**‘’Rethinking the fundamental right enforcement procedure and compensations for rights violation’’**

**INTRODUCTION**

The concept of the Rule of Law as propounded by A. V Dicey in 1885 is today perceived to the bed rock of every progressive and democratic state. Incontrovertibly, societies that adopt these rules of law are termed to be free and working societies. These societies respect basic human right and allow citizens to be protected by law from government, from individuals and even from themselves. Fundamental rights are basic rights of citizen entrenched in our laws. These rights are inalienable and can only take God and the Court to wrest them from the citizens. They are provided to promote human liberty and the dignity of the human persons especially in a democratic, liberal and open society. I said open society because I still remember there is a state called *North Korea* where the society is brutish and life suppressive. Fundamental rights are rights guaranteed in the Nigerian Constitution and can be found entrenched in chapter IV of the 1999 Constitution(as amended)particularly in sections 33- 44. In order to speedily deal with issues of right violation and abuses considering its sensitive nature, the former Chief Justice of Nigeria, I.L Kutigi, CJN made the Fundamental Right Enforcement Procedure Rules 2009 (FREP RULES). These rules are made to ensure speedy ventilation in the prevention of human right abuses and the settlement and compensation of victims in time.It also protectsand fast-tracks litigation with respect to fundamental rights matters as against the slow-paced nature of litigation in the Nigerian judicial system. To this effect, one would be tempted to say fundamental rights proceedings have become *sui generis* since the advent of the Fundamental Right Enforcement Procedure Rules 2009. In this regard, the FREP rules have also abolished the need for leave of court before seeking redress against violators of fundamental human rights.

**OVERVIEW**

There are natural rights, human rights and fundamental rights. There are differences amongst these rights. Natural rights are rights that pertain to individuals by virtue of the fact that they are human. These rights need not be codified before they can be regarded as natural rights. Human rights are the rights that are recognized by laws. Fundamental rights are the rights that have a constitutional backing -**UZOUKWU V. EZEONNU (1991) 6 NWLR (Pt200) 708 C.A.** In Nigeria, such rights are contained in chapter IV of the CFRN. For the purpose of this discussion, enforcements of fundamental rights would be limited to the chapter IV, CFRN and by extension the Africa Charter on Human and People Rights (Ratification and Enforcement) Act.

The Federal Republic Nigeria Constitution 1999 has done tremendously well in making provision for the protection of human basic right. In 1957 the Henry Willink commission that was set up before independence to investigate the fear of the minority came out with the Inquiring that more fundamental right should be given to the citizens, the inquiring recognize that with these right protected every citizen will have a sense of belonging in the new Nigeria. Going forward, the present Constitution being operated has not disappointed in providing and entrenching these rights, however, if the challenges stated below are well address, the enforcement and compensation of human rights and abuses will lead to more civil society.

**OBJECTIVES OF THE FUNDAMENTAL RIGHT ENFORCEMENT PROCEDURE RULES 2009**

It is pertinent to mention once more that the Fundamental Rights Enforcement Rules 2009 were made by the former chief justice of Nigeria pursuant to section 46 [3] of the Nigerian Constitution 1999(as amended). The objectives are clearly written out in section 3(a) of the Fundamental Rights Enforcement Procedure Rules, to wit:

1. To advance and realize the human right and freedoms which are listed in chapter IV of the Nigerian Constitution, as well as in the African charter. The implication of this is that the rules are tailored to materialize, give flesh and substance as well as to bring to life, the rights enumerated in chapter IV of the Nigerian Constitution 1999(as amended). This is unlike the directives principles of state policies which are evinced under chapter ll of the 1999 constitution and which are not justiciable, but at best idealistic. Where breached, the fundamental right, for which redress is sought must be enumerated in chapter IV of the Nigerian 1999Constitution or the African Charter on Human People Rights. Again, human rights must be given purposive and not given false interpretation to ensure that human and societal values are upheld to the highest regards.
2. Paragraph 3 (b)- to ensure the advancement but never the restriction of the applicants' rights and freedoms, by the courts in respect of municipal, regional and international bills of rights. It is clear from the wording in this paragraph that one of the objectives is to advance the right of human protection and never to be restrictive with it. Although foreign laws do not govern us in Nigeria; however, Nigeria must uphold foreign laws she has domesticated and to which she is a signatory to in the quest to advance these rights
3. For the court to be able to make consequential orders as may be just and expedient to ensure the advancement but never the restriction of the applicant’s right and freedoms. Flowing from the above paragraph, the courts are encouraged to make precedents and laws to advance protection of human right and not to kill or suppress it. This perhaps led to the establishment of the ‘’judges rules’’
4. Paragraph 3 (d)for the court to proactively pursue enhanced access to justice for all classes of litigants especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented.
5. Paragraph 3(e) - for the court to encourage and welcome public interest litigations in the human rights field and ensure that no human rights case is dismissed or struck out for want of *locus standi*. The apex court has severally dismissed law suits on appeal for lack of sufficient interest as the court and indeed the law does not welcome or tolerate meddlesome interlopers. However, by the purport of this paragraph, public interest litigation is encouraged and the issue of sufficient interest will no longer be a barrier to the pursuit of fundamental right enforcement in our courts.
6. Paragraph 3 (g) - to ensure that human rights suits are given priority in deserving cases. Where there is any question as to the liberty of the applicant or any person, the case shall be treated as an emergency. In deserving cases, law suits that border on the enforcement of fundamental rights are to be given priority. Cases on fundamental right must be resolved as a matter of urgency and this is especially where a person is detained.

