

2009 FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES: THE RIGHTS OF DEPENDANTS AND CORPORATE ACTIONS IN NIGERIAN COURTS

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Abstract

The 'human' element in the description of Human Rights is getting eroded to enable artificial entities enjoy some of the rights. We now have fundamental rights which seem to encompass both rights inherent in people as human beings and those developed and recognized by the society through legislation for the enjoyment of the original rights. This article discusses the availability of the Fundamental Rights Enforcement Procedure Rules, 2009 (FREP Rules) to the enforcement of those rights by natural, artificial persons and the dependents of deceased rights holders. While perspectives of jurists and practitioners seem to be in disarray, the article interrogates arguments that only natural persons can enforce human rights through the instrumentality of the FREP Rules. Following a detailed analysis of the legal basis of rights and underscoring the distinction between the 'human' rights and 'enacted' rights, the article concludes on the restrictive note that human rights should not be enforceable by corporate entities via the FREP Rules. Alternative procedural rules, including common law remedies, are rather commended to such artificial entities.

Keywords

Corporate Enforcement, Dependants' Actions, FREP Rules, Human Rights, Nigerian Courts.

INTRODUCTION

By the very nature that one is human, certain rights have been regarded as accruable to persons since the Magna Carta of 1215.¹ These are the rights catalogued as Human Rights. The term ‘human right’ is relatively of recent origin or usage, but the idea of human rights itself is as old as man. Human right has been used in the term of natural rights or in a more appealing term ‘the right of man.’² However, with time, some other rights developed and are recognized by law. This pushed them into the realm of what is today regarded as “fundamental human rights”. These rights are possibly so described due to the reality that even those that are outside the peculiar rights of human beings are still enforceable through human beings.

However, as shall be unveiled in the course of this engagement, the confusion arising from the broad classification eventually led again to the delimitation of the boundary under the Nigerian human rights jurisprudence. The ‘human’ element in the description has now been eliminated to enable artificial entities enjoy some of the rights. We now have fundamental rights which seem to encompass both rights inherent in people as human beings and those developed and recognized by the society through legislation for the enjoyment of the

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¹ Magna Carta Libertatum is the "Great Charter of Freedoms" agreed to by King John of England on 15 June 1215. It has served as the origin of standardization of rights and later developed to the status of statutory and constitutional recognition. See generally, Samuel Rawson Gardiner, *The Constitutional Documents of the Puritan Revolution, 1625-1660*, (3rd edn, OUP 1906).

² Daniel Moeckli, Sangeeta Shah, and Sandesh Sivakumaran, *International Human Rights Law* (New York, OUP 2010) 18.

original rights. Be that as it may, the crux of this discussion centers on the availability of the Fundamental Rights Enforcement Procedure Rules, 2009 (FREP Rules) to the enforcement of those rights by natural and artificial persons. It is the contention in some quarters that only human beings can interrogate those rights through the instrumentality of the FREP Rules to the exclusion of artificial entities. Opinions, both from the perspectives of jurists and practitioners seem to be in disarray on the issue. This we shall analyse in the corpus of this work. Beyond this is also the aspect of representatives ventilating the rights on behalf of non-existent human beings, precisely a deceased. Is such permissible under the FREP Rules? Can the estate of the deceased or other affected persons ventilate the rights of a deceased using the FREP Rules? These are the compelling points of our engagement in this effort. For a proper appreciation of the issues involved, it is pertinent that we commence with conceptual clarification of terms used. Thereafter, an evaluation of the legal basis of the rights and its actualization will be undertaken. On the strength of the above, we take excursion into the realm of evaluating the views expressed and the correct proposition therefrom. An apt conclusion of our analysis will then be done.

CONCEPTUAL CLARIFICATION

As indicated above, there is a need for a working definition or description of the terms crucial to this paper. In this respect, terms such as ‘human rights’; ‘fundamental human rights’; ‘fundamental rights’, ‘person’ and ‘citizen’ are pertinent.

What are Human Rights?

In a bid to describe ‘human rights’, it is essential to first appreciate the meaning of the word, ‘human’. According to New Webster’s Dictionary of the English Language,³ ‘human’ connotes: ‘of or characteristic of man, being a person, of people as limited creatures, human failings, resembling man’ Similarly, Oxford Advanced Learner’s Dictionary⁴ defines ‘human’ to mean ‘of or connected with people rather than animals, machines or gods.’

The import of the foregoing is that literally, human means a natural person which excludes an animal, machine or gods and does not admit of any artificial person. Therefore, human rights, according to Black Law Dictionary⁵ consists of:

The freedoms, immunities, and benefits that, according to modern values (esp. at an international level), all human beings should be able to claim as a matter of right in the society which they live.

In the same vein, New Webster’s Dictionary of the English Language⁶ proffers the meaning thus:

the right to be free from governmental violations of the integrity of the person...”; “the right to fulfillment of such vital needs as food, shelter, health care, and education...”; and “the right to enjoy civil and political liberties....

