

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY THE 1ST DAY OF MARCH, 2019,
BEFORE HIS LORDSHIP, THE HON. JUSTICE A. I. CHIKERE
JUDGE

SUIT NO: FHC/ABJ/CS/147/2018

BETWEEN:

1. MR. WILFRED TASSANGE
2. DR. NFOR NGALA NFOR
3. DR. CORNELIUS KWANGA
4. ELIAS EYAMBE ESQ
5. SHUFAI BLAISE BERINYU
6. MRS NALOWA BIH ESQ
7. MR. JULIUS AYUK TABE
8. PROFESSOR AUGUSTINE AWASOM
9. DR. HENRY KIMENG
10. DR. OJONG OKONGO
11. DR. FIDELIS NDE CHE
12. MRS. WINIFRED AUGUSTINE
13. THANKGOD GENESIS
14. NASIRU BAH
15. TITA TEBIO
16. BAME EMMANUEL
17. CASIUS LENDZEMO
18. NANGSIYUNG CHRISTAIN
19. NYNYKI ERNEST
20. ELVIS FONYUN
21. ROMEON SEVIDEE
22. WIRED ZENYUY LEONARD
23. AMOS BENTAR
24. LONTUN WILFRED
25. AHMADU HASSAN
26. ADONES MARTIN
27. LUKONG ABDULLAHI
28. EDWIN DUBILA
29. TIVEN EMMANUEL

APPLICANTS



290259299798

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B U J A

Signature _____
Date 5/3/19

Abu SO
(H E O 90)

30. FRANKLIN EMIA
31. DEMIAN BONGBEM
32. SALAH EDMOND
33. NWANYAM C. SUMGWA
34. KIDZE TELSON TANLAKA
35. TUKON DEVINE
36. JOHN NKWAH
37. ANIFAKAH KIVEN
38. KATAT EZEKIEL
39. PENIEL TERI
40. NGORAM EMILE
41. NYEFEH BORIS
42. MUHAMMADU RABIU AUDU
43. JOSEPH BONGUMNYI
44. PIUS NGORAN
45. ASHIME BROWN
46. LUKONG ABDULRAHAMAN
47. FON STANGLEY
48. SEKEH MULLIGAN
49. NSOYE IGNATIUS
50. VOMAN ROMARIOUS
51. ZAKARAITAU NSAVOLZENYUY

APPLICANTS

AND

1. NATIONAL SECURITY ADVISER
2. ATTORNEY GENERAL OF THE FEDERATION

RESPONDENTS

JUDGMENT

Learned Counsel to the Applicant commenced this action by way of Originating Motion on Notice dated 7/02/2018 but filed on 9/02/2018 praying the court for the following relief:

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B N O A

Signature [Signature]
Date 5/3/19

2 | Page

1. A DECLARATION that the deportation of the Applicants from Nigeria to Cameroon on Friday, January 26, 2018 is a violation of their fundamental rights to reside in Nigeria, seek and obtain asylum guaranteed by Article 12 of the Africa Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A10, Laws of the Federation of Nigeria, 2004.
2. A DECLARATION that the deportation of the Applicants from Nigeria to Cameroon on Friday, January 26, 2018 is violation of their movement guarantee by Section 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and Article 5, 6, and 12 of the Africa Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A10, Laws of the Federation of Nigeria, 2004.
3. A DECLARATION that the deportation of the Applicants from Nigeria to Cameroon on Friday, January 26, 2018 is a violation of their unquestionable and inalienable right to self-determination guaranteed by Section 40 of the Constitution and Article 20 of the Africa Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A10, Laws of the Federation of Nigeria, 2004.
4. AN ORDER directing the Respondents to bring the Applicants back from Cameroon to Nigeria Forthwith.
5. AN ORDER directing the Respondents to pay damages N200,000,000.00 (Two Hundred Million Naira) to each of the Applicants for the violations of the fundamental rights to fair

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B J A

3 | Page

Signature.....
Date..... 5/3/17

hearing, freedom of movement, freedom to reside in Nigeria and seek asylum.

