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A REVIEW OF THE COURT OF APPEAL'S DECISION IN *CHIEF OF NAVAL STAFF ABUJA & ORS v. EYO ARCHIBONG & ANOR*: THE IMPERATIVE OFEXPANDING THE FRONTIERS OF FUNDAMENTAL RIGHTS ENFORCEMENT LAW

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Abstract

This article examines whether joint application can be instituted by more than one persons in the enforcement of fundamental rights cases in Nigerian courts. It adopts the case study approach by reviewing five major Court of Appeal decisions on this subject. While majority of these decisions answered this question in the negative, few of the cases held the question in the affirmative, thereby unsettling the position of the law on this point. The legal implication is that it does not make for certainty of the law, subsequent courts can pick and choose which of the decisions to follow. This paper argues that there is need to expand and expound the frontiers of fundamental rights enforcement procedure law in order to accommodate joint application in fundamental rights claims. Appellate courts should not set aside judgement of trial courts simply because the action was instituted by more than one applicant, as this would amount to sacrificing justice on the altar of technicalities. While this article enjoins the Court of Appeal to uphold joint fundamental rights application in subsequent cases, it also advocates that the Supreme Court should maintain a liberal disposition in settling this point of law whenever the opportunity rises.

1.0 Introduction

Natural law jurist consider human rights to be naturally inhering on persons by virtue of existence as human beings. The universal nature of these rights are well captured in international law instruments and municipal laws of the most civilized nations of the work. It is not any different in Nigeria. It is well recognized in Nigeria as fundamental rights, hence its prime position in the Constitution of the Federal Republic of Nigeria, which is the highest law in the land. The pride of place given to fundamental rights is further exemplified by more strenuous procedure required for the amendment of Chapter IV of the 1999 Constitution, wherein these rights are contained.[1] Fundamental rights essentially seek to protect the citizens from power wielding individuals, entities and institutions. Hence, where there is an abuse of power which affects the rights of citizens, the constitution offers reprieve and compensation for such persons.

The High Courts, both at the State and Federal level, are constitutionally conferred with the exclusive original jurisdiction to consider and determine allegations of breach of fundamental rights of persons and grant redress in appropriate cases. No doubt, fundamental rights are generally regarded as individual rights. This has posed a nagging question before courts tasked with the duty of determining matters of that nature as to whether the individual nature

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[1] See, Section 9 (3) 1999 Constitution.

of this rights imply that more than one persons whose fundamental rights have been breached cannot jointly commence an action to seek redress. Conversely put: does a joint action by two or more persons in a fundamental right suit derogate or becomes inconsistent with the private nature of these rights?

In trying to answer the question as to whether an application can be filed by more than one person to enforce a right under the Fundamental Rights (Enforcement Procedure) Rules, 2009, this article shall examine this issue from the spectrum of case laws. This question has come up for consideration in a number of cases. There are five notable cases on this point, which shall be subjected to review in this article. They include the cases of: *The Chief of Naval Staff Abuja & Ors v. Eyo Archibong & Anor Case*,[2] *Civilian JTF & Ors v. Idris Abdullahi & Ors*,[3] *Alhaji Ali Ahmad Maitagaran & Anor v. Hajiya Rakiya Saidu Dankoli & Anor*,[4] *Finamedia Global Services Limited v. Onwero Nigeria Limited & Ors*,[5] and *Udo v. Robson & Ors*.[6] Interestingly, all these cases were recently determined by the Court of Appeal. As shall be seen, the Court of Appeal has not maintained a sonorous voice the determination of this question in these five cases. On some of the cases the question were answered in the affirmative, while on the other instances, the questions were answered in the negative. Hence, this subject has become an unsettled point of law, except the Supreme Court decide one way or the other in order to settle the law on this subject.

This article shall examine the legal implication of the inconsistences in the various decisions of the court of appeal on this subject. However, the author prefers a more liberal approach on this subject. Hence, the argument shall be canvassed that the fundamental rights enforcement decision of a trial court should not be set aside on the ground that the application was instituted by more than one applicant, *simpliciter*. The increasing rate of human rights' violation even in a democratic dispensation is quite alarming. This implies that a broad and liberal approach should be adopted in the interpretation of fundamental right laws in order to forestall injustice in the society. It is, therefore, expected that subsequent decisions of the Court of Appeal on this matter should tilt towards acceptance of joint action for the enforcement of fundamental rights. The author also implores the Supreme Court to maintain a liberal disposition in the determination of this subject whenever it gets the opportunity to do so.

