

Court's Copy

IN THE HIGH COURT OF LAGOS STATE
IN THE EPE JUDICIAL DIVISION
SITTING AT HIGH COURT 1
BEFORE THE HON. JUSTICE W. ANIMAHUN
TODAY, MONDAY THE 29th DAY OF SEPTEMBER 2025.

SUIT NO: EPD/19703MFHR/2025

BETWEEN

1. MR. AIRE E. BRUNO
2. MRS. OMOLARA BOLAJI
3. DR. JULIUS UTOMHIN

APPLICANTS

AND

1. DR. ENIOLA AWOLOLA
2. REGISTERED TRUSTEES OF LEKKI GARDENS
PHASE 2 ESTATE RESIDENTS ASSOCIATION

RESPONDENTS

JUDGMENT

By an Originating Application, dated 11/06/2025, the Applicants prayed for the following reliefs-

1. *"A DECLARATION that the Applicants are entitled to their rights to dignity of the human person, right to personal liberty and right to acquire and own immovable property anywhere in Nigeria guaranteed under Sections 34, 35 and 43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 2, 5, & 6 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, 2004.*
2. *A DECLARATION that the continual deprivation of access of the Applicants by the Respondents and/or their agents at the pleasure, will and instigation of the 1st Respondent without consideration of the proprietary rights of the Applicants as it patterns(sic) to their respective properties*

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HIGH



STATE

Sign: Date: 03/10/2025
CASH OFFICE, EPE

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situate at: PLOT A32, LEKKI GARDENS PHASE 2 ESTATE, AJAH; PLOT A23/1 LEKKI GARDENS PHASE 2 ESTATE, AJAH; PLOT C3/1 PRIVATE AREA, LEKKI GARDENS PHASE 2 ESTATE, AJAH, is a violation of the fundamental human rights of the Applicants as guaranteed under Section 34, 35 and 43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 2, 5, & 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 2004.

3. A DECLARATION that the denial of ingress to the Applicants who are the rightful owners of PLOT A32, LEKKI GARDENS PHASE 2 ESTATE, AJAH; PLOT A23/1 LEKKI GARDENS PHASE 2 ESTATE, AJAH; PLOT C3/1 PRIVATE AREA, LEKKI GARDENS PHASE 2 ESTATE, AJAH Lagos State, without a prior Court Order and the subjecting of the Applicants to emotional and psychological distress, indignity and trauma by persons acting at the behest of the 1st Respondent is unlawful and without justification.

4. AN ORDER OF PERPETUAL INJUNCTION restraining the Respondents, their assigns, workmen, staff and subordinates from further harassing, intimidating and/or infringing on the fundamental rights of the Applicants to personal liberty, dignity of the human person and right to acquire and own immovable property anywhere in Nigeria, especially with regards to their rights to ingress and egress being the rightful owners of PLOT A32, LEKKI GARDENS PHASE 2 ESTATE, AJAH; PLOT A23/1 LEKKI GARDENS PHASE 2 ESTATE, AJAH; PLOT C3/1 PRIVATE

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**AREA, LEKKI GARDENS PHASE 2 ESTATE,
AJAH LAGOS STATE.**

- 5. AN ORDER directing the Respondents to jointly and severally compensate the Applicants for damages in the sum of ₦25,000,000 (Twenty-Five Million Naira Only) for the arbitrary violation of the Applicants' Fundamental Rights as guaranteed in Sections 34, 35 and 43 of the 1999 Constitution (as amended).**
- 6. AND FOR SUCH ORDER OR FURTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstances".**

The Affidavit in support was sworn to by the 2nd Applicant. She described the Applicants as owners of houses and residents of Lekki Gardens, Phase 2 Estate, Ajah (hereinafter referred to as the estate). She described the 1st Respondent as the Chairman of the 2nd Respondent. She says that the Respondents sent messages to the Applicants that they were owing the sum of ₦24,000 (Twenty-Four Thousand Naira) for service charge and that as a result of this, they were disallowed from accessing the estate through the gate and the walkway. She says that the Applicants were not owing and that the dispute on fees is on an additional sum maliciously imposed by the Respondents on the residents. She exhibited photographs, evidencing restriction of access to the estate.

