

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 22 WUSE ZONE 2 ABUJA.
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE 31ST DAY OF JANUARY, 2020**

SUIT NO: FCT/HC/CV/232/19

BETWEEN:

MOHAMMED KABIR USMAN

APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE

}

2. MOHAMMED SULEIMAN

RESPONDENTS

YUSUF ABUBAKAR for the Applicant.

G.T. THOMPSON for the 2nd Respondent.

RULING

This is an originating motion brought pursuant to the provision of Section 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended), Articles 4, 5, 6 and 12 of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act Cap 19 Laws of the Federation of Nigeria 2004, Order 2, Rules 1, 2, 3, 4 and 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and under the inherent jurisdiction of the court seeking for the following reliefs:-

- (1) A declaration that the arrest and detention of the Applicant by the agents of the 1st Respondent from 18th September, 2019 to 19th September, 2019

in respect of purported illicit claim of **N7,539,231.00k (Seven Million Five Hundred and Thirty-Nine Thousand, Two Hundred and Thirty-One Naira)** tag as **“meter differences (10.4)”** by the 2nd Respondent, is unconstitutional, unlawful and infringement of the Applicant’s right to dignity of human person, right to personal liberty and right to freedom of movement.

(2) An order of perpetual mandatory injunction restraining the Respondents, by themselves, their agents, privies and any person, either military or para-military officers, acting on behalf of the 2nd Respondent on the purported illicit claim herein, from executing the persistent threat to the Applicant’s life and the use of the officers and men of the 1st Respondent, and any other service officers, to intimidate, harass, arrest, detain the Applicant in further violation of the Applicant’s fundamental right to dignity of human person, right to personal liberty and right to freedom of movement.

(3) An order of this court awarding the sum of **N10,000,000.00 (Ten Million Naira)** as general and exemplary damages in favour of the Applicant against the 1st and 2nd Respondents to be paid jointly and or severally.

(4) An order of this court directing the 1st and 2nd Respondents to tender public apology to the Applicant in two(2) national dailies, having violated the Applicant’s fundamental rights to dignity of human person, personal liberty and freedom of movement in respect of purported illicit claim herein.

The Grounds upon which Reliefs are Sought as follows:-

- (a) The purported audit of the Secretary of IMB of UNPENG Suleja-Abuja Unit shows that the stocks supplied to, and expenses incurred in the said three filling stations were intact.
- (b) The purported “meter differences (10.4)” which, according to the 2nd Respondent, is the adjustment made in the pumps’ meters to short change the government’s approved meter price per litre of which the Applicant instantly rejected because the Applicant does not know it, until the said IMB’S Secretary audit of three filling stations, and had never been used in auditing the said three filling stations in the previous auditing.
- (c) The 2nd Respondent had before unjustly infringed the Applicant’s fundamental rights to dignity of human person, personal liberty and freedom of movement by using the men and officers of the 1st Respondent at Suleja to wrongly arrest and detain the Applicant. Having achieved that now, the 2nd Respondent is threatening the Applicant’s life and boasting to use his influence and position as the Chairman of IMB of UNPENG Suleja-Abuja Unit, to unjustly cause the Applicant re-arrest by another men and officers of the 1st Respondent, SARS, on the purported illicit claim that is pending before a Court because the Applicant is powerless.
- (d) The 2nd Respondent has exhibited another trick by instigating one of the Applicant’s surety to withdrew from being the Applicant’s surety, if not the 2nd Respondent has threatened to eject the said surety from his (the 2nd Respondent’s) house where the surety lives, in order to effect his plan of taking the Applicant back to the prison.

- (e) The 2nd Respondent is boasting that being an influential person the Applicant cannot do anything to him because he (the 2nd Respondent) has already settled the agency who has the power to monitor issue of pumps/meters' adjustment.
- (f) The Applicant's fundamental rights to life, dignity of human person, personal liberty and freedom of movement has been breached and is likely to further be infringing by the 2nd Respondent through the unjust use of SARS or any person, either military or para-military, acting on the 2nd Respondent's behalf in respect of the purported illicit claim of N7,539,231.00k as meter differences (10.4).

The application is supported by a 20 paragraph affidavit of Mr. Mohammed Kabir Usman, the Applicant himself with one Exhibit marked as Exh. 'A'.

