IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN
ON WEDNESDAY THE 23rd NOVEMBER, 2011
BEFORE THE HON. JUSTICE A.O. FAJI (JUDGE)

SUIT NO:- FHC/IL/CS/20/2011

BETWEEN:-

OGEDENGBE SURAJUDEEN OLA... PLAINTIFF

AND

1. **UNIVERSITY OF ILORIN**
2. **VICE CHANCELLOR, UNIVERSITY OF ILORIN (PROFESSOR ISHAQ OLAREWAJU OLOYEDE)**
3. **CHIEF SECURITY OFFICER, UNIVERSITY OF ILORIN (MR. I.M. TIJANI)**

.................DEFENDANT

JUDGEMENT

This is an application for the enforcement of the fundamental right of the Applicant – OGEDENGBE SURAJUDEEN OLA. The reliefs claimed as per the statement are as follows:

1. A declaration that the unlawful arrest and detention of the Applicant by agents of the 1st Respondent when he went to dispatch letters in the office of the 2nd Respondent constitutes a flagrant violation of the Applicant's right to personal liberty.
2. A declaration that the gross assault, mental and psychological torture, harassment and intimidation meted out to the Applicant by the 1st Respondent constitutes a grave violation of the Applicant's right to dignity of human person.
3. A declaration that the unjustified seizure of the phones of the Applicant and documents (including his personal documents) by the agents of the 1st

Respondent constitutes a violation of the Applicant's right to private and family life.

4. An order of mandatory injunction compelling the 3rd Respondent to return all the documents (including personal belonging to the Applicant) which are in the custody of the 3rd Respondent.

5. An order of mandatory injunction compelling the Respondents, jointly and severally to write an unalloyed and unmitigated letter of apology to the Applicant as required under the 1999 constitution of the Federal Republic of Nigeria and a publication of same in one of the national dailies.

6. An order of perpetual injunction restraining the 1st-3rd Respondents by themselves agents, privies or whomsoever acting through them or for them from further arresting, detaining, intimidating or harassing the Applicant herein.

7. A sum of Ten Million Naira only, jointly and severally against the 1st-3rd Respondents as general, exemplary and aggravated damages to assuage the feelings of the applicant for the mental and psychological damage done to his person by the Respondents.

The applicant swore to a 36 paragraph affidavit to which was exhibited:

- Exhibit S001: Copy of a letter addressed to 2nd Respondent copied to the Registrar and Legal Unit of 1st Respondent.
- Exhibit S002: Copy of letter dated 8th April 2011, from the office of the 3rd Respondent addressed to the Divisional Police Officer 'F' Division, Tanke, Ilorin.
- Exhibit S003: Copy of Police investigation report dated 18th April, 2011.
- Exhibit S004: Endorsed copy of letter dated 13th April, 2011 written by Plaintiff's Solicitors, to 1st Respondent's Registrar and the 2nd Respondent.
- Exhibit S005: Endorsed copy of covering letter of exhibit S004 copied to the 2nd Respondent.

A written address was also filed.

The Respondents reacted.

Akanbi Dare, Legal Officer of 1st Defendant swore to and filed an 11 paragraph counter-affidavit on 20/7/2011. Inuwa Muhammadtijani, the Chief Security Officer of 1st Respondent who is also the 3rd Respondent herein swore to a 22 paragraph counter-affidavit Exhibited thereto are:

- Exhibit UNILORIN 1: A copy of the Applicant's statement made at 1st Respondent's security post.
- Exhibit UNILORIN 2: Letter from the Academic Staff Union of Universities (ASUU) office of the 1st Respondent.

A written address was also filed.

On 21/7/2011, Applicant's Counsel adopted her address in the absence of Respondent's Counsel who was late to court. Counsel urged the court to discountenance the counter-affidavit which was filed out of time. In the alternative, Counsel submitted that the averments in the two counter-affidavits do not frontally deny the Applicant's affidavit. The counter-affidavits were therefore upon application deemed to be properly filed and served with liberty to the Applicant's Counsel to file a reply address. The said address was filed on 27/7/2011. Applicant's Counsel adopted her reply address.

Respondent's Counsel adopted his written address and proffered oral arguments. Counsel submitted the main plank of Applicant's case-dehumanisation-has been denied in paragraph 20 of the counter-affidavit. The Applicant's affidavit is also contradictory as Applicant's assertion that he is a staff of ASUU having been denied by the Respondent was not confirmed by a further affidavit neither did he mention that he was a staff of ASUU in Exhibit UNILORIN 1 – his statement. The non-denial of exhibit UNILORIN 2 also shows that Applicant lied on oath. There is thus no need to controvert the deposition which has been actually controverted.

Counsel also submitted that the Police which is a central figure in this suit has not been joined. The suit is therefore incompetent for none-joinder which is fatal. Counsel relied on: **FAJEMIROKUN-V-C.B. NIG LTD** (2009) ALL FWLR (part 487) 1 @ 25C-A.

