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**IN THE HIGH COURT OF LAGOS STATE**  
**IN THE LAGOS JUDICIAL DIVISION**  
**HOLDEN AT LAGOS**

SUIT NO:

**IN THE MATTER OF AN APPLICATION BY MR FEMI FALANA, SAN**  
**FOR AN ENFORCEMENT OF HIS FUNDAMENTAL HUMAN RIGHT**  
**TO PRIVACY AS GUARANTEED BY THE CONSTITUTION OF THE**  
**FEDERAL REPUBLIC OF NIGERIA, 1999**

**BETWEEN**

**MR FEMI FALANA, SAN**

**APPLICANT**

**AND**

**META PLATFORMS INC.**

**RESPONDENT**

**ORIGINATING MOTION**

**BROUGHT PURSUANT TO SECTION 37 OF THE CONSTITUTION OF**  
**THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED), SECTION**  
**24(1)(A) AND (E) AND 34(1)(D) OF NIGERIA DATA PROTECTION ACT**  
**2023; ORDER 2 RULE 1 FUNDAMENTAL RIGHTS ENFORCEMENT**  
**PROCEDURE RULES 2009 AND UNDER THE INHERENT**  
**JURISDICTION OF THIS COURT.**

LET the RESPONDENT of 1601 Willow Road, Menlo Park, California, 94025, California, USA within thirty (30) days after service of this Originating Motion on them, inclusive of the date of such service, cause an appearance to be entered for them to this summons which is issued upon the application of the Applicant of 25 Adekunle Fajuyi Way, Ikeja GRA, Lagos State which claim:

1. **A DECLARATION** that the Respondent’s continued publication of the Applicant’s name, still and motion images and purported voice on a page and video captioned “AfriCare Health Centre” on their platform - [www.facebook.com](http://www.facebook.com) to the effect that the Applicant suffered from a disease known as ‘Prostatitis’ constitutes an invasion of the Applicant’s privacy guaranteed by section 37 of the Constitution of the Federal Republic of Nigeria, 1999.
  
2. **A DECLARATION** that the Respondents’ continued retention of the video captioned - “captioned “AfriCare Health Centre” on their platform - [www.facebook.com](http://www.facebook.com) is false, inaccurate, misleading and unfair to the Applicant and thereby violates the provision of section 24(1)(a) and (e) of the Nigeria Data Protection Act 2023.

3. **AN ORDER** mandating the Respondents to forthwith remove/erase/delete the video captioned "AfriCare Health Centre" on their platform - [www.facebook.com](http://www.facebook.com).
4. **GENERAL DAMAGES** in the sum of \$5, 000, 000 (Five Million US Dollars).
5. **CONSEQUENTIAL ORDER(S)** that this honourable court may deem fit to grant in the circumstance.

Dated this 3<sup>rd</sup> day of February 2025



*Olumide Babalola*

**Olumide Babalola, Esq.**  
Applicant's Counsel  
Olumide Babalola LP  
Aggey House (6<sup>th</sup> floor),  
12 Berkeley Street,  
Off King George V Street,  
Moloney,  
Lagos Island, Lagos State.  
[counsel@oblp.org](mailto:counsel@oblp.org),  
09161263105  
0811 111 4778  
07016264434

**FOR SERVICE ON:**

The Respondent  
**META PLATFORMS INC.**  
Meta Platforms, Inc.  
1601 Willow Road  
Menlo Park, CA 94025,  
California, USA  
[support@fb.com](mailto:support@fb.com)  
[mydataprivacyrights@fb.com](mailto:mydataprivacyrights@fb.com)

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BETWEEN

MR FEMI FALANA, SAN

APPLICANT

AND

META PLATFORMS INC.

RESPONDENT

**STATEMENT OF THE APPLICANT**

**1. NAME OF APPLICANT:**

The name of the Applicant is Mr Femi Falana, SAN.

**2. DESCRIPTION OF APPLICANT:**

The Applicant is a Nigerian Citizen, Senior Advocate of Nigeria (SAN) with address at 25 Adekunle Fajuyi road, Ikeja, Lagos.

**3. RELIEFS SOUGHT:**

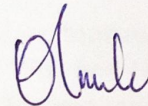
- a) **A DECLARATION** that the Respondent's continued publication of the Applicant's name, still and motion images and purported voice on a page and video captioned "AfriCare Health Centre" on their platform - [www.facebook.com](http://www.facebook.com) to the effect that the Applicant suffered from a disease known as 'Prostatitis' constitutes an invasion of the Applicant's privacy guaranteed by section 37 of the Constitution of the Federal Republic of Nigeria, 1999.
- b) **A DECLARATION** that the Respondents' continued retention of the video captioned - "captioned "AfriCare Health Centre" on their platform - [www.facebook.com](http://www.facebook.com) is false, inaccurate, misleading and unfair to the Applicant and thereby violates the provision of section 24(1)(a) and (c) of the Nigeria Data Protection Act 2023.

- c) **AN ORDER** mandating the Respondents to forthwith remove/erase/delete the video captioned “AfriCare Health Centre” on their platform - [www.facebook.com](http://www.facebook.com).
- d) **GENERAL DAMAGES** in the sum of \$5, 000, 000 (Five Million US Dollars).
- e) **CONSEQUENTIAL ORDER(S)** that this honourable court may deem fit to grant in the circumstance.

**4. GROUND(S) UPON WHICH RELIEFS ARE SOUGHT:**

- i. The Applicant is a Nigerian citizen and legal practitioner.
- ii. The Applicant is guaranteed the enjoyment of fundamental right to privacy under Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- iii. The Respondents published the Applicant’s name and images and ascribed a false illness to him and thereby violated the Applicant’s right to privacy guaranteed by the Constitution and Nigeria Data Protection Act 2023.
- iv. The Applicant has suffered emotional and psychological distress as a result of the false story.

