

**JUDGE  
FEDERAL HIGH COURT  
LOKOJA**

**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LOKOJA JUDICIAL DIVISION  
HOLDEN AT LOKOJA  
ON WEDNESDAY, THE 8<sup>TH</sup> DAY OF JUNE, 2016  
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE PHOEBE M. AYUA  
JUDGE**

**SUIT NO. FHC/LKJ/CS/17/2016**

**BETWEEN:**

**ZAKARI EGBUNU ..... COMPLAINANT**

**VS**

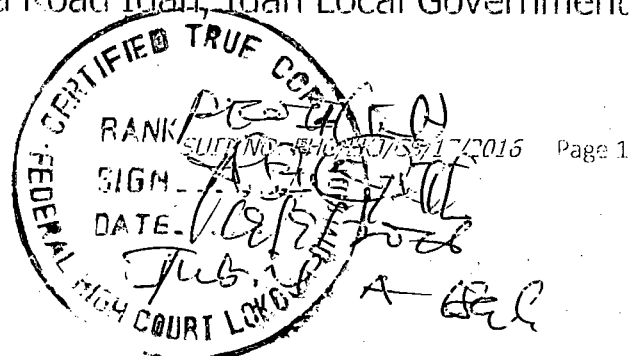
- 1. COMMISSIONER OF POLICE,  
KOGI STATE**
- 2. THE COMMANDANT, SPECIAL  
ANTI-ROBBERY SQUAD, KOGI STATE. .... RESPONDENTS**

**JUDGEMENT**

This is an application brought by way of Motion on Notice, dated the 24/02/2016 and filed on the 01/03/2016. It was brought by the Applicant, herein, against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, praying for an order for the enforcement of his Fundamental Rights in terms of the Reliefs sought by the Applicant as contained in the Statement in support of the Motion. The application was filed pursuant to section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Articles 4, 5 and 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, (the FREPR) and the inherent jurisdiction of this Court.

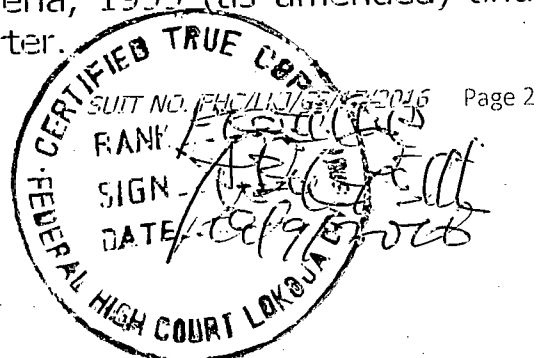
In the Statement in support of the Motion on Notice filed in compliance with Order II Rule 3 of the FREPR, 2009, the name and description of the Applicant are given as **ZAKARI EGBUNU**, Male, Nigerian Citizen of Angwa-Jama Road Idah, Idah Local Government

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Area, Kogi State. The Reliefs sought by the Applicant are enumerated as follows:

1. **A Declaration** that the arrest and detention of the Applicant from the 18th day of February, 2016 up till the date of filing this suit by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents based on an allegation by the Nigerian Police Force, Kogi State Command, is illegal, unconstitutional, and a gross violation of the Applicant's Fundamental Rights guaranteed in the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and emphasized by the African Charter, as well as an affront on the judicial system.
2. **A Declaration** that the continued harassment and detention of the Applicant by Respondents in their custody is illegal, unconstitutional, and a gross violation of the Applicant's Fundamental Rights guaranteed in the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and as emphasized by the African Charter.
3. **An Order** of This Honourable Court directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to forthwith release the Applicant from their Custody or Prefer a Charge against the Applicant before a Competent Court of Law.
4. **An Order** of perpetual injunction restraining the Respondents, her agents, privies, representatives, contingencies and assigns from further arresting, intimidating, harassing and threatening the Applicant in whatsoever manner after the determination of this case except with an express order of Court.
5. **An award of ₦1,000,000.00 (One Million Naira) only** against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents being, damage suffered by the Applicant for the gross violation of his Freedom of Movement and Right to Personal Liberty to wit; his arrest, harassment and continued detention between the 18<sup>th</sup> day of February, 2016 up till the date of filing this suit as enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and emphasized by the African Charter.



6. **An Order** of this Honourable Court directing the Respondents to write a Public apology letter addressed to the Applicant and to publish same in a National daily Newspaper in Nigeria.

7. **And** for such further order or orders as the Court may deem fit to make within the contemplation of this case.

The five grounds upon which the reliefs are sought are also stated as follows:

1. That the arrest, detention, harassment and threat of the Applicant from the 18<sup>th</sup> day of February, 2016 up till the date of filing this suit by the Respondents based on an allegation by the Nigerian Police Force, Kogi State Command, is an infraction of the Constitutional rights of the Applicants.
2. That the continued harassment, torture and detention of the Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in their custody is an infraction of the Applicant's fundamental Human Rights as enshrined under Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria as amended.
3. That the Respondent has no legal basis to arrest, detain, harass and threaten the Applicant.
4. That the Applicant's right to personal liberty, dignity of human person, private and family life and freedom of movement have been violated and are likely to be further violated by the Respondents.
5. That the fundamental rights of a Nigerian citizen as entrenched and guaranteed by chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria (as Amended), Articles 4, 5, and 6 of the African Charter, cannot be violated or infringed upon save and except as contemplated by the Constitution.

The application was filed along with an affidavit of 19 paragraphs deposed to by one Musa Ibrahim, of New Camp Idah, Kogi State and uncle of the Applicant.

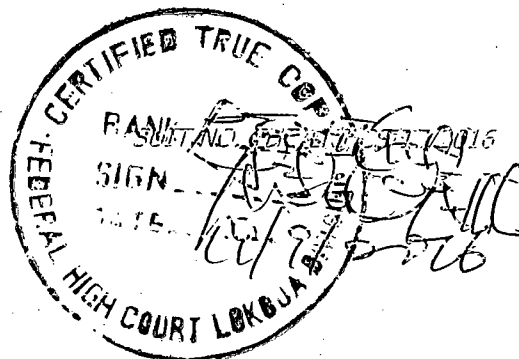
Also, filed in support of the application is a written address of Counsel.