**Fundamental rights to be enforced in Nigeria Courts**

All of the rights entrenched in chapter IV of the 1999 Nigerian Constitution are clearly in the list of rights to be enforced. These rights include, but are not limited to **right to life, right to personal liberty, right to freedom of thoughts, rights to foredoom of religion, right to dignity of human persons, right to freedom of assembly and association, right to fair hearing** etc.Any of those rights contained in Chapter one of the Africa Charter on Human and Peoples Rights, which are similar to the rights in chapter IV of the Nigerian Constitution 1999 as amended are to be enforced. However rights excluded by virtue of chapter II of the Nigerian Constitution 1999 (as amended) do not fall under this enforcement of right as they are tagged as ‘’directive principles of state policy’’. These are rights that are meant to guide the government in governance of it's citizens. Some of these rights include social, cultural and economic rights.

The 2009 rules has made a large and well concrete list of rights to be enforced as fundament rights in our courts. Specifically order 1 rule 2 of the 2009 rules provides ‘*’fundamental right means any of the rights provided for in chapter IV of the constitution and includes any of the rights stipulated in the African charter on human and peoples right (Ramification and Enforcement) act’’*

 It can be gleaned from the above that our courts are now at liberty to apply and enforce the African Charter on Human and Peoples Rights which has been ratified and re-enacted as a domestic law by the Nigeria National Assembly.

To succinctly put, the following are the rights to be enforced under chapter IV of the Nigerian Constitution 1999 (as amended).

* 1. Rights to life contain in section 33
	2. Right to the dignity of human person -section 34
	3. Right to personal liberty – section35
	4. Rights to fair hearing- section 36
	5. Right to private life section 37
	6. Right to freedom of thought –section 38
	7. Right to freedom of expression –section 39
	8. Right to peaceful assembly –section 40
	9. Right to freedom of movement – section 41
	10. Right to freedom from discrimination section 42
	11. Right to freedom to own immovable property – section 43

Article 3 to article 19 of the Africa charter on human and people right are in line with the above rights to be enforced in Nigerian courts.

**Applicable laws**

1. Constitution of the Federal Republic of Nigeria 1999 (as amended)
2. Fundamental Rights Enforcement Procedure Rules 2009 (FREP Rules)
3. The African Charter on Human and Peoples Rights

**Who can sue in human rights litigation?**

1. Anyone acting in his own interest- the person whose right has been breached
2. Any one acting as a member of or in the interest of a group or class of persons
3. Anyone acting on behalf of another person
4. Any one acting in the public interest
5. Association acting in the interest of its members or other groups or individuals
6. Also any person who desires to be heard in human right application and who appears to be a proper party whether he has been served any of the relevant processes or has any interest in the matter may be heard- Order 13 Rule 1 FREP Rules 2009

Again, *amicus curiae* who are friends of the court may be encouraged in human right applications and may be heard at any time if the court's business allows it- Oder 18 Rule 2 FREP Rules 2009. The respondent can be an individual, corporate body, the government, any person who has legal personality and who is alleged to have infringed the provisions of chapter IV CFRN and the African Charter on Human and People Rights - **ABDULHAMID V. AKAR (2006) LPELR- 24 (SC)**

It is instructive to note that infants can enforce their rights through their next friend – **BADEJO V. MINISTRY OF EDUCATION** (1990) 4 NWLR (PT 143) 254 . However for deceased persons, no cause of action can be taken because fundamental rights are personam- **EZEADUKWA V. MADUKA( 1997) 8 NWLR ( PT 518) 635**

**Procedures and Hearing under Fundamental Right Enforcement**

The mode of commencement is by originating process without leave of court. Form *No 1 which is contained* in the appendix to the rules may be used as appropriate. Order 2 Rule 2 FREP rules provides that leave of court is no longer necessary before bringing an application for the enforcement of fundamental rights.

