**FORT ROYAL HOMES LIMITED AND ANOTHER**

**V.**

**ECONOMIC AND FINANCIAL CRIMES COMMISSION AND ANOTHER**

IN THE COURT OF APPEAL OF NIGERIA

THE 11TH DAY OF JULY, 2017

CA/A/211/2013

**LEX (2017) - CA/A/211/2013**

OTHER CITATIONS

2PLR/2017/133 (CA)

(2017) LPELR-42807(CA)

**BEFORE THEIR LORDSHIPS**

ABUBAKAR DATTI YAHAYA, J.C.A

EMMANUEL AKOMAYE AGIM, J.C.A

MUHAMMED MUSTAPHA, J.C.A

**BETWEEN**

1. FORT ROYAL HOMES LIMTTED

2. MR OTUNBA COLLINS ADEWUNMI Appellant(s)

AND

1. ECONOMIC AND FINANCIAL CRIMES COMMISSION

2. SUNTRUST SAVINGS AND LOANS LIMITED Respondent(s)

**ORIGINATING COURT**

HIGH COURT OF THE FEDERAL CAPITAL TERRITORY HOLDEN AT ABUJA (Garba Salisu, J., Presiding)

**REPRESENTATION/LAWYERS**

S. AJALA with N. OKA - For Appellant

HUSSAINA GARBA for 1st Respondent

MUSA IDEL with U. OBIAGI for 2nd Respondent - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

DEBTOR AND CREDITOR LAW:- Failure/neglect to pay loan as at when issue – Evidence of absconding to prevent the legal enforcement of the loan – Legal effect [- Whether automatically circumscribes the liberty of the debtor - Section 35(1) (c) of the Constitution of Nigeria 1999 (as amended) in review

CRIMINAL LAW AND PROCEDURE – ARREST AND BAIL:- Proof of detention – Whether can be satisfied by evidence of bail related to the alleged detention

CONSTITUTIONAL LAW - ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHT(S):- Meaning and nature of fundamental human right(s) – Duty of court thereto - How to determine the question of infringement of fundamental rights

CONSTITUTIONAL LAW - RIGHT TO PERSONAL LIBERTY - Constitutional right of an accused person to personal liberty – Nature and basis of - Whether is an absolute right - - Circumstances in which a person may be deprived of his right to personal liberty

ADMINISTRATIVE AND GOVERNMENT LAW – PUBLIC AGENCY - ECONOMIC AND FINANCIAL CRIMES COMMISSION:- Powers of the Economic and Financial Crimes Commission.

**PRACTICE AND PROCEDURE ISSUES**

ACTION - PRELIMINARY OBJECTION:- Duty of a respondent who intends to rely on a preliminary objection to the hearing of an appeal.

APPEAL - FORMULATION OF ISSUE(S) FOR DETERMINATION - Whether an Appeal Court can adopt or formulate issue(s) for determination.

EVIDENCE - AFFIDAVIT EVIDENCE - Effect of an affidavit that does not comply with the provision of the Evidence Act.

EVIDENCE - BURDEN OF PROOF/ONUS OF PROOF - Proof of detention.

EVIDENCE - EVALUATION OF EVIDENCE - Whether evaluation of evidence and ascription of probative value is a primary function of the trial Court; principles that guide the court in the evaluation of evidence.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellants herein were the applicants at the lower Court. At the trial court, they prayed for: a declaration that the arrest and detention of the 2nd applicant by the respondents for no reasonable ground was unlawful, illegal, unconstitutional and a gross violation of the 2nd applicant’s fundamental rights to personal liberty; a declaration that the denial of the 2nd applicant of the right to consult with his legal practitioner after his arrest is unlawful, illegal, unconstitutional and a gross violation of the 2nd applicant's fundamental rights to personal liberty by the respondents; an order restraining the 1st respondent from further arresting, detaining, and or threatening the 2nd applicant in respect of the same or similar subject matter not being an offence known to any law in Nigerian criminal jurisprudence; an order awarding against the respondents the sum of N50,000,000 (Fifty Million Naira) being compensation for the unlawful, illegal, unconstitutional and gross violation of the 2nd Applicant's fundamental rights to personal liberty and dignity of human person at the instance of the respondent.

The appellants/applicants at the lower Court filed a motion dated and filed on the 19th of September, 2012. In support of the motion, they filed an affidavit and a written address in compliance with the provisions of the Fundamental Human Rights (Enforcement Procedure) Rules of 2009. The 1st respondent, in reaction to the motion, filed a counter affidavit. The 2nd respondent also filed an affidavit. The application was heard and dismissed by the trial Court.