Upon being served with the originating processes of the Applicant, the Respondents filed a counter affidavit of 18 paragraphs, deposed to by one Sgt. Suleiman Idris, an investigating Police Officer attached to the Special Anti-Robbery Squad, the Nigeria Police Force, Kogi State Command, Lokoja. Annexed to the counter affidavit are documents labelled Exhibit AA, Exhibit AA1, Exhibit B, Exhibit C and Exhibit D.

The Respondents' Counsel also filed a written address in support of the Counter Affidavit.

The Applicant filed a further affidavit on the 06/04/2016, in further support of his Motion in response to the Respondent's Counter Affidavit.

On the 03/05/2016, Counsel for the Applicant and Counsel for the Respondents were present in Court. The learned Counsel for the Applicant I. O. Abdullahi, Esq., acknowledged the processes filed by him before the Court, being the Motion, the Statement and affidavit in support of the Motion as well as the written address. He adopted the written address filed in support of the Applicant's application as their argument in favour of the said application. He also drew the attention of the Court to paragraphs 6, 9, 11, 13, 14 and 15 of the Respondents' Counter Affidavit, stating that they contravene section 115(2) of the Evidence Act as they are legal arguments and



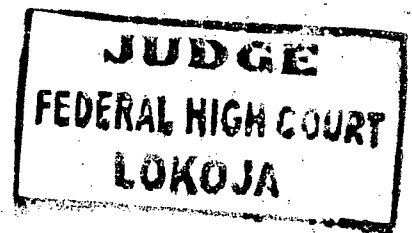
conclusions and cannot stand the test of law. He urged the Court to expunge the said paragraphs and disregard them.

Learned Counsel also urged the Court to hold that the Senior Magistrate's Court III where the Applicant was arraigned is not the proper Court to try allegations of kidnapping and armed robbery as evidenced by Exhibit D annexed to the Counter affidavit. Learned Counsel submitted that there are a number of judicial authorities that condemn "holding charge" as unconstitutional. He urged the Court to so hold and to grant the prayers of the Applicant.

The Counsel for the Respondents, S. I. Ikutanwa, Esq., submitted that prayer 3 on the Applicant's motion paper has already been answered in that the Applicant has since been arraigned before the Senior Magistrate's Court III, Lokoja. Learned Counsel adopted the written address of Counsel which was filed in support of the counter affidavit and the five exhibits annexed to the said counter affidavit and urged the Court to allow the Respondent to rely on it as his argument in opposition to the Applicant's application. He submitted that the Applicant's application has no leg upon which to stand in that the depositions in the supporting affidavit to the application, particularly, paragraph 8 thereof is an admission of the fact that the Respondent was justified in arresting and detaining the Applicant for arraignment in Court.

Furthermore, the learned Counsel submitted that paragraphs 11, 12, 13 and 14 of the supporting affidavit contravene section 115(2) of the Evidence Act, 2011. Learned Counsel urged the Court to invoke section 215(1) (a) and (b) of the 1999 Constitution (as amended) to hold that the 2<sup>nd</sup> Defendant is not a juristic person and cannot sue or be sued. He relied on the case of **COMMISSIONER OF POLICE, ONDO STATE v. OBOLO (1989) 5 NWLR page 131 at 133.**





This Court was urged to expunge the name of the 2<sup>nd</sup> Respondent from this suit. Finally, the Respondents' Counsel urged the Court to dismiss the application with costs.

The Applicant's Counsel considered the judicial pronouncement in the case of **C.O.P. ONDO STATE v. OBOLO (supra)** and conceded that the 2<sup>nd</sup> Respondent is not a juristic person. The Court therefore, relied on order 9 Rule 14(2) of the Federal High Court (Civil Procedure) Rules, 2009, to strike out the name of the 2<sup>nd</sup> Respondent as a party to this case. Now, the 1<sup>st</sup> Respondent is the only Respondent in this case.

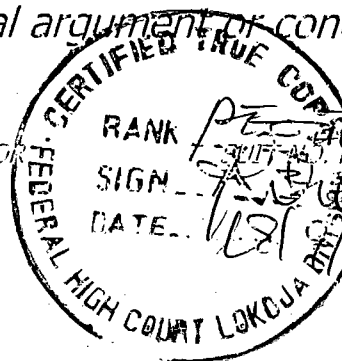
The issue about paragraphs of the Counter Affidavit of the Respondent and the supporting affidavit of the Applicant being in contravention of section 115(2) of the Evidence Act, 2011, is a threshold issue and will be treated forthwith.

The Applicant's Counsel raised objection to paragraphs 6, 9, 11, 13, 14 and 16 of the Counter affidavit for being legal arguments and conclusions, contrary to the requirements of an affidavit as stipulated in section 115(2) of the Evidence Act, 2011.

On his part, the Respondent's Counsel attacked paragraphs 11, 12, 13, and 14 of the supporting Affidavit for being in contravention of Section 115(2) of the Evidence Act, 2011.

Now section 115(2) of the Evidence Act, 2011, provides as follows:

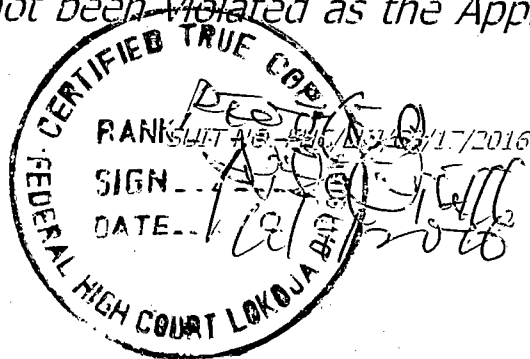
*An affidavit shall not contain extraneous matters, by way of objection, prayer or legal argument or conclusion.*



The paragraphs of the Counter affidavit attacked for being contrary to section 115(2) of the Evidence Act, 2011 are copied below, as follows:

*Paragraph 6: That paragraphs 5 and 6 are false and state in response that the Applicant was arrested based on an information received from the following Police informants Barr. I. O. Dekina and Salihu O. Jibril to the Nigeria Police Divisional Police Headquarters Idah to the effect that on 02, 02, 2016 some persons using a Gulf car kidnapped his grandfather called Yusuf Joseph Odekina and were demanding a ransom of N40 million using GSM No. 08067113142. The copy (sic) of their statements are herewith attached and marked as Exhibited "AA" (sic), respectively.*

- 11. Paragraph 12 is false and state in response that the Applicant is in good condition of health and he is not showing any sign of sickness.*
- 13. Paragraph 14 is false and state in response that I know as a fact that the arrest and detention of the Applicant is on the strength of the information of the informant Barr. I. O. Odekina, Salihu O. Jibril which is constitutional.*
- 14. That paragraph 15 is false and state in response that I know as a fact that the Applicant is a jobless Applicant.*
- 16. That paragraph 17 is false and state in response that I know as a fact that the fundamental rights of the Applicant have not been violated as the Applicant is*



*being investigated for the criminal offences of Criminal Conspiracy, Armed Robbery and Kidnapping reported by Barr. I. O. Odekina and Salihu O. Jibril.*

It is apparent, in my humble view, that it is only paragraphs 13 and 16 of the counter affidavit that are legal arguments, and conclusions and therefore in contravention of section 115(2) of Evidence Act, 2011. The said paragraphs 13 and 16 of the Respondent's Counter Affidavit are, hereby, struck out accordingly. Paragraphs 6, 9, 11 and 14 are to my mind, statements of facts and are in order.

Similarly, I hereunder copy paragraphs 11, 12, 13, and 14 of the supporting affidavit said to be in contravention of section 115(2) of the Evidence Act, 2011, as follows:

*Paragraph 11. That I know as a fact that the Applicant has been undergoing untold harassment, torture, maltreatment in the hands of the Respondents since his arrest and continued detention in the custody of the 2<sup>nd</sup> Respondent since the 18<sup>th</sup> day of February, 2016 till date.*

*12. That I know as a fact the Applicant is a sicklier (sic) patient and that his health condition has been deteriorating since his arrest and continued detention in the custody of the 2<sup>nd</sup> Respondent could lead to his untimely death.*

*13. That I know as a fact that the 1<sup>st</sup> Respondent is the Head of the Kogi State Command, Nigeria Police Force located at Lokoja and that all men of the Nigeria Police Force attached to the Divisional Police, Idah Division and the Special Anti-Robbery Squad of the Nigerian Police Force, Kogi State, Lokoja are directly*



representative of the 1<sup>st</sup> Respondent and derive direction from the 1<sup>st</sup> Respondent before taking any action whatsoever.

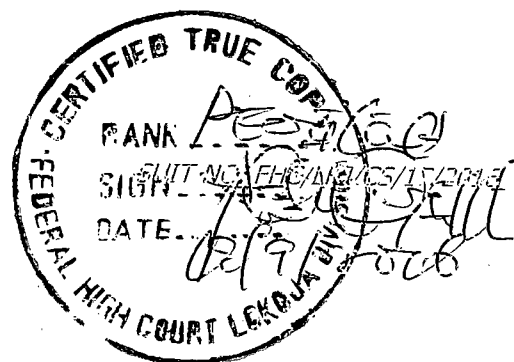
14. That I know as of fact the arrest and continued detention of the Applicant by the Respondents on the strength of the Complaint of the Complainant against him was unwarranted.

A careful perusal of the averments in the stated paragraphs of the supporting affidavit shows that paragraphs 13 is a legal argument while paragraph 14 is a conclusion. The said paragraphs fall foul of the Section 115(2) of the Evidence Act, 2011. The said paragraphs 13 and 14 are hereby struck out, accordingly. Paragraphs 11 and 12 are in my view, mere statements of facts based on the deponent's knowledge, as stated by him and the said paragraphs 11 and 12 of the supporting affidavit are in good order.

**APPLICANT'S ARGUMENT IN SUPPORT OF HIS APPLICATION**

The facts of the suit as can be gleaned from the affidavit in support of the application are as follows:

*That on the 18<sup>th</sup> 02<sup>nd</sup> 2016, the Applicant was invited by men of the Divisional Police Office, Idah Division of the Nigeria Police, Kogi State Command. The Applicant honoured the invitation and reported at the Police Station on the same day. That while at the Police station, the 2<sup>nd</sup> Respondent arrested and detained the Applicant till the date of filing this application. That the Applicant was arrested and detained based on a complaint brought against him by complainants/informants.*



In the written address of Counsel for the Applicant a lone issue was formulated for determination, as follows:

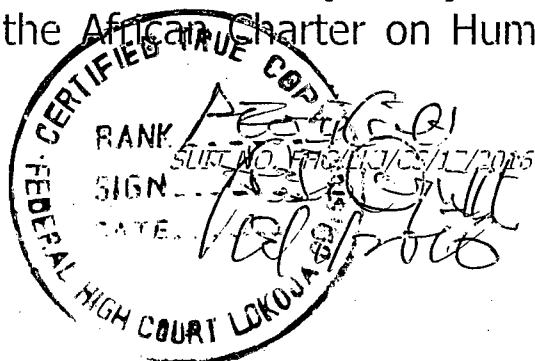
*Whether the Respondents, severally and jointly, have violated the Applicant's Fundamental Human Rights to entitle him to the reliefs sought.*

On the above point, the learned Counsel submitted that Chapter IV of the 1999 Constitution and Articles 4, 5 and 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria, 2004, severally and jointly guarantee the right to personal liberty, right to privacy and family life, right to dignity of the human person, etc., as fundamental human rights.

He also submitted that fundamental rights are in the realm of domestic law and that they are fundamental because they have been guaranteed by the Constitution. He relied on the case of **EKANEM V. ASSISTANT I. G. P. (2008) ALL FWLR (PT.420) 775 at 785 paragraph C.**

Furthermore, learned Counsel submitted that the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act has the force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive and judicial powers in Nigeria.

He relied on the provision of section 1 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and the case of **ODAFE & ORS v. A.G.G. & ORS (2005) CHR 309** where the Court affirmed that the African Charter on Human and



Peoples' Rights (Ratification and Enforcement) Act, has been incorporated by the government of Nigeria as part of the Law of Nigeria.