The Counter-Affidavit is dated 03/07/2025. It was sworn to by the 1st Respondent. He says that the Respondents did not interfere with the Applicants' occupation of their properties and that the estate is managed by the 2nd Respondent. The other relevant facts in the Counter-Affidavit are quoted below –

"12. That I know for a fact that for the proper management and administration of the Estate and its infrastructures, the Residents of the Estate inclusive of the Applicants subscribes to rules and regulations as contained in the Estate's Handbook and periodic interventions including dues and levies for the efficient management of the Estate.

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14. That facts as contained in paragraph 7 of the Applicants' affidavit are false and grave misrepresentation of facts. The deponent, Mrs. Omolara Bolaji is indebted to the 2nd Respondent on Monthly service charge and other incidental levies payable by all residents of the Estate for the management of Lekki Gardens Phase 2 Estate and payment of service providers.

18. That the monthly service charge rate payable by all the residents of Lekki Gardens Phase 2 Estate as at March 2024 was ₦24, 000.00, used to pay for the private security guards services, waste disposal, maintenance of Estate's infrastructures and among others. The monthly service charge was further reviewed to ₦28, 500.00 in March 2024 to cover from April to December 2024 and ₦43,000 in January 2025.

20. That the monthly service charge payment was further reviewed to ₦43, 000.00 for the year 2025 due to increase in the cost of services and inflation prevalent in the Nigerian economy. The residents in their General Meeting approved the said increase in the service charge fee.

21. That the Applicants never objected to the advised monthly service charge payment and have paid the service charge fees and other incidental levies till last quarter of the year 2024 when they refused to pay further monthly service charge and levies to the Estate.

24. That the Applicants live and reside in Lekki Gardens Phase 2 Estate and have access to their properties through the alternative gate of the Estate allowed for delinquent residents who are indebted to the 2nd Respondent on their monthly service charge payment and other approved levies

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payable by residents of Lekki Gardens Phase 2 Estate.

25. That I know as a fact for efficient administration, management and for security purposes of Lekki Gardens Phase 2 Estate, the Lekki Gardens Phase 2 Residents on September 24, 2022 in its General Meeting approved the introduction of Smart Boom Bar Security System and Pedestrian Access Control with Estate App project. The 3rd Applicant was present in the said meeting where the decisions were made.

26. That I know as fact that this Smart Boom Bar Security System and Pedestrian Access Control with Estate App project are programmed electronically on the Lekki Gardens Phase 2 Estate Main Entrance gate and accessible to all residents who have fully paid their dues and levies to the Estate via the Estate app.

27. That I know for a fact that in the General Meeting of Lekki Gardens Phase 2 Residents Association on October 7, 2023 attended by the 3rd Applicant, Engr. Julius Uthomin, the residents unanimously voted and approved to disconnect all residents indebted to the 2nd Respondent on service charges payments and incidental fees from using common utilities and infrastructures in the Estate by updating their debts and levies on the Estate app.

30. That facts as contained in paragraph 9 of the Applicants' affidavit are false. The Applicants have unrestricted access to their homes through the alternative gate to the Estate that has no electronic access control mechanism.

38. That I know as a fact that access control at the Estate's main gate has no human interface and the Applicants cannot generate code to access the

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Estate's main gate as they are indebted to the 2nd Respondent.

39. That I know as fact that, the Applicants herein have approached the High Court of Lagos State in Suit No: LD/10299GCMW/2023 pending before Alakija J. sitting at TBS square, Onikan, Lagos seeking to join the suit claiming unlimited access through the Estate gate among others.

63 (c). That the main gist of the Applicants' suit herein is on the legality of Lekki Gardens Estate Phase 2 rules and regulations in administering the Lekki Gardens Estate 2 cannot be adjudicated upon via the Fundamental Right Enforcement Procedure.

63(g). That the pith of this matter on the activities of the 2nd Respondent, an incorporated Association under the law is within the jurisdiction of the Federal High Court."

The Applicants filed a further Affidavit, sworn to on 08/07/2025. The relevant paragraphs of the process read thus –

"6. That the suit No. LD/10299GCM/23 is not a fundamental Right Application but a suit for nullity of some constitution of Lekki Gardens and injunctive orders which is different from the suit before this Honourable Court.

8. That none of the Applicants are indebted to the Estate as none payments of Estate levies till date is as a result of unresolved issues in respect of the exorbitant increase of the Estate Levies by close to one hundred percent of the former levy.

9. That the other available gates according to the Respondents are not motorable and kilometers away from the Estate. The so-called gates are also under lock and key."

