be seriously sanctioned for bringing this mischievous application in other to mislead this Honourable Court and that the Applicant's extant application is a fortune hunt and intended to mislead the Honourable Court, arm twist and extort money from the her and other the Respondents by all means. That to show the mischievous intention of the Applicant, the Applicant served the originating process on her at a wrong address, 106 Old Aba Road, Port Harcourt, despite stating that she is his sister's co-tenant.

The 5<sup>th</sup> Respondent's Counsel, V. C. Ubochi, Esq., in his Written Address raised a lone issue for determination thus:

***Whether the Applicant has led credible evidence to proof(sic) and/or link the 5<sup>th</sup> Respondent to the action brought against her, and therefore entitled to the reliefs sought?***

5<sup>th</sup> Respondent's Counsel submitted that an Applicant who seeks the enforcement of his right against certain persons has the burden to establish that he has a cause of action against the person(s). He cited in aid the cases of **RINCO CONSTRUCTION CO. LTD. V. VEEPEE INDUSTRIES LTD & ANOR (2005) LPELR-2949 (SC) AND IBRAHIM V. OSIM (1988) 3 NWLR (PT. 82) 257**. Counsel argued that perusing

through the Applicant's Affidavit, there is no cause of action against the 5<sup>th</sup> Respondent, as the 5<sup>th</sup> Respondent never mentioned the Applicant's name in her petition or that she instigated the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and that even if the allegation of the Applicant is true, the 5<sup>th</sup> Respondent still has a right to report crime to security agencies. He referred the Court to the cases of **FAJEMIROKUN V CBN 37 NSQR (2009) 1 AND GBAFOR V. OGUNBUREGUI (1961) ALL NLR 882.**

5<sup>th</sup> Respondent's Counsel further argued that the Originating process was fraudulently served at 106 Old Aba Road. That the Applicant despite knowing that the 5<sup>th</sup> Respondent never lived there. Counsel contended that service of Originating process on a party in a wrong address and misrepresentation of fact in affidavit of service/non service is fraudulent and robs the Court the jurisdiction to entertain this suit.

5<sup>th</sup> Respondent's Counsel further argued that the evidence relied upon by the Applicant in support of his case is contradictory and there is no link between his exhibits and the alleged wrong done to him and urged the Court not to believe the Applicant. He contended that the Applicant's suit constitutes an abuse of Court process. He referred the Court to the cases of **EZEMBA V. IBENEME (2004) ALL FWLR (PT. 223) 178 AND IGWEMOH.V. IGWEMOH (2015) ALL FWLR (PT. 801) 1554 AND ADEJUMO V. AYANTEGBE (1989) 3 NWLR (PT. 110) 417 @ 422-423 AND UNION BANK OF NIGERIA PLC V. AJABULE (2011) LPELR-8239(SC)**

Counsel argued that the Applicant failed to prove that any of his fundamental right was breached and therefore he is not entitled to damages as there is no wrongful act. He cited in aid, the case of **UBA PLC V. SAMBA PETROLEUM COMPANY LTD. (2002) LPELR-7178(CA).** 5<sup>th</sup> Respondent's Counsel further argued that the Applicant's application is incompetent, as the Applicant reliefs were not contained in the Originating process and therefore should be dismissed, as the Court is not a father Christmas, so would not grant what has not been asked for. He cited the cases of **NPA PLC.V. LOTUS PLASTIC LTD (2005) 19 NWLR, (PT. 959) 158 AND AGIP NIG LTD V AGIP PEROL INT'L (2010) 16 NWLR (PT 1219) 1 SC AND LADOKE V OLADOYE (1992) 4 NWLR (PT. 261) 605.**

The Applicant upon being served with the 5<sup>th</sup> Respondent's processes filed a Further-Affidavit of 16 paragraphs and a Reply on Points of Law on the 16<sup>th</sup> of March, 2025. In his Further-Affidavit, the Applicant maintained that he did not fabricate any fact and that on that 10<sup>th</sup> May, 2024, the 5<sup>th</sup> Respondent whom he had always thought was Inspector Ade, whom the 5<sup>th</sup> Respondent said is Inspector Akin did storm the compound where he is living with his sister and he was assaulted. The Applicant's Counsel did not file any Reply on Points of Law.

This is the summary of the case as presented by the parties before this Court.

Let me at this juncture point out here that even when there is only one Applicant before this Court, both the Applicant and the 5<sup>th</sup> Respondent have needlessly expended so much time making references to one Christine Alali Iyalla and other persons, who are not parties to this suit. No matter how many times a person is mentioned in the processes of

the parties before the Court, the Court cannot make any pronouncement against or in favour of a party not before it. Parties and their Counsel must learn how to narrow their issues and save the time of the Court in the determination of issues before the Court. See the cases of **PLATEAU STATE V. A.G FED. (2006) 3 NWLR (PT. 967) 346 @ 422-423** AND **NDOMA-EGBA V. CHUKWUOGOR (2004) 6 NWLR (PT. 869) 382 @ 423, PARA F.**

On the 26<sup>th</sup> of May, 2025, when this matter came up for hearing, only the Applicant and the 5<sup>th</sup> Respondent were represented. The 1<sup>st</sup> to 4<sup>th</sup> Respondents, despite service on them did not file any process before this Court. This suit is therefore fought only between the Applicant and the 5<sup>th</sup> Respondent. However, as earlier highlighted in this Judgment, the 5<sup>th</sup> Respondent filed a Notice of Preliminary Objection. So on the 26<sup>th</sup> of May, 2025, the Preliminary Objection was first argued before both parties adopted their respective processes in respect of the substantive suit.