The Learned Counsel maintained that the fundamental rights enshrined in the African Charter on Human and People's Rights, etc., and indeed other legislation in Nigeria are enforceable in Nigeria and that the Courts are obliged to enforce them.

The Applicant's Counsel submitted also that every human being is entitled to his fundamental rights when he is not subject to any constitutional disability. He cited in aid the case of **EKANEM v. I.G.P. (supra)** at 783 paragraphs B-E.

It was the submission of the Applicant's Counsel that it is the duty of the Court to safeguard the rights and liberties of the individual and to protect him from any abuse or misuse of power. He relied on the case of **NAWA v. ATTORNEY-GENERAL, CROSS RIVER STATE (2008) ALL FWLR (PT.401) 807 at 840, paragraph, B-F.**

The learned Counsel submitted that the Applicant has shown in his supporting affidavit that the Respondent illegally arrested and detained him while he went to honour the invitation of the Respondent's men despite the fact that the nominal Complainant said the Applicant was not involved in the alleged offence during the investigation parade carried out in the office of the Respondent in Lokoja, Kogi State.

It was the contention of Counsel that the law bestows on a resident in Nigeria, high and low, the right to go about his or her lawful business unmolested by anyone else, be it a government functionary



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or a private individual. That the Court will frown upon any manifestation of arbitrary power assumed by a person over the life or property of another even if that other is suspected of having breached some law or regulation. He relied on the case of **A. S.E.S.A. v. ELWEMEM (2001) FWLR (Pt.51) 2034 AT 2054 – 2055** paragraphs A-B.

Learned Counsel contended that the arrest and detention of the Applicant by the Respondents without justification, violate the fundamental rights of the Applicant to dignity, personal liberty and right to privacy, contrary to the provisions of sections 34, 35(1)(c) and 37 of the 1999 Constitution and Articles 4, 5 and 6 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act. On this point, he again cited in support, the case of **EKANEM v. ASST. IGP (supra) at 783 B-E**. It was the argument of the learned Counsel that the operative word used in section 35(1) of the 1999 Constitution is "shall", which has been interpreted in judicial pronouncements to mean a command or mandate. That when the word "shall" is used in a statute, it is not permissive but mandatory. He referred this Court to the case of **UGWU V. ARARAUME (2007) All FWLR 377 p. 807 AT 857 C-F**.

Furthermore, learned Counsel submitted that it is trite law that in an application of this nature, what is required of the Applicant is to show credible evidence that his fundamental right has been breached and or likely to be breached. He relied on the case of **NWANGWU V. DURU (2002) VOL.13 WRN P. 158 at P.167 lines 25-45**. Learned Counsel maintained that in line with the authority in the case of **NWANGWU v. DURU (supra)**, the Applicant, herein, has furnished credible evidence by way of a supporting affidavit.

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In addition, learned Counsel contended that applications for enforcement of fundamental rights are peculiar and special in nature and that such applications should ordinarily be decided on the basis of the supporting affidavit, and counter affidavit and if need be, further affidavit alone. He cited in aid the case of **AFRIBANK NIGERIA PLC. V. ADIGUN (2009) ALL FWLR (PT.476) 2009 at 2026 paragraph E.**

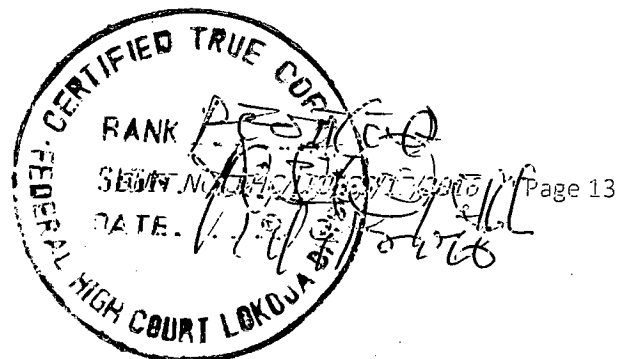
It was the further submission of learned Counsel that once it is discovered that any of the rights guaranteed in Chapter IV of the 1999 Constitution as well as the provisions of the African Charter on Human and Peoples' Rights has been or is about to be breached, the Court is duty bound to grant the proper remedy, a compensation and public apology. He referred to the cases of:

- **LONESSTER DRILLING COMPANY LIMITED v. CAPTAIN SULGIN OLAKSNDK (2003) 16 W.R.N. 74.**
- **NAWA v. A.G., CROSS RIVER STATE (2008) ALL FWLR (PT.401) 807 at 842 B-C.**
- **DURUAKU v. NWOKE (2015) 15 NWLR (PT.1483) 482 B-E.**

In conclusion, the learned Counsel urged the Court to grant all their prayers as per their Motion paper.

## **RESPONDENT'S RESPONSE IN OPPOSITION TO THE APPLICANT'S APPLICATION.**

In the Respondent's Counter affidavit sworn to by Sergeant Suleiman Idris of the Nigeria Police, Kogi State Command, the Respondent denied paragraphs 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 18 and 19 of the Applicant's supporting affidavit.



In particular, at paragraph 6 of the Counter affidavit, paragraphs 5 and 6 of the supporting affidavit are said to be false and that the fact of the matter is that the Applicant was arrested based on an information received from Police informants, namely, Barrister I. Odekina and Salihu O. Jibril. That the said informants told the Nigeria Police, Divisional Police Headquarters, Idah, that on the 02/02/2016, some persons, using a gulf car kidnapped their grandfather, Joseph Yusuf Odekina and were demanding a ransom of N40 Million using GSM Number 08067113142. The copies of their Statements were annexed to the counter affidavit and labelled Exhibit "A" and Exhibit "AA1", respectively.

At paragraphs 7, 8, 10, 11, 12, 14 and 15, the deponent to the counter affidavit, deposed to the fact that the kidnap victim Joseph Yusuf Odekina identified the Applicant, Zakari Egbunu, as one of his abductors. That Salihu O. Jibril, the Police informant, also identified the Applicant as a member of the kidnap syndicate and annexed Exhibit A1.