³ *The New Webster’s Dictionary of the English Language* (International Edition, New York: Lexicon International – Publishers Guild Group 2004) 471.

⁴ Albert Sidney Hornby, *Oxford Advanced Learner’s Dictionary* (7th International Student’s Edition OUP 2005). 729.

⁵ Bryan A Garner, *Black’s Law Dictionary* (11th edn West Publishing Co. 2019) 889.

⁶ The New Webster’s Dictionary (n 3).

From the communal import of the above, the rights originally appear unique to human beings but by the time society creates other rights outside those innate to human beings, it becomes fundamental rights. Meaning that the continuous evolution of man led to the development of the associated rights that are not by virtue of being human enjoyable. By Order I rule 2 of the FREP Rules, human rights include fundamental rights. The implication of this definition of human rights by FREP Rules is that ‘fundamental rights’ is just a part of human rights; hence it can be said to be subsumed under human rights. However, in one’s view, the converse ought to be the position. That is, ‘fundamental rights’ include ‘human rights’. It is a broader term than human rights. Historically, the protection availed used to be restricted to human rights than the societal created rights. In a more general term, human right means right to life, liberty, equality and dignity of individual irrespective of race, religion or creed. Human rights are rights one has because one is a human being. A right derives from the inherent dignity of a human person.⁷

What is Fundamental Right?

What then is fundamental right? According to the Black’s Law Dictionary,⁸ it is a right derived from fundamental law; a significant component of liberty, encroachment of which are rigorously tested by courts to ascertain the soundness of purported governmental justification. They are creatures of law than nature.

⁷ Jack Donnelly, ‘Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights’ (1982) 2: 76 *The American Political Science Review* 304.

⁸ Black’s Law Dictionary (n 5) 817.

It is in this context that Order I Rule 2 of the FREP Rules defines Fundamental Right to mean ‘any of the rights provided for in Chapter IV of the Constitution and includes any of the rights stipulated in the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act’. The import is simply that these are rights created by law and are, therefore, enforceable by the force of it.

The dichotomy between ‘human right’ and ‘fundamental right’, was considered by the Court of Appeal in *Uzoukwu v. Ezeonu II and Ors.*⁹ where the court said:

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

The words ‘Human Rights’ have been used interchangeably with ‘fundamental rights’. The genesis of this usage can be traced back to the discourse on human rights, where ‘human rights’ is used to refer to those rights which are universal in nature and applicable to all humans irrespective of their race or creed. Fundamental rights are rights enshrined in the Constitution of nations of the

⁹ (1991) 6 NWLR (Pt. 200) 708, 760-761, paras. H-A.

world.¹⁰ The bottom line is simply that fundamental rights encompass human rights that are creations of nature and enacted rights that developed outside the ambit of nature, and this explains why artificial entities can equally enjoy the latter. In contemporary times, however, fundamental rights are used to accommodate both categories of rights discussed above, that is human and enacted rights.

Who is a Person?

Section 18 of the Interpretation Act¹¹ defines the word ‘person’ to include any body of persons corporate or unincorporate’. Black’s Law Dictionary¹², after defining persons as human beings (i.e., natural person), went on to define artificial person as ‘an entity, such as a corporation created by law and given certain legal rights and duties of a human being; real or imaginary, who, for the purpose of legal reasoning is treated more or less like a human being’.

Identically, Chambers Dictionary¹³ defined persons as ‘a human being (natural person), or a corporation (artificial person) regarded as having rights and duties under the law.’ In addition, Section 43(1) of the Companies and Allied Matters Act, 2020 provided that upon incorporation, a company has all the powers of a natural person. Therefore, in the eyes of the law, ‘person’ includes artificial entities.

¹⁰ Gianluigi Palombella, ‘From Human Rights to Fundamental Rights: Consequences of a Conceptual Distinction’ European University Institute Working Paper Law No 2006/34 available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=963754, accessed 19 May 2021.

¹¹ Laws of The Federation of Nigeria 2004, Vol. 7, CAP. 123.

¹² Black’s Law Dictionary (n 5.)1378 – 1379.

¹³ *The Chambers Dictionary* (Chambers Harrap Publishers Limited 1993) 1271.

Citizens

Black's Law Dictionary¹⁴ defines a citizen as:

Someone who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections; a member of the civil state, entitled to all its privileges.

According to Chambers Dictionary,¹⁵ a citizen is a member of a political community, which is defined by a set of rights and obligations. Chambers Dictionary further states that 'Citizenship therefore represents a relationship between the individual and the state, in which the two are bound together by reciprocal rights and obligations.'

Under the 1999 Constitution, a person can become a citizen either by birth,¹⁶ by registration¹⁷ or by naturalization.¹⁸ The meaning given to a citizen by birth, by registration and by naturalization in the 1999 Constitution does not admit of corporate citizenship and hence, the word 'citizen' as used in Chapter IV of the 1999 Constitution can be said to refer strictly to a human being.