Dissatisfied, the appellants filed a notice of appeal on the 4th of February, 2012.

**DECISION(S) APPEALED AGAINST**

The trial Court entered judgment, dismissing the Appellants/Applicants’ application for fundamental rights enforcement. Dissatisfied, the Appellants/Applicants appealed to the Court of Appeal.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

1. Whether the learned trial judge in the light of the exhibits annexed to the 1st respondent's affidavit was right to hold that the appellants' affidavits have not in any way by credible evidence shown that the fundamental rights of the 2nd appellant was breached.

2. Whether the learned trial judge was right in discountenancing the appellants' affidavit on the ground of his perceived variation in the passports affixed on both affidavits of the appellants.

*BY 1ST RESPONDENT:*

1. Whether there was credible evidence before the trial court to prove that the 2nd appellant's fundamental right to personal liberty had been violated by the respondent.

2. Whether the 2nd appellant was actually detained by the 1st respondent.

*BY 2ND RESPONDENT:*

1. Whether the 2nd appellant was indeed detained by the 1st respondent at the instigation of the 2nd respondent

2. Whether the appellants' affidavit in any way by credible evidence show that the 2nd appellant's personal liberty was infringed upon or violated.

*AS FORMULATED BY COURT*

Whether it was proved at the trial court that the appellants' fundamental right to personal liberty was breached.

**MAIN JUDGMENT**

**ABUBAKAR DATTI YAHAYA, J.C.A.** (Delivering the Leading Judgment): This appeal has arisen from the ruling of Honourable Justice Garba Salisu of the High Court of the Federal Capital Territory holden at Abuja in suit number FCT/HC/M/77/12, delivered on the 16th day of January, 2013.

The appellants herein were the applicants at the lower Court. They prayed for the following reliefs:

1. A declaration that the arrest and detention of the 2nd applicant on the 18th day of September 2012 for no reasonable ground was unlawful, illegal, unconstitutional and a gross violation of the 2nd applicants fundamental rights to personal liberty by the respondents.

2. A declaration that the denial of the 2nd applicant of the right to consult with his legal practitioner after his arrest on the 18th day of September, 2012 is unlawful, illegal, unconstitutional and a gross violation of the 2nd applicant's fundamental rights to personal liberty by the respondents.

3. An order restraining the 1st respondent from further arresting, detaining, and or threatening the 2nd applicant in respect of the same or similar subject matter not being an offence known to any law in Nigerian criminal jurisprudence.

4. An order awarding against the respondents the sum of N50,000,000 (Fifty Million Naira) being compensation for the unlawful, illegal, unconstitutional and gross violation of the 2nd Applicant's fundamental rights to personal liberty and dignity of human person at the instance of the respondent.

The appellants/applicants at the lower Court filed a motion dated and filed on the 19th of September, 2012. In support of the motion, is an affidavit and a written address in compliance with the provisions of the Fundamental Human Rights (Enforcement Procedure) Rules of 2009. The 1st respondent in reaction to the motion filed a counter affidavit on the 28th of September, 2012. The 2nd respondent also filed an affidavit on the 17th of November, 2012. In response to issues raised, the appellants/applicants filed a further and better affidavit and reply on points of law.

The application was heard and dismissed by the trial Court. Dissatisfied, the appellants filed a notice of appeal on the 4th of February, 2012. There are two grounds of appeal with their particulars and reliefs sought.

The learned counsel for the Appellants settled its brief of argument dated 10th of June, 2013 and filed on the 12th of June, 2013. In it, two issues were identified thus:-

1. WHETHER THE LEARNED TRIAL JUDGE IN THE LIGHT OF THE EXHIBITS ANNEXED TO THE 1ST RESPONDENT'S AFFIDAVIT WAS RIGHT TO HOLD THAT THE APPELLANTS' AFFIDAVITS HAVE NOT IN ANY WAY BY CREDIBLE EVIDENCE SHOWN THAT THE FUNDAMENTAL RIGHTS OF THE 2ND APPELLANT WAS BREACHED.

2. WHETHER THE LEARNED TRIAL JUDGE WAS RIGHT IN DISCOUNTENANCING THE APPELLANTS' AFFIDAVIT ON THE GROUND OF HIS PERCEIVED VARIATION IN THE PASSPORTS AFFIXED ON BOTH AFFIDAVITS OF THE APPELLANTS.