An Originating motion is most often used and any other form is appropriate as long as it is accepted by the court. The date for hearing of the application is to be fixed within 7 days of filling of the application- Order 4 Rule 1 FREP rules. Application for enforcement of fundamental right is to be treated as an urgent matter and the court will not entertain or grant frivolous adjournments except that which is extremely expedient. - Order 4 Rule 2 FREP rules. The hearing of the application is to be on the parties – Order 12 Rule 1 FREP rules. Oral arguments are allowed for twenty minutes from each party on matters not contained in written address and which came to his knowledge after filing his written address- Order 12 Rule 2 FREP rules. If on the date set for adoption of written address and either of the parties is absent the court may *suo motu* or on application [oral] of the counsel to the party present order that the address be deemed adopted- if the court is satisfied that.

1. Parties had notice of the date of adoption as he was present in court the day it was made or
2. He was served with the notice on the day of adoption – Order 12 Rule 3 FREP rules

**Ex parte application**

Time is of the essence in fundamental rights enforcement procedures. For this reason, where a party desires interim orders vide an *ex parte* application, the court may only hear *ex parte* application on interim relief, where exceptional hardship will be done to the applicant especially when life or liberty of the applicant is involved – order 4 rule 3 FREP rules. The application *ex parte* must be supported by affidavit, setting the grounds why delay in hearing the application would cause exceptional hardship- order 4 rule 4[a] FREP rules.

**COMPENSATION UNDER THE FUNDAMENTAL RIGHT ENFORCEMENT RULES**

Compensation under the fundamental right enforcement rules is rather not too encouraging. No too far ago in this decade, our youths were subjected to series of human right violation during the famous **ENDSARS** rally and some had their lives taken prematurely by the authorities. Government panels set up to investigate and compensate affected victims have long completed their inquiries and to the best of my knowledge, many States, including the Center of Excellence(The Federal Capital Territory) are yet to fully implement the recommendation of the panel and victims of human rights abuses are still yet to be compensated. Justice is the root of democracy and no one can talk about justice when the ordinary man on the street lives in perpetual fear and harassment from the authorities. Many Nigerian citizens are behind bars today as we speak for alleged offences, many have even stayed more than the years prescribed by the law and such mattersstill suffer endless adjournments. In many cases, when these victims are acquitted of alleged crimes, they go home with tampered freedom and with no form compensation paid for donkey years behind bars. Indeed, this categories our society as unprogressive and retrogressivewith life, being nothing short of nasty, brutish and poor. Authorities ought to be held to the highest account for atrocities committed so that life becomes more meaningful.

If an applicant for the enforcement of his fundamental rights proves that he was unlawfully arrested and detained, by virtue of section 35[6] of the Nigerian Constitution 1999 (as amended) he should be entitled to compensation and an apology from the State where no specific amount is claimed. This is what the law provides.

The court of appeal relying on the Supreme Court authority in **JIM- JAJA V C.O.P RIVERS STATE AND OTHERS** [**2013] 6 NWLR [Pt1350]**held that in an enforcement of fundamental rights suit, an applicant only has to prove that his fundamental right has been or is being or likely to be violated and that the trial court has the discretion to award any damages found necessary in the circumstance of the applicant facts deposed in his affidavit in support of his application. The applicant is not under any duty to prove damages before being automatically entitled to same. A combined reading of sections 35 [6] and 46 [2] of the Nigerian Constitution gives effect to the principle of ***ubi jus ibi remedium***. By section 35 and 46 of the constitution, fundamental rights matters are placed on a higher pedestal than ordinary civil matters in which a claim for damages resulting from a proven injury has to be made and specifically proved. Once the appellant proves the violation of his fundamental rights by the respondent, damage in the form of compensation and even apology should follow. In **OKIBE V NDLEA [2022] LPELR- 56995 [CA]** the court stated that as follows “ a person who is arrested or detained beyond the time or limit provided in the provisions of the *our* constitution and is able to discharge the onus of proof cast upon him he is automatically entitled to compensation as provided for under the constitution.’’ A victim of violation or infringement of fundamental rights by any authority or person does not need to plead or claim an amount specifically in general damages or exemplary damages or punitive damages before he should be given or awarded compensation against the person or authority that is adjudged guilty of violating a person’s fundamental rights. It is at the discretion of the of the trial judge to exercise his power judiciously and judicially to ensure justice is done by awarding compensation. Compensation in terms of damages must be commensurate to the deprivation of person’s liberty suffered which is contrary to the constitution and not permitted by law. Same is true where the provision of section 36 (1) and (5) of the constitution of the FRN is violated. The victim is entitled to damages *ex debito justiciae* that will serve as deterrent to others.