That the Applicant was being detained for alleged offences of criminal conspiracy and armed robbery and kidnapping and referred to the Extract from the crime diary, Exhibit "B". That the Applicant is in good health condition and that the Applicant is a jobless person.

In the written address, learned Counsel, submitted that consequent upon the information received from the two Police informants about the kidnap of Joseph Yusuf Odekina, the matter was incidented and documented and referred to Sgt. Suleiman Idris for investigation. That the Applicant was subsequently arrested and he made a Statement in rebuttal to the criminal allegations levelled against him. That the Applicant made that Statement under word of caution as a suspect. That the Statement was annexed to the counter affidavit and marked as Exhibit C. That at the close of preliminary

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investigation the Applicant was arraigned in Court on a First Information Report (F.I.R.). That a copy of the F.I.R. is attached to the Counter affidavit as Exhibit "D". That it was during the pendency of the investigation of the Applicant by the Special Anti-Robbery Squad (SARS) Headquarters, Lokoja, that the Applicant instituted this action alleging breach of his fundamental rights. During adopting of their written address in support of their counter affidavit learned Counsel for the Respondent submitted that the Applicant had been arraigned before the Senior Magistrate's Court III.

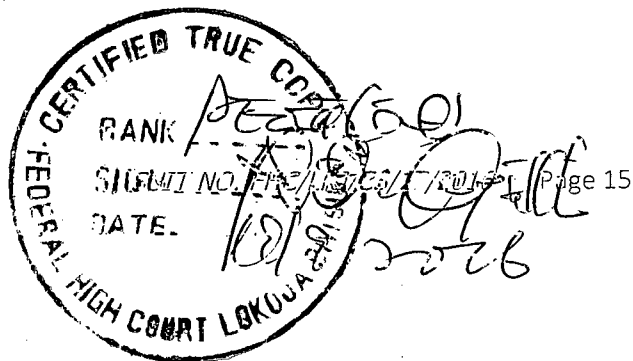
Learned Counsel then raised two issues for determination as follows:

1. *Whether upon a complaint of the commission of an alleged offence, the Respondents have not powers to investigate it.*
2. *Whether the right to personal liberty of the Applicant is absolute having regard to sections 45(1) and 35(1)(c) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended).*

### **ISSUE ONE**

Learned Counsel answered issue one in the affirmative. He submitted that the Respondent is under statutory obligation to act when an allegation of the commission of a crime is reported to him or he receives an information from disclosed informants that a crime is about to be or is being committed.

It was the submission of learned Counsel that the Nigeria Police is a law enforcement agency created by section 214 of the 1999 Constitution and statutorily empowered to perform its investigative and prosecutorial functions by the provisions of sections 4, 23, 24, and 29 of the Police Act, CAP.P19, Laws of the Federation of Nigeria, 2004.



The community reading of the sections of the Police Act mentioned above indicate that the Police can engage in the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property as well as due enforcement of all laws and regulations.

Furthermore, it was submitted that the Police is statutorily empowered to arrest without warrant any person suspected of having committed a criminal offence or any person reported by another on suspicions of his having committed a felony or misdemeanour, etc.

Learned Counsel submitted that in the present case, the allegations against the Applicant are Criminal Conspiracy, Armed Robbery and Kidnapping, reported by Police Informants on the 02/02/2016, against the Applicant and one other person now at large.

It was submitted that the Respondent accepted the information, invited the Applicant for investigation and that the Applicant made a Statement as per Exhibit C.

It was the submission of the Respondent's Counsel that the Respondent and his men never knew the Applicant prior to the criminal complaint against him by the Police Informants. That the Respondent was therefore duty bound to investigate the allegations against the Applicant. He relied on the cases of **ONYEKWERE v. THE STATE (1973) 8 NSCL 250 at 255; GANI FAWEHINMI v. IGP (2004) FWLR 167. OLANREWAJU MAKINDE HASSAN v. C.O.P. & 4 ORS. SUIT NO. FHC/LKJ/CS/13/2014 delivered on the 19/06/2014. MOHAMMED NDABABO v. COP, KOGI STATE COMMAND & 3 ORS. In Motion No. HCL/44IM/2014; MR. COSMAS ONAH V. DESMOND OKENWA & ORS. (2010) LPELR 4781 (CA); REV. PAUL ENANUGA & ORS v. HON. NSE**

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**ABAS (CORNELIUS) SAMPSON (2012) LPELR – 8487 (CA);  
and EMMANUEL ANTHONY v. IGP & 5 ORS. Unreported Suit  
No. FHC/LKJ/CS/23/2014.**

Learned Counsel relied on the above cases and urged the Court to hold that the Respondent has the powers to investigate criminal offences reported to him by members of the public and to resolve issue one in favour of the Respondent.

**ISSUE TWO**

Whether the right to liberty of the Applicant is absolute having regard to sections 45(1) and 35(1)(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Issue two was answered in the negative by the Respondent's Counsel. The learned Counsel submitted that it is trite that where a person is involved in the commission of a crime or is charged with the commission of a crime by another person, such a person can be deprived of his right to personal liberty. He relied on the Court of Appeal decisions in the cases of **JIMOH v. C.O.P. (2007) 5 ACLR 272 at 277** **EKWUENUGO v. F.R.N. (2001) 5 NWLR (PT. 708) 171 at 185 H, per Fabiyi, JCA (as he then was) Ratio 13** and **A. G. Anambra State v. CHRIS UBA (2005) 15 NWLR (PT.947) 44 at 49-50, Ratio 6, per Bulkachuwa, JCA, (as he then was) now PCA** as well as the Supreme Court cases of **MBANEFO v. MOLOKWU (2014) 2 S.C.N.J. 581 at 583-584; FAWEHINMI v. IGP (supra) at 669 per Kalgo, JSC.**

It was the submission of learned Counsel that the Applicant was arrested, investigated for criminal offences of criminal conspiracy, armed robbery and kidnapping and that investigation was still ongoing. He added that these processes are all consistent with the investigative and prosecutorial powers of the Respondent as a law enforcement agent. That Police powers to investigate and prosecute

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criminal offences or complaints made to them by members of the public cannot attract judicial intervention, since the arrest, detention and obtaining of statements are processes in the course of investigation.

