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**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE ABAKALIKI JUDICIAL DIVISION  
HOLDEN AT ABAKALIKI  
ON TUESDAY THE 8<sup>TH</sup> DAY OF DECEMBER, 2015  
BEFORE HIS LORDSHIP  
HONOURABLE JUSTICE M. A. ONYETENU  
JUDGE**

SUIT NO. FHC/AI/CS/21/2014

**BETWEEN:**

**SUNDAY ISEH**

.... ....

**APPLICANT**

**AND**

1. **MR. AMECHI ODA**
2. **HON. ODA EZEKIEL AMECHI**
3. **ASP. PET ER BONIFACE E. O**  
(Officer in charge of Anti Kidnapping Squad  
Ebonyi State Police Command)
4. **ASSISTANT COMMISSIONER OF POLICE**  
(In charge of Criminal Investigation Department  
Ebonyi State Police command)
5. **COMMISSIONER OF POLICE, Ebonyi State**
6. **OFFICER IN CHARGE OF ZONAL SARS**  
**ZONE 6 CACLABAR.**
7. **ASSISTANT INSPECTOR GENERAL OF POLICE**  
(In charge of Zone 6 Calabar)
8. **INSPECTOR GENERAL OF POLICE**

**RESPONDENTS**

**RULING**

By a Motion on Notice filed on 15/9/2014 the Applicant sought to enforce his fundamental rights against the Respondents by praying for the following reliefs:

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1. A **DECLARATION** that the arrest and detention of the Applicant by the 1<sup>st</sup> Respondent, using the instrumentality of the 2<sup>nd</sup> to the 5<sup>th</sup> Respondents to arrest and detain the Applicant at the State C. I. D., Ebonyi State Police Headquarters, Abakaliki from the 22<sup>nd</sup> day of May, 2014 to the 5<sup>th</sup> day of June, 2014 before charging the Applicant to court, consequent upon a malicious and frivolous allegation by the 1<sup>st</sup> Respondent that the applicant kidnapped two of his sons; **Collins Odah** and **Wisdom Odah**, is a gross violation of the Applicant's Fundamental Right to personal liberty guaranteed under section 35 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended)
2. A **DECLARATION** that the arraignment and continuous incarceration of the Applicant by the Respondents at the Federal Prisons, Abakaliki, Ebonyi State, from the 5<sup>th</sup> day of June, 2014 to the 14<sup>th</sup> day of August, 2014 on a malicious and frivolous allegation of kidnapping without proper investigation is a gross violation of the Applicant's Fundamental Right to dignity of his person and right to personal liberty guaranteed under sections 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).

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3. **AN ORDER** of this Honourable Court restraining the Respondents from further infringing the Applicant's fundamental rights.

4. **AN ORDER** of this Honourable Court awarding damages to the Applicant against the Respondents jointly and severally in the sum of **N10, 000, 000.00 (Ten Million Naira)** only, for the violation of the Applicant's fundamental rights.

The motion is supported by a statement stating the grounds upon which this application is made.

The motion is also supported by a 23 paragraph affidavit along with 7 exhibits to wit:

Exhibit A- Appointment Letter of Applicant as Youth Leader.

Exhibit B- Petition titled *Complaint about Environmental Pollution in Ntezi Community.*

Exhibit C- Petition to Commissioner of Police Ebonyi State.

Exhibit D- Charge before the Magistrate Court.

Exhibit E- Certified true copy of record of proceedings at the Magistrate Court.

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Exhibit F- Legal opinion by Ministry of Justice Abakaliki.

Exhibit G- Certified True Copy of Record of Proceedings of 14/8/14 from  
Magistrate Court Abakaliki.

