

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA, COURT 50
TODAY WEDNESDAY THE 5TH DAY OF NOVEMBER 2025
BEFORE HONOURABLE JUSTICE O.A ODUSANYA (MRS.)

SUIT NO: ID/18430MFHR/2024

IN THE MATTER OF AN APPLICATION BY YAHAYA ABOLARINWA FOR
AN ORDER FOR THE ENFORCEMENT OF HIS FUNDAMENTAL HUMAN
RIGHTS.

AND

BETWEEN

YAHAYA ABOLARINWA

..... APPLICANT

AND

GABRIELLE CHASE MEDIA COMPANY LTD RESPONDENT

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JUDGMENT

The Applicant filed this Originating Motion dated 19th November 2024 brought pursuant to Sections 34, 37, 42 the Constitution of the Federal Republic of Nigeria, 1999 (As Amended); Articles 5 & 12 of the Universal Declaration of Human Rights of 1948, Sections 4(1) & (2), 8(1) & 9(1) Of the HIV and Aids (Anti-Discrimination) Act, 2014: Article 1 of the Discrimination Employment and Occupation) Convention, 1958 (No. 111), Order 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 and under the inherent jurisdiction of the Honourable Court praying for the following reliefs;

1. A DECLARATION that the subjection of the Applicant to a compulsory HIV test by the Respondent as a condition for continuing to participate in the Style Magnate Fashion Reality Show of 2024 is in violation of Sections 34 and 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Articles 5 & 12 of the Universal Declaration of Human Rights of 1948; and Sections 8(1) and 9(1) of the HIV and AIDS (Anti-Discrimination) Act, 2014; and is therefore unconstitutional and unlawful.
2. A DECLARATION that the Respondent's termination of the Applicant's participation in the Style Magnate Fashion Reality Show of 2024 on the bases of his HIV status is in violation of Sections 34 & 42

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Davies Oluken
COMMISSIONER FOR OATHS
HIGH COURT, IKEJA
12/11/2025

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COURT OF LAGOS
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HIGH COURT
12-11-2025
Sign: _____ Date: _____

of the Constitution of the Federal Republic of Nigeria 1999 (as amended): Article 5 of the Universal Declaration of Human Rights of 1948; and Section 4 of the HIV and AIDS (Anti-Discrimination) Act, 2014; and is therefore unconstitutional, discriminatory on the grounds of health status, and unlawful.

3. AN ORDER directing the Respondent to desist from the unlawful practice of conducting compulsory HIV tests on participants of its fashion reality shows, and the discriminatory practice of terminating the participation of participants in its reality fashion shows on grounds of their real or perceived HIV status.
4. AN ORDER of this Honourable Court awarding the sum of N10,000,000.00 (Ten Million Naira) as damages against the Respondent for grossly abusing the Applicant's fundamental rights by subjecting him to a compulsory HIV test as a condition for continuing to participate in the Style Magnate Fashion Reality Show of 2024 and for termination of the Applicant's participation in the Style Magnate Fashion Reality Show on the bases of his HIV status.
5. AN ORDER directing the Defendants to pay interest on the judgment sum at the interest rate of 22% per annum till the said sum is liquidated.
6. AN ORDER as to the Cost of this action.
7. AND for any further Order(s) the Honourable Court may deem fit to make in the circumstances of this case.

The Grounds upon which the Application is brought are as follows:

1. The grounds upon which the reliefs are sought are as elaborately stated in the Affidavit in support of the Application.

The said Application is supported by a 19 - Paragraph Affidavit deposed to by Yahaya Abolarinwa, the Applicant in this suit.

The Deponent stated that on 20th October 2023, he came across a casting call for a fashion reality show on the Respondent on instagram to which he applied on the 21st of October, 2023. That the Respondent, through one Gbemileke Peters, sent him an email acknowledging his application on November 11th 2023 to which he immediately responded to.

That the Respondent, on 13th January, 2024, sent him a congratulatory email message welcoming him to the Magnate Reality Fashion Show and further sent him a medical form via email requesting that he complete same for the upcoming show which he completed and informed the Respondent about same via an email dated 18th January, 2024.

That on the 6th February, 2024, he and his team met the Liaison person for the Respondent: one Mr Sunday, who informed them that they were going to do medicals and they were tested for HIV and Hepatitis B. That his consent was not obtained before the agents of the Respondent proceeded to carry out these two tests on him nevertheless, he never thought his results were going to constitute a problem towards his participation in the reality show. That he was psychologically traumatized and devastated by the email from Respondent containing the letter informing him that based on results from the medical examinations, they were compelled to make the difficult decision to discontinue his involvement in the show.