LEGAL BASIS OF FUNDAMENTAL RIGHTS IN NIGERIA

The Nigerian 1999 Constitution is the grund norm for the enforcement of fundamental rights in Nigeria. Chapter IV of the 1999 Constitution contains

¹⁴ Black's Law Dictionary (n 5) 428.

¹⁵ The Chambers Dictionary (n 13) 314.

¹⁶ Section 25 of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

¹⁷ Ibid section 26.

¹⁸ Ibid section 27.

these justiciable fundamental rights that are enforceable. These fundamental rights span from Sections 33 to 44 of the 1999 Constitution. The rights contained therein could be catalogued into those that are ‘human or natural rights’ and those that are enacted rights created or conferred by law. As indicated earlier, both classes of rights are now referred to as ‘fundamental rights’ as captured under the FREP Rules. However, permit the dichotomy for the purpose of our further analysis in this work. Of those that are human are the right to life,¹⁹ right to dignity of human person,²⁰ right to personal liberty,²¹ right to private and family life,²² right to freedom of thought, conscience and religion²³, right to freedom of movement,²⁴ right to freedom from discrimination²⁵ which are rights that are only connected to, attached to, pertained to and limited to natural person, that is human being and cannot be enforced by an artificial person. On the other side of the divide are rights to fair hearing,²⁶ freedom of expression and the press,²⁷ right not to compulsorily acquire movable and immovable property without due process of law²⁸ which constitutes what should be taken as the enacted rights unassociated with the fact of being human but necessarily created for the peaceful co-existence of the society. For a proper analysis of the capacity to use the FREP Rules, this

¹⁹ Ibid section 33.

²⁰ Ibid section 34.

²¹ Ibid section 35.

²² Ibid section 37.

²³ Ibid section 38.

²⁴ Ibid section 41.

²⁵ Ibid section 42.

²⁶ Ibid section 36.

²⁷ Ibid section 39.

²⁸ Ibid section 44.

distinction must be constantly borne in mind. Having clarified this, the FREP Rules provides that the High Court only shall have jurisdiction to enforce the rights enshrined in Chapter IV of the 1999 Constitution. Section 46(1) of the 1999 Constitution provides thus:

Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

The courts have interpreted the provision of section 46(1) of the 1999 Constitution as giving both the Federal High Court and State High Court concurrent jurisdiction to entertain Fundamental Rights actions. In *FUT., Minna v. Olutayo*,²⁹ while holding that both the Federal High Court and State High Court have jurisdiction on enforcement of fundamental rights, the apex Court held thus:

Section 42(1) of the 1979 Constitution, under which *Garba v. University of Maiduguri* (Supra) and *Jack v. University of Agriculture, Makurdi* were brought for the enforcement of the fundamental rights of students of the Universities, is *in pari materia* with section 46(1) of the 1999 Constitution. Section 46(1) of the Constitution provides:

46(1) any person who alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in any State in relation to him may apply to the *High Court* for redress.

Section 46(1) of the 1999 Constitution (*ipssma verba* with section 42(1) of the 1979 Constitution) clearly vests concurrent jurisdiction in both the Federal High Court and the State High Court in the matters of the enforcement of a citizen's fundamental right. A High Court in section 46(1) of the Constitution and FREP, means and includes the Federal High Court and or a State High Court.

²⁹ (2017) LPELR-43827(SC).

Adopting the dictum of Kekere-Ekun JSC in *FUT., Minna v. Olutayo, Eko JSC*, held in *EFCC v. Reinl*³⁰ as follows:

I adopt the view so expressed in the instant case. So long as the enforcement of the applicant's fundamental right is the main claim in the suit and not an ancillary claim, the Federal High Court and the State High Courts, including the High Court of the FCT, have concurrent jurisdiction to entertain it. See: *Tukur v. Government of Gongola State* (Supra).

Consequently, there is no doubt that both the Federal High Court and State High Court have concurrent jurisdiction on enforcement of fundamental rights.

Furthermore, Section 46(3) of the 1999 Constitution empowers the Chief Justice of Nigeria to make rules with respect to practice and procedure of a High Court concerning the enforcement of fundamental rights as enshrined in Chapter IV of the 1999 Constitution. The said subsection 3 of section 46 states that: 'The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section.' It was in furtherance of the foregoing provision of section 46(3) of the 1999 Constitution that the Fundamental Rights (Enforcement Procedure) Rules 2009 was made by the then Chief Justice of Nigeria, Idris Legbo Kutigi.

Similar to the provision of section 46(1) of the 1999 Constitution is Order II rule 1 of the FREP Rules of 2009 which provides thus:

Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and People's Right

³⁰(2020) 9 NWLR (Pt. 1730) p. 489, 514-515 paras. H-A.

(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. Form No. 1 in the *Appendix* may be used as appropriate.

