

**IN THE COURT OF APPEAL OF NIGERIA**  
**IN THE CALABAR JUDICIAL DIVISION**  
**HOLDEN AT CALABAR**

APPEAL NO: \_\_\_\_\_  
SUIT NO: FHC/CA/FHR/63/2021

**BETWEEN:**

ENO IYAMBA, ESQ.                      -----

APPELLANT

**AND**

1. THE NIGERIAN AIRFORCE
2. THE CHIEF OF AIR STAFF
3. AIRMAN MBU
4. AIRMAN GALA

RESPONDENTS

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**NOTICE OF APPEAL**

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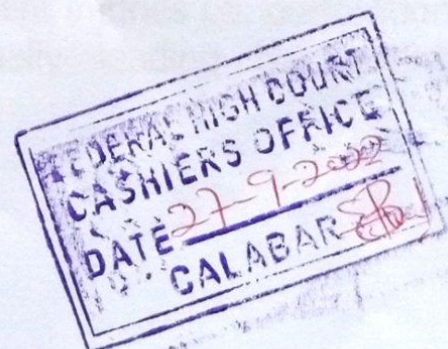
**TAKE NOTICE** that the Appellant being dissatisfied with the Judgment of the Federal High Court of Nigeria, Calabar Judicial Division (hereinafter referred to as the 'Lower Court') in **Suit No: FHC/CA/FHR/63/2021** delivered on the 1<sup>st</sup> day of July, 2022 by **Honourable Justice Rosemary Dugbo Oghoghorie**, do hereby Appeal the aspect of the decision as stated in paragraph 2 herein, upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the reliefs set out in paragraph 4.

AND the Appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

**2. PART OF THE DECISION OF THE LOWER COURT APPEALED AGAINST:**

The aspect of the judgment on award of damages and on the failure to consider some of the reliefs sought by Appellant.

**3. GROUNDS OF APPEAL:**





## **GROUND ONE**

The Lower Court misdirected itself in law when it awarded a paltry sum of one million naira only as damages, which amount is ridiculously low, unreasonable and not commensurate with the intensity of pain and injury suffered by the Appellant in this case.

### **Particulars of Misdirection**

1. The damages awarded by the lower Court is starkly at variance with the evidence presented in this case as well as the positive findings of fact made by the learned trial Judge.

2. On page 23 of its judgment, the lower Court courageously found and stated that:

*"This act of arbitrariness of the 305 Special Mobility Group, Nigerian Air Force, Calabar is unfortunate. Security services over the years have been enjoined not to intimidate and harass citizens without justification. The Security Agencies have however, continually engaged in breaches of fundamental rights of citizen (sic). This Court is however under a duty to stop them.*

*In my opinion, the right of the Applicant to Personal Liberty and Dignity has been infringed. It is trite that, where there is a right, there is a remedy."*

However, the lower Court dramatically summersaulted and proceeded to award a paltry sum of one million naira only, which considering the degree of harm suffered by the Appellant is tantamount to no remedy at all.

3. The lower Court did not consider necessary factors or indices like the degree of harm suffered by the Appellant, which could have aided a proper and fair minded assessment of damages.

4. In his application for enforcement of fundamental rights filed before the lower Court, the Appellant made factual and graphic depositions in his supporting affidavit as well as provided abundant medical evidence showing the degree of harm occasioned to him as a result of the needless and unwarranted violation of his fundamental rights by the Respondents.

5. The violation of the Appellant's fundamental rights by the Respondents was gruesome, grave and occasioned permanent injuries i.e. perforation of the Appellant's eardrums and eventually leading to hearing impairment.



6. In **Odogu Vs. A. G. Federation (1995 – 1996) ALL NLR 480**, the Apex Court stated that: *"Whatever compensation is awarded in such cases as this should truly reflect not only the actual pecuniary loss of the victim but also the abhorrence of society and the law for such gross violation of human rights, particularly the right of personal liberty as in this case. An unwitting trivialization of a serious matter by an inordinately low award should be avoided"*.
7. Having regard to the gravity of the violation in this case, the impunity of the Respondents and considering the status and pedigree of the Appellant as former chairman, Young Lawyers' Forum, Calabar branch, former Senior State Counsel, Ministry of Justice, Calabar and being a learned Magistrate at the material time serving at Chief Magistrate's Court 2, Ogoja, Cross River State, the lower Court ought to have, at the very least, awarded damages of Twenty Million Naira (N20,000,000.00) in favour of the Appellant, which by any fair minded consideration, is the appropriate amount adequate enough to properly assuage the degree of harm visited on the Appellant by the Respondents.
8. The Respondents were duly represented by counsel before the lower Court, but did not file any process to dispute or in any way challenge the Appellant's case.
9. The Appellant had prayed the lower Court for general damages of One Hundred Million Naira (N100,000,000.00) as well as punitive/exemplary damages of One Hundred Million Naira (N100,000,000.00), and the Appellant creditably proved its case on a preponderance of evidence to the satisfaction of the lower Court.
10. Given the entire circumstances and the nature of the violation, the award of a paltry one million naira damages by the lower Court was highly misdirected and in fact tantamount to no remedy at all for the Appellant.
11. By awarding a ridiculously low and unreasonable amount as damages, the lower Court trivialized the degree of harm occasioned to the Appellant, made total mockery of the Appellant's case and this has occasioned serious injustice to the Appellant.