The court although, not a father christmas that doles out gift or grant prayers not sought, must howevercompensate victims of human right violation whether compensations is asked for or not upon proven violation of rights

**FACTORS AFFECTING FUNDAMENTAL RIGHTS ENFORCEMENT IN NIGERIA**

**The Law and Jurisdiction**

What the law provides which some Courts in Nigeria have interpreted to mean by virtue of case laws, is that both the Federal and state High Courts in Nigeria have jurisdiction to entertain fundamental human right matters. The case of **JIM-JAJA V. C.O.P. RIVERS STATE (2012)LPELR- 20621 (SC)**is instructive on the point that section 46(2) of the 1999 constitution vests on the High Court( Whether Federal or State) , the original Jurisdiction to completely determine any application which is brought before the Court and can issue such directions, including the making of such necessary orders required for the enforcement of the rights of such person for whom the application is brought within that jurisdiction. The consequence of such decision is that section 46(1) of the Constitution fits the Federal and State High Courts with the vires to deal with fundamental rights matters where there is a right which is being breached, about to be breached or is at the risk of being infringed upon.

This position has nevertheless been qualified by the apex Court in a host of authorities. The Supreme Court has in a few cases qualified the right of the State High Courts to deal with fundamental Human right matters in contemplation of the Jurisdiction conferred on each court by the constitution. Accordingly, fundamental right matters which fall outside the circumference of matters enumerated under section 251 of the Constitution cannot be dealt with by the Federal High court. In same regard, a High Court of a State lacks the vires to deal with matters falling within the borders of section 251 of the Constitution, though such matters have been brought pursuant to section 46(2) of the Constitution.

**Entertaining joint applications for the enforcement of fundamental human rights.**

Fundamental rights are generally considered on a class of their own own and exist intrinsically in every individual under the constitutional flavours of Chapter IV of the Constitution, 1999( as amended). It is for this reason that they enjoy both national and international recognition and protection whether in the sense of national laws or internationally accepted charters and agreements. Kayode Eso, JSC(of blessed memory) captures it appositely in the case of **RANSOME-KUTI VS. THE ATTORNEY GENERAL FEDERATION (1985) 2 NWLR (PT. 6) 211**wherein he ratiocinated: ‘’It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence".

In preceding paragraphs under this seminar paper, it had been stated that the following categories of people can bring a fundamental rights action:

1. Anyone acting in his own interest;
2. Anyone acting on behalf of another person;
3. Anyone acting as a member of, or in the interest of a group or class of persons;
4. Anyone acting in the public interest; and
5. Association acting in the interest of his members or other individuals or groups.

Without prejudice to the aforementioned position, it is settled beyond cavil that matters bordering on fundamental human rights cannot be jointly maintained by parties because of their personal character. In **UDO V. ROBSON& Ors(2018) LPELR- 45183 (CA)**where the 1st, 2nd and 3rd Respondents were the applicants for the enforcement of their fundamental rights and were able to prove that their rights had at some point been breached by the applicants, the court held, nonetheless:“*here the act complained of is the arrest and detention without bail and without an arraignment in Court for any known offence.* The Court furtherratiocinated in further paragraphs…."*I still believe that in the circumstance that the Court in the interest of justice and convenience can allow the parties to file their complaint together for the enforcement of their fundamental rights. However, since this provision is not in the rules, the Courts are having difficulty in taking it up*". The Court’s decision inthe Udo's case is found on the Court of Appeal’s decision in the case of **KPORHAROR & Anor. V. YEDI & Ors (2017) LPELR-42418 (CA)**where the Court of Appeal once again upheld the singularity of rights brought under the constitution pursuant to section 46(1) of the Constitution, 1999 (as amended). The Court held that fundamental human rights are very personal in nature and cannot be jointly claimed claimed as a collective right.