Briefly stated the case of the Applicant is that the 2<sup>nd</sup> Respondent impersonated him in order to collect N15, 000, 000 (Fifteen Million Naria) from Setraco Nigeria Limited in a petition written to the Honourable Commissioner of Environment. Hence he and one Agu Chigozie petitioned the 5<sup>th</sup> Respondent in this case. Based on the petition the 2<sup>nd</sup> Respondent and 3 others were arrested. That the investigation was later taken over by the office of the Deputy Inspector General of Police. That to stop that investigation the 1<sup>st</sup> Respondent who is the brother of the 2<sup>nd</sup> Respondent made a complaint that the Applicant kidnapped 2 of his sons. The 3<sup>rd</sup> Respondent then arrested the Applicant and took him to the office of the 4<sup>th</sup> and 5<sup>th</sup> Respondents where he was detained from 22/5/2014 to 5/6/2014 and was then arraigned before the Magistrate Court from where remanded him to prison custody on 5/6/14 and it was not till 14/8/14 when the Ministry of Justice wrote a legal opinion exonerating him that the Accused was released

from prison. That during his remand, his wife and children suffered and that even up till now the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are still threatening him.

In his written address, the Counsel to the Applicant gave 3 issues for determination to wit:

- a. Whether the Applicant's right to liberty has been, is being or is likely to be infringed by the activities of the 1<sup>st</sup> Respondent using the instrumentally of arrest and detention by the 2<sup>nd</sup> to 5<sup>th</sup> Respondents.
- b. Whether the psychological trauma experienced by the Applicant throughout his stay at the Federal prisons Abakaliki is justified in law.
- c. What is the remedy that will be adequate to compensate the Applicant.

On issue one, Counsel to the Applicant submitted that all the Applicant did, was to report a case of impersonation against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and then the 1<sup>st</sup> and 2<sup>nd</sup> Respondent framed a case of kidnapping against him.

Counsel submitted that the arrest and detention of the Applicant was set in motion by the Respondent 1<sup>st</sup> and 2<sup>nd</sup> and that the Applicant's right to liberty was breached.

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On the 2<sup>nd</sup> issue Counsel submitted that the arrest and detention of the Applicant was not justified in law as it was occasioned by malice and the report was not properly investigated by the 3<sup>rd</sup> to 5<sup>th</sup> Respondents citing **SKY POWER EXPRESS AIRWAYS LTD vs AJUNWA OLIMA & ANOR 2005 18 NWLR pt 945 at 224.**

Counsel to the Applicant submitted that the 2<sup>nd</sup> to 5<sup>th</sup> Respondents used their powers under the law unconstitutionally citing **S. 35 (1) (c) of the 1999 Constitution.**

Counsel urged this court to take judicial notice that from the headquarters of the 3<sup>rd</sup> to 5<sup>th</sup> Respondents to the High Court or Magistrate Court Abakaliki is not up to a kilometer and yet the 3<sup>rd</sup> and 5<sup>th</sup> Respondents kept the Applicant in custody for more than 10 days.

Counsel further submitted that it is the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that sent the 3<sup>rd</sup> to 5<sup>th</sup> Respondents to arrest the Applicant and that Exhibit F shows no criminality against the Applicant hence the Applicant has proved that his arrest and detention was unlawful citing

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**FAJAMIROKUN vs COMMERCIAL BANK CREDIT LYNNAIS NIG.**

LTD 2002 10 NWLR 554 and the action of 1<sup>st</sup> and 2<sup>nd</sup> Respondents was harassment citing

**AGBAJA vs OKUMOLA & 3 ORS 2012 2 NWLR 62 at 63.**

On the 3<sup>rd</sup> issue whether the trauma experienced by the Applicant is justified in law, his Counsel answered this in the negative submitting that the action of the 1<sup>st</sup> Respondent was barbaric and cruel and that he subjected the Applicant to inhuman treatment referring to **S. 34 of the 1999 Constitution** and citing **UZOCHUKWU vs EZEONU II 1991 6 NWLR pt 200 at 708.**

On the 4<sup>th</sup> issue of the remedy available to the Applicant his Counsel referred to **S. 46 of the 1999 Constitution** submitting that the court is empowered to make such orders and give such directives as it may consider just and appropriate in this case and he therefore urged this court to grant all the reliefs sought by the Applicant.

