

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 14TH DAY OF MAY, 2020
BEFORE HIS LORDSHIP, HON. JUSTICE U. P.KEKEMEKE
SUIT NO: FCT/HC/CV/1013/18

COURT CLERK: JOSEPH BALAMI ISHAKU & ORS.

BETWEEN:

CHIDOZIE OKOLOCLAIMANT

AND

- | | | |
|--|---|------------------------|
| 1. ECONOMIC & FINANCIAL CRIMES
COMMISSION | } |DEFENDANTS |
| 2. SUNDAY OBALIM | } | |

RULING

The Applicant's Originating Motion dated the 21/02/18 and filed the same date against the 1st and 2nd Respondents is for:

1. A declaration that the intimidation, harassment, arrest and detention of the Applicant by the operatives of the 1st Respondent on the 18th day of January 2017 at the behest, instance and in collusion with the 2nd Respondent upon a commercial transaction voluntarily entered into by the 2nd Respondent with the Applicant without an Order of Court is illegal, inimical, unlawful, unconstitutional, null and void and a gross violation of the dignity of human person personal liberty and freedom of movement.

2. A declaration that the continued seizure and detention of the Applicant's Honda CRV (SUV) with Reg. No. KSF 936 DK Lagos and Chassis No. JHLRD785 12C008858 by the 1st Respondent at the instance and behest of the 2nd Respondent upon a civil commercial transaction without a Court Order is unlawful, illegal unconstitutional, null and void and a gross violation of the Applicant's right to family life and freedom of movement as prescribed and protected by the 1999 Constitution of the Federal Republic of Nigeria.
3. A declaration that the continued seizure of the custom duties certificate (original) and current vehicle particulars of the Applicant's Honda CRV (SUV) with Reg. No. KSF 936 DK Lagos and Chassis No. JHLRD785 12C008858 on the 18th day of January 2017 till date by the Operatives of the 1st Respondent at the instance and behest and in collusion with the 2nd Respondent upon a civil transaction without a Court Order is unlawful, illegal, unconstitutional, null and void and a gross violation of the Applicant's right as guaranteed by the 1999 Constitution.
4. A declaration that the continued harassment, intimidation and threat to further arrest the Applicant by the Operatives of the 1st Respondent at the

behest, instance and in collusion with the 2nd Respondent without an Order of Court upon a civil commercial transaction voluntarily entered into by the 2nd Respondent is illegal, unlawful, unconstitutional and a gross violation of the Applicant's fundamental right to dignity of human person, personal liberty, freedom of movement as preserved and protected under the 1999 Constitution.

5. A declaration that the 1st Respondent by law is not a debt recovery agent under the extant laws of the Federal Republic of Nigeria.
6. A perpetual Injunction prohibiting, restraining, commanding the Respondents jointly or severally from further harassment, intimidation, arrest, threat to further arrest, detention of the Applicant or interfering in any manner whatsoever with the Applicant's fundamental Human Right or from committing further infractions on the right of the Applicant.
7. An Order directing the 1st Respondent to unconditionally release forthwith the Applicant's Honda CRV (SUV) with Reg. No. KSF 936 DK Lagos and Chassis No. JHLRD785 12C008858 seized on the 18th day of January 2017 till date without an Order of Court.

8. N100 Million as exemplary damages and compensation for unlawful detention harassment and seizure of the Applicant's SUV.

Learned Counsel relies on the Affidavit deposed to by the Applicant on 21/02/18.

Essentially, he deposed that the 2nd Respondent filed a Petition against him at the Headquarters of the 1st Respondent on the 18/01/17.

That he (Applicant) is the Managing Director of Seaflow International Investment Limited.

That sometimes in 2007, he applied through Seaflow Investment Limited to the Abuja Metropolitan Management Agency for an allocation of a Recreational Park within the Federal Capital Territory.

That on the 5th day of July 2007, he was allocated a Park known as Park No. 1523C, BO6 at Mabushi District of the Federal Capital Territory. The letter of allocation is Exhibit A.