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That he knows the Respondent's decision to terminate his participation in the show was due to his HIV status. That following the Respondent's wrongful termination of his participation in the Style Magnate Fashion Reality Show he briefed his lawyer who wrote to the Respondent demanding compensation on his behalf however, the Respondent never replied the said letter. That the Respondent's termination of his participation in the Fashion Reality Show has caused untold hardships and psychological trauma on him.

In support of the Application, they attached the following documents;

1. A printed-out copy of the advertisement attached as "Exhibit YA1"
2. Copies of the Acknowledgement dated November 11th 2023 and Response email attached as "Exhibits YA2" and "YA3"
3. A copy of the invite email dated 23rd November 2023 attached as "Exhibit YA4"
4. A copy of the email requesting for a portrait picture and Instagram handle of the Applicant dated 29th November, 2023 attached as "Exhibit YA5"

5. A copy of the said congratulatory email message of 13th January, 2024 and of the email dated 14th January, 2024 attached as "Exhibits YA6" and "YA7" respectively.
6. The Copies of the email of 17th January, 2024, the email of 18th January, 2024, and the bio data form attached as "Exhibits YAB", "YA9" and "YA10"
7. A Copy of the email of the Arrival date dated 26th January, 2024 attached as "Exhibit YA11"
8. Copies of the said email of the letter of Discontinuance of the Applicant and his team participation dated 8th February, 2024 attached as "Exhibits YA13" and "YA14" respectively.
9. A Copy of my Hepatitis B vaccine card attached as "Exhibit YA15"
10. A copy of the email dated 15th April, 2024 attached as "Exhibit YA16".
11. A copy of the letter of compensation dated 15th July, 2024 attached as "Exhibit YA17".
12. A Copy of the said Medical report from the Applicant's personal doctor at the 68 Nigerian Army Reference Hospital, Yaba attached as "Exhibit YA18".

In the Written Address, the Learned Counsel to the Applicant- Chizelu Emejulu Esq., raised a sole issue for determination which is:

"Whether the Applicant is entitled to the reliefs sought in this Application?"

He argued that by virtue of Section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) an applicant who alleges that his fundamental right 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.

He further argued that for the purpose of advancing and never restricting the Applicant's rights and freedoms, the Court shall respect municipal, regional and international bills of right cited to it of which the court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions.

He submitted that the Respondent in terminating his participation in the Fashion Show of 2024 on the bases of his HIV status is unconstitutional and discriminatory further contending that the decision of the Respondent in conducting the compulsory HIV test is in contravention of Section 34 of the constitution and Article 5 of the Universal Declaration of Human Rights of 1948. He referred the Court to the case of Okafor v. Lagos State Government [2017] 4 NWLR (Pt. 1556) 404 Pp. 434-435 paras H-B, Bi-Courtney Aviation Services Ltd v. Kelani (2021) LPELR-56365(CA) (Pp. 29-29 Paras A - D) 4.14 and P.P (Nig.) Ltd v. Olaghere [2019] 2 NWLR (Pt.1657) p. 541@568 F-H.

He further submitted that a combined reading of the Bi-Courtney and P.P (Nig.) cases invariably lead to the conclusion that the scope of what is protected under section 37 of the constitution includes personal and private information of citizens, and that before such information is to be obtained and used by anyone, the consent of said citizen ought to be first sought and obtained.

He argued that the Respondent breached this right to privacy when it subjected the Claimant to a HIV test and obtained the result of same without his consent and his termination based on his health status amounts to workplace discrimination and although there is no definition of workplace discrimination in the Nigerian Labour jurisprudence, the Court relied on the provisions of Section 254C(2) of the Nigerian constitution of 1999 and adopted the definition of discrimination in Article 1 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) which has been ratified by Nigeria since 2002. He referred the Court to the unreported case of Onuhikemi v. Smridu Nigeria Ltd Suit No. NICN/LA/265/2015. He referred the Court to Section 15(2), 42 of the Constitution and Sections 4(1), 8, 9(1) of the HIV and AIDS (Anti-Discrimination) Act 2024.

He submitted that at no time during the Applicant's participation in the Respondent's Reality Show of 2024 did he constitute present any danger of HIV transmission to other participants of that show or any of the staff of the Respondent and since the Applicant deposed to the fact that

he has been taking his anti-retroviral medications consistently since 2016 he does not constitute any danger of HIV transmission regardless of the nature of his participation at the show.

