

COMMUNITY COURT OF JUSTICE,

ECOWAS

COUR DE JUSTICE DE LA COMMUNAUTE,

CEDEAO

TRIBUNAL DE JUSTIÇA DA COMUNIDADE,

CEDEAO



No. 10 DAR ES SALAAM CRESCENT,

OFF AMINU KANO CRESCENT,

WUSE II, ABUJA-NIGERIA.

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**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC  
COMMUNITY OF WEST AFRICAN STATES (ECOWAS)**

**HOLDEN AT ABUJA, NIGERIA ON THE 04<sup>TH</sup> DAY OF OCTOBER, 2016**

**SUIT N°: ECW/CCJ/APP/01/16**

**JUDGMENT N°: ECW/CCJ/JUD/23/16**

**BETWEEN**

**COL. MOHAMMED SAMBO DASUKI (RTD)**

**APPLICANT**

**AND**

**THE FEDERAL REPUBLIC OF NIGERIA**

**DEFENDANT**

**BEFORE THEIR LORDSHIPS:**

**1- Hon. Justice Friday Chijioke Nwoke**

**– Presiding**

**2- Hon. Justice Micah Wilkins Wright**

**– Member**

**3- Hon. Justice Yaya Boiro**

**– Member**

**Assisted by Tony Anene- Maidoh**

**-Chief Registrar**

**REPRESENTATION OF THE PARTIES**

1. Robert Emukpoeruo Esq. with

- i. Wale Balogun
- ii. Henry Nwakpa
- iii. Olukayode Olojo
- iv. Waliu Adeniran
- v. Titilayo Ajao (Miss)
- vi. Jennifer Adike (Miss).

For the Applicant.

2. T.D Agbe with

- i. A.O Oloruntogbe
- ii. Eledimuo E.
- iii. O Olabimtan
- iv. M.Akanle

For the Defendant.

## **1. FACTS AS PRESENTED BY APPLICANT.**

The Applicant is a Nigerian Citizen and a retired Colonel of the Nigerian Army who upon retirement was made the Managing Director of the Nigerian Minting and Printing Company. He was subsequently appointed

by the immediate past President of Federal Republic of Nigeria (the Defendant) as the National Security Adviser to the Federal Republic of Nigeria, an office he held until removed in July, 2015 by the present Administration.

The Defendant is a Member State of the Economic Community of West African States (ECOWAS) and a signatory to its Treaty, Protocols, Directives and Regulations as well as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples Rights.

The Applicant avers that at about 6.40pm on the 16<sup>th</sup> July, 2015, while he was about breaking his Ramadan fast, his house was unlawfully invaded and several items and properties including cars and monies were taken away by the agents of the Defendant, that during this invasion the Applicant and Members of his family who were in Abuja home, were subjected to severe psychological and emotional torture and were restrained from receiving any visitor during or allowed to leave the house. That this was done without any lawful order or warrant.

That the Applicant's homes were subsequently vacated by the Agents of the Defendant on the 17<sup>th</sup> July, 2015 without any reason given for the 24 hours invasion and with a promise to be back for him. That Applicants further avers that his aged father of about 90 years old staying in his

Sokoto home was psychologically shaken and was treated so shabbily by the agents of the Defendant that the old man was traumatized for several days after the invasion.

The Applicant was arraigned before a Federal High Court, Abuja on 1<sup>st</sup> September, 2015 on a one count charge of illegal possession of fire Arms. He made a bail application before the Court and was admitted to bail on self-recognizance on the condition that his International Passport number A500033168 be deposited with the Court.

That he subsequently applied to the Court on the 23<sup>rd</sup> October, 2015 for leave to travel abroad for medical attention and this was granted by the Court on the 3<sup>rd</sup> November, 2015 for which he purchased his travel ticket and was issued a boarding pass.

However, a day after the order was granted, the Defendant through its agents laid siege on the Applicant's residence at No.13 Khadiya Street, Asokoro for a period of one Month blocking all entrance and exit from the premises and thereby preventing him from travelling to London for medical attention in defiance of the Court order.

On the 13<sup>th</sup> December, 2015, the Applicant was arraigned before another Court, High Court N0.4 of the Federal Capital Territory, Abuja Nigeria wherein he was charged for another set of offences. Again he applied for and was granted bail on 18<sup>th</sup> December, 2015.

Meanwhile the Applicant was at the same time, on 15<sup>th</sup> December, 2015 arraigned before a 3<sup>rd</sup> Court, High Court No. 24 of the Federal Capital Territory, Abuja for another set of offences in charge **No. FCT/HC/CR/42/2015** between **FEDERAL REPUBLIC OF NIGERIA Vs. BASHIR YUGUDA & 5 OTHERS** for which he again applied for and was granted bail on the 21<sup>st</sup> December, 2015.

Having met all the bail conditions imposed by the high Courts, the Courts signed and issued his Release Warrants (orders) to the authorities of Kuje Prison but rather than release the Applicant he was rearrested after release in defiance of the Court Order.

The Applicant's family are seriously worried and troubled about the condition of the Applicant's detention and more worrisome is the fact that the applicant's state of health has deteriorated significantly having not been able to attend to his medical needs which was granted to him by the Court since 3<sup>rd</sup> November, 2015 and the Defendant has refused to honour the Court order.

The Applicant's family concern and apprehension became compounded recently when the president of the Federal Republic of Nigeria in his maiden Presidential Media Chat on the 30<sup>th</sup> December, 2015 said that Applicant will not be released because according to the President, judging by the weight of the crimes allegedly committed by the accused against

the Nigeria State, if he is allowed to enjoy any form of freedom, he is likely to jump bail.

The Applicant's arrest, detention and continued detention is not in accordance with any known law or judicial proceedings and has inflicted physical, emotional and psychological torture on the Applicant.

That if the Defendant and its agents are not restrained, his rights to life, human dignity, personal liberty, privacy, family life, freedom of movement and right to own properties which have been impaired and violated, will continue to be violated and put to jeopardy.

The Applicants therefore instituted this action praying this Court for the following:

- i. **A DECLARATION** that the *continued detention* of the Applicant by the officers, servants, agents, privies of the Defendant in defiance of orders for his bail granted by Courts of competent jurisdiction in Nigeria, namely the Federal High Court of Nigeria in charge No. **FHC/ABJ/CR/319/2015, FEDERAL REPUBLIC OF NIGERIA Vs COL. MOHAMMED SAMBO DASUKI** and the High Court of the Federal Capital Territory, Abuja, Nigeria in charge N<sup>o</sup>.**FCT/HC/CR/42/2015** between **FEDERAL REPUBLIC OF NIGERIA Vs. BASHIR YUGUDA & 5 ORS** and charge N<sup>o</sup> **FCT/HC/CR/43/2015** between **FEDERAL REPUBLIC OF NIGERIA Vs. COL. MOHAMMED SAMBO DASUKI (RTD) &**

5ORS is unlawful, arbitrary and an egregious violation of the Applicant's Fundamental Human Rights as guaranteed by sections 34, 35 and 41 of the **Constitution of the Federal Republic of Nigeria** 1999 (As amended), Articles 5, 6, and 12 of the **African Charter on Human and People's Rights** (Ratification and Enforcement) Act Cap D9 Laws of the Federation of Nigeria 2004; Articles 9 and 12 of the **International Covenant on Civil and Political Rights** and Articles 3, 5, 9 and 13 of the **Universal Declaration of Human Rights** and a most egregious violation of the treaty obligations of the defendant under and by virtue of its being a signatory to the above legal instruments.