That sequel to this allocation, he was further advised by the Director of Parks & Recreation not to commence development of the Plot until he receives a clearance letter from the Committee on Revalidation & Recertification of Parks in the FCT.

On the 28/09/11, the clearance letter was given to him authenticating his allocation. It is Exhibit B.

He paid all the outstanding arrears of payments to the Department of Parks & Recreation. The receipt of payment is Exhibit C.

That staffs of the Parks & Recreation fail to show him his Plot on ground. He wrote a letter of complaint to the Director dated 12/12/11. A copy is Exhibit D.

That as a result of Exhibit D, he was finally shown the Plot know as Park No. 1523C, BO6 Mabushi by Surveyors Jafaru O. Otegu and his colleague known as Mr. Hussein Elnafati.

That he was rudely shocked when on the 4/06/12 at about 1 p.m. while at the Plot 1523C Mabushi when three armed policemen accosted him, maltreated and took him to Utako Police Station. A letter of Complaint he wrote to the CP FCT Police Command dated 5/06 complaining about the brutality and humiliation is Exhibit E.

While he was at the station, he was told by the DCOII, one Amina that Mrs. Rose Uzoma, a former Controller of Immigration Service made a complaint that he was encroaching on her Plot 1523C. He knows as a fact that one Mrs. Rose Uzoma was allocated a Park at Plot 1523B and she later acquired 1523A from the original allotte.

That he quickly filed a complaint at the headquarters of the Public Complaint Commission Maitama complaining

about the collusion and connivance of some staffs of Abuja metropolitan Management Agency and Mrs. Rose Uzoma using the instrumentality of the State to acquire his land. The Petition is Exhibit F.

When there was no response, he instructed the law firm of Onyeakalam Alilionwu & Co. to petition the Independent Corrupt Practices & Other Related Offences Commission.

A copy is Exhibit G.

That he never got any tangible response from the Commission despite several visits.

In January 2015, he was approached by the 2nd Respondent who expressed interest and pleaded with him to assign his unexpired interest in the Plot to him.

That he explained his predicament on the Plot and efforts so far made by him to secure the Plot.

After a legal search by the said 2nd Respondent and having been satisfied that he is the original allottee, he purchased the land from him and executed a Power of Attorney and Deed of Assignment. That the 2nd Respondent knew of the encroachment of Mrs. Rose uzoma and her position.

That he agreed with the 2nd Respondent to continue with this effort to ward off trespassers from the Plot while he will provide all the assistance needed to achieve the aim on

the ground that he is the original allottee and has a better standing to ward off intruders.

In furtherance of the above, he lodged a second complaint to the Director of Abuja Metropolitan Management Agency (AMMA) complaining against the connivance of their staff with Mrs. Rose Uzoma to forcefully take his park.

A copy of the letter of complaint dated 5/06/15 is Exhibit H. When it was clear to him that these complaints are not given the attention they deserve, he wrote a petition to the executive Chairman of EFCC. It is Exhibit I.

That despite his repeated visits to follow up the Petition, he did not get any response.

That the 2nd Respondent knows all the above facts and has the original title documents of the Park in question.

He was surprised in November 2016, he received a phone call from a certain man who introduced himself as a Chief Priest Mr. Ezeamalu of a Deity known as Adu Awkuzu in Awkuzu Local Government Area of Anambra State.

That he was summoned by the Chief Priest on the complaint of the 2nd Respondent.

That he went there and explained himself, they pleaded with him to assist the 2nd Respondent. He told the Chief

Priest of the deity that 2nd Respondent should assist him in initiating a civil action against the trespassers and that he should also make available to him the original title documents for onward transmission to his solicitors. That he made available the said original documents with a promise to fund the cost of litigation.

To his surprise on the 18/01/17, he was arrested and detained by the operatives of the 1st Respondent at the instance and behest of the 2nd Respondent. His Honda CRV (SUV) with Reg. No. KSF 936DK was equally seized by the operatives of the 1st Respondent and is still in their custody till the time of filing this application.