Dated this 3<sup>rd</sup> day of February 2025



**Olumide Babalola, Esq.**  
Applicant’s Counsel  
Olumide Babalola LP  
Aggey House (6<sup>th</sup> floor),  
12 Berkeley Street,  
Off King George Street,  
Moloney,  
Lagos Island, Lagos State.  
[counsel@oblplp.org](mailto:counsel@oblplp.org),



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BETWEEN

MR FEMI FALANA, SAN

APPLICANT

AND

META PLATFORMS INC.

RESPONDENT

**AFFIDAVIT IN SUPPORT**

---

I, **MR FEMI FALAN, SAN**, Male, Adult, legal practitioner (Senior Advocate of Nigeria) and Nigerian citizen of 25 Adekunle Fajuyi way, Ikeja, Lagos State do hereby make oath and state as follows:

1. I am a Nigerian citizen, legal practitioner and the Applicant in this suit, and therefore conversant with the facts contained herein.
2. My legal career has been distinguished by his resolute stand on human rights, labor issues, and governance. I was called to the Nigerian Bar in 1981 and has since become a Senior Advocate of Nigeria (SAN), which is the highest rank attainable for a lawyer in Nigeria.
3. I am known for his fearless legal battles, often taking on cases against government policies and actions that infringe upon the rights of citizens. My law practice covers a broad range of areas, including constitutional law, civil rights, public interest litigation, and international human rights law. I am particularly recognized for my work in defending freedom of expression, advocating for the rights of marginalized groups, and challenging governmental overreach.
4. Over the years, I have represented numerous individuals and organizations in landmark cases, including: Defending journalists who have faced persecution for exercising their right to free speech; Advocating for the release of political prisoners and individuals imprisoned under unjust laws; Challenging governmental

abuses of power, including illegal detentions, extrajudicial killings, and anti-democratic policies. My legal victories have earned him the admiration of both national and international human rights communities.

5. Beyond my legal practice, I have been an outspoken advocate for social justice. He has consistently fought for democratic reforms in Nigeria, including the end of military rule and the promotion of good governance. As an active participant in the National Democratic Coalition (NADECO) during the military dictatorship of the 1990s, I played a key role in the struggle to restore democracy in Nigeria. In addition to my involvement in Nigerian civil society, I have also worked with numerous global human rights organizations. My contributions extend to promoting African unity and strengthening regional human rights frameworks.
6. I have written extensively on issues of law, democracy, and human rights. My numerous publications serve as important resources for legal practitioners, scholars, and activists. My books and articles have contributed significantly to the discourse on governance, justice, and the protection of civil liberties in Africa.
7. My lifelong commitment to justice and human rights has earned me several awards and recognitions, both in Nigeria and internationally. Some of his accolades include:
  - a) The Nigerian Bar Association's Award for Outstanding Contribution to the Legal Profession.
  - b) Recognition by human rights organizations, such as Amnesty International, for his unwavering dedication to the protection of human rights.
  - c) Femi Falana was one of the nominees for The Future Awards Africa (TFAA) of the theme "celebrating challengers and builders". He was given the award for his impact in adding values and inspiring the upcoming generation.
  - d) Femi Falana was awarded with the Civic Activism Award by BudgIT a civic data-driven tech organization 2022.
  - e) Femi Falana was awarded the International Bar Association's Bernard Simons Memorial Award 2008.
  - f) Femi Falana was awarded Lifetime Achievement Award for Human and Civil Rights by LXG Awards.
  - g) Femi Falana was awarded human rights defender award, presented by the Wole Soyinka Centre for Investigative Journalism (WSCIJ)
8. The Respondent is a media company operating a global social media platform known as [www.facebook.com](http://www.facebook.com).

9. On the 16<sup>th</sup> day of January 2025, I discovered that a video of me was posted on the Respondent's platform under the page named "AfriCare Health Centre" on Respondent's platform - [www.facebook.com](http://www.facebook.com) at

<https://m.facebook.com/watch/?v=1573293906703429&vanity=6157171705689>

4 **Attached and marked "Exhibit 1" are screenshots of the video.**

10. In video that carries my name, picture and purported video, I am reported to have said that:

"My name is Femi Falana, and I have been battling prostatitis for over 16 years. At the age of 50, I was diagnosed with this condition. Every day I faced pain discomfort and constant fatigue. I had trouble urinating lower back pain and other symptoms that made it difficult to live a full life. Despite consulting the best urologist in the country, no one could offer me effective treatment, I was prescribed numerous medications, physical therapy even surgery but the problem was that these methods only temporarily relived the symptoms."

11. I have been greatly prejudiced by the video on the Respondent's on the following grounds:

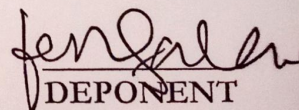
- a. My health life is part of my private life and I have never suffered any disease known as 'Prostatitis' in my life.
- b. I have never had any dealing with the Respondent or its pages on issues with my health life.
- c. The video and its contents are false, inaccurate, misleading and unfair to me.
- d. The video paints me in a false light and as such an invasion of my privacy.

12. The Respondents operates global platforms and anything published on these platforms are accessed and viewed by millions of people around the world. Hence, the stories have been viewed by millions of people since January 2023 when they were published on the Respondents' platforms.

13. For the purpose of this suit, I do not find these stories libelous but since they are false and fabricated against me, I find them offensive, reckless, insensitive, disturbing and unjustifiable intrusion into my privacy by painting me in a false light.

in the video, the Respondent's page has given me a publicity that paints me in a false light as the insinuations in the video are false and they infringe my right to privacy – right to be let alone.