In the affidavit the deponent stated thus:-

That the 2nd Respondent is the owner and director of Abdullah Abaji & Son, Monafs Investment of Nigeria Limited and A.S. Nigeria Limited (herein referred to as "The three Filling Stations") all situate and lying at Abaji in Abaji Area Council, FCT-Abuja within the jurisdiction of this Court and well as, the Chairman, of independent Marketers Branch (IMB) of NUPENG Suleja-Abuja Unit. That he was the manager of the said three filling stations in Abaji, Abaji Area Council, FCT-Abuja for almost Seven(7) years without any problem except sometime in 2019.

That sometime in August, 2019, he was mischievously alleged by the 2nd Respondent to be in debt of the sum of **N7,539,231.00k (Seven Million Five Hundred and Thirty-Nine Thousand, Two Hundred and Thirty-One Naira)** which the 2nd Respondent tag as "meter differences (10.4)" despite the fact that the 2nd

Respondent's monies for the stocks supplied to, and expenses incurred in the said three filling stations were found intact within the period of the purported auditing by Idowu who is the Secretary of IMB of UNPENG Suleja-Abuja Unit. The copy of the purported audit papers is attached and marked as Exhibit "A". That since he became the manager of those three filling stations, the purported "meter differences 10/4)" which according to the 2nd Respondent, is the adjustment made in the pumps' meters to short change the government's approved meter price per litre, had never been previously used in auditing the three filling stations he managed.

That after the purported auditing of the Secretary of IMB of NUPENG Suleja-Abuja Unit where the said purported "meter differences (10.4)" was maliciously included of which he instantly rejected because he does not know it, until the said purported auditing of the IMB's Secretary of the foretasted three filling stations, before the 2nd Respondent deceptively invited him to IMB office at Suleja in order to reconcile and resolve the issue. That on the 18th September, 2019 when he arrived IMB office at Suleja unknown to him the 2nd Respondent had invited police men from Area Commander's office at Suleja to arrest him. Traumatized, he was arrested and detained by the agents of the 1st Respondent till the next day without informing him of the offence he committed, and instead of the agents of the 1st Respondent at Suleja to properly investigate the matter, they worked with the 2nd Respondent's plan of taking him to the court so that he will be incarcerated in prison custody.

That on the 19th September, 2019 as planned, he was taken to Chief Magistrate Court in Suleja where he was remanded pending the ruling of his bail application

which was adjourned for two weeks, specifically to the 3rd of October, 2019. That he was reliably informed by his counsel, Yusuf Abubakar Esq., in their office at Suleja on the 24th day of September, 2019 at the hour of 5:00pm, after his release from prison, of the following facts which he verily believe to be true and correct as follows:-

- (a) That before the adjourned date for the ruling, his counsel had filed for an abridgement of the date of the said ruling to an earlier date as contained in the motion.
- (b) That on the 24th day of September, 2019 the date of the ruling of his bail application was abridged and ruling was instantly delivered by the Chief Magistrate granting him bail but after fulfillment of the monetary arrangement made his, his brothers with the 2nd Respondent.

That sometime in October, 2019 the 2nd Respondent called, not only him but also his friend, threatening to kill him if he refused to paid him the said purported money. This threat to his life was confirmed by his friend, Mustapha Salihu, who was also called by the 2nd Respondent informing him to convey the said threat to him since he stopped receiving his calls. That similarly, on the 28th of October, 2019 at the venue of a meeting convened by an Islamic organization (Izala) leadership at Suleja in order to settle the matter, the 2nd Respondent repeated the said above threat and that despite the pendency of the case at Chief Magistrate Court in Suleja, the 2nd Respondent stated that he has many ways he can deal with him in order to recover the said purported money, having been the Chairman of IMB of UNPENG Suleja-Abuja Unit, by using Special Anti-Robbery

Squad (SARS) to re-arrest and detain him in violation of his fundamental rights again.

That he is afraid, if the Respondents are not restrained, his dignity of human person, personal liberty and freedom of movement will further be infringed by the agents of the 1st Respondent, SARS, due to the threat of the 2nd Respondent who is boasting to use his influence and position as the Chairman of IMB of UNPENG Suleja-Abuja Unit, to unjustly cause his re-arrest by SARS on his purported claim despite pendency of the case before a Chief Magistrate Court because the 2nd Respondent had before wrongfully used the men and officers of the 1st Respondent at Suleja to arrest and detain him without just cause in violation of his fundamental rights due to the fact he is powerless.

That there is urgent need to perpetually restrain the Respondents from further infringing his fundamental rights to dignity of human person, personal liberty and freedom of movement through the wrongfully use of SARS or any person, either military or para-military, acting on the 2nd Respondent's as he has earlier suffered at Suleja Area Command and prison, without any just cause. The learned counsel also argued that the counter-affidavit was not filed within time and urge the court to discountenance it.