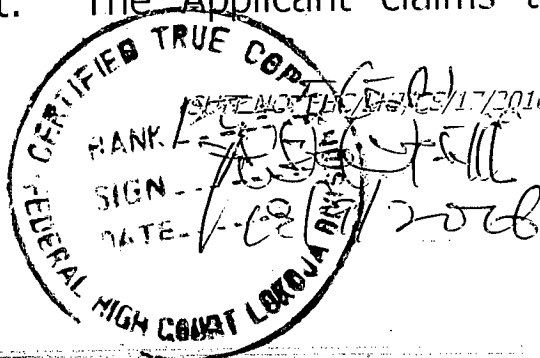
Furthermore, learned Counsel contended that the Applicant has not made out any case against the Respondent as to be entitled to the reliefs claimed by him. He maintained that the Respondent has shown before this Court that he acted in line with the law of the land and did not violate the fundamental right of the Applicant who was reported to the Respondent on allegations of being involved in the commission of criminal offences of criminal conspiracy, armed robbery and kidnapping and was subjected to investigation. He added that the Respondent, as a Police Officer, cannot be restrained from carrying out his constitutional/statutory functions. He relied on the cases of **ATTORNEY GENERAL OF ANAMBRA STATE V. CHRIS UBA** (supra) and **EMMANUEL ANTHONY v. IGP & 5 ORS** (supra).

In conclusion, learned Counsel urged this Court to hold that the Respondent acted lawfully and to resolve issue two in favour of the Respondent.

Finally, the Respondent's Counsel urged the Court to dismiss the suit for lack of merit, with costs.

**RESOLUTION OF THE ISSUE**

This is an application seeking the enforcement of the fundamental rights of the Applicant to human dignity, personal liberty and privacy and family life guaranteed in sections 34(1), 35(1) and 37 of the 1999 Constitution and Articles 4, 5 and 6 of the African Charter on Human and Peoples' Rights, etc. Act: The Applicant claims that the



Respondent's officers invited him to the office of the DPO., Nigeria Police, Idah Divisional Police Headquarters for interview and that he honoured the invitation but that, to his surprise, he was arrested and was being detained and subjected to untold hardship in the Police cell contrary to the provisions of sections 34(1), 35(1) and 37 of the 1999 Constitution.

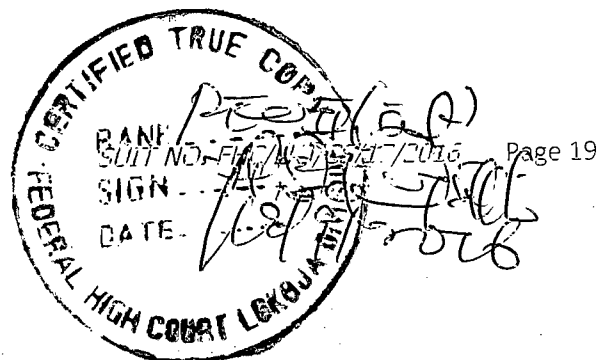
The Respondent on their part, stated that two persons informed the Police in writing of the kidnap of one Joseph Yusuf Odekina and one of the informants identified the Applicant as one of the kidnappers. That the Respondent and his officers were only performing their constitutional and statutory duties when the Respondent's officers arrested the Applicant for questioning.

In my humble view, the lone issue for determination is:

*Whether the Respondent Breached the Fundamental Human Rights of the Applicant as to entitle the Applicant to the reliefs sought by him.*

I agree with the Applicant that the right to dignity of human person and personal liberty as well as other rights are guaranteed in chapter IV of the 1999 Constitution and the African Charter on Human and Peoples' Rights Act. I also agree that every resident in Nigeria is entitled to enjoyment of these rights except otherwise permitted by the Constitution or some other law.

The Courts in Nigeria are empowered to protect the rights of individuals as guaranteed under the 1999 Constitution and the African Charter on Human and Peoples' Rights Act. See section 46 of the 1999 Constitution and Section 1 of the African Charter on



Human and Peoples' Rights Act. See also the case of **ODAFE & ORS. V. A.G.F. & ORS (2005) (supra).**

The Courts are therefore poised to uphold the fundamental rights of persons and would frown upon any manifestation of arbitrary power assumed by anyone over the life or property of another even if that other is suspected of having breached some law or regulation. See the case of **A. S. E. S. A. V. ELWUMEM (2001)(supra)** cited by the Applicant's Counsel.

The Applicant has deposed to facts in the Affidavit in support of his application that he was arrested and is being detained for no just cause.

The Respondent, however, argues that the enjoyment of fundamental rights by individuals is not absolute. That, for example, under section 35(1) (a) - (f) of the 1999 Constitution, exceptions to the right to personal liberty are listed. That under section 35(1) (c) of the 1999 Constitution, a person can be deprived of his personal liberty for the purpose of bringing him before a Court in execution of the order of a Court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence. Section 35(4) and (5) explain what "reasonable time" in the context of section 35(1)(c) means.

The Respondent, therefore, argued that the Police of which he is a member, as law enforcement agents are established by virtue of section 214 of the Constitution and have been vested with the power of prevention and protection of crime, the apprehension of offenders, the preservation of law and order; the protection of life and property

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and the due enforcement of all laws and regulations with which they are directly charged. See section 4 of the Police Act.

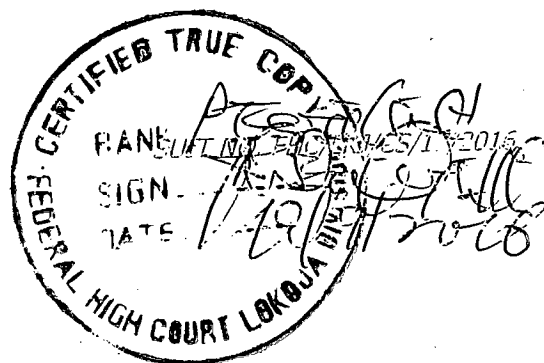
See also sections 23, 24 and 29 of the Police Act, by which the Police are authorised to arrest with or without warrant, a person suspected of having committed or committing a criminal offence. The Police are also empowered to receive complaints from members of the public against a person who is suspected of having committed a criminal offence and to investigate the same. See the case of **ONYEKWERE V. STATE (supra)**. All the cases cited by the Respondent's Counsel in his Written Address are relevant on this point and they have been mentioned above.