16. At the time of deposing to this affidavit, the video has been published to the entire world on the Internet, and it has remained there for several weeks.
16. For their failure to verify the page and video before publishing, I believe the Respondent's publicity of my name and image in a false light was done carelessly and recklessly to draw traffic to the Respondent's platform to boost its advertisement revenues.
17. I believe that the Respondent's use of my name and image in the video is unfair and insensitive to my feelings since they never verified the claims as expected.
18. I find the Respondents' publicity of my photograph and name in a false light highly offensive and emotionally disturbing. This continues to cause me anxiety, sadness and exposure to ridicule.
19. I caused my lawyers to write the Respondent to remove the misleading and false video but the refused. Attached and marked "Exhibit 2" is my letter.
20. The electronically generated documents attached here was printed by me via our office HP Elitebook Laptop and HP printer Laserjet MFP M26 pro (the devices) during a period over which the devices were used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by me. Over that period there was regularly supplied to the devices in the ordinary course of those activities information of the kind from which the information so contained is derived.
21. Throughout the material part of that period the devices were operating properly and the information contained in the document attached reproduced is derived from information supplied to the devices in the ordinary course of those activities.
22. I depose to this affidavit in good faith, believing same to be true and in accordance with the Oaths Act.

  
DEPONENT

Sworn to at the High Court Registry, Lagos state  
this ..... day of ..... 2024.