He further submitted that the Respondent was given ample opportunity by the Applicant, vide Exhibit "YA16" to provide him with a copy of the so called "health protocol" they relied on to which they did not and from the foregoing, there is no doubt that the purportedly difficult decision to discontinue the Applicant from the show was made solely on the grounds of the Applicant's HIV status.

He therefore urged the Court to grant the reliefs sought by the Applicant as prayed.

In opposition, the Respondent filed a 14 - paragraph Counter Affidavit dated 9th April, 2025 deposed to by Abisola Omolade, the Chief Executive Officer of the Respondent in this Suit.

The Deponent therein stated that the narrative provided in the Affidavit of the Applicant is not entirely true and has been presented with the intention to mislead this Court to grant the relief(s) sought on his Originating Motion. That the representatives of the Respondent sought the consent of the Applicant before the HIV tests were conducted on him contrary to his Affidavit.

That based on the nature of the show, the Applicant and other contestants were scheduled to work together in a semi-industrial environment at close quarters under intense pressure and competitive timelines with machines, scissors and needles and other equipment which could cause injury and therefore present a clear and present danger to other contestants.

That the decision to exclude the Applicant from the show was taken as a prudent measure to prevent the other contestants from being exposed to any danger of transmission or exposure as reports from two independent doctors confirmed same. That the Respondent had an overriding obligation to ensure that all of the other contestants were not unduly exposed to any danger considering the peculiar nature of the activities

which the contestants are required to undertake during the show. That the Applicant was treated with utmost courtesy and respect throughout his engagement with the Respondent. That also, in recognition of the Applicant's efforts, the Respondent offered to pay the Applicant a sum of N200,000.00 (Two Hundred Thousand) as a compensation.

In support of their Counter Affidavit, the Respondent attached the following documents:

1. Print outs of some of the pictures of the set showing some of the equipment for the show marked as "Exhibit A1".
2. The reports from two independent doctors which confirmed that the inclusion of the Applicant in the show would have constituted a clear and present danger of HIV transmission to others marked as "Exhibits A2 and A3" respectively.
3. A Copy of the said letter marked as "Exhibit A4".

In the Written Address, the Learned Counsel to the Respondent, Olumayowa A. Owolabi, ESQ., raised a sole issue for determination which is:

"Whether in view of the peculiar nature of the schedule of activities that the contestants in the "Style Magnate Show" were required to undertake, the Applicant is entitled to the relief(s) sought on his Originating Motion?"

He submitted that the Applicant's entire claim is hinged on a perceived violation of the provisions of Sections 34 and 42 of the Constitution of the Federal Republic of Nigeria (1999) (As Amended), Article 5 and 12 of the Universal Declaration of Human Rights of 1948 and Sections 8 (1) and 9(1) of the HIV and AIDS (Anti-Discrimination Act) 2014.

He argued that the Applicant's assertions that his consent was not sought before the medical tests were conducted are untenable as the Applicant had admitted in his Affidavit that he was informed of the specific tests to be undertaken and he presented himself for the tests consequently, this implies that he consented to the tests being done and that if the

Applicant did not consent to the test, he should have refused to provide his blood samples for testing.

He further argued that the Applicant's contention that by conducting the HIV tests and subsequently excluding him from participating in the show, the Respondents had breached his constitutional right to dignity and privacy is not supported in the Affidavit filed in support of the Applicant's Motion as no facts or materials were presented to this Honourable Court to support the contention.

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He submitted based on the Respondent's Counter-Affidavit to the Applicant's Motion, it has been established that utmost confidentiality had been ensured in the handling of the test results as the tests were conducted by qualified professionals with utmost care and the results were not disclosed nor the reason for his disengagement made known to any third party.

He further submitted that the decision to exclude the Applicant from the show was taken as a prudent measure to prevent the other contestants from being exposed to any danger of transmission or exposure as the Respondent as a responsible corporate citizen, has an overriding obligation to ensure that all of the other contestants were not unduly exposed to any danger considering the peculiar nature of the activities which the contestants are required to undertake during the show and they had no intention to discriminate against the Applicant in any manner whatsoever.

