

ABUAD Law Journal (ALJ)

Vol. 10, No. 1, 2022, Pages 26-43 <https://doi.org/10.53982/alj.2022.1001.02-j>

Published by College of Law, Afe Babalola University Law Journal,
College of Law, Afe Babalola University, Km 8.5, Afe Babalola Way,
P.M.B. 5454, Ado Ekiti, Ekiti State, Nigeria ISSN: 2971-7027
www.abuad.edu.ng, abuadlawjournal@abuad.edu.ng

Wrongful Interference of Police in Civil Transactions and the Remedies for Aggrieved Persons

Daniel P. Saredau*

Ujong Basse Okpa**

Abstract

Though established under section 214 of the 1999 Constitution of the Federal Republic of Nigeria, the provisions on the functions, powers, administration, and structure of the Nigeria Police Force are as contained in the Nigeria Police Act, 2020. But, despite section 32(2) of the Police Act and section 8(2) of the Administration of Criminal Justice Act (2015) providing that a person shall not be arrested merely on a civil wrong or breach of contract, and the plethora of judicial authorities deprecating this practice, there continues to be a swash of cases in which the police meddle with civil claims. In the result, the police often, wrongly, turn itself into a debt recovery agency, an enforcer of contracts, or a forum for settling civil claims. Using doctrinal methodology and a discursive research design, this study examines the law on the issue. The study finds that there are legal remedies available for a person who feels aggrieved with police interference in civil claims. The remedies discussed are action for malicious prosecution, action for false imprisonment, fundamental rights enforcement action, and action under the Anti-torture Act. Overall, the study dissuades citizens from resort to the police for civil claims, and encourages the police to desist from wrongful interference in civil claims.

Keywords: *Nigerian police, false imprisonment, malicious prosecution, fundamental rights enforcement*

1.0 Introduction

Under the law, a person whose legal right is breached can seek for redress through either the criminal or civil justice system. Indeed, the administration of justice, which is defined as the maintenance of right within a political community by means of the physical force of the state, is divisible into the two parts of criminal and civil justice.¹ Generally, the choice between criminal or civil justice is determined by the nature of the breach and the remedy to be applied; that is, whether it is a breach of criminal law or of civil law, and whether the remedy is directed towards punishment of wrong or enforcement of right.

Criminal justice consists in the punishment of wrongs and would punish a defendant for wrongful conduct. On the other hand, civil justice is about the enforcement of rights, and would enforce the rights of the claimant by securing him compensation, restoration, or an injunction. The complaint in criminal law is an accusation of wrong, while in civil law, it is a claim of right.² In this connection, civil law is quite wide and embraces such areas of law as contracts, torts, trusts, inheritance and succession, maritime, aviation, oil and gas, business enterprises, land, and employment, among many others. On the other hand, the major aim of criminal law is to assure public security, order and welfare, through retribution, deterrence, incapacitation, rehabilitation and restoration.

*LLB (Abuja), LLM (Ibadan), BL., Lecturer, Faculty of Law, Taraba State University, Jalingo, and a doctoral candidate at the Faculty of Law, University of Ibadan. Email: dansaredau@yahoo.com.

**LL.B (Calabar), BL., legal practitioner based in Port-Harcourt, Rivers State. Email: okpaujong@yahoo.com

¹J.W. Salmond, *Jurisprudence* (4th edn Stevens and Haynes) 70.

² *Ibid* at 72.

Notwithstanding the marked distinction between criminal law or criminal justice and civil law or civil justice, it is problematic that the Nigeria Police Force ('NPF' or simply 'police'), an apparatus of the criminal justice system, has developed a penchant for dabbling into purely civil matters, and thereby blurring the lines of divide between the two typologies of law. This is despite that there is nothing in its extant laws³ to support a civil law role for the police. However, in practice, the police routinely meddle in civil matters. This, they usually do by dressing contractual disputes in the garb of cheating or criminal breach of trust, thereby transforming civil claims into criminal complaints.

On the background of the above commentary, this study sets out to achieve two main things. First, it seeks to tease out the primary functions of the NPF, and to draw out the unlawfulness of the practice of police interference in civil law claims. Secondly, and which is its crux, the study discusses the remedies available to persons aggrieved with police interference in civil claims. The research method applied is doctrinal. Accordingly, the authors utilize a discursive research design of jurisprudential and content analysis of relevant statutory provisions and case law.

2.0 The Functions of the Nigeria Police Force

Historically, the NPF traces its origin to the year 1820 when the colonial administration, in order to attain the ends of internal security, introduced a police force for its colony in Nigeria.⁴ Over two hundred years of its existence, the NPF has undergone numerous transformations into what it currently is, as firmly established by section 214 CFRN, and the Police Act 2020, as Nigeria's

³ s.214 of the Constitution of the Federal Republic of Nigeria 1999, 'CFRN'; Police Act 2020. The Police Act 2020 repeals the Police Act Cap. P19 Laws of the Federation of Nigeria 2004, and came into force on 17 September, 2020.