2.0 The Chief of Naval Staff Abuja & Ors v. Eyo Archibong & Anor[7]

The respondents filed an action for the enforcement of their fundamental right against the appellants at Federal High Court, Calabar. Respondent claimed the appellants made threats of arrest, intimidation and forceful seizure of the 1st respondent's Nokia phone, Mercedes Benz Car and hundred thousand naira cash. Appellants filed a preliminary objection to the hearing of the respondents' motion on notice, on the ground that joint application cannot be initiated by more than one applicant for the enforcement of fundamental rights under the Fundamental

[2] (2020) LPELR-51845(CA).
[3] (2020) LPELR-51480(CA).
[4] (2020) LPELR-52025(CA).
[5] (2020) LPELR-51149(CA).
[6](2018) LPELR - 45183 (CA)
[7] (2020) LPELR-51845(CA).

Rights (Enforcement Procedure) Rules. The trial court dismissed the objection and subsequently granted the respondents reliefs in the substantive motion on notice. Being dissatisfied with the judgement, the appellant appealed to the Court of Appeal.

The Court of Appeal allowed the appeal, thereby setting aside the judgment of the trial Court.

> Section 46 (1) of the 1999 Constitution states in clear terms that:- "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". Neither the 1999 Constitution nor the Fundamental Rights (Enforcement Procedure) Rules 2009 defines the word 'person' but in the context of Section 46 (1) of the Constitution and Order 1 Rule 2 (1) of the extant Fundamental Rights (Enforcement Procedure) Rules it refers to an individual. The adjective used in both provisions in qualifying who can apply to a Court to enforce a right is "any" which also denotes to singular and does not admit pluralities in any form. It is thus an individual right as opposed to collective right... In the light of the foregoing and considering the fact that there is no ambiguity in the words used in both Section 46 (1) of the 1999 Constitution and Order 1 Rule 2 (1) of the Fundamental Rights (Enforcement Procedure) Rules 2009, the preamble to the Fundamental Rights (Enforcement Procedure) Rules 2009; cannot override the plain words used in both the Constitution and the extant rules. I cannot therefore deviate from the previous decision which prohibits joint and or group application for the enforcement of fundamental rights".

3.0 Civilian JTF & Ors v. Idris Abdullahi & Ors[8]

Five applicants jointly filed an application for the enforcement of their Fundamental Human Rights as guaranteed by Sections 35 and 41 of the 1999 Constitution in the Federal High Court, Yola. One of the application deposed to an affidavit in his individual capacity.

Respondents challenged the competence of the application because it was commenced jointly. Based on the objection the application was dismissed. Hence, the Court of Appeal was called upon to determine the propriety or otherwise of the decision of the trial court.

In setting aside the decision of the trial court, the appellate court argued that:

> By the use of the word "any" it is clear that it is a right that can only be exercised singularly, individual rights and not collective. No doubt, the application that was before the trial Court was brought by five (5) applicants, it was filed by more than one person and it was not filed in a representative capacity. On the other hand, the provisions of the 2009 Rules (the operative Rule) did not give any room for a group of

[8] (2020) LPELR-51480(CA).

persons to file an application before the Court. The wordings of Order II (3) of the Rules is clear by the use of the word "applicant"... Further, Order VII Rule 3 of the 2009 Rules allows consolidation after the applications have been filed individually, it cannot be assumed, without a formal application and grant of an order for consolidation, which was not the case here, where one application was filed by the five Respondents as applicants. In effect, the rule provides that more than one person cannot apply to enforce a fundamental right. It is the law that any application filed by more than one person to enforce a right under the Fundamental Rights (Enforcement Procedure) Rules, 2009 is incompetent. The provisions of Chapter 4 of the Constitution covers individuals by the clear use of the words "every individual", "every person", "any person", and "every citizen". See, R.T.F.T.C.I.N. vs. IKWECHEGH (2000) 13 NWLR (PT 683) at PAGE 1 where 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. Similarly, this Court in OKECHUKWU vs. ETUKOKWU (1998) 8 NWLR (PT 562) PAGE 511 held that no group of persons can commence an action on infringement or contravention of Fundamental Rights under Chapter IV of the Constitution or by virtue of the 1979 Rules that created the rights under the Constitution, now governed by the Fundamental Rights (Procedure Enforcement) Rules, 2009. The provisions of Chapter 4 of the Constitution covers individuals not groups or a collection of individuals. The wordings in Chapter 4 did not contemplate an application being filed by several persons in one. Pursuant to Order 2 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules, filing separate applications is the starting point before an order for consolidation could be considered, which is not the case here... The trial Court ought not to have dismissed the preliminary objection, two or more persons cannot jointly file an application for enforcement of their Fundamental Rights. The application for the enforcement of the Respondents' Fundamental Rights jointly filed at the trial Court on 20th November, 2017 is incompetent and ought to have been struck out by the trial Court. I hold that the application jointly filed by the Respondents for the enforcement of their Fundamental Rights is incompetent, same is hereby struck out".