The 1st respondent in its brief of argument dated the 20th of December, 2016 and filed on the 21st of December, 2016 but deemed properly filed on the 25th of April, 2017 distilled two issues for determination as follows:

1. WHETHER THERE WAS CREDIBLE EVIDENCE BEFORE THE TRIAL COURT TO PROVE THAT THE 2ND APPELLANT'S FUNDAMENTAL RIGHT TO PERSONAL LIBERTY HAD BEEN VIOLATED BY THE RESPONDENT.

2. WHETHER THE 2ND APPELLANT WAS ACTUALLY DETAINED BY THE 1ST RESPONDENT.

The 2nd respondent also filed a brief of argument dated the 5th of November, 2014 and filed on the 6th of November, 2014 wherein two issues for determination were also formulated.

1. WHETHER THE 2ND APPELLANT WAS INDEED DETAINED BY THE 1ST RESPONDENT AT THE INSTIGATION OF THE 2ND RESPONDENT

2. WHETHER THE APPELLANTS' AFFIDAVIT IN ANY WAY BY CREDIBLE EVIDENCE SHOW THAT THE 2ND APPELLANT'S PERSONAL LIBERTY WAS INFRINGED UPON OR VIOLATED.

The appellant filed a reply brief in response to the 1st and 2nd respondents' brief of argument dated the 20th day of February, 2015 but deemed filed on the 25th of May, 2017.

Learned counsel to both the 1st and 2nd respondents have argued that the issues raised by the appellant are incompetent because they do not flow from the Appellants' grounds of appeal. The appellants on this issue in their reply brief to the 1st and 2nd respondents' brief submitted that the objections of the respondent are incompetent for being in breach of Order 7 Rule 1 of the Court of Appeal Rules.

By the rules of this Court a respondent who wishes to object to the appeal is expected to file a preliminary objection. Now, the proper thing for both counsel to the 1st and 2nd respondents to have done is to have filed a preliminary objection. This, they have not done. Rather what they have done was to mention in their respective briefs of arguments their objection that the issues raised by the appellant have not been properly raised as they do not flow from the grounds of appeal. Order 10 Rule 1 of the Court of Appeal Rules 2016 provides:

"A respondent intending to rely upon a preliminary objection to the hearing of the appeal, shall give the appellant three clear days notice thereof before the hearing, setting out the grounds of objection, and shall file such notice together with twenty copies thereof with the registry within the same time."

From the above, the respondents are not in compliance with the Rules. Non-compliance with the Rules renders the objection incompetent and it is struck out.

By virtue of the cases of OGUNBIYI V. ISHOLA (1996) 6 NWLR (PT.4520) 12 AND AKPAN V. BOB (2010) 17 NWLR (PT.1223) AT 476, it was held in both cases that the appellate Court has the power to condense or reframe issues for determination whenever it deems it apt, I formulate a lone issue in determining this case.

ISSUE FOR DETERMINATION

WHETHER IT WAS PROVED AT THE TRIAL COURT THAT THE APPELLANTS' FUNDAMENTAL RIGHT TO PERSONAL LIBERTY WAS BREACHED.

Learned counsel for the appellants referred to Section 123 of the Evidence Act 2011 and the cases of OUR LINE LTD v. S.C.C (2009) 39 NSCQR, p.471 @ 503 and UBA V. JARGABA (2007) 31 NSCQR. P.144 and submitted that, facts that have been admitted by parties in a proceeding need not be proved. Counsel drew our attention to documents placed before the Court below particularly the exhibits annexed to the counter-affidavit of the 1st respondent. He argued that the learned trial judge failed in its duty to consider the entire evidence before it both oral and documentary. The exhibits counsel referred to are on pages 5 to 9 of the record of appeal and are as follows:

a) A petition titled the abscondment of Otumba Collins Adewunmi

b) Application for bail on self recognisance by Otumba Collins Adewunmi; and

c) A bail bond of One Hundred Million Naira made by Otumba Collins Adewunmi

Counsel relied on the cases of USI ENTERPRISE LTD V. KOGI STATE GOVERNMENT (2005) 1 NWLR PT. 908 P.500, OLALOMI IND LTD V. N.I.D.B (2009) 39 NSCQR P.240 AND SHELL V. EDAMKUE, KORO & NWUIKUNNE (2009) 39 NSCQR P. 597 where the Courts held that it is the duty of the trial Court to appraise evidence before giving judgment.