⁴ TI Odeyemi and AS Obiyan "Exploring the Subsidiarity Principle in Policing and the Operations of the Nigeria Police Force." (2017) *African Security Review*. 27(1):42-60

pre-eminent paramilitary agency. As per section 4 of the Police Act, the primary functions of the NPF are as follows:

- (a) Prevent and detect crimes, and protect the rights and freedoms of every person in Nigeria as provided in the Constitution, the African Charter on Human and Peoples Rights, and any other law;
- (b) Maintain public safety, law and order;
- (c) Protect the lives and property of all persons in Nigeria;
- (d) Enforce all laws and regulations without any prejudice to the enabling Acts of other security agencies;
- (e) Discharge such duties within and outside Nigeria as may be required under this Act or any other law;
- (f) Collaborate with other agencies to take any necessary action and provide the required assistance or support to persons in distress, including victims of road accidents, fire disasters, earthquakes and floods;
- (g) Facilitate the free passage and movement on highways, roads and streets open to the public; and adopt community partnership in the discharge of its responsibilities under this Act or under any other law; and
- (h) Vet and approve the registration of private detective schools and private investigative outfits.

It is apparent from the above iteration of the primary functions of the police that whereas crime prevention, detection, management, and enforcement are key components, there is no mention of civil transactions. Accordingly, it is appropriate to make some comments on the nature of a crime. The Criminal Code Act⁵ defines crime or an offence as any act or omission which renders the person doing the act or making the omission liable to punishment under the law.⁶ In essence, a crime is a conduct which the state proscribes and imposes a sanction for its breach. Following the common law position of *actus reus non facit reum nisi mens sit rea*,⁷ the law of crimes in Nigeria is that for a person to be liable for a crime, it is generally required that there is a

⁵ Cap. C38 Laws of the Federation of Nigeria (LFN) 2004.

⁶ S. 3 of the Criminal Code Act, *supra*

⁷ Which means: 'An act would not make a person guilty of a crime until the person had a concurrent guilty mind.'

concurrence of the external physical act or omission (that is the wrongful conduct or *actus reus*) and the mental blameworthy state of mind (that is the wrongful mind or *mens rea*). Furthermore, under the Nigerian legal system, the definition of crime is restricted only to conducts expressly prohibited and defined as offences with their penalty prescribed in a written law.⁸

Accordingly, the commission or intent or preparation to commit an offence is the condition for the apprehension of offenders and the start off for police interference. In furtherance of the functions to prevent, detect, and manage crime, the Police Act confers on police officers the powers of investigation and arrest. Under section 31 of the Act, where an allegation of an offence is notified to the police, the police shall investigate the allegation in accordance with due process. Again, by section 32(1) of the Act, a person suspected of an offence shall be arrested, investigated, tried, or dealt with in accordance with the law.

3.0 The Position of the Law on Police Interference in Civil Transactions

Nothing in section 4 of the Police Act⁹ expressly or impliedly vests on the NPF the function of resolving civil transactions. Also, nothing in Part VII of the Police Act¹⁰ confers on police officers the power to intervene in civil transactions. As identified above, the primary function of the police relates to the criminal justice system. Indeed, by section 32(2) of Police Act, and section 8(2) of the Administration of Criminal Justice Act (2015), a person should not be arrested merely for a civil wrong or breach of contract. It is, therefore, both strange and surprising that the police have, by itself, extended its functions and powers to incorporate enforcement of civil

⁸ Section 36(12) CFRN. See also *Aoko v Fagbemi* (1961) 1 All NLR 400.

⁹ The section comprehensively enumerates the primary functions of the NPF.

¹⁰ The part deals extensively with the powers conferred on police officers

claims. This they, often, do by garbing civil disputes in the apparel of the offences of cheating and criminal breach of trust.

In *AIG & ORS v GOMBE*,¹¹ it was that the powers of the police going by the provisions of the Constitution and the Police Act and all other laws enabling the police to act, are indeed very enormous, but yet not left at large, and does not cover intermeddling or interfering with civil claims. In *ABAH v UBN*,¹² it was similarly held that the police (or any Law Enforcement Agency, for that matter, including the Economic and Financial Crimes Commission- EFCC), is not allowed to dabble into enforcement of civil contracts and agreements, or to engage in recovery of debts. Again in *DIAMOND BANK PLC v HRH EZE (DR) PETER OPARA*¹³ the Supreme Court lamented that the way and manner the police and some other security agencies, rather than focus squarely on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used by overzealous or unscrupulous characters for the recovery of debts arising from contracts, loans or purely civil transactions, is disturbing.