- ii. **A DECLARATION** that the detention and continued detention of the Applicant by the officers, servants, agents, privies of the Defendant, after the Applicant met and fulfilled all the bail conditions for his release and after service on the appropriate authorities of the defendant of release warrants issued by both Federal High Court of Nigeria and the High Court of the Federal Capital Territory, Abuja, Nigeria, is unlawful, arbitrary and constitutes an egregious violation of the Applicant's human rights as guaranteed by sections 34, 35 and 41 of the **Constitution of the Federal Republic of Nigeria** 1999 (As amended)), Articles 5, 6 and 12 of the African Charter on Human and peoples' Rights

(Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990; Articles 9 and 12 of the **International Covenant on civil and Political Rights** and Articles 3, 5, 9 and 13 of the **Universal Declaration of Human Rights** and a most egregious violation of the treaty obligations of the Defendant under and by virtue of its being a signatory to the above legal instruments.

iii. **A DECLARATION** that it's an unlawful violation of the Applicant's human rights to personal liberty and freedom of movement as guaranteed and protected by **section 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (As amended), Article 6 of the African Charter on Human and Peoples' Rights, Articles 9 of the International Covenant on Civil and Political Rights and Articles 3 and 13 of the Universal Declaration of Human Rights** and a most egregious violation of the treaty obligations of the Defendant under and by virtue of its being a signatory to the above legal instruments, for the Defendant to unlawfully detain the Applicant after he was granted bail by Courts of competent jurisdiction and fulfilled all the bail conditions for his release.

iv. **A DECLARATION** that it an unlawful violation of the Applicant's Human Rights to dignity of human person, privacy and family life guaranteed and protected rights under **section 34 and 37 of the Constitution of the Federal Republic of Nigeria 1999 (As amended),**

Article 17 of the International Covenant on Civil and Political Rights and Articles 12 of the Universal Declaration of Human Rights and a most egregious violation of the treaty obligations of the Defendant under and by virtue of its being a signatory to the above legal instruments, for the Defendants' agents, privies, servants to have unlawfully detained the Applicant under a de-humanizing condition after he has been granted bail by the Courts of competent jurisdiction and fulfilled all the bail conditions for his release.

- v. **A DECLARATION** that the invasion of the Applicant's *Privacy, Home and or Correspondence* at N° 13 John Kadiya Street, Asokoro, Abuja, Nigeria and at both Sultan Abubakar Road, Sokoto and Sabo Bini Road Sokoto, Sokoto State, Nigeria sometimes on the 16<sup>th</sup> and 17<sup>th</sup> July, 2015 and *forcefully and unlawfully seizure of the Applicants' properties listed in schedule of seized properties (Annexure A)* by the Defendant, without any lawful order or warrant of a Court of competent jurisdiction constitutes a gross violation of the Applicants' fundamental rights guaranteed under **Section 44 of the Constitution of the Federal Republic of Nigeria 1999(As amended), Article 14 of the African Charter on Human and Peoples' Rights( Ratification and enforcement) Act Cap A 9 Laws of the Federation of Nigeria 2004 and Articles 17 of the International Covenant on Civil and Political Rights** and a most egregious violation of the treaty obligations of the Defendant under
- and by virtue of its being a signatory to the above listed legal instruments is therefore illegal and unlawful.

- vi. **AN ORDER** directing the defendants and its agents to forthwith release the Applicant.
- vii. **AN ORDER** directing the Defendant and its agents to forthwith release the Applicant and or his agents/solicitors all his unlawfully seized properties listed in **Annexure A**, during the invasion of the house/ home of the Applicant on the 16<sup>th</sup> and 17<sup>th</sup> July, 2015 without any lawful order or warrant of any Court of competent jurisdiction.
- viii. **AN ORDER OF INJUNCTION** restraining the Defendant, its officers, servants, agents, privies and anyone taking instruction from them from further harassing, threatening, intimidating or in any other manner infringing on or interfering with the fundamental rights of the Applicant as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 ( As amended), Articles 4, 5, and 14 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act cap D9 Laws of the Federation of Nigeria 2004, Articles 9 and 12 of the International Covenant on Civil and Political Rights and Articles 17 of the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.
- ix. **N500,000,000.00 (Five Hundred Million Naira Only)** as compensatory damages against the Defendant for its egregious violation of the Applicant's Human Rights as guaranteed and protected by the Constitution of the Federal Republic of Nigeria 1999 (As amended), Articles 4, 5, and 14 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act

Cap A9 Laws of the Federation of Nigeria 2004, Article 17 of the International Covenant on Civil and Political Rights and the Universal Declaration on Human Rights.

The Plaintiff in addition filed an application for expedited hearing on the grounds that his health has been deteriorating since July, 2015 when he was scheduled to urgently meet with his Doctor in London to undergo necessary surgical operations. The application was heard and granted.

The Defendant having failed to file a defense, the Plaintiff brought an application for default judgment. Subsequently the Defendant filed a motion for extension of time in which they file their Defense and Preliminary Objection out of time. In the light of the Defendant application for extension of time to file their defense, the Plaintiff withdrew the application for default judgment which was struck out by the Court. The Defendant application for extension of time to file their defense and Preliminary Objection was moved and granted.

The Defendant then filed a Preliminary Objection to the jurisdiction of the Court to entertain the suit on grounds that the action was founded on contempt of the orders of Nigerian Court and that a similar action is pending before the Nigerian Court.

The Preliminary Objection was argued and the Court ruled that it has jurisdiction and dismissed the Application.

## 2. DEFENDANT'S CASE.

The Defendant filed a statement of defense and averred:

2.1. That the facts and circumstances as stated by the Applicant before this Honourable Court are misleading and do not in any way reflect the truth of the facts leading to the commencement of this suit.

2.2 . The Defendant is a Federation observing and enforcing the rule of law in accordance with its Constitution (the Constitution of the Federal Republic of Nigeria, 1999 as amended), the Treaties and Protocols establishing the Economic Community of West African States, the African Charter on Human and Peoples' Rights etc. and makes all possible efforts in reaching its Regional and International obligations

2.3. The Defendant averred that in its current fight against corruption, financial crimes, misappropriation and terrorism to meet its Regional and International expectations, the Defendant's discovered that the sum of 2.1 billion dollars allocated to the office of the Applicant for purchase of arms, ammunition and welfare of the armed forces of the Defendant was misappropriate and shared amongst the well-wishers of the Applicant while serving as the National Security Adviser in the immediate past Administration of the Defendant.

- 2.4. That the decision to investigate the Applicant was triggered by the apparent lack of success on the part of the Nigerian Army in combating the Boko Haram Group. That various searches on the Applicant's houses and premises revealed that the Applicant has been in illegal possession of fire arms which include Rocket Propelled Grenade (RPG), General Purpose Machine Gun (GPMG), five Bullet Proof Cars and varieties of weapons.
- 2.5 That the responsibility to investigate financial crimes lies in the Economic and Financial Crimes Commission (EFCC), the Department of State Security Service (SSS) and the National Drug Enforcement Agency (NDLEA).
- 2.6 That the Applicant's investigation led to the filing of different charges on separate offences before the defendant's Courts in charge N<sup>o</sup>: FHC/HC/CR/43/2015.
- 2.7 That upon the release of the applicant on bail, the Department of State Security Services deemed it necessary to investigate the Applicant on suspicion of having committed or planning to commit offences bordering on National Security of the Defendant based upon which the Applicant was further arrested and detained.
- 2.8 That the act of further arresting the Applicant on and fresh allegations was misconstrued as constituting the breach of his rights to bail granted by the Defendants' Court.
- 2.9 That the Applicant before approaching this Honourable Court, has rightly complained and instituted actions in the Defendant's Court on

the legality of his subsequent arrest. The claims in the said suit are same as in this suit and in delivering its ruling, the court held that his bail was adequately enjoyed by him and if he has any grievance on his subsequent arrest he should sue the State Security Services of the Defendant claiming his right.

2.10. That the Applicant now seeks to re-litigate that case before this Honourable Court.

2.11 That it is justifiable under the Defendant's law to detain the Applicant as the allegation borders on offence which affects the National security of the Federal Republic of Nigeria.