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He argued that the cases which were cited copiously by the Applicant's Counsel all relate to cases which have no correlation to the facts of this present case which clearly indicates that all of the cases were cited out of context and it is trite that a case only serves as authority for what it decides. He referred the Court to the case of PDP v INEC P.D.P. v. I.N.E.O. (2023) 13 NWLR (Pt. 1900) 89 and A.P.C. v. Moses (2021) 14 NWLR (Pt. 1796) 278.

He therefore urged the Court to dismiss the Application on the grounds that it is unsustainable based on the facts surrounding his exclusion from the show.

The Respondent also filed a 6 paragraph further Counter-Affidavit dated 13th May, 2025 deposed to by Emmanuel Adeyemi, the Litigation Clerk in the law firm of the Respondent.

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The Deponent stated that after filing the Respondent's Counter-Affidavit to the Originating Motion, he discovered that he had inadvertently omitted some of the Exhibits which were referenced in the said Counter-Affidavit. That the Exhibits which are reports were referenced in paragraph 8 of the afore-mentioned Counter-Affidavit, have now been attached as Exhibit A3.

In response, the Applicant filed a 9 paragraph Further-Affidavit dated 16th May, 2025 in reply to the Respondent's Counter-Affidavit dated 8th April, 2025 and the Further Counter-Affidavit dated 13th May, 2025 deposed to by Yahaya Abolarinwa, the Applicant in this suit.

The Deponent stated that the contents of the said Counter-Affidavit and Further Counter-Affidavit, together with Exhibits A2 and A3 are all false and denied, reiterating that the agents of the Respondent never bothered to seek and obtain his informed and full consent before proceeding to carry out the HIV test on him.

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That he does not present a clear or present danger to other contestants of the Reality Show as the medical report from his personal doctor from the 68 Nigerian Army Reference Hospital, Yaba where he has been receiving HIV treatment consistently since 2018 states that he does not pose any risk to anybody since he is undetectable.

That the Respondent's Exhibit A2 and A3 which are copies of the purported report from two independent doctors was never shown to him. That he admits that an offer of the said sum of N200, 000.00 (Two Hundred Thousand Naira) was made to him by the Respondent however, the said money was never paid to him by the Respondent for any reason whatsoever.

In replying on points of law, Counsel to the Applicant, Chizelu Emejulu, Esq., argued that it is clear, going by the averments in the paragraph 11 of the Applicant's Affidavit in support, that the Respondent's agent did not furnish the Applicant with all the necessary information, as required by law, to properly induce the said Applicant to give his "informed consent" to the HIV test. He referred the Court to Section 30 of the HIV and AIDS (Anti-Discrimination) Act 2014.

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He further argued that if the Respondent's agent complied with the legal requirements, the Applicant would not have participated in the HIV testing exercise, given the fact he deposed to in the same paragraph 11 of his Affidavit in support that he was however not worried at the time because he did not think his HIV test results was going to constitute a problem towards his participation in the reality show.

He urged this Honourable Court to hold that the Respondent failed to obtain the Applicant's informed consent before proceeding to conduct a compulsory HIV test on him, having failed to comply with section 30 of the HIV and AIDS (Anti-Discrimination) Act 2014.

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He submitted that given the obvious imbalance of power between the Applicant and Respondent and the Respondent's submission that the Applicant was not coerced into the HIV testing exercise is untenable, because of this imbalance of power consequently, the Applicant practically had no choice in the matter. He referred the Court to the case of *Yusufu & Anor v. Obasanjo & Ors* (2003) LPELR-3540(SC) (Pp. 88 paras. C).

He argued that a proper reliance on section 9(1) of the HIV and AIDS (Anti-Discrimination) Act, 2014 by the Respondent should have been made before carrying out the said compulsory HIV test, and not after the test as the wordings of section 9(1) are clear and unambiguous and they should be given their plain and ordinary meaning. He referred the Court to the case of *in Laban-Kowa v. Alkali* [1999] 9 NWLR (P1. 620) 601 (P. 610, Para. A).

He further argued that the two medical documents exhibited by the Respondent does not comply with the provisions of Section 9(1) of the

Act as at the time the decision to subject the Applicant to a compulsory HIV test was made by the Respondent, Exhibits A2 and A3 were not in existence and the contents of Exhibits A2 and A3 do not disclose any recommendation to the Respondent that a compulsory HIV test ought to be carried out on the Applicant in compliance with the provisions of section 9(1) of the Act. He referred the Court to the case of *Okpalauzuegbu v. Ezemenari* [2011] 14 NWLR (Pt. 1268) 492 (Pp. 524-525 paras, G-A).