Indeed, the trend of police interfering in civil claims is a source of worry for both citizens and the courts. There are a plethora of cases where the courts have had course to deprecate the ugly practice. We shall highlight on a few as illustrative. Perhaps, the most authoritative recent decision on the issue is the Supreme Court's decision in *THEOPHILUS KURE v COMMISSIONER OF POLICE*,¹⁴ where in his concurring judgment, Aji, JSC lamented the situation, thus:

¹¹ (2016) LPELR-40816 (CA) per Georgewill, JCA. at pp. 3-32

¹² (2015) LPELR-24758 (CA)

¹³ (2018) LPELR-43907 (SC)

¹⁴ (2020) LPELR-49378(SC)

*As I went through the facts of this case, I was wondering how a purely civil matter could easily metamorphose and transubstantiate into a purely criminal case. The end result now is that the Appellant has suffered irreparable damage, disgrace, shame, odiousness, and untold hardship in the hands of the Police that is constitutionally and legally saddled with prosecution of criminal offences. The police have muzzled the rights and freedom of Nigerians even where cases are clearly outside their jurisdiction, power, or corridor. If this is not curbed, everybody, including the judicial officers, will suffer from floodgates of civil matters being hijacked by the police and transmuted into crimes. If this is not tackled, everybody would have suffered in the merciless hand of the police who has become a law unto itself in this country. The primary duty of the Police by Section 4 of the Police Act is the prevention, investigation and detection of crime and the prosecution of offenders. See *IBIYEYE v GOLD (2012) ALL FWLR (PT 659) 1074*. The Police is not adebt recovery agency and has no business to dabble into contractual disputes between parties arising from purely civil transactions...¹⁵*

The facts of this case are interesting. Mr. Theophilus Kure was a veterinarian living in Kaduna. He was contracted by the Rivers State Ministry of Culture and Tourism through one Mrs. Sokari Davies, the Director of Tourism in the Ministry, to supply a calf giraffe, at a consideration of N3,500,000 (Three Million Five Hundred Thousand Naira). Mr. Kure was paid the consideration sum in full, but he failed to supply within the time of two weeks agreed. After months on end of waiting, the Ministry reported the matter to the Commissioner of Police, Kaduna State Command. The police accepted the complaint and charged Mr. Kure before the Chief Magistrate Court, for the offences of criminal breach of trust and cheating contrary to sections 312 and 322 of the Penal Code. The court convicted Mr. Kure as charged, and also ordered him to pay compensation of the contract money to the Ministry. Mr. Kure's appeals to the Kaduna State High Court, and subsequently to the Court of Appeal, were dismissed. Dissatisfied, Mr. Kure further appealed to the Supreme Court. In its momentous decision, the Supreme Court overruled the concurrent findings of all three lower courts, and acquitted the Appellant. Aside the reasoning that the prosecution failed to establish the essential ingredients of

¹⁵ pp. 32-33, paras. A-E

the offences alleged against Mr. Kure, the Supreme Court was emphatic that there was nothing criminal in the transaction between Mr. Kure and the Ministry, holding that the affair was a purely contractual issue which remedy lay in civil litigation and not criminal prosecution.

According to the Supreme Court:

The second comment under section 312 of the Notes on the Penal Code law by S.S. Richardson, states as follows: 'Breach of trust is not the same thing as breach of contract. In all the cases given in the illustration to Section 311, in which a person is said to have committed criminal breach of trust, the property misappropriated is the property of another person or property of which the offender was not the beneficial owner.' For a criminal breach of trust to occur, there must be evidence of trust. A trust... is a property interest held by one person, called the trustee at the request of another person called the settlor for the benefit of a third party called the beneficiary... A trust exists when property is to be administered by one person on behalf of another for some purpose other than the trustee's benefit. Where the property is administered for the benefit of the person holding it, it ceases to bear the meaning of trust... In the instant case there are no beneficiaries other than the Appellant... I am of the firm view that the transactions involved in this case were based on contractual agreement, as there is no evidence of criminal breach of trust. In Onagoruwa v State (1993) LPELR-43456 (CA) at pages 67-68 Paras, F-B, Niki Tobi (as he then was) said 'There Is no law known to me where a breach of agreement between two parties, can result in a criminal charge and subsequent conviction. At best, it can be a breach of a contractual relationship which the criminal law lacks the legal capacity or competence to enforce or punish' ...¹⁶

Though the nominal complainant who laid the complaint is a means, the end lies with the police. Before the police should swing into the action of accepting a complaint and proceeding to arrest, detain and prosecute an alleged offender, it should make a considered assessment of the complaint to discover whether the crux of the issue is crime or civil liability. The corresponding author's experience sometimes in April 2022 at the GRA Division of the Taraba State Command of the Nigeria Police Force is instructive. A complaint on alleged rape was laid by a man who claimed to be the guardian of the victim. The alleged victim was never produced, nor was any

¹⁶ Per Galumje, JSC, pp. 22-24

evidence aside the oral statement of the complainant adduced. Preliminary investigations showed that the alleged offender was merely a boyfriend to the alleged victim, and the crux of the allegation was that alleged offender impregnated the alleged victim. Preliminary investigation also disclosed that both the alleged victim and alleged offender were adults who were in a love relationship, and often partook in consensual sexual intercourse. Indeed, the alleged offender stated that he always used condom when having sexual intercourse with the alleged victim, and could not have impregnated her. Notwithstanding, the complainant insisted that the police must detain and prosecute the alleged offender. Admirably, the police declined this invitation to meddle into the issue, and advised the complainant to seek the services of a lawyer to ventilate his grievances, if any, in a civil court. This conduct of the police is commendable.¹⁷

The police should know, based on the nature of the complaint received, whether a crime has been committed or is likely to be committed, and must therefore take blame if it allows itself to be dragged, needlessly, into a civil issue. This point was stressed by the court in *OGBONNA v OGBONNA & ANOR*:¹⁸

This brings to the fore, again, the sad reminder of how the Police sometimes allow themselves to be willing tools in the hands of mischief makers to pursue evil private scores/agenda of trouble makers, like the Appellant, and compromise the lawful and proper function of their Office. I had cause to deprecate this in the case of GASAU v UMEZURIKE (2012) ALL FWLR (Pt. 655) 89; (2012) 28 WRN 111 at 145 ‘... that the police have no business helping parties to settle or recover debts. We also deprecated the resort by aggrieved creditors to the Police to arrest their debtors using one guise of criminal wrong doing or another....’