The 1<sup>st</sup> Respondent filed a 17 paragraph counter affidavit which he relied on.

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In his written address his Counsel gave 2 issues for determination to wit:

1. Whether the Applicant is entitled to the reliefs sought by him against the 1<sup>st</sup> Respondent in view of the affidavit in support of the application and counter affidavit of the 1<sup>st</sup> Respondent.
2. Whether from the facts of this application the Applicant has raised any cause of action against the 1<sup>st</sup> Respondent.

On the 1<sup>st</sup> issue, Counsel to the 1<sup>st</sup> Respondent referred to paragraph 7 – 9 of the supporting affidavit that there is no act done by the 1<sup>st</sup> Respondent which breached the Applicant's right that in paragraphs 4-12 of his counter affidavit the 1<sup>st</sup> Respondent merely reported through his brother an act of kidnapping to the Nigerian police.

He submitted that the Applicant did not aver that the 1<sup>st</sup> Respondent arrested, detained or incarcerated him and this the Applicant has not been able to prove breach of his fundamental rights by the 1<sup>st</sup> Respondents.

Counsel further submitted that the onus is for them to prove that the arrest was reasonable citing



**SKY POWER EXPRESS AIRWAYS LTD vs OLIMA & ANOR 2005 10**

and this they have done as the 1<sup>st</sup> Respondent reported the kidnapping of his sons through the 2<sup>nd</sup> Defendant to the Police.

Counsel submitted that the Applicant has to prove that it was the 1<sup>st</sup> Respondent who set the law in motion against him and was actually instrumental to his arrest and detention citing

**ONOGORUWA vs I.G.P. 1991 5 NWLR pt 195 at 593.**

And that the Applicant has failed to do so.

On issue 2 Counsel submitted that the Applicant's allegation that the 1<sup>st</sup> Respondent set the motion in law against him was denied by the 1<sup>st</sup> Respondent and where a statement of claim discloses no cause of action, the action will be dismissed citing

**COOKEY vs TAMBO 2005 22 NSCLR 411 at 422;**

**UWAZURUONYE vs GOVERNOR OF IMO STATE 2012 11-12 CLR pt 319 at 3415.**

He urged this court to dismiss this application with cost.

The 2<sup>nd</sup> Respondent filed a Motion on Notice for extension of time to file a Counter Affidavit and a written address which Counsel attached their counter affidavit and written address to it.

Counsel to the Applicant urged this court to hold that they have abandoned their motion as well as the counter affidavit and written address. It was not adopted before the court since.

However **Order XII Rule 3 of the Fundamental Rights Enforcement Procedure rules 2009** provided that when the parties written address have been filed and they are not present during adopting, the court shall order that the parties written address be deemed adopted.

In the present case therefore, I will deem as adopted the counter affidavit of the 2<sup>nd</sup> Respondent and written address of his Counsel.

The 2<sup>nd</sup> Respondent filed a 27 paragraph counter affidavit which they relied on together with 2 exhibits to wit:

Exhibit A- Letter demanding payment of youth entitlement.

Exhibit B- Letter written to the Commissioner of Police.

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In his written address the 2<sup>nd</sup> Respondent Counsel gave 2 issues for determination to wit:

1. Whether the Applicant has made a case under the fundamental rights (enforcement) rules that will entitle him to the reliefs sought in this application against the 2<sup>nd</sup> Respondent.
2. Whether the 2<sup>nd</sup> Respondent violated the fundamental rights of the Applicant.

On issue one, Counsel submitted that the 2<sup>nd</sup> Respondent did not instigate the 1<sup>st</sup> Respondent to frame up a frivolous allegation against the Applicant to the effect that he kidnapped the sons of the 1<sup>st</sup> Respondent neither did he act as the pointer who brought the 3<sup>rd</sup> Respondents officials that arrested the Applicant.