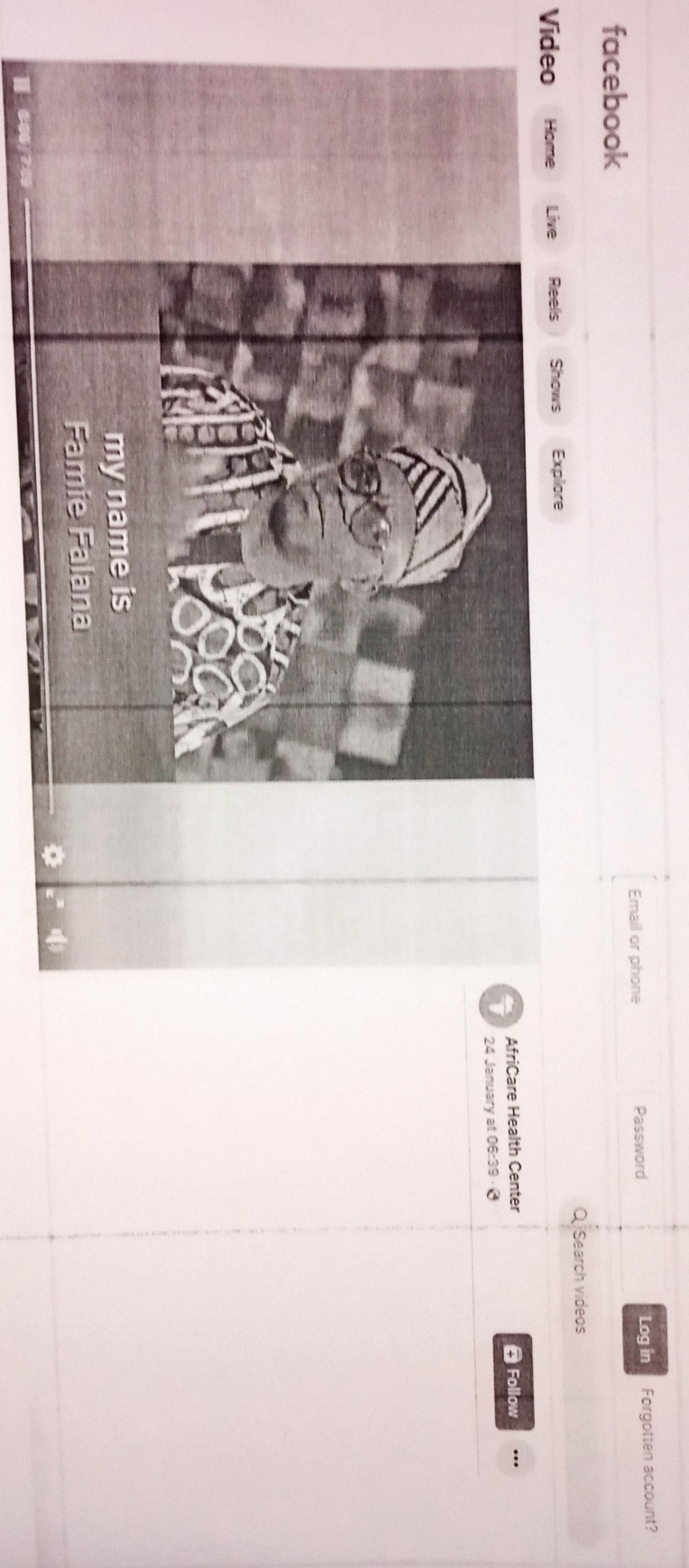


BEFORE ME

COMMISSIONER FOR OATHS



Exh 1



# EXIT 1

facebook

- Video
- Home
- Live
- Reels
- Shows
- Explore

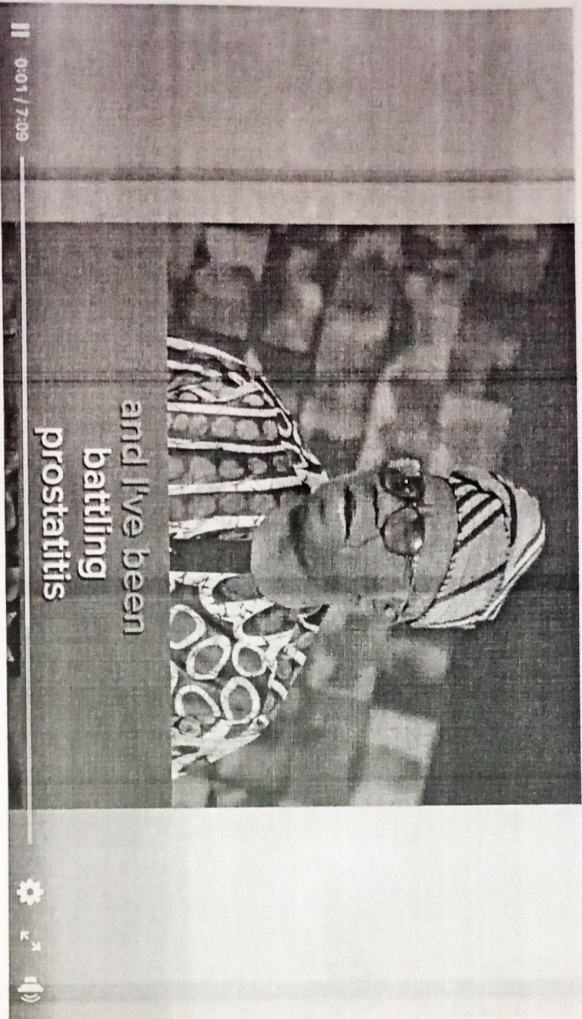
Email or phone

Password

Log in

Forgotten account?

Search videos



AfricCare Health Center  
24 January at 06:39 · 🌐

Follow



facebook

Video Home

Live

Reels

Shows

Explore

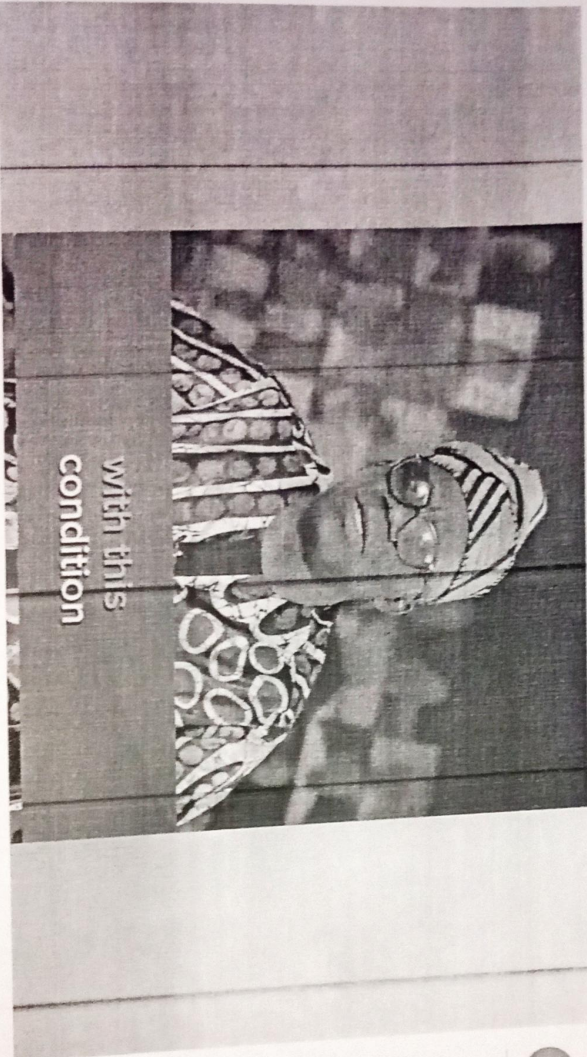
Email or phone

Password

Log In

Forgotten account?

Search videos



Africare Health Center  
24 January at 06:39

Follow



# facebook

- Video
- Home
- Live
- Reels
- Shows
- Explore

Email or phone

password



I had trouble  
urinating  
lower back



MyCare Health Co  
28 January at 06:30

facebook

Video

Home

Live

Reels

Shows

Explore

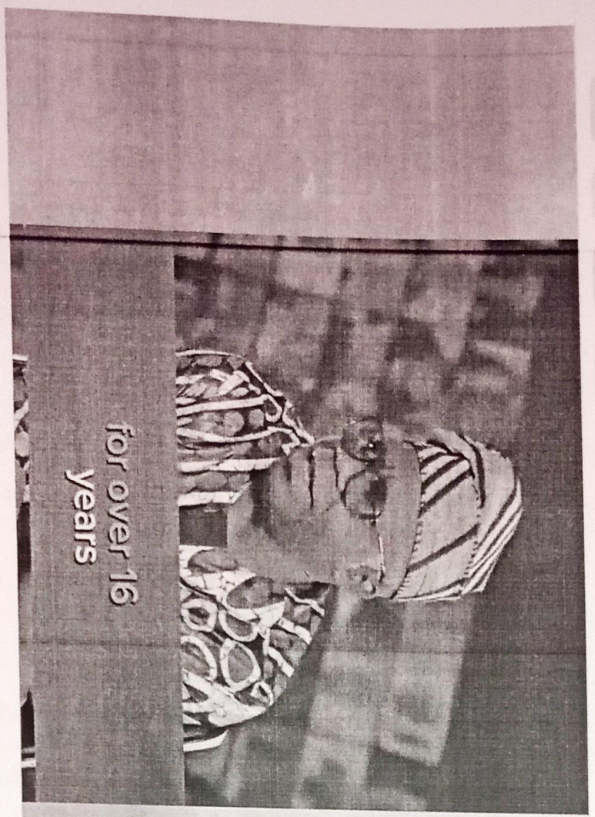
Email or phone

Password

Log in

Forgotten account?