2.12 That the Applicant was a high ranking military officer in the Defendant with a wide range of vulnerable escape route out of the country and thereby poses a serious threat to the security of the Defendant as a nation.

2.13 That the Applicant, if released may make it impossible in Nigeria for Courts to sit and determine the criminal charges against him.

2.14 The Applicant has varieties of means to substantially intervene with the investigation and put the national security of the Defendant and other neighbouring West African nations in jeopardy.

2.15 That the Defendant had not in any way prevented or denied the Applicant his right to bail as granted by the courts.

**The Applicant Subsequently filed with the leave of Court additional reliefs as follows;**

1. **A DELCARATION** that the re-arrest and the subsequent detention on or about 5<sup>th</sup> November, 2015 of the Applicant by the officers, servants,

agents, privies of the Defendant is unlawful, arbitrary and an egregious violation of the Applicant's Fundamental human rights as guaranteed by Sections 34, 34 and 41 of the **Constitution of the Federal Republic of Nigeria 1999** (As amended), Articles 5, 6 and 12 of the **African Charter on Human and peoples' Rights** (Ratification and Enforcement) Act Cap D9 Laws of the Federation of Nigeria 2004; Articles 9 and 12 of the **International Covenant on Civil and Political Rights** and Articles 3, 5, 9 and 13 of the **Universal Declaration of Human Rights** and a most egregious violation of the treaty obligations of the defendant under and by virtue of its being a signatory to the above legal instruments.

2. **A DECLARATION** that the detention and continued detention of the Applicant on or about 5<sup>th</sup> November, 2015 by the officers, servants, agents, privies of the Defendant is unlawful, arbitrary and constitutes an egregious violation of the Applicant's human rights as guaranteed by Sections 34, 35 and 41 of the **Constitution of the Federal Republic of Nigeria 1999** (As amended), Articles 5, 6 and 12 of the **African Charter on Human and Peoples' Rights** (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990; Articles 9 and 12 of the **International Covenant on Civil and Political Rights** and Articles 3, 5, 9 and 13 of the **Universal Declaration of Human Rights** and a most egregious violation of the treaty obligations of the defendant under and by virtue of its being a signatory to the above legal instruments.

3. **A DECLARATION** that it is an unlawful violation of the Applicant's human rights to personal liberty and freedom of movement as guaranteed and protected by **Section 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999** (As amended), **Article 6 of the African Charter on Human and Peoples' Rights**; **Articles 9 of the International Covenant on Civil and Political Rights** and **Articles 3 and 13 of the Universal Declaration of Human Rights** a most egregious violation of the treaty obligations of the defendant under and by virtue of its being a signatory to the above listed legal instruments, for the Defendant to

unlawfully detain the Applicant without any justification since 5<sup>th</sup> November, 2015.

4. **A DECLARATION** that it is an unlawful violation of the Applicant's Human Rights to dignity of human person, privacy and family life guaranteed and protected rights under **Section 34 and 37 of the Constitution of the Federal Republic of Nigeria 1999 (As amended); Article 17 of the International Covenant on Civil and Political Rights and Articles 12 of the Universal Declaration of Human Rights** a most egregious violation of the treaty obligations of the defendant under and by virtue of its being a signatory to the above listed legal instruments, for the Defendant's agents, privies, servants to have unlawfully detained the Applicant under a de-humanizing condition since 5<sup>th</sup> November, 2015.

The Applicant relies on all processes already filed before this Court and adopt the facts therein and incorporate same as if they were repeated herein and submits that the detention and continued detention of the Applicant has no legal or any judicial procedure in both domestic law of the Federal Republic of Nigeria and any International Law/Treaty/Convention;

The Defendant also filed an amended statement of defense in which it stated as follows:

1. That the facts and circumstances as stated by the Applicant before this Honourable Court are misleading and do not in any way reflect the truth of the facts leading to the commencement of this suit.
2. The Defendant is a Federation observing and enforcing the rule of law in accordance with its Constitution, the Treaty establishing the Economic Community of West African States, the African Charter on Human and Peoples' Rights etc. and makes all possible efforts in observing its regional and international obligations.
3. That Contrary to the facts presented by the Applicant in his application, it is important to state that the Defendant in its current fight against corruption, financial crimes, misappropriation and terrorism to meet its regional and international expectations, discovered that the sum of **\$2,100,000,000 Billion dollars** allocated to the office of the Applicant for the purchase of arms, ammunition and welfare of the armed forces of the Defendant was dishonorably misappropriated and shared amongst the well-wishers of the Applicant while in his position as the National Security Adviser in the immediate past Administration of the Defendant in this suit.
4. That instead of buying arms for the Federal Republic of Nigeria so that she can fulfil the above mentioned obligation, the Applicant decided to share the entire money among his friends and political associates.
5. The decision by the Defendant to investigate the Applicant was triggered by the apparent lack of success on the part of the Nigerian Army in combating the Boko Haram group, the increase in territorial gain by the armed group in Nigeria, Cameroon, Chad Republic, Niger and the threat to the entire West Africa and the world at large.

6. That various searches on the Applicant's houses and premises revealed that the Applicant has been in illegal possession of fire arms which include Rocket Propelled Grunade (RPG), General Purpose Machine Gun (GPMG), five Bullet Proof cars and varieties of weapons which put the National Security of the Defendant at imminent threat. That after the coming into power of the present Administration and looking at the handover books, the Government of the Federal Republic of Nigeria, discovered that money worth of Billions of Dollars budgeted for the purchase of arms were not utilized for the said purpose.
7. The Security Agencies and Anti-graft Agencies after investigation effected the arrest of the Applicant.
8. On further investigation it was discovered that the Applicant was in possession of very powerful arms and same was discovered in his personal bedroom and not the security post in his house; the said firearms were Tavor X95 Assault Riffles and UZI Riffles that apart from the arms mentioned in paragraph 2.07 above.
9. That the Arms discovered from the Applicant's private bedroom are very dangerous and capable of sacking the entire Federal Capital Territory within a twinkle of an eye.
10. That Tavor is one of the category of firearms strictly prohibited to be carried by unauthorized people, even the security personnel; and the weapon can only be legally procured under the authorization of the Federal Government.
11. That the searching of the Applicant's house followed a top security intelligence that the Applicant intends to wage war on the Nigeria State either by a coup de tat or by destabilizing the new Administration with the aid of trained hoodlums who will make use of the Arms illegally purchased and kept by the Applicant.

12. That though earlier the Federal Republic of Nigeria only charged the Applicant to Court on the offence of being illegally in possession of fire arms, on further investigation, the Security Agencies of the Defendant discovered that Applicant is a security risk to over millions of Nigerians if released on the streets of Nigeria.
13. That if the Applicant is released on bail he will pose a danger and hinder the smooth investigation of the serious allegations of crimes which are connected to treasonable offences.
14. The Defendant states that during the investigation it was discovered that the Applicant is not working alone and there is need to conduct a prolonged investigation without the interference of the Applicant.
15. That the domestic investigative function of the Defendant is statutorily divided with specific class of offences assigned to different Departments (Agencies) of the Defendant. The responsibility to investigate financial crimes vested in the Economic and Financial Crimes Commission (E.F.C.C), the Department of State Security Service (SSS) with the statutory duty of investigating crime affecting National Security of the Defendant, the National Drug Law Enforcement Agency (NDLEA) saddled with the powers to investigate drug related offences, and so applies to host of other Departments.
16. The Applicant was thoroughly investigated on the alleged misappropriation of Two billion One Hundred Million dollars, and his investigation led to the filing of different charges on separate offences before the Defendant's Courts in Charge

17. That bail has been granted in all the Charges filed above. The inability of the Applicant to fulfill the bail conditions on time made him spend more time in detention. However, upon the release of the Applicant, the Department of State Security Service deemed it necessary to investigate the Applicant on suspicion to have committed or planning to commit offences bordering on National Security of the Defendant.