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In the Written Address in support of the Application, the Applicants formulates two issues for determination thus-

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"1. Whether this Honourable Court is conferred with the powers to grant the Reliefs sought herein as it pertains to the fundamental rights of the Applicants.

2. Whether the 1st Respondent's denial of access to the Applicants' respective properties, without lawful justification or a prior court order, constitutes a violation of their proprietary rights and amounts to high-handedness and unlawful conduct warranting the censure of this Honourable Court."

The issues were argued together. It was submitted that the act of the Respondents in denying them access through the main gate of the estate constitutes infringement of the Applicants' rights to personal liberty, to dignity of human person and to their properties. Counsel argued the case under Sections 34, 35 and 43 of the Constitution of the Federal Republic of Nigeria, 1999 and cited **EZEIGBO V. ASCO INV. LTD (2022) 8 NWLR (Pt. 1832) 387** and **A.G RIVERS STATE V. A. G. AKWA IGBOM STATE(2011) 8 NWLR (PT. 1248) 31**. Counsel submits that the act of the Respondents amounts to self-help and deprivation of their rights of ingress and egress to the Applicants' properties. The Address was concluded thus –

"Assuming without conceding there was a debt, the appropriate procedure would be to initiate a civil claim and obtain judgment not resort to acts of harassment or extra-judicial punishment. It is submitted that the conduct of the Respondent is reprehensible, amounts to taking the law into his own hands, and must be deprecated by this Honourable Court".

On his part, Counsel for the Respondents formulates four issues for determination thus –

"1. Whether the Applicants' suit as presently constituted in the light of the pendency of their application seeking to join Suit Number: LD/10299GCMW/2023 with similar reliefs of this suit pending before the High Court of Lagos State, is an abuse of court process?

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2. Whether this suit as presently constituted discloses any cause of action against the 1st Respondent being an agent of a disclosed principal, the 2nd Respondent?

3. Whether this present suit as constituted is one that ought to be brought under the Fundamental Human Right Enforcement Procedure? If in the Affirmative.

4. Whether from the circumstances of this suit, the Applicant has presented credible facts entitling him to the reliefs sought?"

Argument on issue number one is that this case is an abuse of Court process because of the pending motion for joinder of the Applicants in the other suit referred to above.

On issue number two, Counsel submits that only rights cognisable under Chapter IV of the Constitution are enforceable under fundamental human rights enforcement Rules. For this, he relied on **HASSAN V. EFCC (2014) 1. NWLR (PT. 1389) 607**. The argument is that the reliefs must not be ancillary to those rights covered by Chapter IV of the Constitution. He further relied on **TUKUR VS GOVERNMENT OF GONGOLA STATE (1997) 6 NWLR (PT. 510) 576**. He argued that the case is on breach of the estate rules and the consequence and not strictly fundamental human right claims and that their claims therefore qualify for redress under the law of contract.

On the third issue, Counsel contends that residents of an estate are bound by the rules made for the estate. In support of this, he cited **FAMAKINWA VS. ODOFIN OLOJA ESTATE RESIDENTS' ASSOCIATION (2016) LPELR-41066 (SC)**.

Counsel further argued that there cannot be restriction of movement where an alternative route is available.

On the last issue, Counsel argued that being an agent of the 2nd Respondent, the 1st Respondent cannot be held personally liable. **UNITY BANK PLC. V. BCC (NIG.) LTD (2020) 16 NWLR (PT. 1749) 132** was relied upon.

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In the Reply on points of law, Counsel for the Applicants argued that the Applicants are not yet parties to the other suit and that by virtue of this, the present suit cannot be an abuse of Court process. Counsel further contends that while the other suit is based on civil claims, the claims here are for enforcement of fundamental human rights.

On whether the claims in the suit are ancillary to Chapter IV of the Constitution, Counsel submits that they fall squarely under the said Chapter.

It was submitted that **FAMAKINWA VS. ODOFIN** (supra) relied upon by the Respondents is artificial intelligence generated case. It was further contended that the estate rules cannot override the provisions of the Constitution, the Constitution being the grundnorm.

On agency of the 1st Respondent, Counsel submits that Section 46 (1) of the Constitution does not exempt an agent. It was said that what is important is for him to have played an active or substantial role in the dispute that led to the violation of the rights sought to be enforced.

There is an additional Address from the Applicants, filed on 08/07/2025, wherein previous arguments were repeated.