Q Search videos



Africare Health Center  
24 January at 06:39

+ Follow



**From:** Associate In-Chambers counsel@oblp.org  
**Subject:** Request for Immediate Removal of False Content and Compensation for Privacy Violation  
**Date:** 2 February 2025 at 08:43  
**To:** support@fb.com  
**Cc:** mydataprivacyrights@fb.com  
**Bcc:** Associate In-Chambers counsel@oblp.org

EXH 2

30<sup>th</sup> January 2025

**Meta Platforms, Inc.**  
Attn: Legal and Compliance Department  
1 Hacker Way  
Menlo Park, CA 94025  
USA

Dear Sir,

**Request for Immediate Removal of False Content and Compensation for Privacy Violation**

We have been engaged by Mr Femi Falana – a well-known Nigerian legal practitioner and human rights activist, whose privacy rights have been egregiously violated by a video published on the Facebook platform owned by Meta Platforms, Inc. The video in question, which falsely states that Mr. Falana suffers from Prostatitis, was published on 20<sup>th</sup> January 2025. This misinformation constitutes a serious breach of Mr. Falana's privacy, personal dignity, and reputation.

We respectfully request that Meta take the following immediate actions:

1. **Remove the video** from the Facebook platform and any associated Meta platforms, ensuring that the content is deleted permanently and cannot be re-uploaded.
2. **Provide N500, 000, 000 compensation for the harm caused** by this violation of Mr. Falana's privacy, in accordance with the provisions set out in Nigeria's Data Protection Act 2023, which stipulates that individuals are entitled to seek redress for any unauthorized or incorrect processing of personal data that affects their rights.
3. **Issue a formal apology** to Mr. Femi Falana for the defamatory content, and ensure that this apology is visible on your platform to clarify the misinformation.

The video's content is misleading, and represents a blatant violation of Mr. Falana's right to privacy under the Nigerian Constitution, which guarantees individuals protection against false or damaging information that invades their privacy. Specifically, the privacy provisions under Chapter 4, Section 37 of the Nigerian Constitution, and the Nigeria Data Protection Act 2023, safeguard citizens from unwarranted disclosure of personal and sensitive information without consent.

We also bring to your attention that Meta, as the operator of the platform, has an obligation to prevent the dissemination of content that violates national data protection laws, as well as global standards for privacy and human dignity. We urge you to act swiftly to remedy this situation and prevent any further damage to Mr. Falana's reputation.

Should Meta fail to take appropriate action within 24 hours of your receipt of this letter, we will have no choice but to seek legal remedies available under Nigerian law, including but not limited to

making a claim for damages resulting from the violation of Mr. Falana's privacy rights.

We look forward to your prompt response and swift action in addressing this matter. Kindly acknowledge receipt of this letter and confirm that the necessary steps are being taken.

Thank you for your immediate attention to this serious issue.

Sincerely,

**Olumide Babalola, Esq.**

*Managing Partner*

*olumide@oblp.org*

Respectfully,

**Associate In-Chambers**

Olumide Babalola LP  
Aggey House (6th Floor)  
12 Berkeley Street,  
King George V Road,  
Moloney, Lagos Island,  
Lagos State,  
Nigeria  
[www.olumidebabalolalp.com](http://www.olumidebabalolalp.com)

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Please see our privacy notice at: <https://olumidebabalolalp.com/our-privacy-policy/>

Falana's letter of demand.pdf





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BETWEEN

MR FEMI FALANA, SAN

APPLICANT

AND

META PLATFORMS INC.

RESPONDENT

**WRITTEN ADDRESS IN SUPPORT**

**INTRODUCTION**

1. My Lord, this originating Motion is brought pursuant to section 37 of the Nigerian Constitution, section 24 of the Nigeria Data Protection Act 2024, order 2 rule 1 of the Fundamental Rights Enforcement Procedure Rules 2009 and under the inherent jurisdiction of this honourable court.
2. The application prays for the reliefs contained on the face of the Motion.
3. In support of the Motion is a 16-paragraphed affidavit deposed by the Applicant together with 2 exhibits. The Applicant shall rely on all the paragraphs and exhibits at the hearing of this suit.

**FACTS**

4. My Lord, the facts to be relied on are as deposed in the affidavit in support.

**ISSUES**

5. From the facts and circumstances of the case, the Applicant has respectfully distilled two issues for the determination of this honourable court as follows:
  - i. Whether or not as opposed to libel, the Respondent's continued publication of the Applicant's name, still and motion images and purported voice on a page and video captioned "AfriCare Health Centre" on their platform - [www.facebook.com](http://www.facebook.com) to the effect that the

Applicant suffered from a disease known as 'Prostatitis' constitutes an invasion of the Applicant's privacy and thereby infringes his right to privacy guaranteed by section 37 of the Constitution of the Federal Republic of Nigeria, 1999.

- ii. Whether or not the Respondent's continued retention of the video captioned - "captioned "AfriCare Health Centre" on their platform - www.facebook.com is unfair, false, inaccurate and thereby violates the provision of section 24(1)(a) and (e) of the Nigeria Data Protection Act 2023?

## ARGUMENTS

### ISSUE 1

Whether or not as opposed to libel, the Respondent's continued publication of the Applicant's name, still and motion images and purported voice on a page and video captioned "AfriCare Health Centre" on their platform - www.facebook.com to the effect that the Applicant suffered from a disease known as 'Prostatitis' constitutes an invasion of the Applicant's privacy and thereby infringes his right to privacy guaranteed by section 37 of the Constitution of the Federal Republic of Nigeria, 1999.