The combined provisions of section 46(1) of the 1999 Constitution and Order II rule 1 of the FREP Rules is to the effect that any person, in any State of the Federation who alleges that any of his fundamental rights has been, is being or is likely to be contravened may apply for the enforcement of his fundamental rights either at a State High Court in that State or at the Federal High Court in that State. However, the question is who can utilize this vessel and what rights are capable of enforcement under it? This forms the body of the ensuing segment.

LOCUS AND RIGHTS ENFORCEABLE UNDER THE FREP RULES.

Locus as it is known, is critical to the enforcement of any right in court. Locus is said to be a combination of facts giving rise to the cause of action. In *Centre for Oil Pollution Watch v. NNPC*,³¹ the Court defines Locus Standi as follows:

In simple terms, therefore, this narrow and rigid conception of *locus standi* means that it is only a person who has suffered a specific legal injury by reason of actual or threatened violation of his legal right or legally-protected interest who can bring an action for judicial redress,

³¹ [2019] 5 NWLR (Pt. 1666) 518, 561, para. F.

in effect, this rule with regard to locus standi “thus postulates a right-duty pattern which is commonly to be found in private law litigation.

We further refer to the cases of *Daniel v. INEC*³². From the provisions of section 46(1) of the 1999 Constitution and Order II Rule 1 of the FREP Rules 2009 alluded to above, only persons whose rights are infringed, threatened or affected by the violation are clothed with the requisite *locus standi* to maintain an action under the FREP Rules 2009. The first area of concern in this regard is the right of relatives of a deceased person to proceed under the FREP Rules 2009. The trigger for this contention arose out of the decision of Oyewole J, (as he then was) in the case of *Shobayo v. COP, Lagos State* - Suit No. ID/760M/2008 delivered on the 15 January 2010 which was endorsed by the Court of Appeal in *Dilly v IGP*³³ and *Omonyahuy v IGP*³⁴. These decisions, unlike the reasoning in *Opara v S.P.D.C.N.*³⁵ was premised on the FREP Rules 2009 which expanded the scope of the Applicants for the enforcement of the rights. From the wordings of the Order and the interpretation in the cases under the FREP Rules referred to above, it would seem that a representative action could be undertaken in respect of rights of a deceased person by the dependants. The question, however, is whether the Chief Justice of Nigeria can, who authored the Rules within the confines of Section 46(3) of the 1999 Constitution, can expand the scope of *locus* beyond that contemplated by the Constitutional provision so as to enable such representative actions to be maintained. “Every person or Citizen’ as used largely in the provisions will

³² [2015] 9 NWLR (Pt. 1463) 113,152, paras. A-C.

³³ (2016) LPELR-41452(CA).

³⁴ (2015) LPELR-25581 CA.

³⁵ [2015] 14 N.W.L.R. (Pt. 1479) 307.

appear restrictive of the classes of persons that can utilize the vessel of FREP Rules to enforce fundamental rights collectively. In the case of *Ankpa & Ors. v. Maikarfi & Anor.*³⁶ Aboki JCA held thus:

It is the law that no provision of any enactment is capable of expanding or subtracting from the elaborate provisions of the Constitution on any subject matter dealt with by the Constitution, this is so because the Constitution is the grund norm.

In the wisdom of Hon. Justice Kolawole, in the case of *The Registered Trustees of SERAP & Ors. v. A.G., FED. & Anor, unreported suit No. FHC/ABJ/CS/640/2010*, the said Rules, to the extent that it tends to expand the scope or range of applicants qualified to litigate under the Rules is unconstitutional. This decision is yet to be appealed. In the light of this development, therefore, can one safely say that the Rules in that regard is still extant? This is a trickish question to answer as several appellate court decisions, notwithstanding this pronouncement, continue to patronise the FREP Rules as it relates to *locus*. Generally speaking, on the strength of the pronouncement of Kolawole, J (as he then was), one would have thought that the FREP Rules, particularly as it relates to locus, is extinct, having being declared a nullity and unconstitutional. Most of the Appellate decisions came after the judgment of Koloawole, J (as he then was). Appellate decisions thereafter placed on the said Rules would appear delivered *per incuriam*, thereby suggesting that those appellate decisions cannot be good law. The poser then is on what basis are those decisions premised? NONE. Taking cue

³⁶ (2008) LPELR-3776(CA) 18-19, paras. D-B.

from this posture, it will then seem that the dependants of a deceased person cannot utilize the vessel of the FREP Rules to ventilate their grievances. Furthermore, the puzzle also will remain who will be proper party before the court for the purpose of agitating those rights of the deceased. Can a dead person be said to possess any such right again? If not, where lies the cause of action? Without a cause of action, can there be a valid suit? Undoubtedly, rights exist in favor of the dependants but such can only be ventilated in tort via a civil action. Hence, to the extent that constitutional rights are made peculiar to the person or citizen, it cannot be interrogated by another person through the FREP Rules. This is buttressed by the fact that the whole essence of the FREP Rules is to ensure speed as it relates to a living person. In the light of this, appellate decisions cited above in relation to those human rights are suspect to the extent of their interrogation by a representative.