## **GROUND TWO**

The lower Court erred in law when it failed to consider and pronounce on the Appellant's relief for "special damages" which was abundantly pleaded



and duly established with hard and unchallenged evidence presented before it.

### **Particulars of Error**

1. It is trite law that the claims of a party no matter how useless, must be distinctly and specifically considered and decided one way or the other.
2. One of the reliefs sought by the Appellant before the lower court was for: *"The sum of Thirty-Three Thousand, Four Hundred and Seventy Naira (N33,470.00) jointly and severally against the Respondents as special damages arising from the gruesome brutalization of the Applicant /violation of his fundamental rights".*
3. The Appellant positively pleaded the claim for special damages with sufficient particularization as required by law as well as exhibited all receipts of payment for various medication/medical services arising from the violation of his fundamental rights.
4. The lower Court regrettably and inexplicably overlooked and totally ignored the claim for special damages as duly established before it by the Appellant and failed to make any pronouncement on same one way or the other.
5. This action of the learned trial Judge is highly misdirected and same has occasioned a miscarriage of justice to the Appellant.

### **GROUND THREE**

The lower Court erred in law when it failed to consider and grant the Appellant's relief for "public apology" as mandatorily provided by law as one of the remedies for any infringement of the fundamental right to personal liberty.

### **Particulars of Error**

1. Among the reliefs claimed by the Appellant before the lower Court was: *"An Order compelling the Respondents to tender a written public apology in two national dailies to the Applicant (now Appellant)".*



2. The lower Court in its judgment made positive findings of fact to the effect that the Appellant's right to personal liberty, amongst others, has been brazenly violated by the Respondents (see, pages 19, 21 & 23 of the judgment).
3. The lower Court regrettably stopped short of its findings of fact without more, and failed to award the corresponding remedy of a public apology as provided by law.
4. By section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended), "*Any person who is unlawfully arrested and detained shall be entitled to compensation and public apology from the appropriate authority or person*".
5. The action of the learned trial Judge in ignoring the relief for public apology and /or refusing to grant same, is a grave error of law which has given rise to injustice against the Appellant.

#### **GROUND FOUR**

The judgment is against the weight of evidence.

#### **4. RELIEFS SOUGHT FROM THE COURT OF APPEAL:**

The Court of Appeal will be urged upon to grant the following reliefs/orders:

- i. **An Order** allowing this Appeal and making an upward review of the one million naira damages awarded by the lower Court and substituting in its stead, the sum of Twenty Million Naira (N20,000,000.00) as damages for the needless and unwarranted violation of the Appellant's fundamental rights.
- ii. The sum of Thirty-Three Thousand, Four Hundred and Seventy Naira (N33,470.00) jointly and severally against the Respondents as special damages arising from the gruesome brutalization of the Appellant/violation of his fundamental rights.
- iii. **An Order** compelling the Respondents jointly and or severally to tender a written public apology in two national dailies to the Appellant.



- iv. AND such further order or orders this Honourable Court may in its absolute discretion deem fit to make in the circumstances.

## **5. PERSONS DIRECTLY AFFECTED BY THIS APPEAL**

### **A. The Appellant:**

**ENO IYAMBA, ESQ.**

C/o His Counsel

**James Ibor, Esq.**

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(Barristers, Solicitors & Notaries Public),

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### **B. The Respondents:**

#### **i. THE NIGERIAN AIR FORCE**

Nigerian Air Force Headquarters,

Moshood Abiola Road,

Garki, FCT – Abuja

#### **ii. THE CHIEF OF AIR STAFF**

Nigerian Air Force Headquarters,

Moshood Abiola Road,

Garki, FCT – Abuja

#### **iii. AIRMAN MBU**

305 Special Mobility Group,

Nigerian Air Force,

Cross River State Command,

Calabar.

Or

**C/o The Commanding Officer,**

305 Special Mobility Group,

Nigerian Air Force,



Cross River State Command,  
Calabar.

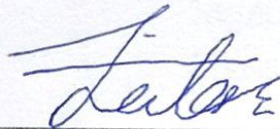
**V. AIRMAN GALA**

305 Special Mobility Group,  
Nigerian Air Force,  
Cross River State Command,  
Calabar.

Or

**C/o The Commanding Officer,**  
305 Special Mobility Group,  
Nigerian Air Force,  
Cross River State Command,  
Calabar.

DATED AT CALABAR, THIS 27TH DAY OF SEPTEMBER, 2022



**JAMES IBOR, ESQ ✓**

CHRISTIANA ANOINTED ENOH, ESQ.

PATIENCE AGALA, ESQ.

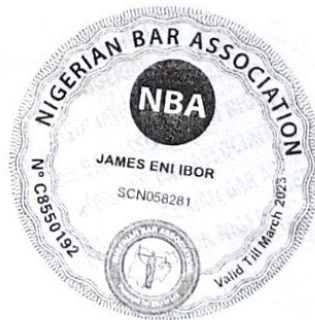
KEHOLE ENYA, ESQ.

THANKGOD E. UMET, ESQ.

**FOR:** BASIC RIGHTS LAW PARTNERS,  
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**FOR SERVICE ON THE RESPONDENTS**

**1. THE NIGERIAN AIR FORCE**

Nigerian Air Force Headquarters,



Moshood Abiola Road,  
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**2. THE CHIEF OF AIR STAFF**

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