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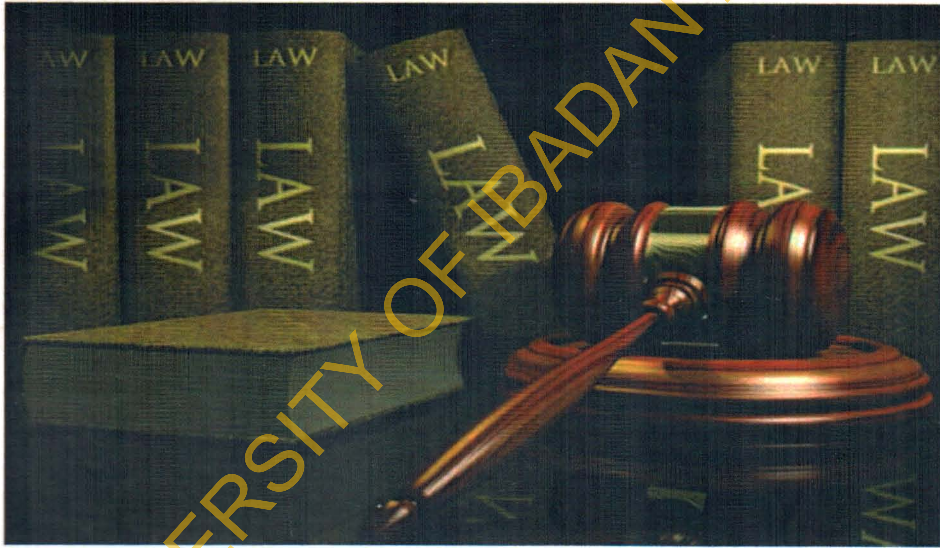

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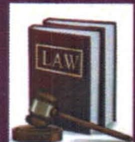
(In Conjunction with the College of Law, Afe Babalola University, Ado-Ekiti, Nigeria)



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REVIEW OF THE COURT OF APPEAL DECISION IN *UDO v. ROBSON & ORS*: A CALL TO EXPANDING THE FRONTIERS OF FUNDAMENTAL RIGHTS ENFORCEMENT LAW*

Abstract
This article is aimed at sensitizing the Nigerian Judges and legal practitioners alike to see need to expanding and expounding the frontiers of fundamental rights enforcement procedure law to accommodate joint application for the enforcement of fundamental rights matter in our law courts. Increasing rate of human rights' violation is alarming, even in the democratic regime which requires broad and liberal approach in the interpretation of our laws to forestall injustice. This article concludes by proposing a way forward in form of judicial activism. This article calls on Court of Appeal to overrule itself in subsequent appeal(s). This article, again, calls on Supreme Court to decide on this issue.

Keywords: Court of Appeal, *Udo v Robson & Ors*, Fundamental Rights Enforcement, Expansion

1. Introduction

The question this article seeks to answer is whether an application can be filed by more than one person to enforce a right under the Fundamental Rights (Enforcement Procedure) Rules, 2009. In answering this question, some case laws would be examined. Hitherto, position of the law is that an application to enforce fundamental rights entrenched in Chapter IV of the Constitution of Federal Republic of Nigeria, As Amended and African Charter cannot be filed by more than one person to enforce a collective or joint right under the Fundamental Rights (Enforcement Procedure) Rules, 2009. To enforce collective or joint rights, separate applications for the enforcement of fundamental rights have to be filed first before they may be consolidated by an order of the Court if necessary. Therefore, filing separate applications is a condition precedent to an order of consolidation.

2. Facts of the Case

In the most recent case of *Udo v. Robson & Ors*[1], this appeal borders on the Enforcement of Fundamental Human Rights. It is an appeal against the judgment of the High Court of Akwa Ibom State sitting at Eket in Suit No. HEK/29/2011 delivered on 4th day of March, 2013 by Theresa I. Obot, J. The decision was sequel to an application filed at that Court by the 1st, 2nd and 3rd Respondents appeal against the Appellant and the 4th and 5th Respondents for the enforcement of their fundamental rights. The reliefs sought in the application were:

(1) A DECLARATION that the arrest, detention, harassment and torture of the 1st and 2nd Applicants from the 3rd day of March, 2011 to the 30th day of March, 2011 at the behest and instigation of the 1st Respondent and at the 2nd and 3rd Respondents cell from 12:30am on the 3rd day of March, 2011 to 30th day of March, 2011 is illegal, unlawful, unconstitutional, null and void.

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[1] (2018) LPELR-45183 (CA)

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(2) A DECLARATION that seeking to arrest and the continuous invading of the compound of the Applicants at Ikot Obioro Okon, Eket in an attempt to arrest, detain and torture Mrs. Elizabeth Udo Robson the aged widow and mother of the 1st and 2nd Applicants at the behest and instigation of the 1st Respondent is unconstitutional and amount to infraction of or infringement of the Applicants human rights as provided for the guaranteed under Section 34(1), 35(1), 37 and 41(1) of the Constitution of the Federal Republic of Nigeria 1999 and Articles 4, 5, 6 and Article 12 paragraph 1 of the African Charter on Human and Peoples, Rights (Ratification and Enforcement) Act and therefore illegal and or wrongful.
(3) AN ORDER for payment of N10,000,000.00 (Ten Million Naira) only, compensation or damages jointly and severally against the Respondents and in favour of the Applicants for the violation or infraction of or infringement on the Applicants fundamental and Human Rights as aforesaid is illegal and unconstitutional.
(4) AN ORDER directing the 2nd Respondent to refund the sum of N70,000.00 (Seventy Thousand Naira) only, collected from the 1st and 2nd Applicants and their surety as bail fee on the 30th day of March, 2011, 1st April, 2011, 8th April, 2011 and 18th April, 2011, respectively.
(5) AN ORDER FOR THE RESPONDENTS to tender public apology to the Applicants for the violation of their fundamental and or Human Right as aforesaid.
(6) AN ORDER of perpetual injunction restraining the Respondents by themselves and or their servants, agents or privies, their supervisor and successors in office however called from further infringement, violation or infraction on the Applicants fundamental and or Human Rights to movements and dignify of their persons as provided for under Section 34, 45 and 41 of 1999 Constitution of the Federal Republic of Nigeria and in particular from further intimidation, harassment, embarrassment and detention.