Learned counsel further submitted that from the petition annexed to the 1st respondents counter-affidavit, it is obvious that the petitioner is confused as to whom he granted the loan. Counsel explains that this is because in one breadth the petitioner stated that the 1st appellant approached them for a loan facility and in another he (the petitioner) stated that the 2nd appellant only guaranteed the loan. These are in paragraphs 4 and 5 of the affidavit. Counsel stated that the petition in totality actually failed to disclose any known offence committed by the appellants save the invitation of the 1st respondent by the 2nd respondent on whose behalf the petition was forwarded to act as a debt collector on behalf of the 2nd respondent.

On the second and third documents referred to above, learned counsel to the appellants submitted that there is no better admission of the infringement of the 2nd appellant's fundamental human right to personal liberty by the 1st respondent than the fact that the 1st respondent by itself annexed proof in the nature of an application for bail made to the 1st respondent by the 2nd appellant. This claim of the counsel stems from the fact that the 1st respondent denied arresting and detaining the 2nd appellant as deposed in paragraph 4 (j) of its counter affidavit that it granted bail to the 2nd appellant, and attached copies of the application for bail and bail bond to that effect. Counsel contended that there cannot be bail without detention and there cannot be detention without arrest. Counsel concluded by referring this Court to the case of FAJEMIROKUN V. C.B (CL). NIG. LTD (2002) 10 NWLR, PT.774, P.95.

Learned counsel to the appellants relying on the case of ARISON V. MILITARY GOVERNOR OF OGUN STATE (2009) 38 NSCQR, PT II. P.745 prayed this honourable Court to evaluate the said exhibits annexed to the 1st respondent's counter-affidavit so as to decipher whether or not the fundamental right to personal liberty of the 2nd appellant was not infringed upon since the Court below failed in its duty to evaluate same.

As to whether the trial Court was right in rejecting the affidavits of the appellant, learned counsel to the appellants referred us to the provisions of the Fundamental Rights (Enforcement Procedure) Rules 2009 which provides that where a situation arises in which there is inadequate provisions in the course of human rights proceedings, the civil procedure rules of the Court for the time being shall be in force. The question that arises therefore according to counsel is that did the Fundamental Rights (Enforcement Procedure) Rules 2009 make adequate provisions in relation to affidavits in fundamental human rights enforcement actions? In answering this question, learned counsel submitted that the provisions are adequate. Counsel cited the case of THOMPSON ORGANISATION V. NIPSS (2004) 18 NSCQR, PT I PG 157 and referred us to Order II Rules 3 and 4 of the Fundamental Rights (Enforcement Procedure) Rules 2009. Learned counsel further argued that the provisions of the Fundamental Human Rights (Enforcement Procedure) Rule 2009 overrides the practice direction of the High Court of the FCT and must be adhered to strictly, Despite this counsel said, the trial Court discountenanced the 2nd appellant's affidavits on the grounds that the passport photographs were not the same. Counsel further opined that the learned trial judge also somersaulted in his conclusion that the passports attached to the affidavit in support of the application and the one attached to the further and better affidavit are not the same or do not belong to the same Person.

Learned counsel to the appellants further argued that the fact that the 2nd appellant was dressed in a suit in the passport photograph attached to the affidavit does not make him a different person from the one in the further and better affidavit. See pages 5 and 111 of the record of appeal respectively. Counsel explaining the differences in the passport photographs attached to the affidavits stated that the 2nd appellant simply looks bigger and has a moustache in one passport while he look slightly thinner, wearing a clean shave in the other passport.

Counsel further submitted further that if in any event a confusion as to the identity of a person in two different passport photographs arises, the Court to do justice in the matter can exercise its discretionary powers and summon the deponent to clear the ambiguities arising from such passports and not to discountenance the affidavits. SA'EED V. YAKOWA (2013) 7 NWLR PT 1352 p.124 was referred to. Counsel added that even if the passports had belonged to two different persons, the learned trial judge should have focused on doing justice rather than choosing to cling to technicalities which stemmed from the perceived non compliance with the practice direction even when such non-compliance did not occasion a miscarriage of justice against the respondents at the lower Court. Relying on the case of SA'EED v. YAKOWA (SUPRA), it was submitted that assuming without conceding that the appellants' affidavits did not comply with the practice direction of the Court below because of the variation in the passports, the learned trial judge ought to have satisfied himself that whether such non-compliance (if any) occasioned any injustice to the respondents before discountenancing the said affidavits.

On this matter, learned counsel to the appellants concluded by submitting that the findings and judgment of the lower Court was mala fide and occasioned a miscarriage of justice, and a perverse finding which ought to be set aside by this honourable Court. They urged us to uphold their argument and set aside the ruling of the lower Court and enter judgment in favour of the appellants.