In keeping with the time honoured principle in the determination of any suit in which a Preliminary Objection is filed, I shall determine the Notice of Preliminary Objection filed by the 5<sup>th</sup> Respondent's Counsel first. If the objection succeeds, that will be the end of this suit. However, if the Objection fails, I shall proceed to determine the suit on its merit.

### **ARGUMENTS ON THE NOTICE OF PRELIMINARY OBJECTION**

The 5<sup>th</sup> Respondent in her Notice of Preliminary Objection dated the 4<sup>th</sup> day of March, 2025 and filed on the 5<sup>th</sup> March, 2025 prays this Court for the following reliefs:

1. **AN ORDER** dismissing the Enforcement of Fundamental Human Rights proceeding in this suit against the Applicant for being an abuse of court process and for fraudulent service of originating process.

**AND FOR SUCH FURTHER ORDER OR ORDERS** that the Honourable Court may deem fit to make in the circumstance.”

The Preliminary Objection has in support three grounds as follows: -

1. That this suit constitutes an abuse of court process by multiplicity of suits on the same subject matter, forum shopping and inappropriate use of court process to harass, vex, annoy, irritate, pass false information and intimidate the 5<sup>th</sup> Respondent/Applicant.
2. Fraudulent service of the originating process on the 5<sup>th</sup> Respondent/Applicant at wrong address with false deposition on the affidavit of non-Service.
3. That any form of abuse of Court process and default in service of the Originating process robs the Honourable Court of the jurisdiction to entertain the matter and attracts outright dismissal of action.

The 5<sup>th</sup> Respondent in her Affidavit in support of the Notice of Preliminary Objection stated that the subject-matter in this suit, reliefs sought and exhibits are the same as the subject matter, reliefs and exhibits filed in Suit Number: PHC/1844/FHR/2024 before his Lordship, Hon. Justice Beauty Emmanuel-Okere, against her and to the knowledge of

the Applicant. The 5<sup>th</sup> Respondent annexed the application for the enforcement of fundamental right suit, filed against her as Exhibit OG1. The 5<sup>th</sup> Respondent further maintained that the Applicant was not beaten, arrested or detained at the police station. She exhibited the Further-Affidavit filed in Suit No: PHC/1884/FHR/2024 referencing particularly paragraphs 20 and 24, video coverage of what happened on the 10th day of June, 2024 as Exhibits OG2 and OG3, respectively. The 5<sup>th</sup> Respondent further stated that the Applicant in order to mislead this Court, deposed through the Bailiff of Court on the 12<sup>th</sup> day of July, 2024 that the 5<sup>th</sup> Respondent was not in Port Harcourt, neither was she at the law office of Emeka Onyeka & Co., 1<sup>st</sup> Floor, 106 Old Aba Road Port Harcourt, whereas both the 5<sup>th</sup> Respondent and the Applicant are residents of No. 10 Shehu Close, off Rumundururu-Rumuosumwo Encka Town, Port Harcourt Rivers State till date. That the Applicant's service of the Originating process on her in this suit and the Order for substituted service obtained was fraudulently obtained in order to mislead this Honourable Court. The 5<sup>th</sup> Respondent further stated that she has not at any time lived at No. 106 Old Aba Road, Port Harcourt to the knowledge of the Applicant and that the address of the office of Emeka Onyeka & Co, has changed from No. 106 Old Aba Road, Rumuobiokani since August, 2024 and the notice of such change was posted at every conspicuous location of the Court as a public notice.

In his Written Address in support of the Notice of Preliminary Objection, the 5<sup>th</sup> Respondent's Counsel formulated a lone issue for determination thus:

***Whether the suit does not constitute an abuse of Court process and for fraudulent service of Originating process and same liable to be dismissed?***

In his Written Address, 5<sup>th</sup> Respondent's Counsel argued that the Applicant's extant suit constitutes an abuse of Court process, as it is simply meant to irritate and annoy the 5<sup>th</sup> Respondent who has already been sued on this subject-matter and reliefs, in Suit No: PHC/1844/FHR/2024 between Christine Alali Iyalla v. Police Service Commission & 5 Ors instituted on the 6<sup>th</sup> day of June 2024. He cited in aid the cases of **ARUBO V. AIYELERI (1993) 3 NWLR (PT.280) 126, R-BENKAY NIGERIA LTD V. CADBURY NIGERIA LTD (2012) LPELR-7820(SC), SARAKI V. KOTOYE (1992) NWLR (PT. 264)156 AND OKORODUDU V. OKOROMADU (1977) 3 S.C 21.** Counsel then urged the Court to decline jurisdiction, reprimand the Applicant and dismiss the extant suit for abuse of Court process. He relied further on the cases of **PRINCE EVINDADE OJO & 3 ORS V. OLAYIWOLA OLAWARE & ORS (2008) 6-7 SC (PT. 11) 54, MAILANTARKI V. TONGO & ORS (2017) LPELR-42467(SC), AFRICAN REINSURANCE CORP. V. JDP CONSTRUCTION (NIG.) LTD (2003) 13 NWLR (PT. 838) 609, UMEH V. IWU (2008) VOL. 5 M.J.S.C 175, SYLVA. V. I.N.E.C. (2015) 16 NWLR (PT. 1486) 576, DANGANA & ANOR V. USMAN & ORS (2012) LPELR-7827(SC) AND NWACHUKWU V. NWACHUKWU (2018) LPELR-44696 (SC).**