Though the law abhors the maintenance of joint claims in the enforcement of fundamental rights matters, Order VII of the FREP rules allows for consolidation of actions where there are applications of a similar nature relating to the infringement of fundamental rights in separate suits. The law notwithstanding, the application for consolidation can only be made at the behest of the applicant and never the respondent. The Court in the case of **Alaribe v Nwankpa& Ors(1999) LPELR- 6742 (CA)** defined the extent of consolidation and its implication at law where it held*"two or more suits on consolidation assume a new character, giving the trial judge the power to treat them together and be seised of the issue involved in the consolidated action".*

The provision which allows for consolidation of suits cures the lacunae in the FREP rules relating to joinder of actions, since there is no provision for same under the rules. Nonetheless, the law on consolidation of actions does not cure any defect where there is multiplicity of actions under the rules; but diffuses the likelihood of protracted suits which generally characterizes litigation in Nigeria, whilst allowing for efficiency in administration of cases as well as quick dispensation of matters. Though the law allows for consolidation, this does not mean that consolidated actions are of a singular nature as each case still possess their distinct and separate identities.

**Companies enforcing their Fundamental rights**

As with natural persons, corporate entities have the right to sue and be sued and the right to sue also extrapolates the enforcement of fundamental rights. As with natural persons, corporate entities may institute actions to enforce their fundamental rights through the use of any of the originating processes accepted by law without leave of the Honourable Court. The Originating process shall be accompanied with a statement setting out the name and description of the applicant and the relief sought and the grounds upon which the relief is sought. The application shall also be supported byan affidavit setting out the facts upon which the application is made and a written address.

This position of law has been given judicial credence in the cases of **Akwa Savings and Loans Ltd V. Udoumana & Ors (2009) LPELR- 8861(CA),**where the Court held that a Company, being an artificial person, can enforce its rights through its alter ego in the event that those rights are breached.In the case of **Concord Press Nigeria Limited V Ag Federation & Ors (1994) FHCLR 144**; the Federal High Court under the 1979 FREP Rules also upheld the applicants’ rights(a company) to challenge the unlawful closure of their place of business under the military regime. The Federal High Court upheld the right of the applicants to freely express themselves and also awarded exemplary damages against the respondents.

However for an artificial person to institute an action under the FREP rules, such a right must be capable of being enforced. In the case of **F.B.N. Plc & Ors v. A.G. Federation (2018) 7 NWLR Pt. 1617,S.C 121 for instance, the apex court ratiocinated** "an artificial person cannot maintain an action for violation of its fundamental rights. Thus, in the instant case, the 1st appellant being an artificial person was incapable of being arrested and detained. The 2nd - 5th appellants, being natural persons, were the ones who could institute an action for the enforcement of their fundamental human rights. **The 1st appellant not being a person capable of being arrested and detained was not entitled to damages in this case although it may have its remedy elsewhere"**.{Emphasis mine}

The supreme Court’s decision is authority to support the notion that artificial persons can only enforce such rights which are factually possible to be enforced. An artificial person can for instance sue for its rights to freely associate, right to dignity and freedom from harassment and discrimination as well with other rights that can be factually enforced without more.

**Jurisdiction of Courts with respect to the enforcement of Fundamental rights involving the Federal Government and its Agencies**

It almost sounds cliche’ that the Federal High Court is vested with the exclusive Jurisdiction by the provisions of Constitution, 1999( as amended) to entertain matters relating to the Federal Government and any of its agencies. In **Inegbedion v. Selo – Ojemen & Ano***r***(2013) LPELR- 19769 (SC)** the Supreme Court held that *"the effect of Paragraphs (p), (q) and (r) of Section 251 (1) of the 1999 Constitution is to vest exclusive jurisdiction on the Federal High Court over all civil causes and matters in which the Federal Government or any of its agencies is a party.* A similar decision was reached in the case of **Nepa v. Edegbero (2002) 103 LRCN 2280 at 2281 - 2282**where the Court held “*The provision to Section 251 (1) of the 1999 Constitution does not in any way detract from the exclusive jurisdiction conferred on the Federal High Court by virtue of Section 251 (1) (p), (q) and (r). Consequently, the proviso cannot apply*."