The failure of the Applicant to contradict the counter-affidavits also amounts to an admission and the facts are deemed admitted.

On the application of Applicant's Counsel, Applicant's Counsel was granted leave to file a written address on the issue of jurisdiction with liberty to Respondents' Counsel to file a reply on points of law.

Applicant's Counsel filed a supplementary address on the issue of jurisdiction on 11/8/2011 whilst Respondent's Counsel reacted vide his written address filed on 29/8/2011. Applicant's counsel submitted that paragraphs 2.04, 2.05 and 2.13 of Respondents' address do not relate to the issue of jurisdiction – a point which was conceded by Respondents' Counsel. The said paragraphs were accordingly struck out by the court.

Applicant's Counsel submitted that the extent of the involvement of the Police determines if they should have been joined as parties. The Police was not involved in any way as it was the 3rd Respondent who arrested the Applicant. It was also the Respondent who detained the Applicant for several hours before he was handed over to the Police. Applicant is also not complaining about his further detention at the Police Station. Counsel relied on: **IFEANYICHUKWU-V-SOLEH BONEH** (200) 3 SCNJ 18@34. The phones have been returned but the documents are still with Respondents. Since the seizure was done by the Respondents, Police is not a necessary party. The failure to join a party does not rob the court of jurisdiction since the Police is not a necessary party.

Respondent's Counsel submitted orally that they did not admit that applicant was arrested. Counsel urged the court to presume that the documents were returned to the Applicant since the phones seized along with the documents were returned to Applicant by the Police in view of exhibit S003. It was consequent on seeing the document (the letter in issue) that the Police made S003. Applicant did not also controvert the deposition that all the items were given to the Police and the Police has handed them over to the Applicant since Applicant did not react to the counter-affidavits. Counsel distinguished the authorities cited by Applicant's Counsel on the facts.

Applicant's Counsel identified 3 issues for determination argued seriatim as follows:

Issue number one:

Whether the arrest, detention and the degrading treatment meted out to the Applicant by the Respondents is not an infraction of the Applicant's rights to personal liberty and dignity of his person as enshrined in the 1999 constitution.

Counsel submitted that Applicant was arrested in the course of the exercise of his lawful duties in the course of dispatching letters in a University – an ex-facie lawful matter. There was no reasonable suspicion that Applicant committed an offence in dispatching a letter which he did not write. If the contents of the letter were not pleasing to Respondent it was for them to reply the letter and not take the law into their hands. The Applicant was not even told why he was arrested. Counsel relied on:

- **CHINEDU EZE & ANOR-V-INSPECTOR GENERAL OF POLICE & 4 ORS** (2007) CHR 43 at 65 per Banjoko J;
- **BLESSING ONOMEKU-V-CP DELTA STATE COMMAND & 2 ORS** (2007) CHR 173 @ 182 A per DIAI J;
- Section 35 (1) & (5) 1999 constitution;
- Article 6 of the African charter on Human and Peoples' Rights cap A9 LFN 2004;

The detention of the Applicant by the Respondents at the Security Unit for not less than 6 hours without any lawful excuse is also unlawful, the length of time of the detention is immaterial. Counsel referred to **ISENALUMHE-V-JOYCE AMADIN & ORS** (2001) 1 CHR 458 @ 466 B-D Per Adah J where the detention was for three hours.

On degrading treatment, Counsel relied on paragraphs 19 and 24 of the Applicant's affidavit and the meaning of degrading to wit: reviling, holding one up to public obliquy, lowering a person in the estimation of the public, exposing to disgrace, dishonour or contempt Per **ISENALUMHE-V-JOYCE AMADIN** (supra) quoting from Black's law Dictionary. The conduct of the Respondents therefore contravenes section 34(1) (a) 1999 constitution and Article 5 of the African Charter.

Counsel urged the court to resolve this issue in favour of the Applicant.

Issue number two:

Whether the seizure of the Applicant's phones and the documents in his possession by the Respondents is not unconstitutional.

Counsel submitted that the seizure of the Applicant's phones as well as his documents as shown in paragraphs 19 and 21 for about 24 hours is unconstitutional.

Several photographs of the Applicant in a half-nude state were also taken. All in contravention of Applicant's right to private and family life pursuant to section 37 of the 1999 constitution.

Counsel urged the court to resolve issue number two in Applicant's favour.

Issue number three:

Whether the Applicant is not entitled to general, exemplary, and aggravated damages as a result of the breach of his fundamental human rights.

Counsel submitted that Applicant has established a breach of his fundamental human rights to human dignity, personal liberty and to private and family life against all the Respondents. Once there is a breach of any right, damages follow automatically. The arrest and detention of the Applicant entitle him to compensation and apology under section 35(6) 1999 constitution (as amended) . The apology should in the circumstances be published in one of the national dailies. Damages are due regardless of how great or minute the trespass is. Counsel relied on: **OKONKWO-V-OGBOGU** (1996) 4 SCNJ 190 at 207.