18. That it is justifiable under the Defendant's law to detain the Applicant as the allegation borders on offence which affects the National Security of the Federal Republic of Nigeria, and the investigation so far has revealed that more weapons and ammunition are still in different locations in the territory of the Defendant and the Applicant is unwilling to reveal.

19. The Applicant being the former National Security Adviser has varieties of means to substantially intervene with his investigation and put the National Security of the Defendant and other neighbouring **West African nations in jeopardy.**

20. That the Federal Republic of Nigeria is committed to the protection of life and property of all Residents and Citizens of the Federal Republic of Nigeria since it is one of her obligation under the African Charter on People and Human Right.

Defendant also relied on the following documents attached to the Defendant's amended defense and Marked Exhibits FRN1 – FRN4:

1. A letter titled: Re Request for clarification on issuance of license to private persons to own Tarvor Assault rifles dated 4<sup>th</sup> April 2016.

2. A letter titled: Request for ballistic experts opinion on the capacity of Tavor X 95 – Assault 5.56MM and Uzi Rifles. Dated 12 March, 2016 and all the attached documents.
3. Charge sheet I suit No. FHC/ABJ/CR/319/2015 and all the document attached to same.
4. The Amended Charge in suit No. FHC/ABJ/CR/319/2015 and all the documents attached thereto.

**Plaintiff filed a reply to the Defendants amended statement of defense in opposition to the application, and averred;**

1. That Defendants made no reference to a Domestic Legislation authorizing the detention of the Applicant in the manner and circumstance of this case.
2. That Defendants reliance on the provision of Section 35(1)(c) 1999 Constitution (as amended) and section 45 thereof is misconceived.
3. That the Nigerian Constitution made adequate provisions for the procedures for lawfully arresting and detaining persons consistent with the obligations of the Defendant under International Treaties which it subscribes to.
4. That the arms allegedly found in Plaintiffs house is the subject matter of a pending Criminal Trial in charge no. **FHC/ABJ/CR/319/2015** for illegal possession of fire arms, wherein the Applicant has also been granted bail and he has fulfilled all the bail conditions as rightly admitted by the Defendant.
5. That Applicant upon his re-arrest on the 4<sup>th</sup> November, 2015 has not been informed till date whether orally or in writing the reason for his detention and has not been shown any detention warrant or warrant of arrest since the time of arrest till date.

## ANALYSIS BY THE COURT

It is our view that the following issues call for determination:

1. **Whether the invasion of applicants' residence and seizure of his properties as alleged is unlawful and attributable to the defendant as to hold it responsible for same**
2. **Whether the actions of the Defendants agents in re arresting and detaining the Applicant without charge as they did is unlawful and a violation of Applicants rights as provided under Articles Article 6 of the African Charter , Article 9 of the international covenant on civil and political rights and Articles 3 and 13 of the Universal declaration of human rights**

Before going into the issues raised above it is necessary for the avoidance of doubt to clarify the content and limit of the present case.

The Defendants, while addressing this Court relied on Section 3 of the fire arms Act Cap 28 which provides:

**“No person shall have in his possession or under his control any firearm of one of the categories specified in Part I of the Schedule to this Act (in this Act referred to as a “prohibited firearm”) except in accordance with a license granted by the President acting in his discretion”.**

We submit that the above provision is not in anyway relevant to the case before this Court. Apparently, the Defendants have misconceived the matter before this Honorable Court to a criminal matter.

A careful perusal of the Defendants amended defense shows that emphasis has been persistently made on the weapons discovered and seized at the Applicants

Residence and its adverse effect to the Country at large. The Defendant having laid emphasis on the dangerous weapons seized, such as Tavor X95 assault rifle, UZI riffles, rocket propelled grenade etc. have failed to put up a proper defense as to the substantive application before this Court which borders on arbitrary arrest and detention, right to liberty, and right to health which is the crux of this case especially since these are already the subject of a criminal charge of illegal possession of firearms for which the Applicant was granted bail. Furthermore the firearms aforementioned are already in possession of the Defendant.

It is a well-established fact that this Court does not have criminal jurisdiction as has been held in a plethora of its decisions. The allegation misappropriation of funds and unlawful possession of ammunition is not before this Court and even if it is, the Court lacks jurisdiction to entertain same.

We are therefore not deciding on the guilt or otherwise of the Applicant on the charges before the National Court and has only assumed jurisdiction based on the facts before it to establish whether the human rights of the Applicant as alleged has been violated.

**1. Whether the invasion of Applicants' Residence and seizure of his properties as alleged is unlawful and attributable to the Defendant as to hold it responsible for same**

Section 28 of the Nigerian Police Act provides;

1. A superior police officer may by authority under his hand authorize any police officer to enter any house, shop, warehouse, or other premises in search of stolen property, and search therein and seize and secure any property he may believe to

have been stolen, in the same manner as he would be authorized to do if he had a search warrant, and the property seized, if any, corresponded to the property described in such search warrant.

2. In every case in which any property is seized in pursuance of this section, the person on whose premises it was at the time of seizure or the person from whom it was taken if other than the person on whose premises it was, may, unless previously charged with receiving the same knowing it to have been stolen, be summoned or arrested.

The Administration of criminal justice Act 2015 makes provisions for issuance of search warrants and provides in sections 143,144 and 146 thus:

143. Where an investigation under this Act is being made by a police officer, he may apply to a Court or Justice of the Peace within the local limits of whose jurisdiction he is for the issue of a search warrant

144(1). Where a Court or Justice of the Peace is satisfied by information on oath and in writing that there is reasonable ground for believing that there is in any building, ship, carriage, receptacle, motor vehicle, aircraft or place:

- (a) Anything upon or in respect of which any offence has been or is suspected to have been committed,
- (b) Anything which there is reasonable ground for believing will provide evidence as to the commission of an offence, or
- (c) Anything which there is reasonable ground for believing is intended to be used for the purpose of committing an offence,

The Court or Justice of Peace may at any time issue a warrant authorizing an officer of the Court, Member of the Police Force, or other person named to act in accordance with subsection (2) of this section.

(2) A search warrant issued under subsection (1) of this section shall authorize the officer of the Court, a Police Officer, or other person to :

- a. search such building, ship, carriage, receptacle, motor vehicle, aircraft or place for any such thing and seize any such thing until further trial proceeding before the Court issuing the search warrant or some other Court to be dealt with according to law; and
- b. arrest the occupier of the house or place where the thing was found where the Court deems fit to direct on the warrant.

146. (1) A search warrant shall be under the hand of the Judge, Magistrate or Justice

of the Peace issuing it.

(2) A warrant shall remain in force until it is executed or cancelled by the Court which issued it.

The Administration of Criminal Justice Act is later in time than the Police Act and applying the rule of interpretation the later provision supersedes the earlier. The applicable law in this case is therefore the 2015 Administration of Criminal justice Act.

Applying the above provisions therefore, it is clear that for the Police or any other person so empowered by law to lawfully enter and conduct a search in a building it must be done with a warrant issued by a Judge Magistrate or Justice of the Peace.

Sections 143,144 & 146 of the Administration of Criminal Justice Act of the Defendants Statutes expressly states how a Search Warrant should be issued and executed.

Section 37 of the 1999 Constitution (As Amended) provides for the right to privacy which is why whenever a constitutional or statutory right of a citizen is to be derogated from, maximum care must be taken to ensure that derogation is for good cause and every provision relating to such derogation must be complied with.

The Applicant contend that the Defendants and its Agents conducted an unlawful search upon his premises in that same was done without a Search Warrant. It falls on the Defendant to satisfy this Court that the search was under the authority of a duly executed Search Warrant.

