THE CONTROVERSY ON THE PROPRIETY OF MULTIPLE APPLICANTS IN AN ACTION FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS.

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1. ABSTRACT

The issue of whether two or more applicants can file or bring an application for the enforcement of their fundamental rights, under the FREP Rules 2009 in the Nigerian legal system, has been a vexed issue with sharply contrasting views held by several authors and lawyers, and even the members of the bench are not left out in the controversy. These contrasting views were reached, in the writer's humble opinion, by the interpretation ascribed to the provisions of Section 46(1) of the 1999 CFRN and the Preamble of the Fundamental Rights (Enforcement Procedure) Rules 2009. This divide in opinions is further heightened by the fact that there is no single Supreme Court authority, to the knowledge of the writer, on this issue and thus, litigants, lawyers and the trial courts (the High Courts in Nigeria) have had no choice than to depend on the numerous conflicting decisions of the Court of Appeal on the issue. This essay is aimed at examining the statutory provisions and judicial authorities on the issue, presenting the arguments in favour and against joint application by multiple applicants, recommendation and suggestion on the way forward.

2. INTRODUCTION

Fundamental Rights is not nascent area of law in the Nigerian legal system. Fundamental rights or human rights are the specie of rights which can be said to inhere in every human being. They are regarded as inalienable and immutable and as such, they cannot be taken away from any person without affront to justice. These rights are immutable, inalienable and fundamental that they are entrenched and enshrined in the 1999 Constitution of the Federal Republic of Nigeria (as amended).

In the Nigerian context, the terms "human rights" and "fundamental rights" are always used interchangeably. This has been justified by the learned author Prof. Osita Nnamani Ogbu who has stated:

> *"Human rights remain so, whether they occur in the international plane or within the municipal confines, and whether they are called 'human rights' or 'fundamental rights' or 'fundamental human rights'. It should be noted that the international bill of rights - the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, use the expression fundamental human rights, so also the UN Charter".*[1]

[1] Osita Nnamani Ogbu, Human Rights Law and Practice in Nigeria: An Introduction, CIJAP Press, Enugu

Since the Constitution specifically provides for "fundamental right" the Nigerian courts have found it expedient to draw a line between human right and fundamental right. Thus in **Uzochukwu v. Ezeonu II Ors**[2] the court per Nasir J.C.A said:

> *"Due to the development of Constitutional Law in this field, distinct difference has emerged between 'Fundamental Rights' and 'Human Rights'. It may be recalled that human rights were derived from and out of the wilder concept of natural rights. They are rights which every civilized society must accept as belonging to each person as a human being. These were termed human rights. When the United Nations made its declaration it was in respect of Human Rights' as it was envisaged that certain Rights' belong to all human beings irrespective of citizenship, race, religion and so on. This has now formed part of International Law. Fundamental Rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country; that is by the Constitution."*

The confusion associated with the difference between "human rights" and "fundamental rights" has been removed in Nigeria[3]. Human rights are now said to include fundamental rights while fundamental rights mean any of the rights provided for in the Chapter IV of the Constitution and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act[4]

Fundamental Rights are so basic and inalienable to every man that they have to be enshrined directly in the Constitution. Under the 1999 Constitution of the Federal Republic of Nigeria (as amended) the rights are preserved in Chapter IV. The Fundamental Rights (Enforcement Procedure) Rules, 2009 created a special procedure for proceedings under this peculiar category of action. The provisions of the FREP Rules 2009, guide the conduct of proceedings of all actions for the enforcement of fundamental rights. The right to approach a Court to enforce fundamental rights 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 in that State for redress."*

3. SOURCES OF FUNDAMENTAL RIGHTS PROVISIONS IN NIGERIA.

1. Fundamental rights no doubt can be found in the 1999 Constitution of the

1999 P. 31

[2] (1991) 6 NWLR (Pt. 200) 708 at 761.

[3] See Order 1 FREP Rules 2009

[4] Femi Falana, Fundamental Rights Enforcement in Nigeria 2nd ed Legaltext Publishing Company Rivers 2010. P 7

Federal Republic of Nigeria, same having been incorporated into the *grundnorm*, the *fons et origo* of our laws in Nigeria. The rights are preserved in Chapter IV of the CFRN 1999, comprising of 14 Sections, spanning between Sections 33-46. While Sections 33-45 contain the substantive rights *par se*, Section 46 makes provision for the right to seek redress where the fundamental rights as enumerated in Sections 33-45 are contravened or likely to be contravened.

2. The next in the hierarchy of laws in Nigeria which provides for fundamental rights is the African Charter on Human and Peoples' Rights (Rectification and Enforcement) Act CAP 10 LFN 1990. The ACHPR was made in Banjul on the 19th day of January, 1981. The ACHPR made provisions for human rights and peoples' rights in Part 1 of the ACHPR, comprising 29 Articles. The Act has since been ratified and domesticated in Nigeria.

3. The Fundamental Rights (Enforcement Procedure) Rules 2009, also known as the FREP Rules 2009 for short, is a specific piece of legislation which provides for the procedure for the enforcement of fundamental rights contained in the 1999 Constitution of the Federal Republic of Nigeria and in the African Charter on Human and Peoples' Rights. The FREP Rules, 2009 is an amendment and an upgrade of the FREP Rules 1979. The Fundamental Rights (Enforcement Procedure) Rules, 2009 created a special procedure by which an action can be brought to enforce fundamental rights, and it is its provisions that guide and govern the conduct of proceedings of all actions to enforce fundamental rights.