4.0 Alhaji Ali Ahmad Maitagaran & Anor v. Hajiya Rakiya Saidu Dankoli & Anor[9]

In this case, the respondents were two applicants who filed an action for the enforcement of their fundamental right against the two appellants. Applicants/Respondents claim was on the basis of their fundamental rights to dignity of human person and right to own property.

[9] (2020) LPELR-52025(CA).

Apart from filing a counter affidavit Appellants/Respondents also filed a notice of preliminary objection wherein, amongst other things, it was contended that the action was filed by the two Respondents jointly. In a considered ruling on the preliminary objection alongside the substantive suit the Court dismissed the objection for lack of merits and judgment was entered in favour of the Applicants/Respondents. Consequently, ₦500,000.00 was awarded as damages while ₦20,000.00. was granted as costs of action.

Upon being satisfied, Respondents/Applicants challenged this judgement in the Court of Appeal. Part of the issues raised which concerned the discuss in this paper is: "whether a joint application can be filed by more than one person to enforce a right under the Fundamental Rights (Enforcement Procedure) Rules"

According to the Court of Appeal:

> "...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... A read through the case of the Respondents on the affidavit in support of their application shows that the rights they sought to ventilate arose from a common cause. The finding of the lower Court that the action of the Respondents was competent cannot thus be faulted".[10]

5.0 Finamedia Global Services Limited v. Onwero Nigeria Limited & Ors[11]

In the aforementioned case, the appellant locked up the shops of Onwero Nigeria Ltd and Mr. Uchenna John Paul Chidokwe, the 1st and 2nd respondents, respectively. This resulted in loss of business earnings and goodwill. They jointly filed an application at the High Court of the Federal Capital Territory, Zuba, Abuja, for the enforcement of their fundamental rights, under the 2009 Rules. Judgement was granted in favor of the respondents, thereby causing the dissatisfied appellant's appeal of the decision to the Court of Appeal. The major grouse of the appellant was: "whether the trial Court had jurisdiction to entertain the joint application filed

[10] Ibid. per Abiru, JCA at (Pp. 28-30, paras. C-B).
[11] (2020) LPELR-51149(CA).

by the respondents to enforce their fundamental rights pursuant to Fundamental Rights Enforcement Procedure Rules, 2009".
The appellate court entered judgement in favour of the appellant. The Court of Appeal contended that:

> "an action for the enforcement of fundamental rights is quite unlike an action in a civil suit, where parties may, expectedly, be joined in an action as plaintiff is quite unlike an action in a civil suit, where parties may, expectedly, be joined in an action as plaintiff. This cannot happen in an action under the fundamental rights enforcement procedure rules 2009, because of the sui generis nature of fundamental rights. The contention that the respondents' grievances is the determining factor is hollow, to say the least, because Fundamental Rights are so basic and inalienable to every person, individually. That explains the use of the word "any person" in Section 46 (1) of the Constitution... The words used in Section 46(1) of the Constitution are very clear, and it is not by accident that the constitution and the rules use the same adjective in qualifying who can apply to a Court to enforce a Right as, "any", which denotes singular, and does not admit pluralities in any form. Individual rights and not collective rights take prominence in fundamental rights applications... The position of this Court, and indeed the Supreme Court in recent times is that Chapter IV of the 1999 Constitution, as amended protects individuals and not groups as the expression "every individual", "every person" and "every citizen" clearly suggest".[12]

On whether Section 14 of the Interpretation Act can be call in aid for interpreting the word 'any person" as contained in Section 46 (1) of the Constitution, the court stated that:

> "the necessity for that has not arisen, because the word is clear and unambiguous, and therefore not likely to lend itself to any other interpretation. The 2009 Rules was promulgated to enhance the enforcement of fundamental rights; Order IX Rule 1 is particularly revolutionary in this regard, because it sought to cure defects and technicalities. Be that as it may, no exception was made for multiple applications. If indeed there was any intention or desire to allow for multiple applications, it would have been provided for in Order IX Rule 1. Alas, no such exception was made. Reliance on the said rule is of little or no help to the respondents in this case"[13]

[12]ibid.
[13]ibid.