6. AN ORDER OF PERPETUAL INJUNCTION restraining the Respondents from further violating the fundamental rights of the Applicants in any manner whatsoever however without lawful justification.

Accompanying the Originating Motion on Notice is a 6 paragraphs affidavit deposed by one Paul Ochayi with Exhibits.

Counsel filed Written Address.

Upon service of the Originating Motion on Notice, learned counsel to the Respondents filed a Notice of Preliminary Objection challenging the jurisdiction of this court to entertain this suit on the following grounds:

- a. That the Applicant's suit disclose no cause of action against the Respondents.
- b. That the Applicants' suit is wrongly commenced by way of fundamental right enforcement.
- c. That the subject matter of this suit is not within Chapter IV of the Constitution.
- d. That there is no competent affidavit in support of the Applicant's suit.
- e. That this court lacks the jurisdiction to hear and determine the Applicants suit.

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A. O. J. A.
Signature _____
Date 5/3/19

Accompanying the Notice of Preliminary Objection is a 5 paragraphs affidavit deposed to by one Ilop Lawrence.

Counsel filed Written Address.

Responding to the Notice of Preliminary Objection learned senior counsel to the Applicants filed a 11 paragraphs Counter Affidavit deposed to by one Barrister Fru John Nsoh and a 20 paragraphs Counter Affidavit deposed to by Femi Falana SAN with exhibits.

Counsel filed Written Address.

ISSUES FOR DETERMINATION

- a. Whether this court is vested with the jurisdiction to entertain this suit?
- b. Whether the Applicants have made a case to be entitled to the reliefs sought?

ISSUE A

Whether this court is vested with the jurisdiction to entertain this suit?

Learned counsel to the Respondents contends that the Applicants have not disclosed any cause of action against the Respondents or any of the Federal Government Agency. That there is nothing on record to support the case of the Applicants against the Respondents.

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date..... 5/3/09

Learned counsel contends that the Applicants and their Counsel are operating under the misconception that the Respondents sued are vicariously liable for the alleged acts of the unknown armed security men. He cites Adekoya v. Federal Housing Authority (2008) 11 NWLR (Pt. 1099) 539 at 551, SPDC (Nig.) Ltd vs. X.M. FED LTD (2006) 16 NWLR (Pt. 1004) 189 @ 200 amongst other cases.

Learned counsel submits that the entire affidavit of the Applicants is laced with alleged conduct of some unknown, unidentified, nameless and faceless agency of the Respondent. That not even one of the alleged agency of the Respondents was identified. That the Applicants have failed woefully to establish a nexus between this case and the Respondents and he cites APC v. PDP (2015) ALL FWLR (Pt. 791) 1493 and Ransome-Kuti and Ors vs Attorney General of the Federation (1985) 16 NSCC Pt. 2, 879

He submits that where the Applicants are sure that it was the Defence Intelligence Agency that detained them, they ought to sue that Security Agency before the 2nd Respondent can be made a nominal party. That it is not the duty of the Respondents to deport anyone but that of the Nigerian Immigration Service which can sue and be sued. That the issue of deportation does not require the Order of the court but the responsibility of the Minister saddled with such duty. He cites Section 19 and 25 of the Immigration Act.

RECEIVED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature: 
Date: 5/3/19

Learned counsel argued further that the right to approach the court for the enforcement of fundamental right is only to the person who alleges that his right is likely or has been breached and not community of a people. That representative actions cannot be properly commenced by way of enforcement of fundamental human right. That the Preamble of the Fundamental Right (Enforcement Procedure) Rules 2009 allowing for a third party is unconstitutional, null and void. He cites Section 46(1) of the Constitution of the Federal Republic of Nigeria(1999) As Amended) and Registered Trustees of FTCN v. Ikwechegh (2000) 2 SCNQR 2 1407 amongst others

Learned counsel argued that it is the Applicants by themselves in law saddled with the responsibility of deposing to the affidavit in support of the initiating process or originating process. That if for any reason the Applicant cannot deposed to the Affidavit as a result of incarceration, the subsequent deponent must state why the Applicant could not depose to the affidavit. That it was not done in the present suit. He cites Order II Rule 4 of the Fundamental Right (Enforcement Procedure) Rules 2009 and Setraco (Nig) Ltd v. Kpaji (2017) 5 NWLR 280 AT 302.

