

**IN THE HIGH COURT OF THE FEDERAL CAPITAL  
TERRITORY  
HOLDEN AT ABUJA  
ON MONDAY 16TH DAY OF MARCH 2020  
BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI  
SITTING AT COURT NO. 14 APO – ABUJA**

SUIT NO: FCT/HC/CV/298/19

**BETWEEN:**

MRS. MERCY ORJI AKA ... .. APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE	}	RESPONDENTS
2. NIGERIA POLICE FORCE		
3. COMMISSIONER OF POLICE (ABIA STATE)		

**RULING**

By order made on 03/12/2019, pursuant to the Applicant's motion ex parte, this Court granted leave for her to apply for an Order of Mandamus compelling the Respondents to conclude investigation on and charge to Court, one **Mr. Baron Jon Anyaele**, who was allegedly

arrested initially upon suspicion of killing one **Emmanuel Orji Aka**, on 11/09/2017.

The instant application was filed pursuant to the order granting leave in that regard whereby the Applicant has sought the principal relief set out as follows:

*An Order of Mandamus against the Respondents compelling them to charge Mr. Baron Jon Anyaele who was arrested for killing Emmanuel Orji Aka on the 11<sup>th</sup> day of September, 2017, having concluded the investigation.*

I had considered the totality of the processes filed to support the present application. As the records of the Court bear out, the Respondents were duly served with the originating motion on notice as well as hearing notices for the scheduled hearing dates but they elected not to respond to the application.

The Applicant is the mother of the deceased **Emmanuel Orji Aka**. He was alleged to have been murdered at the market square in *Alayi, Ohafia Local Government Area of Abia State* on 11/09/2017, in the full glare of members of the village. It is narrated on behalf of the Applicant that it took the intervention of the 1<sup>st</sup> Respondent, upon the Applicant's petition, through her Solicitors, before the 3<sup>rd</sup> Respondent was requested to investigate the matter, after which the said **Mr. Baron Jon Anyaele** was arrested for being complicit in the murder of the deceased; but that the 3<sup>rd</sup> Respondent has let off the said suspect and had done nothing further about the case ever since.

The Applicant has further alleged that the said alleged suspect, **Mr. Baron Jon Anyaele**, has continued to intimidate and threaten her and members of her family for daring to seek justice in the matter.

The foregoing represents the brief facts of this case as narrated by on behalf of the Applicant in the Affidavit deposed in support of the application.

The law is trite that where a person or body has a duty of public nature to perform or discretion of a public nature to exercise, an order of mandamus can be issued to compel the performance of such duty provided a request to do so preceded it. See Fawehinmi Vs. IGP [2000] 7 NWLR (Pt. 665) 481; Comptroller General, Nigeria Customs Service & ors Vs. Minaj Holdings [2017] LPELR-43055.

Moreover, it is an important factor in obtaining a mandamus order for the Applicant to have sufficient legal interest in the matter to which the application relates. See also Ayida & Ors Vs. Town Planning Authority & Anor. [2013] LPELR- 20410(SC).

In the instant case, it is needless to say that the Applicant, being the mother of the deceased, must be specially aggrieved by her son's alleged gruesome murder and the alleged non-performance of the duty sought to be enforced against the Respondents. This thus underscores her special interest in *locus* to file the present application

It is imperative for an applicant for an order of mandamus to further establish that a prior demand was made for the performance of the duty sought to be enforced followed by a refusal to perform. See *Ayida & ors Vs. Town Planning Authority & Anor.* (*supra*).

The Applicant has attached as **Exhibit A** to her Affidavit in support of the present application, copy of the petition written on the 20<sup>th</sup> September, 2017, by her Solicitors to the 1<sup>st</sup> Respondent requesting for an investigation of the killing of the deceased **Emmanuel Orji Aka.**

The 1<sup>st</sup> Respondent indeed acted on the Petition **Exhibit A**; but to the extent of requesting the 3<sup>rd</sup> Respondent to investigate the allegation. I further make reference to letter dated the 25<sup>th</sup> September, 2017, copy of which was attached as **Exhibit B** to the Affidavit in support of the application, by which the 1<sup>st</sup> Respondent so directed the 3<sup>rd</sup> Respondent to investigate the matter.

It is further deposed on behalf of the Applicant that since the letter **Exhibit B** was written by the 1<sup>st</sup> Respondent to the 3<sup>rd</sup> Respondent, the 3<sup>rd</sup> Respondent has been foot-dragging to investigate the case and possibly prosecute the alleged suspect. Rather, according to the Applicant, the said suspect has continued to intimidate her and her family members with further threats to kill them for daring to call for investigation of the murder case.

From the foregoing the Court is satisfied that the Applicant has discharged the legal burden on her to demand for investigation of the murder case which demand the Respondents have failed to heed. I so hold.

As rightly submitted by the Applicant's learned counsel, it is the statutory duty of the Respondents, by virtue of the provisions of **s. 35** of the **Constitution** and **s. 24** of the **Police Act**, to investigate the case in question and on the basis of the investigation, decide as to whether or not there are enough evidence to charge the suspect to Court. See *Daniel Vs. EFCC [2016] LPELR-41173(CA)*.

In the present case, there is nothing to show that the Respondents have conducted any concrete investigations whatsoever with respect to the heinous crime of murder of the Applicant's son, for which the Applicant has fingered

the said **Mr. Baron Jon Anyaele**, as being complicit in the said murder.

In the final analysis, I find merit in this application and the same is hereby granted as prayed. Accordingly, order of mandamus is hereby issued, compelling the Respondents, forthwith, to effect the arrest of and prosecute **Mr. Baron Jon Anyaele**, initially arrested for killing one **Emmanuel Orji Aka**, at the *Market Square in Alayi, Ohafia Local Government Area of Abia State*, on 11<sup>th</sup> day of September, 2017, on the basis of the investigations so far made on the case.

**OLUKAYODE A. ADENIYI**

*(Presiding Judge)*

**16/03/2020**

**Legal representation:**

**Christabel Ayuk (Miss) – for the Applicant**

Respondents unrepresented by counsel