With respect to the right of artificial entity to initiate action under the FREP Rules 2009, there appears to be divergence of opinion on the subject. While in some regard, it is said that an artificial entity has the *vires* to enforce any of the fundamental rights under the FREP Rules. I refer to the Court of Appeal decisions in *Onyekwuluje v. Benue State Govt.*³⁷ In *Attorney General of Lagos State & Ors v. Zanen Verstoep & Company Nigeria Limited & Ors.*³⁸ the 1st Respondent (an artificial person) commenced a fundamental right action against the Appellants and the 2nd to 4th Respondents at the Federal High Court in relation to forceable entry and illegally and unconstitutionally carting away of the 1st Respondent's properties from the 1st Respondent's premises. The 1st

³⁷ [2005] 8 NWLR (Pt. 928) 614.

³⁸ (2016) LPELR-41402 (CA).

Respondent relied solely on the provision of section 44(1) of the 1999 Constitution. The Federal High Court granted all the reliefs sought by the 1st Respondent including an order that the Appellants and the 2nd to 4th Respondents before him should ensure the return of the 1st Respondent's properties forcibly removed, within 30 days of the ruling, otherwise, they would be liable to pay for the value of the items to the tune of \$5,707,297.90 (US Dollars). Dissatisfied with the decision, the Appellants alone, without the 2nd to 4th Respondents, appealed to the Court of Appeal. Dismissing the appeal and affirming the decision of the Federal High Court, Oseji, J.C.A held thus:

The moveable and immoveable properties of the applicant in this case have been taken possession of compulsorily not in a manner prescribed by law. There is clearly a violation of the fundamental right of the Applicant enshrined in Section 44 of the 1999 Constitution. I am indeed inclined to agree with the findings and holding of the learned trial judge and my stance is based on the main reliefs sought by the 1st Respondent which is for a declaration that the forcible breaking in and carting away of the 1st Respondent's properties from the premises occupied by it violates its right to property guaranteed by Section 44 of the 1999 Constitution and also a declaration that the continued occupation of the said premises by the Appellants is illegal and unconstitutional. Section 44(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides thus:

Section 44(1) No moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for purposes prescribed by law that, among other things:

- (a) Requires the prompt payment of compensation; therefore, and
- (b) gives to any person claiming such compensation right of access for the determination of his interest in the property and the amount of

compensation to a Court of law or Tribunal on body having jurisdiction in that part of Nigeria?

The wordings of the above set out provision is clear and unambiguous and gives every citizen of this country, including legal entities the right to seek redress in Court by way of enforcement of their fundamental right where their property whether moveable or immoveable is taken possession of compulsorily and without due process of law being adhered to...

In the circumstance, I cannot but agree with the holding of the lower Court that the said act by the Appellants and their agents constitute an infringement of the rights of the 1st Respondent as guaranteed under Section 44 of the 1999 Constitution (as amended) and as such justifies the main relief claimed by the 1st Respondent.

In *Okechukwu v. EFCC*³⁹ the Court of Appeal, per Iyizoba JCA, while holding that an artificial person can file an action for enforcement of its fundamental rights held as follows:

On this issue two, Counsel rightly submitted that an artificial person such as the 2nd appellant can file an action for the enforcement of its fundamental rights since companies/artificial persons can only act through human beings. Learned counsel is right. See *Onyekwuluje v. Benue State Govt.* (2005) 8 NWLR (Pt. 928) 614 @ 646 B. Assuming a limited liability company is involved in a case of where it was denied fair hearing, it has the right to sue for breach of its fundamental Rights to fair hearing. Again, if the processes filed by the appellants were couched in such a way as to show that the 1st appellant's ordeal and unwarranted arrests and detention was based primarily on the fact that he is the Managing Director of the 2nd appellant, then the 2nd appellant has the right to sue for the infringement of the fundamental human rights of its Managing Director. In its judgment at page 175 of the record of appeal, the trial court held as follows:

³⁹ (2015) 18 NWLR (Pt. 1490) 1, 24-25, paras. E-H

'It is obvious that technically, the application of the applicants and on the facts as it relates to the 2nd applicant, the application is defective, incompetent and unsustainable. There was nothing alleged against the 2nd applicant which amounted to a breach of its right. Nothing was done to the 2nd applicant as all the facts alleged in respect of infringement pointed to only the 1st applicant.'