4. WHO CAN BRING AN ACTION FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS.

In order to answer this question, recourse will be made to the explicit provisions of Section 46(1) of the CFRN 1999 (as amended) and Order II Rule I of the FREP Rules, 2009, thus:

> **Section 46(1) CFRN 1999** - *"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 in that State for redress."*
>
> **Order II Rule I FREP Rules, 2009** -*"Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Chapter on Human and peoples' Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being or is likely to be infringed, may apply to the Court in the state where the infringement occurs or is likely to occur, for redress;…"*

The FREP Rules 2009 nonetheless made extensive provisions widening the scope of

persons who shall have the locus standi to institute actions for the enforcement of fundamental rights under the FREP Rules, thereby delimiting and expanding the scope of possible applicants beyond the actual victim of the human right violation or infringement. A quick look at **paragraph 3(e)** of the Preamble to the FREP Rules provides:

> ***3. "****The overriding objectives of these Rules are as follows:*
>
> *(e) The Court shall encourage and welcome public interest litigations in the human rights field and no human rights 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 organisations, 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, and*
> *(v)Association acting in the interest of its members or other individuals or groups."*

What the FREP Rules 2009, has done by virtue of its Preamble, is to enlarge the scope of persons who can institute an action for the enforcement of fundamental rights, to including human rights activists, advocates, or groups as well as any non-governmental organisations, who may institute human rights application on behalf of any potential applicant. This gives the scenario where the applicant in court is not the one whose rights were infringed upon. Unlike the FREP Rules 2009, the FREP Rules 1979 did not provide for the capacity of bringing an application in furtherance of public interest litigation. The 1979 Rules was restrictive in nature.

5. THE PROPRIETY OF MULTIPLE APPLICANTS IN A FUNDAMENTAL RIGHTS APPLICATION

The above poser has been a controversial issue laden with several divergent and opposing opinions. In **Incorporated Trustee of Digital Right Lawyers Initiative & Ors v. NIMC**[5] Ugochukwu Anthony Ogakwu J.C.A expressed thus:

> *"There has been a good number of conflicting decisions of this Court on the point, the most recent decisions which I was able to find being Govt of Enugu State v. Onya (2021) LPELR - 52688 (CA) delivered by the Enugu Division on 28th*

[5] (2021) LPELR - 55623 (CA)

> *January, 2021, which held that joint applicants can bring an application to enforce fundamental rights. Au contraire, in AEDC v. Akaliro (2021) LPELR - 54212 (CA) which was delivered by the Makurdi Division on 31st March, 2021, it was held that an application by joint applicants was incompetent…"*

Owing to these conflicting decisions, there has arisen, two schools of thought. One group subscribes to the view that fundamental rights application can be brought by more than one applicant in a single action, while the others strongly oppose this view. In **Nasiru & Anor v. EFCC & Ors**[6], Hon. Justice Habeeb Adewale Olumuyiwa Abiru J.C.A stated thus:

> *"As stated in the lead judgment, there are presumably two schools of thought in this Court on the issue. The first school of thought postulates that the law and rules governing enforcement of fundamental rights do not allow for the filing of a joint application by two or more applicants even where their complaints flow from the same cause of action and that such a joint application is incompetent. This is the decision of this Court in the cases of Kporharor v. Yedi (2017) LPELR - 42418 (CA), Udo v. Robson (2018) LPELR - 45183 (CA), Finamedia Global Services Ltd v. Onwero (Nig.) Ltd (2020) LPELR - 51149(CA), Abubakar v. Dauda (2020) LPELR -51417(CA), Chief of Naval Staff, Abuja v. Archibong (2020) LPELR - 51845 (CA) and Abuja Electricity Distribution Company Plc v. Akaliro (2021) LPELR - 54212. The second school of thought maintains that the law and the rules governing enforcement of fundamental rights do allow for the filing of a joint application by two or more applicants where their complaints flow from the same cause of action and that such a joint application is competent. This is the decision of the Court in the cases of Uzoukwu v. Ezeonu II (1991) 6 NWLR (Pt. 200) 708 at 761, Ihejiobi v. Ihejiobi (2013) LPELR 21957 CA), Ubochi v. Ekpo (2014) LPELR 23523 (CA), Orkater v. Ekpo (2014) LPELR 23525 (CA), Maitagaran v. Dankoli (2020) LPELR 52025 (CA) and Government of Enugu State v. Onya (2021) LPELR 52688(CA)"*

As has been stated elsewhere in this article, the genesis of the problem, the subject matter of this essay, arose as a result of the perception, interpretation and opinion of lawyers and Judges, on the meaning and effect of the words "any person" as used in Section 46(1) of the CFRN 1999 and equally, in Order II Rule I of the FREP Rules 2009.

On a side of the divide, the view has been maintained that the phrase "any person" and the word "any" as used in Section 46(1) of the CFRN 1999 and Order II Rule I of the FREP Rules 2009, are succinct, clear and unambiguous, to imply that only one person can bring an application for the enforcement of fundamental rights. This view has had judicial blessings in the following recent cases of the Court of Appeal which were determined based on the FREP Rules 2009, to wit: **COP Kaduna State Police command & Anor v. Dauda & Ors (2020) LPELR -51412 (CA), Abubakar v. Dauda & Ors (2020)**

[6] (2022) LPLER – 56976 (CA)

LPELR -51417 (CA), Finamedia Global Services Ltd v. Onwero (Nig) Ltd & Ors (2020) 51149, Civilian JTF & Ors v. Abdullahi & Ors (2020) LPELR – 51480 (CA), Chief of Naval Staff Abuja & Ors v. Archibong & Anor (2020) LPELR – 51848 (CA), Abuja Electricity Distribution Company Plc & Ors v. Akaliro & Ors (2021) LPELR – 54212 (CA), EFCC v. Energy Property Development Ltd & Ors (2021) LPELR – 55068 (CA) and Nasiru & Anor v. EFCC & Ors (2022) LPLER – 56976 (CA)

In **Abubakar v. Dauda & Ors** supra the court held that:

> *"The words 'any person' clearly refers to 'any one person'. It will be extraneous to import plurality of persons into that provision. See the case of Kporharor v. Yedi & Ors and Archibong Udo v. Ebanga Udo Robson & 4 Ors where the Court held as follows: '...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…"'*

On the flip side of the divide, the view expressed is that an interpretation of the phrase 'any person' and the adjective 'any' though singular, also admits of plurality. In **INEC v. Olalekan & Ors**[7] the court held thus:

> *"By Section 14 of the Interpretation Act, Laws of the Federation of Nigeria, 2004, provides inter alia thus: "In an enactment - (a) ... (b) words in the singular include the plural and words in the plural include the singular." … I am of the view that in law the use of the word 'any person', even though expressed in the singular, admits of the plural, and therefore admits of more than one person. Thus, a joint application by more than one person, as in the Respondents, is very competent in law and I so firmly hold…"*

Having stated the following above, we shall proceed to consider the ratios and legal arguments in support of each schools of thought and also a review of judicial authorities.