¹⁷ This in tandem with the admonition of the courts that police station is not a place for civil matters. The function of the police is to maintain law and order in the society. In doing this, the police can investigate and prosecute offenders of crime. The police should not be used to settle scores or be used by the mighty to oppress the small; it is not an agent of vendetta. Even if a citizen decided out of ignorance or wickedness to take a civil matter to the police, the police has the duty to direct the person to the appropriate place, been a court with civil jurisdiction. See *OKAFOR v AIG ZONE II* (2019) LPELR-46505 (CA) at p 22

¹⁸ (2014) LPELR-22308 (CA), pp. 54-55, paras. C-A, per Mbaba, JCA

Another illustrative case about police meddling into civil matters is *OMUMA MICRO-FINANCE BANK NIG. LTD v OJINNAKA*¹⁹In this case, the Respondent, Vincent Ojinnaka, was both a shareholder and a customer of the Appellant bank, Omuma Micro-FinanceBank. In 1996, he obtained a loan facility from the bank, which he secured with his property. He liquidated and paid off the loan sum and interest. In 1997, he applied and secured another loan facility in the sum of One Million Naira (₦1,000, 000). But, he was unable to repay this second loan as scheduled. The bank secured the services of some police officers to assist in recovering the loan. The police officers arrested the Respondent at his residence in Aba. They took him to Owerri, and detained him. They later transferred him to Enugu. At Enugu, the police forcefully caused the Respondent to issue two cheques cumulating to Five Hundred and Fifty Thousand Naira (₦550,000) in favour of and duly received by the Appellant. The Respondent's case for false imprisonment was successful. The court took the opportunity to castigate the police for meddling in the civil matter, calling it crass and unprofessional attitude because 'The Police instead of limiting their duties to the protection of lives and properties in accordance with their enabling statutes, they have reduced themselves to the status of debt collectors/ recovery agents, and are being used by unscrupulous citizens for illegal activities.'²⁰

A further interesting case is *MCLAREN & ORS v JENNINGS*.²¹Here, the Respondent, James Jennings, was the Managing Director of Sotra Nigeria Limited, a corporate entity which owed Nicon-Noga Hilton Hotels Limited ('the Creditor') some money. The 1st Appellant, Ken McLaren, an officer of the Creditor, went to Kano with two police officers, arrested the

¹⁹ (2018) LPELR-43988(CA)

²⁰At p. 15 of the E-Report

²¹ (2002) LPELR - 5784 (CA)

Respondent, drove him to Abuja, locked him up in a room in the Creditor's hotel, and demanded for an immediate repayment of the sum. Aghast with the conduct of the police, the Court interpreted the provision of Section 4 of the Police Act and stated the position of the law on the propriety of the police to recover debts or enforce contracts, thus:

I have scrutinized the provisions of the section and am unable to see a provision providing for or empowering police to enforce contract or collect common debts. The appellants and the policemen they pressed into duty were not in Kano to prevent or detect a crime nor was the respondent an offender. It is equally not the case of the appellant that there was a breakdown of law and order, the preservation of which took them to Kano. The court has also not been told of the laws or regulations the group went to enforce in Kano. In short, the appellants and the policemen they took to Kano were there to collect debt which is not one of the several duties assigned to the Police under the provisions of the Police Act to which the court was directed and the court has not been able to find another provision of the Act empowering or constituting the Nigeria Police Force to one of a debt or rent collector, It follows that the policemen who accompanied the appellants to Kano and assisted them in the arrest of the respondent were on the frolics of their own. The arrest was not authorized by the Act and was consequently unlawful, wrongful and illegal and cannot afford the appellants a shield.²²

A final illustrative decision for our purpose is ANUBALU v STATE.²³ In this case, the court observed that even assuming that the Complainant paid money to the Appellant as purchase price for the property, and the Appellant failed to deliver the property as agreed, or to refund the purported consideration, the only remedy available in law to the Complainant is to institute an action for either specific performance of the contract, restitution, and or to seek for damages for breach of contract, and not to engage the police to file a spurious criminal charge of obtaining by false pretence against the Appellant.²⁴ According to the court, our jurisprudence is replete with practice and procedure for enforcing the terms of commercial contract between parties, and if indeed, there was any agreement or contract for the sale of the property by the Appellant who is

²² Per Salami, JCA, P. 8, Paras. B-G

²³ (2019) LPELR-48088 (CA)

²⁴ Page 45 of the E-Report

the legal owner of the property, and the said Appellant reneges or rescinds on the contract after receiving the purchase price, the cause of action falls within the purview of a breach of contract which does not require the involvement of the police.²⁵