The compensation should also be adequate in view of the degrading treatment meted out to Applicant – a 2009 graduate of the 1st Respondent University. It is thus condemnable and belittling to any discerning mind. Exemplary damages should thus be awarded and also in order to make the 1st Respondent its agents, servants and/or privies cautious in future when dealing with innocent citizens. Counsel relied on **ISENALUMHE-V- JOYCE AMADIN & 3 ORS** (supra). Counsel submitted that exemplary damages lie if the Applicant is a victim of the punishable behaviour of the Respondent. The means of the Respondent and the frequency of the act (in this case

the Respondent is a Federal Institution of higher learning with the means to pay) should also be considered. The 1st Respondent also has an unrepentant posture and brazen disregard for the rule of law which earned her the reputation of being one of the most oppressive and repressive institutions in the country as exemplified by the case of **PROF. J.A. AKINYANJU-V-UNIVERSITY OF ILORIN & ANOR** (2011) ALL FWLR (part 569) 1080@ 1207 G-H Per Nweze JCA. Counsel also referred to **CHIEF CHINEDU EZE & ANOR-V-INSPECTOR GENERAL OF POLICE AND 4 ORS** (SUPRA) 43 @ 68E-1; **ODOGU-V-AG. FEDERATION** (1996) 7 SCNJ 132 @ 139; **MISOR-V-ADELEKE** (2005) ALL FWLR (part 287) 887 E-G 896-897F-H.

Counsel urged the court to grant Applicant's prayers.

The Respondents formulated two issues for determination:

1. Whether based on the facts and circumstances of this case, the interrogation and eventual handing over of the Applicant to the Police by the 1st Respondent is justifiable both in law and fact.
2. Whether the Applicant is not entitled to any of the reliefs sought against the Respondents in this suit.

Arguing issue number one, Counsel submitted that Applicant was neither molested assaulted or degraded in any form. He was suspected and quizzed, taken to the security post and handed over to the Police to avoid reactions from people in the University environment. The applicant was in violation of the law going by the contents of the letters he claimed to be dispatching which according to Counsel was inciting and seditious to his knowledge. Counsel referred to sections 417-419 of the Penal Code (Northern States) Provisions Act Cap P3 LFN 2004. The contents of the letter were also confirmed by the Police to be inciting. He also made inconsistent statements when accosted by the 1st Respondent's Security men. He first claimed to be a student of the University but when he was unable to produce his student's identity card, he said he graduated from the University in 2009. He also claimed to be a staff of ASUU – a claim which was denied by the Secretary of ASUU. He thereafter disclosed his mission in the 1st Respondent and the person who sent him. The address on the said letter was the

English Department of the University but the Head of that Department denied the existence of ASUU in his Department. These were sufficient to agitate the mind of the 1st Respondent and cast doubt in its mind as to the person of the Applicant and the genuiness of his purpose. This necessitated his being taken to the security post, the taking of his statement and his being handed over to the Police by 1st Respondent's security officers. This had to be done in order to avoid the danger to the University community which the inciting publication posed. The Applicant can therefore not successfully allege violation of his fundamental rights. Counsel referred to:

- **EKANEM-V-ASSISTANT IGP** (2008) ALL FWLR (part 420) 775 @ 785 D;
- **ODOGWU-V-A.G., FEDERATION** (1996) 6 NWLR (part 456) 52;
- **A-G ANAMBRA-V-UBA** (2005) ALL FWLR (part 277) 909 @ 925-926 B
- **ADINUSO-V-OMEIRE** (2006) ALL FWLR (part 310) 1759 @ 1768 C-F.
- Section 35 (1) (c) 1999 constitution

The accosting interrogation and handing over of the Applicant to the Police by the Respondents is therefore reasonably justifiable to prevent the Applicant from further committing the offence of distributing inciting letters and to ensure his prosecution. He was not eventually prosecuted as that decision rests with the Police.

The constitution is not to be interpreted in an isolated manner but holistically. Counsel referred to:

- **P.D.P-V-INEC** (1999) 11 NWLR (part 626) 200 at 242 F-G; 250 B-C and 257 A-B;
- **A.G FEDERATION-V-A.N.P.P** (2003) 15 NWLR (part 844) 600 at 650 A-B.

The isolated reliance on section 35(1) without considering the exceptions is not therefore proper. The cases of **CHINEDU EZE-V-INSPECTOR GENERAL OF POLICE** (supra); **BLESSING ONOMEKU-V-COMMISSIONER OF POLICE DELTA STATE COMMAND** (supra); **ISENALUMHE-V-JOYCE AMADIN** (supra), sections 34 and 35 of the constitution and articles 5 and 6 of the African Charter is thus out of context. The facts and circumstances are also different.