The Defendants attached a copy of search warrant as an annexure to their defense. In their oral testimony stated that they went to the Applicant's premises with a duly signed Search Warrant, but effort to serve the Search Warrant was resisted by the Soldiers, as they claimed they could not access the Applicant because according to them he was upstairs.

They contacted their office who in liaison with the Military authority advised the soldiers to allow them access as they were there legally. The said copy of the Search Warrant is not certified. Consequent upon this, a minimal weight will be attached to it. A Search Warrant should be served on the person to be searched. In this case there is no evidence that it was so served.

Although the Applicant signed the list of recovered items seized from his residence, this does not validate the process adopted by the Agents of the Defendant. Similarly, the purported warrant was not certified, thus its authenticity is questionable

We are therefore not convinced that the search warrant, if any, was served on the plaintiff and so hold that the search was carried out without a warrant and illegal.

The Applicant has an inherent right to the peaceful enjoyment of his property as provided by law.

***Section 44(1) of the constitution of Nigeria provides: --*** 1. No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by a law that, among other things.

- a. Requires the prompt payment of compensation therefor; and
- b. give to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

The right to property is further guaranteed in Article 14 of the African Charter on Human and Peoples' Rights, as follows:

**"The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."**

Right to property generally implies that an owner is entitled to no interference in the enjoyment of his property, in particular, by the government. The action of the Agents of the Defendant is therefore unlawful and a violation of Article 14 of the African Charter and Article 17 of the International Covenant on Civil and Political Rights. It is trite that the rules of state responsibility applies to International Human Rights Law.

Article 122 of the UN Draft Article on Responsibility of States for Internationally wrongful acts, adopted by the ILC at its 53<sup>rd</sup> session and submitted to the UN General Assembly provides:

1. Every internationally wrongful act of a State entails the internal responsibility of that State.
2. There is an internationally wrongful act of a State when conduct consisting of an action or omission.
  - (a) Is attributable to the State under Internal Law and
  - (b) Constitutes a breach of an International Obligation of the State.

In **Ranken v. Islamic Republic of Iran** (Award No. 326-0913, 23<sup>rd</sup> November, 1957 Iran – United States Claims report vol. 17 pg. 141. The Tribunal in determining whether it has jurisdiction over the case considered that part 1 of the Articles provisionally adopted by the International law Commission constituted the most recent and authoritative statement of current International law on the organs of state responsibility for international wrongful acts. (Note that part 1 was finally adopted in 2001) and observed that only injuries which are not the result of an act of the Government of Iran are excluded from its jurisdiction.

See also this Court's Decision in **Tidjane Konte v. Republic of Ghana** Judgment No. ECW/CCJ/JUD/11/14 of 13<sup>th</sup> May, 2014

For the purpose of International Law the State consists of different organs with different functions and is treated as a unit so that the action of any of its organs is considered the action of that single legal entity.

In the light of the above the Defendant is liable for the wrongful acts of its Agents.

**2. Whether the actions of the Defendants Agents in re arresting and detaining the Applicant without charge as they did is unlawful and a violation of Applicants rights as provided under Article 6 of the African Charter, Article 9 of the International Covenant on Civil and Political Rights and Articles 3 and 13 of the Universal Declaration of Human Rights.**

The right to enjoy respect for their liberty and security by all human beings is recognized by law. It is axiomatic that without an efficient guarantee of the liberty and security of the human person, the protection of other individual rights is vulnerable and illusory. Despite this recognition, arrest and detention without reasonable cause and devoid of legal remedies to victims are common place in most jurisdictions, the world over.

In the course of such arbitrary arrests and deprivation of liberty, the victims are also deprived access both to their lawyers, their own families and subjected to torture and other forms of degrading and in human treatment.

Article 9(1) of the International Covenant on Civil and Political Rights and Article 6 of the African Charter on Human and Peoples 'Rights (the relevant International Instrument for the determination of this case) guaranteed a person's right to personal liberty and security. The diction of the International Court of Justice (ICJ) in the Hostages in Teheran case (**America vs. Iran**) ICJ REP (1980) p. 42 para.91 is instructive viz:

**“Wrongfully to deprive human beings of their freedom and to subject them to physical and constraint in conditions of hardship is in itself incompatible with the principle of the Charter of the United Nations, as**

well as with the fundamental principles enunciated in the Universal Declaration of Human Rights Article 3 of which guarantees the right to life, liberty and security of the human person”.

Even where a State have not ratified or adhered to any of the international human instruments stated above, it is nonetheless bound by other legal sources, especially Customary International Law to ensure that a person’s right to respect for his or her liberty and security.

Article 9 (1) of the International Covenant on Civil and Political Rights provides as follows;

**“Everyone has the right to liberty and security of persons. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”.**

Similarly, Article 6 of the African Charter on Human and Peoples’ Rights provides that:

**“Every individual shall have the right to liberty and to security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular no one may be arbitrarily arrested or detained”.**

An analysis of these provisions suggests even if in different terms, that deprivation of liberty must in all cases be carried out in **accordance with the law**, (the principle of legality). Furthermore, deprivations of liberty must not be **arbitrary**.

With regard to the principle of legality, it has been held by the Human Rights Committee of the United Nations that;

**“It is violated if an individual is arrested or detained on grounds which are not clearly established legislation”**. In other words,

“the grounds for arrest and detention must be established by law.”

See: Communication No 702/1996 **MCLAWRENCE Vs. JAMAICA** (views adopted 18<sup>th</sup> July, 1997) UN. doc. GAOR A/52/40 (Vol 11) pp.230 – 231 Para. 5.5

In a case where a person was arrested without a warrant, which was issued more than three days after arrest, the Human Rights Committee hereinafter referred to as the (Committee), concluded that there has been a violation of Article 9(1) because the author had been ‘deprived of his liberty in violation of a procedure as established by law’. (**Grindin Vs. Russian Federation**) (views adopted on 20th July, 2000). In UN doc. GAOR A/55/40 (Vol .II) p. 175 Para 8.1.

With regard to **“arbitrary arrest”**, the Committee in interpreting Article 9(1) of the Covenant on Civil and Political Rights observed (and rightly in our view)

**“arbitrariness is not to be equated with against the law’, but must be interpreted more broadly to include elements of inappropriateness injustice, lack of predictability and due process”**. (Underlining for emphasis)

This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in the circumstances. Remand in custody must further be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime”

See: Communication No 458/1991. A W. **MUKONG Vs. Cameroun** (views adopted on 21 July 1994) UN. doc GAOR A/49/40 (vol. 11) para 9.8.

Accordingly, remand in custody pursuant to lawful arrest must not only be “**lawful**” but also reasonable and necessary in all circumstances for the aforementioned purposes. It is for the State party concerned to show that these factors are present in the particular case.

In **MUKONG Vs. Cameroun** (supra) the Applicant alleged that he had been arbitrarily arrested and detained for several months, an allegation rejected by the State party on the basis that the arrest and detention has been carried out in accordance with the Domestic Law of Cameroun. The Committee concluded that articles 9 (1) has been violated since the author’s detention ‘was neither reasonable nor necessary in the circumstances of the case’.

For instance, the State party had not shown that the remand in custody was necessary to prevent flight, interference with evidence or recurrence of crime, but had merely contended that the author’s arrest and detention were clearly justified by reference to Article 19 (3) of the Covenant which allows restriction on the right of freedom of expression.

However, the Committee considered that ‘National Unity’ under difficult Political circumstances cannot be achieved by attempting to muzzle advocacy of multiparty democratic tenets and human rights and that the author’s right to freedom of expression had therefore been violated.

Clearly, when a person is arrested without warrant or summons and then simply kept in detention without any Court order, this also amounts to a violation of the right to freedom from arbitrary arrest and detention set forth in Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR).