Copies of vehicle particulars are Exhibit J1 – 5.

He was granted bail on the same date he was arrested.

That since then there has been continuous and ceaseless harassment, intimidation, further threat to arrest, detention and arraignment because the 1st Respondent is acting as a debt recovery agent to the 2nd Respondent.

That as at now, his right to freedom of movement has been curtailed since 18/01/17 by the Respondents' jointly and severally without any lawful justification.

That the Respondents have jointly and severally traumatized the Applicant emotionally and psychologically.

That the 1st Respondent is further threatening to intimidate, harass, arrest and arraign the Applicant.

That unless the reliefs are granted, the Respondent will continue to carry out their illegal and unlawful acts against the Applicant.

That the Applicant is entitled to the reliefs sought.

In his Further Affidavit, the Applicant deposed that it is not true that the vehicle Reg. No. KSF936DK Lagos belonging to the Applicant was a proceed of fraud.

That he has not been arraigned for any crime.

The 1st Respondent's Counsel also rely on his Counter Affidavit sworn to by Sampson Onoje a Litigation Officer of the 1st Respondent at 1 Hambari Street, Off Ademola Adetokubo Street, Wuse 2, FCT.

He deposes that the Applicant was invited and was released the same date without any detention.

That 1st Respondent received a Petition from the law firm of Akus & Co. dated 7/12/16 against the Applicant alleging intimidation and threat of Abduction by the Applicant.

That investigation revealed cheating and obtaining money by false pretence. The Petition is Exhibit EFCC1.

The 1st Respondent never involved itself in continuous harassment of the Applicant but has only been carrying out its statutory functions.

That the Honda CRV referred to by the Applicant is a proceed of fraud which investigation revealed.

That the 1st Respondent is entitled by law to invite or even arrest any Applicant on reasonable suspicion of having committed an offence.

That the incessant threats or harassment is a mere fabrication and a figment of Applicants imagination. That it is in the interest of justice to refuse the application.

The 2nd Respondent's Counter Affidavit is dated 27th November 2018.

Learned Counsel to the 2nd Respondent also rely on the said Counter Affidavit.

He deposes that sometimes in March 2015, the Applicant informed him that he is the owner of a piece of land described as park No. 15236, BO6 located at Mabushi Recreation Park.

That the said Park was duly allocated to SEAFLOW INTERNATIONAL INVESTMENT LTD.

That the Applicant being the Director of the said Company could sell his interest in the land.

That the 2nd Respondent bought the piece of land for N10 Million which he paid in two installments. The evidence of payment is Exhibit A attached to the Counter Affidavit.

That after payment, he demanded that the Applicant should hand over possession and documents of the piece of land to him but Applicant started giving excuses.

From the attitude of the Applicant, it became clear to him that the transaction was a fraud orchestrated by the Applicant to deprive him of his hard earned monies.

He therefore demanded for the refund of his money which the Applicant refused.

That Applicant started harassing and threatening his life whenever he demanded his money and that he cannot do anything.

He decided to report the matter to his kinsmen since they are from the same State and a neighbouring community.

That Applicant agreed to refund the money within one month but reneged on his promise. He threatened to hire assassins to either kill him or kidnap members of his family.

He decided to report to the EFCC to investigate the threat and to recover his money.

The Petition to EFCC is Exhibit B.

Learned Counsel to the Applicant adopted his Written Address. He canvasses that the Applicant has a right to

his personal liberty and can only be deprived of such liberty in accordance with procedure permitted by law.

That the arrest of the Applicant amounts to an outright violation of his right to liberty.

That by Section 44 of the 1999 Constitution, the seizure and continuous seizure of the Applicant's Honda CRV by the Respondents amount to unlawful and illegal acquisition of the Applicant's car.

That the attitude of the Respondent is an abuse and misuse of power and a gross violation of the Applicant's right.

That the arrest, detention and continued threat and harassment of the Applicant by the 1st Respondent at the instance of the 2nd Respondent is not in accordance with the Constitution.