Learned counsel to the 1st respondent in his brief argued that it was reiterated in the judgment of the lower Court that he who asserts that his fundamental right has been breached must prove his assertion. Thus, the burden of proof was therefore on the appellants/applicants to prove that their fundamental rights had been breached. It added that the trial Court was right when it held that the 1st respondent received a petition against the applicants bordering on allegation of financial crime which the EFCC is empowered to investigate by virtue of its enabling Act, particularly SECTIONS 6, 7, 8(s), 13 AND 41 of the ECONOMIC AND FINANCIAL CRIMES (ESTABLISHMENT) ACT, 2004. The learned counsel to the 1st respondent stated that the 2nd appellant was invited for questioning and was allowed to go on the same day. Counsel further argued that the trial Court was right when it held that it is settled law that if there is a reasonable suspicion that a person has committed an offence, his liberty may be impaired temporarily. Counsel cited the case of EKWENEGU V. FRN (2001) 6 NWLR PT 7080 AT 185 stating that no citizen's freedom or liberty is absolute, the freedom and liberty of a citizen end where that of others may start.

In furtherance of their contention that the 2nd appellant was never detained but merely invited to the EFCC office where he was interviewed, learned counsel stated that the trial Court was right when it held that the 1st respondent acted within its powers as provided by SECTION 7 OF THE EFCC ACT which empowers the 1st respondent to cause investigation to be conducted as to whether any person, corporate body or organisation has committed an offence under the EFCC Act or any law relating to financial crimes. Counsel then added that if the 2nd appellant was never detained, the issue of having to specifically state where he was detained does not arise.

As to the bail form annexed to the counter-affidavit of the 1st respondent, counsel argued that it is merely a standard procedure for all persons invited as suspects to the 1st respondent's office to fill the form. This, counsel added was necessary since the 2nd appellant was invited as a suspect.

Counsel argued that it is not enough for the appellant to allege that his fundamental human right has been breached, but that he must show how these right had been breached as he who asserts must prove.

Learned counsel to the 1st respondent concluded by submitting that in the event that this honourable Court agrees with the appellants that the 2nd appellant was indeed detained, the question would then be whether or not the appellant was detained beyond 24 hours as provided by the Constitution since it has been established that the EFCC has the same powers as the police. The 1st respondent could invite the 2nd appellant or any person on the reasonable suspicion of the commission of an offence.

In response to the issue on the use of different passport photographs, learned counsel to the 1st respondent submitted that the lower Court was right in rejecting both affidavits stating that evidence given in cases of fundamental rights is in the form of affidavits and every affidavit must carry the passport photograph of the deponent hence, the difference in passport photographs attached to the appellants affidavit and further and better affidavit respectively alludes to the fact that either or both affidavits contain false information.

Learned counsel cited the cases of KODE V. YUSSUF (2001) 4 NWLR PT.413 PG 413 PARAS E-F, IVIENAGBOR v. BUZUAYE (1999) 9 NWLR PT 620 AT 561 AND OWE V. OSHINBANJO (1965)1 ALL NLR 72 AT 75 among others in buttressing his point that the Court does not embark on speculation. Also, a Court does not substitute its own views for matters in contention in the absence of evidence. In arguing that affidavits speak for themselves learned counsel to the 1st respondent contended that it is not for the Court to go on a wild goose chase in trying to determine if the two passports photographs supplied on the two affidavits were one and the same person when in fact a look at them showed two different persons.

Counsel to the 1st respondent finally concluded by saying the trial judge was right when he discountenanced the two affidavits before him. This meant that there was no evidence before the Court in proof of the appellant's case at the trial Court. They therefore urged us to hold that there was no credible evidence before the trial Court. The Court was urged to dismiss the appeal.

The 2nd respondent on their part in response to the argument of the appellants submitted that the 1st and 2nd respondents did not in any way infringe upon the rights of the appellants. Counsel added that the 1st respondent is a financial institution and it is saddled with the responsibility of protecting public fund by petitioning the appropriate authorities concerning a disappearance or abscondment of the 2nd appellant over the loan granted to the 1st appellant to which the 2nd appellant guaranteed.