He concluded by urging the court to dismiss the suit.

Responding, learned counsel to the Applicants F. Falana SAN contends that the Preliminary Objection takes no account of the validity of the claims of the claimant or plaintiff because it deals with the competence of the suit. That the court should discountenance any argument made on the substance of the case.

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B M J A

7 | Page

Signature.....
S B K 7

Learned counsel contends that the argument that the Applicants have disclosed no cause of action is misconceived as only in matters commenced by way of writ of summons can defence raise the objection of the matter not disclosing reasonable cause of action. That a fundamental right suit is an action for the interpretation of certain provision of the Constitution. That cause of action automatically inures in favour of the Applicant. More so, that it is only the case of the plaintiff that the court will examine to determine whether there is a cause of action. He cites Mobil Producing Unlimited v. LASEPA (2002) LPELR 1887.

He contends that the denial of arrest, detentions and deportation of the Applicants by Respondents doesn't not divest the court of its jurisdiction. That the argument of the Respondents on the ground that the Attorney General of the Federation should not be made party is wrong because the complaint in the instant suit is against the Executive Arm of Federal Government of Nigeria as such the AGF is the proper party to be sued. He referred the court to AG Kano v. AGF (2007) LPELR 618 Page 28, Section 5(1), 147, 148 and 150 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) amongst other authorities.

Learned counsel argued that the Fundamental Right (Enforcement Procedure) Rules 2009 shares the same pedestal with the Constitution and overrides the provisions of other statute. That the court has departed from the narrow view that it's the actual person whose right

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

8 | Page

Signature.....
Date..... 5/3/19

has been infringed or likely to be infringed that can institute an action in court for the enforcement of his fundamental right. He cites Nig Stored Products Research Institute and Ors v. Mathias Ugwu and 11 ors (2013) 15 WRN 49, Nwankwo v. Ononeze- Madu (2009) 1 NWLR (Pt. 1123) 671) at 715 amongst other cases.

Learned counsel contends that the fundamental rights of the Applicants cannot be ordinarily taken away without an affront to justice. He cites Uzoukwu and Ors vs. Ezeonu II and Ors (1991) 6 NWLR (Pt. 200) 708 at 761 amongst other cases

He concluded by urging the court to grant the reliefs sought in the Originating Motion.

A cause of action has been defined in the case of **Egbe Vs Adefarasin (1987) 1 NWLR (47) 1 @ 20** where Oputa, JSC (As he then was) explained what amounts to a cause of action thus:

"Now let us look at the meaning of cause of action. It is admittedly an expression that defies precise definition. But it can safely be defined as the fact or facts which establish or give rise to a right of action - it is the factual situation that gives rise to judicial relief. A cause of action is to be distinguished from a right of action. A right of action is the right to enforce presently a cause of action. In other words, a cause of action is the operative fact or facts (the factual situation), which give rise to a right of action, which it itself a remedial right.."

CEPT FIED TRUE COPY
FEDERAL HIGH COURT
A B UJA
Signature _____
Date _____

In order for the court to determine whether a party has a cause of action it must examine the originating process. In the present case, the Originating Motion and the accompanying affidavit will be examined. See the case of **EFCC & ORS V. ODIGIE (2012) LPELR-15324** where the court held:

"A cause of action and when it commences is determined only on a perusal of the plaintiff's action or claim".

It must be stated that in determining whether there is a cause of action or reasonable cause of action, it is dependent on whether the case has the chance of succeeding or there is a possible right accruing to a party. See the case of **Rinco Const. Co. v. Veepee Ind. Ltd. (2005) 9 NWLR (Pt.929)85**

"Reasonable cause of action means a cause of action with some chances of success. For a statement of claim to disclose a reasonable cause of action, it must set out the legal rights of the plaintiff and the obligations of the defendant. It must then go on to set out the facts constituting infraction of the plaintiff's legal right or failure of the defendant to fulfill his obligation in such a way that if there is no proper defence, the plaintiff will succeed in the relief or remedy he seeks. The word "reasonable" means fair, proper, just, moderate, suitable under the circumstances."