6. My Lord, it is important to state that the Applicant in this suit – a revered Senior Advocate of Nigeria – has not alleged libel rather an invasion of privacy and violation of certain provisions of the Nigeria Data Protection Act 2023. This clarity is with respect, important, lest the Respondent confuses both claims in their response.
7. There is no gainsaying that, the right to privacy is the most under-litigated fundamental right in Nigeria, hence many aspects of the right have neither been litigated nor pronounced upon by the court. (*see Aaron Olaniyi Salau, 'Data Protection in an Emerging Digital Economy: The Case of Nigerian Communications Commission: Regulation without Predictability?' (7th International Conference on Information Law and Ethics, 22-23 February 2016) accessed 24 December 2022.*)
8. Even though, the Court of Appeal declared in the decision in **Paul Ojoma v State (2014) LPELR-2294 (CA)** that: "Privacy is the most valuable of all

rights,” the value is yet to be seen in the enforcement and compensation for privacy violations in Nigeria.

9. Not until 2021, the appellate courts never had the opportunity to pronounce on the inclusion of data protection under our constitutional right to privacy guaranteed by section 37 of the 1999 Constitution. Happily, this was done in the decision in **Digital Rights Lawyers Initiative v National Identity Management Commission (2021) LPELR – 55623(CA)** where the court held that:

“But the meaning and scope of ‘privacy of citizens’ as guaranteed by the section has not received clear definition/interpretation in the constitution. The trial court had, in my view, rightly held that the right to ‘privacy of citizens’ as guaranteed under the section includes the right to protection of personal information and personal data.”

10. In defining the right to privacy, the Supreme Court had in **Medical Dental Practitioners Disciplinary Tribunal v Dr. Emewulu Okonkwo (2001) 7 NWLR (Pt. 711) 206** 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 unauthorised invasion. ...The sum total of the rights of privacy and of freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary.” (Emphasis mine)

11. From the definition, the court had made it clear that individuals are guaranteed freedom from intrusion into their private lives which includes their state of health whether true or false. See also the decision in **Nwali v EBISIEC (2014) LPELR-23614(CA)**.
12. In this case, the Applicant claims that the Respondent intruded into his privacy by making false claims about his health status – a component of his private life.

13. **What is invasion of privacy by false light?** Historically, the right to privacy was conceived in 1890 in the United States of America (via an article written by two lawyers titled 'Samuel Warren and Louis Brandeis, The Right to Privacy, (1890) 4(5) Harvard Law Review, 193-195) to protect four interests: to wit:

- (a) intrusion upon seclusion or solitude,
- (b) publication of embarrassing private facts,
- (c) appropriation of name or likeness, and
- (d) publicity placing an individual in a false light before the public eye.

14. In Nigeria, the following learned authors have recognised publicity in false light as a form of invasion of privacy:

15. **Prof. E.S Nwauche** confirms 'false light' as a privacy wrong in his article thus:

“An idea of the key issues in the right to privacy can be found in the classification of the jurist Prosser of the four torts which had then emerged from the American protection of privacy. These four torts are : (i) **publicity which places plaintiff in a false light**; (ii) appropriation of the plaintiffs name or likeness; (iii) intrusion upon plaintiff's seclusion or solitude and (iv) public disclosure of private facts about the plaintiff.<sup>4</sup> Even though these torts have found different manifestations in different countries, they remain the signposts for the protection of the right to privacy.” (Emphasis mine)

*(See Prof. E.S. Nwauche in his article, 'The right to privacy in Nigeria', (2007) 1 (1) CALS, Review of Nigerian Law and Practice, 63-89. See also Prosser Privacy (1960) 48 California Law Review, 383.*

16. The nature of painting another in a false light as a form of privacy invasion was also acknowledged by **Prof. Kehinde Mowoe** in her book titled '**Constitutional Law of Nigeria**, published by Malthouse Press 2008.

17. At page 414, the learned professor states that:

“Privacy is a concept composed of several aspects.., it embraces at least four branches of protected interests, protection from intrusion upon one’s seclusion, from appropriation of one’s manner or likeness from unreasonably publicity which unreasonably places one in a false light before the public” (Emphasis mine)

18. In his article titled ‘**The right to privacy as a human right in Nigeria and consideration of class suits as an enforcement option**’ (2022) 13 (1) The Gravitas Review of Business and Property Law,1, **Uche Val Obi, SAN** argues that:

“False Light: This refers to the public disclosure of misleading information. The disclosed information need not be false. The essential elements of a false light action are:

- a. publication by the defendant about the plaintiff;
- b. it was done with reckless disregard;
- c. it places the plaintiff in a false light; and
- d. it would be highly offensive or embarrassing to a reasonable person”

19. In another article by **Fortune Ugwumba** titled, ‘**Appraisal of privacy torts in the media**’, accessible at <https://dnlegalandstyle.com/2021/an-appraisal-of-privacy-torts-in-the-media/>, the learned author argues that:

“Simply put, if you say something about another person which happens to be false and of course affects the way a 3<sup>rd</sup> party views such person and further harm him, you will be liable for the tort of False light. In order to succeed in a claim for False Light, the claimant must prove that defendant published something that gave people the wrong impression about him. The harm of this tort is that it seeks to spread non-defamatory but false information which is unbearable; albeit in a manner that is often hard to pin down.”

20. It is arguable that these interests are covered by the Supreme Court’s definition of right to privacy as provided in the decision in **Medical and Medical Dental Practitioners Disciplinary Tribunal v Dr. Emewulu Okonkwo (supra)**

21. In our case, the Applicant has deposed to affidavit that:

- a. The Respondent published false video about his health status – his private life
- b. The story paints him in a false light
- c. He finds the publication offensive and disturbing
- d. He is mentally and emotionally disturbed by the false story

22. The depositions touch on the ingredients of false light and we have demonstrated above and further as follows:

23. My Lord, while we admit that false light has some elements of defamation, it is our respectful submission that both causes of action must not be conflated or confused. We respectfully emphasise that the Applicant's claim in this case is not for defamation.