Above ends the arguments of both Counsel. I start my resolution of the issues with the minor ones. On agency of the 1st Respondent, the facts of the case support this. There is no dispute that he is the Chairman of the 2nd Respondent and ipso facto its agent, the 2nd Respondent being an artificial legal entity. Further, there is no evidence that the action taken to restrict movement through the main gate was done in the personal capacity of the 1st Respondent. The law is that an agent is not liable for acts and omissions done on behalf of his principal, particularly a disclosed principal, as in this case. See **CARLEN (NIG.) LTD. V. UNIVERSITY OF JOS** (1994) 1 NWLR (PT. 323) 631 at 659.

However, I do not think that this principle applies to Fundamental Human Rights cases. For example, the Preamble to the Rules provides – “In human rights litigation, the applicant may include any of the following –(i) Anyone acting in his own interest;(ii) Anyone acting on behalf of another person”.

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Also, Order 1 of the Rules defines an Applicant as - "...a party who files an application or on whose behalf an application is filed under this rules".

Although the above provisions relate to the Applicant, I see no reason why they cannot apply to the Respondent. What is good for the goose should be good for the gander. This position is best buttressed using the right to life as an example. It will be absurd to argue that an agent that kills on behalf of his principal is not personally liable. This issue is therefore resolved against the Respondents.

On alleged infringement of the Applicants' right to their properties, I do not see how this arises from this case. I say this because Sections 43 and 44 of the Constitution that deal with it relates to forceful acquisition of properties, which is not the case here, neither is their title to their properties being challenged by the Respondents. Their case is about right to access their properties and not on title to them. In other words, right to properties is different from access to them. This issue is therefore resolved against the Applicants.

On abuse of Court process, this envisages a situation where two similar suits are pending on the same subject matter. See **SARAKI V. KOTOYE (1992) 9 NWLR (PT. 264) 156**.

What is pending in the other suit relied upon by the Respondents is a motion for joinder of parties. There is no suit yet, by or against them because the process is still inchoate. I say this because the motion can still be withdrawn by the Applicants and even refused by the Court. In other words, it is not a substantive suit to justify invocation of the principle of abuse of Court process. The question is - what happens if I agree with the Respondents on the issue of abuse of Court process and the Motion for joinder fails? Based on these reasons, the issue is resolved against the Respondents.

I am now left with the main issue. Having held that the dispute among the parties is not about right to properties, it is my view that the case is about either freedom of movement or right of ingress and egress to the Applicants' properties. Right to freedom of movement is provided for in Section 41 of the Constitution that reads thus-

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"(1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom".(Underlinning,mine).

As shown in the above underlined, the right guaranteed above relates to movement from one part of the Country to another. That is, from one State to another or from one Local Government to another, or within one part of a Local Government to another. This is what the Constitution envisages to make the right of citizenship meaningful, since citizenship confers nationwide rights and privileges, one of which is the right to settle in any part of the Country and own landed properties there.

Based on this view, it follows that where an Applicant's right to movement from one part of a State or Local Government is not restricted, but restricted to a particular piece of land or building, the restriction will not qualify for determination under Chapter 1V of the Constitution because it is a simple case of right of ingress and egress to the affected property. An example to buttress this is - will breach of a covenant in a tenancy agreement on right of easement from plot A to plot B qualify for determination as a fundamental right to freedom of movement from plot A to plot B? I do not think so because the covenant is an agreement, and should therefore be enforced as a civil suit for breach of contract.

Even if I am wrong, that is, if the claims in this suit qualify for determination under Chapter 1V of the Constitution, the law is that rights guaranteed under it are not absolute. See **EMEKA EKWUGO V. FRN (2001) 6 NWLR (PT. 708) PG 171**. Meaning that there are exceptions to them. The question then is - Are the Applicants entitled to unconditional access to their houses? This question appears simple because there is no dispute that they all agreed to payment of ₦25,000 (Twenty-Five Thousand Naira) as service charges, which covers the security post. It follows that since they paid the sum, there is an implied understanding among them that the right to access their houses through the main gate is not absolute. It is conditional on payment of the agreed sum of ₦25,000 and therefore not absolute.