6. EXAMINATION OF RATIOS AND LEGAL ARGUMENTS IN SUPPORT OF EACH SCHOOL OF THOUGHT

The first school of thought postulates that the law and rules governing enforcement of fundamental rights do not allow for the filing of a joint application by two or more applicants even where their complaints flow from the same cause of action and that a joint application is incompetent. The locus classicus of this school of thought is the case of **Kporharor & Anor v. Yedi & Ors**[8]**.** In addition, this school opines that, where two or more persons believe that any of their fundamental rights has been infracted in the course of the same cause of action, the starting point for them in the process of

[7] (2022) LPELR – 56901 (CA)
[8] (2017) LPELR – 42418 (CA)

enforcing the rights in court, is to file their individual or separate applications, the hearing of which can be subsequently consolidated by the court in accordance with Order VII Rule 3 of the Rules. *See* **Civilian JTF & Ors v. Abdullahi & Ors**[9] and **Nasiru & Anor v. EFCC & Ors**[10]

The second school of thought maintains that the law and the rules governing enforcement of fundamental rights do allow for the filing of a joint application by two or more applicants, where their complaints flow from the same cause of action and that such a joint application is competent. To them, this view accords with the spirits of the preamble to the FREP Rules 2009, which encourages public spirited litigation in enforcement fundamental rights, having expanded the horizon of locus standi in fundamental rights cases.

The Preamble to the Rules enjoins the Court to constantly and conscientiously seek to give effect to the overriding objectives of the rules at every stage of human rights action, especially whenever it exercises any power given to it by the rules or any other and whenever it applies or interprets any rule. And the first overriding objective says that Constitution as well as the African Charter shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the acts and freedom contained in them and affording the protection intended by them.[11]

7. RATIOS AND LEGAL ARGUMENTS

i.) The Meaning of "Any" and "Any Person"

a. In **COP Kaduna State Command & Anor v. Dauda & Ors** supra, the court relying on Kporharor v. Yedi & Ors and Archibong Udo v. Ebanga Udo Robson & 4 Ors, held as follows:

> *"The words 'any person' means 'any one person' in a clear English grammar. No other meaning can be imported into that provision to admit multiplicity of applicants... 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"*

Subscribers of the first school of thought argue that the use of the words 'every individual', 'every person', 'any person', and 'every citizen' in the provisions of Chapter IV of the Constitution, shows that the provisions of Chapter IV clearly covers individuals, not groups, or a collection of individuals. In **R.T.F.T.C.I.N. v. Ikwechegh (2000) 13 NWLR (Pt. 683) pg 1**, it was held that, where an individual feels that his fundamental rights or human rights have been violated, he should take out an action personally for the alleged infraction, as rights of one differs from the complaint of another.

[9] (2020) LPELR – 51480 (CA)
[10] (2022) LPELR - 56976 (CA)
[11] I.T.D.R.L.I & Ors v. NIMC (2021) LPELR – 55623 (CA); All Jaafariyya Dev. Association & Anor v. Govt. of Kano State & Ors (2021) LPELR – 57168 (CA); Nasiru & Anor v. EFCC & Ors (2022) 56970 (CA)

The wordings in Chapter IV did not contemplate an application being filed by several persons in one, and that it will be extraneous to import pluralities to the provisions as the enforcement of a right is to be brought by each person, individually. See the case of **Civilian JTF & Ors v. Abdullahi & Ors** supra, and **Abubakar v. Dauda & Ors** supra. It is also contended that that the necessity for resort to Section 14 of the Interpretation Act for the purpose of interpreting the word 'any person' in Section 46(1) of the Constitution has not arisen, because the word is clear and unambiguous and therefore not likely to lend itself to any other interpretation[12].

b. On the other hand, subscribers of the second school of thought argue that even if the phrase "any person" as used in Section 46(1) of the 1999 Constitution and in Order II Rule I of the FREP Rules 2009 denotes singular, by the provisions of Section 14 of Interpretation Act, in construing enactments, words in the singular include the plural and words in the plural to include the singular[13].

In **Udeh v. The State (1999) LPELR-3292 (SC),** in interpreting Section 215 of the Criminal Procedure Act, the Supreme Court applied Section 14 of the Interpretation Act**.** The Court, per His Lordship Iguh, J.S.C, held at pages 16 - 17, paras. F - A, as follows:

> *"...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."*

Furthermore, Hon. Justice Ita George Mbaba J.C.A in **All Jaafariyya Dev. Association & Anor v. Govt of Kano State**[14] stated thus:

> *"However, it is an elementary rule of statutory construction that where the singular is used in a statute it includes the plural and vice-versa. Thus, in the case of Public Citizen, Inc. Vs Mineta 340 F.3d 39 (2d Cir. 2003) where a statute provided for the provision of warning systems that indicate "when a tire is significantly under inflated", the United State Court of Appeals, Second Circuit, held that the Act's 'a tire' plainly meant one tire, two tires, three tires, or all four tires, under the elementary rule of statutory construction that the singular ('a tire') includes the plural ('tires'). This principle is captured in Section 14(b) of the Interpretation Act, 1964 which reads that 'in an enactment, words in the singular include the plural and words in the plural include the singular.' By Section 315 of the 1999 Constitution (as amended) the Interpretation Act is an Act of the National Assembly which has been incorporated by reference into the*