It is also false to assert that Applicant was arrested for six hours, that his photographs in the nude were taken and that he was assaulted, molested, degraded and treated inhumanly. Applicant was not detained at the security post but was handed over to the Police immediately after his statement was taken. The allegation (which is not conceded) that he was detained for 8 hours is also untenable in view of the provisions of section 35 of the constitution, since he was reasonably suspected of committing or being likely to commit an offence.

Counsel urged the court to answer issue number one in the affirmative and refuse the reliefs sought.

On issue number two, Counsel submitted that Applicant's act of distributing the inciting letters to members of the academic staff of 1st Respondent bespeaks criminality and by virtue of section 419 of the Penal Code it is for the Applicant to disprove criminal intention. Compensation and public apology will only arise under section 35(6) of the constitution if the alleged arrest and detention was unlawful. Counsel relied on **EKANEM-V-INSPECTOR GENERAL OF POLICE** (supra). Counsel submitted further that the cases relied upon by the Applicant are not applicable as the applicants in those cases were found to have been arrested and detained unlawfully as they did not commit nor were they suspected of committing or about to commit any crime. As opposed to Applicant in the instant case who is neck deep into the offence of incitement contrary to the provisions of the Penal Code.

Counsel submitted finally that he who asserts must prove as laid down in **UBN PLC-V-ISHOLA** (2001) 15 NWLR (part 735) 47 @ 81 B-C. Applicant is therefore not entitled to any of the reliefs sought.

Applicant's Counsel replied on law. Counsel considered the depositions in the two counter-affidavits, starting with the first one which Counsel submitted did not deny any of the depositions in Applicant's Affidavit. The said depositions are therefore deemed admitted. Paragraphs 3,4,5, 7 and 8 also contain facts not within the deponent's knowledge, he did not also say how he came about those facts. The deponent might have been informed by an eye-witness but he failed to disclose his

informant, time and place of the information thus making the said depositions void for none-compliance with sections 86,88 and 89 of the Evidence Act cap E20 LFN 2004. The said paragraphs are not only defective as to form but in substance and are therefore incurable. Apart from going to the Police Station to seek the release of the Applicant, the deponent did not do any other thing in relation to this case. Counsel therefore urged the court to strike out the said paragraphs. In the alternative, Counsel argued that the said paragraphs are watery and no weight should be attached to them as they are incredible and inherently contradictory.

Whilst not denying exhibit S004, paragraph 7 admits that the documents were seized but asserts that they were returned and that Applicant signed for them. The document allegedly signed was however not exhibited. Even if it is assumed for purposes of argument that Applicant signed any document, the failure of the Respondents to exhibit the document necessitates the invocation of section 149 of the Evidence Act. Counsel urged the court to discountenance the first counter-affidavit.

On the second counter-affidavit, same did not frontally deny the depositions of the Applicant. Even though paragraphs 3,4,6,7 and 8 make out a case parallel to that of the Applicant, paragraphs 13,14 and 20 are sweeping denials and are designed to mislead the court. Counsel relied on:

- **OGUNSOLA-V-USMAN** (2003) FWLR (part 180) 1465 @ 1482A;
- **OSAWE-V-OSAWE** (2003) FWLR (part 183) 97 @ 107 C-E

It is not sufficient to make blanket and general denials.

Paragraph 3 of the 1st counter-affidavit also contradicts paragraphs 3 and 4 of the second counter-affidavit. Paragraph 4 of the second counter-affidavit says the Applicant was allegedly standing around the 2nd Respondent's office while paragraph 3 of both counter-affidavits say Applicant was loitering around the Senate building. These material contradictions must be resolved in favour of the applicant. Counsel relied on:

- **NYUMA-V-AOR** (2008) ALL FWLR (part 439) 571 @ 593 G-H and **BANK OF BARODA & ANOR-V-MERCANTILE (NIG) LTD** (1987) 2 NSCC 892 @ 896.

The 3rd Respondent could not also explain how he was alerted on the purported loitering of the Applicant, which amounts to suppressing evidence.

Paragraphs 11 of the second counter-affidavit is also conclusive and argumentative in contravention of section 87 of the Evidence Act. Exhibit UNILORIN 2 is a public document and ought to be certified. Even if this was not so the exhibit is no justification for the infringement of Applicant's fundamental right. The exhibit is also dated 7th June 2011 – a day after the incarceration of the Applicant. Its probative value is also diminished by the deposition in paragraph 10 of the first counter-affidavit that Respondents did not press for Applicant's prosecution because of the 'self styled, ASUU officials that sent him.' The exhibit is an afterthought and incredible and must be treated with levity.

Counsel submitted that the Respondents' written address did not address the issues raised by the Applicant and is deemed to have conceded Applicant's arguments. It also contains distorted facts as there is no evidence that Applicant was advised against the course of conduct by the Head of Department of Computer Science as stated in paragraph 2.08 of the address. Counsel's address cannot be a substitute for evidence. Counsel referred to **NIRCHANDI-V-PINHEIRO** (2001) FWLR (part 48) 1307 @ 1320 B-C.