The learned judge is correct in the sense that none of the averments in the affidavit in support of the application for the enforcement of the fundamental rights of the appellants alleged any infringement of the fundamental rights of the 2nd appellant. All averments were directed to infringement of the rights of the 1st appellant in his personal capacity and not as an officer of the 2nd appellant. Rather the submission of the learned counsel that the fundamental right of the 2nd applicant was infringed is premised on the contention that the arrest and detention of the 1st appellant by the 1st respondent was based on allegation that the appellants (particularly the 2nd appellant) were owing the 2nd and 3rd respondents; and further that the sum of \$133,000.00 claimed by the appellants comprised the sum of \$128,000.00 paid to the respondents by the 2nd appellant and the \$5,000.00 paid by the 1st appellant to the 2nd and 3rd respondents through the 1st respondent. I am really at a loss as to how this allegation, assuming that it represents the true situation, infringes the fundamental right of the 2nd appellant. The trial court was indeed right when it observed that there was nothing alleged to have been done against the 2nd applicant which amounted to a breach of its right; and nothing was done to the 2nd applicant as all the facts alleged in respect of infringement painted to the 1st applicant only. The set of facts presented by the appellants as far as the 2nd appellant is concerned; purportedly disclose a breach of contract by the 2nd and 3rd respondents against the 2nd appellant. That is the only allegation that concerns the 2nd appellant and this fact does not amount to a breach of the fundamental right of the 2nd appellant.

Even the decision of the apex Court in *FBN Plc. v. AG, Fed.*⁴⁰ cannot be said to be different. In that case, the Appellants filed an application for enforcement of their fundamental rights at the Federal High Court against their arrest and detention. In their motion on notice, the appellants, *inter alia*, prayed for a declaration that the arrest and detention of the 2nd to 5th appellants by the 3rd to 5th respondents constitute a violation of their fundamental rights guaranteed under sections 34, 35 and 41 of the 1999 Constitution and Articles 1, 4, 5, 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and, therefore, illegal and unconstitutional. The Appellants also sought for aggravated and exemplary damages against the respondents in favour of each of the appellants. After striking out some of the reliefs sought by the appellants, the Federal High Court dismissed the appellants' action on the two remaining claims of which a declaration for illegal and unconstitutional arrest and detention on ground of violation of their fundamental rights under sections 34, 35 and 41 of the 1999 Constitution was one. Dissatisfied with the decision, the appellants appealed to the Court of Appeal. Allowing the appeal, the Court of Appeal held that the arrest and detention of the appellants were totally unjustifiable, wrongful and unconstitutional. The Court of Appeal awarded damages of ₦750,000.00 in favour of the 2nd to 4th appellants. While the Court of Appeal omitted the 5th appellant's name for damages, it refused to award damages for the 1st appellant (First bank of Nigeria). Dissatisfied with this part of the decision of the Court of Appeal, the appellants appealed

⁴⁰ (2018) 7 NWLR (Pt. 1617) 121, 155, paras. C-G.

to the Supreme Court. At the Supreme Court, the Appellants put forward the following submission as a basis for award of damages to the 1st Appellant:

Furthermore, that by virtue of section 46(1) of the Constitution) as amended) read with section 18 of the Interpretation Act, Cap 123, LFN 2004, fundamental rights enure to natural and artificial persons. *Onyekwuluje v. Benue State Govt.* (2005) 8 NWLR (Pt. 928) 614; that since the second to fifth appellants are key chief officers of the first appellants that natural implication of their incarceration was financial loss and loss of reputation to the Bank in Millions of Naira; that their personal liberty is a commodity of high value to it as they are its directing minds as first appellants acts mainly through them. *Odogu v. A.-G., Federation* (1996) 6 NWLR (Pt. 456) 508: therefore, such damages commensurate to their status should be awarded to it.

Augie JSC, while refusing to award damages to the 1st Appellant (First Bank of Nigeria) under the FREP Rules for the unlawful arrest and detention of the 2nd to 5th Appellants on the ground that the 1st Appellant cannot be physically arrested and detained, held thus:

As it stands, the question that rears its head is whether a Bank, the first appellant, can be physically arrested and detained by EFCC? The appellants argued that it can be arrested and detained by proxy that is since second to the fifth appellant's, who are key chief officers of the Bank, were arrested and detained, the Bank was also affected.

They contend that the implication of the incarceration of its key chief officers 'was financial loss and loss of reputation' to the bank. This line of argument, obviously, lacks merit. The first appellant has every right to seek redress for 'financial loss and loss of reputation', occasioned by the arrest and detention of its said key chief officers; but it cannot do so through the procedure provided by law under the Fundamental Human Rights (Enforcement Procedure) Rules 1979; the applicable rules in this matter and not the present 2009 Rules.

So, any claims touching on violation of rights to personal liberty guaranteed by the constitution, are usually made before the court under Fundamental Human Rights (Enforcement Procedure), Rules, enacted specifically to govern or regulate actions for enforcement or the protection of fundamental right guaranteed by the Constitution, *jack v. University of Agriculture, Makurdi* (2004) LPELR-1587 (SC), (2004) 5 NWLR (Pt. 865) 208.