Counsel submitted that this allegation is based on speculation, suspicion which cannot take the place of legal proof citing

**MILLER vs STATE** 2005 8 NWLR pt 922 at 236;

**ANPP vs R.O.A.S.S.D.** 2005 6 NWLR pt 920 at 140 C. A.

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Counsel further submitted that the Affidavit in support of this application does not disclose any complaint against the 2<sup>nd</sup> Respondent that he acted as a pointer to the 2<sup>nd</sup> to 5<sup>th</sup> Respondents in the arrest of the Applicant.

On the allegation that it is because of case of impersonation reported against him by the Applicant that he made out the story of kidnapping against the Applicant counsel submitted that there is no sufficient evidence before the court linking the 2<sup>nd</sup> Respondent who does not have issues with the Applicant to the breach of his right.

He urged this court to discountenance this applicant's argument and submission and strike out this case with costs against the Applicant.

The 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents filed a counter affidavit of 29 paragraphs together with Exhibits to wit:

Exhibit A- Extract from Ntezi Police Station Crime diary.

Counsel to the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents gave issues for determination to wit:



1. Whether the police are statutorily empowered to investigate and prosecute criminal act of the Applicant.
2. Whether the right to liberty is absolute.
3. Whether the Applicant is entitled to the relief he is claiming.

Counsel submitted that by virtue of **S. 59 (1) of the Criminal Procedure Act** the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents are at liberty to investigate any allegation of crime against the Applicant and that the court is enjoined not to interfere if the invitation, investigation is exercised reasonably citing **GANI vs I.G.P.** 2002 7 NWLR pt 76 606 at 645, and referring also to **S. 4 of the Police Act.**

Counsel submitted that the reason the Applicant was invited was to maintain law and order and since after the investigation the matter was charged to court, the action was justifiable citing

**CHUKWUMA vs C.O.P.** 2005 8 NWLR pt 92 at 278.

On issue 2 Counsel submitted that the fundamental rights entrenched in the 1999 Constitution are not to be in conflict with or invalidate any law in a democratic society in the interest of public safety, order, morality or health

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and that **S. 33- 37 of the Constitution** has to be read subject to what is reasonable within a democratic society and the rights provided therein are therefore not absolute.

That since the Applicant was investigated and charged to court, this action is not within the preview of fundamental rights citing

**NATIONAL UNION OF ELECTRICITY vs BUREAU OF PUBLIC ENTERPRISE** 2010 3 SCM 135 at 142.

On issue 3, Counsel submitted that the Applicant has not explained how he suffered as a result of the wrongful act of the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents neither did he or his business suffer any loss or damage and that damages due to legitimate exercise of a right is not actionable against the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents citing

**ADANE vs DANFUNDU** 1994 NWLR pt 328 at 509;

and that award of damages is borne out of consideration of evidence of probative value establishing an actionable wrong citing

**ANAMBRA STATE ENVIRONMENTAL SANITATION AUTHORITY vs RAYMOND EKWENAM** 2009 9SCM at 7 – 8.



Finally Counsel submitted that the Applicant has not shown that his personal interest was affected by the actions of the Respondents and that he suffered an injury from 1<sup>st</sup> to 3<sup>rd</sup> Respondents citing

**ODUNEYE vs EFUNGWU** 1990 7 NWLR pt 164 at 618.

He urged this court to dismiss this suit in favour of the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents with substantive cost.

The 6<sup>th</sup> and 7<sup>th</sup> Respondents even though served did not turn up in court neither did they file any process.

The Applicant filed a further affidavit of 17 paragraphs in response to the 1<sup>st</sup> Respondent's counter affidavit and also filed a written address. That written address was a material of law and facts and the Applicant Counsel must of his time was re-arguing his case. I will therefore discountenance most of the said written address.

In reply to the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents counter affidavit filed on 2/12/14, the Applicant filed a further and better affidavit of 31 paragraphs.

His address on point of law is more or less a re-argument of his earlier argument, thus I will not go into them again.

The 6<sup>th</sup> and 7<sup>th</sup> Respondent even though served did not appear in court neither did they file any process.