The effect of both cases is that by the Provisions of Section 251 (1) (p), (q), (r) of the Constitution in a matter relating to the Federal Government or any of its agencies, the State High Court lacks the locus to entertain any of such cause or matter. In **Adebileje v. NEPA(1998)12 NWLR (Pt 577) 219 ,** the Kaduna Division of the Federal High Court held that, by section 230(1), (q) of the Constitution (suspension and modification) Decree 107 of 1993, without prejudice to anything contrary in the Constitution, the Federal High Court shall have exclusive Jurisdiction to entertain such cause or matter relating to the Federal High Court or any of its agencies. The Supreme Court’s decision in the case of **University of AgricultureMakurdi v. Jack (2000) 11 NWLR (Pt.679) 658**is also to the effect that the Constitution does not by any chance confer jurisdiction on the State High Court in matters relating to the Federal Government or any of its agencies.

In the case of **Iheme v. Chief of Defence Staff & Ors** there was a contention as to whether tortuous offences such as battery and assault falls under the Jurisdictional competence of the Federal High Court or of the State High court. The Court of Appeal languished the dilemma in determining the Court’s jurisdiction where there is a conflict between subject matter jurisdiction and parties. The Court reviewed the decision of the Supreme Court reached in that case, in the case of **Adetona v. I. G. Enterprises (2011) 7 NWLR (Pt.1247) 535**and considered the appropriateness of foisting the Federal High Court with Jurisdiction where the subject matter of the suit has elements of tortuous offences in violation of fundamental human rights, but where the party so involved is the Federal Government or any of its agencies.

According to the Court, the applicant may not have any court to seek redress, because while the subject matter falls within the Jurisdictional competence of the State High Court, a strict interpretation of the law vide the principles entrenched by the apex Court will mean that the Federal High Court ought to also have jurisdiction in such matters. The court questioned the intendment of the law in view of the principle **Ubi jus ibi remedium**. The Court of Appeal’sinterpretation was found on the Supreme Court’s decision in **Adegbite&Anor. v. Amosu (2013) JELR 35540 (CA)**where the Court held" *The Constitution of the Federal Republic of Nigeria, 1999 (as amended) has conferred exclusive jurisdiction on the Federal High Court in a matter in which the Federal Government or any of its agencies is involved (Section 251(1) (p), (q), (r) and (s). According to the Court, the import of this decision was to oust the jurisdiction of the State High Court completely where the parties relate to the Federal Government or any of its agencies.*

In **NEPA v. Edegbenro (2002) 18 NWLR Pt.798 83** the Supreme Court held that the Federal High Court is vested with exclusive Jurisdiction to entertain all causes and matter relating to the Federal Government or its agencies, notwithstanding the nature of such claims. However In **Onuorah v. K.R.P.C. Ltd 2005 6 NWLR (Pt. 921) 393** the Supreme Court held that the Federal High Court does not have Jurisdiction to entertain matters relating to simple contracts and it makes no difference that the party against whom the action is instituted involves the Federal Government or any of its agencies.

The conflict as to the Jurisdiction of the Court with respect to fundamental rights matters seems to have been settled by the Supreme Court in the case of **F.U.T Minna v Olutayo 2018 ALL FWLR (Pt. 935) 1255** where in a case involving the unlawful suspension of a student of a Federal University and the institution of an action for the purpose of remediation in the High Court of Niger State, the Supreme Court held:

**Section 46(1) of the 1999 Constitution (ipssima verba with section 42(1) of the 1979 Constitution) clearly vests concurrent jurisdiction in both the Federal and State High Court in the matters for the enforcement of a citizen’s fundamental right. A High Court in section 46(1) of the Constitution and FREP, means and includes the Federal High Court and or a State High Court.**

A similar decision was earlier reached by the Supreme Court in the case of **Gafar v. Government of Kwara State (2007) 4 NWLR (Pt. 1024) 375 at 393.** By virtue of the foregoing cases, the Federal High Court and the State High Court of a State have Concurrent jurisdiction in fundamental right matters, regardless of the colouration of the Federal Government or an agency of the Federal Government as a party. In my opinion, this view is more in tandem with the 1999 Constitution as amended.

