




1. **A DECLARATION** that the arrest and detention of the applicant by the respondents was unwarranted and a violation of his right to personal liberty as guaranteed under Section 35 (1) of the Constitution of the Federal Republic of Nigeria 1999 as amended (AA) And under Article 6 of the African Charter on Human and People's Rights (Ratification And Enforcement) Act Cap 10 Laws of the Federation 2004.
2. **A DECLARATION** that the refusal by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to allow the applicant access to food for three days, while arbitrarily locked up in the police cell, amounted to torture and inhuman treatment, hence, a violation of the applicant's fundamental right as guaranteed under Section 34 (1) (a) of the Constitution of the Federal Republic of Nigeria 1999 (AA).
3. **AN ORDER** directing the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents to release forthwith to the Applicant, all the documents belonging to the Applicant's Organization which they illegally seized/confiscated.
4. **AN ORDER OF PERPETUAL INJUNCTION** restraining the Respondents, their agents, servants or privies from taking further steps in connection with this matter, such as harassing, inviting/arresting, detaining or in any other manner infringing on the fundamental rights of the applicant, there being no justification for same.

  
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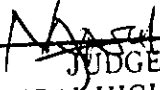
5. **AN ORDER** awarding **COMPENSATORY DAMAGES** to the applicant in the sum of **N10,000,000.00 (Ten Million Naira)** only, jointly and severally against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents, for the gross violations of the Applicant's fundamental rights.
6. **AN ORDER** directing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents jointly and severally to tender an apology to the applicant by publishing same in a national or local daily (Newspaper) pursuant to **Section 35 (6)** of the CFRN 1999 (AA).
7. **SUCH OTHER ORDER(S)** as the Honourable Court may deem fit to make in the circumstance.

However on 22/10/2015, the Counsel to the 1<sup>st</sup> Respondent filed a Notice of preliminary objection on the following grounds:-

1. Improper service of originating process
2. Instituting an action in the name of a person with wrong designation.

In other words the counsel is challenging the jurisdiction of this court to hear and determine this matter.

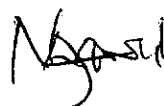
The Supreme Court in a long line of authorities has held that jurisdiction is the corner stone and bedrock of adjudication, it can neither be comprised nor conferred by consent of parties upon a court. It is constitutional and very fundamental, hence the reason why it can be raised at any stage of proceeding, where a court lacks

  
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jurisdiction, any proceeding conducted is in breach and render same a nullity. See the case of NANA OPIA V INEC (2014) 57 NSCQLR per K.M.O. Kekere- Ekun JSC at page 1276.

In view of the above-mentioned authority it is pertinent for this court to hear and determined the issue of preliminary objection first before delivering into the main suit because without jurisdiction whatever decision is reached amount to a nullity. The said preliminary objection is supported by a 9 paragraphs Affidavit deposed to by one J. U. Unah Esq and there is a written address where three (3) issues were raised for determination. The counsel submitted that by order 6 Rule 2 of the Rules of this court, an originating process is mandatory required to be served personally to any party sued in an action. The counsel argued that in the instant case, the supposed 1<sup>st</sup> Respondent, Chief Omazi Ubani was not served personally with the originating process but one chief Chukwu Ivi who is not the agent of Chief Omazi Ubani.

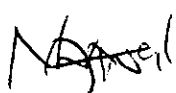
The counsel further submitted that where there is failure to serve a party, the proceedings will be set aside because the jurisdiction of the court to adjudicate is properly activated when service is affected. Where there is no service, the court cannot proceed. The service affected must be in accordance with the provisions of the law and the Rules of Court. He cited the case of *REV OKOROAFOR V REV. EMEKA (2015) 4. C. A. R 80 CA PG 141*. He also refer to the Bailiff's proof of



service in the court's case file. The counsel also submitted that the 1<sup>st</sup> Respondent in this suit Chief Omazi Ubani is said to be the Traditional Ruler of Akaeze Autonomous Community, Ivo local government Area of Ebonyi State. But the traditional ruler of Akaeze Autonomous Community is HRH EZE JOSEPH UBANI AND CHIEF OMAZI UBANI is the Traditional Prime Minister of Umuihe Autonomous Community, Ivo Local Government Area of Ebonyi State. He added that the two persons mentioned above are different persons, from two different communities with different designations.