The Court held that there was nothing in the provisions of the Police Act, empowering the police to enforce contract or meddle into purely civil transactions between parties, and that such interference is an abuse of statutory powers. Conclusively, the court counseled the police to methodically sieve through the countless petitions it daily receives, to determine if there is criminal element therein before acting on same. This is because it simply is neither the duty nor the power of the police to serve as agents of any person, be it individual or a corporate citizen or even agents of government at the Federal or State or Local Government level, to enforce commercial disputes, under any guise or pretext of investigating a crime in a purely civil dispute without any element of criminality.²⁶

It was surely in response to the hues and cries attendant to the police's dabbling into civil transactions that the legislature thought it wise to make an express pronouncement on the issue. Accordingly, a new provision, which was first inserted as section 8(2) of the Administration of Criminal Justice Act (2015), is again, inserted as section 32(2) of the Police Act (2020), to expressly prohibit police from arresting a person merely on a claim of civil wrong or breach of contract.

4.0 Remedies Available to Victims of Unlawful Interference in Civil Claims by the Police

²⁵ Page 46 of the E-Report

²⁶ Page 47 of the E-Report

An individual who is aggrieved with unlawful interference in civil claims by the police is afforded a catalogue of remedies. These remedies are enforceable either solely against the individual complainant who was the mastermind of the arrest, detention or prosecution; collectively against both the individual and the police; or separately, against the police officers who turned themselves into tools at the behest of the complainant. Laying credence to this assertion, the Court of Appeal in *SKYE BANK PLC v NJOKU & ORS*²⁷ stated that ‘a party that employs the Police or any law enforcement agency to violate the fundamental right of a citizen should be ready to face the consequences, either alone or with the misguided agency.’ In *OMUMA MICRO-FINANCE BANK NIG. LTD v OJINNAKA*, it was held per Mbaba JCA, that:

*‘... one who procures the Police or any law enforcement agency, to dabble in a purely civil contract, to recover debt for the party to an agreement, must be ready to bear the consequences of such unlawful act of the Police/law enforcement agency, acting in abuse of their powers.’*²⁸

Again in *MADUKA v UBAH*²⁹ it was stated that if a party assists the police to get the person arrested, and if such arrest amounts to a breach of fundamental right, the person who assisted the police will be as liable as the police. This is because in such a situation, the person plays an active part towards the arrest. It is the law that if the report made to the police is made *malafide*, it takes the reporter from the angle of an innocent person to that of an interested person who wants to harass or oppress the other person. In such a situation, the law will come in aid of the oppressed.

²⁷(2016) LPELR-40447 (CA)

²⁸ (2018) LPELR-43988 (CA) pp.15-17, paras. F-A

²⁹ (2014) LPELR-23966 (CA)

Similarly, in *KURE v COP*,³⁰Uwani Musa Abba-Aji JSC, held thus:

When, as in the circumstances of this action, a purely civil matter is reported to the Police, such a person cannot go scot-free as the report ought not to have been made at all since it is not within the purview of Police duties. It is a report made malafide and he will equally be liable for the action taken by the Police irrespective of whether he actively instigated them or not, since he had no business involving the Police in a purely civil matter in the first place. Such conduct which portrays disregard of the law and is aimed at using the coercive powers of the State to punish a contracting party is purely a civil matter which ought to be mulcted in exemplary damages. See OKAFOR & ANOR v AIG POLICE ZONE II ONIKAN & ORS (2019) LPELR-46505

The four main remedies against unlawful interference in civil matters by the police are identified as (a) action for false imprisonment; (b) action for malicious prosecution; (c) fundamental rights enforcement action; and (d) action constituted under the Anti-Torture Act. These remedies would now be discussed.

4.1 Action for False Imprisonment.

An action for false imprisonment is a remedy exercisable against the individual complainant. As a civil action which finds its bearing in the law of torts, false imprisonment occurs when one person intentionally restricts another person's movement within an area, without legal authority or justification, and without the restrained person's express or implied permission.³¹ Actual physical restraint is not a necessary factor for the establishment of false imprisonment, neither is it necessary that the constraint be a physical barrier. Only the following are required:

- a. The confiner acted willfully

³⁰ Supra at p. 33

³¹ "False Imprisonment" Wex. Cornell Law School. <https://www.law.cornell.edu/wex/false_imprisonment> accessed 22 March 2022

- b. The confiner intended to confine the victim (the plaintiff)
- c. The confiner did confine the plaintiff
- d. The plaintiff was aware of his/her confinement
- e. The confinement was without legal authority and without the plaintiff's consent.