**Mis-appreciation of Procedures in Fundamental Right matters - Pursuing Fundamental Right claims as ancillary relief**

Where pursuing an action for the enforcement of fundamental rights, it is the law that the application should be the principal relief and not the ancillary claim before the Court. Where the ancillary claim before the Court is an action for fundamental right, the jurisdiction of the Court cannot be invoked in favour of the applicant. In reverse, where the principal relief is not for the enforcement of fundamental rights, fundamental rights procedure cannot be properly invoked. In **Ihenacho v N.P.F (2017) 12 NWLR (Pt.1580) 424**the court held that for a claim to qualify as falling under the Fundamental Rights (Enforcement Procedure) Rules, it must be clear that the principal relief sought by the applicant is for the enforcement of a fundamental right and not to redress a grievance that is ancillary to the principal relief which is not itself ipso facto a claim of fundamental right. An application brought under the rules must as a condition precedent relate to a principal claim for the enforcement of fundamental rights and not an ancillary claim.

**Fundamental rights matters and Debt Recovery**

Fundamental right issues may also arise in matters bordering on debt recovery actions. This is common in matters where parties, in a bid to enforce the terms of contract, employ the usage of force in recovering of debts owed them. A situation as such arose in the case of **Okafor&Anor v. AIG Police Zone II Onikan& Ors (2019) LPELR- 46505 (CA)** where the Court held that the use of force by the Security agents to recover debts under bare contractual relationships is prohibited by law. The Court ratiocinated held - "*I believe that the EFCC rather than advising the 1stRespondent to use legal means to recover the alleged debt, allowed its coercive powers to be used by the 1stRespondent to harass, intimidate and brutalize the Appellant in a purely business relationship. By so doing, Appellant's fundamental rights were violated, and the trial court was wrong to justify the breaches*".

In **EFCC v. Diamond Bank Plc (2018) Vol 279 LCRN 46 (SC)**the Court’s duty to protect the fundamental rights of citizens was once again upheld*.* In that case, it was held that the Powers of Security agencies such as the Economic and Financial Crimes Commission, the Police and other Security agents, do not relate to the recovery of debt. More specifically, *the Court held that* the powers of the Economic and Financial Crimes Commission (EFCC) combat financial crimes in Nigeria pursuant to section 6(b) of the Economic and Financial Crimes Commission (Establishment) Act does not extend to the resolution of disputes arising from simple contracts entered into by parties.

**Post-Judgment Proceedings - Seeking the Consent of AG to Enforce rights against the Government**

During Post-Judgment proceedings, where monies to be attached are in the possession of a public officer, such as in a garnishee proceeding, the consent of such officer must be first had and obtained before an order nisi can be made by the Court to attach such sums in possession. Though, this provision is well encapsulated in our laws by the provision of section 84 of the Sheriff and Civil Processes Act, issues relating to fundamental rights may arise, where a party in seeking to enforce a Judgment in his favour is derided the opportunity to so enforce such right where the Attorney General refuses to give his consent.

The Court has given this position judicial stamp in the case of in the case of**CBN v. Hydro Air Property Limited 2014 16 NWLR (Pt. 1434) 492**, where it was held that the prior consent of the Attorney-General under section 84 of the Sheriffs and Civil Processes Act is expedient in judgement enforcement proceeding against the State, the failure of which may render such proceedings a nullity where such consent is yet to be obtained.

The Supreme Court in the case of **CBN v. Interstella Communications Limited 2018 7 NWLR (Pt.1618) 294** explained the reason for Section 84 of the SCPA where it held that the said section is intended to prevent the utilisation of funds earmarked for some function for the settlement of a debt unknown the Government or its agency.

Clearly, from the above cases, it is evident that the consent of the AG is a precursor for the enforcement of fundamental rights against the state.

The recourse which may be had to an intending Judgement Creditor/litigant is to compel the Attorney General to so act in giving consent through an order of mandamus where the applicant shows that he has a right that is in threat of being breached, is being breached or that has been breached. The neglect of the AG to act entitles the applicant to seek relief under the writ of mandamus. However, the applicant must be able to establish that there exists a legal right to performance of a public duty by law. This is because section 287(3) of the 1999 Constitution provides that; *"the decisions of the Federal High Court, the High Court and all other Courts established by this constitution shall be enforced in any part of the federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the Federal High Court, a High Court and those other courts, respectively".*

**Enforcement of decisions of EVOWAS and the enforcement of Fundamental Rights**

Section 12 of the 1999 Constitution stipulates that a treaty only gains force in Nigeria where it is domesticated and ratified into Nigerian laws. The section of the Constitution obtained judicial force in the case of **Abacha&Ors v. Fawehinmi (2000) 4 SCNJ 400** where the Court held that treaties only secure force in Nigeria upon domestication.