The Application was heard by the High Court and at the end judgment was entered in favour of the Applicants who are the 1st, 2nd and 3rd Respondents in this appeal with most of the reliefs granted. Being dissatisfied with the decision, the Appellant appealed to the Court of Appeal.

The Court of Appeal determined the appeal on the issues raised by the Appellant and couched as follows:
(1) Whether the High Court of Akwa Ibom State or the Federal High Court had jurisdiction to hear and determine 1st - 3rd Respondents application?
(2) Whether it is proper to join several Applicants in one application for the purposes of securing the enforcement of their fundamental rights as the 1st - 3rd Respondents did at the trial Court, if not, whether the Respondents application was competent before the trial Court?
(3) Whether the Appellant's liability can be premised on the liability of the 4th and 5th Respondents at the trial Court who were not properly sued?
(4) Whether the trial Court was right to hold that the 1st - 3rd Respondents had proved their case and the Appellant properly said to be liable?

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3. The Decision of the Court of Appeal

The Court of Appeal held on whether an application can be filed by more than one person to enforce a right under the Fundamental Rights (Enforcement Procedure) Rules

> ...The story of the 1st to 3rd Respondents here shows clearly that the violation of their right as alleged took place in one place at the same time and in the same circumstance. In all the civil procedure Rules of the High Courts in Nigeria, provision is made for persons in civil claim to claim jointly or severally. For example, Order 13 Rule 1 of the Akwa Ibom State High Court (Civil Procedure) Rules 2009. The Rules therein provide: All persons may be joined in one action as Claimants in whom any right to relief is alleged to exist whether jointly or severally and judgment may be given for such one or more of the Claimants as may be found to be entitled to relief and for such relief as her or they may be entitled to, without any amendment. This type of provision helps to minimise pluralism of actions and save both the parties the cost and the Court to inconvenience of dealing with multiple suits in respect of one fault or line of claim. In the 2009, Fundamental Rights (Enforcement Procedure) Rules, there is no joinder provision. What we have is consolidation of separate suits filed. The focus may be that fundamental rights are personal rights and cannot be fought together as right varies from one person to the other. But in a situation, such as in the instant case, the act complained of is the act of arrest and detention without bail and without an arraignment in Court for any known offence. I still believe 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. Since this provision is not in the rules the Courts are having it difficult to take it up. In the case of SOLOMON KPORHAROR & ANOR. VS. MR. MICHAEL YEDI & ORS. (2017) LPELR - 42418 (CA), a decision of this Court, the facts are the 1st and 2nd Respondents who were Applicants at the trial Court sought against the Appellants and 3rd to 5th Respondents the enforcement of their fundamental right over the seizure and detention of their D7G bulldozer plant. The lower Court ordered among others the release of the said bulldozer. Application was brought for stay of the order alleging that the application filed in Court was incompetent due to the fact that the application was not filed properly before the Court. On appeal to this Court, the appeal was found meritorious. The Court struck out the application. Bada, JCA who read the lead judgment held inter alia as follows: Under the 1999 Constitution of the Federal Republic of Nigeria (as amended) the rights are preserved in Chapter IV i.e. four. See - RAYMOND S. DONGTOE VS. CIVIL SERVICE COMMISSION, PLATEAU STATE & ORS. (2001) 4 SCNJ page 131. The Fundamental Rights (Enforcement Procedure) Rules, 1979 created a special procedure for proceedings under this peculiar category of action. It is only by these procedures that an action can be brought to enforce rights and it is the provisions of the 1979 Rules that guide the conduct of proceedings of all actions to enforce rights. The right to approach a Court to enforce a

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Fundamental Right is conferred by Section 46(1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Section 46(1) of the 1999 Constitution provides thus:- 'Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court for redress'. In this appeal under consideration, the application was brought by two separate Applicants (1) Mr. Michael Yedi and (2) Onodje Yedi Nig. Ltd. The words used under Section 46(1) of the Constitution set out above is very clear. The same provision is made in Order 1 Rule 2(1) of the Fundamental Rights (Enforcement Procedure) Rules, 1979. The adjective used in both provisions in qualifying who can apply to a Court to enforce a right is 'any' which denotes singular and does not admit pluralities in any form. It is individual rights and not collective rights that is being talked about. In my humble view, any application filed by more than one person to enforce a right under the Fundamental Rights (Enforcement Procedure) Rules is incompetent and liable to be struck out. The above view is supported by the case of RTFTCIN VS. IKWECHEGH (2000) 13 NWLR PART 683 AT PAGE 1, where it was held among others that:- 'If an individual feels that his Fundamental Rights or Human Rights has been violated, he should take out action personally for the alleged infraction as rights of one differs in content and degree from the complaint of the other .... is a wrong joinder of action and incompetent'. Also in the case of OKECHUKWU VS. ETUKOKWU (1998) 8 NWLR PART 562 PAGE 511, it was held amongst others per Niki Tobi, JCA (as he then was) that:- 'As I indicated above, the Umunwanne family is the centre of the whole matter. A family as a unit cannot commence an action on infringement or contravention of Fundamental Rights. To be specific, no Nigeria family or any foreign family has the locus to commence action under Chapter IV of the Constitution or by virtue of the 1979 Rules. The provisions of Chapter 4 cover individuals and not a group or collection of individuals. The expression 'every individual', 'every person', 'any person', every citizen' are so clear that a family unit is never anticipated or contemplated'. The contention of learned Counsel for the Respondents that it is proper in law for two or more persons to apply jointly for the enforcement of their fundamental rights cannot be sustained. The decision of this Court in KPORHAROR case (supra) is the current decision of this Court. By the doctrine of stare decisis I am bound by the earlier decision of this Court. I cannot in anyway deviate from it. I hold in the circumstance that it is not proper to join several Applicants in one application for the purpose of securing the enforcement of their fundamental rights. This issue is resolved in favour of the Appellant.