It is also evident that where a person is kept in detention in spite of a judicial order of release, this is also contrary to Article 9(1) of the Covenant. It is equally against the spirit of that article when a person is rearrested without due process after release from initial detention; following the grant of bail as it renders the bail granted Superfluous.

The African Commission on Human Rights have also held that;

**“indefinite detention of persons can be interpreted as arbitrary as the detainee does not know the extent of his punishment, article 6 of the Charter had been violated in this case because the victims concerned were detained indefinitely after having protested against torture”**

**(See. ACHPR Organization Contre La TOTURE & ORS Vs. Rwanda; Communications NOS. 27/28, 47/91 and 99/93, decision adopted during the 23rd ordinary session, October, 1996, para. 28.**

In the same vein, it constitutes arbitrary deprivation of liberty within the meaning of Article 6 of the African Charter to detain people without charges and without possibility of bail in a case against Nigeria, the victims had been held in these conditions for over three years following

elections. (See: ACHPR Constitutional Rights Projects and Civil Liberties Organization Vs. Nigeria, communication N° 102/93, decision adopted 31<sup>st</sup> October, 1998, para.55).

A suspicion of having committed an offence does not justify indefinite detention. By Article 9(3) of the Covenant, the suspect has a right to be tried “within a reasonable time or to release” pending trial. Liberty is the rule detention must be the exception. Indeed Rule 6. 1 of the United Nations Standard Minimum Rules for Non- Custodial Measures, the so – called “Tokyo Rules”,

**“pretrial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim”.**

With regard to Administrative Detention i.e. detention ordered by the Executive. The power of administrative and Ministerial authorities to order detentions is highly controversial, and should be abolished, it is not outlawed by International Law, even though it is surrounded by safeguards some of which have been enumerated above.

According to the General Comment N° 8 of the Human Rights Committee, Article 9(1) is applicable to all deprivations of liberty whether in criminal cases or any other purpose.

Where the detention is for reasons of public security or public order presents some difficulty even in a State governed by the rule of law in view of the difficulty in defining the terms “**public security**” and “**public order**” with precision. A guide is however, provided by the Human Rights Committee of the United Nations as follows:

“..... if so called, preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. it must not be arbitrary, and be based on grounds and procedures established by law (para 1) in formation of the reasons must be given (para 2) and Court control of the detention must be available (para4) as well as compensation in the case of a breach (para. 5) And if, in addition, criminal charges are brought in such cases, the full protection of Article 9(2) and (3) as well as Article 14, must also be granted”.

(See: Comment N° 8 United Nations Compilation of general Comments).

In summary, as earlier noted, liberty is the rule and detention the exception. Deprivation of a person’s liberty must at all times be **Objectively**, justified in that the reasonableness of the grounds of detention must be assessed from the point of view of an objective observer and based on facts and not merely on subjective suspicion.

The most common grounds for a lawful judicial deprivation of liberty are:

- a). After conviction by a competent independent and impartial Court of law
- b). On reasonable suspicion of having committed an offence or in order to prevent the person from doing so, and
- c). in order to prevent a person from fleeing after having committed a crime.

All these situation and circumstances must be established by cogent, convincing, credible and unequivocal evidence.

Applying these principles and law to the case at hand, can it be succinctly stated without fear of contradiction that the arrest and detention of the Applicant is arbitrary and unlawful. The answer is an obvious yes.

The Plaintiff contends that he was arrested, has been detained without charge in an undisclosed place.

The Defendant contends that the reason behind the continued detention of the Applicant is based on different allegation of offences relating to National Security of the Defendant and that considering the Applicants antecedents, and top security reports indicting him, he stands a security risk to over millions of Nigerians if released on the Streets of Nigeria.

On the other hand, DW1 testified to the contrary during his oral testimony where he acknowledged that the Applicant has been in their custody since November 2015 till date for the following reasons:

1. For his own interest and personal protection;
2. There is intelligence indicating that the Applicant can get out of the Country thereby evading justice.

Furthermore, in the initial statement of defense particularly para 3.07, the Defendants argued that S.1 of the State Security (Detention of Persons) Act Cap 414 empowers the

Federal Government to detain persons for acts prejudicial to State security for a period not exceeding six months at a time and to provide for a review of such detention.

Section 1 (1) of the State Security (Detention of Persons) Act, Cap 414 provides:

**“If the Chief of General Staff is satisfied that any person is or recently has been concerned in acts prejudicial to State Security or has contributed to the economic adversity of the Nation, or in the preparation or installation of such acts and that by reason thereof it is necessary to exercise control over him, he may by order in writing direct that person be detained in a Civil Prison or Police Station or such other place specified by him, and it shall be the duty of the person or persons in charge of such place or places, if an order is made in respect of any person is delivered to him, to keep that person in custody until that order is revoked.”**

Under that law that the detention order has to be made “in writing”, and same be delivered to the person so detained. The Defendants did not deliver any such order to the Applicant, neither have they shown this Honorable Court that there was a written order upon which they acted.

During cross examination, DW1 said he wouldn't know if a detention order was sought before detaining the Applicant. He also said he is not aware that the Applicant requested for their protection, but that it is within their mandate to detain if for any reason they discover that the Applicant's life will be in danger. DW1 also acknowledged that the Applicant was granted bail and the bail conditions were satisfied. On the question about the Applicant being detained not pursuant to any judicial procedure, DW1 admitted in the affirmative.

However, the said State Security (Detention of Persons) Act to which the Defendants hinge their argument on has since been repealed on the coming into force of the Constitution of the Federal Republic of Nigeria 1999. This is evident in the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree No: 63 of 1999, LFN which provides as follows:

1. Subject to section 6 of the Interpretation Act ( which relates to the effect of repeals, expiration and lapsing of enactments), the enactments set out in the Schedule to this decree, including all amendments thereto, are hereby repealed or consequentially repealed with effect from 29<sup>th</sup> May 1999. The schedule in question included the State Security (Detention of persons) Act, 1990.

In para 2.25 of the Defendants amended defense, the Defendant argued that the Applicants arrest is on further and fresh allegations independent of the charges upon which bail was granted. The question is, was the applicant charged to Court for the said “further and fresh” allegations”

The subsequent re-arrest and detention without an Arrest Warrant, or a Detention Order or even being informed of the reasons upon which the arrest and detention is made, and keeping the Applicant in custody for 7 Months without being charged to Court is unknown to our laws, against the principle of Natural Justice, a contravention of the internationally guaranteed right to personal liberty, as well as other fundamental rights.

In the General Observation No. 13 regarding the “Equality before the Courts and the right of every person to be heard publicly by a competent Tribunal established by law (Art. 14)”, the Human Rights Committee of the United Nations stated that:

The right to be informed “without delay’ of the charges requires that the information be provided in the form described as soon as the accusation is formulated by a competent authority; in the Committee’s opinion, this right must appear when, during the course of an investigation, a Tribunal or an Authority of the Office of the Public Prosecutor decides to adopt procedural measures against a person suspicious of having committed a crime or designated publicly as such. The specific demands of section (a) of paragraph 3 may be satisfied by formulating the accusation either verbally or in writing, as long as they include both the law and the alleged facts on which the information is based.

As earlier noted the right to personal liberty is one of the most fundamental human rights recognized under International Human Rights Law

Section 41 of the Nigerian constitution provides:

1. Every Citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no Citizen of Nigeria shall be expelled from Nigeria or refused entry thereof or exit therefrom.
2. Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a Democratic Society.
  - (a) Imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or
  - (b) Providing for the removal of any person from Nigeria to any other country to –
    - (i) be tried outside Nigeria for any criminal offence; or
    - (ii) undergo imprisonment outside Nigeria in execution of the sentence of a Court of law in respect of a criminal offence of which he has been found guilty; Provided that there is reciprocal agreement between Nigeria and such other Country in relation to such matter

Articles 3 and 9 of the Universal Declaration of Human Rights (UDHR) provides;

3 “everyone has a right to life, liberty and security of person” and 9 “no one shall be subjected to arbitrary arrest, detention or exile”.