The action in false imprisonment was adopted by the Respondent in *OMUMA MICRO-FINANCE BANK NIG. LTD v OJINNAKA*³² and the court awarded damages in his favor. The Respondent was able to establish his claim that his arrest without reasonable cause, and consequent detention by the Appellants was a willful and intentional confinement which was done without authority or consent. However, the law is that where the Plaintiff is arraigned, the action for false imprisonment cannot be brought during the pendency of criminal proceedings instituted against the Plaintiff, and must await the determination of the criminal case, lest it would fail for want of maturity.³³ Also, where the victim was arrested in the course of investigating a crime pursuant to sections 35(1), (4) and (7) (a) of the Constitution or in consequence of a reasonable suspicion of the commission of a crime, an action for false imprisonment may fail.³⁴

4.2 Malicious Prosecution

Like the action for false imprisonment, the tort of malicious prosecution is enforceable against the individual complainant. The tort has been defined in several ways. In *OGBONNA v OGBONNA*,³⁵ for instance, it was defined as a tort or a civil wrong which enables a person who is the subject of groundless and unjustified court proceedings to seek a civil claim for damages

³² *Supra*

³³ See *UDOFIA & ANOR v OKON & ORS* (2018) LPELR-64154(CA)

³⁴ See the cases of *UDO v ESSIEN* (2014) LPELR-22684(CA), and *OKEKE v IGBOERI* (2010) LPELR-4712(CA).

³⁵ *Supra*, per Orji-Abadua

against his prosecutor. Kodilinye and Aluko described it as a tort committed where the defendant maliciously and without reasonable or probable cause, initiates against the plaintiff, a criminal prosecution which terminates in the favour of the plaintiff, and which results in damage to the plaintiff's reputation, physical body or property.³⁶

As can be gleaned from the above definitions, the tort of malicious prosecution is only feasible in the presence of a formal charge of the victim/plaintiff before a court of law, with the charge being in past tense. The civil remedy of malicious prosecution is best understood through the elements needed in proof of it. Thus, for a victim of the extra functions of the police to succeed in an action for malicious prosecution, he must prove, as plaintiff, the five elements of malicious prosecution. These elements are listed and summarily discussed below:

- a. The defendant, as complainant, instituted or was instrumental to the institution of the prosecution or criminal proceedings against the plaintiff.
- b. The prosecution or criminal proceedings terminated in favour of the plaintiff.
- c. There was no reasonable or probable cause for setting the law in motion against the plaintiff.
- d. The complainant/defendant was malicious.
- e. The plaintiff suffered damages.

These elements are cumulative and must each be proved by the plaintiff before his claim for malicious prosecution can be successful:

4.2.1 Institution of Prosecution: The first element, institution of the prosecution (criminal proceedings), is proved when it is shown that the complainant/defendant either directly prosecuted the criminal matter or urged the prosecution of the victim/plaintiff by the police. When the complainant/defendant merely did the latter, he is said to have set the

³⁶G Kodilinye and O Aluko *Nigerian Law of Torts* (Revised Edition, Spectrum Books Ltd. 2001).

law in motion. This connotes that the criminal proceedings may be technically or constructively conducted by the complainant/defendant. Hence, if the defendant knowingly made a false accusation to the police or a judicial officer with the result that the innocent plaintiff was sent for trial, he will be liable as the prosecutor, even though the prosecution was not technically conducted by him.³⁷ In the case of *KURE v COP* (supra), the appellant, having been discharged and acquitted by the Supreme Court, may choose to seek remedy through the tort of malicious prosecution after being certain of passing this first test, for it is unarguable from the facts that Mrs. Davies/ Ministry of Tourism set the law in motion and constructively prosecuted him.

4.2.2 Criminal Proceedings Favoured the Plaintiff: The second element (that the criminal proceedings terminated in favour of the victim/plaintiff) is met where the plaintiff was not convicted in the criminal suit instituted against him. What is essential is not whether he was proved innocent or not, but that he was not convicted. Generally, withdrawal by the prosecution or an exercise of *nolle-prosequi* by the Attorney General in favor of the accused is enough to fulfill this element.³⁸ This element is also met where the accused/plaintiff was declared innocent by the court, and the complainant or prosecution has not taken steps to initiate an appeal against the decision that declared the accused/plaintiff innocent of the criminal allegation or allegations, where such is appealable. Again, the case of *KURE v COP* has a pass in this element.

³⁷ *TEWARI v SINGH* (1908) 24 T.L.R. 884

³⁸ In *OGBONNA v OGBONNA & ANOR* (Supra), the court held that if the proceedings are terminated in a way that means that the accused person is not actually found guilty by a Court (such as where a *nolle prosequi* is entered), the plaintiff does not need to positively prove his innocence in order to recover damages for malicious prosecution.

- 4.2.3 Absence of Reasonable Cause: Proving the third element (the absence of reasonable cause) is often the bane of the victim/plaintiff in an action for malicious prosecution, for the action is won or lost on this ground. The presence of reasonable or probable cause for setting the law in motion would deflate an action for malicious prosecution, and it is for the plaintiff to establish a dearth of it, not for the defendant to prove its existence. Generally, where the victim's prosecution was due to the unlawful interference of police in civil matters, there is a high likelihood of the absence of reasonable or probable cause, allowing the seemingly tough element become a piece of cake for the victim/plaintiff. The Respondent in *OMUMA MICRO-FINANCE BANK NIG. LTD v OJINNAKA*, as well as the Appellant in *KURE v COP*, would, and could, easily prove this element given the peculiarity of the facts of their cases.
- 4.2.4 Proof of Malice: Proving that the complainant was malicious is a proof that necessarily flows from the element of lack of reasonable cause. Malice here simply means that the complainant was actuated by an improper motive for prosecution. Improper motive is the desire to secure and achieve anything else other than justice. In defining what malice is, it was held in *ARBRATH v NORTH EASTERN RAILWAY COMPANY*³⁹ that the plaintiff must show 'that the proceedings of which he complains of are instituted in malicious spirit, that is from an indirect and improper motive, and not in furtherance of justice...' And unless the victim/plaintiff so proves, he cannot succeed in an action for malicious prosecution. And even though malice is not the same as lack of reasonable cause, and different factors are required in proof of both, success in proof of one will