On the whole, the Court found merit in the appeal and accordingly allowed same. The judgment of the High Court delivered on 4th day of March, 2013 in Suit No. HEK/29/2011 was set aside. The suit before the High Court was struck out.

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4. Analysis or Reasons to have a judicial re-think

With due respect to my Lords at the Court of Appeal, I beg to have a different opinion from their decision in this case.[2] To start with, part of the overriding objectives[3] of the Fundamental Rights (Enforcement Procedure) Rules is for the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms which the court is under obligation to respect. The rules[4] provides that the court shall encourage and welcome public interest litigations in the human rights field and no human right case may be dismissed or struck out for want of *locus standi*. In particular, human rights activists, advocates or groups as well as any non-governmental organizations, may institute human rights application on behalf of any potential applicant. 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 (iii) anyone acting as a member of, or in the interest of a group or class of persons (iv) anyone acting in the public interest (v) association acting in the interest of its members or other individual or groups. Premised on the intention of the framers of the Fundamental Rights (Enforcement Procedure) Rules, 2009, which can be deciphered from the Rules, it is opined that joint application for the enforcement of rights should be allowed without separate applications to be filed first before they may be consolidated by an order of the Court on the following grounds viz; (i) In human rights litigation, the applicant may include…[5] The interpretation clause is not restrictive. Under the law of interpretation the word 'include' is a word of extension in that it is used to enlarge the meaning and content of the words or phrases occurring in the body of the statute.[6] When used in a statute the words or phrases mentioned are intended to be construed as comprehending not only such things as have been mentioned in the statute according to their ordinary and natural meaning but also other things not specifically mentioned but which may reasonably be held to come within the purview of what is mentioned. In other words, when it is clear from the context of the statute that such a result is intended, the word 'include' may properly be interpreted to be equivalent to connote 'means' and 'includes'. The Supreme Court[7] held:

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[2] Udo v. Robson & Ors (supra)

[3] Paragraph 3(b) & (e) of the Preamble to Fundamental Rights (Enforcement Procedure) Rules, 2009.

[4] Paragraph 3(e) of the Preamble to Fundamental Rights (Enforcement Procedure) Rules, 2009.

[5] Paragraph 3(e) of the Preamble to Fundamental Rights (Enforcement Procedure) Rules, 2009. Rabiu v. Kano State (1980) LPELR-2936(SC) 'It has, in my respectful view, quite rightly been said that sometimes, however, the word 'include' is used in order to enlarge the meaning of words or phrases occurring in the body of a statute; and when it is so used those words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include [See Lord Watson in Dilworth v. Commissioner of Stamps (1899) AC. 99 at 105 and 106]. It is well known that where a statute defines a word simply as 'means so and so', the definition is meant to be explanatory and prima facie restrictive but where the word is so defined to 'include' so and so' then the definition is clearly intended to be extensive; and as stated in Nutter v. Accrington Local Board of Health (1879) 4 QBD 375 at 385-6 , 'the interpretation clause is not restrictive.' Gough v. Gough (1891) 2 Q.B. 666. R. v. Britton (1967) 2 Q.B. 51.

[6] Section 46 (1) of the 1999 Constitution of the Federal Republic of Nigeria; Paragraph 3(e) of the Preamble to Fundamental Rights (Enforcement Procedure) Rules, 2009.

[7] Ibrahim v. State (1991) LPELR-1404(SC) See the decision of the Privy Council in Reynolds v. Income Tax Commissioners (1967) 1 AC 1, at pp. 10-11. In that case, Lord Hudson cited with approval the opinion of Lord Watson in Dilworth v. Commissioner of Stamps (1899) AC 99, at P.105

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> the word 'include' is very generally used in interpretation clauses to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also these things which the interpretation clause declares that they shall include.[8]

The word include is intended to be extensive not restrictive. (ii) Order 7, Rule 1 of Fundamental Rights (Enforcement Procedure) Rules, 2009 provides that a Judge may on application of the Applicant consolidate several applications relating to the infringement of a particular fundamental right pending against several parties in respect of the same matter, and on the same grounds. Where applications are pending before different Judges, the Applicant shall first apply to the Chief Judge of the Court for re-assignment of the matter to a Judge before whom one or more of the matters are pending.[9] The Applicant must show that the issues are the same in all the matters before the application for consolidation may be granted by the Court.[10] It is opined that Order 7, Rule 1 of Fundamental Rights (Enforcement Procedure) Rules, 2009 which provides for consolidation of applications amount to waste of applicant's resources and precious judicial time. If consolidation of applications will be allowed later during the proceedings on fulfilment of some conditions, why not allowing joint applications *ab initio* on fulfilment of the same conditions which will be deposed to in the affidavit in support of the application? Once it can be shown from the affidavit evidence of the applicants that issue that will be submitted for determination of the court are on the same matter and on the same grounds, joint applications should be allowed *ab initio* as a matter of right-*ex debito justitiae.* (iii) The words 'every individual', 'every person', 'any person', every citizen' 'a citizen' mentioned in chapter IV[11] is singular. Section 14 of Interpretation Act, Laws of Federation of Nigeria, 2004 provides in an enactment, words importing the masculine gender include females and words in the singular include the plural and words in the plural include the singular.