Citing the case of ONA v. OKENWA (2010) 7 NWLR PT 1194 PG 536 PARAS E-H, learned counsel to the 2nd appellant submitted that petitioning the EFCC on the disappearance and abscondment of the 2nd appellant is not in any way a violation of his rights by the 2nd respondent as any person who feels an offence has been committed has a right to report to the relevant authorities. Counsel submitted further that the 2nd respondent only exercised its legal rights by petitioning the EFCC over public funds invested in it and which was granted to the 1st appellant as a loan facility to which upon default the 2nd appellant would be called in to repay as the guarantor. This repayment, they both failed to do, and the 2nd appellant was nowhere to be found. Hence, the 2nd respondent exercised its right to petition the 1st respondent while the 1st respondent exercised its statutory powers to investigate on the petition.

Learned counsel citing the cases of NYAME v. F.R.N (2010) 7 NWLR PT 1193 PG 344, A.G. ABIA STATE V. A.G. FEDERATION (2006) 16 NWLR PT 1005, 265 and SECTIONS 7(1)(a) AND 2(f) OF THE EFCC ACT, submitted that the 1st respondent is constitutionally and statutorily empowered to invite any person for questioning, interrogation and investigation on reasonable suspicion of commission of any financial crimes. As such, the 2nd appellant was neither arrested nor was he detained as the invitation of the 2nd appellant by the 1st respondent was for investigation purposes only. That the fact that the investigation took hours does not make it a detention or deprivation of his rights.

On the issue of the passports attached to the two affidavits deposed to by the 2nd appellant, learned counsel submitted that the lower Court was right in its decision stating that a careful perusal and critical look at the passport photographs shows that they are different persons. Counsel opined that the use of two different passports by the 2nd appellant is a criminal offence which goes beyond the purview of technicality in law. According to counsel, the use of two different passports makes the contents of the affidavit unreliable and contradictory. Citing the cases of OCHOR V. OJO (2008) 13 NWLR PT.1105 PG 524 AT 542 AND ONI v. FAYEMI (2008) 8 NWLR PT 1089 PG 400 AT 444, counsel added that the practice direction for the enforcement of Human rights cases must be complied with and not to be ignored. Also it is a condition to affix a passport showing who the deponent is. That it is therefore ludicrous to argue that the practice directions in respect of the enforcement of human rights should be ignored.

In conclusion, the 2nd respondent pointed out that SECTION 35 OF THE 1999 CONSTITUTION (AS AMENDED) provides for situations where the liberty of a person may be temporarily impaired. That there is no conflict between the provisions of the Fundamental Human Rights Enforcement Rules and the Practice direction in respect thereof.

The appellants' reply brief is a repetition of what has been canvassed in the main brief and is hereby discountenanced.

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. And when they are protected as legal rights they then become known as fundamental human rights which are protected by the grundnorm of the society i.e. the Constitution of the Federal Republic of Nigeria.

That being said, the question before us is whether the 2nd appellant has proved that his fundamental rights to personal liberty were infringed upon by the respondents in this matter. The appellants' main arguments are that the learned trial judge failed to evaluate the entire evidence placed before him before arriving at his decision. The evidence referred to is that the 2nd appellant was detained unlawfully by the respondents.

I must point out here that the evaluation of relevant and material evidence before the Court and the ascription of probative value to such evidence are the primary functions of the trial Court, which saw, heard and assessed the witnesses while they testified. Where the trial Court unquestionably evaluates the evidence and justifiably appraises the facts, it is not the business of the appellate Court to substitute its own views for the views of the trial Court.- FAGBENRO V. AROBADI (2006) 7 NWLR (PT. 978) 174 SC. In the evaluation of evidence, the trial Courts are guided by the following principles, namely: (a) whether the evidence is admissible; (b) whether the evidence is relevant; (c) whether the evidence is credible; (d) whether the evidence is conclusive; and (e) whether the evidence is more probable than that given by the other party. - MOGAGI V. ODOFIN (1978) 4 SC 91 and AKAD INDUSTRIES LTD v. OLUBODE (2004) 4 NWLR (PT.862) JCA.

Learned counsel to the appellants had argued that the petition against the 2nd appellant made to the 1st respondent by the 2nd respondent, the application for bail and the bail bond made by the 2nd appellant all point to the fact that without a doubt the 2nd appellant was unlawfully detained and his right to liberty was breached, to which the respondents have denied. Both respondents claim that the 2nd appellant was not detained but was merely invited for questioning.

Every person is protected from arbitrary arrest and no man shall be arrested except for reasonable cause allowed or permitted by law.

A man should enjoy liberty and freedom without unpermitted interference or inhibition.

Fundamental Human Rights are fundamental because they are guaranteed by the Constitution. See Uzoukwu Vs Ezeonu II (1991) 6 NWLR (part 200) 708 and Enaboro Vs Abacha (1998) 1 NWLR 424.