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He therefore urged this Court to discountenance all the arguments submitted on behalf of the Respondent as same amounts to a misapprehension and misapplication of the law as it applies to the parties.

I have carefully considered the Application, the several affidavits filed in support and in opposition of same, together with all the exhibits attached. In addition, I have perused the address of both counsels, which I have found helpful. In view of the fact that they form part of the records of the court I will save judicial time and resources by not repeating a summary of the said arguments again at this juncture.

The Superior Courts have defined Fundamental Rights as basic moral guarantees that people in all countries and cultures allegedly have, simply because they are people. In *RANSOME-KUTI Vs. ATTORNEY GENERAL OF THE FEDERATION* (1985) 2 NWLR (Pt 6) 211 at 230, Eso, JSC stated that

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"a fundamental right is a right which stands above the ordinary laws of the land and which are in fact antecedent to the political society itself and it is a primary condition to civilized existence."

This view was reiterated by Tobi, JSC in *FEDERAL REPUBLIC OF NIGERIA Vs. IFEGWU* (2003) 15 NWLR (Pt 842) 113 that:

"Fundamental rights are inherent in man because they are part of man and if a hierarchical order of our laws is drawn, fundamental rights will not or take a pride of place but the first place."

The human person possesses rights because of the very fact that, he is a person, a whole, master of himself and of his acts, and which consequently.

is not merely a means to an end but an end, an end which must be treated as such. By virtue of natural law, the human person has the right to be respected, is the subject of rights, and possesses rights. These are things which are owed to man because of the very fact that he is a man. Fundamental rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country".

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They are freedoms essential to the concept of ordered liberty inherent in human nature and consequently inalienable. Fundamental rights are frequently held to be universal in the sense that all people have and enjoy them irrespective of class, gender or religion. In Nigeria the fundamental rights of her citizens have been constitutionally guaranteed in the 1999 CFRN (as amended) and are equally provided for in the African Charter on Human and Peoples Rights, a Charter which has been domesticated into the laws of Nigeria. It is the duty of the courts not only to protect these rights but to seek a robust interpretation of the rights in such a way as to give maximum protection to the citizenry.

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The case put forward by the Applicant has been stated above.

The law is settled that the protection and enforcement of fundamental rights are not absolute. The law recognizes that they may be curtailed where there are cogent and exceptional grounds for doing so. For instance, the right to life may be curtailed pursuant to due process upon conviction for a heinous crime. The right to liberty and freedom may equally be abridged pursuant to a judicial pronouncement and even for public health reasons.

In applications of this nature the burden is squarely on the shoulders of the applicant to establish by cogent and credible evidence that his constitutionally guaranteed freedoms are in danger of being truncated without due process or have actually been so truncated thus necessitating the intervention of the court to protect those rights.

In discharging this burden, it is not enough for the Applicant to make wild unsubstantiated accusations against law enforcement officers as it is settled that he who avers must go further to prove same.

This was the position taken by the court in the case of Nigerian copyright Commission & Ors v. Musical Copyright Society of Nig. Ltd & Ors (Pp. 54-55 paras. E-E) where the Court held as follows:

"In determining whether there has been an actual or threatened infringement of any of the fundamental rights guaranteed by the provisions of Chapter IV of the Constitution of Nigeria 1999 as amended, it must be borne in mind that whilst it is the duty on the person alleged to have infringed the fundamental right of the citizen to show justification for such infringement, the primary duty is on the person alleging a breach of his fundamental right to place before the Court such cogent and sufficient materials to establish the alleged infringement before the duty to justify the proved infringement would shift unto the other party. In other words, it not merely enough to allege an infringement of fundamental right without any proof thereof and then fold his hand to watch and see how the other party justifies an infringement that has not even been established since in law the rights as guaranteed under the Constitution of Nigeria 1999 as amended under Chapter IV thereof as fundamental rights, though sacrosanct, are not absolute, Section 35(1)(c) of the Constitution of Nigeria 1999 as amended. See also *Fajemirokun V. CIJ (Nig.) Ltd.* (2002) 10 NWLR (Pt. 774) 95 @ 110; *Ekwenugo V. FRN* (Supra) @p. 185;" Per GEORGEWILL, J.C.A

In the instant case and from the totality of the facts placed before this court, I accept that the Applicant was invited by the Respondent to participate in the Style Magnate Fashion Reality Show upon his successful application. Also, by Exhibit YA8 dated 17th January 2024, the Respondents requested the Applicant to complete medical form and Bio data form. By paragraph 8, the Applicant stated as follows and I quote that: The Respondent further sent me a medical form and bio data form via an email dated 17th January, 2024 requesting that I complete same for the upcoming show. I completed the forms and informed the

Respondent about same via an email dated 18th January, 2024. End of quote.