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Further, the fact that the Applicants paid to be entitled to pass through the gate means that their relationship with the Respondents is contractual and

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that any dispute relating to the agreed consideration for the use of the gate will qualify as a breach of contract and therefore not a fundamental human right case. I hold this view because their relationship started as that of contracting parties. It is in view of this that I agree with the Respondents' Counsel that the claims in this suit are ancillary to rights guaranteed under Chapter IV of the Constitution. This is the position that I stated earlier, that their case falls under right to ingress and egress to their properties, which is outside the provisions of Chapter IV of the Constitution. The law does not permit ancillary claims under the said Chapter. See **WAEC V. AKINKUNMI (2008) 9 NWLR (PT. 1091) 151 at 172.**

The situation in the estate where the dispute arose from is akin to the practice adopted in operation of toll gates on our roads, whereby there is always an alternative route for those that find the toll fees unbearable. The Applicants' objection is not that there is no other gate. Rather, their case is that it is locked and not motorable. As a gate, it must be locked except when it is about to be used. If the main gate that led to this suit is not locked, there would not have been an issue of restriction of access through it. The condition of the road to the other gate is the sacrifice to be paid by those that wish to avoid payment of dues for the main gate. Services are not rendered for free. The Applicants realized this by paying the mutually agreed sum of ₦25,000 (Twenty-Five Thousand Naira). The dispute is about the reviewed sum. This is the reason why I said that the case is about the appropriate consideration to be paid for services being rendered and not a fundamental human rights case.

In a judgment that I delivered on 22/02/2018 in **ANAJE CHINEDU FEDRIC ESQ V. MR. SULYMAN BELLO & 6 ORS., SUIT NO. LD/4586MFHR/2016**, I held thus -

"I do not see how I can find my way through in holding that a citizen has a Fundamental Human Right to ply on motor-able roads. The conditions of roads vary. In some areas good roads are necessity. In some, they are luxury. In some other locations, motor-able roads are not required. An example of this is a riverine area. In other words, the right to a good road may be recognized in law but it is certainly not an inalienable right. It does not qualify for litigation under Chapter IV of the Constitution. It is a luxury in the class of economic,

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social and educational rights, guaranteed in sections 16, 17 and 18 of the Constitution and yet rendered unenforceable. See **A.G. ONDO STATE V. A.G. FEDERATION (2002) 9 NWLR (PT. 772) 222** and **CHARLES UGWU V. SENATOR IFEANYI ARARUME (2007) 4 SC. (PT 1) 88**.....

Once there is no confinement and there is an alternative route, there cannot be an infringement of freedom of movement. See **ADEYEMO V. AKINTOLA (2004) 12 NWLR (PT. 887) 390**, where the Court held that -

"False imprisonment may be defined as the restraint of a man's liberty whether it be in an open field or in a cage. The relevant fact to look for is whether the victim had at the time liberty freely to go at all times; as enshrined in our 1999 Constitution. See Section 35(1).

However the detention must be total, in that there should be no means of escape from the detention known to the victim. See **Meering V. Graham White Aviation Coy. Ltd. (1920) 122 Law Times 44, 51 and 53.**"

The above implies that restriction of freedom of movement will not arise where the Applicant is at liberty to use alternative routes. The restriction envisaged under Section 41 of the Constitution must be total".

I will avoid **FAMAKINWA'S** case on bindingness of estate rules on the residents. It suffices for me to hold that the Applicants are bound by their agreement to pay estate dues. This accord with the law that parties are bound by their agreement. See **NATIONAL SALT COMPANY OF NIGERIA LTD. V. MRS M.J. INNIS-PALMER (1992) 1 NWLR (PT. 218) 422**. With inflation, review of the agreed sum becomes inevitable except forbidden by the agreement of parties. There is no evidence before me that this is not allowed. Indeed, the evidence is that review was discussed at a meeting of residents of the estate.

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Despite holding that the case does not qualified for determination under Chapter 1V of the Constitution, I proceeded to consider it on the merit in case I am found wrong by the Court of Appeal. It follows that since my main decision is not on the merit, the appropriate order to make is to strike out the suit to enable them ventilate claims on their rights of ingress and egress to their properties. Based in this, this case is hereby struck out. There is no order as to costs.



HON. JUSTICE W. ANIMAHUN

29/09/2025

Appearances

E. S. Otuoniyo appears for the Applicants.

Chinedu Nwanelli appears for the Respondents.

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ADESANYA N.D. (MRS)
ADMIN & HR OFFICER
03/10/2025
Sign: _____
Date: _____
COMM. FOR OATHS

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COURT OF LAGOS

HIGH



STATE

Sign: _____

Date: _____

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