It can be opined, with greatest respect to their Lordships of the Court of Appeal[12] that 'every individual', 'every person', 'any person', every citizen' 'a citizen' includes applicants in enforcement of fundamental rights. To confirm the position of this research, references have to be made to cases where Section 14 of Interpretation Act had been interpreted.[13] It is opined that no harm can be done to the words 'applicants' if it is read into the words 'every individual', 'every person', 'any person', every citizen' 'a citizen' used in Chapter IV of the Constitution.

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[8] Dilworth v. Commissioner of Stamps (1899) AC 99, at P.105
[9] Order 7 Rule 2 Fundamental Rights (Enforcement Procedure) Rules, 2009
[10] Order 7 Rule 3 Fundamental Rights (Enforcement Procedure) Rules, 2009
[11] of the 1999 Constitution of the Federal Republic of Nigeria, As Amended
[12] Kporharor & Anor v. Yedi & Ors (supra)
[13] Cyril Udeh v. The State (1999) LPELR-3292(SC); '...Section 14 of the Interpretation Act, Cap. 192, Laws of the Federation of Nigeria, 1990 which stipulates as follows 'In an enactment - (a) .... (b) Words in the singular include the plural and words in the plural include the singular.' It is thus clear, on the application of Section 14(b) of the Interpretation Act, that no violence can be done to the provisions of Section 215 of the Criminal Procedure Act if the word 'persons' is read into the word 'person' therein used.' COKER V. ADETAYO & ORS (1996) LPELR-879(SC)

It is agreed the cases of *Kporharor & Anor v. Yedi & Ors;*[14] *R.T.F.T.C.I.N. v. Ikwecheigh;*[15] *Okechukwu v. Etukokwu;*[16] *Barr. Ikechukwu Opara & 3Ors v. Shell Petroleum Development Company of Nigeria Ltd & 5 Ors*[17] were decided under the old Rules[18] before the advent of the new Rules.[19] Notwithstanding, it is believed that the decisions of Court in the above cases were decided *per incuriam*[20] and would have been different if provisions of Section 14 of the Interpretation Act has been taken into cognizance.[21]

(iv) What is more, in a situation where applicants have the same interest in the cause or matter, common grievance, the relief sought in the action is in its nature beneficial to the applicants,[22] joint applications should be allowed without filing separate applications first before they may be consolidated by an order of the Court. (v) I believe, in the circumstance of case of *Udo & Ors v. Robson*[23] 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. If an alleged violation of fundamental rights shows clearly that the violation of rights as alleged took place in one place at the same time and in the same circumstance, joint applications should be

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[14] supra
[15] supra
[16] supra
[17] supra
[18] Fundamental Rights (Enforcement Procedure) Rules, 1979
[19] Fundamental Rights (Enforcement Procedure) Rules, 2009
[20] Adisa v. Oyinwola & Ors (2000) LPELR-186(SC) where Supreme Court per Michael Ekundayo Ogundare ,J.S.C. (Pp. 50-51, paras. D-A) held 'And when is a case said to be decided per incuriam? Karibi-Whyte JSC provided the answer when at p.493 of the Report he said - 'A case is decided per incuriam where, a statute or rule having statutory effect or other binding authority, which would have affected the decision, had not been brought to the attention of the Court. See African Newspaper v. Federal Republic of Nigeria (1985) 2 NWLR (Pt. 6) 137.' The learned Justice of the Supreme Court later in his judgment at p. 494, adopted the view of Cross on Precedent in English Law (1961) p.139 to this effect: 'The principle appears to be that a decision can only be said to be per incuriam if it is possible to point to a step in the reasoning and show that it was faulty because of a failure to mention a statute, a rule having statutory effect or an authoritative case which might have made the decision different from what it was.' Ngwo & Ors v. Monye & Ors (1970) LPELR-1991(SC) Per George Baptist Ayodola Coker ,J.S.C (Pp. 17-18, paras. D-C) held 'When a decision is impugned on the ground that it has been arrived at by the Court only because the Court had acted in ignorance or concealment of an authority, statutory or otherwise, which is binding on the Court, the decision is said to have been given per incuriam and constitutes a special case where the Court is not bound to apply the principle of stare decisis. Dealing with this aspect of the law, Lord Evershed, M.R. in Moraue Ltd. v. Wakeling [1955] 2 Q.B. 379 observed at 406 as follows:- 'As a general rule the only cases in which decisions should be held to have been given per incuriam are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned ...' See also in this connection R. v. Northumberland Compensation Appeal Trubunal ex-parte Shaw [1951] 1 K.B. 711. Where a decision is given per incuriam it does not possess for this Court any binding effect and this Court is entitled to disregard it. See Young v. Bristol Aeroplane Co. Ltd. (supra); also the Divisional Court in Nicholas v. Penny [1950] 2 K.B. 466. where at p 473 Lord Goddard, C.J. said:- 'that where material cases or statutory provisions, which show that a Court had decided a case wrongly, were not brought to its attention the Court is not bound by that decision in a subsequent case.'
[21] Laws of Federation of Nigeria, 2004
[22] Oragbaide v. Onitiju (1962) 1 ALL NLR 32 (1962) 1 SCNLR 70; Adediran & Anor v. Interland Transport Ltd (1991) LPELR-88(SC); Adefulu & Ors v. Oyesile & Ors (1989) LPELR-91(SC); Ukatta & Ors v. Ndinaeze & Ors (1997) LPELR-3340(SC)
[23] Supra

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allowed without filing separate applications first. (vi) Allowing joint application for the enforcement of fundamental rights will help to minimize pluralism of actions and save both parties cost. It also saves the Court any inconvenience in dealing with multiple suits with respect to one fault or line of claim. The way the Fundamental Rights (Enforcement Procedure) Rules, 2009 introduced liberality must be the focus of the Court to enable us adopt purposive interpretation of the Rules, and advance the interest of justice to the victims of fundamental right violations in Nigeria.