5<sup>th</sup> Respondent's Counsel further submitted that for a Court to be clothed with jurisdiction to determine a suit, the Originating process must be properly served, without which, the jurisdiction of the Court will not be activated. That in the extant case the 5<sup>th</sup>

Respondent was not properly served, as the Applicant fraudulently sought the Order of this Honourable Court to serve the Originating process on the 5<sup>th</sup> Respondent via substituted means at 106 Old Aba Road, Port Harcourt (being the former law office of Emeka Onyeka and Co) and the Applicant also knows that the 5<sup>th</sup> Respondent has never lived in the said address. Counsel referred the Court to the cases of **DUBAR HOTELS PLC V. IIYOUGH & ORS (2016) LPELR-42560(SC)**.

5<sup>th</sup> Respondent's Counsel further submitted that since this Court was misled into making the Order for substituted service on wrong facts, the service on the 5<sup>th</sup> Respondent is void and this Honourable Court lacks the jurisdiction to hear and determine this matter.

In response to the Notice of Preliminary Objection filed by the 5<sup>th</sup> Respondent, the Applicant filed a Counter-Affidavit of 21 paragraphs and accompanying same is the Written Address of the Applicant's Counsel.

The Applicant in his Counter-Affidavit stated that he lives with his sister, "Christine Alali lyalla" within the same compound with the 5<sup>th</sup> Respondent and that on the 10<sup>th</sup> of May, 2024, the 5<sup>th</sup> Respondent brought the officers of the 1<sup>st</sup> to 4<sup>th</sup> Respondents to the compound and that these officers mercilessly beat him, his sister and other of his siblings. That his sister filed the matter with Suit N0: PHC/1844/FR/2024 against the 5<sup>th</sup> Respondent and the rest of the Respondents and same is pending before Hon. Justice Beauty Emmanuel-Okere and that he is not a party in Suit PHC/1844/FHR/2024 against the Respondents. That the officers of the 1<sup>st</sup> to 4<sup>th</sup> Respondents led by the 5<sup>th</sup> Respondent assaulted everyone they found in the apartment of his sister and they never asked anyone questions nor inform him or any of his siblings living there, the reason for assaulting them. That his suit is not an abuse of Court process as he was personally assaulted and he is seeking redress personally before this Court against the Respondents, including the 5<sup>th</sup> Respondent.

The Applicant further stated that he is not a Bailiff and the remarks of the Bailiff speaks for itself and that he knows that the 5<sup>th</sup> Respondent works with Emeka Onyeka & Co at 106 Old Aba Road, Rumuobiokani and the Exhibit 1, which is the tenancy agreement franked by the 5<sup>th</sup> Respondent clearly stated that she is a lawyer with the law firm. That the 5<sup>th</sup> Respondent works at the law firm and often returns back to the compound late and that he knew it will be impossible for the bailiff of Court to come to the house at such a late hour to effect service of the processes of this Court on her, whereas it will be easy to serve her at her law firm during working hours. That he is not aware that the law firm has changed its address at any time. That when the bailiff of Court could not serve the 5<sup>th</sup> Respondent personally, he made an application and the Court granted an Order that the processes be pasted at the door of the law firm. But that

before the bailiff of Court could carry out the substituted service on the 5<sup>th</sup> Respondent and while the 5<sup>th</sup> Respondent was appearing in the suit filed by his sister against her, she was informed of the pendency of this suit following which she filed her Counter-Affidavit and Written Address in this case on the 26<sup>th</sup> of February, 2025. The Applicant finally deposed that this Court has the jurisdiction to hear and determine this application for the Respondents' wanton assault on him and their infringement of his fundamental rights and that the preliminary objection was brought in bad faith.

The Applicant's Counsel in his Written Address in opposition to the Notice of Preliminary Objection, raised a sole issue for determination to wit:

***Whether this suit as constituted before this court is same with PHC/1844/FHR/2024 as to amount to an abuse of court process and whether the 5<sup>th</sup> Respondent has proved her preliminary objection to be entitled to her relief before the Court?***

The Applicant's Counsel submitted that an allegation of abuse of Court process by multiplicity of suit will fail if the suit in question does not have similar parties, subject matter and issues, as these three similarities must co-exist for such an allegation to be sustained, which Counsel contended are absent in the present case, as the Applicant is not a party in Suit N0: PHC/1844/FHR/2024, which the 5<sup>th</sup> Respondent attached as Exhibit OG1. That the said suit was filed by the Applicant's sister to seek redress for the violation of her fundamental rights. Counsel referred this Court to the cases of **CHIEF OHWOVWIOGHOR IKINE V. OLORI EDJERODE (2001) LLJR-SC, AJALI & ANOR V. OKURI-EZE & ORS (2013) LPELR-22492 (CA) AND MESSRS NV SCHEEP & ANOR V. THE MV "S. ARAZ" & ORS (2000) 12 SC (PT. 1) 164.**