The Applicant filed a further affidavit of 17 paragraphs in response to the 1<sup>st</sup> Respondent's counter affidavit and filed a written address.

That written address is a mixture of law and facts and in most of the address his Counsel was merely rearguing the case of the Applicants, I will therefore discountenance the said written address.

The same holds true for the written address of Counsel to the 2<sup>nd</sup> and Counsel to the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents. I will discountenance the said written address but will consider their further affidavits.

In response to the counter affidavit of the 2<sup>nd</sup> Respondent, the Applicant filed a further and better counter affidavit of 29 paragraphs and exhibited a sole exhibit. Exhibit A- A copy of apology letter written by one Wisdom Olung to the Commissioner of Environment Ebonyi State.

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In response to the counter affidavit of the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents, the Applicant filed a further and better affidavit of 31 paragraphs which he relied on.

Now I have carefully considered this application sought by the Applicant in this case. I have also considered the replies of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents in this case as well as all the written address of all counsel in this case.

In my humble view, a sole issue calls for determination by this court to wit:

Whether the Applicant has established a breach of his fundamental right to entitle him to the reliefs sought by him in this case.

The Applicant claim that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents initiated a frivolous and malicious complaint to the police that he the Applicant kidnapped his 2 sons.

**See Paragraphs 7, 8, and 9 of the Affidavit in support of this action.**

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In paragraph 4 of his counter affidavit the 1<sup>st</sup> Respondent averred that his sons were kidnapped, that the 2<sup>nd</sup> Respondent is not his brother and that it was the 2<sup>nd</sup> Respondent that made the report to the police.

Interestingly enough in paragraph 5 of that counter affidavit the 1<sup>st</sup> Respondent averred that he did not know how the Applicant was arrested.

In their own counter affidavit, the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents in paragraph 6 averred that the 1<sup>st</sup> Respondent was the one who reported a case of abduction of his children. They exhibited Exhibit A Extract from their crime diary.

In paragraph 7 of their own counter affidavit, they averred that the 1<sup>st</sup> Respondent made his statement to them. Again in paragraph 6 – 10 of his counter affidavit the 1<sup>st</sup> Respondent averred he gave the 4<sup>th</sup> Respondent the phone numbers that the kidnappers used to call him and that he mobilized the 4<sup>th</sup> and 5<sup>th</sup> Respondents to investigate the 2 phone numbers.

The 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents averred that the Applicants averments as to phone numbers is false and fabricated. Thus there is yet another material contradiction in the evidence of the 1<sup>st</sup> Respondent viz a viz that of the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents.



Again the 1<sup>st</sup> Respondent averred in paragraph 8 of his counter affidavit that in his statement to the 5<sup>th</sup> Respondent he gave the phone numbers of the said kidnapper, the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents however did not exhibit his statement. They exhibited only the crime diary extract. The question is why was the statement of the 1<sup>st</sup> Respondent not shown to this court. It seems to me that the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents have something to hide.

Moreover the 1<sup>st</sup> Respondent averred in paragraph 5 (e) of his counter affidavit that it was his brother, Mr. Ogbonna Odah who informed the police of the kidnapping of his children but the extract from the crime diary believe this piece of evidence as that extract showed that it was the 1<sup>st</sup> Respondent himself who reported the kidnapping incident to the police, not his brother which further confirms the applicant's averment in paragraphs 4 (6) and (f) of his further affidavit that the said brother of the 1<sup>st</sup> Respondent Mr. Ogbonna Odah was himself a suspect in this case and could not have been the one who reported this case,

Another averment of the 1<sup>st</sup> Respondent in his counter affidavit is that he made a withdrawal of N2, 000, 000 (Two Million Naira) from his bank

account as payment of ransom before his children were released and he exhibited Exhibit 10 a First Bank Withdrawal Slip.

I have studied that exhibit. It did not show the name of the 1<sup>st</sup> Respondent or the account number or his signature, indeed it shows nothing that helps the 1<sup>st</sup> Respondent case.