There are few cases where joint applications for the enforcement of fundamental rights were allowed though issue of competence of their application on ground of joint application was never raised or part of issues for determination before the court. In the case of *Lafia Local Government v. Executive Government of Nasarawa State & Ors*,[24] thirty-six applicants filed a joint application for enforcement of their fundamental rights. In 1999 the Governor of Nasarawa State issued a policy statement wherein he directed all unified Local Government staff serving in the various Local Government Councils other than their Councils of Origin to relocate to their Local Government Councils on their existing ranks and status. Staff of various councils who were not of Nasarawa State origin were directed to remain in the councils where they were working. In compliance with the policy statement, Lafia Local Government Council set up a screening committee to screen its staff. The Screening Committee identified the respondents as indigenes of Nasarawa Eggon Local Government Council. Acting on the screening Committee's Report, the respondents were deployed from Lafia Local Government Council to Nasarawa Eggon Local Government Council. Nasarawa Eggon Local Government Council refused to accept the respondents. Respondents were of the view that the policy statement of the Governor was a breach of their fundamental rights entrenched in the Constitution. They applied to the High Court for the enforcement of their fundamental rights. Trial was on affidavits and documentary evidence. Dismissing the respondents/applicants' application the learned trial judge said the respondents failed to satisfy the Court by evidence that they were indeed indigenes of Lafia Local Government Area. Dissatisfied with the Ruling, the respondents lodged an appeal at the Court of Appeal, Jos Division. That Court resolved all the issues in favour of the respondents and allowed the appeal. Appellant lodged an appeal at the Supreme Court. Respondents filed a cross-appeal. The Supreme Court per Olukayode Ariwoola, J.S.C held:

> There is no doubt that by the pronouncement of the Nasarawa State Government on its policy of redeployment of staff of government from Lafia Local Government, the above Constitutional provision has been breached and violated. With that breach and violation, the constitutionally guaranteed right of the 3rd-35th Respondents was breached and they deserved to be protected. In other words, the 3rd-36th Respondents as applicants before the trial Court were entitled to seek the enforcement of their fundamental right as guaranteed by the Constitution. The trial Court was therefore in error to have refused to grant the reliefs they sought. In short, the Court below was right in allowing the appeal of the 3rd-36th Respondents, after it was satisfied with the affidavit

[24](2012) LPELR-20602 (SC)

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and documentary evidence made available with their application for the enforcement of their fundamental rights.

More so, in the case of *Ikudayisi & Ors v. Oyingbo & Ors*[25] in this appeal three applicants filed application for the enforcement of their fundamental rights, their appeal was not dismissed because they were three applicants. Court of Appeal held 'a dispute between the parties over land in my view is not a fundamental rights issue. For this reason, I resolve the lone issue for determination against the Appellants.'[26] It should be noted that in the case of *Lafia Local Government v. Executive Government of Nasarawa State & Ors*[27], issue of joint application was not raised at any time in the case, notwithstanding, applicants' claims were granted.In the case of *Adepoju Adebowale & 23 Ors v. Controller-General, Nigeria Prisons Services & Anor*[28], applicants initiated this mater at the Federal High Court, Abuja sought to enforce their fundamental rights to dignity of human person and personal liberty against the respondents. All the applicants herein are Nigerian citizens who were living in Libya. From evidence led it was stated that in March, 2006, there was a massive clampdown on Africans by the Libyan government who arrested them and falsely accused them of drug related offences. They were tried before the Sharia Court in Tripoli, convicted and sentenced to death. Their claims were that they were not represented by lawyers at their trial which was conducted in arabic without interpretation made to them. The Nigerian House of Representatives as well as Socio-Economic Rights and Accountability Project took up their matter with the Libyan Government urging the government to release their applicants from prison following an order of African Commission, the then Libyan Leader commuted the applicants' death sentence to jail terms. They were later pardoned by the Libyan Leader and were awaiting release from prisons when the Libyan crisis broke out. There was violent attack on the prisoners and other government properties by protesters and as a result, the applicants were released to the Nigerian Embassy for evacuation to Nigeria. Upon arrival in Nigeria, they were detained at Kuje Prison from 27th February, 2011 up till 25th April, 2011. Their contention is that they have not committed any offence in Nigeria to justify their detention. The applicants however, sought to enforce their fundamental rights by a motion bought pursuant to the Fundamental Right (Enforcement Procedure) Rules, 2009 and under the African Charter on Human and Peoples' Rights. The application was granted even when it was initiated by more than one person, though no objection was raised as to joint application of the applicants.

In the case of *Chief Francis Igwe & Ors v. Mr Goddy Ezeanochie & Ors*[29] sometimes in year 2001, some members of the Federal Trans-Nkissi Residents Association with the respondents on record set in motion a process for formation of a new or rival association in the area covered by the Federal Trans-Nkissi Area, Onisha. Some of the applicants when approached by the respondents to join them in the formation of the new body of Federal Low-Cost Housing Estate Residents Association Federal Trans-Nkissi, Onosha declined. Consequently, the respondents

[25] (2015) LPELR-40525(CA)
[26] supra
[27] supra
[28] (2015) 1N.H.R.L.R. (Pt 1) 16 @ 36
[29] (2015) 1N.H.R.L.R. 125 @