Applicant's Counsel further submitted that the allegation of the 5<sup>th</sup> Respondent that the suit of the Applicant be dismissed on fraudulent service of the Originating process is a mere technicality which is no longer allowed under the rules of the enforcement of fundamental rights, as the Courts are now more interested in the substance other than the form. He referred the Court to the case of **AKEREDOLU V. ABRAHAM (2018) LPELR-44067 (SC)**. Counsel further submitted that the 5<sup>th</sup> Respondent was served at the address that she provided, so cannot turn around to deny the existence of her own address and that it is not possible for the Applicant to know that the 5<sup>th</sup> Respondent has changed her address. Applicant's Counsel finally contended that since the essence of the service of the Originating process on the 5<sup>th</sup> Respondent is for her to have the knowledge of the pendency of the suit, the 5<sup>th</sup> Respondent having filed her Counter-Affidavit and Written Address to the substantive suit on the 26<sup>th</sup> of February, 2025 proves that she is aware of the pendency of the suit before this Court even before the filing of the preliminary objection. Counsel urged the Court to adjudge the Notice of Preliminary Objection as unmeritorious and dismiss same with cost of ₦200,000 in favour of the Applicant.

Upon service of the Applicant's Counter-Affidavit and Written Address on the 5<sup>th</sup> Respondent, Counsel to the 5<sup>th</sup> Respondent on the 9<sup>th</sup> of April, 2025 filed a Reply on Points of Law. The argument in the Reply on Points of Law is materially a rehearse of the 5<sup>th</sup> Respondent's Counsel's argument in his Written Address in support of the Notice of Preliminary Objection.

## **RESOLUTION OF NOTICE OF PRELIMINARY OBJECTION**

In the determination of the Notice of Preliminary Objection, the issue that calls for this Court's decision is simple and that is,

**WHETHER THE 5<sup>TH</sup> RESPONDENT'S NOTICE OF PRELIMINARY OBJECTION HAS MERIT?**

The objection of the 5<sup>th</sup> Respondent is on two limbs, viz

- (1) That this suit constitutes an abuse of Court process in view of the pendency of Suit N0: PHC/1844/FHR/2024 and should therefore be dismissed and
- (2) That the Applicant failed to properly serve her with the Originating processes in this suit and therefore this Court lacks the jurisdiction to adjudicate over same.

The law is that fundamental right suit is *sui generis* and an action for breach of fundamental right is a personal action. Therefore, any person who alleges that his fundamental right has been breached, or is being breached or likely to be breached need not wait for any person's prompting but to approach any High Court within whose jurisdiction the alleged infringement occurred to seek for redress. See **Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (As amended)** and the case of **STANDARD CHARTERED BANK V. ADEGBITE (2019) 1 NWLR (PT. 1653) 348 @ 369-370.**

The Applicant in this case filed this suit on the 20<sup>th</sup> day of June, 2024 alleging breach of his fundamental right, although, in the course of laying out the facts in support of his application, he made reference to the alleged ordeal his sister, one Christine Alali Iyalla, also suffered at the hands of the Respondents on the same day and time, yet that reference alone does not connote that the extant suit filed by the Applicant as the sole Applicant and the suit filed by the Applicant's sister with Suit N0: PHC/1844/FHR/2024, as the sole Applicant also, are one and the same suits, so as to make this suit an abuse of the process of this Court. I therefore do not agree with the 5<sup>th</sup> Respondent's Counsel's contention that this suit constitutes an abuse of the process of this Court.

While it would have been legally permissible for the Applicant herein and the Applicant in Suit N0: PHC/1844/FHR/2024 to file a joint application for the enforcement of their fundamental right, since the alleged breach of their fundamental right occurred under the same circumstances, sight must not be lost of the fact that prior to the decision of the apex Court in the case of **TOTAL EXP. & PROD. (NIG.) LTD. V. OKWU (2024) 17 NWLR (PT. 1967) 379**, the decisions of the Courts were polarized on whether joint application for the enforcement of fundamental right was competent or not. Therefore, I shall not penalize the Applicant for choosing to tow the part of caution by maintaining a separate action for the enforcement of his fundamental right. This limb of the 5<sup>th</sup> Respondent's objection therefore fails.

The 5<sup>th</sup> Respondent has also contended that the Applicant fraudulently obtained an Order for substituted service from this Court to serve her by substituted means at the law firm of Emeka Onyeka & Co at N0 106 Old Aba Road, Port Harcourt, despite being aware that she does not live there and also being aware that the Law Firm has since changed its address and posted the notice of change of address at conspicuous places, including the Court premises. The Applicant denied this allegation and stated that he is not aware that

the law firm has changed its address, as the said address was provided by the 5<sup>th</sup> Respondent.

The first point that must be pointed out here is that the burden of proof is on he who alleges and not on he who denies. Therefore, the burden of proving that the Applicant obtained the Order of this Court fraudulently is on the 5<sup>th</sup> Respondent, who is expected to prove same beyond reasonable doubt, since the allegation of fraud is a criminal offence, be it in civil or criminal proceedings. See **Section 135(1) of the Evidence Act, 2011 (As amended)** and the case of **A.S.E.S.A. V. EKWENEM (2009) 13 NWLR (Pt. 1158) 140**. The 5<sup>th</sup> Respondent woefully failed to prove beyond reasonable doubt that the Applicant obtained the Order for substituted service from this Honourable Court fraudulently. The 5<sup>th</sup> Respondent also had the burden of proving that the Applicant knew that the law firm of Emeka Onyeka & Co had relocated from N0 106 Old Aba Road, Port Harcourt, yet obtained the Order for substituted service to serve her at that old address. The 5<sup>th</sup> Respondent failed to discharge that burden of proof on her, she even failed to produce the notice of change of address that she claimed was posted in conspicuous places in the Court premises. What is more, assuming that the law firm of Emeka Onyeka & Co had indeed changed its address from N0 106 Old Aba Road, Port Harcourt, there is nothing wrong in law to obtain an Order to serve a person at his or her last known address, if that is the only address known to the person.