From the above therefore, it is clear to me that the First Respondent has not been able to debunk the Applicant's evidence that he set the law in motion his against him leading to unlawful arrest and detention thereby violating the Applicants further right to liberty.

It is also clear that there is no sufficient evidence of kidnapping against the applicant moreso in the light of Exhibit F the Legal Opinion from the Ebonyi State Ministry of Justice and Exhibit G the record of proceedings at the Magistrate Court Abakaliki.

For the 2<sup>nd</sup> Respondent the allegation against him was that he served as a pointer to the 3<sup>rd</sup> Respondent and actually asked the 3<sup>rd</sup> Respondent to arrest the Applicant which he did **See Paragraph 8 of the Affidavit in support of this application and also Paragraphs 18 and 19 of the further and better affidavit of the 2<sup>nd</sup> Respondent.**

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The 2<sup>nd</sup> Respondent in his own counter affidavit denied being the pointer of the Applicant to the 3<sup>rd</sup> Respondent and the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents also stated this but made no effort to state who did.

As pointed out by counsel to the Applicant must have been shown to the police before he was arrested by them. There is no evidence to the effect that the Applicant is a known criminal so that the 3<sup>rd</sup> Respondent could not have known him.

I have studied the evidence of 2<sup>nd</sup> Respondent in this case and found it to be contradictory making his evidence unreliable for instance the 2<sup>nd</sup> Respondent denied that the co-ordinator of Ishielu Development Centre appointed the Applicant youth leader even in the face of documentary evidence Exhibit A which stated so and gave a frivolous reason for his denial.

Again the 2<sup>nd</sup> Respondent did not deny that he was part of Exhibit B, the Letter written to the Commissioner of Environment Ebonyi State in which one Otung Wisdom leader but still signed that exhibit. His defence was that that was for the benefit of the community.

**See paragraph 9 of his counter affidavit.** The 2<sup>nd</sup> Respondent is economic with the truth and I find no difficulty in accepting the evidence of the



Applicant over his that he actually initiated the breach of the Applicants right by initiating the complaint of kidnapping against the Applicant.

In respect of the 3<sup>rd</sup> Respondent even though he was served, he did not appear in court neither did he file any process.

Counsel to the 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents had submitted that he is not the O/C in charge of kidnapping. But the fact remains that the Applicant in paragraph 8, 9, and 13 of his affidavit in support of this application averred that he arrested him and charged him to court without proper investigation.

The 3<sup>rd</sup> Respondent did not controvert those averments with the effect that this court will deem them as true. See **ADEFARARH vs DAYAKEH** 2007 ALL FWLR pt 348 at 911. So that the Applicant has established a case of breach of this fundamental rights against him.

For the 4<sup>th</sup> Respondent no name is stated just the Assistant Commissioner of Police State C. I. D. Ebonyi that in itself is not enough description as that is not a legal person like the Commissioner of Police.

The good remains however is that they are all under the 5<sup>th</sup> Respondent the Commissioner of Police, the State and Country to submissions of Counsel



to the 5<sup>th</sup> Respondent, the 5<sup>th</sup> Respondent being in charge of all policemen in this state can be held vicariously liable for the actions of his men.

For the 5<sup>th</sup> Respondent must it in true that the Police have powers of arrest and detention such powers must be exercised in the manner prescribed by law.

Counsel to the 5<sup>th</sup> Respondent has submitted that the Applicant was charged to court hence their action is justified. Let me state quickly that the fact that an act complained of against the Police ended in a charge being filed in the court does not mean that there is no violation of a person's fundamental right indeed an unwarranted prosecution against an individual which leads to court detention can be a violation of the person fundamental right to liberty.

In the present case, the applicant was not only detained in police cell, he was also detained in prison under remand by the court.