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B J V A
Signature _____
Date 5/3/17

I have carefully examined the Originating process and the accompanying documents in the present case. The gamut of the Applicants claim is that they were illegal deported by the Respondents without having regard to their fundamental human rights.

As rightly pointed out by the learned counsel to the Applicants, the issue on fundamental right is a very important issue which deals with existence of mankind. See the case of **Nig. Stored Prod. Rescar. Inst. v. Ugwu (2013) 15 WRN 49A AT 74** where the court held:

"The fundamental rights inhere in man because they are part and parcel of mankind. They are the forefront among the rights that enure to human beings. They are the *fons et origo* of human rights

I am also in agreement with the learned counsel to the Applicants that when determining a reasonable cause of action, the position taken or the defence put up by the defendant or respondent is irrelevant. See the case of **Mobile Producing Unlimited vs. LASEPA (2002) LPELR 1887 (SC)** where the court held:

"...it is now trite that in confirming whether there is reasonable cause of action in a suit, it is only the writ and statement of claim that are considered by our jurisprudence. Once these documents disclose triable issues capable of leading to the grant of reliefs, then the court holds that a reasonable cause of action exists. At this

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B UJA

11 | Page

Signature... 
Date... 5/3/19

stage, the court does not look at the defence of the defendants; that's a matter of joinder of issues to be trashed out at trial nor does it pay attention to the weakness in the case presented by the plaintiff; which is a matter to be trashed out at the trial of the case"

Therefore, the submission of the learned counsel to the Respondent in paragraph 4.06 of this Written Address that the Applicants failed to identify the agency that participated in the alleged deportation is inconsequential because the reasonable cause of action is not dependent of the defence but on the claims of the Applicant. More so, it will seem to the court that by following the line of argument of the learned counsel to the Respondents will mean that, that the court will determine the merit of the case at this interlocutory stage.

The courts have been admonished not to delve into the merit of the case at an interlocutory stage. The submission of the learned counsel that the Applicant did not mention who Agency that participated or mention anyone that participated in the alleged wrong or that the Minister does not need the Order of the court at this stage of the proceeding is misconceived. See the case of **NDALILE & Ors. v. NUPE & Ors. (2010) LPELR-4585**, the court held:

"It is also trite that a Court shall not, at interlocutory stage, delve into the merit of the substantive matter

It must also be borne in mind that by the nature of preliminary objection, the issue must be on grounds of law and not issues that

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B U A
Signature [Signature]
Date 5/3/17

touches on the merit of the case. See the case of **A.-G. Federation v. ANPP (2003) 18 NWLR (Pt. 851) 182 at p. 207**, the court held:

"Preliminary objection, by its very nature, deals strictly with law and there is no need for a supporting affidavit. In a preliminary objection, the applicant deal with law and the ground is that the court process has not complied with the enabling law or rules of court and therefore should be struck out..."

In the circumstances, the originating motion and accompanying process have disclose a reasonable cause of action. Whether the Applicants succeed at the trial is a different thing.

Learned counsel to the Respondent maintained the argument that present action should be commenced by applicants personally and not by way of representative action or class action. He sought from the court to declare the provision of the Fundamental Right (Enforcement Procedure) Rules, 2009 inconsistent with the Constitution.

The present action is not a representative action but a class. There is nothing in our legal jurisprudence that says that there cannot be more than one plaintiff in a fundamental human right action where they share a common wrong.

Again, from the arguments of the learned counsel to the Respondents is the fact that all the cases cited in support of his argument predate coming into force the Fundamental Rights (Enforcement Procedure)

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B I J A

Signature.....
Date.....