The gist of the matter is that the 2nd respondent wrote a petition to the 1st respondent against the appellants in respect of a loan facility which the 2nd respondent granted to the appellants. The 2nd respondent who is the Managing Director and Chief Executive Officer is the guarantor of the said facility.

The appellants defaulted in payment of the loan. The 2nd respondent who promised to make a bulk payment of N20,000,000.00 within 72 hours absconded. He was nowhere to be found and his telephone lines were switched off, hence the petition to the EFCC, the 1st respondent. The petition is exhibit EFCC 1.

As a result of the petition against the appellants, the 2nd appellant claimed to be arrested and detained without any good reason. The appellants/applicants then filed a Suit No.FCT/HC/M/77/12 for the enforcement of their fundamental right.

The law is settled that where a person is suspected of having committed an offence, his liberty may be impaired temporarily. Section 35(1) (c) of 1999 Constitution of Nigeria (as amended) is to the effect that the person can be lawfully arrested or detained for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

The appellants did not dispute the facts that they were granted loan facility of N70,000,000.00 by the 2nd respondent. There is also no denial of default in payment of the facility.

The Economic and Financial Crimes Commission and its officials are statutorily empowered to arrest anybody upon reasonable suspicion of having committed any financial crime as prescribed in Section 7 of the EFCC Act, 2004. See Chairman EFCC Vs Little Child (2016) 3 NWLR (part 1498) 72 at 78. Section 7(1) (a) of the EFCC Act provides:

1) The commission has power to-

a) Cause investigations to be conducted as to whether any person, corporate body or organization has committed any offence under this Act or other law relating to economic and financial crimes.

Although the 1st respondent denied that the 2nd appellant was arrested and detained, but that he was invited, questioned and released on the same day. It does not matter whether it was an invitation or arrest. The fact remains that in the cause of interrogation the 2nd appellant was detained for some hours.

However what is important is that the 1st respondent having relied on the petition as its defence to the arrest and detention or invitation of the 2nd appellant, the 1st respondent must satisfy the Court that its act was done within the ambit of the law given that the fundamental rights of every citizen is protected as guaranteed by the 1999 Constitution (as amended).

It is my view that the 1st respondent was incompliance with the provisions of Section 7(1) (a) of the EFCC Act 2004 in the arrest and detention or invitation of the 2nd respondent.

The Supreme Court in Amale Vs Sokoto Govt. (2012)11 SCNJ 181 at 183 held that the correct approach in a claim for enforcement of fundamental rights is to examine the reliefs sought, the grounds for such reliefs and the facts relied upon whether a breach of fundamental rights was disclosed.

In the instant case a calm examination of the reliefs sought, the grounds of such reliefs and the facts relied upon, the appellants have failed to disclose a breach of their fundamental rights.

The 2nd appellant/applicant in paragraph 2 of the grounds of reliefs sought said he was detained for more than 10 hours as reflected at page 4 of the record, In his affidavit in support at page 5 of the record, he deposed that he was detained for more than 6 hours by the 1st respondent which amounts to a breach of his fundamental right. Notwithstanding the contradictory claim of hours of detention of the 2nd appellant the fact remains that he was released and allowed to go the same day after interrogation. He was not detained for more than 24 hours as provided by the Constitution.

It is the contention of the appellant that having been admitted to bail on self recognizance and made to sign a bail bond of N100,000,000.00, it is proof of his detention by the 1st respondent as there could be no bail without detention. That is correct. Thus on the settled position of our law, it is only a person who is detained that is granted bail. See Duruaku Vs Nwoke (2015) 15 NWLR (Part 1483) 417 at 425.

However the argument of the 1st respondent in this respect is that, it is a standard requirement of its office, that whoever is invited for questioning upon suspicion of having committed an offence must sign the bail bond. The 2nd appellant was invited as a suspect, and the 2nd appellant having signed the bail bond without challenging it is deemed to have accepted the standard requirement of the 1st respondent and therefore has no reason to complain.

It is necessary to state that a citizen's freedom or liberty is not absolute. See Hassan Vs EFCC (2014) 1 NWLR (part 1389) 607.

The qualification in Section 35(1) (c) of the Constitution depicts that the 2nd appellant's liberty has not been trampled, when he was arrested and detained upon the petition made against them by the 2nd respondent.