[12] Finamedia Global Services Ltd v. Onwero (Nig) Ltd & Ors supra
[13] Per Ugochukwu Anthony Ogakwu JCA, in ITDRLI v NIMC supra
[14] supra

> *Constitution and Section 318(4) of Constitution provides explicitly that the 'Interpretation Act shall apply for the purpose of interpreting the provisions of this Constitution.'"*

In buttressing the above position, it is further argued that for fundamental rights proceedings, the preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009 which is the Rules made pursuant to Section 46(3) of the 1999 Constitution, had taken into consideration this basic rules of interpretation and had provided in Paragraph 3(e) of the Preamble, urging the court to encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of locus standi.

ii.) Effect of the Provisions of the Preamble to the FREP Rules, 2009

a. The proponents of the second school of thought hold the view that the preamble to the FREP Rules 2009 is instrumental in understanding the intendments of the Rules. They express the view that by the FREP Rules 2009, there is no restriction to the number of persons who can file a fundamental rights action, leaning on the liberal interpretation of statutes, in order to cure the restrictive nature and effect of the FREP Rules, 1979. It is their argument that the Rules have widened the scope of applicants in fundamental rights suits to include public interest and public spirited litigations.

They canvass the opinion that the focus of the court should tend towards liberality as introduced by the FREP Rules 2009, so as to enable the court adopt purposive interpretation of the Rules and advance the interest of justice to the victims of fundamental right violations in Nigeria. The above view was expressed by Mbaba and Abiru, JJ C.A, in their dissenting judgment in **All Jaafariyya Dev. Association & Anor v. Govt of Kano State**[15] supra, as follows:

> *"The Preamble to the Rules enjoins the Court to constantly and conscientiously seek to give effect to the overriding objectives of the Rules at every stage of human rights action, especially whenever it exercises any power given it by the Rules or any other law and whenever it applies or interprets any rule. And the first overriding objective says that Constitution as well as the African Charter shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedom contained in them and affording the protection intended by them. These statements enjoin the Courts not to allow a conservative approach to interpretation of the Constitution and of the Rules and peripheral technical rules to defeat and/or impede a person seeking the enforcement of his fundamental rights - Enukeme vs Mazi (2014) LPELR-23540(CA)."*

[15] Supra. See also Govt. of Enugu State & Ors v. Akaliro & Ors (2021) LPELR – 52688 (CA)

The learned author of Casebook on Human Rights Litigation in Nigeria by Frank Agbedo at page 176, stated therein that by the new rules made to address the procedural pitfalls associated with the 1979 rules, Paragraph 3 of the preamble to the new rules, stated thereto no human rights case may be struck out for want of locus standi. The learned author holds the view that by the stated rules, unfettered access to Court was granted to any person or group seeking judicial intervention for the enforcement of fundamental rights whether in their personal capacity or in any of the capacities enumerated in Paragraph 3 of the Preamble to the Rules.[16] This indeed has demonstrated that public spirited litigation in fundamental rights related cases is now the norm.

b. On the other hand, the proponents of the first school of thought argue that preamble in a statute is merely a preamble and its wordings do not prevail over the clear wordings of the operative part of the statute. In **Chief of Naval Staff Abuja & Ors v. Archibong & Anor**[17], the court stated as follows:

> *"…Perhaps, it may be necessary to restate the legal position that preamble does not prevail over the clear words used in the operative part of an enactment. It does not control the plain words of the enactment. In ogbonna v. A.G., Imo State (1992) LPELR - 22871 at 25. Nnameka Agu, JSC said: - "It is necessary to note that a preamble to an enactment is as it were its preference or introduction the purpose of which is to portray the interest of the framers and the mischief they set out to remedy. It may sometimes serve as a key to open the understanding of the enactment." The preamble to the Fundamental Rights (Enforcement Procedure) Rules 2009; cannot override the plain words used in both the Constitution and the extant rules..."*

iii.) Consolidation; Same Transaction, Grievance, Nature and Content of the Infringement.

On the issue of consolidation, both schools of thought agree that consolidation of actions is permitted by the FREP Rules 2009, by virtue of Order VII, which provides for the consolidation of several application relating to the same infringement. It is also agreed that for consolidation of several actions, the rights infringed in the applications sought to be consolidated must have arisen from the same matter and on the same grounds. The alleged breach must be of the same nature and degree and equally and evenly violated.

a. The proponents of the first school of thought further commenting on the issue of consolidation express the view that both the FREP Rules 2009 and the 1999 Constitution do not give room for a group of persons (applicants) to file a sole application in any fundamental rights enforcement proceeding. It is a wrong joinder of

[16] National Security Adviser & Anor v Tabe & Ors (2022) LPELR – 57209 (CA) pg 5
[17] Supra; See also Govt. of Enugu State & Ors v. Akaliro & Ors supra

action and incompetent for different individuals to join in one action to enforce different causes of action under the Fundamental Rights (Enforcement Procedure) Rules, or where the infraction of rights differs in content and degree from one applicant to the other.