13 | Page

Rules, 2009. It was this line of arguments advanced by the learned counsel to the Respondents that led to the coming into force of the current Fundamental Rights (Enforcement Procedure) Rules, 2009 which amongst other things removed the issue of locus standi, technical hiccups such as the present one advanced by the learned counsel to the Respondents which was obtainable in Fundamental Rights (Enforcement Procedure) Rules, 1979.

By the current rules, any person can come to court on behalf of another person to challenge an alleged fundamental human right abuse or as a class if the need arises. This is clearly seen in the Preamble of the said **Fundamental Rights (Enforcement Procedure) Rules, 2009**. Which provides:

"3 The overriding objectives of these Rules are as follows:

(e) The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*. In particular, human rights activists, advocates, or groups as well as any non-governmental organisations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following:

- (i) Anyone acting in his own interest;
- (ii) Anyone acting on behalf of another person;

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B U D A

Signature.....
Date.....

(iii) Anyone acting as a member of, or in the interest of a group or class of persons;

(iv) Anyone acting in the public interest, and

(v) Association acting in the interest of its members or other individuals or groups

This provision of the Fundamental Rights (Enforcement Procedure) Rules, 2009 has been confirmed by the courts over time. See **ODUBU V. STEPHEN & ORS (2012) LPELR-19792(CA)** and **SAMBO & ORS v. OKON & ORS (2013) LPELR-20394(CA)**

Therefore, the provisions of the Fundamental Rights (Enforcement Procedure) Rules, 2009 is not inconsistent with the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

On the issue of whether the Affidavit in support of the Originating Summons is defective. The provisions of **Order II Rule 4 of the Fundamental Rights (Enforcement Procedure) Rules, 2009** reads:

"The affidavit shall be made by the Applicant, but where the applicant is in custody or if for any reason is unable to swear to an affidavit, the affidavit shall be made by a person who has personal knowledge of the facts or by a person who has been informed of the facts by the Applicant, stating that the Applicant is unable to depose personally to the affidavit."

This provision of the Fundamental Rights (Enforcement Procedure) Rules, 2009 clearly gives a person who is abreast with the facts of the

CERTIFIED TRUE COPY
FEDERAL HIGH COURT

A B / J A

Signature

Date

15 | Page

[Handwritten Signature]
[Handwritten Date: 5/3/19]

case the right to depose to an affidavit stating other than the Applicant who may not be able to depose to the facts personally.

I am in agreement with the learned counsel to the Respondents that the deponent one Paul Ochayi failed to state why the Applicants are unable to depose personally to the affidavit. However, should the court term this as an issue that affects the jurisdiction of the court to entertain the suit? The answer is definitely in the Negative. See **EFCC and Ors v. Chukwurah (2018) LPELR-43972** where the court held:

"Similarly, the combined reading and application of the Provision of Order 2 Rule 4 and Order 9 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009 renders the failure of the deponent to state that the Applicant is unable to personally depose to the affidavit a mere irregularity which does not render the deponent's affidavit incompetent"

From the community reading all the 6 paragraphs Affidavit in support of the Originating Motion on Notice, it is clear that the Applicants are not able to depose to the affidavit because they were deported to Cameroun to an undisclosed place.

Requiring the deponent to state categorically, that the Applicants are unable to depose to the affidavit is taking technicality too far. This court and many other courts have been eschewed against this line of argument. In other words, learned counsel to the Respondent wants this court to strike out or dismiss this suit at this stage of the proceedings

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B C D A

16 | Page

Signature.....
Date..... 5/3/19

simply because the deponent failed to state in the affidavit that the Applicants are unable to depose to the affidavit. With due respect to the learned counsel to the Respondents this is technicality taken to the extreme. See the case of **ANPP v. R.E.C., Akwa Ibom State (2008) 8 NWLR (Pt.1090) 453 at 548-549** where the court held:

"The hey days of technicalities are gone forever. The court is now more interested in doing substantial justice than relying on technicalities which can only lead to injustice. The judicial process malfunctions and is discredited when it is bogged down by technicality and is manipulated to go from technicality to technicality and thrives on technicality. That is why at all times the tendency towards technicality should be eschewed and the determination to do substantial justice should remain the preferred option and hallmark of the judicial system."

