

Time filed 10.48 a.m. 2011/11/5/12 43

IN THE HIGH COURT OF OGUN STATE  
IN THE OTA JUDICIAL DIVISION  
HOLDEN AT OTA

SUIT NO MT/73/12

IN THE MATTER OF AN APPLICATION BY BARRISTER ROBERT IGBINEDION FOR THE  
ENFORCEMENT OF FUNDAMENTAL RIGHT TO FAIR HEARING, FREEDOM FROM  
DISCRIMINATION AND HUMAN DIGNITY

BETWEEN

1. BARRISTER ROBERT IGBINEDION ----- APPLICANT  
AND  
2. BISHOP DAVID OYEDEPO  
3. LIVING FAITH CHRISTIAN CHURCH INT'L ----- RESPONDENTS

RESPONDENTS' COUNTER AFFIDAVIT

I, OLUGBENGA ADEGBOYE male, Christian, senior legal officer to the Respondents herein of km 10  
idiroko Road ota Ogun State do hereby make oath and states as follows:

1. That I am the senior legal officer to the Respondents.
2. That by virtue of my position I am familiar with the facts of this matter as I hereby deposed to on the consent and authority of the respondents.
3. That I depose to this affidavit in controverting the facts deposed to in paragraphs 3 to 12 of the affidavit of the applicant and further state the true facts of this matter as follows:
  - (a) That the 2<sup>nd</sup> Respondent is a religious body/ministry over which the 1<sup>st</sup> Respondent presides.
  - (b) That the 2<sup>nd</sup> Respondent's ministry or religious body is a ministry where the holy bible is preached and people are prayed for without coercion.
  - (c) That the 1<sup>st</sup> Respondent informed me and I verily believed him that he did not slap any body called Miss Justice in any of the services organized by the 2<sup>nd</sup> Respondent.
  - (d) That the 1<sup>st</sup> Respondent informed me and I verily believed him that the 2<sup>nd</sup> Respondent has no record of any one called miss Justice and the applicant herein in any of its services organized in the past.
4. That I deposed to this affidavit in good faith believing the contents to be true and correct and in accordance with the oaths law.

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D. Adigun  
Deponent

SWORN to at the high court  
Registry Ota this 9<sup>th</sup> day of March 2012

BEFORE ME

[Signature]

COMMISSIONER FOR OATHS

Cliff. # 100 =  
Fly. 200 =  
# 300 =



under taking  
I undertake to serve the  
applicant personally

18 books @ #500 = 9000  
per book = #500 = 9000

[Signature]  
K. A. ALAGBE.  
Assistant Chief Registrar



← True filed 10:40 2012

IN THE HIGH COURT OF OGUN STATE  
IN THE OTA JUDICIAL DIVISION  
HOLDEN AT OTA

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SUIT NO MT/73/12

IN THE MATTER OF AN APPLICATION BY BARRISTER ROBERT IGBINEDION FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHT TO FAIR HEARING, FREEDOM FROM DISCRIMINATION AND HUMAN DIGNITY

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**NOTICE OF PRELIMINARY OBJECTION**

TAKE NOTICE that the respondents shall at the hearing of the applicant's suit or application herein contend by way of preliminary objection that this honourable court lacks the jurisdiction to hear and determine this suit or application as presently constituted and that same should be struck out or set aside.

TAKE FURTHER NOTICE that the grounds upon which this application is brought are as follows:

- (i) That the applicant herein is not a juristic person  
(ii) That the respondents herein are not juristic persons.  
(iii) That the subject matter is not within chapter iv of the 1999 constitution of the federal republic of Nigeria or the African charter on human and peoples rights (Ratification enforcement) Act"

Dated this 10th day of May 2012

Attest  
W. A. Adeniji

W. A. Adeniji

200 =  
100 =  
800 =  
200 =  
1500 =

HIGH COURT REGISTERED  
DATE 10-05-2012

FB AGBANWU ESQ.  
RESPONDENTS' SOLICITOR,  
KM 10 IDIROKO ROAD,  
OPPOSITE CANAANLAND,  
OTA- OGUN STATE.  
08023605045

understand to serve the applicant  
ally - F. IS A. B. H. 10-5-12

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ON NOTICE TO

THE APPLICANT

BARRISTER ROBERT IGBINEDION

SALUS POPULI CHAMBERS

SUIT 209, UCHE AGBOOLA PLAZA

11, OLORUNLOGBON STREET

ANTHONY VILLAGE LAGOS



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**IN THE HIGH COURT OF OGUN STATE  
IN THE OTA JUDICIAL DIVISION  
HOLDEN AT OTA**