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resorted to harassment, oppression, intimidation, brutality, arrest and detention of the applicants who refused to join either in the formation or membership of the respondent's association. The respondents further sought assistance of security men, their agents, and some policemen who attacked the applicants menaced and terrorized them to join as members and pay up membership dues, security levies and road maintenance dues and even raided the applicants. Pursuant to the leave granted to the applicants, hereinafter referred to as the appellants, on the 25th April, 2005 the appellants filed their substantive application for the enforcement of their fundamental rights. The trial court found no merit in their application and dismissed it. Appellants appealed and their appeal were allowed unanimously. The court held on whether the exercise of one's right should affect adversely the fundamental rights of other. The Court held that there is no doubt that the respondents may have good intention in providing security for the community they live in and thereby levy residents, to secure fund to finance the project. Yet, this must not be done to affect adversely the rights of others, even members of the same community.[30] In the case of *Kporharor & Anor v. Yedi & Ors*[31], briefly, the facts of the case are that by an application brought under the Fundamental Rights (Enforcement Procedure) Rules, 1979, the trial Court granted the 1st and 2nd Respondents leave to enforce their Fundamental Right against the Appellants herein and 3rd to 5th Respondents on 25/8/2005. The 1st and 2nd Respondents who were Applicants at the trial court sought against the Appellants and 3rd to 5th Respondents the following reliefs:

(a) A declaration that the seizure and continued detention of D7G bulldozer plant with Engine No 3306 3N60872/4N4506 and Chassis No. 92V499/8P5458 over which the Applicants have legitimate possessory rights by the Respondents since 19/8/2005 is illegal, unconstitutional, null and void.

(b) An order directing the Respondents, their agents, privies and/or servants to release forthwith that entire D7G bulldozer plant with Engine No. 3306 3N60872/4N4506 and Chassis No 92V499/8P5458 to the Applicants herein.

(c) An order of this Honourable Court directing the 1st Respondent to pay the sum of (N60,000.00) Sixty Thousand Naira per day being agreed daily cost of hire of all that D7G bulldozer plant with Engine No. 3306 3N60872/4N4506 and Chassis No. 922V499/8P5458 until the same is released to the Applicants herein.

(d) An order of injunction restraining the Respondents, by themselves, their agents, privies and/or servants from further seizing and or detaining all that D7G bulldozer plant with Engine No. 3306 3N60872/4N4506 and Chassis No. 92V499/8P5458.

The trial Court in granting leave to the 1st and 2nd Respondents to enforce their rights against the Appellants and 3rd and 5th Respondents, equally made other orders including an order directing the Respondents including the Appellants to release forthwith all that D7G bulldozer plant with Engine No. 3306 3N60872/4N4506 and Chassis No. 92V499/8P5458 to the 1st and 2nd Respondents pending the determination of the motion on notice. Upon the service of the motion on notice and the enrolled order of Court on the Appellants, the Appellants filed a counter affidavit to the motion on notice and equally filed an application asking the trial Court

[30] Agbai v. Okogbue (1991) 7NWLR (Pt 204) 391; (1991) 4SCNJ 147
[31] (2017) LPELR-42418(CA)

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to stay Order No. 2 made by the Court ordering the Respondents including the Appellants who were Respondents to release forthwith the said D7G bulldozer to the Applicants and to strike out the said Suit No. EHC/M/65/2005 for (1) being incompetent and (2) that the facts disclosed in the grounds for the relief sought in the application are not Fundamental Rights issues. On 20/2/2006, the trial Court in a ruling refused the Appellants' application to stay the order to release the D7G bulldozer forthwith and to strike out the main application and proceeded to award cost of (N2000.00) Two Thousand Naira against the Appellants. The Appellants, who are dissatisfied with the ruling, lodged this Appeal against the said ruling. The appeal was decided on the Appellant's issues which the Respondent and the Court of Appeal adopted viz: two of the issues for determination relevant to this discourse are viz;

(1) Whether Suit No EHC/M/65/2005 was not incompetent, same having been filed by two Applicants and same being a fundamental right enforcement proceeding.
(2) Whether from the facts of the case, the action was properly brought under the fundamental right enforcement proceedings.

The Court of Appeal (Benin Judicial Division) on thursday, the 4th day of May, 2017 in Appeal No: CA/B/131/2006 Before Their Lordships, Jimi Olukayode Bada, Philomena Mbua Ekpe & Mudashiru Nasiru Oniyangi said in the final analysis, the appeal was found meritorious and it was allowed. The Ruling of the trial Court in Suit No EHC/M/65/2005 Mr Michael Yedi & 1 Or v. Mr. Solomon Kporharor & 4 Ors delivered on 20th day of February, 2006 was set aside. In its place, the said suit was struck out for being incompetent. The Court of Appeal, per Jimi Olukayode Bada, J.C.A (pp. 8-13, paras. F-A) held,

> In this appeal under consideration, the application was brought by two separate Applicants (1) Mr. Michael Yedi and (2) Onodje Yedi Nig. Ltd. The words used under Section 46(1) of the Constitution set out above is very clear. The same provision is made in Order 1 Rule 2(1) of the Fundamental Rights (Enforcement Procedure) Rules, 1979. The adjective used in both provisions in qualifying who can apply to a Court to enforce a Right is 'any' which denotes singular and does not admit pluralities in any form. It is individual rights and not collective rights that is being talked about. In my humble view, any application filed by more than one person to enforce a right under the Fundamental Rights (Enforcement Procedure) Rules is incompetent and liable to be struck out. The above view is supported by the case of - R.T.F.T.C.I.N. v. Ikwecheigh (2000) 13 NWLR Part 683 at Page 1, where it was held among others that: - 'If an individual feels that his Fundamental Rights or Human Rights has been violated, he should take out action personally for the alleged infraction as rights of one differs in content and degree from the complaint of the other. It is a wrong joinder of action and incompetent for different individuals to join in one action to enforce different causes of action.' Also, in the case of - Okechukwu v. Etukokwu (1998) 8 NWLR (Part 562) page 511, it was held amongst others per Niki Tobi, JCA (as he then was) that: - 'As I indicated above, the Umunwanne family is the centre of the whole matter. A family as a unit cannot commence an action on infringement or