In the case of **GANI FAWEHINMI V. I.G.P. (supra)** it was held by the Supreme Court, per Kalgo, JSC, that:

*In civil proceedings, investigation is hardly necessary but in criminal proceedings where allegations of crime are made, there is almost always the need to ensure that there is sufficient evidence to prosecute and these may involve questioning, arrest or even detention, where necessary, of persons involved.*

See also the case of **EKWENUGO V. FRN (supra)** where it was held by Court of Appeal, per Fabiyi, JCA (as he then was) that:

*If there is a reasonable suspicion that a person has committed an offence, his liberty may be impaired temporarily. In the same vein, a person's liberty may be tempered with so as to prevent him from committing an offence. In short, it is clear that no citizen's freedom or liberty is absolute. The freedom of a citizen ends where that of the other starts.*



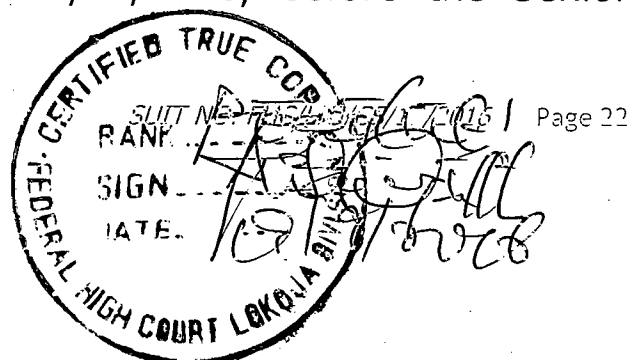
Considering the statutory and judicial authorities referred to herein, the Respondent seemed to have taken the lawful steps when they received the report from the Police informants as regards the kidnap of Joseph Yusuf Odekina and swung into action to investigate the matter. The Applicant who was named as a suspect by one of the Police informants was arrested and was being detained for detailed investigation, more so that another suspect was said to be at large.

The arrest and detention of the Applicant by the Respondent in the circumstances as described in the Counter Affidavit of the Respondent was lawful. See sections 35(1)(c) of the 1999 Constitution and sections 4, 23, 24 and 29 of the Police Act. The Applicant was kept in Police custody from the date of his arrest on the 18/02/2016 up until the 11/03/2016 before he was brought before a Court of law, the Senior Magistrate's Court III, Lokoja, on a First Information Report (F.I.R.).

In the FIR, it is stated that the nature of the information is: **CRIMINAL CONSPIRACY, ARMED ROBBERY AND KIDNAPPING CONTRARY TO SECTION 97(1) AND 298(C) OF THE PENAL CODE LAW AND PART I SECTION 3(2) PUNISHABLE UNDER SECTION 3(3) (B) OF KOGI STATE KIDNAPPING, THUGGERY AND OTHER RELATED OFFENCES (PROHIBITION) LAW, 2010.**

That on 02/02/2016 at about 09:30 hours the following persons (1) Barr. I. O. Odekina and (2) Salihu O. Jibril jointly reported at Ankpa Divisional Police.

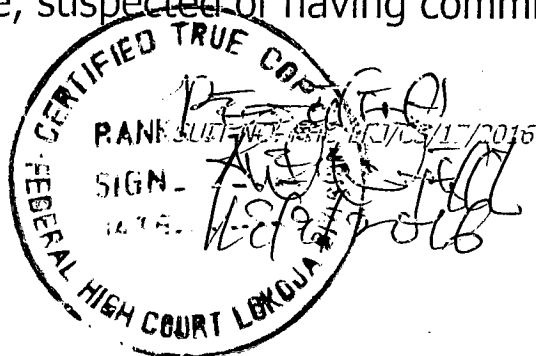
The endorsement at the reverse page of the FIR shows that the Applicant was arraigned on the 11/03/2016, before the Senior



Magistrate's Court III, Lokoja, presided over by O. R. Haruna, Esq., Magistrate I. The content of the FIR was read to the Applicant, herein in English language. That the Accused Person (Applicant, herein) said he understood the FIR and replied that the content of the FIR is false. That the Accused Person (Applicant, herein) applied for bail which was opposed by the Prosecutor, Cpl. Awoyale Adebayo. That the Court upheld the objection of the Prosecution and refused the bail application and ordered the remand of the Accused Person (Applicant, herein) in the Federal Prison, Idah and transferred the case file and the Accused Person (Applicant, herein) to the Senior Magistrate's Court, Idah. That the case was adjourned to the 24/03/2016.

During adoption of the Applicant's written address in support of this application, his learned Counsel referred to paragraph 4(j) of the Applicant's Further and Better Affidavit dated the 06/04/2016 and filed on the same date and Exhibit D annexed to the Respondent's Counter Affidavit and argued that the Senior Magistrate's Court III is not the proper Court to try allegations involving Criminal Conspiracy, Armed Robbery and Kidnapping. He argued that the Applicant was taken to the Senior Magistrate's Court III on the strength of the allegations against him as stated above and contained in the FIR, Exhibit "D" on a "holding charge". That the position of the law in Nigeria is that "Holding Charge" is unconstitutional. He urged the Court to so hold and grant their application. Learned Counsel, sought the leave of the Court to supply to the Court the judicial authorities to support his argument on the unconstitutionality of "holding charge". The application was granted.

Well, as earlier noted, in Exhibit "D" (the FIR) of the Respondent, it is stated that the Applicant was arrested and detained based on the strength of a report to the Police, suspected of having committed, in



company of other persons now at large, the offences of Criminal Conspiracy, Armed Robbery and Kidnapping contrary to sections 97(1) and 298(C) of the Penal Code Law and Part 1 section 3(2), punishable under section 3(3) of the Kogi State Kidnapping, Thuggery and Other Related offences (Prohibition) Law, 2010.

I got hold of the Kogi State Kidnapping, Thuggery and Other Offences (Prohibition) Law, 2010 and perused the same.