In **Abuja Electricity Distribution Company Plc & Ors v. Akaliro & Ors**[18], 12 Appellants' as Applicants at the trial Court instituted an action against the Respondents for the enforcement of their fundamental human rights allegedly breached by the Respondents. The Appellants claimed that the Nigerian Army formation at 177 Guards Battalion incurred outstanding electricity bills to the sum of N604,701,853.60 (Six hundred and four million, seven hundred and one thousand, eight hundred and fifty-three naira, sixty kobo). That despite several demand letters, the Respondents refused/neglected to pay their outstanding electricity bills. The Appellants finally issued a disconnection notice and eventually disconnected the Nigerian Army formation at 177 Guards battalion from electricity supply. Subsequently, military personnel from 177 Guards Brigade Battalion invaded and raided the 1st Appellant's office, infringed on the fundamental rights of the Appellants and thereafter forced the Appellants to reconnect electricity supply to the Barracks. The application was dismissed by the trial court. dissatisfied, the Appellants appealed

The Court of Appeal in dismissing the appeal held that the joint application of the 12 Appellants as applicants was incompetent. Hon Justice **Yargata Byenchit Nimpar, J.C.A** in his concurring judgment stated:

> "*…the alleged breach was not equally or evenly violated and therefore after a finding that the breach was established, how would the Court appropriate the reliefs and compensation for possible enforcement by each applicant, since the breach is not of the same nature and degree? Here, the 5th Appellant alleged she was forced to expose her breast in public, that obviously is an allegation of inhuman and degrading treatment for a woman and it cannot relate to the male appellants. Therefore, how would the Court do a surgical operation or separation while considering the claim..."*

The first school of thought suggests that, where the cause of action arose from the same transaction, same matter and grounds, instead of filing joint applications, the applicants should rather file separate applications and thereafter sought for and obtain an order for consolidation.[19]

b. On the other hand, the approach of the courts on the propriety or otherwise of bringing an action by two or more applicants in a fundamental right claim, has generally been to give vent to the intendment of the FREP Rules 2009, to the effect that several

[18] (2021) LPELR - 54212 (CA)

[19] See generally Civilian JTF & Ors v. Abdullahi & Ors supra, Finamedia Global Services Ltd v. Onwero (Nig) Ltd & Ors supra. See also the lead judgment in the case of Nasiru & Anor v. EFCC supra.

persons may institute fundamental rights proceedings provided that the basis of the complaints arose from the same cause of action. Where the applicants have a common grievance and common interest and it is on the same factual situation that they predicate the evisceration of their fundamental rights, they can bring a joint application for redress.[20]

In **Govt of Enugu State & Ors v. Onya & Ors** supra, the facts of the case shows that the 34 Respondents (Applicants) were allocated spaces or plots, to build stalls or stores at what became ENSEPA Mini Shops, at the Murtala Mohammed Park, Works Road, Enugu, by the Enugu State Environmental Protection Agency (ENSEPA), an Agency of the Government of Enugu State; the Appellants (1st and 2nd) had offered the said spaces to Respondents, through their said Agent (ENSEPA) and Respondents were allocated the said stall/shops. Respondents had been given/shown the site plan and prototype drawing of the proposed mini shops, as prepared by ENSEPA and forwarded to Enugu North Town Planning Authority, which granted the approval in 1997, with the prototype plan/drawing, with area of plot 28861.6m2. The 2nd Appellant had inherited ENSEPA and the 4th Appellant was carved out from the 2nd Appellant. The Appellants later demolished the stalls/shops built by Respondents, and which the Respondents occupied.

In an action for breach of Fundamental rights guaranteed under Section 43 and 44 of the 1999 Constitution, the High Court found Appellants liable for breach of Respondents Fundamental Rights. Dissatisfied, the Appellants appealed to the Court of Appeal. In the lead judgement, my Lord **Ita George Mbaba JCA,** commented thus:

> *"...I also think the Appellants were in error to say that the 34 Applicants were wrong to bring this suit together, alleging misjoinder of parties. Parties are rather always encouraged to come together when they have a common interest or grievance, seeking redress in Court. I think the principle relating to representative action also governs a suit by two or more applicants in a Fundamental Rights action, once their common grievance and common interest originated from the same factual situation, like in this case, where the 34 Applicants (Respondents) were allocated stalls or spaces to build shops at the park; they established an association, together and held their interest together and the cause of action (demolition of their stores) also happened at the same time, at the instance of the Appellants, throwing them (Respondents) into common grievance and they had common interest in the suit. I do not therefore think the interest of justice in a fundamental rights action can be defeated or truncated by allegation, on appeal, that the Applicants, who had a common interest and/or*
> *common grievance in the violation of their fundamental rights, brought a joint*

[20] See generally Olumide Bablola v AGF (2018) LPELR 43808 (CA), Govt of Enugu State & Ors v. Onya & Ors supra, I.T.D.R.L.I & Ors v NIMC supra, National Security Adviser & Anor v. Tabe & Ors supra and Ejeh v. Ali & Ors (2022) LPELR – 57593 (CA)

action, not separate actions. Such holding would completely negate the essence and purpose of the 2009 Fundamental Rights (Enforcement Procedure) Rules, in my opinion."

iv.) Recourse to the Civil Procedure Rules of Court where there is Lacuna in the FREP Rules 2009.

Order XV Rule 4 of the **FREP Rules 2009** provides:

> *"Where in the course of any Human Rights proceedings, any situation arises for which there is or appears to be no adequate provision in these Rules, the Civil Procedure Rules of the Court for the time being in force shall apply."*

a. The adherents of the second school of thought relying on this provision, have resorted to the provisions of the High Court Civil Procedure Rules in permitting the joinder of persons in a single suit and further to hold that an action filed by two or more applicants in a single suit for the enforcement of their fundamental rights is competent.

In the case of **Maitagaran & Anor v. Dankoli & Anor**,[21] the court held:

> *"There is no express provision in the Fundamental Rights (Enforcement Procedure) Rules 2009 permitting or forbidding such joinder of causes of action. Order XV Rule 4 of the Rules provides that where in the course of any Fundamental Rights proceedings, any situation arises for which there is or appears to be no adequate provision in the Rules, the Civil Procedure Rules of the Court for the time being in force shall apply. The lower Court here is the Federal High Court. Now, Order 9 Rule 1 of the Federal High Court (Civil Procedure) Rules 2009 provides that "All persons may be joined in one action as plaintiffs in whom any right to relief is alleged to exist whether jointly or severally and judgment may be given for such plaintiffs as may be found to be entitled to relief and for such relief as he or they may be entitled to without any amendment." The Courts have interpreted this provision as permitting persons who have rights arising from one common cause to file a joint action as co-claimants to ventilate the rights - AbdulRaheem v. Oduleye (2019) LPELR 48892(SC)"*

Dovetailing from the above position of the law, it has been held that a joint action filed by more than one person to ventilate the breach of these fundamental rights arising from one and same action of a defendant or defendants is competent.

b. Contrary to the above, the first school of thought holds the view that the need for recourse to the High Court Civil Procedure Rules is not necessary, they assert that the FREP Rules is sufficient and has made unambiguous provisions which clearly negated the competence of filing single application by more than one applicant.

