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## TEMPLARS ThoughtLab

# Supreme Court Addresses Controversy Surrounding the Competence of a Fundamental Right Enforcement Application Involving Multiple Applicants

### Introduction

The Supreme Court of Nigeria, in a recent decision – the case of **Total Exploration & Production (Nig) Ltd v. Okwu & Ors<sup>1</sup> ("Okwu's case")**, addressed the controversy surrounding the competence of an application filed by multiple applicants to enforce their rights under the Fundamental Rights (Enforcement Procedure) Rules. This decision is a welcomed development given the several conflicting decisions of the Court of Appeal on this point.

As a preliminary point, it is important to note that the fundamental human rights of any person in Nigeria, are enshrined in Chapter IV of the Nigerian Constitution (1999 as amended). These rights safeguard the basic freedoms and dignities of individuals.<sup>2</sup> They play a crucial role in protecting citizens from abuses by both state actors (government authorities) and non-state actors (corporations or private entities), to ensure that everyone is entitled to and gets equal treatment under the law.

### Overview

The enforcement of fundamental rights in Nigeria is made possible through the **Fundamental Rights (Enforcement Procedure) Rules, 2009 ("the FREP Rules")**, which provide a framework for individuals to seek redress when their rights are violated. The FREP Rules streamline the process of litigation, allowing an accessible legal mechanism to challenge abuse of power or violations.

<sup>1</sup> (2024) LPELR-62623(SC)

<sup>2</sup> These rights include the right to life, dignity, personal liberty, fair hearing, privacy, freedom of thought and religion, expression, peaceful assembly, movement, and freedom from discrimination.

Historically, the position in Nigeria had been unclear as to whether a group of persons, with a common cause of action could enforce their rights in a single application for the enforcement of their Fundamental rights or whether they were required to file separate suits. In this regard, there have been conflicting positions in the Judgements of the Court of Appeal—in some cases<sup>3</sup> the Court of Appeal had held that a joint application was incompetent, while in some judgements<sup>4</sup> the Court of Appeal allowed the joint application. However, the decision of the Supreme Court in the **Okwu case** has addressed the position, albeit obiter, that multiple individuals can jointly enforce their rights if their grievances arise from the same facts. This Judgement, in our view, reinforces the progressive approach of the Supreme Court, in interpreting laws and dealing with otherwise thorny legal issues.

## Section 46 of the CFRN and Order II Rule 1 of The FREP Rules

In every court action, a fundamental requirement is the presence of a party alleging that their rights or interests have been violated.<sup>5</sup> This principle ensures that there is a legitimate party to pursue the matter before the court and that the claim is grounded in a recognized legal grievance. In this regard, **Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 (“CFRN”)** provides 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.” Also, **Order II Rule 1 of the FREP Rules** provides as follows: “**Any person** who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter 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: Provided that where the infringement occurs in a State which has no Division of the Federal High Court, the Division of the Federal High Court administratively responsible for the State shall have jurisdiction...”

The phrase “Any person” has received several conflicting interpretations from the Court of Appeal, thereby creating confusion as to the appropriate positions of the law. There are two schools of thought on this issue, which shall be discussed below. In sum, the first school of thought is the conservative school of thought, which has interpreted the phrase “Any person” as restrictive. Thus, the proponents of the school hold the view that the right to bring an action to enforce a fundamental right is limited to one person, while the other school of thought have adopted a liberal view by giving a purposive and broader meaning to the phrase “Any Person”, thus permitting multiple applicants in an action for enforcement of fundamental right.

<sup>3</sup> Udo v. Robson (2018) LPELR 45183(CA), Kporharor v. Yedi (2017) LPELR 42418(CA), Chief of Naval Staff & Ors v. Archibong & Ors (2020) LPELR 51845(CA) and Abuja Electricity Distribution Company Plc & Ors v. Akaliro & Ors (2021) LPELR 54212(CA).

<sup>4</sup> Incorporated Trustees of Digital Rights Lawyers Initiative & Ors v. National Identity Management Commission (2021) LPELR 55623(CA), National Security Adviser v. Tabe (2022) LPELR 57209(CA).

<sup>5</sup> Nwavu & Ors v. Okoye & Ors (2008) LPELR-21116(SC).

## The conflicting decisions of the Court of Appeal

### The Conservative interpretation

In the case of **Kporharor v. Yedi**<sup>6</sup>, two applicants filed a joint action for the enforcement of their fundamental rights following the seizure and detention of their bulldozer plant by the defendants. The Court of Appeal ultimately declared the suit incompetent due to the joint nature of the application. The court, in interpreting **Order II of the FREP Rules**, held that the enforcement of fundamental rights must be pursued by individual applicants.

In the case of **Udo v. Robson & Ors**<sup>7</sup>, the 1st – 3rd Respondent sued the Appellant, the 4th and 5th Respondents for breach of their fundamental right for the unlawful arrest, detention and harassment meted on them between the 3 March 2011 to 30 March 2011. The Court found that the action was invalid - the applicant having filed a joint action to enforce their individual fundamental rights.