The view expressed in paragraphs 4.03 and 4.04 of Respondents' address that Applicant cannot ask for the protection of the law when he has himself violated the law draws the conclusion that they have constituted themselves into a court of law. They do not have the competence to charge, try and convict a person for any criminal offence. They have also denied the Applicant the constitutionally guaranteed presumption of innocence. Respondents have also equated the opinion of the Police in exhibit S004 to a charge against the applicant. The attempt to distinguish the authorities cited by the applicant also runs against the principle of precedent as re-echoed in **OLADEJI-V-N.B. PLC** (2007) 1 SCNJ 375 at 388 to the effect that the facts do not have to be on all fours in the sense of exactness or exactitude for an authority to apply. There is also no evidence to show that the purported inciting document is a threat to industrial peace.

Even paragraph 11 should be struck out for being in contravention of section 87 of the Evidence Act and does not bear this out. The cases cited in paragraph 4.09 of the Respondents' address do not also apply. The exception in section 35(1) of the 1999 constitution does not apply as Applicant was not charged for any criminal offence. The Respondents also admitted the arrest of the Applicant and did not deny that he was not told the reason for his arrest. The Respondents have also admitted the unreasonableness of the arrest by not disclosing the time the Applicant was 'quizzed' and the time he was eventually taken to the Area 'F' Police station. They also admitted that the Applicant was released on bail at about 7 pm on the instruction of the 1st Respondent. The Applicant has therefore unquestionably been unlawfully arrested and detained and is entitled to adequate compensation and public apology. The contention that Applicant was neither molested nor treated inhumanly is at variance with paragraph 15 of the second counter-affidavit which admits that Applicant was deprived of food by asserting that the Applicant did not 'demand for any food.' Counsel relied on **EDOKPOLOR-V-OHENHEN** (1994) 7 NWLR (part 358) 511 @ 529 that the court will presume the existence of one fact from the existence of proved facts when such a presumption or inference is irresistible or when there is no other reasonable presumption or inference which fits all the facts. The unlawful arrest, and detention and dehumanising treatment of the Applicant has thus been made out. The Respondents also failed to produce the original/or certified true copies of the documents which Applicant gave them notice to produce. The presumption in section 149 of the Evidence Act therefore applies. To assert that the conduct of Applicant bespeaks criminality pursuant to section 419 of the Penal Code is a usurpation of the powers of a court of law. To assert that Applicant is neck deep into the offence of incitement contrary to the provisions of the Penal Code when in actual fact Applicant was not charged for any offence is also strange and a flagrant disregard for the rule of law. The court should intervene to check this ugly trend. The definition of incitement in Black's Law Dictionary also shows that Respondents' position that Applicant allegedly distributed inciting document is feeble. The definition is 'the act of persuading another person to commit a

crime.' Respondents have not shown how the act of distributing a letter addressed to a specific office (the office of the 2nd Respondent and copied to the Registrar and Legal Unit of the 1st Respondent) persuades another to commit a crime.

The Applicant's Counsel also filed a supplementary address on the issue of jurisdiction in reaction to Respondents' oral arguments on same. Counsel raised two issues for determination to wit:

- Whether the Police are necessary parties to this action
- Whether this honourable court is not seised with jurisdiction to entertain this suit on account of the non-joinder of the Police.

On issue 1, Counsel referred to the definition of necessary party as laid down in:

- **REGISTERED TRUSTEES N.A.C.H.P.N-V-MHWUN** (2008) ALL FWLR (part 412) 1013 @ 1074 A-B and
- **GREEN-V-GREEN** (2001) FWLR (part 76) 795 @814 G-H and submitted that

the only reason why it is necessary to make a person a party to an action is that he should be bound by the question in the action and the question to be settled. There must thus be a question in the action which cannot be effectively and completely settled unless he is a party. The Applicant's claim is against the Respondents whom he alleges breached his fundamental rights. Counsel submitted that the Applicant claims his arrest and detention was by the Respondents. The Police are in no way involved even when exhibit S002 and the counter-affidavit are considered. Exhibit S003 show how he was handed over to the Police by the Respondents. The Applicant was also released on the instruction of the 1st Respondent. There is no evidence before the court which makes the Police necessary parties. A Plaintiff should be allowed to pursue his remedy against the Defendant he has a cause of action against. Counsel relied on:

- **OKESADE-V-OGUNKAYODE** (1994) 1 NWLR(part 318) 26 @ 36 and
- **GREEN-V-GREEN** (supra).

The Applicant was also dehumanised by the Respondents and not the Police. The Police is thus not a necessary part. The Applicant's phones were also seized by the Respondents and the Police was not involved in that act. There is also no evidence

linking the Police with the seizure of applicant's documents. The Police is not a necessary party as it is not likely to be affected by the result of this action.