In section 13 of the said law, it is provided that:

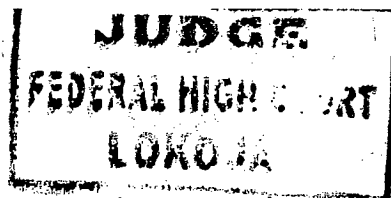
*Offences under this law shall be triable in the High Court of Justice or such other High Court of Justice to be so designated.*

In the present case, the Applicant was arraigned before the Senior Magistrate's Court III, not the High Court of Justice, and on suspicion of his having committed, inter alia, the offence of kidnapping contrary to the above law. It is my finding that the Applicant was brought not before a competent Court, and I so hold. I rely on the case of **OLAWOYE V. C.O.P. (2006) 2 NWLR (Pt. 965) 427 at 442-443**, paragraphs H-D, where the Court of Appeal, per Tijjani Abdullahi, JCA held that:

*Where jurisdiction to try offenders is exclusively vested by law in the High Court, the arraignment before a Magistrate Court is tantamount to a holding charge which has been described as unconstitutional and illegal. In the case of Enwere v. C.O.P. (supra) [(1993) 6 NWLR (Pt. 299) 333] it was held that "holding charge" is unknown to Nigeria Law and an accused person detained thereunder is entitled to be released on bail within a reasonable time before trial more so in a non-capital offence.*

In the OLAWOYE case, the Appellants were students of the Federal Polytechnic, Offa, Kwara State. They were arrested at Offa on the 17/08/2004





and detained till 23/08/2004 by the Police. They were subsequently arraigned before a Chief Magistrate's Court in Ilorin for the offence of being members of secret cults and secret societies in educational institutions of Higher learning in the State. The Chief Magistrate's Court refused the Appellant's bail application. The Appellants, thereafter, filed a Motion on Notice at the High Court, Ilorin, praying the Court to admit them to bail pending the determination of their case, which as at that date had not been filed before the Court. The High Court also refused their bail application on the grounds that the offence of cultism was rampant and that the offence was a serious one.

Dissatisfied with the decision of the High Court, the Appellants appealed to the Court of Appeal. The Court of Appeal held that the arraignment of the Appellants before the Magistrate's Court which has no jurisdiction to try the offences instead of the High Court (which was exclusively vested with power to try those offences) was tantamount to holding charge which has been described as unconstitutional. The Court of Appeal also considered the provision of section 35(4) of the 1999 Constitution and unanimously allowed the appeal.

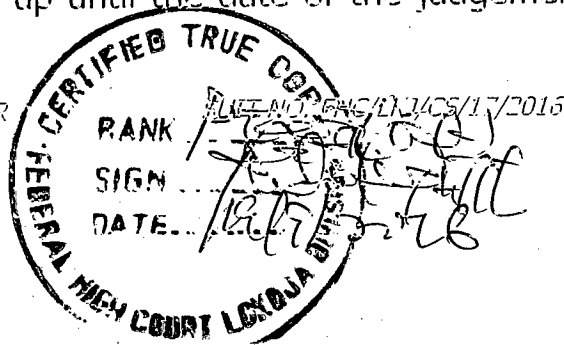
Now, Section 35(4) states as follows:

*Section 35(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before the Court of law within a reasonable time, and if he is not tried within a period of:*

*a) Two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail, or*

*b) Three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.*

The Court of Appeal in the same case observed that the Appellants had been in detention since the 17/08/2004 up until the date of the judgement in the



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appeal in June, 2005, a period over nine months without being charged to Court (a competent Court) for trial. The Court of Appeal held that it amounted to a "flagrant violation of the right of the Appellants as provided under the provisions of the 1999 Constitution.

In the case in hand, it is not in dispute that the Applicant has been in detention since the 18/02/2016, and has not been brought before a competent Court for trial for a period of more than three months as at today. Putting these circumstances and the time lag surrounding the arrest and detention of the Applicant in juxtaposition with the provisions of section 35(1)(c) and (4), 35(4) of the 1999 Constitution it is glaring that the Applicant is entitled to be released on bail unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial, if charged before a competent Court, at a later date and I so hold.

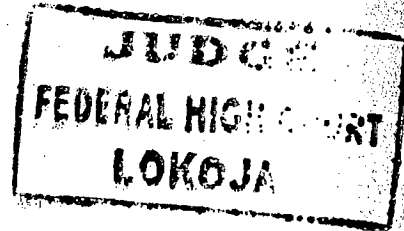
Pursuant to securing the enforcement of the fundamental right of the Applicant as stated in section 35(1)(c) and (4) of the 1999 Constitution, I hereby make an order releasing the Applicant on bail on the following terms:

1. The Applicant is admitted to bail in the sum of N800,000.00 (Eight Hundred Thousand Naira only) with one surety in the like sum.
2. The Surety shall be a responsible citizen of Nigeria and owner of landed property within the jurisdiction of this Court and the value of such property shall not be below the bail sum.
3. The Surety shall depose to affidavit of means and shall be recommended by the learned Counsel for the Applicant on record, I. O. Abdullahi, Esq.
4. The original title deed of the Surety's property shall be deposited at the Registry of this Court.
5. The Registry of this Court in liaison with the Respondent's Counsel, S.I. Ikutanwa, Esq., shall verify the title deed of the Surety's property and depose to and file affidavit in that regard, at the Registry of this Court.

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6. The Applicant shall not leave or travel out of the jurisdiction of this Court without the leave of Court first sought and obtained.
7. The Applicant shall be remanded at the Federal Prison Idah, Kogi State, pending the fulfilment of all the bail conditions, herein.

This shall be the Judgement of this Court in this case.



*[Handwritten signature]*

Hon. Justice Phoebe M. Ayua  
Judge

Wednesday, the 8<sup>th</sup> day of June, 2016

Parties: Are all absent from the Court.

Appearances: S. I. Ikutanwa, Esq., for the Respondent and the Applicant's Counsel is absent from Court.

*[Handwritten signature]*

Hon. Justice Phoebe M. Ayua  
Judge

Wednesday, the 8<sup>th</sup> day of June, 2016