6.0 Udo v. Robson & Ors[14]

In the most recent case of *Udo v. Robson & Ors*,[15] this case borders on the enforcement of Fundamental Human Rights. It is an appeal against the judgment of the High Court of Akwa Ibom State[16] delivered on 4th day of March, 2013 by Theresa I. Obot, J. The decision was sequel to an application filed at the Court by the 1st, 2nd and 3rd Respondents against the Appellant and the 4th and 5th Respondents for the enforcement of their fundamental rights.

After hearing the application, the trial court entered judgement in favour of the Applicants/Respondents, granting most of their reliefs. Appellant was displeased with the decision, hence the appeal brought before the Court of Appeal. The appellant challenged the competence of the application and the jurisdiction of the trial court to determine the suit, in view of the joinder of several Applicants in a singular application for fundamental rights enforcement.

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. According to the court:

> 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

[14](2018) LPELR - 45183 (CA)
[15](2018) LPELR - 45183 (CA)
[16]See *Udo v Robson & Ors.*, Suit No. HEK/29/2011.

> fundamental rights. Since this provision is not in the rules the Courts are having it difficult to take it up".[17]

In finding merit in the appeal and allowed same thereby setting aside the decision f trial court, the Court of Appeal relied on the common law principle of *stare decisis*, thus:

> "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.

7.0 Rationale for Judicial Re-think

A look at the various decisions reviewed above, it can be seen that there is impasse on this point of law as the court of appeal has only been consistent in maintaining conflicting decisions on this point. With due respect to the decisions of the Court of Appeal against joinder of multiple parties in fundamental right enforcement actions, this paper shall pitch tent with the decisions of the court of appeal where a more liberal approach has been taken on this point.

To start with, part of the overriding objectives[18] 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[19] 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...[20] The interpretation clause is not

[17] ibid.

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

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

[20] (1980) LPELR-2936(SC); See also the following cases: *Dilworth v. Commissioner of Stamps* (1899) AC. 99 at 105-106; *Nutter v. Accrington Local Board of Health* (1879) 4 QBD 375 at 385-6; *Gough v. Gough* (1891) 2 Q.B. 666. *R. v. Britton* (1967) 2 Q.B. 51.

restrictive. In *Rabiu v. Kano State*[21] the Supreme Court held the word "include" to mean: a word of extension, such that it is used to enlarge the meaning and content of the words or phrases occurring in the body of the statute. 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". In *Ibrahim v. State*,[22] the Supreme Court held:

> 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.

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.[23] 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.[24] 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 fulfillment of some conditions, why not allowing joint applications *ab initio* on fulfillment 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", and "a citizen" mentioned in Chapter IV of the 1999 Constitution is singular. Section 14 of the Interpretation Act provides that, 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.

[21]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.
[22](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.
[23]Order 7 Rule 2 Fundamental Rights (Enforcement Procedure) Rules, 2009
[24]Order 7 Rule 3 Fundamental Rights (Enforcement Procedure) Rules, 2009

It can be opined, with greatest respect to their Lordships of the Court of Appeal[25] 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.[26] 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. Agreed, the cases of *Kporharor & Anor v. Yedi & Ors;*[27] *R.T.F.T.C.I.N. v. Ikwecheigh;*[28] *Okechukwu v. Etukokwu;*[29] *and Barr. Ikechukwu Opara & 3Ors v. Shell Petroleum Development Company of Nigeria Ltd & 5 Ors*[30] were decided under the old Rules[31] before the advent of the new Rules.[32] Notwithstanding, it is believed that the decisions of Court in the above cases were decided *per incuriam*[33] and would have been different if provisions of Section 14 of the Interpretation Act has been taken into cognizance in those cases.[34]

(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,[35] 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*[36] 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 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

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[25] *Kporharor & Anor v. Yedi & Ors* (supra)

[26] *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)

[27] Supra.