Also Article 9(1) of the International Covenant on Civil and Political Rights provides:

“everyone has the right to liberty and security of person. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”.

Article 6 of the African Charter on Human and Peoples Rights provides:

“Every individual shall have right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained”.

The concept of freedom from arbitrary arrest and detention dates back to the Magna Carta wherein Article 39 provides:

“No freeman shall be taken or imprisoned or be disseized of his freedom, or liberties, or free customs or be outlawed or exiled or any otherwise destroyed, nor will we not pass upon him nor condemn him, but by lawful judgment of his peers, or by the law of the land”

The 1789 French Declaration of the Rights of man and the citizen provides under Article 7 that no man may be indicted, arrested or detained except in cases determined by law and according to the forms which it has prescribed.”

The UN Committee on the study of the Rights of everyone to be free from Arbitrary Arrest, Detention, and Exile defines Arrest as “The act of taking a person into custody under the authority of the law or by compulsion of another kind and includes the period from the moment he is placed under restraint up to the time he is brought before an authority competent to order his continued custody or to release him” and defines detention as the act of confining a person to certain place, whether or not in continuation of arrest and under restraint which prevent him from living with his family or carrying out his normal occupational or social activities.

Article 9(4) of ICCPR provides:

**" Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a Court, in order that Court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."**

The act of applying for bail is thus a fundamental right of any person arrested and detained by a State or its Agents.

The facts of this case as presented by the Applicant has been summarized above. His contention here is that he applied for and was granted bail by the Courts before which he was arraigned. On satisfying the bail conditions he was ordered to be released from custody. He then applied for and was granted leave to travel for medical treatment but was not able to do that because the Agents of the Defendant barricaded all entrances and exits to and from his house. He was subsequently rearrested on fresh charges and arraigned before a high Court.

Again he applied for and was granted bail on conditions which he fulfilled. He was again ordered to be released but the defendants agents intercepted him in the prison and detained him in undisclosed location in complete disregard of the Court Order.

The Applicant is now asking this Court to declare his arrest and detention as unlawful and arbitrary and a violation of his human rights to personal liberty and security.

The concept of arbitrariness under Article 9 of UDHR has been severally examined with a consensus that it imposes a larger international standard on the context of the domestic laws providing both substantive and procedural protection from arrest and detention.

The European Court of Human Rights in **Steel and ors. Vs The United Kingdom**, Judgment of <sup>23rd</sup> Sept Nov.1998 Report 1998 V11. P2735 para 54 referring to Art 5 of the European Convention on Human Rights held that “**the expression “lawful” and “in accordance with a procedure prescribed by law”** in Article 5. 1 stipulate not only full compliance with the procedural and substantive rules of national law, but also that any deprivation of liberty be consistent with the purpose of Article 5 and not arbitrary.

Black’s Law Dictionary Ninth Edition, Bryan Garnes, defines Arbitrary as “(1) Depending on individual discretion; determined by a judge rather than by fixed rules, procedures or law (2) of a judicial decision founded on prejudice or preference rather than on reason or fact.

An otherwise legal act can at the same time be arbitrary. Arbitrary thus connotes not just illegality but unreasonableness.

All the legal provisions on restriction of movement as can be seen above are derogable. However in order to derogate from them the law and process must not only be valid but reasonable.

It is trite that the decision of a court is valid until set aside. It therefore will not be a ground of disobedience to contend that the decision is unreasonable or not backed by law. The proper channel when dissatisfied is appeal.

**In H R, Cesti Hurtado V. Peru, September 29 1999, P.445. 141-143** Gustavo Cesti Hurtado against a threat of re-arrest by the state filed a habeas corpus application. The order was granted by the Public Law Chamber pursuant to article 7(1), 7(2)

and 7(3) of the American Convention and ordered that the arrest be revoked and the restriction on his travelling abroad be lifted and the procedure under military jurisdiction should be suspended. In defiance of the order, the military authorities set up a special military tribunal, arrested, tried and convicted Gustavo Cesti Hurtado. The state argued that Gustavo Cesti Hurtado ought to have appealed against his arrest and the jurisdiction of the tribunal to try him in that any person prosecuted under military jurisdiction, should have opted for presenting a jurisdictional dispute or requested provisional liberty. They argued further that at the time the order was made Gustavo was not in detention and as such there was no corps to bring before the Public law chamber

The Court in rejecting the defense arguments held that the habeas corpus petition filed by Gustavo fulfils all the when there is a hypothetical conflict between laws, the one which is most favorable to the fundamental right in question should be applied and, when in doubt, it should also be resolved in favor of the right to liberty because liberty is the Prius of law.

That it is evident that the military authorities defied the order of the public law Chamber in its entirety and proceeded to detain, prosecute and convict Gustavo Cesti Hurtado That as this Court has already determined, the petition for habeas corpus filed by Gustavo Cesti Hurtado fulfills all the requirements set forth in the Convention, which establishes an appropriate method to ensure the liberty of the affected person. Once Gustavo Cesti Hurtado sought and obtained the pertinent remedy, the existence of other remedies became irrelevant – even if it could be shown that they were equally effective. As a result of the refusal of the Military authorities to obey and execute the legitimate order of the Public Law Chamber

and of the subsequent detention, prosecution and sentencing of Gustavo Cesti Hurtado, the State violated his right to personal liberty as guaranteed in Article 7(1), (2) and (3) of the Convention.

Nigeria is under democratic governance where the Rule of Law reigns and Separation of Power practiced. The three arms of government should perform their respective duties without any hindrance or interference from the other.

This Principle of Rule of Law is a safeguard against arbitrary governance and the foundation of good governance.

**Lord Denning in *Gouriet V. Union of Post Office Workers* (1977) 1 Q.B 729 @ 761-762** said: “be you so high, the Law is above you”.

The Nigerian Supreme Court in ***Lagos State V. Ojukwu* (1996) 1 NWLR (Pt 18) 621** noted that:

The rule of law presupposes that the State is subject to the law, that the judiciary is a necessary agency of the rule of law, that the Government should respect the right of individual Citizens under the rule of law and that to the judiciary, is assigned both by the rule of law and by our constitution the determination of all actions and proceedings relating to matters in disputes between persons, Governments or Authority.

Emphasizing the centrality of the concept of rule of law to Constitutional Democracy and Good Governance, the Supreme Court of the Defendant in *Miscellaneous Offences Tribunal v. Okorafor* (2001) 18 NWLR (Pt 745) 310 at 327 stated

“Nigerian constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the framework of recognized rules and principles which restrict discretionary powers.”

Under the Nigerian legal system a person is deemed innocent until proven guilty. The Applicant alleged that the President of the Federal Republic of Nigeria in His maiden presidential media chat dated 30<sup>th</sup> December, 2015 announced that the Applicant will not be released because of the weight of crimes he committed against the Nigerian state, and because he is likely to jump bail.

The above statement if established offends the principle of presumption of innocence of the accused, smirks of utmost disrespect of the concept of Separation of Powers and is an encroachment of the executive in the functions of the Judiciary likely to embolden its Agents to shun Court Orders.

Re-arresting the Applicant immediately after he has been granted bail by a court of competent jurisdiction makes a mockery of the Country’s Democracy which is anchored on the Rule of Law and Separation of Powers. A Party not satisfied with a ruling of a Court has a right to apply for judicial review and also apply for a stay of execution of the said ruling but not to ignore it or carry on as though the Court’s Order is not binding on it. See: **Attorney-General of Lagos State V Attorney-General of the Federation (2005) 2 WRN 1 at 150**

Democratic governance is based on the will of the people wherein people live in dignity and freedom. The rule of law protects the fundamental, political, social, and economic rights of the people who will otherwise be vulnerable. Where the Judicial function is interfered with by the executive this destroys the concept of

separation of powers and the rule of law will transform to the Rule by Might and entronement of tyranny.