On issue number 2, Counsel submitted that the court has jurisdiction to determine this matter and the Police is not a necessary party. The non-joinder of a person who is not a necessary party cannot by any circumstance affect the jurisdiction of the court. Counsel relied on:

- **GREEN-V-GREEN** (supra);
- - order 9 rule 14(1) Federal High Court Rules 2009 and
- **AGBEKONI-V-KAREEM** (2008) ALL FWLR (part 406) 1970.

Even if (which is not conceded) the Police are necessary parties, the non-joinder of the Police is no more than a procedural defect which can neither affect the substance of this case nor the jurisdiction of the court. Counsel relied on **AGBEKONI-V-KAREEM** (supra).

Counsel urged the court to resist the invitation by the Respondents to join the Police against whom the Applicant alleges no legal wrong.

Counsel submitted that the facts of **FAJEMIROKUN-V- COMMERCIAL BANK (NIG) LTD** (supra) are not similar as a report was made and the arrest therein done by the Police. In the instant case, the arrest , detention, seizure of the Applicant's phones as well as the dehumanisation of the applicant was done by the Respondents. It was after all these occurred that the matter was handed over to the Police and the Applicant was not charged for any offence.

Counsel urged the court to hold that it has jurisdiction.

The Respondents filed a reply on points of law. As observed by Applicant's Counsel and conceded by the Respondents paragraphs 2.04, 2.05 and 2.13 of the Respondents' address do not address the issue of jurisdiction. The said paragraphs having been struck out therefore, the court will not consider the arguments therein.

On issue number one, Counsel argued that the parties joined issue on whether the Applicant was detained by the Police or not and whether the items seized from him were released by the Police. The Respondents posit that they were. This was not

denied by the Applicant and are deemed admitted. The authorities cited by the Applicant also support Respondents' case. The court is at best in doing its duty when all necessary issues and parties are before it.

The Respondents' men arrested the Applicant but did not detain him. He was handed over to the Police when his mission became clear. Detention does not extend to accosting and interrogating which are in the purview of arrest. Counsel also submitted that the cases of **OGELE-V-SALIU** and **GREEN-V-GREEN** are not relevant. Even though the Plaintiff has the right to sue a person of his choice, the court has the corresponding duty of seeing that the case is heard and determined effectively and effectually by ensuring that all those without whose presence the justice of the case may not be achieved are brought in either suo moto or on application by the adversary. Akanbi Dare has also shown that all that was collected from the applicant has been released to him by the Police. The need for the presence of the Police is whether all what was collected from Applicant were received by him at the Police Station. The claim by the Respondents that they handed over all those items has to be tested through the Police. It is also necessary to find out if they are still in the custody of the Police or the Police has actually released everything to the Applicant. This goes beyond mere evidence as the Police has been roped into the suit and need to be called to settle all the issues involved effectively, completely and effectually.

Reacting to issue number two, Counsel submitted that the duty of the court is to do justice and it should guard against anything that will affect the performance of that duty. The case of Applicant as constituted is inadequate and this will affect the discharge of this duty. To proceed in the face of none-joinder as in the instant case poses the risk of the decision being set aside on appeal especially if injustice results from such none-joinder. The importance of joining a necessary party was stated by the Supreme Court in **BUHARI-V-YUSUF** (2003) 14 NWLR (part 841) 446 @ 519-520 B-B and **FAJEMIROKUN-V-COMMERCIAL BANK (NIG) LTD** (supra) where the Supreme Court stated the need for joinder of the Police in matters of this nature.

The Police did not carry out the arrest but carried out the alleged detention, collection and release of the Applicant's phone. The Applicant was also handed over to the Police and released. These were put in issue by the Applicant and cannot be resolved without the joinder of the Police.

If the Police is not joined, the reliefs claimed cannot be granted without injustice to the Respondent. The court should not speculate. Counsel relied on: **T.G.F.A. (NIG) LTD-V-M.L. LTD** (2005) 17 NWLR (part 953) 70 at 87 B-C.

Counsel urged the court to resolve the issue in favour of the Respondents and cited cases in which none-joinder has been held to be fatal to wit:

- **EGOLUM-V-OBASANJO** (1999) 7 NWLR (part 611) 423 and
- **BUHARI-V-OBASANJO** (2005) 13 NWLR (part 941) 1.

Those were the submissions of Counsel on the merits and the issue of none-joinder of the Police.

I will consider the issue of none-joinder first.

Respondents' Counsel has contended that the Police is a necessary party without whose presence, the instant matter cannot be effectually and effectively determined. He relied on FAJEMIROKUN's case. I am of the view that that case does not assist the Respondents as the Police played a major role in the arrest of the Applicant in that case. The Police was however not joined as a party and the matter was defeated on that ground. In the instant case, the Applicant has not sued the Police and indeed made no claims against the Police. He did not also make any allegations against the Police. He has not alleged that the Police played a major role in his matter. Indeed, exhibit S003 – the Police Report – was relied on by the Applicant to show that the Police did not find that he committed an offence. The Applicant did not complain against the activities of the Police in any manner whatsoever.