24. My Lord, for the sake of clarity, the distinction between defamation and invasion of privacy by false light are depicted in the table below.

	Defamation	False Light
1.	Causes damages to reputation	Causes mental or emotional distress.
2.	Proof of malice required.	Malice not necessarily required. Recklessness suffices
3.	Protects personal integrity, character or reputation	Protects right to privacy, unauthorised use of personal information giving false opinion
4	Injury must be proved to be entitled to damages	Injury need not be proved for breach of privacy
5	It is a tort	It is a fundamental right violation

25. My Lord, due to the absence of local authorities on this novel area of our laws, we shall respectfully refer the Court to the following foreign decisions on false light.

26. In **Max Rufus Mosley v The United Kingdom (2002) ECHR**, 1840, a newspaper company published a story titled 'F1 boss has sick Nazi orgy with

5 hookers' with an opening sentence of 'Formula 1 motor racing chief Max Mosley is today exposed as a secret sadomasochistic sex pervert'. When the Applicant filed an action against his publication in false light, the court considered the following provision:

"Measures to protect the individual against interference with his right to privacy 1. There is an area in which the exercise of the right of freedom of information and freedom of expression may conflict with the right to privacy protected by Article 8 of the Convention on Human Rights. The exercise of the former right must not be allowed to destroy the existence of the latter. 2. The right to privacy consists essentially in the right to live one's own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honour and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorised publication of private photographs, protection against misuse of private communications, protection from disclosure of information given or received by the individual confidentially. Those who, by their own actions, have encouraged indiscreet revelations about which they complain later on, cannot avail themselves of the right to privacy." (Emphasis mine)

27. The court conclusively, the court affirmed the Applicant's right to privacy in the circumstance.
28. In **Leverton v Curtis Publishing Co.** 192 f. 2d 974 (3d Cir 1951) a newspaper company repeatedly used a girl's picture for different unrelated and irrelevant stories (associating her with) in awarding her damages, the court found the newspaper liable for violating her privacy by putting her in conjunction with an article that had nothing to do with her incident.
29. Also in **Peay v Curtis Publishing Co., Pub. Co.**, 78 F. Supp. 305 (D.D.C. 1948) a victim's picture was published in relation to an irrelevant story and the court awarded damages for invasion of privacy by publicity in a false light.
30. In **Gill v Curtis Publishing Co.** 38 Cal.2d 273, a man and his family picture was published in a story depicting 'love at first sight' is a bad risk. The court awarded damages for invasion of privacy by publishing in false light.

31. In **National Bonding Agency v Demeson** 648. Sw. 2d 748 (Texas Court of Appeal, 1983), Defendant caused to be published a 'wanted' poster with the Plaintiff's name and photograph describing her sexual habits. The plaintiff sued for invasion of privacy by painting in false lights and the court awarded her damages.
32. In **Lovington v The Houston Post**, 75 N.M. 60 (N.M. 1965) a person's picture was published in conjunction with another person's name, the latter being associated with criminality. The victim brought action for false light and damages was awarded for such an invasion of privacy.
33. My Lord, we have cited the array of decisions to show the patterns and dimensions of compensation for invasion of privacy by publicity in a false light.
34. From the Respondent's publication of the Applicant's name and photograph along with the associated caption, we respectfully submit that the Respondent has published the Applicant in a false light and thereby violated her right to privacy guaranteed by section 37 of the 1999 Constitution.
35. From the foregoing arguments, we respectfully urge the court to resolve this issue in our favour.

## ISSUE 2

Whether or not the Respondent's continued retention of the video captioned - "captioned "AfriCare Health Centre" on their platform - [www.facebook.com](http://www.facebook.com) is unfair, false, inaccurate and thereby violates the provision of section 24(1)(a) and (e) of the Nigeria Data Protection Act 2023?

36. My Lord, section 24(1)(a) of the Nigeria Data Protection Act 2023 (NDPA) provides that:

“(1) A data controller or data processor shall ensure that personal data is —

- (a) processed in a fair, lawful and transparent manner
- (b) ...
- (c) ....
- (d) ....



(e) accurate, complete, not misleading, and, where necessary, kept up to date having regard to the purposes for which the personal data is collected or is further processed” (Emphasis mine)

37. In this context of section 65 of the NDPA, the Respondent is the data controller and the Applicant is the Data subject. For clarity, these terms are defined as:

“data controller” means an individual, private entity, public Commission, agency or any other body who, alone or jointly with others, determines the purposes and means of processing of personal data”

“data subject” means an individual to whom personal data relates.

38. My Lord, personal data is used fairly when it is not used to prejudice the data subject in any manner. In this case, the Applicant has deposed that his name and images are used in a prejudicial and unfair manner, hence he finds the use offensive.

39. My Lord, it is our respectful submission that, publishing the Applicant’s name and images and falsely attributing a strange illness to him is unfair especially since such allegation has been vehemently denied.

40. My Lord, ‘fairness’ is a principle of data protection which dictates that, personal data must not be processed in an insensitive manner. It is our submission that, the Respondent’s publication of the Applicant’s name and picture in the manner is highly insensitive of the Applicant’s feelings.