The Applicant also attached the Application form wherein they asked if he has any health problems, he responded N. A In the email attached as Exhibit YA11: Questions asked were: what other prescription medication are you on and what are the names of the medication?

By paragraph 10, he stated that On the 5th day of February, 2024, I arrived at the location for the event somewhere in Ajah/Sangotedo, Lagos State and via paragraph 11 as follows; As the following day was the 6th February, 2024, our official first day in camp, my team and I thought we were going to hit the ground running. But the Liaison person for the Respondent; one Mr Sunday, informed us that we were going to do Medicals. He continued by stating that the Respondent took us to Eleganza Estate in Ikota where a makeshift clinic had been set up by the team. One of the staff of the Respondent informed us that as a condition for us to continue participating in the show, we were going to be tested for HIV and Hepatitis B. My consent was neither sought nor obtained before the agents of the Respondents proceeded to carry out these two tests on me. I was however not worried at the time because I did not think my HIV test results were going to constitute a problem towards my participation in the reality show. I discovered my HIV status many years ago. I have been on antiretroviral medications consistently since 2016, and as such my viral load at the time was undetectable, and is still undetectable till date. A copy of my current hospital appointment card for my HIV treatment is hereby attached. End of quote.

This clearly shows that the Applicant consented to the test. I am therefore in agreement with the submissions of learned Respondent Counsel, that, the Applicant was informed of the type of tests he was to take and willingly submitted his blood samples for same.

It was only when he was further questioned that the Applicant revealed the prescription medication, he was on despite having been asked since the time of submission of his application. It was thereafter that he received the email of the Respondents informing him of the decision to

discontinue his involvement with the show and offering him the sum of N200,000 as compensation as gesture towards his business and growth. Although, the Applicant claimed not to have received any money.

The Applicant also stated and I quote that; "After the tests, and while my team and I were still getting ready for the show, I received a letter from the Respondent via an email dated the 8th of February, 2024. When I opened and read the letter, I was psychologically traumatized and devastated by the contents of same. In the said letter, the Respondent made it quite clear that based on the medical examinations of the 6th of February, 2024 they were compelled to make a purportedly difficult decision to discontinue my involvement in the show" and attached Copies of the said email of 8th February, 2024.

On the other hand, the Respondents claim that the Applicants consent was actually sought stating as follows; "Contrary to the representations made in paragraph 11 of the affidavit of the Applicant, the representatives of the Respondent sought the consent of the Applicant before the HIV tests were conducted on him. They stated as follows and I summarise as follows;

"That the statement made about the failure to obtain his consent is self-contradictory as the Applicant indeed admitted in the same paragraph that he was notified of the tests to be carried out and this included HIV) before his blood samples were taken.

That based on the nature of the show "Style Magnate Fashion Reality Show" which the Applicant had sought to participate in, the Respondent was obliged to carry out certain medical tests and examinations on all the contestants to guarantee the safety of every other contestant that was participating in the show.

Based on the nature of the show, the Applicant and other contestants were scheduled to work together in "a semi-industrial environment at close quarters under intense pressure and competitive timelines with machines and other equipment which could cause injury and therefore present a clear and present danger to other contestant. The contestants

were detailed to work with sewing and other machines, scissors and needles which are capable of causing injuries during the cause of use".

Some of the tasks required to be executed during the show entailed working in pairs and groups with the highlighted equipment. The schedule also included a requirement for contestants to carry out additional tasks in their designated living quarters in pairs and mini-groups as over-night tasks and these required the contestants to work under immense pressure. They attached pictures of the equipment.

The decision to exclude the Applicant from the show was taken as a prudent measure to prevent the other contestants from being exposed to any danger of transmission or exposure. To confirm this assertion, I have attached herewith a report from two independent doctors which confirmed that the inclusion of the Applicant in the show would have constituted a clear and present danger of HIV transmission to others. End of quote.

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The reports were attached as Exhibits A2 and A3.

While the Applicant insists that the agents of the Respondent never bothered to seek and obtain his informed and full consent before proceeding to carry out the HIV test on him.