[28] Supra.

[29] Supra.

[30] Supra.

[31] Fundamental Rights (Enforcement Procedure) Rules, 1979.

[32] Fundamental Rights (Enforcement Procedure) Rules, 2009.

[33] In *Adisa v. Oyinwola & Ors* (2000) LPELR-186(SC) 493, the Supreme Court per Karibi-Whyte JSC stated that: "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 also: *African Newspaper v. Federal Republic of Nigeria* (1985) 2 NWLR (Pt. 6) 137; *Ngwo & Ors v. Monye & Ors* (1970) LPELR-1991(SC); *Moraue Ltd. v. Wakeling* [1955] 2 Q.B. 379; *R. v. Northumberland Compensation Appeal Tribunal ex-parte Shaw* [1951] 1 K.B. 711; *Nicholas v. Penny* [1950] 2 K.B. 466, 473.

[34] Laws of Federation of Nigeria, 2004.

[35] *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).

[36] Supra.

(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,*[37] 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 and documentary evidence made available with their application for the enforcement of their fundamental rights.

[37](2012) LPELR-20602 (SC).

Moreso, in the case of *Ikudayisi & Ors v. Oyingbo & Ors*[38] 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."[39]

It should be noted that in the case of *Lafia Local Government v. Executive Government of Nasarawa State & Ors*,[40] 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*[41], applicants who 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 the 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*,[42] 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 declined, 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, Onisha. Consequently, the respondents 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

[38](2015) LPELR-40525(CA).
[39]Supra.
[40]Supra.
[41](2015) 1N.H.R.L.R. (Pt. 1) 16 at 36.
[42](2015) 1 N.H.R.L.R. 125.

association. The respondents further sought assistance of security men, their agents, and some policemen who attacked the applicants menaced and terrorised 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 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.[43]

In the case of *Kporharor & Anor v. Yedi & Ors*,[44] 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 were Applicants at the trial court.

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 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 proceedings.
(2) Whether from the facts of the case, the action was properly brought under the fundamental right enforcement proceedings.

[43]Agbai v. Okogbue (1991) 7NWLR (Pt. 204) 391; (1991) 4 SCNJ 147.
[44](2017) LPELR-42418 (CA).

The Court of Appeal (Benin Judicial Division), on the 4th day of May, 2017, 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. held that:

> 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 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.

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 & 3 Ors v. Shell Petroleum Development Company of Nigeria Ltd & 5 Ors*[45] one of the issue 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, Port Harcourt, 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 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.

[45](2015) 14NWLR (Pt. 1479) 307.

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 & 8 Ors v. The Commissioner of Police, Osun State & 3ors*[46] 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 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.

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

8.0 Conclusion

In human rights cases, whose interest(s) does the court seek to balance and protect: individual rights or government restrictions on those rights?[47] In view of the new provision[48] 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[49] even when the facts and laws are different such as in the case of *Mr Abideen Salimonu & 8 Ors v. The Commissioner of Police, Osun State & 3 Ors*[50] 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.[51] 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 therefrom.[52] 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.[53] The exception is where to do so would lead to absurdity.[54] Where an interpretation will result

[47]U Basil, 'Balancing, Proportionality, and Human Rights Adjudication in Comparative Context: Lessons for Nigeria', (2014) 1 The Transnational Human Rights Review 1, 58.

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

[49]*Wambai v. Donatus & Ors* (2014) LPELR-23303 p. 20, paras. B-D (SC) per Walter Samuel Nkanu Onnoghen, J.S.C. "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". See also the following cases: *Adesokan & Ors v. Adetunji & Ors* (1994) LPELR-152(SC) (Pp. 20-22, paras. B-D), *Osborne to Rowlett* (1880) 13 Ch. D 774, 784; *Close v. Steel Co. of Wales Ltd* (1962) AC 367, 388 (1961) 2 All ER 953 HL; *FA and AB Ltd. v. Lupton* (1972) AC 634. 658; (1971) 3 All ER 948, 964 HL. In reaching its decision, the Court, in the case of *National Telephone Co. v. Baker* (1983) 2 CR. 186 placed reliance on the rule in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330.

[50]Supra.

[51]*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).

[52]*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).

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

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

in breaching the object of the Statute, the Court would not lend its weight to such an interpretation.[55]

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