41. We respectfully refer the court to page 52 of a book titled **Annotated Nigeria Data Protection Act 2023**, where the authors – **Olumide Babalola and Paolo Balboni** explain the fairness principle thus:

This provides that data must not be collected or otherwise processed by deceit or by prejudicial or unjust means but always putting the data subject into consideration. Processing must not be vindictive, insensitive or misleading to data subjects or others. The principle imposes a duty on controllers to comprehensively take into account the interests of data subjects in achieving their

'data processing goals'. It must be such processing that the data subject may reasonably anticipate.?' (Emphasis mine)

42. In the same vein, section 24 of NDPA requires personal data to be accurate but the Applicant has given evidence that the video is false, fabricated and inaccurate.
43. At page 54 of the book titled **Annotated Nigeria Data Protection Act 2023** (supra), the authors note that:
- “Inaccurate misleading personal information can potentially expose data subjects to ridicule, discrimination or other fundamental rights violations, hence this principle mandates controllers to process accurate information about data subjects and additionally ensure those data are updated periodically.”
44. The Applicant has given evidence that the video about him is false and misleading, hence we submit that such story violates the provision of the NDPA and has occasioned injuries to the Applicant.
45. The Applicant has given evidence that the stories are false, inaccurate, fabricated offensive and insensitive, hence we respectfully submit that, these are circumstances under which the right can be validly exercised.
46. The Applicant’s lawyers wrote a letter to the Respondent demanding a removal of the video but they refused and thereby violated the Applicant’s right to removal.
47. My Lord, the Nigeria Data Protection Act 2023 (NDPA) guarantees some rights in favour of data subjects. One of these rights is the right to erasure which is also know as the right to be forgotten.
48. Section 34(1)(d) of the NDPA specifically provides that:

“A data subject has the right to obtain from a data controller, without constraint or unreasonable delay —

....

(d) the erasure of personal data concerning the data subject, without undue delay”

49. The Applicant has attached evidence showing that, she has (through her lawyers) requested a deletion of the offensive stories but the Respondents have continued to retain the stories on their platform and this violates the Applicant's right to be forgotten.

50. My Lord, interestingly, this right to be forgotten became prominent in a case involving the 1<sup>st</sup> Respondent before the European regional court in **Google Spain SL v Agencia Española de Protección de Datos (AEPD) Case C-131/12** where a man requested Google to remove stories concerning his outdated and financial status but the former refused. In deciding the dispute, the European court made the following instructive declarations:

**On whether search engines' display of personal data constitutes processing:**

“...the very display of personal data on a search results page constitutes processing of such data. Since that display of results is accompanied, on the same page, by the display of advertising linked to the search terms, it is clear that the processing of personal data in question is carried out in the context of the commercial and advertising activity of the controller. That being so, it cannot be accepted that the processing of personal data carried out for the purposes of the operation of the search engine should escape the obligations and guarantees laid down by Directive 95/46, which would compromise the directive's effectiveness and the effective and complete protection of the fundamental rights and freedoms of natural persons which the directive seeks to ensure.”

**On the right of data subjects to request erasure from Google:**

“... the principles of protection laid down by the directive are reflected, on the one hand, in the obligations imposed on persons responsible for processing, in particular regarding data quality, ... the rights conferred on individuals whose data are the subject of processing ...to object to processing in certain circumstances. (para 67). Article 7 of the Charter guarantees the right to respect for private life, whilst Article 8 of the Charter expressly proclaims

the right to the protection of personal data. Article 8(2) and (3) ... guarantee every data subject the right to obtain from the controller ... erasure or blocking of data the processing of which does not comply with the provisions of Directive 95/46, in particular because of the incomplete or inaccurate nature of the data.”

### On how search engines interfere with privacy:

“... processing of personal data, such as that at issue in the main proceedings, carried out by the operator of a search engine is liable to affect significantly the fundamental rights to privacy and to the protection of personal data when the search by means of that engine is carried out on the basis of an individual’s name, since that processing enables any internet user to obtain through the list of results a structured overview of the information relating to that individual that can be found on the internet information which potentially concerns a vast number of aspects of his private life and which, without the search engine, could not have been interconnected or could have been only with great difficulty and thereby to establish a more or less detailed profile of him. (para 80). Indeed, since the inclusion in the list of results, displayed following a search made on the basis of a person’s name, of a web page and of the information contained on it relating to that person makes access to that information appreciably easier for any internet user making a search in respect of the person concerned and may play a decisive role in the dissemination of that information, it is liable to constitute a more significant interference with the data subject’s fundamental right to privacy than the publication on the web page. (para 87)

51. Also, in the European decision in **Google LLC v Commission Nationale de l’Informatique et des Libertés (CNIL)**, on the right to erasure, the Court of Justice of the European Union held that:

“In the context of Regulation 2016/679, that right of a data subject to de-referencing is now based on Article 17 of that regulation, which specifically governs the ‘right to erasure’, also referred to, in the heading of that article, as the ‘right to be forgotten’. Pursuant to Article 17(1) of Regulation

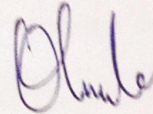
2016/679, a data subject has the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller has the obligation to erase personal data without undue delay where one of the grounds listed in that provision applies." (para 47)

For a comprehensive reading of the cases, see Olumide Babalola, Casebook on Data Protection (Noeticum Repertum, 2020)

### CONCLUSION

52. My Lord, we conclusively submit that, having published the Applicant's personal information in a false light, the Respondent has breached the Applicant's right to privacy and relevant sections of the NDPA and we respectfully urge the court to so hold.

Dated this 3<sup>rd</sup> day of February 2025



**Olumide Babalola, Esq.**  
Applicant's Counsel  
Olumide Babalola LP  
Aggey House (6<sup>th</sup> floor),  
12 Berkeley Street,  
Off King George V Street,  
Moloney,  
Lagos Island, Lagos State.  
[counsel@oblp.org](mailto:counsel@oblp.org),  
09161263105  
0811 111 4778  
07016264434



### FOR SERVICE ON:

The Respondent  
**META PLATFORMS INC.**  
Meta Platforms, Inc.  
1601 Willow Road  
Menlo Park, CA 94025,  
California, USA  
[support@fb.com](mailto:support@fb.com)  
[mydataprivacyrights@fb.com](mailto:mydataprivacyrights@fb.com)