In the circumstances, this court has jurisdiction to entertain this suit and the Preliminary Objection is dismissed for lacking in merit.

ISSUE B

Whether the Applicants have made a case to be entitled to the reliefs sought?

Learned counsel to the Applicants contends that the deportation of the Applicants is a violation of the Applicants' fundamental rights

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

17 | Page

Signature.....
Date..... 5/3/19

when they are legal immigrants in Nigeria. That the court has the duty to safeguard the rights and liberties of persons living within the confines of the Nigeria state from any form of abuse. He cites Section 35(1) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and *Nawa v. A.G. Cross River State* (2008) ALL FWLR (Pt. 401) Page 807.

Learned counsel contends that 1st to 3rd Applicants are naturalized Nigerians citizens. The 4th -10th Applicants are recognized refugees, while the 11th to 52nd Applicants are political asylum seekers in Nigeria who are entitled to be protected by the Nigerian Constitution. That the Applicants are refugees recognized by the United Nations Commissioner for Refugees and he cites Chief (Mrs) Olufunmilayo Ransome-Kuti and Ors v. AGF (1989) 2 NWLR (Pt. 6) Page 2110

He contends that the deportation of the Applicants without giving them an opportunity to make representation violates their right to fair hearing as provided in Section 36(2) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended). That Article 12 of the African Charter on Human and Peoples' Right provides that no one can be expelled from Nigeria without due process. That a foreigner may be refused access to Nigeria by the Minister of Interior but where access is given that person cannot be expelled or deported without following the law. More so, that the conduct of the Federal Government is a clear violation of the provisions of UN Convention Relating to the Status of Refugees and the OAU Convention on Refugees.

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

18 | Page

Signature.....
Date.....

Learned counsel submits that the Applicant have suffered damages to their personal liberty and dignity. That on the account of the illegal deportation/ expulsion from Nigeria, the Applicants have also been deprived of their fundamental right of association. Their fundamental right to freedom of movement, as well as their fundamental right to reside in Nigeria, seek and obtain asylum guaranteed by Article 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (CAP) LFN, 2004, are entitled to damages of N200,000,000.00 (Two hundred million naira) each. He cites *Fugu v. President (2009-2010) CHR P.1 AT 20-21*

He concluded by urging the court to grant the reliefs sought.

Learned counsel to the Respondents did not file a Counter Affidavit to the Originating Motion on Notice but relied only on the Notice of Preliminary Objection.

It is the law that where a party files an Notice of Preliminary Objection only and the said objection fails, he will be taken to have conceded to the facts therein in the Originating process. See the case of **Omnia (Nig) Ltd v. Dyktrade Ltd (2007) 15 NWLR (Pt.1058) 576 at 628** where the court held;

"Once a defendant has decided to challenge an action by way of preliminary objection before filing his defence, he is taken as having conceded all questions of facts as contained..."

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
Signature _____
Date 5/3/19

Again, a party who was afforded a right of fair hearing on an issue cannot be heard complaining about the outcome thereafter. See the case of **ATAMAH & ANOR V. EBOSELE & ORS (2008) LPELR-3815** where the court held:

In its nature, a party who has or had every opportunity to present his case before the court and who fails to do so, cannot be heard to complain..."

The paragraphs of the affidavit in support of Originating Motion on Notice having not been controverted by the Respondents shall be deemed as true. See the case of **Digal vs. Nanchang (2005) ALL FWLR (Pl.240) 41 at 46**, where the court held:

"Averments in an affidavit which have not been challenged or controverted in a Counter Affidavit is deemed to be admitted as true"

This court is bound to take the averments/ paragraphs in the affidavit in support of the Originating Motion on Notice as true.