[21] (2020) LPELR – 52025 (CA)

They argue that actions for the enforcement of fundamental rights of citizens of this country although are civil actions, they are nonetheless sui generis, peculiar and in a unique class of their own. Hence, such actions are governed not by the general Civil Procedure Rules of Court but by the special and unique rules of procedure specifically laid down under the Fundamental Rights (Enforcement Procedure) Rules 2009. The FREP Rules are rules of general application in all the thirty-six States of Nigeria and Federal Capital Territory. There must therefore be strict compliance with the provisions of the Rules and recourse should not be had to any other Rules of Court when it comes to the enforcement of any of the fundamental rights under the Constitution[22].

It is in line with the above that the proponents of the first school of thought state that the decisions reached by the Court of Appeal in **Maitagaran v. Dankoli** supra and **Govt. of Enugu State of Nig. v. Onya** supra, supporting the filing of joint application, were not hinged on the provisions of the enabling law, that is, the Fundamental Rights (Enforcement Procedure) Rules but on the rules of the High Courts.[23]

v.) Doctrine of Judicial Precedent

The provisions of the FREP Rules 1979 and FREP Rules 2009 are not the same and their provisions are miles-years away from each other. There are major and far-reaching differences between them. The 1979 rules had to be amended to remove a number of bottle necks in the way of litigants; one of which is the filing of joint applications. The 2009 Rules are much more permissive and expansive and allow more classes of people to file applications for enforcement of fundamental rights.

The law is trite that statutory provisions have the force of law when they are operative and until they are abrogated, repealed or amended, they remain in force. With the coming of the FREP Rules 2009, FREP Rules 1979 was abrogated and ceased to be applicable.[24] What this means is that cases decided upon the old rules shall to the extent of their inconsistency with the new/extant rules, be bad authority or bad law in the light of the new legislation. In addition, where an issue in a suit is determined based on the provisions of a law and the said law is later on amended or repealed, but the said provisions are similar or in pari material with that of the new statute, the case/decision can still be relied upon as an authority on that point/issue and thus remains good law and authority[25]. But on any point where the old and repealed law differs from the extant legislation, any decision reach on that point relying on the old legislation ceases to be authority with regards to that issue in respect of the new legislation.

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[22] See lead judgement in Nasiru & Anor v. EFCC & Ors supra; Civilian JTF & Ors v. Abdullahi & Ors supra.

[23] Nasiru & Anor v. EFCC & Ors

[24] Order XV Rule 1 FREP Rules 2009

[25] In INEC v. LP & Ors (2023) LPELR 60206 (CA), the court held thus: "An earlier decision of a superior court will only bind the court and subordinate courts in a subsequent case only if the facts and the law which informed the earlier decision are the same or similar in those subsequent case".

The case of **R.T.F.T.C.I.N. v. Ikwecheigh** supra and **Okechukwu v. Etukokwu** were decided in 2000 and 1998 respectively and on the basis the FREP Rules 1979. The case of **Kporharor & Anor v. Yedi & Ors** was instituted in 2005 under the FREP Rules 1979 and was decided by the Court of Appeal in 2017. A read through the case of **Kporharor & Anor v. Yedi & Ors** supra reveals that the decision of the court was based on the earlier cases of **R.T.F.T.C.I.N.** and **Okechukwu,** applying FREP Rules 1979 to discountenance joint applicants in a fundamental rights suit**.** The case of **Udo v. Robson & Ors** supra was instituted in 2011 and under the FREP Rules 2009, however, the court followed the decision in **Kporharor v. Yedi** and thus reached the verdict that joint application by two or more applicants was incompetent.

It is settled law that a judicial decision cannot be relied upon as a precedent when the legislation, the basis for the decision, is different from that applicable in the subsequent case.[26] It is on this basis that it is submitted with respect that the case of **Udo v. Robson** was reached per incuriam, because the Court of Appeal in that case arrived at its decision relying on **Kporharor v. Yedi, RTFTCIN v. Ikwechegh** and **Okechukwu v. Etukokwu**, which were all decided on the basis of the 1979 FREP Rules.

It is trite law that by the doctrine of stare decisis, the Court of Appeal is bound by its previous decisions on similar matters in similar circumstances[27]. In **Abacha vs Attorney General, Federation**[28], the Supreme Court opined that: "The principle of stare decisis postulates that a point or principle of law once officially and authoritatively decided or settled by the same Court should no longer be open to examination or new ruling by the same Court or by those Courts or Tribunals bound by its decision, unless the decision is shown to be per incuriam or for some other exceptional reasons." In legal jurisprudence, the necessary consequence of a Court reaching a decision in ignorance of binding judicial precedents, where that decision goes against the position of law as established by those precedents, is that the decision will be classified as having been reached per incuriam.