Respondents' Counsel also posits that the issue of the documents allegedly seized from the Applicant cannot be resolved unless the Police is a party. It is Respondents' position that the documents were handed over to the Police and later released to the applicant by the Police. These facts according to Respondents were not

disputed by the Applicant. Respondents also posit that applicant himself was handed over to the Police by the Respondents. The Applicant has however not complained about his arrest or detention by the Police. Indeed, Respondent's Counsel further stated that Applicant's case is inadequate.

It would seem to me that the Respondents appear to be more concerned about how Applicant should go about his case than the applicant himself. Respondents appear interested in ensuring that the Police be joined in order to make Applicant's case clearer. That really is a matter for the Applicant. Even at that, the Police would only in my view be necessary witnesses. Since Applicant whose case is not clear according to Respondents has not thought it right to involve the Police as witnesses, it is not for the court or the Respondents to ensure that this is done a fortiori have the Police joined as parties.

There is no order sought against the Police. There is nothing in this case that will attract liability on the part of the Police. The reliefs sought do not affect the Police and thus there is no need for them to be bound by the decision. Care must therefore be taken to ensure that in the attempt to do justice, the court does not involve persons whose presence is not necessary for the effectual and effective determination of this matter. In any event, exhibit S003 is the official position of the Police in this matter. One wonders what else the Police will be doing in the case. The Applicant has himself relied on this document in support of his case. He therefore has no complaints about the role Police played.

As stated earlier, it would seem that Respondents want the Police to justify Respondents' position that the documents were handed over to the Police. Applicant's position is that he has not received same. I think this is a pure matter of evidence and burden of proof. It has nothing to do with joinder of parties. If Respondents think the Police can bear out their position, it is for them to get them to court to give evidence and not for them to be parties in a case in which even if the Applicant succeeds, none of the reliefs sought, if successful, will affect the Police. I am therefore of the considered view

that the Respondents' position cannot be the correct one. The objection based on none-joinder of the Police is therefore hereby dismissed.

Now to the merits of the matter. The Respondents have contended that not having filed a further affidavit, the Applicant has admitted all the facts contained in the 2 counter-affidavit filed by Respondents. The reaction of Applicant to this is that some of the paragraphs of the 2 counter-affidavits offend the provisions of the Evidence Act and in some cases are contradictory.

Paragraphs 3,4,5,7 and 8 of the 1st counter-affidavit according to Counsel offend sections 86, 88 and 89 of the Evidence Act as they are not within the personal knowledge of the deponent who did not also disclose the source of his information. In the alternative, they are watery and not entitled to any weight . Paragraph 3 of this counter-affidavit is also inconsistent with paragraphs 3 and 4 of the second counter-affidavit.

It would seem that paragraph 3 of the 1st counter-affidavit is not within the personal knowledge of the deponent who works in the Legal Unit of 1st Respondent. He did not also disclose the source of his information. I therefore find that the said paragraph offends sections 86 and 88 of the Evidence Act and is hereby strike out. The contention that this paragraph 3 also contradicts paragraph 3 and 4 of the second counter-affidavit therefore loses steam. Paragraph 4 also suffers the same fate as paragraph 3. That is not however the case with paragraph 5 since the deponent himself went to secure the release of the applicant, as deposed to in paragraph 6. Paragraphs 7 and 8 also seem to me to be within the knowledge of the deponent being the one who secured the release of the Applicant at the Police Station. To contend that the deponent did not exhibit the document which Applicant allegedly signed on receipt of the items collected to my mind is a feeble attempt by the Applicant to explain away the error of not filing a further affidavit to rebut these facts. In the absence of any denial or disputation of paragraph 7 therefore, the said paragraph is deemed to be true. The position would have been different if Applicant had denied this paragraph especially in view of paragraph 27 of the affidavit in support when he deposed that his phones were returned

returned to him at the Police Station without mentioning the situation as regard the documents. Paragraph 8 was also not denied by the Applicant. It is therefore deemed to be true.

So much for the 1st counter-affidavit. The 2nd counter-affidavit contains paragraphs which are material to this case but not denied by the Applicant. To contend that Respondents did not frontally challenge Applicant's affidavit in support does not seem to have much force in view of the assertion by Applicant's Counsel that paragraphs 3,4,6,7 and 8 of this counter-affidavit make out a case parallel to that of the Applicant. The Applicant did not controvert these paragraphs which are deemed to be true. Applicant contends that paragraphs 13 and 14 of 2nd counter-affidavit are sweeping denials. I do not think so. In his capacity as Chief Security officer the deponent is in charge of the security Unit of 1st Respondent and should know if the Applicant was detained, stripped half naked or his photograph taken. To my mind, this is a direct answer to the depositions of Applicant on the way he was allegedly treated by the Respondents. Paragraph 20 is not a statement of fact but a conclusion. It is accordingly hereby struck out for being in contravention of section 87 of the Evidence Act.