SUIT NO MT/73/12

**IN THE MATTER OF AN APPLICATION BY BARRISTER ROBERT IGBINEDION FOR THE  
ENFORCEMENT OF FUNDAMENTAL RIGHT TO FAIR HEARING, FREEDOM FROM  
DISCRIMINATION AND HUMAN DIGNITY**

**BETWEEN**

1. BARRISTER ROBERT IGBINEDION ----- APPLICANT  
AND  
2. BISHOP DAVID OYEDEPO  
3. LIVING FAITH CHRISTIAN CHURCH INT'L ----- RESPONDENTS

**WRITTEN ADDRESS IN SUPPORT OF THE PRELIMINARY OBJECTION**

**1.0 INTRODUCTION**

1.1 This is a preliminary objection brought by the respondents challenging the jurisdiction of this honourable court to entertain the applicant's application or suit on the following grounds:

- (i) That the applicant in this matter is not a juristic person.
- (ii) That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are not juristic persons.
- (iii) That the subject matter is not within chapter iv of the 1999 constitution of the federal republic of Nigeria or the African charter on human and peoples' Rights (Ratification enforcement) Act"

**2.0 BRIEF STATEMENT OF FACTS:**

2.1 The applicant herein brought this application to court in the name; BARRISTER ROBERT IGBINEDION claiming from the respondents before this honourable court the following reliefs:

- (i) A declaration that the slapping of the poor Nigeria girl by the 1<sup>st</sup> Respondent is a violation of her right to human dignity and freedom from torture, inhuman and degrading treatment as enshrined in section 34 of the constitution of the federal republic of Nigeria 1999, African charter on human and people's Right and united Nation's universal declaration on human Right and therefore illegal and wrongful.
- (ii) A declaration that the calling out of miss Justice and others as witches is illegal, unconstitutional and a breach of section 34 of the constitution of the federal republic of Nigeria 1999, African

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charter on human and peoples' Right and united nation's universal declaration on human Right and therefore illegal and wrongful.

- (iii) A declaration that the slapping of the poor Nigeria girl by the 1<sup>st</sup> Respondent is a violation of her right to fair hearing as enshrined in section 36 of the 1999 constitution of the federal republic of Nigeria, African charter on Human and peoples' Right and united nation's universal declaration on human rights.
- (iv) A declaration that the publishing of the attacks on Miss Justice by the Respondents is a violation of chapter iv of the 1999 constitution of the federal republic of Nigeria, African charter on human and peoples' Right and united nation's universal declaration on human Rights.
- (v) An award of Two Billion Naira (N 2,000,000,000) as general and exemplary, punitive damages jointly and severally against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
- (vi) An order compelling the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents to make a similar alter call for illicit drug dealers, fraudsters, corrupt Government officials, bribe giving contractors and other category of sinners.
- (vii) An order that the Respondents issue public apology written and signed by the 1<sup>st</sup> Respondent to be published in two national daily newspapers and one international satellite television station.
- (viii) An order that the respondents pay the cost of this action.