In **Nasiru & Anor v. EFCC & ORS**<sup>8</sup>, where the issue of whether a joint application can be filed by more than one person to enforce a right under the FREP Rules came up, before the Court of Appeal, the Court in a majority judgement, held that the joint action filed by the Appellants was incompetent and liable to be struck out. Interestingly, **Hon Justice Abiru (Now JSC) - (his Lordship read the lead judgement in the Okwu case)** was the lone voice in his dissenting judgement. Specifically, his Lordship held that:

“The reality is that, contrary to the assertion in the lead judgement, there is no express provision in the FREP Rules forbidding two applicants from filing a joint petition for enforcement of their fundamental rights, 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...what these translate to is that the first school of thought which exist in this Court, which forbids the filing of a joint application by two or more applicants for the enforcement of fundamental rights even where their complaints flow from the same cause of action, was built on a quicksand; it is a mirage. **The Second school of thought which supports the filing of a joint application by two or more applicants where the complaints flow from the same cause of action was erected on a solid rock and it is the only viable and sustainable one**”.

The predominant reasons for the decision of the Court of Appeal in the foregoing cases, as well as other similar cases, are that: (i) fundamental rights are personal to individuals and should be individually enforced; and (ii) the phrase “any person” connotes singular and does not admit pluralities in any form.

<sup>6</sup> (2017) LPELR 42418(CA)

<sup>7</sup> (2018) LPELR-45183(CA)

<sup>8</sup> (2022) LPELR 56976 (CA). This case further demonstrates the confusing position of the Court of Appeal on this principle. Although the majority decision adopted the conservative approach, we have included this decision under the liberal approach to highlight the dissenting opinion which has now been adopted by the Supreme Court.

## The Liberal interpretation

The Court of Appeal, in some other cases, have sustained Fundamental Rights actions filed by multiple applicants. Specifically, in **Oghenegueke & Ors v. Inspector General of Police & Ors**,<sup>9</sup> the main issue submitted to the Court of Appeal for determination was whether multiple applicants could file a joint action to enforce their fundamental rights under Nigerian law. The appellants, 12 individuals, sought redress for alleged harassment, intimidation, and threats of arrest by the police over a civil dispute concerning community leadership in Delta State. The Court of Appeal affirmed that multiple applicants can indeed file a joint application for the enforcement of their rights. The court highlighted that allowing joint applications helps avoid duplicative actions, conflicting judgments, and unnecessary use of judicial resources.

In **National Security Adviser v. Tabe**<sup>10</sup>, the applicants, who are Cameroonian nationals and asylum seekers in Nigeria, were arrested on 7 January 2018 during a meeting at Nera Hotel, Abuja by agents of the National Security Adviser. The applicants sought redress for alleged unlawful arrest and detention under the FREP Rules. The Court of Appeal held that multiple persons could file a joint application for enforcement of their fundamental rights thereby reinstating the suit.

With the situation delicately poised, the Supreme Court was provided with a golden opportunity in the **Okwu case** to impose some order and clarity on this area of law.

## The Okwu Case

This matter was initiated by 6 applicants, the 1<sup>st</sup> – 6<sup>th</sup> Respondents in this appeal, against the Appellants, Total E&P Nigeria Limited, and 4 others<sup>11</sup> at the High Court of Rivers State (the High Court) under the FREP Rules for the breach of their fundamental human rights to personal liberty and the right against inhumane and degrading treatment. The 1<sup>st</sup> – 6<sup>th</sup> Respondents were officials and colleagues at a company named Pontecelli Nigeria Limited, while, the 7<sup>th</sup> Respondent was the Project Manager of the 8<sup>th</sup> Respondent – [Darcet International Limited], who is one of the contractors of the Appellant. The 9<sup>th</sup> Respondent is an officer of the Nigerian Army – the 10<sup>th</sup> Respondent.

The case of the 1<sup>st</sup> – 6<sup>th</sup> Respondents is that on 29 January 2012, they were arrested and severely beaten by the 9<sup>th</sup> Respondent and some unidentified military escorts at one Obagi Base Camp allegedly belonging to the Appellant. According to them, their arrest and beating were at the instigation of the 7<sup>th</sup> Respondent in furtherance of a personal vendetta that the 7<sup>th</sup> Respondent had against the 1<sup>st</sup> Respondent. They also claimed that they were shot at by the 9<sup>th</sup> Respondent and his cohorts with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents sustaining injuries in the stomach and hand respectively. Finally, they alleged that their Toyota Hiace Bus was impounded, and the 2<sup>nd</sup> Respondent detained, at the Obagi Base Camp. The Appellant in its defence denied the allegations and stated that the Obagi Base Camp does not belong to it. The Appellant also contended that the case does not disclose any reasonable cause of action against it.

<sup>9</sup> (2023) LPELR 60233(CA)

<sup>10</sup> (2022) LPELR 57209(CA); see also *Uzoukwu v. Ezeonu II* (1991) 6 NWLR (Pt. 200) 708

<sup>11</sup> The Appellant was the 4<sup>th</sup> Respondent at the High Court, while the 4 others are the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Respondents in this appeal.