**By the provision of Article 10 of the Supplementary Protocol of t**he ECOWAS Court adopted in January 2005 by the Authority of Heads of State and Government of the ECOWAS States there shall be access by all individuals, corporations and governmental organizations have to the ECOWAS Court for human rights enforcement and the judgments of the Court are binding all member states and are enforceable by Article 19(2) of the Protocol (A/P1/91) on the Community Court of Justice

Article 24(2) and (3) of the Supplementary Protocol of the ECOWAS Court also expressly provides that "execution of any judgment of the Court shall be in the form of a writ of execution, which shall be submitted by the Registrar of the Court to the relevant member states for execution according to the rules of civil procedure of that member state. Upon verification by the appointed authority of the recipient member state that the writ is from the Court, the writ shall be enforced".

Article 22(3) of the Protocol and Article 5(2) of the ECOWAS Revised Treaty expressly mandates States who are members of the ECOWAS to domesticate the ECOWAS Treaty and all other instruments that are required for the enforcement of the Judgment of the Court.

Despite these salient provisions, enforcing the Judgment of the Ecowas Court has been a bottleneck even though there are adequate provisions relating to the means of such enforcement. The same position straddles Nigerian Courts. One of such instances is evidenced in the case of **SERAPv. Federal Republic of Nigeria & Anor Judgment No. ECW/CCJ/APP/08, 27 October, 2009**. In this case, it was decided that basic education should be given to every citizen of Nigeria and till date, that decision has not been enforced. It has been argued that the reason why same has not been enforced is due to the problem of ratification under section 12 of the Constitution. However, that problem lingers.

**Difficulties in enforcing Fundamental Rights in Nigeria**

The major difficulties plaguing the enforcement of fundamental rights in Nigeria are varying and they range from technical difficulties such as illiteracy and the absence of a strong civic knowledge, including oppression by the Political elites. Vast majorities of Nigerian citizen are not educationally enlightened and are as such unaware of their civic rights. In reverse, those who are aware employ such knowledge for the mischief of others and perpetuate all sorts of Human rights abuses including threatening the right to life, liberty, freedom of speech, the right to association and the dignity of Human persons. This is only added to the unfettered abuse of political power by the ruling class as was evidenced in the Endsars saga where varying rights entrenched and protected in the Constitution were flagrantly abused by the authorities without an iota of regard for the distinct sense of Constitutional protection of such rights.

Security agents are employed to execute foul and heinous acts whilst recovering debts for individuals, Corporations and Governmental authorities, whose agenda are ill-motivated. In many a occasion, individuals resort to self-help in infringing the rights of others and in many regards the offenders escape unscathed.

Poverty also plagues the desire of many person to pursue the enforcement of their fundamental rights and being categorized as a third world Country, many of the citizens in the Country are largely poor without any access to basic amenities and Justice. Though access to Non-Governmental Organizations serves as a panacea to the malady, there is only so far these Organizations can help with the vast majority of poor citizens with such limited resources.

**CONCLUSION**

Human rights are generally rights that are inherent in every human by virtue of their very humanity, the absence of which life will become devastatingly brutish, nasty and poor. These rights must as such enjoy maximum protection from violations in any democratic society.

This is what the Nigerian Constitution attempts to achieve through the detailed enumeration of the fundamental rights encapsulated in Chapter 4 of the Constitution. In furtherance, the adoption of the African Charter on Human and Peoples Rights, as well as the latest amendments to the FREP Rules is only the first step to the realization of a safe haven for the Protection of Fundamental rights for the Citizens of Nigeria.

However, rules inscribed in mere paper and ink, do not extend beyond the words themselves where they are plagued by the difficulties which have been discussed above. More has to be done from all parties involved, including the three arms of Government to wit: the Judiciary, the Executive and the legislative to eradicate the menace of human rights violations. There must be accountability from every responsible party and especially to the people on whose account the Government is to lead. Adequate compensation must be made available to deserving persons where there is evidence of human right violations, without fail, fear or favour. The judiciary through the bar, the bench and advocacy groups are key to this constant struggle for protection and enforcement of inalienable human rights.

Thank you.

**REFERENCES**

1. Hon. Justice Abdu Aboki. (2009) paper presentation on ‘Proceedings Under the (Fundamental Rights Enforcement) Procedure Rules 2009
2. Okorie Kalu *et tal* (2020) Challenges in Enforcement of Fundamental Right in Nigeria.
3. Constitution of the Federal Republic of Nigeria 1999 (as amended)
4. African Charter on Human and People Rights.
5. Law pavilion
6. Nigeria Weekly Law Report