The counsel argued that the Applicant's application is incurably defective as two persons are impliedly sued as 1<sup>st</sup> Respondent. He urged the court to dismiss the applicant's application as no application is made for any correction as required by the Rules of this court. He added that in reaction to the Counter-Affidavit of the Applicant, they have filed a nine (9) paragraphs further and Better Affidavit in support of their preliminary objection in 14/1/2016 and a reply on point of law. He urged the court to uphold their preliminary objection.

In reaction, the counsel to the Applicant filed an 11 paragraphs Counter-Affidavit on 12/1/2016 deposed to by the Counsel himself. There is also a written address and annexed is Exhibit A which is a further report of service of process deposed to

  
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by one of the Bailiff of this Court, Ali Godwin. Those are the submissions of counsel to both 1<sup>st</sup> Respondent/Applicant and the Applicant/Respondent.

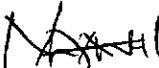
The issue for determination is whether the preliminary objection has merit or not.

It should be noted that order 6 Rules 2 of the Rules of this Court states inter alia that an originating process shall be served personally by delivering to the person to be served a copy of the document.

Similarly Order 6 Rules 5 of the Rules of this court states as follows:-

“Whether it appears to the court (either after or without an attempt at personal service) that for any reason personal service cannot be conveniently effected, the court may order that service be effected either.

- (a) by delivery of a document to an adult person at the usual or last known place of abode or business of the person to be served, or
- (b) by delivering of the document to some person being an agent of the person to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or other person come to the knowledge of the person to be served, or
- (c) By advertisement in the Federal Government official gazette, or in some new papers circulating, within the jurisdiction, or

  
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- (d) By notice put up, or some other place of public resort in the judicial division wherein the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode, or of business, of the person to be served.

There are plethora of supreme court authority which states that service of these type of processes must be on the person to be served, so service on his wife or agent is not a good service. The general purpose of requiring service of such a process is to give notice to the Defendant. *See the case of F.B.N PLC v OBANDE (1998) 2 NWLR Part 538.*

The next logical question is whether in the present circumstances of this case at hand, it can be said that the Applicant/Respondent has fully complied with the requirement of the law relating to personal service of processes of this nature? I have carefully considered the record of this court and the application of the Applicant and found that the Applicant/Respondent has admitted that there is no proper service on the 1<sup>st</sup> Respondent/Applicant. See paragraphs 4-10 of their counter-Affidavit to the preliminary objection and Exhibit "A" attached which is the further report of service. It is clearly admitted that one Chief Chukwu Ivi was served with the said process instead of the 1<sup>st</sup> Respondent as required by the law.

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*M. N. Nwankwo*

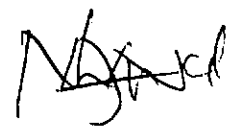
As regards, the 2<sup>nd</sup> ground of objection by the Applicant/1<sup>st</sup> Respondent i.e instituting an action in the name of a person with wrong designation and that two persons were sued by as 1<sup>st</sup> Respondent, I hold that this court will not be able to determine the issue at this stage as there is conflict in the Affidavit and counter-Affidavit of the parties. Oral evidence has to be call to determine who is right or wrong after cross examination and observing the demeanor of the witnesses by the court.

Similarly, it is the contention of the counsel to the Applicant/Respondent that this preliminary should be dismiss as it was not file within time. I hold that it is common knowledge that objection challenging the jurisdiction of a court can be raised at any stage of proceeding even on appeal. See the case of *A. G. RIVER V A. G. AKWA IBOM (2010) 45 NSCQR* PER W.S.N. ONNOGHEN JSC AT PAGES 1092 – 1093, *NANA OPIA V INEC (SUPRA)*.

Based on the above authorities, I am of the humble opinion that the preliminary objection has merit and is therefore uphold. The main suit is hereby struck out.

This is my decision.



  
M. L. ABUBAKAR  
JUDGE  
10/11/16