³⁹(1883) LR11 Q.B.D 440 Per Bowen L.J

presumably lead to success in proof of the other. The action of the complainant in OMUMA MICRO-FINANCE BANK NIG. LTD v OJINNAKA in causing the arrest and detention of the Respondent in the absence of the Respondent as a privy to the contract is a clear case of malice.

4.2.5 Proof of Damages: The fifth element, the pinky finger, of the tort of malicious prosecution, is proof of damages. Here, the victim/plaintiff must prove that by virtue of the proceedings against him, he suffered damages or injury to his person, his reputation or his property. The victim/plaintiff must satisfy the court either that he was corporally punished or imprisoned or physically bruised or wounded, or that the news of his arrest or imprisonment made reasonable members of the society to think at any point that he has a criminal intent. Bearing of cost in the course of the prosecution is also a proof of damages suffered. This connotes that physical damage, pecuniary damage, and character damage, are the kinds of damages contemplated in an action for malicious prosecution. This makes the category of damages wide, ambiguous and somewhat unpredictable. Proof of this element proves to be the easiest given the simplicity of what needs to be proved and the heightened possibility of proving same. In OGBONNA v OGBONNA & ANOR the 1st Respondent, Christian Ogbonna, was able to satisfy the court that he and his mother, the 2nd Respondent, suffered damage, for their detention in the police cell at Kafanchan on several occasions by the Appellant, Patrick Ogbonna, who was his half-brother. His damage was monetary and made up of the bail sum and the money he had expended on legal services rendered.

4.3 Fundamental Rights Enforcement Action

An action for the enforcement of fundamental rights should actually be the first in the mind of the victim when seeking remedy overunlawful interference by police in civil matters. Fundamental rights are pre-eminent human rights specially guaranteed by Chapter IV CFRN.⁴⁰ Other guaranteed human rights are documented in African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.⁴¹ Ordinarily, in this circumstance, the right is enforceable severally and jointly against the complainant, the police officer(s), and the police as an institution. The rights that are, often, infringed when police unlawfully meddle in civil matters are right to dignity of human person under section 34, right to personal liberty under section 35, and right to freedom of movement under section 41 of the CFRN.

In the case of *GUSAU & ORS v UMEZURIKE & ANOR*,⁴² the victim enforced his right against the complainant, the Commissioner of Police, the Inspector General of Police, and the Nigeria Police. The Court of Appeal upheld the decision of the High Court of Kwara State declaring the detention of the 1st Respondent wrongful and unlawful, awarding Five Hundred Thousand Naira (₦500,000) damages to the 1st Respondent for the infringement of his fundamental right to personal liberty pursuant to section 35 (6) of the CFRN. In this case, the 1st Respondent, Emeka Umezurike, a textile merchant imported textile materials into Nigeria from Togo. His business partner, the All State Company (Nig.), was to clear the goods with the Nigeria Customs and other related agencies for him. Both the 1st Respondent and his business partner were cash strapped. His business partner decided to borrow some money from the 1st Appellant, Alhaji

⁴⁰ See Section 33 – 45 of the CFRN

⁴¹ The Charter whose general title is African Charter on Human and Peoples' Rights is a domestic law enforced in Nigeria by virtue of Section 12(1) of the CFRN 1999. That section allows for international laws and treaties ratified by Nigeria to have the force of law in the country. The Charter was adopted by African Union in 1981 and ratified by Nigeria in 1983, giving it an enforceable arm in the country. The Charter consists of 63 articles wrapped into 3 parts and 4 chapters.

⁴² (2012) All FWLR (Pt. 655) 291 at 318

Bala Gusau. The 1st Respondent undertook to pay the loan and issued to 1st Appellant a cheque covering same. The goods were, however, impounded by the Nigeria Customs, and the cheque was dishonoured when presented. The 1st Appellant lodged a complaint with 2nd-4th Appellants' agents.⁴³ Accordingly, the 1st Respondent was arrested and detained by the 2nd-4th Appellants' agents before he was charged to court.

Fundamental rights owe its enforcement and remedy to section 46 CFRN.⁴⁴ Proof of bodily injury or pecuniary damage is not a condition for success in fundamental matters, the infringement itself suffices. Mere infringement is viewed as a violation of the tenets of the CFRN and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, and it raises a presumption of injury to the person.