That he does not present a clear or present danger to other contestants of the Reality Show as the medical report from his personal doctor from the 68 Nigerian Army Reference Hospital, Yaba where he has been receiving HIV treatment consistently since 2018 states that he does not pose any risk to anybody since he is undetectable.

In the instant case, the question is did the Respondents act within the parameters of the law in carrying out the medical test and was the Applicant actually informed.

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From the several paragraphs of the affidavit of the Applicant, the further affidavit and the Counter affidavit and as previously stated above, it is clear that the Applicant was informed of the tests to be carried out and consented to them, just like other participants to the fashion show.

The Court observes that the Applicant did not respond to the statement of the Respondent where they stated that; based on the nature of the show, the Applicant and other contestants were scheduled to work together in a semi-industrial environment at close quarters under intense pressure and competitive timelines with machines, scissors and needles and other equipment which could cause injury and therefore present a clear and present danger to other contestants.

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That the decision to exclude the Applicant from the show was taken as a prudent measure to prevent the other contestants from being exposed to any danger of transmission or exposure as reports from two independent doctors confirmed same. That the Respondent had an overriding obligation to ensure that all of the other contestants were not unduly exposed to any danger considering the peculiar nature of the activities which the contestants are required to undertake during the show. That the Applicant was treated with utmost courtesy and respect throughout his engagement with the Respondent. That also, in recognition of the Applicant's efforts, the Respondent offered to pay the Applicant a sum of N200, 000.00 (Two Hundred Thousand) as a compensation. End of quote. All he had to say was that his informed consent was not obtained and he was not paid the N200,000 promised by the Respondent.

The Applicant made a lot of heavy weather about informed consent which submissions this honourable court does not totally agree with as he was not compelled but freely gave his blood sample stating that he never felt that his HIV status would be an issue. He had been asked whether he was on prescription drugs and the names of the drugs which it is not clear whether he ever responded to.

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From the responses of the Applicant for participation at the fashion exhibition, he seems to have intentionally not responded to the questions asked by the Respondent. As a result, I find that no material, cogent or compelling have been placed before me to conclude that the Respondents have in any way acted beyond the scope of their authority and I so hold. The Applicant either intentionally withheld information requested or was

apprehensive of full disclosure and decided to withhold information on his HIV status until the last minute.

From the totality of the materials placed before me it appears that the Respondent has conducted their process in line with the law taking all other participants into consideration.

I am also in agreement with submissions of learned Respondents Counsel that the facts of the cases cited by the Applicant especially *Bi-Courtney Aviation Services Ltd v. Kelani* are not relevant to the instant case, although some of the findings on constitutional provisions are useful.

The Court in *Mirchandi v. IGP & Ors* (2021) LPELR-54016(CA) (Pp. 19-20 paras. E) have held that the question of an infringement of the fundamental rights of an individual is largely a question of fact. It therefore does not depend on the submission of Counsel on the Law, no matter how brilliant and impressive it is. It is the facts as disclosed by the affidavit evidence that is usually examined, analyzed and evaluated to determine whether indeed the fundamental right of a person has been, is being or is likely to be eviscerated/ breached as claimed, or otherwise dealt with in a manner that is contrary to the constitutional and other provisions of the Law - *Okafor V Lagos State Govt* (2016) LPELR-41066(CA)." Per SANKEY, J.C.A

It is not enough for the Applicant to allege breach of fundamental rights but failed to prove same.

The relevant provisions of the law cited by the Applicant are Section 34, 37 and 42 of the Constitution which provides as follows:

"Sec 34(1)(a): no person shall be subjected to torture or inhuman or degrading treatment

Sec 37: The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby granted and protected.

Sec 42: (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person -

- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or
 - (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.
- (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth. Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria."

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While Sections 4, 8 and 9 of the HIV and AIDS Antidiscrimination Act provide as follows:

Section 4. (1) Every individual, community, institution and employer shall take steps to protect the human rights of people living with or affected by HIV or AIDS by eliminating HIV-related discriminations in all settings, including employment, health and educational institutions, policies and practices.

(2) Every individual, community and employer shall take steps to promote equality of opportunity and treatment and non-discrimination on the basis of real or perceived HIV status and HIV-related illness.

8. (1) Prior to accessing any public or privately delivered services, employment and any other opportunity, no individual, institutions or bodies shall require a person to disclose his or her HIV status or the status of any other person, by asking questions, orally or in writing directly or indirectly.

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9(1) No employer, institution, body or individual shall require an HIV test as a precondition to an offer of employment, access to public or private services or opportunities, except where it is shown, on the certification

of two competent medical authorities (working independently) to the Court, that failure to take such a test constitutes a clear and present danger of HIV transmission to others.