In this case, it is physically impossible for the first appellant to be arrested and detained, and the Court of Appeal was standing on firm ground when it refused to award damages to first appellant for unlawful arrest and detention of second to fifth appellants. Issue 1 definitely lacks merit and it is resolved against the appellants.

In concurring with the lead judgment of Augie JSC, Aka'ahs JSC⁴¹ held that:

I entirely agree that the 1st appellant, being an artificial person cannot maintain an action for violation of its fundamental human rights because the 1st appellant is incapable of being arrested and detained. The 2nd-5th appellants, being natural persons are the ones who can institute an action for the enforcement of their fundamental human rights.

Although the reasoning of the apex Court in the latter case is sound, the vague and broad use of the term, 'fundamental right' in the conclusion is misleading. It would have been best to adopt 'human right' which would have been consistent with the decision rendered. Thus, the apex court only declined to reverse the judgment based on the nature of the right involved which conceptually is human right. In other words, if it had fallen into the realm of enacted right, the Court would have upheld the contention of the appellant.

What the decisions has thrown up is the distinction highlighted above between the human rights as it relates to natural persons and the enacted rights. Whilst

⁴¹ Ibid 173, para. F.

according to the conclusion of the apex court, a natural person can, through the instrumentality of the FREP Rules, enforce human rights, artificial persons cannot. The latter can employ alternative routes to ventilate such grievances, as in for instance, tort. However, both a natural person and artificial person will appear capable of using the Rules to ventilate enacted rights at large. The reasoning stems from the reality that artificial bodies cannot be subject of those infractions under human rights. It is to this extent that I agree with the reasoning of Affen J. (as he then was) in *United Bank for Africa Plc & Anor. v. FCT Commissioner of Police, Abuja & Anor.* in Suit No. FCT/HC/M/12305/12 delivered on June 21, 2012 that the question as to whether a particular right is enforceable by an artificial entity or otherwise depends largely on the nature of the right. In other words, if it belongs to the class of enacted rights generally as opposed to human right, then it is possible of being enforced by the artificial body. Let me quickly enter the caveat that whilst I agree with the reasoning in that case, I vehemently, with respect, disagree with the conclusion, as the right involved relates to the right to own immovable property under section 43 of the 1999 Constitution which certainly can be enforced by an artificial entity. This is an enacted right that is not innate to a human.

A live issue therefore in this regard relates to the enforcement of proprietary rights by artificial entities through the instrumentality of the FREP Rules. In support of this judicial position alluded to earlier, Femi Falana SAN,⁴² argued that an artificial person can enforce the provisions of the fundamental rights

⁴² Femi Falana, *Fundamental Rights Enforcement in Nigeria* (2nd edn, Legal Text Publishing Company Limited 2010) 243-247.

through FREP Rules. He relied on the cases of *Concord Press Nigeria Limited v. Attorney-General of the Federation & Ors*⁴³ and *Punch Nigeria Limited & Anor. v. Attorney-General of the Federation & Ors.* to the effect that both applicants separately challenged the closure of their business premises under the 1979 Fundamental Rights Enforcement Procedure Rules and the Federal High Court upheld their contention that the action of the Federal Military Government violated their fundamental right to freedom of expression, ordered the re-opening of the applicant's premises and awarded damages. Falana⁴⁴ also cited the case of *Tell Communication Limited & Ors. v. State Security Service* to the effect that the respondents joined issues with the applicants over the competence of the 1st applicant, a publishing company, to sue for the enforcement of its fundamental rights under the FREP Rules.

Examining each of the fundamental rights as enshrined in Chapter IV of the 1999 Constitution vis-à-vis all the fundamental rights cases cited, one may come to the conclusion that the only rights which artificial persons are capable of enforcing are rights to the protection of property, fair hearing,⁴⁵ right to freedom of expression at the press⁴⁶ and right not to take over and compulsorily acquire movable and immovable property of a person without due process of law.⁴⁷ With respect to right to peaceful assembly and association,⁴⁸ Amanda

⁴³ (1994) FHCNLR 144.

⁴⁴ Femi Falana (n 42)244.

⁴⁵ Section 36 of the 1999 Constitution

⁴⁶ Ibid section 39.

⁴⁷ Ibid section 44(1).

⁴⁸ Ibid section 40.

Dirisu and Damilola Alabi in their article⁴⁹ have stated that whilst the right of the corporation to join any political party can be debated, it is not in contention that corporations have the freedom to associate with other corporations that have the same interests. In their words:

Under section 40 of the Constitution, every person has a right to freely assemble and associate with other persons or join any political party, trade union or any other association for the protection of similar interest. Whilst the right of a corporation to join any political party can be debated, it is not in contention that corporations have the freedom to associate with other corporations who have the same interest. Some of the corporate associations in Nigeria include the Association of Telecommunications Companies of Nigeria, the Association of Nigeria Construction Companies, and the Petroleum Technology Association of Nigeria.