5 Anti-Torture Act Enforcement.

The last remedy for consideration is the invocation of the provisions of the Anti-Torture Act (2017). This is a criminal action against the complainant and his agents, the Police officers, and can only be invoked when the acts of the complainant and his agents amounted to torture under the Act. Section 2 of the Act broadly defines the phrase 'torture'. In doing so, it categorizes torture into physical and mental torture. While 'physical torture' includes, among other acts, beating, head-banging, punching, kicking, striking with rifle butts and jumping on the stomach, food deprivation, electric shocks, cigarette burning, submersion of the head in either clean or polluted water, tying of the body, rape, sexual abuses, mutilation, forced dental extraction, harmful exposure to sunlight or cold, use of plastic bags over the head to the point of

⁴³ The 2nd, 3rd and 4th Appellants were the Commissioner of Police Kwara State, the Inspector General of Police and the Nigeria Police Council.

⁴⁴ By section 46 (1) CFRN: 'any person who alleges that any of the provisions of this Chapter has been, is being, or is likely to the contravened may apply to High Court in that State.'

asphyxiation, use of drugs to induce confession, and other forms of aggravated treatment, 'mental torture' includes blindfolding, threats, solitary confinements, prolonged interrogations, unscheduled transfer of a person from one place to another creating the belief that the person will be summarily executed, maltreating a member of the person's family, torturing the person in the presence of another person, denial of sleep or rest, stripping the victim naked, shaving of the hair, putting marks on the person's body, and confining the victim under intolerable prison conditions.⁴⁵

With all these acts of torture, the torture is only committed when intentionally carried out to either obtain information, punish the victim for the act he committed or suspected to have committed, or to intimidate the victim or a third party.⁴⁶ This implies that unintentional acts of torture are not actionable. It must be added that emergency, consent of a public officer, threat of war, and internal political instability are not legal justifications for torture.⁴⁷

The action for torture is directed against the Police officers, but may lie against the complainant if he expressly directed those acts. In addition, for a victim to succeed under the Anti-torture Act, he must have been a victim of any of the physical or mental acts of torture, and must not have given his consent. Again, as a general principle of criminal proof, he must prove the torture beyond reasonable doubt.

⁴⁵ See s 2(2) of the Anti-Torture Act (2017)

⁴⁶ See s 2(1) of the Act

⁴⁷ S 2(1) and 3 of the Act

5.0 Conclusion

The interference by the police in civil transactions is reprehensible, wrongful and unlawful. It is not within the functions or the powers of the police to settle civil claims; and the police are not to be used as debt collection agents. Section 8(2) of the Administration of Criminal Justice Act (2015), Section 32(2) of the Police Act (2020), and a host of judicial authorities have made this clear. The remedies available to a person who is at the receiving end of the exercise of this unlawful power are, as far as we can say, adequate. Though adequate, they raise questions on the enforcement of contracts against a party who is unwilling, and has willfully refused to perform his part of the agreement. For such persons, would it not be morally justifiable to engage the police, who have a record for forcing compliance with such agreements? Another scenario that poses a justifiable ground is what happens when civil proceedings have been commenced against the party who has breached the agreement, but is unwilling to appear before the court. Should criminal proceedings not be initiated against such an individual as an exemplary punishment, and to ensure his constant appearance throughout the civil suit? The answers will rest on the negative as the law was not created to justify our moral convictions. There are adequate remedies in the law for enforcing agreements, for securing the attendance of a party sued in court, and for enforcing the judgments or orders of a court upon a party who breaches the rights of another in a civil transaction. The Nigeria police, as an agency, cannot continue adding to history by exercising functions and powers beyond that conferred upon it by its enabling statute.

The irony still remains. Instead of being the protector of the fundamentally guaranteed rights of citizens, the police often become the violators of these rights. This gongs a sound of hopelessness for the citizenry. On the other hand, it necessitates a call for citizens to build intimacy with their

legally endowed rights and make a resolve to enforce them anytime and everytime they are infringed. Threats for the engagement of the police over the enforcement of contractual agreements or disagreements should not be greeted with fangs of fear, unless there really is a criminal intent. The extension of police powers to civil transactions is not only untrammelled, it is non-existent and should be treated so. A fitting conclusion is the words of the court in OKAFOR v AIG ZONE II⁴⁸ which attempts to delineate when it is proper for the police to act, and when

It is true that once a citizen reports a matter to the police, the rest is left to the police. The decision to arrest or detain is squarely on the shoulders of the police and not the individual. The individual will surely not be responsible for the decision of the police. However, when a citizen reports a matter which he knows or ought to know that the police has no power to handle, being a civil matter, consequent upon which the police makes arrest which breaches the fundamental rights of another person, the person who reports the matter will be liable, as such a report, is said to be done mala fide, that is in bad faith. However, if a civil matter has some criminal connotation, that is to say it is not purely a civil matter; a citizen can report that criminal content. The police is meant to hear complaints on criminal matters and then proceed to investigate professionally and if need be proceed to arrest and detain but this must be done within constitutional limit to bring the suspect to court. If after reporting a criminal matter, the police in exercise of their duty of investigation go beyond their constitutionally acceptable limits, the police will answer for it and not the person who made the report. No citizen no matter how highly placed should dictate to the police on how to go about their duty of investigation, who to arrest, when to arrest, and when to release a suspect.⁴⁹

⁴⁸ (2019) LPELR-46505

⁴⁹ See page 22-23 of the E-Report