In *Nwali v. Ebsiec & Ors* (2014) LPELR-23682(CA) (Pp. 27-29 paras. E-E) the Court held in respect of Section 37 of the Constitution of the Federal Republic of Nigeria 1999 as amended that:

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"S. 37 of the 1999 Constitution states that "the privacy of citizens, their homes, correspondence, conversations and telegraphic communication telephone guaranteed and protected". It is clear from the text of the provision that it specifically mentioned the types of privacy that it protects. Five of them are listed therein as follows- 1. The privacy of citizens 2. The privacy of their homes 3. The privacy of their correspondence 4. The privacy of their telephone conversations 5. The privacy of their telegraphic communication.....It is glaring that the phrase "Privacy of Citizens" is general and is not limited to any aspect of the person or life of a citizen. It is not expressly defined by the Constitution and there is nothing in the Constitution or any other statute from which it's exact meaning or scope can be gleaned." Per AGIM, J.C.A

Also further explained in the case of *Bi-Courtney Aviation Services Ltd V. Kelani* (2021) LPELR-56365 (CA) (Pp. 24-25 paras. A-A) where the Court held as follows:

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"Section 37 of the Constitution provides: "The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected". The meaning of the term "privacy of Citizens" is not directly obvious on its face. It is obviously very wide as it does not define the specific aspects of the privacy of citizen it protects. A citizen is ordinarily a human being his body, his life, his person, thought, conscience, belief, decisions (including his plans and choices), desires, his health, his relationships, character, possessions, family etc. So, how should the term, privacy of the citizen be understood?

Should it be understood to exclude the privacy of some parts of his life?

The Supreme Court following the non- restrictive and liberal approach interpreted it as including the privacy of all his constituents as a human being in *Medical and Dental Practitioners Disciplinary Tribunal vs. Okonkwo* (2001) 5 NSCQR 650 at 684 - 685 when it held that "the right to privacy implies a right to protect one's thought, conscience or religious belief and practice from coercive and unjustified intrusion and one's body from unwarranted invasion." Per BAYERO, J.C.A.

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The Respondents never mentioned the HIV status in their email attached to the Application as Exhibit YA14 neither were they accused by the Applicant of leaking the Applicants status to a third party nor was the Applicant singled out/ forced among other participant to undertake the medical tests, so why claim breach of fundamental right to privacy or even discrimination?

Also worthy of note are Exhibits A2 and A3 being the report of 2 medical doctors in respect of the issue, which the Applicant claimed was made 2 months after the medical test carried out on him. On the other hand, the Applicant also attached Exhibit YA18 which is from his medical doctor dated 8th May 2025, however, same is almost 6 months after this case was filed.

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The questions that ~~could be asked~~ in this case are: did the Respondents owe other participants any duty of care at all, was the Applicants rights greater than that of other participants who also took the same tests? was there full disclosure from the beginning? I will say no more.

In the case of *Ajani v. Giwa* (1986) LPELR-283(SC) (Pp. 21 paras. B-B) the position of the Apex Court was that:

"One over-riding principle in the exercise of its discretion by a Court is to maintain a balance of justice, bearing in mind the rights of the parties." Per OPUTA, J.S.C

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From the above analysis and authorities cited, I have no doubt in my mind however, that the root cause of the dispute may relate to some form of

contractual transaction between the parties and not one that can be captured under the Enforcement of Fundamental Rights procedure and I so hold.

This was shown by paragraph 17 of the Applicant's Affidavit where he stated and I quote "That following the Respondent's wrongful termination of my participation in the Style Magnate Fashion Reality Show I briefed my lawyer who wrote to the Respondent demanding compensation on my behalf however, the Respondent never replied the said letter. End of quote. Failure to pay compensation to the Applicant as promised could be the basis of the current suit.

The Law Courts can resolve perceived contractual disputes but same is not the issue brought before this honourable court. In the final analysis, for all the reasons stated above I find and hold that the Application is unsustainable, totally lacking in merit and is hereby accordingly dismissed in its entirety.

This is the judgment of the court.

I so hold

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Odusanya

HON. JUSTICE OLUWATOYIN ATINUKE ODUSANYA

Judge

Appearances:

Parties absent

Z.O. Olatunbosun for Respondent

No appearance for the Applicant

COURT OF LAGOS

HIGH



STATE

Sign:

Date:

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