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> contravention of fundamental rights. To be specific, no Nigeria family or any foreign family has the locus to commence action under Chapter IV of the Constitution or by virtue of the 1979 Rules. The provisions of Chapter 4 cover individuals and not a group or collection of individuals. The expression 'every individual', 'every person', 'any person', every citizen' are so clear that a family unit is never anticipated or contemplated under the provisions of Chapter 4 of the Constitution of Nigeria 1979.' The contention of Learned Counsel for the Respondents that it is proper in law for two or more persons to apply jointly for the enforcement of their fundamental rights cannot be sustained. The cases relied upon by Counsel for the Respondents are not relevant because the issue of competence of the action as a result of multiple Applicants did not arise in those cases. The position that more than one Applicant cannot competently bring an application under the Fundamental Right Proceedings is further strengthened by the provision of Order 2 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules, 1979 which provides that - 'in case several applications are pending against several persons in respect of the same matter or on the same grounds, the applications may be consolidated.' The word 'may' used is permissive. What it means is that separate applications have to be filed first before they may be consolidated by an order of the Court if necessary. And I am of the view that pursuant to Order 2 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules, filing separate applications is a condition precedent to an order of consolidation.

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The purport of the above cited authorities is that separate applications ought to be filed first before they may be consolidated by an order of the Court. That is a condition precedent for filing joint action in enforcing human rights' violations. Whether the above position can stand the test of time in view of the new Fundamental Rights (Enforcement Procedure) Rules, 2009 would be considered later in this discourse. Furthermore, in the case of *Barr. Ikechukwu Opara & 3Ors v. Shell Petroleum Development Company of Nigeria Ltd & 5 Ors*[32] one of the issues for determination in this matter was whether a group or body of persons (such as the present appellants), with a complaint that their fundamental rights to life and dignity of human person enshrined in Section 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 were violated by one and the same incident or transaction, have a right of access to court by virtue of section 46(1) of the Constitution for the protection of their fundamental rights by an action instituted in a representative capacity. At the Federal High Court, Portharcourt, the appellant after obtaining leave of court filed a Motion on Notice for the enforcement of their fundamental rights. The appellants claimed five reliefs. The applicants complained of 1st to 4th defendants' gas flaring activities in the applicants' communities, namely Rumuekpe,, Eremah, Akala-Olu and Idamain Niger Delta area of Nigeria are in violation of the applicants' said fundamental rights to life and dignity of human person and a healthy life in a healthy environmental. The defendants/respondents filed preliminary objections praying that the suit

[32] (2015) 14NWLR (pt 1479) 307

be struck out on the ground that the action was bad for misjoinder of causes of actions. That the Fundamental Rights (Enforcement Procedure) Rules cannot be used in a representative capacity to institute class action, as Chapter IV of the Constitution of the Federal Republic of Nigeria confers legal rights on citizens in their individual capacity. The trial court in its ruling struck out the suit. Dissatisfied, the appellants appealed to the Court of Appeal. The Court of Appeal held on whether different individuals can join in an action to enforce fundamental rights:

> if an individual feels that his fundamental right or human right has been violated, he should take action personally for the alleged infraction, as rights of one differs in content and degree from the complaints of the other. It is a wrong joinder of action and incompetent for different individuals to join in one action to enforce different causes of action.

The Court of Appeal held further that;

> where the rights claimed are personal rights, as in the instant case, they cannot be accessed or procured by a representative communal claim. The rights in chapter IV of the constitution are personal rights relating to human person. Some of these rights are, for example, the right to life in section 33, right to dignity of human person in section 34, right to personal liberty in section 35, right to private and family life in section 37, right to freedom of thought, conscience and religion in section 38, right to peaceful assembly and association in section 40. Most of these rights are related to human person and no more. What is more, in this case, the claim was not for only one community but it was an amalgam of different causes of action from four communities.

In another similar case of *Mr Abideen Salimonu & 8ors v The Commissioner of Police, Osun State & 3ors*[33] The applicants which numbered nine (9) had by Motion on Notice dated and filed the 7th and 9th days of March 2018 respectively seek an order of the Court to enforce or secure the enforcement of their fundamental right to personal liberty. The application was supported by an affidavit of 43 paragraphs deposed to by the 7th Applicant. The Applicants who are farmers of Badeku village shares common farm land with the 2nd and 3rd Respondents of Oguntedo village, accordingly dispute arose when the 2nd and 3rd Respondent unilaterally sold the farm land to the 4th Respondent without the consent of the Applicants, the refusal of the Applicants to recognize the 4th Respondent as the rightful owner of the farm land occasioned the Applicants ordeal raging from incessant arrest, detention, intimidation and destruction of their farm crops thus this application of the applicants to enforce or secure their fundamental rights which has been unwontedly infringed.

The Judge held;

> Having carefully considered the totality of the affidavit evidence adduced by both parties in this case, and the legal arguments canvassed by the learned

[33] Unreported in Suit No. HRE/M8/2018 of Osun State High Court, Ikire Judicial Division, Holden at Ikire,(Court 1) Hon. Justice Abdulkareem

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counsel on both sides, I found as a fact that the applicants in the instant case brought a joint action for the alleged infraction of their fundamental rights. Going by the authority of Opara vs Shell Petroleum Dev. Co Nig. Ltd; it is a wrong joinder of action, and incompetent for different individuals such as the applicants in the case to join in one action to enforce different cause of action. The lone issue for determination is therefore resolved in favour of the 2nd to 3rd respondents against the applicants. The applicants' action is hereby struck out for being incompetent. I make no any order as to cost.

5. Conclusion

In human rights cases, whose interest(s) does the court seek to balance and protect, individual rights or government restrictions on those rights?[34] In view of the new provision[35] of the fundamental rights rules allowing group of people, even association acting in the interest of its members or other individuals or groups may institute human rights application on behalf of any potential applicant, it will require a liberal mind to give the law a desired and purposeful interpretation as intended by the legislature. Some of our judges find it difficult to depart from the judicial precedents[36] even when the facts and laws are different such as in the case of *Mr*

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[34] Basil, U. 2014. Balancing, Proportionality, and Human Rights Adjudication in Comparative Context: Lessons for Nigeria. The Transnational Human Rights Review Volume 1: 1-58

[35] Paragraph 3(e)(v) of the Preamble to Fundamental Rights (Enforcement Procedure) Rules, 2009.