On the issue of the different passports affixed on the affidavits sworn to by the 2nd appellant, it should be noted that fundamental rights proceedings are a special proceeding which has its own rules. These rules govern proceedings, and I agree with counsel to the 2nd respondent that the practise direction for the enforcement of Human rights cases must be complied with and not ignored. However, being a civil suit in nature, it naturally means that where the provisions of the enforcement of fundamental rights rules fall short, the civil procedure rules for the Court in which the trial is held will be considered. Now, counsel to the appellants have argued that the trial Court in resolving the issue of differences in passports affixed to the affidavits should have exercised its discretionary powers in summoning the deponent to clear the ambiguities and not to discountenance the affidavits. This ambiguity in my opinion should not even have arisen in the first place. A higher level of care is expected of counsel when handling cases especially sensitive cases such as these which involve the enforcement of fundamental human rights. Learned counsel in his submissions argued that since the affidavit carried different passports, it means that either or both affidavits contain false information. I do not agree. The contents of the affidavit may not be false but there is need for adequate identification of the deponent as provided by the rules. Moreover, Order II Rules 3 and 4 of the Fundamental Rights (Enforcement Procedure) Rules 2009 provides that applications must set out detailed description of the applicant, reliefs sought and the grounds upon which the reliefs are sought by an affidavit made by the applicant or by a person who has knowledge of the facts or by one who has been informed by the applicant stating that the applicant cannot depose to the affidavit. This simply means that where for any reason the applicant is unable to depose to an affidavit, someone else can depose on his/her behalf. The deponent must identify himself by attaching his passport as required by the rules.

Having carefully examined the passport photographs attached to the 2nd appellant/applicant's affidavit and that of the further and better affidavit on record, I agree with the trial Court that the photographs are of two different persons. It is my opinion that the difference in the passport photographs should be regarded as an irregularity that can be corrected since the deponent in both affidavits is the same person. According to the provisions of Section 84 of the Evidence Act, the Court may permit an affidavit to be used, not withstanding it is defective in form, if the Court is satisfied that it has been sworn to before a person duly authorized. See Osasuyi Vs Mudashiru (2015) 4 NWLR (part 1449) 201 at 204 and Maduka Vs Ubah (2015) 11 NWLR (part 1470) 201.

Order 1 Rule 1 of the FCT High Court Civil Procedure Rules provides:

"Where in commencing proceedings, or at any stage in the course of proceedings, there appears a failure to comply with the provisions of these Rules, in respect of time, place, manner, form or content or others, the failure may be treated as an irregularity, which shall not nullify the respective proceedings, document, judgment or order."

In line with the above provisions of the Evidence Act and authorities cited and Order 1 Rule 1 of the FCT High Court Civil Procedure Rules, the trial Court was wrong to have discountenanced the affidavit in support and the Further and Better affidavit.

Be that as it may, the appellants have failed to prove the breach or infringement of their fundamental rights. Since the complaint against them is that the 2nd appellant absconded in default of payment of the loan facility which they obtained from the 2nd respondent, their liberty became automatically circumscribed by Section 35(1) (c) of the Constitution of Nigeria 1999 (as amended).

Finally I have not seen anything in the evidence adduced in the affidavit supporting the appellants/applicants application at the trial Court to be expected to hold that the appellants fundamental rights were infringed by the respondents. See the case of Fajemirokun Vs C.B.(C.L.) Nig. Ltd (2002) 10 NWLR (part 774) 95.

The question of infringement of fundamental rights is largely a question of facts and does not so much depend on the dexterous submission of counsel on the law. So it is the facts as disclosed by the affidavit evidence that is usually examined, analyzed and evaluated to see if the fundamental rights have been breached as claimed. See Okafor Vs Lagos State Govt. (2017) 4 NWLR (Part 1556) 404 at 413.

In the instant case the facts did not disclose a breach of the personal liberty of the 2nd appellant as claimed. I find no fault with the Ruling of the trial Court. The sole issue is resolved in favour of the respondents against the appellant.

The appeal is unmeritorious and it is dismissed. The Ruling of the trial Court is affirmed. Costs of N50,000.00 is awarded to the respondents against the appellants.

**EMMANUEL AKOMAYE AGIM, J.C.A.:**

I had a preview of the judgment just delivered by my Learned brother, ABUBAKAR DATTI YAHAYA, J.C.A. I agree with the reasoning, conclusions and orders therein.

**MOHAMMED MUSTAPHA, J.C.A.:**

I had the benefit of reading before now the lead judgment of my learned brother, Abubakar Datti Yahaya JCA, and I agree with his reasoning and conclusion. I also dismiss this appeal, for same reasons adduced therein. I abide by the consequential orders, including the order as to costs in favour of the respondents.