The High Court found in favour of the 1st – 6th Respondents and awarded damages in the sum of 230 million Naira in their favour. Regarding the Appellant, the High Court held that the agency relationship between the 8th Respondent, who did not deny ownership of the Obagi Base Camp where the Bus was being detained, and the Appellant makes the Appellant jointly liable with the 7th, 8th, 9th and 10th Respondents. The Appellant appealed the High Court's decision and the appeal was dismissed by the Court of Appeal.

On further appeal to the Supreme Court, the Appellant, for the first time, challenged the jurisdiction of the High Court to entertain the suit on the grounds of multiple applicants. This issue was, however, resolved against the Appellant on the grounds that the complaint is a procedural irregularity which ought to have been made at the High Court failing which the Appellant is deemed to have waived the irregularity and is foreclosed from raising the same.<sup>12</sup>

**However, the Court took the liberty of laying the issue of multiple applicants to rest and held that parties having one common cause may jointly file an action to enforce their fundamental rights. The apex Court in reaching this conclusion held that the phrase “any person” should not be interpreted to mean one person.** In this regard, the Court drew support from the principle of law that where a singular expression is used in a statute, it includes the plural and vice versa.<sup>13</sup> Also, the Court held that where the word “any” is used in a statute, it could mean “one” or an “indefinite number”<sup>14</sup>.

Further, the Supreme Court emphasized that when interpreting the provisions of the CFRN, courts are expected to adopt a liberal approach to allow a broader interpretation of an expression used in the CFRN except the text or other parts of the CFRN clearly indicate the need for a more restrictive interpretation.<sup>15</sup> The Supreme Court also upheld the overriding objectives of the FREP Rules which enjoin Courts not to interpret the CFRN, the FREP Rules or any related technical provisions in a manner that hinders or prevents an individual from seeking to enforce their fundamental rights.<sup>16</sup> Finally, the Court reviewed **Order XV Rule 4 of the FREP Rules** which allows a Court to make recourse to its civil procedure rules where the FREP Rules does not make provision for a situation and held that the Civil Procedure Rules of the High Court of Rivers State<sup>17</sup> individuals who have rights arising from a common cause to file a joint action as co-claimants to ventilate the rights, notwithstanding some of the reliefs sought may be different.<sup>18</sup>

However, the Supreme Court found that there was no statement from the affidavit evidence to the effect that the Obagi Base Camp was owned by the Appellant and that the Appellant cannot be vicariously liable for the actions of the 7th and 9th Respondents. Consequently, the appeal was allowed.

<sup>12</sup> The MT Bata (2022) 3 NWLR (Pt 1817) 367, Peoples Democratic Party v. Muhammad (2023) LPELR 60157(SC), Habibu v. State (2023) LPELR-60351 (SC).

<sup>13</sup> Public Citizen, Inc. v. Mineta 340 F.3d 39 (2d Cir. 2003); Section 14(b) of the Interpretation Act, 1964

<sup>14</sup> Texaco Panama Incorporation (Owners of the Vessel M.V. Star Tulsa) v. Shell Petroleum Development Corporation of Nigeria (2002) 5 NWLR (Pt 759) 209

<sup>15</sup> National Unity Party v. Independent National Electoral Commission (2021) 17 NWLR (Pt 1805) 305; Crestar Integrated Natural Resources Ltd v. Shell Petroleum Development Co Ltd (2021) 16 NWLR (Pt 1800) 453.

<sup>16</sup> Federal Republic of Nigeria v. Ifegwu (2003) 15 NWLR (Pt 842) 113, Eukeme v. Mazi (2014) LPELR-23540(CA).

<sup>17</sup> As is the case for other trial courts in Nigeria.

<sup>18</sup> Fode Drilling (Nig) Ltd v. Fabby (2017) LPELR 42822(CA), AbdulRaheem v. Oduleye (2019) LPELR 48892(SC).

## Conclusion

The enforcement of fundamental human rights in Nigeria has undergone significant evolution, particularly regarding the ability of multiple individuals to file joint actions. This development is crucial as it recognizes the collective nature of many rights violations, facilitating a more efficient and streamlined approach to seeking justice. The pronouncement of the Supreme Court in Okwu's case marks a pivotal point in this legal landscape, confirming that the phrase "any person" in the context of fundamental rights encompasses multiple applicants who share a common cause. By adopting a liberal interpretation of the relevant statutes and emphasizing the need for accessible legal recourse, the Court has set a precedent that aligns with the objectives of the FREP Rules.

As a result, individuals facing similar grievances can now unite their claims, thereby conserving precious judicial time and resources as well as minimizing the potential for conflicting judgments, and at the same time reducing the docket of the Court. This approach not only empowers citizens but also reinforces the integrity of the legal system in upholding human rights.

Moving forward, it is essential for courts to continue embracing this inclusive interpretation to ensure that all individuals can effectively seek redress for violations of their rights, thus fostering a more just and equitable society.