In *Oko-Osi V. Akindele* (2013) LPELR-20353(CA) the Nigerian Court of Appeal held:

**"Yet, it's a trite veritable principle, that obedience to lawful orders of Court is fundamentally a sine qua non to the good order, peace and stability of the Nigerian Nation, nor any notion for that matter. Paradoxically, the alternative to obedience of lawful Court Order is brute self-help and anarchy. As authoritatively held by the Supreme Court: Disobedience to an order of Court should, therefore, be seen as an offence directed not against the personality of the judge who made the order, but as a calculated act of subversion of peace, law and order in the Nigerian society."**

The principle of presumption of innocence posit that everyone is presumed innocent until the contrary is proved. The constitutional provisions cited earlier provide a time frame within which a person so arrested and detained is to be brought before the Court of law. The Defendant in the instant case took laws into their hands when they re-arrested, and continued to detain the Applicant without any legal justification.

It is trite law that every person is presumed innocent until the contrary is proved.

Likewise, the 36<sup>th</sup> principle of Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment of the United Nations, states that:

[a] detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to

law in a public trial at which he has had all the guarantees necessary for his defense.

In the case of **ACOSTA- CALDERON V. ECUADOR JUDGMENT OF 24<sup>TH</sup> JUNE 2005**, Inter-American court of Human Rights, the court held that:

**“the principle of presumption of innocence constitutes a foundation for judicial guarantees. The obligation of the State is not to restrict the detainee’s liberty beyond the limits strictly necessary to ensure that he will not impede the efficient development of the investigations and that he will not evade justice derived from that established in Article 8 (2) of the Convention. In this sense, the preventive detention is a cautionary measure and not a punitive one. This concept is laid down in multiple instruments of International Human Rights Law. The International Covenant on Civil and Political Rights provides that preventive detention should not be the normal practice in relation to persons who are to stand trial (Article 9 (3). It would constitute a violation to the covenant to keep a person whose criminal responsibility has not been established detained for a disproportionate period of time. This would be tantamount to anticipating a sentence, which is at odd with universally recognized general principles of law.”**

In the instant case the criminal responsibility of the applicant has not been established, he has not been brought before any judicial authority nor charged for any criminal offence. The continued detention of the applicant without being tried is unlawful and a violation of his rights under the various international instruments referred to above.

The act of the Defendant in the continued detention of the Applicant in circumstances where he had been granted bail in three different Courts of the Defendant, satisfied the conditions of bail and released, only to be re-arrested by the Defendant and detained incommunicado and without charge is to say the least condemnable. Granted the Applicant may have committed a heinous crime for which charges are already pending in three Domestic Courts of the Defendant, which had granted him bail, he is entitled to due process.

Even if he is suspected of additional crime he is still entitled to being charged expeditiously and either released or properly detained] on the orders of a competent Court, if not entitled to bail. It must be stated that the administrative or preventive detention of a person suspected of having committed a crime, as the Applicant in this case, does not disentitled him to due process. Any detention for a considerable period of time, as in this case over seven months is a gross violation of the right to personal liberty and security of the Applicant and a violation of the obligations of the Defendant as a signatory to the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the Universal Declaration of Human rights and Customary International Law.

The Courts, Domestic, or International must rise up to the occasion by asserting their independence, providing succor to persons, even in the face of suspicion of having committed offences, no matter how heinous, discourage to the barest minimum executive lawlessness and impunity. If not so, our democratic society and its tenets will be drastically endangered. It may be the Applicant today and other persons tomorrow. The presumption of innocence which is the fulcrum of our criminal justice system must be preserved and respected no matter whose ox is gored.

**IN CONCLUSION**, it is clear from the evidence and annexures produced before the Court, there is no legal basis for re-arrest of the Applicant after having been granted bail by three Domestic Courts of the Defendants. It appears that the sole aim of the re-arrest is to circumvent the grant of bail and by keeping the Applicant in custody through executive fiat unsupported by any law or order of Court.

Furthermore, the search warrants purportedly produced by the Defendant as the basis of the search of the Applicant's house is neither certified as to determine its authenticity and the usual procedure required by law for the execution of such warrant was not complied with.

There is no prima facie evidence that the search warrant was signed by the Applicant as required by law, even though the list of items recovered were purportedly endorsed.

Accordingly, it is our considered view that the search warrant was an afterthought aimed at perverting the course of justice. In this regard the search of the Applicants premises both at Abuja and Sokoto, Nigeria and the seizure of his personal properties listed is illegal, not having been carried out in accordance with law. Consequently, the privacy, right to family life, integrity and to own property of the Applicant was violated.

For the avoidance of doubt any person who have violated the criminal laws of a State especially the ones impeding the development of the State and destruction of its Common Wealth are liable to be tried and if found guilty should face the consequences of their action(s).

However, in doing so, States must respect all International obligations with regard to due process and respect for fundamental rights of the suspects. Failure to do so will impute responsibility to the State regarding such violations of rights while leaving intact their right to prosecute and punish offences against their criminal laws.

## **DECISIONS**

The Court adjudicating in a public sitting after hearing the parties in last resort, after deliberating in accordance with law,

**AS TO THE MERITS; DECLARES;**

i. That the arrest , detention and continued detention of the Applicant by the Agents of the Defendant since November, 5<sup>th</sup> 2015 without charge or judicial order after having been granted bail by three different Domestic Courts of the Defendant and released is unlawful, arbitrary and Constitutes a violation of Article 9 and 12 of the International Covenant on Civil and Political Rights, Articles 3,5,9 and 13 of the Universal Declaration of Human Rights and more particularly, Articles 5,6 and 12 of the African Charter on Human and Peoples'Right.

ii. That the invasion of the Applicant's home, privacy and correspondence at No13 John kadiya Street, Asokoro Abuja, Nigeria and Sultan Abubakar Road Sokoto Nigeria sometimes on 16<sup>th</sup> July and 17<sup>th</sup> July, 2015 and the forceful removal and seizure of property listed in Annexure A to this Application without lawful authority violates the Applicant's right to own property contrary to Articles 14 of the African Charter on Human and Peoples' Rights and Articles 17 of the International Covenant on Civil and Political Rights.

**iii. ORDERS:** the Defendant and or its Agents to forthwith release the Applicant and all his UNLAWFULLY seizure properties during the invasion of his house or home on the 16<sup>th</sup> and 17<sup>th</sup> July, 2015 and listed in Annexure A to this Application.

**iv. ORDERS:** the Defendant to pay the sum of 15, 000,000.00(fifteen million Naira) as damages to the Applicant for violation of his rights guaranteed under

Articles 4, 5 and 14 of the African Charter on Human and Peoples' Rights and Article 17 of the International Covenant on Human and Peoples Rights as well as the Universal Declaration of Human Rights.

**v. DECLINES:** to issue on Order of Injunction against the Defendant as such will amount to an interference on the right of the Defendant to prosecute and punish offences committed within its territorial jurisdiction provided such is done in accordance to due process recognized by International Human Rights law.

### **AS TO COSTS**

Cost are awarded against the Defendant's as assessed by the Registry of the Court.

Thus made and Adjudged and pronounced in a public hearing this day 04<sup>th</sup> day of October 2016.

### **THE FOLLOWING JUDGES HAVE SIGNED THE JUDGMENT.**

- 1- Hon. Justice Friday Chijioke Nwoke ..... Presiding
- 2- Hon. Justice Micah Wilkins Wright ..... Member
- 3- Hon. Justice Yaya Boiro ..... Member

Assisted by Tony Anene- Maidoh ..... Chief Registrar