The Applicant has explained in his Counter Affidavit, that he used the Office Address because the 5<sup>th</sup> Respondent spent all the working hours in the office and he felt that the Bailiff can only serve her during working hours. I total agree with the Applicant.

While it is the law that service of a Court process, mainly an Originating process on parties to a suit is fundamental to activate the jurisdiction of the Court, the right to service being a personal one can be waived by the person affected. See **O & O NETWORKS LTD V. BROAD COMMS. LTD (2021) 5 NWLR (PT. 1770) 454 @ 494 AND AKEREDOLU V. ABRAHAM (2018) LPELR-44067 (SC)**.

The 5<sup>th</sup> Respondent had since on the 26<sup>th</sup> day of February, 2025 filed her Counter-Affidavit and Written Address in opposition to the Applicant's Originating process. Therefore, having become aware of the pendency of this fundamental right application and filed her process, the 5<sup>th</sup> Respondent cannot still be heard to complain of non-service of the Originating process. Although, the law has since moved away from adherence to undue technicality and has fully embraced doing substantial justice. The 5<sup>th</sup> Respondent having therefore become aware of the pendency of this suit, howsoever she stumble to know of it notwithstanding, cannot in law be heard to complain that she was not served. Moreso, when she has filed her processes without even a protest. See the cases of **O & O NETWORKS LTD V. BROAD COMMS. LTD (SUPRA)**, **INTEGRATED BUILDERS V. DOMZAQ VENT. (NIG.) LTD. (2005) 2 NWLR (PT. 909) 97**, **AKPABUYO L. G. V. EDIM (2003) 1 NWLR (PT. 800) 23 AND AKEREDOLU V. ABRAHAM (supra)**.

The law is that the primary essence of service is for a party to have notice of the pendency of the suit against him, which essence I hold has been satisfied in this case.

Even though, the 5<sup>th</sup> Respondent did not file her Preliminary Objection along with her Counter Affidavit, this court accepted same.

I must however state that the 5<sup>th</sup> Respondent cannot be blowing hot and cold at the same time.

In fact, I must state that the 5<sup>th</sup> Respondent lied on oath when she stated that she was not served at all.

On 18<sup>th</sup> February, 2025, when the 5<sup>th</sup> Respondent attended court for the first time and appeared in person, the 5<sup>th</sup> Respondent informed this court that she was served through her former office, even when the Applicant lives in the same compound with her. That she became aware of this matter when the Applicant Counsel served her through whatsapp.

She further stated that she had also responded but that there was a challenge at the RIVCOMIS Platform and therefore applied for a short adjournment to enable her file.

Counsel for the Applicant obliged same and the matter was adjourned to 11/3/2025 for hearing.

The 5<sup>th</sup> Respondent cannot turn around to state that the bailiff lied in his Affidavit of service.

Order IX of the Fundamental Rights (Enforcement Procedure) Rules 2009 provides thus:

- i. Where at any stage in the course or in connecting with any proceedings there has, by any reason of anything done or left undone, been failure to comply with the requirement as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify such proceedings except as they relate to –
- ii. Mode of commencement
- iii. The subject matter is not chapter IV of the constitution or the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.

Therefore, this court will treat the non-service of the Applicant as an irregularity.

I therefore hold that the Notice of Preliminary Objection filed by the 5<sup>th</sup> Respondent is without merit or substance and same is accordingly dismissed.

I shall now proceed to determine this suit on its merit.

### **RESOLUTION OF THE SUBSTANTIVE SUIT**

I have read all the processes filed by the parties in this suit, including the Exhibits and the written arguments of the Applicant's Counsel and the 5<sup>th</sup> Respondent's Counsel, the 2<sup>nd</sup> to 4<sup>th</sup> Respondents having not been represented, despite service of the Originating process on them, there is no process from them to consider.

In my view, the issue before this Court is quite narrow and a lone issue is sufficient to determine same. The issue to be determined by this Court is,

**WHETHER THE APPLICANT HAS PROVED A BREACH OF HIS FUNDAMENTAL RIGHTS BY THE RESPONDENTS?**

The law is settled that the burden of proof is on the Applicant in an application for the enforcement of fundamental right to prove how his/her right was violated by the Respondent(s) through credible evidence. The burden in this case is therefore on the Applicant to demonstrate how the Respondents violated his fundamental rights. In the case of **OCHOLI V. AJIBOYE-OBADINA & ANOR (2025) LPELR-80419(CA)**, the Court of Appeal, on the burden on an Applicant to prove by cogent and credible evidence the allegation that his fundamental right has been or is likely to be breached, per Peter Oyinkenimiemi Affen, JCA @ 16, paras A – D held thus:

*"The infringement of fundamental rights is largely a question of fact and an applicant alleging that his fundamental right has been, is being or is likely to be contravened must present facts which eloquently disclose the alleged infringement. It is the facts presented by the applicant that will disclose if his fundamental rights have been undermined or breached. See OYEWOLE SUNDAY v ADAMU SHEHU [1995] 8 NWLR (PT. 414) 484 and DONGTOE v CIVIL SERVICE COMMISSION, PLATEAU STATE [2001] 9 NWLR (PT. 717) 132."*