It is the law that the provisions of the African Charter on Human and Peoples' Rights have been domesticated into our legal jurisprudence. Consequently, it has the force of the law. See the case of **IGP v. ANPP (2008)12 WRN 65 AT 99** where the court held:

"It is now part of the domestic laws of Nigeria and like all other laws, the court must uphold African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap 10 LFN"

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
Signature.....
Date..... 5/3/19

Article 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (CAP) LFN, 2004 reads:

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups

The provisions of the law is very clear and unambiguous and this court is under duty to give it its ordinary meaning. See the case of **Oladokun v The Military Governor of Oyo State & Ors (1996) LPELR-2551 (SC) @ Pg. 49 Para A-C**, the apex Court re-affirmed this principle of law thus:

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B J A

21 | Page

Signature.....
Date..... 5/3/19

"A court must not in the interpretation of a statute whose wordings are clear and unambiguous import into it something which is not contained in it. Further, where words in a statute, as in the instant case, are clear and unambiguous, they should be given their ordinary meanings and enforced accordingly"

By the provisions of the above law, every individual not only Nigerians by the wordings of the law, have a right of movement and seek refugee or asylum where they feel persecuted. In the instance case, by the uncontroverted affidavit evidence, 1st to 3rd Applicants are Nigerians by Naturalization, the 4th to 10th are recognized refugees while 11th to 52nd Applicants are political asylum seekers in Nigeria.

The decision of the court in **FEDERAL MINISTER OF INTERNAL AFFAIRS & ORS. V SHUGABA ABDULRAHMAN DARMAN (1982)3 NCLR 915** clearly state that a Nigerian domiciled in Nigeria cannot be deported from Nigeria.

By the above decision, 1st to 3rd Applicants being Nigerians cannot be deported from Nigeria. As the law on deportation cannot be exercised or invoked against Nigerians as it is a clear violation of their fundamental rights to personal liberty, privacy and freedom to move freely throughout Nigeria.

On the part 4th to 10th Applicants who are recognized refugees and 11th to 52nd Applicants who are political asylum seekers in Nigeria the provisions of Article 12 (3)(4) and (5) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (CAP) LFN,

22 | Page

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature _____
Date 5/3/19

2004 protects persons who are refugees and political asylum seekers and can only be deported or taken back where they are found to have violated the laws of the country. In the instant case, there is nothing before the court that shows any such violation.

Accordingly, this court hold as follows:

1. That the deportation of the Applicants from Nigeria to Cameroon on Friday, January 26, 2018 is a violation of their fundamental rights to reside in Nigeria, seek and obtain asylum guaranteed by Article 12 of the Africa Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A10, Laws of the Federation of Nigeria, 2004.
2. That the deportation of the Applicants from Nigeria to Cameroon on Friday, January 26, 2018 is a violation of their movement guarantee by Section 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and Article 5, 6, and 12 of the Africa Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A10, Laws of the Federation of Nigeria, 2004.
3. AN ORDER directing the Respondents to bring the Applicants back from Cameroon to Nigeria Forthwith.

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date..... 5/3/19

4. AN ORDER directing the Respondents to pay damages N200,000.00 (Two Hundred Thousand Naira) only to each of the Applicants for the violations of the fundamental rights to fair hearing, freedom of movement, freedom to reside in Nigeria and seek asylum.
5. AN ORDER OF PERPETUAL INJUNCTION restraining the Respondents from further violating the fundamental rights of the Applicants in any manner whatsoever however without lawful justification.

I so hold



HON. JUSTICE A. I. CHIKERE
JUDGE
1/03/19

COUNSELS REPRESENTATION

FEMI FALANA SAN, FUNMI FALANA ESQ, MARSHAL ABUBAKAR ESQ, ABDUL OROH ESQ, SAMUEL OGALA ESQ, DEJI MORAKINYO ESQ, FEMI ADEDEJI ESQ, AYOMPE UNIGIFOH ESQ, VERONIQUE FEM, WASHIMA IARINDER ESQ AND AKPOMIEMIE AKPOMIEMIE for the APPLICANTS

SULIEMAN JUDBRIL ESQ, E.O. OMONUWA ESQ, ADEDAYO OGUNDELE ESQ, T.D. AGBE ESQ, DANIEL D. ENIKANOLAYE ESQ AND ABDULKADIR ALIYU ESQ for the RESPONDENTS

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date.....

5/3/19
ASU S.O
(H E O W)