Contrariwise the 3rd respondent in his counter-affidavit averred that the applicant was employed on monthly salary basis to manage (3) three filing stations and had worked for over 5 years as the manager. That sometimes in 2019, the applicant was invited by external auditor to bring all his records and it was discovered that he had misappropriated a total sum of **N7,539,231.00 (Seven Million Five Hundred and Thirty Nine Thousand Two Hundred and Thirty One Naira)**

between December 2018 & August 2019. After the audit, the applicant was asked to go and think of how to refund the money and a possible payment plan be drawn. An agreement that the money shall be paid in installment was made by the parties. See **Exhibit MSG 1**. That the applicant rather than fulfill his obligation under the agreement was sending emissaries to him.

The respondent wrote a petition to the Area Commander, Suleja Command of the Nigeria Police Force on the 18th of September 2019 for allegation of Criminal Breach of Trust and Cheating, and acting upon same by the Police, the applicant was arrested. The applicant was charged to Chief Magistrate Court Suleja on a FIR for the offence of Criminal Breach of Trust by servant. See the certified true copy of the FIR, Exhibit MSG2. While the matter was in court, the applicant through his lawyer undertook to pay the sum of, **N2,000000 (Two Million Naira)** as full and final payment. The applicant later paid a sum of **N1,000,000.00 (One Million Naira)** into an account supplied by the respondent.

At the Gwagwalada chief magistrate court, counsel to the applicant filed a Notice of Preliminary Objection on the process. See Exhibits MSG 4 & MSG 5. His counsel also filed a direct criminal complaint on the respondent alleging criminal conspiracy and defamation of character. See Exhibit MSG6. The respondent claimed that he appeared in court on the 25th & 27th of November 2019 respectively but the applicant did not show up. The respondent urged this court to dismiss the instant suit for lacking in merit. The applicant equally filed a further – affidavit in response to the counter-affidavit.

I have gone through the counter-affidavit, most of the facts contained therein are incongruous and not relevant to the determination of the issue in contention,

which is whether there was a breach of fundamental right of the applicant from the facts in the affidavit of the applicant, and the counter-affidavit of the deponent. The applicant was reported to the police by the 2nd respondent after he failed to fulfill his obligation as contained in Exhibit MSG1. The learned counsel to the applicant contended that there was a civil contract between applicant and the 2nd respondent, that the arrest and detention of the applicant was unlawful. I do not think so. The averment in paragraph 1(h) of the respondent's counter-affidavit that the 1st respondent wrote a petition to the Area Commander which led to the eventual arrest of the applicant was not disputed in anyway by the applicant.

Secondly the applicant after his arrest on the 18th of September 2019 was arraigned before a Chief Magistrate Court Suleja as evidenced by the First Information Report. I went through the FI Report, the content made reference to the audit report that was conducted and the discovery of the alleged short-fall; which the applicant agreed to pay back. What transpired between the applicant and the respondent on the face-of it cannot be said to be civil in nature. It is not a contract, nor was it a loan given to the applicant by the respondent, it would not therefore be proper for one to say that the respondent does not have a right to report the applicant to the police. Although the applicant still enjoys his presumption of innocence as enshrined in the Constitution, the prosecutor has the burden to proof the claim of the respondent beyond all responsible doubts. The right to personal liberty of an applicant should not be used as a shield for criminal investigation and prosecution by the police or other prosecuting agency. See **A. G. ANAMBRA STATE V. UBA AND 3ORS (2005) AFNLR (PART 277) 909 CA; PER BUCKACHUWA (JCA)** where she opined "The contention of the 1st

respondent as contained in the statement of claim cannot hold water, his is particularly so in view of the mandatory provision of Section 174(1) of the 1999 Constitution which provides; that the Attorney General of the Federation shall have power to institute and undertake criminal proceedings against any person before any court in Nigeria other than a Court Martial in respect of any offence created by or under any law of the House of Assembly. Section 35 also provides for the right to personal liberty. For a person therefore to go to court to be shielded against criminal prosecution is an interference of powers given by the Constitution to law officers in the control of criminal investigation.

On whether the counter-affidavit is competent or not, the filing of the counter affidavit out of time is not material to the determination of the substance of the application. Such an omission is cured by the provision of Order 1 & Rule of FRER 2009. It is an irregularity. On the whole, I do not find the claim of the applicant as constituted justifiable. The application lacks merit and is hereby struck out.

SIGNED

**HON. JUDGE
31/01/2020.**