Similarly, in the case of **ABUJA ELECTRICITY DISTRIBUTION COMPANY PLC & ORS V. AKALIRO & ORS (2021) LPELR-54212(CA)**, the Court of Appeal on the burden and standard of proof in an allegation of breach of fundamental human rights, per Ignatius Igwe Agube, JCA @ pp 32 – 34, paras F – C stated thus:

*"The law is settled that where a person approaches a Court of law by way of an Application for redress of a breach or contravention of any of his guaranteed rights under Chapter IV of the Constitution, as the person or party making the assertion or allegation against another person or party, the legal burden of initial proof of the assertion is placed on him by the law, unless or except the assertion was expressly or by necessary implication or presumption, admitted by the other person or party. See Sections 131, 132, 133(1) and 123 of the Evidence Act, 2011, respectively. It is not enough for a party or person to approach a Court of law with an application calling or praying for protection of his fundamental rights by way of declarations, injunction and/or other forms of reliefs on the basis of alleged threat or breach or contravention of such right. For him to be entitled to such redress or reliefs of protection, he must first produce reasonably sufficient and credible evidence before the Court to show and satisfactorily establish a real and factual breach or contravention of the right alleged. Until a person produces evidence*

*which prima facie shows or established a factual breach or contravention of this fundamental rights guaranteed under Chapter IV of the Constitution, his application before a Court for the enforcement of such right will fail and be dismissed out-rightly. It is worthy to mention that, after thoroughly going through the well-considered judgment of the learned trial Judge, I find no fault in his decision especially as he had the opportunity to properly evaluate the affidavits evidence of the parties first hand. I agree in totality with the submission of the learned Counsel to the Respondents and the authority of FAJEMIROKUN v. C.B. (C.L) (NIG.) LTD (Supra); relied on by him and hold that the Appellants failed to establish by cogent and credible evidence the allegations of infringement of their rights."*

See also the case of **NPG PROPERTIES & CONSTRUCTION WORKS LTD V. ZENITH BANK PLC (2023) LPELR-60614(CA)**.

In this case, the Applicant has alleged a breach of his fundamental rights by the Respondents at the instigation of the 5<sup>th</sup> Respondent on the 10<sup>th</sup> of May, 2024, when according to the Applicant, he was brutally beaten, injured, humiliated and rendered unconscious through the beatings he received from police officers, mainly the 4<sup>th</sup> Respondent in the compound wherein the 5<sup>th</sup> Respondent and his sister, Christine Alali lyalla are co-tenants. The Applicant alleged that after being beaten into unconsciousness, he only regained consciousness at the police clinic, but shortly after he retained consciousness, the 4<sup>th</sup> Respondent dragged him to the Old GRA Police Station and locked him up in the cell, despite still bleeding. The 5<sup>th</sup> Respondent on her part has vehemently denied being behind whatever ordeal the Applicant was allegedly subjected to, as she never petitioned him or instructed the police officers to arrest him. In fact, the 5<sup>th</sup> Respondent stated that the Applicant was not arrested and exhibited in proof of her assertion some documents, including the Further-Affidavit filed by the Applicant's sister in Suit N0: PHC/1844/FHR/2024, which the 5<sup>th</sup> Respondent attached as Exhibit OG4, wherein the 5<sup>th</sup> Respondent drew the Court's attention to particularly paragraphs 20 and 24. The 5<sup>th</sup> Respondent further exhibited a copy of the petition, Exhibit OG3 that was submitted to the 2<sup>nd</sup> Respondent in proof of her claim that the Applicant's name was not mentioned in her petition.

As earlier observed in this Judgment, the 1<sup>st</sup> to 4<sup>th</sup> Respondents did not offer any explanation about their involvement in the alleged violation of the Applicant's fundamental rights. The 1<sup>st</sup> to 4<sup>th</sup> Respondents must therefore be taken to have admitted all the facts deposed to by the Applicant in his Affidavit in support of his application for the enforcement of his fundamental right. In **IJEZIE V. IJEZIE (2014) LPELR-23773(CA)**, the Court of Appeal on the effect of failure to file a Counter-Affidavit, per Peter Olabisi Ige, JCA @ pp 17 – 18, paras C – C had this to say:

*"It is true that there is no counter Affidavit against the appellant/applicant's application by the Respondent. It thus means that all the facts contained in the appellant/Applicant's application are deemed to have been admitted. See, HONDA PLACE LTD vs GLOBE MOTORS HOLDINGS (NIG.) LTD (2005) 11 M.J.S.C. 1 at 15 where KATSINA-ALU J.S.C. later C.J.N said: "No counter Affidavit was filed by the Respondent with that the fact deposed to in support of the application were neither challenged nor disputed by the Respondent. What this mean is this. Those facts remain unchallenged and uncontroverted. The meritable consequences is that those facts deposed to in the affidavit filed by the applicant must be deemed to have been admitted by the Respondent and must also be taken as true by the Court unless they are obviously false to the knowledge of the Court. See Alagbe vs Abimbola (1978) 2 SC 39 at 405, See also; (1) NWOSU vs IMO STATE ENVIRONMENTAL AGENCY (1990) 2 NWLR (PART 135) 688 at 721A and 735B . 2. CHIEF U.M. EFET v. INEC & ORS (2011) 7 NWLR (PART 1247) S.423 at 447 F-G per MUHAMMAD, J.S.C. 3. THE REGISTERED TRUSTEES OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF NIGERIA & ORS vs MEDICAL AND HEALTH WORKERS UNION OF NIGERIA (2008) 2 NWLR (PART 1072) 575 at 619 D-E per Mukhtar J.S.C. NOW CJN."*