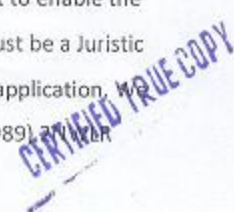
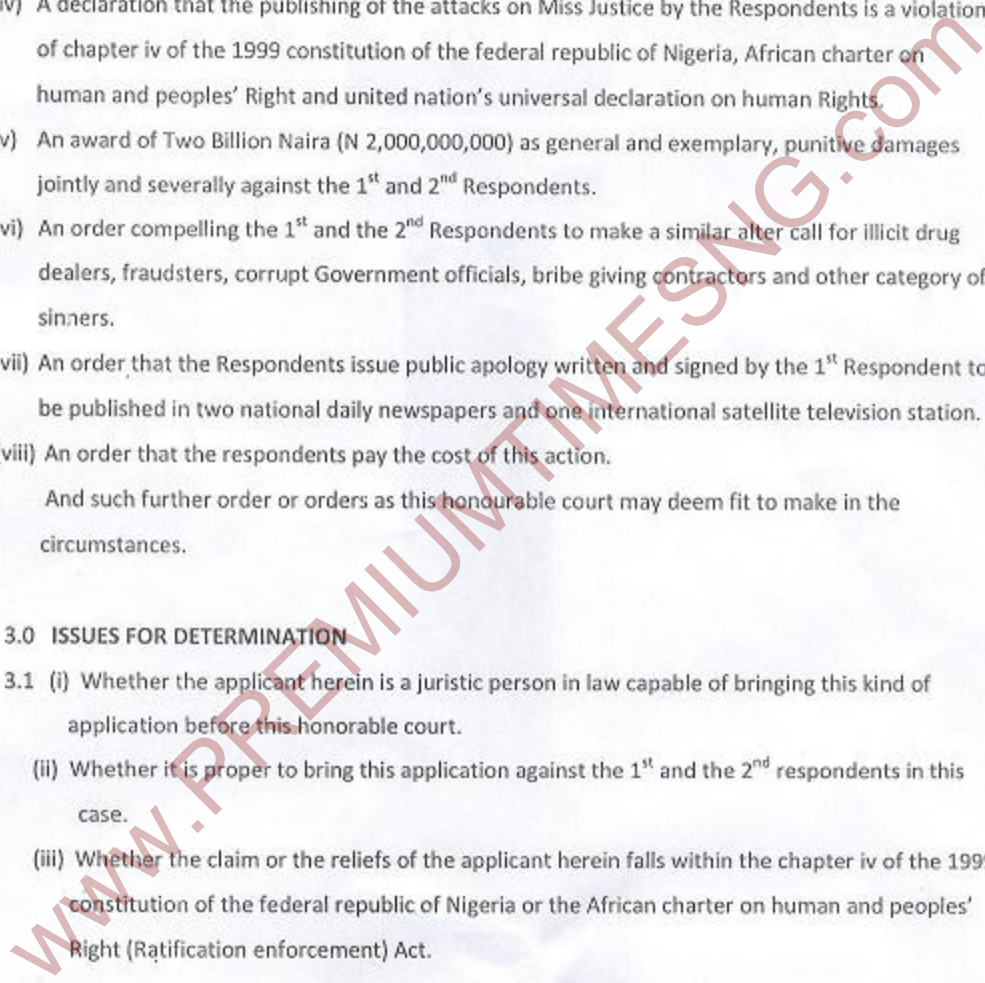
And such further order or orders as this honourable court may deem fit to make in the circumstances.

**3.0 ISSUES FOR DETERMINATION**

- 3.1 (i) Whether the applicant herein is a juristic person in law capable of bringing this kind of application before this honorable court.
- (ii) Whether it is proper to bring this application against the 1<sup>st</sup> and the 2<sup>nd</sup> respondents in this case.
- (iii) Whether the claim or the reliefs of the applicant herein falls within the chapter iv of the 1999 constitution of the federal republic of Nigeria or the African charter on human and peoples' Right (Ratification enforcement) Act.

**4.0 LEGAL ARGUMENT**

4.1 On the first issue raised above, for this application to be proper before the court to enable the court assume Jurisdiction over same both the applicant and the respondents must be a Juristic person or natural person as at the time of instituting the action or bringing the application. I refer the court to the cases of FAWE HINMI V Nigerian bar association (No2) (1989) 2 WILKINSON



558 at 595 and AGBOMAGBE BANK LTD V GENERAL MANAGER, GB OLIVANT and ANOR (1961) ALL NLR 116

4.2 We submit that Barrister ROBERT IGBINEDION is a non Juristic person and as such cannot sue or be sued. We submit further that it is just merely a juridical title.

4.3 On the second issue raised above, we submit that Bishop David Oyedepo is a non Juristic person and as such can not sue or be sued.

We refer the court to the earlier cases of FAWEHINMI V NIGERIA BAR ASSOCIATION and AGBOMAGBE BANK LTD V GENERAL MANAGER, GB OLIVANT & AOR (supra). We submit further that it is merely a title.

4.4 The main types of Juristic corporate bodies in Nigeria are companies registered under PART A of the companies and allied matters Act 2004 and statutory corporation and trustees of association registered under PART C of the companies and allied matters act 2004. See civil procedure in Nigeria 2<sup>nd</sup> edition by FIDELIS NWADIALO page 93.

4.5 We submit that living faith church international is not a juristic corporate body in Nigeria under PART C of the companies and allied matters Act 2004 and as such can not sue or be sued in that name. We refer the court to the earlier cited cases of FAWEHINMI V NIGERIAN BAR ASSOCIATION AND AGBOMAGBE BANK LTD V GENERAL MANAGER GB OLIVANT & AOR (Supra).we submit further that the applicant herein lacks the necessary competency to bring this application against the 2<sup>nd</sup> Respondents herein also.