Counsel to the 5<sup>th</sup> Respondent had alleged that there was proper investigation of this case of kidnapping but the applicant averred in paragraph 10 and 11 of his affidavit in support of this application that the 2 phone numbers used by the kidnappers ought to be investigated and even

M. A. Dyer

volunteered to pay which the 5<sup>th</sup> Respondent men ignored. The 1<sup>st</sup> Respondent confirmed that the issue of phone numbers came up. The 5<sup>th</sup> Respondent in their counter affidavit did not allude to this. They just made a general denial of that paragraph which in my humble view is not enough, they ought to have told this court what happened and the result of the phone investigation if they indeed did one, which they did not do. Perhaps if they had done so, the Applicant would have been vindicated and there would have been no need to prosecute him and thus no breach of his fundamental rights. By failing in this their duty the 5<sup>th</sup> Respondent contributed to the unlawful arrest and detention of the Applicant.

Furthermore Counsel to the Applicant has alluded to the fact that the Applicant was detained from the 22<sup>nd</sup> day of May 2014 to the 5<sup>th</sup> day of June 2014 a total of 14 days, which is above the constitutional provision of a day if there is a court within a one kilometre radius when this court takes judicial notice there is. There is thus a breach of the Applicants right to liberty by the 5<sup>th</sup> Respondent. **See paragraph 35 (5) of the 1999 Constitution.**

On the issue of remedy Counsel to the 5<sup>th</sup> Respondent submitted that the Applicant has not shown how he suffered or how his business suffered



but mere fact of depreciation of liberty is enough suffering and the Applicant did depose in paragraphs that his issues and children suffered.

For the 6<sup>th</sup> and 7<sup>th</sup> Respondents they were served but did not appear in court neither did they file any process. For the 8<sup>th</sup> Respondent, I see no allegation made against him so that this action must fail against him.

Counsel to the Applicant submitted that the evidence against them remains uncontroverted and is thus deemed to be true but then I have studied the averments involving them and it is only in paragraph 12 and 13 of the Affidavit in support of this application that they are mentioned.

The averments are simply to the effect that they took over the investigation of the case of kidnapping when the Applicant petitioned them and arrested the 1<sup>st</sup> Respondent but before their arrival this matter has been charged to court.

I therefore see no action of theirs that can be held to be breach of the fundamental right of the Applicant so that this action against them is hereby dismissed.

M A Oyelami

For the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents, it is clear that they have acted in breach of the Applicants fundamental rights and I so hold.

The next issue then is the reliefs sought by the Applicant.

I hereby grant reliefs 1 to 3 sought by the Applicants.

In respect of relief 4, I award the sum of 2 Million Naira to the Applicant against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents jointly and severally.

In conclusion therefore, I make the following declaration:

1. A DECLARATION that the arrest and detention of the Applicant by the 1<sup>st</sup> Respondent, using the instrumentality of the 2<sup>nd</sup> to the 5<sup>th</sup> Respondents to arrest and detain the Applicant at the State C.I.D. Ebonyi State Police Headquarters, Abakaliki from the 22<sup>nd</sup> day of May, 2014 to the 5<sup>th</sup> day of June, 2014 before charging the Applicant to court, consequent upon a malicious and frivolous allegation by the 1<sup>st</sup> Respondent that the Applicant kidnapped two of his sons **Collins Odah** and **Wisdom Odah**, is a gross violation of the Applicant's fundamental right to personal liberty guaranteed under section 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

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2. A DECLARATION that the arraignment and continuous incarceration of the Applicant by the Respondents at the Federal Prisons, Abakaliki Ebonyi State, from the 5<sup>th</sup> day of June, 2014 to the 14<sup>th</sup> day of August, 2014 on a malicious and frivolous allegation of kidnapping without proper investigation, is a gross violation of the Applicant's fundamental right to dignity of his person and right to person liberty guaranteed under sections 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

*M. A. Onyetenu*  
**M. A. ONYETENU**  
**JUDGE**  
**8/12/15**

Only Applicant present.

All other parties absent.

C. C. Onwe with G. M. Ogboji for the Applicant.

All Respondents Counsel absent.

*M. A. Onyetenu*