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.[29] The decisions of the Court of Appeal that were available for use as judicial precedent to the Court in **Udo v. Robson** supra were the cases of **Ihejiobi v. Ihejiobi** supra, **Ubochi v. Ekpo** supra and **Orkater v. Ekpo** supra decided in 2013 and 2014 respectively, being cases decided based on the provisions of the Fundamental Rights (Enforcement Procedure) Rules 2009, and which upheld the propriety and

[26] Clement v. Iwuanyawu (1989) 3 NWLR (Pt. 107) 39, Ugwuanyi v. NICON Insurance Plc (2013) 11 NWLR (Pt. 1366) 546.
[27] See generally Amaechi v. INEC (2008) LPELR – 446 (SC)National Inland Waterways Authority v. Shell Petroleum Development Co ltd (2020) 16 NWLR (Pt. 1749) 160
[28] (2021) 10 NWLR (Pt. 1783) 129
[29] State v. Ali (2020) 18 NWLR (Pt. 1755) 69 at 103 B-F

competence of joint applications for the enforcement of fundamental rights. The Court in **Udo v. Robson** by the principle of stare decisis ought to have applied the ratio of the court in the case of **Ihejiobi v. Ihejiobi**, **Ubochi v. Ekpo** and **Orkater v. Ekpo**, but made no references to them.

It is trite law that a judgment reached per incuriam by the Court of Appeal has no binding effect on the Court and should not be followed by the Court in subsequent decisions.[30] Therefore, the decision in **Udo v. Robson** supra is not a viable decision that should have been followed by any panel of the Court of Appeal. This contaminates and renders the decisions in **Finamedia Global Services Ltd v. Onwero (Nig) Ltd supra, Abubakar v. Dauda supra, Chief of Naval Staff, Abuja v. Archibong supra, and Abuja Electricity Distribution Company Plc v. Akaliro supra,** which followed the judgment in **Udo v. Robson** supra, as judgments also reached per incuriam**.**

vi.) The Supreme Court's position on the Propriety of Joint Applicants in Fundamental Rights Enforcement Suits.

a. Arguments seconding the second school of thought have maintained that the Supreme Court had endorsed, affirmed and countenanced joint applicants in fundamental rights cases in the recent case of **Diamond Bank Plc v. Opara & 2 Ors**[31] and **FBN Plc & 4 Ors v. A.G Federation**[32]. The above mentioned cases are fundamental right suits instituted by multiple applicants. On appeal to the Supreme Court, the apex court found in favour of the applicants and even made orders in favour of the applicants. It is on this note that the proponents of the second school of thought opine that the Supreme Court had tacitly in its recent decisions countenanced joint applications in fundamental rights cases. The court in **I.T.D.R.L.I. v. NIMC** supra opined thus:

> *"In Diamond Bank Plc v. Opara & 2 Ors (2018) LPELR-43907(SC), which is an appeal an appeal arising from a fundamental rights joint application initiated at the Federal High Court, Port Harcourt, the Supreme Court upheld the judgment of this Court which granted the prayer of the Applicants. Also in FBN Plc & 4 Ors v AG Federation (2018) 7 NWLR (Pt. 1617) 121, the Apex Court upheld the judgment of this Court in joint application by 5 applicants for enforcement of fundamental rights and even awarded compensation to the 5th Applicant which this Court omitted to award."*

b. On the other hand, it is argued in support of the first school of thought that contrary to the perceived endorsement of the Supreme Court as championed by the arguments of the second school of thought proponents, the issue of joint application was neither raised nor considered by the Supreme Court in those cases. Even though the cases

[30] Emeribe v. Opara (2021) 2 NWLR (Pt. 1760) 271
[31] (2018) LPELR – 43907 (SC)
[32] (2018) 7 NWLR (Pt. 1617) 121

were fundamental rights suits instituted by multiple applicants, the question of the competence of the action was never a live issue in the appeal before the Supreme Court. It is trite law that a case is authority for that which it decides[33]. It is for this reason that they held that the cases cannot be authority on the issue of the competence of joint action in fundamental rights enforcement proceedings.

The second school of thought proponents further argue that even though the Supreme Court did not make a pronouncement whether directly or obliquely, with regards to the issue of the competence of the action having been brought by joint applicants, howbeit, a question as to whether joint applicants can maintain an action for the enforcement of fundamental rights, is a question which goes to the competence of the action and a fortiori, the competence of the Court to entertain the action since it is a contention that the action was not initiated by due process of law. So, by parity of reasoning or analytical reasoning, it appears that the Supreme Court would have made the pronouncement, for good order sake, if the action was incompetent on account of having been initiated by a joint application, instead of proceeding to award compensation in favour of the joint applicants as it did in the said cases.[34]

6. THE CURRENT POSITION OF THE LAW.

The paradigm shift came with the enactment of the FREP Rules 2009. Just as had been earlier stated in this essay, there has been conflict on whether two or more applicants can bring an action for the enforcement of their fundamental rights. This conflict persisted despite the coming into effect of the FREP Rules 2009 together with its modifications and improvements over the old FREP Rules 1979, in terms of the expansion of the scope of applicants, the issue of locus standi and the enjoinment of the Courts to constantly and conscientiously seek to give effect to the overriding objectives of the Rules at every stage of human rights action, especially whenever it exercises any power given it by the Rules or any other law and whenever it applies or interprets any rule. The first overriding objective says that the Constitution as well as the African Charter shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedom contained in them, affording the protection intended by them.

In 2020, majority of the decisions of the Court of Appeal opposed the filing of joint application by 2 or more applicants, with exception to the case of **Maitagaran v. Dakoli**. Similarly, in 2021, only the cases of **Govt. of Enugu state v. Onya** and **I.T.F.R.L.I v. NIMC** supported the filing of an application by 2 or more applicants. Opposing opinion was held by the panel of justices in the case of **All Jaafariyya v. Govt of Kano State**, with the majority opinion per Mbaba and Abiru J.C.A, in support of joint application, while the

[33] Anyakorah v. PDP (2022) LPELR 56876 pg 1
[34] I.T.D.R.L.I v. NIMC supra pg 8

lead judgment differed. In 2022, most of the cases decided in the first half of the year to wit: **INEC v. Olalekan, Enakarhere v. Oduduru, National Security Adviser v. Tabe** and **Ejeh v. Ali**, were in support of the filing of an application by multiple applicants.