[36] Wambai v. Donatus & Ors (2014) LPELR-23303(SC) per Walter Samuel Nkanu Onnoghen, J.S.C (as he then was) (P. 20, paras. B-D) Judicial precedent or stare decisis is the foundation on which the Court and a legal practitioner can decide what the law on a particular subject matter is. It is founded on interpretation of statutes, Constitutional provisions, general application of principles of law, be they customary or common law; opinions of academic writers etc. The doctrine of precedent helps to establish certainty in the law. Lord Denning, (MR) in his book, The Discipline of Law defined the doctrine of precedent as: 'Stand by your decision and the decision of your predecessors, however wrong they are and whatever injustice they inflict.' In the case of Adesokan & Ors v. Adetunji & Ors (1994) LPELR-152(SC) (Pp. 20-22, paras. B-D), it was held 'As the Lords of Appeal in Ordinary in England put it in their Practice Statement (Judicial Precedent) - (1966) 1 WLR 1234; (1966) 3 All ER 77. 'the use of precedent (is) an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.' What is binding as precedent is not the concrete decision in the former case that is binding only between the parties to it - but the enunciation of the reason or principle upon which the question before the Court has been decided - Osborne to Rowlett (1880) 13 Ch. D 774, 784. 'Judicial authority belongs not to the exact words in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision' Per Sir Fredrick Pollock in his article: Continental Law in the Nineteenth Century (Continental Legal History Series), XIIV and quoted by Lord Denning in Close v. Steel Co. of Wales Ltd (1962) AC 367, 388 (1961) 2 All ER 953 HL. This reasoning or principle upon which the case is decided is known as the ratio decidendi. It constitutes the general reasons for the decisions (as distinct from the decision itself or the general grounds upon which it is based, detached or abstracted from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi of a case is ascertained by an analysis of the material facts of the case. A judicial decision is often reached by a process of reasoning involving a major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. - FA and AB Ltd. v. Lupton (1972) AC 634. 658; (1971) 3 All ER 948,964 HL Per Lord Simon of Glaisdale who explained further: 'The conclusion is the decision of the case, which may or may not establish new law - in the vast majority of cases it will be merely the application of existing law to the facts judicially ascertained. Where the decision does constitute new law, this may or may not be expressly stated as a proposition of law: frequently the new law will appear only from subsequent comparison of, on the other hand, the material

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Abideen Salimonu & 8ors v. The Commissioner of Police, Osun State & 3ors[37] among others. This article seeks to chart a new path and call for judicial re-think in handling of violation of fundamental rights cases in our law courts. A liberal approach must be adopted when interpreting provisions of fundamental rights legal frameworks. Courts should assume an activist role on issues that touch or concern the rights of the individual and rise as the occasion demands to review with dispatch acts of individuals, organizations, Government or its agencies and ensure that the rights of the individual(s) guaranteed by the fundamental rights provisions in the Constitution are never trampled on without remedy.[38] This research suggests that in fundamental rights matters a Court ought to expound and expand the law; that is to say it is to decide what the law is and what it ought to be; it should tow the path of objectivity and not be subjective. A judge, in fundamental rights matters should be empowered to supply omissions in a Statute or Rule. The law is explicit that where an interpretation of a Statute would defeat the cause of justice, the Court should refrain there from.[39] The law is settled that in the interpretation of Statutes, where the words are clear and unambiguous, they must be given their natural and ordinary meaning.[40] The exception is where to do so would lead to absurdity.[41] Where an interpretation will result in breaching the object of the Statute, the Court would not lend its weight to such an interpretation.[42]

facts inherent in the major premise with on the other, the material facts which constitute the minor premise. As a result of this comparison it will often be apparent that a rule has been extended by an analogy expressed or implied. I take as an example a case remote from the field of jurisprudence with which your Lordships are instantly concerned, because it illustrates clearly, I think, what I have been trying to say National Telephone Co. v. Baker (1983) 2 CR. 186: Major premise: the rule in Rylands v. Fletcher (1868) L.R. 3 H.L. 330: Minor premise: the defendant brought and stored electricity on his land for his own purpose; it escaped from the land; in so doing it injured the plaintiff's property. Conclusion: the defendant is liable in damages to the plaintiff (or would have been but for statutory protection). Analysis shows that the conclusion establishes a rule of law, which may be stated as 'for the purpose of the rule in Rylands v. Fletcher electricity is analogous to water' or 'electricity is within the rule in Rylands v. Fletcher' That conclusion is now available as the major premise in the next case, in which some substance may be in question which in this context is not perhaps clearly analogous to water but is clearly analogous to electricity. In this way, legal luminaries are constituted which guide the wayfarer across uncharted ways.'

[37] supra

[38] Lafia Local Govt v. Executive Govt Nasarawa State & Ors (2012) LPELR-20602(SC) Per Olabode Rhodes-Vivour, J.S.C (P. 20, paras. B-D)

[39] Ikuepenikan v. State (2015) All FWLR (Pt. 788) 919 at 959; Elabanjo v. Dawodu (2006) 15 NWLR (Pt. 1001) 76 at 138; Dickson v. Sylva & Ors (2016) LPELR-41257(SC)

[40] Ibrahim v. Barde (1996) 9 NWLR (Pt. 474) 513 @ 577 B-C; Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377 @ 402 F-N

[41] Toriola v. Williams (1982) 7 SC 27 @ 46; Nnonye v. Anyichie (2005) 1 SCNJ 306 @ 316

[42] Amalgamated Trustees Ltd. v. Associated Discount House Ltd. (2007) 15 NWLR (Pt. 1056) 118

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