However, this Court is still bound to evaluate the evidence adduced by the Applicant to determine if the Applicant has proved the violation of his fundamental rights by the Respondents. See **BARNAX ENG. CO. (NIG.) LTD. V. GOVT., RIVERS STATE (2024) 9 NWLR (PT.1943) 301 @ 326. IN THE CASE OF NABORE PROPERTIES LTD V. PEACE-COVER NIG LTD & ORS (2014) LPELR-22585(CA)**, THE Court of Appeal, per Chinwe Eugenia Iyizoba, JCA @ 38 – 39, paras E – A held:

*"The Principle as correctly submitted by the Appellant is that even where a Counter Affidavit was not filed in opposition to a Motion, that omission does not render the depositions in the Supporting Affidavit incontrovertible. The practice is that where only an Applicant filed an affidavit in support of an application in a motion on notice, his affidavit must be cogent, compelling and unchallenged in order to entitle the applicant to a favourable ruling. Ruling in such a situation will not be entered for the Applicant as a matter of course: Lawal-Osula v UBA Plc (2003) 5 NWLR (Pt.813) 376 @ 389 G-H."*

I have carefully evaluated the evidence adduced by the Applicant in this case and I am of the firm view that the Applicant has proved the violation of his fundamental rights by the 1<sup>st</sup> to 4<sup>th</sup> Respondents in this case, who neither denied, nor controverted the damaging allegations of the Applicant. With regards to the contention of the 5<sup>th</sup> Respondent that the Applicant was not arrested based on her petition rely on the Further-Affidavit filed in

Suit No: PHC/1844/FHR/2024, which the 5<sup>th</sup> Respondent attached as Exhibit OG4, with particular reference to paragraphs 20 and 24, I have carefully looked at the said paragraphs 20 and 24 of Exhibit OG4, and in fact read the entire Further-Affidavit and I see nothing therein to suggest that the Applicant was not arrested or brutalized by the 4<sup>th</sup> Respondent and other police officers on the said 10<sup>th</sup> of May, 2024. The law is that documents are to be read in whole and not in piecemeal or in bits. See the case of **ATUCHE V. FRN & ANOR (2024) LPELR-62994(SC)**, per Habeeb Adewale Olumuyiwa Abiru, JSC @ 55 Paras D – F. This is moreso, as it is not the Applicant's case before this Court that he was taken from the place his rights were infringed to the police station. In fact, the Applicant in Suit N0: PHC/1844/FHR/2024, Exhibit OG4, particularly in paragraph 24, stated that she was taken to the police station with her nephew, Favour Iyalla and not Belema Iyalla, the Applicant in this case. The Applicant's case is that he was beaten and hit with the gun by the 4<sup>th</sup> Respondent and he became unconscious and only regained consciousness at the police clinic. In fact, paragraph 23 of Exhibit OG4, the deponent stated thus:

“That I deny the averment of facts stated by the 5<sup>th</sup> Respondent in paragraphs 15 (a to k) of her Counter-Affidavit and in response I state that my facts stated in the affidavit in support of my application are true. **That Belema Iyalla is my blood brother who was also attacked and severally(sic) injured by the Respondents. That I repeat that after I, my brother and others were dehumanized and I and my brother Belema Iyalla were unconscious.**” (Emphasis mine)

I therefore do not accept the 5<sup>th</sup> Respondent's position that the Applicant was not arrested or beaten. What is more, she cannot be heard to speak for the 1<sup>st</sup> to 4<sup>th</sup> Respondents, who did not authorize her to hold brief for them.

The Applicant has also alleged that it was the 5<sup>th</sup> Respondent that actively instigated the officers of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, led by the 4<sup>th</sup> Respondent to brutalize him on the said 10<sup>th</sup> of May, 2024. The 5<sup>th</sup> Respondent has denied this allegation and has claimed that she had no hand in whatever ordeal the Applicant went through. I have looked at Exhibit OG3, the petition written on behalf of the 5<sup>th</sup> Respondent to the 2<sup>nd</sup> Respondent and I cannot find the name of the Applicant therein, or any allegation made against him by the 5<sup>th</sup> Respondent. Therefore, I am not satisfied that it was the 5<sup>th</sup> Respondent that instigated the 1<sup>st</sup> to 4<sup>th</sup> Respondents to violate the Applicant's fundamental rights on the 10<sup>th</sup> of May, 2024 leading to 11<sup>th</sup> of May, 2024. In the case of **HUMAN RIGHTS & EMPOWERMENT PROJECT LTD/GTE V. PRESIDENT OF FRN & ORS (2022) LPELR-58230(CA)**, the Court of Appeal, per B. A. Georgewill, JCA @ 49 – 51, paras F – A had this to say:

*“It is the law that where the requisite evidence on alleged violation of human rights of the citizen is not in any, even remotely linked to the alleged violator, such a claim is dead on arrival or taken as having not been made out and thus, liable to be dismissed. Indeed, facts are the arrowhead of the law and therefore, were the much-needed facts are not available in evidence against the alleged violator but all what*