Although Amanda Dirisu and Damilola Alabi have stated that corporations have the freedom to associate with other corporations who have the same interest, however, it is still doubtful whether such right can be enforced by corporations or artificial person as it is obvious that corporations cannot belong to any political party in Nigeria and hence, enforcement of such right may not absolutely be possible for artificial person.

⁴⁹ Amanda Dirisu and Damilola Alabi, 'An analysis of Human Rights Law and The Protection of Corporations in Nigeria' (ALP NG Publication) 5 available at <https://www.alp.comany/sites/default/files/ALP%20NG%20%26%20Co%20ANALYSIS%20OF%20HUMAN%20RIGHTS%20LAW%20AND%20THE%20PROTECTION%20OF%20CORPORATIONS%20UNDER%20NIGERIAN%20LAW%20.pdf> , accessed 19 May 2021.

With this point disposed, I wish to reinstate that the entire essence of the FREP Rules is to engender speed and efficiency in the enforcement of fundamental rights. Therefore, any act or omission that will constitute a clog must be eschewed. It is in this regard that one advocates that where the action involved, though bothering on enforcement of fundamental rights, but devoid of any urgency and capable of being accommodated through the ordinary civil process, it may well be best to transfer same to such civil lists as would best accommodate the matter. The capacity to do so is outside the purport of this paper. A good example is where the rights sought to be enforced by the dependant of a deceased entitled to the right, or enforceable by a representative, or that in which an artificial person can still reap the same benefit without impediments, utilizing the alternative bypass. A critical point to note is that in enforcing fundamental rights, it is only a “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”⁵⁰. (Emphasis mine). The right to be enforced must, therefore, be in relation to the applicant and not to a relative or to a dependent or breadwinner. That presupposes that an action under the FREP Rules cannot be commenced for the enforcement of a right that enures to another person. The cardinal principle guiding the application of the FREP Rules, 2009 from inception is that urgent questions of breach of citizen’s fundamental rights should be addressed so that it does not linger in the same way that ordinary civil matter is caught up in the web. In essence, it is a fast-track procedure set up to address concerns on fundamental rights violations. This is evident in the

⁵⁰ Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

provisions of the Rules which set out a time frame for hearing of fundamental rights breaches.⁵¹

CONCLUSION

As reflected in the discussion above, the controversy around the applicability or otherwise of the FREP Rules in the enforcement of rights generally stems from the conceptual confusion of the nature of the rights and by extension, the classification of the rights jurisprudentially into human rights and enacted rights. Secondly, why some tangential references were made in some decisions to this distinction, the dissect of the rationale for the introduction of the Rules is lacking. It is when the basis of the Rules is juxtaposed with the essence of the Rules that the right approach will be undertaken. Thus, it is our submission that human rights by their very nature are only enforceable by human beings via the instrumentality of FREP Rules. However, where the human being is deceased, it becomes problematic to avail the dependents the same opportunity to use the vessel of the FREP Rules when there is alternative route in tort. No right existed anymore to the deceased but the dependents who must take alternative lane to their destination. This certainly avoids the clogging up of this fast channel. On the other hand, in terms of the second category of rights that are enacted rights, both natural beings and artificial entity can, as the law stands today, use the vehicle of FREP Rules to agitate their rights. However, it is suggested that as much as possible, except where considered urgent by the Court, artificial entities should be encouraged to make use of alternative routes to free this road that is meant to be a freeway or motorway. The challenge for

⁵¹ Order IV Rule 1, FREP Rules.

the court to engage in the required jurisprudential and conceptual clarifications is often workload and pressure to promptly discharge the onus of resolving conflict between litigants. Even the appellate courts, particularly the apex court that could have embarked on this, is also unduly saddled and burdened with frivolous cases. Hence, this compels the need to review those categories of cases progressing to the apex court by way of appeal. It is clear from this paper that a company may enjoy fundamental rights, especially those rights that are peculiar to their corporate survival, but those rights must not be taken too far and on a voyage of discovery through the FREP Rules, as this may lead to a distortion of the essence of Fundamental Rights Enforcement Procedure Rules, 2009. These rules, as we have pointed out, are designed to address questions of greater danger to fundamental human rights. It is a fast-track method to arrest breach of human rights in particular. The relaxed approach would greatly hamper the efficient enforcement of fundamental rights. It will equally blur the distinction between the human rights and the enacted rights. As an alternative, there is an avalanche of common law procedural rules established from time immemorial for the enforcement of rights of persons and corporate entity. Except for instances of extreme urgency, actions for breach of fundamental rights which affect a corporate body may be instituted under the normal civil action procedure. For example, right to own immovable properties can be safely instituted under trespass to property, depending on the nature of the claim. Finally, it will seem that the basis of the broad application of the FREP Rules has been knocked off by Kolawole J, and to this extent, the continuous recognition and adjudication on those Rules lacks validity. The

restrictive approach as presented by the various constitutional provisions must, therefore, be adopted.