The preceding summation shows that on the facts, the Applicant has not shown that his documents are still in the custody of the Respondents who made a positive assertion that all the items collected from the applicant were returned to him by the Police. Relief 3 of the motion on notice has thus not been made out. It is accordingly hereby dismissed.

The Respondents' account of what transpired at the University on 6th April 2011 seems to me to be more credible. The first reason is the admission or assertion by Applicant's Counsel that paragraphs 3,4, 6-8 of the 2nd counter-affidavit make out a case parallel to that of the Applicant. These paragraphs were also not denied by the applicant by way of a further affidavit. The account in those paragraphs show that Applicant was loitering and aimlessly wandering around the Senate Building of 1st Respondent. The Applicant was then found somewhere around the 2nd Respondents' office – i.e the office of the Vice-Chancellor of the University. When he was accosted, he said he was a

student of the University but could not produce his identity card. He then changed tune. He said he was no more a student as he graduated from the Computer Science Department in 2009. Further probing unveiled that Applicant was an official of ASUU. The circumstances did not permit an open discussion so Applicant was taken to the security post.

At this point in time, Applicants' conduct was definitely suspicious and his motive and mission also suspicious. He then surrendered all the documents he said he came to dispatch which in the opinion of 3rd Respondent contained incitement, use of abusive, foul, reviling and vociferously vilifying language calculated to cause disaffection in the University community. The said letter was addressed to 2nd Respondent and copied to some other members of the academic staff of 1st Respondent. From paragraph 21 of Applicant's affidavit it is also clear that he also had in his bag, copies of letters to the various Deans of various faculties in the University. It is also note-worthy that an inquiry from the address on the letter revealed that there was no ASUU office at the said address – all making the situation yet more suspicious. At this point in time, I am of the view that it was perfect and in order for the 3rd Respondent to make more inquiries and after their inquiries, the Applicant was handed over to the Police.

From the affidavits, it is clear that this process lasted for about 7 hours i.e. between noon and 7pm on 6th April 2011. Applicant has cited authorities to show that once a person is restrained in violation of section 35 of the constitution, the length of the period is immaterial. In the instant case however, the conduct of the applicant was suspicious. Respondents have also argued that the contents of the letter contravene sections 417 to 419 of the Penal Code. I think it is sufficient that the conduct of Applicant was at all material times suspicious for the action of the Respondents to be justifiable under section 35(1) (c) of the constitution.

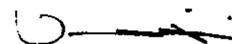
Exhibit S004 which applicant himself relies on shows that the person who sent him on the errand i.e. Dr. Oloruntoba-Oju and his team carried out acts of incitement and were parading themselves as the ASUU body of the University, even though unrecognised by the University and inspite of the fact that there was another recognised

contest between two different factions in the University. The Police therefore suggested mediation and cautioned Dr. Oloruntoba-Oju on how he goes about his complaints, agitations, suggestions or appeals on any matter of interest affecting the running of the University. The University was also asked to be courageous to invite Dr. Oloruntoba-Oju and his members for amicable meetings.

This report emanated from the letter of 8th April 2011 by which 1st Respondent handed over everything relating to the allegations against the applicant to the Police. The Applicant posits that the Police found nothing against him. That may not be exactly so since the person who sent him on errand was found to have been involved in incitement disturbance. The Police however chose not to proceed in the courts but suggested an amicable mode of resolution. To my mind this shows that the letters in question had the potential of arousing disaffection in the University community and that the Respondents were right in the manner they approached the issue. Looking at the entire circumstances therefore I do not see any thing wrong in what the Respondents did. There was no unlawful arrest and detention of the Applicant by the 1st Respondent's agents. The steps taken were reasonable in the circumstances. The Respondents also disputed the various allegations of maltreatment to wit: the alleged gross assault, mental and psychological torture, harassment and intimidation and violation of human dignity. Prayers 1 and 2 have therefore not been made out and are hereby dismissed. I am also of the view that Respondents were perfectly in order in seizing the phones of the applicant at the material time in view of his suspicious utterances and conduct. The Applicant himself has posited that the phones were returned to him the next day by the Police. Even though the only personal documents stated in paragraph 21 of Applicant's affidavit is his curriculum vitae which is definitely incapable of causing disaffection, since it was amongst other documents including copies of letters to the Deans of the various faculties, I am of the view that Respondents were right in taking them from the Applicant. Prayer 3 therefore fails and is dismissed.

Prayer 4 has already been dismissed. Prayers 5-7 are hinged on the success of prayers 1 and 2 and the said prayers having failed, prayers 5-7 also fail and are hereby dismissed.

On the whole therefore, this matter is totally devoid of merit and is hereby dismissed.



A.O. FAJI
(JUDGE)
23/11/2011

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