4.6 On the third issue raised above, an applicant approaching the court for the enforcement of fundamental right must show that his claim falls within the recognized, entrenched and protected rights as contained in chapter iv of the 1999 constitution of federal republic of Nigeria. The cause of action must centre on clear infringement of a fundamental right and not on breach of contract, tort, crime, dispute over land or the like. We refer the court to guides to fundamental Rights litigation by IKE .D. UZO ESQ published in 2005 page 185 and comments on the fundamental Rights (enforcement procedure) Rules 2009 by IKECHUKWU .D. UZO ESQ page 82. see also the cases of: (1) TUKUR V GOVERNMENT OF TARABA STATE (1997) 6 NWLR (pt.510) 541 (2) GRACE JACK V UNIVERSITY OF AGRIC, MAKURDI (2004) ALL FWLR (pt.200) 1506 (3) DANGTOE V CIVIL SERVICE COMMISSION PLATEAU STATE & Ors (2001) 5 scm page59, (4) BORNO RADIO TELEVISION CORPORATION V BASIL EGBUONU (1991) 2 NWLR 81 at 89

4.7 The cause of action or principal claim in this application centers merely on slapping one Miss Justice by the 1<sup>st</sup> Respondent.

4.8 The slapping of Miss Justice is an act that could be described as an assault which is a criminal offence punishable under the criminal code. We refer the court to section 252 of the criminal

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code. See also paragraph 2 of the applicant's affidavit in support of his motion on notice where he admitted Miss Justice as a victim of assault.

- 4.9 We submit that assault is a criminal offence punishable under the criminal code which is clearly outside the provisions of chapter iv of the 1999 constitution and the Africa charter. We submit that slapping being an act of assault is an item outside the provisions of chapter iv of the 1999 constitution and the Africa charter, this court therefore lacks jurisdiction over same.
- 4.10 The applicant talked also of publishing of the attack on Miss Justice by the respondents which he alleged is a clear violation of chapter iv of the 1999 constitution of the federal republic and the African charter and the united nation's universal declaration on human rights.
- 4.11 We submit that the alleged publication of an attack on Miss Justice is an item of TORT which is also outside the purview of chapter iv of the 1999 constitution of federal republic of Nigeria and Africa chapter and united nations universal declaration on human rights. We rely also on the cases of DANGTOE V CIVIL SERVICE COMMISSION PLATEAU STATE and ORS, TUKUR V GOVERNMENT OF TARABA STATE, BORNO RADIO TELEVISION CORPORATION V BASIL EGBUONU and GRACE JACK VS UNIVERSITY of AGRIC, MAKURDI (supra). we submit further that this court cannot as well assume jurisdiction over same.

## 5.0 CONCLUSION

- 5.1 considering the preliminary objection raised to the application of the applicant by the respondents visavis the legal argument canvassed in respect of the issue raised therein, we submit that this honourable court lacks the Jurisdiction to entertain this application. We therefore urge this honourable court to dismiss this application in its entirety.

## 6.0 LEGAL AUTHORITIES

### (A) DECIDED CASES

- (1) FAWEHINMI V NIGERIAN BAR ASSOCIATION (No2) 91989) 2NWLR 558 at 595
- (2) AGBOMAGBE BANK LTD V GENERAL MANAGER, GB OLIVANT AND ANOR (1961) ALL NLR 116
- (3) TUKUR V GOVERNMENT OF TARABA STATE (1997) 6 NWLR (pt.510) 541
- (4) GRACE JACK V UNIVERSITY of AGRIC, MAKARDI (2004) all FWLR (pt.200) 1506
- (5) DANGTOE V CIVIL SERVICE COMMISSION PLATEAU STATE & ORS (2001) 5 SCM page 59
- (6) BORNO RADIO TELEVISION CORPORATION V BASIL EGBUONU (1991) 2NWLR 81 AT 89

### (B) STATUTES

- (1) COMPANIES AND ALLIED MATTERS Act 2004
  - (2) CRIMINAL CODE; section 252
- (B) TEXT BOOKS
- (1) Civil procedure in Nigeria 2<sup>ND</sup> edition by FIDELIS NWADIALO page 93

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- (2) Guide to fundamental Rights litigation by IKE .D. UZO ESQ published in 2005 page 185  
(3) Comments on the fundamental Rights (enforcement procedure) Rule 2009 by IKECHUKWU D UZO ESQ page 82  
(C) AFFIDAVIT  
(1) Paragraph 2 of the applicant's affidavit.

Dated this 28 day of May 2012



*[Handwritten signature]*

F.B AGBANWU ESQ,  
RESPONDENTS' SOLICITOR,  
KM 10 IDIROKO ROAD,  
OPPOSITE CANAANLAND,  
OTA- OGUN STATE.  
08023605045

ON NOTICE TO  
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ANTHONY VILLAGE LAGOS

*[Handwritten signature]*  
K. A. ALAGBE  
Assistant Chief Registrar



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