*is brandish are mere unconfirmed stories and fables, an application for enforcement of fundamental right, the breach of which rights are not proved, is bound to fail and be dismissed by the Court. In this regard, and generally, once the requisite hard evidence is lacking in support of a claim before a Court of law, then neither mere averments or even bare depositions nor the most forensic and eloquence of brilliant submissions can be a substitute for evidence that was not given. This is so because in law the fountain or arrow head of the law are the evidence of the facts. See Neka B. B. Manufacturing Co. Ltd V. African Continental Bank Ltd (2004) All FWLR (Pt. 198) 1175 @ p. 1191. See also Thompson V. Arowolo (2003) 7 NWLR (Pt. 818) 163, Kimdey V. Military Governor, Gongola State (1988) 2 NWLR (Pt. 77) 473."*

The Applicant has therefore failed to adduce any evidence to prove that the 5<sup>th</sup> Respondent did anything to warrant the violation of his rights. Thus, while I agree with the 5<sup>th</sup> Respondent's Counsel's submission that the Applicant has no reasonable cause of action against the 5<sup>th</sup> Respondent, I am of the firm view that the Applicant has established that he has a reasonable cause of action against the 1<sup>st</sup> to 4<sup>th</sup> Respondents having laid before this Court the factual situation that gave rise to this application. In the case of **INEC v. ADP & Anor (2023) LPELR-60333(CA)**, the Court of Appeal on the meaning of cause of action, per Abubakar Muazu Lamido, JCA @ 22 – 23, paras C – B held:


*"What then is a cause of action? A cause of action is the fact which establishes or gives rise to a right of action; that is the factual situation that gave rise to a judicial relief. In BELLO V. AG OYO STATE (1986) LPELR 764@81, KARIBI-WHIYTE, JSC explained what a cause of action is in the following way: "...a cause of action is constituted by the bundle or aggregate of facts which the law will be recognised as giving the plaintiff a substantive right to make the claim against the relief or remedy being sought. Thus, the factual situation on which the plaintiff relies to support his claim must be recognized by the law as giving rise to a substantive right capable of being claimed or enforced against the defendant. In other word, the factual situation relied upon must constitute the essential ingredients of an enforceable right of claim. See THOMAS V. OLUFOSOYE (1986) LPELR 3237, EGBE V. ADEFARASIN (1987) LPELR 1032, TUKUR V. GOVT. OF GONGOLA STATE (1989) 4 NWLR (PT 112) 517 AND UBA PLC V. ABDULLAHI (2003) 3 NWLR (PT 807) 359."*

See also the case of **NWOSU V. APP & ORS (2019) LPELR-49206(CA)**, per Abubakar Datti Yahaya, JCA @ 15 – 16, paras C – D on the above proposition of the law.

Consequently, I find merit in the Applicant's application against the 1<sup>st</sup> to 4<sup>th</sup> Respondents jointly and severally and grant the following reliefs:

**THAT JUDGMENT IS HEREBY ENTERED AS FOLLOWS:**

1. IT IS HEREBY DECLARED THAT the beating and severe torture of the Applicant on the 10<sup>th</sup> of May, 2024 while being arrested alongside his sister Christine Alalii Iyalla and his subsequent detention in the police cell in his battered state with wounds all over his body even after being placed on an oxygen support throughout the night of the 10<sup>th</sup> of May, 2024 till the 11<sup>th</sup> of May, 2024 without any adequate medical care, at the office of the Commissioner of Police Monitoring Unit, Old GRA, Port Harcourt, Rivers State is atrocious, wrongful, unlawful, unconstitutional and constitutes an infringement of the Applicant's fundamental right to life, personal liberty and right to personal dignity as enshrine in sections 33 (1) 34, 34 (a) and 35(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and articles 1, 5, 6 and 12 (1) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.
2. IT IS HEREBY DECLARED that the continuous harassment of the Applicant by the 2<sup>nd</sup> Respondent through her officers, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents is unlawful, unconstitutional and constitutes a breach of the Applicant's fundamental rights to the dignity of his person and freedom from unlawful torture and degrading treatment guaranteed by section 34 (1)(a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and article 5 of the Africa Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004.
3. AN ORDER IS HEREBY GRANTED restraining the 1<sup>st</sup> to 4<sup>th</sup> Respondents, whether by themselves, their agents, privies, servants, hirelings or any person acting for or on their behalf from further infringing on the Applicant's fundamental right to life, personal liberty, freedom from unlawful torture and dignity of his person, as guaranteed under sections 33 (1), 34, 34 (a) and 35(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and articles 1, 5, 6, 12 (1) and 5 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004.
4. The sum of ₦5,000,000.00 (Five Million Naira) only is hereby awarded jointly and severally against the 1<sup>st</sup> to 4<sup>th</sup> Respondents as compensation for the violation of the Applicant's fundamental rights.

  
**COMFORT I. ADANGOR**  
**JUDGE**  
**14/7/2025**

**PARTIES:**

Applicant Present  
5<sup>th</sup> Respondent Present  
1<sup>st</sup> to 4<sup>th</sup> Respondents Absent

**APPEARANCES:**

P.S. Ukadilonu Esq. appears for the Applicant, holding the brief of V.V. Uzochukwu  
O.G. Eke Esq. appears in person for the 5<sup>th</sup> Respondent  
No Counsel appears for the 1<sup>st</sup> to 4<sup>th</sup> Respondents