To the knowledge of the writer, there is no recent case of the Supreme Court on the issue of the competence of two or more applicants bringing an application for the enforcement of their fundamental rights under the FREP Rules 2009. The most recent decision on this issue, to the knowledge of the writer is the case of **Ejeh v. Ali (2022) LPLER 57593 (CA)** decided on 24th of May, 2023 by the Abuja Division of the Court of Appeal, and this case supports the point that two or more applicants can bring an application for the enforcing of their fundamental rights.

7. ADVANTAGES OF JOINT APPLICATIONS BY MULTIPLE APPLICANTS FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS.

Borrowing the statement of the court on **Govt. of Enugu State v. Onya & Ors** supra, parties are always encouraged to come together, either as individuals or as a group and/or in representative capacity, when they have a common interest or grievance, seeking redress in Court. It would amount to multiplicity of actions and abuse of the Court process, if the parties (like the 34 Applicants) who have identified their common interest and grievance in the suit, were to have filed separate actions - 34 Applications, against the same Respondent(s), in the same Court, seeking the same reliefs, thereby overwhelming and over burdening the Court, and increasing the cost of litigation, imprudent use/waste of precious judicial energy, resources, cost and time.

Filing of an action by two or more persons for the enforcement of their fundamental right for the alleged breach which emanated from the same grounds, matter, transaction, with common grievance and interest will certainly avoid multiplicity of actions and its attendant effect.

8. THE WRITER'S OPINION.

It is my humble view that two or more applicants can bring an application for the enforcement of their fundamental rights. I support the view expressed by the second school of thought on the issue and heavily rely of the exposition, sound and informed reasoning of my Lords Hon. Justice Ita George Mbaba and Hon. Justice Habeeb Adewale Olumuyiwa Abiru J.C.A in **All Jaafariyya Development Association & Anor v. Govt. of Kano State**.

The FREP Rules 2009 has done away with the bottle necks and restrictions associated with the FREP Rule 1979. The FREP Rules 2009 brought innovations and improvements such as the expansion of the scoop of persons who can institute an action for the enforcement of fundamental right i.e. by broadening of locus standi in fundamental

rights enforcement suits, the purposive approach of the courts in the interpretation and application of the Rules, and the overriding objectives of the Rules.

It is my respectfully view that the Courts should allow applicants who feel that their fundamental right have been infringed to approach the Courts in so far as the infringement arose from the same transaction and on the same grounds. It should be the legally bounden duty of the trial courts to decide if the individual application of several persons are in respect of the same matter, on the same grounds and involving the same issue. The Courts should avoid striking out an application merely because on the face of it, it is shown that the application is brought by multiple applicants, without the court hearing the application to determine if the alleged infringement arose from the same transaction.

In a situation where the shops of two or more persons were forcefully locked up, resulting to loss of livelihood and goodwill, or where the spaces/stalls allocated to 34 persons were unlawfully demolished, or where in the investigation of an alleged financial related crime against several suspects, Post No Debit (PND) order was placed on the suspects' bank accounts without a valid court order or where the infringement complained of is the unlawful detention of several persons arrested at the same time, place and in the same circumstances, and detained beyond the constitutional 48 hours, without a valid court order, etc., in scenarios like these where there common grievance arising from the same cause of action, the same circumstance and matter, the victims or applicants can and should institute a joint application for the enforcement of their fundamental rights.

The Courts are enjoined not to allow a conservative approach to interpretation of the Constitution and of the Rules and peripheral technical rules to defeat and/or impede a person seeking the enforcement of his fundamental rights.[35] The way the Fundamental Rights (Enforcement Procedure) Rules 2009 introduced liberality must be the focus of the Court to enable the courts adopt purposive interpretation of the rules and advance the interest of justice to the victims of fundamental right violations in Nigeria.

Finally, I aligned myself with the statement of Hon. Justice Abba Bello Mohammed, JCA in **I.T.D.R.L.I. & Ors v. NIMC** as follows:

> *"…no set of cases foster public confidence in the judiciary as an adjudicatory system of redress than fundamental rights cases. This is primarily because most human rights enforcement cases are complaints by seemingly "weak" individual members of the public against apparently "powerful" state actors. For this reason, a narrow interpretation of Section 46 of the 1999 Constitution and the FREP Rules, 2009 which restricts access in fundamental rights proceedings to only individuals will unduly retard the objective of ensuring the promotion and due*

[35] Enukeme v. Mazi (2014) LPELR – 23540 CA)

observance by all, of the fundamental human rights so constitutionally guaranteed."

9. CONCLUSION AND RECOMMENDATION

The FREP Rules 2009 was timely and has aided in the expansion of the frontiers of the law on fundamental rights enforcement in Nigeria. Likewise, the most recent decisions of the Court of Appeal have helped in maintaining, observing and upholding the interest of justice and in conscientiously giving effect to the overriding objectives of these FREP Rules in fundamental rights cases. We anticipate that in no distant time, the Apex Court will have the opportunity to make pronouncement on propriety of joint applicants in a fundamental right enforcement suit and quell or sound a note of finality on the issue, thus putting a stop to the vacillating stance of the Court of Appeal on the matter.

Meanwhile, in the meantime, the divisions of the Court of Appeal should ensure to take cognizance of decisions of other divisions of the Court on a similar issue to which the doctrine of stare decisis apply, in order to avoid conflicting decisions. The courts should ensure to properly observe and adhere to the doctrine of stare decisis and follow the most recent case of **Ejeh v. Ali & Ors** in fundamental rights actions where the question of the competence of joint action by multiple applicants is in issue.

In conclusion, it is my humble prayer that the Court of Appeal should uphold the view which supports joint application by multiple applicants, where there is a common grievance/interest which arose from the same factual situation, or where the alleged breach is of the same nature, matter and from the same grounds.

About the Author

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