Learned Counsel further argues that this is an appropriate case for the award of compensation and a public apology. That it is not the function of the Police to recover debt.

The 1st Respondent also filed a Written Address which was adopted by Learned Counsel.

Learned Counsel argues that 1st Respondent received a Petition against the Applicant for cheating and obtaining money by false pretence. The Applicant was invited to

hear his own side of the story. That the said extension of invitation does not constitute threat and harassment of his person.

That 1st Respondent is entitled to invite or even arrest Applicant or any other upon a reasonable suspicion of having committed any crime if there is sufficient evidence. That the particulars of the threat was not stated by the Applicant.

That there are no facts to prove any threat, arrest and detention.

That granting an injunction against the 1st Respondent will amount to interfering with her law enforcement duties.

He finally urges the Court to dismiss the application.

The 2nd Respondent also adopted his Written Address and canvassed that he who comes to equity must come with clean hands.

That 2nd Respondent has a right to report the matter to the 1st Respondent.

That a party that has committed fraud cannot come under the covering of the law.

He urges the Court to dismiss the application.

I have read the Motion, Affidavit of parties and Exhibits.

I have also considered the Written Addresses of Counsel as summarized above. The Applicant's Affidavit in support of the Originating Motion *is sworn to at the High Court of the FCT.

The seal of the High Court of the FCT is clear on the process before the signature of the Commissioner of Oath notwithstanding the error printed. The lone issue for determination in my view is whether the fundamental human right of the Applicant to liberty and dignity, freedom of movement and right to property were breached by the Respondents.

The Applicants claim as could be garnered from his application is that his fundamental rights under Sections 34, 35, and 41 of the 1999 Constitution have been breached by the Respondents.

Section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria states:

“Every individual is entitled to respect for the dignity of his person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment.”

I have earlier summarized the Affidavit evidence of the Applicant. In paragraph 12 of the Affidavit, the complaint

of brutality was against the Officers of the Nigeria Police and its men. I have also read Exhibit E written to the Police dated 5/12/12, it is titled **“Re-Police Brutality and Humiliation on my person.”**

It is addressed to the Commissioner of Police FCT.

The Police are not parties to this action neither are its personnel or officers. There is no where in the 44 paragraph Affidavit in support of this application where the person of the Applicant was subjected to indignity.

Section 35(1) of the 1999 Constitution which the Applicant alleged was breached states:

“Every person shall be entitled to his personal liberty save in the following cases and in accordance with a procedure permitted by law.”

The said exemptions are contained in subsection (a) – (f).

In paragraph 34 of the Applicant’s Affidavit, he stated that on the 18th day of January 2017, he was arrested and detained by the Operatives of the 1st Respondent at the instance and behest of the 2nd Respondent.

In paragraph 36 of the same Affidavit, Applicant stated that he was admitted to administrative bail by the 1st Respondent the same day he was arrested. He went

further to depose in paragraph 38 that his right to freedom has been curtailed since the 18/01/17 by the Respondents jointly and severally.

The 1st Respondent deposed in its Affidavit that it received a petition from the Solicitors of the 2nd Respondent against the Applicant alleging intimidation and threat of abduction by the Applicant.

That investigation revealed cheating and obtaining money under false pretence.

That Applicant was invited and released the same day.

The 2nd Respondent on the other hand in paragraph 17, 18 and 19 deposed that he reported a case of threat to life and recovery of his money to EFCC against the Applicant. That pursuant to the above, they were both invited to the 1st Respondent's office.

That after the interview, the Applicant was released on bail.

Section 35(1),(c) of the 1999 Constitution contains one of the exceptions under which the liberty of a person can be interfered with.

It is for the purpose of bringing him before a Court in execution of the Order of a Court or upon reasonable suspicion of his having committed a criminal offence or to

such extent as may be reasonably necessary to prevent his committing a criminal offence.

Reasonable time is defined as a period of one day in the instant case.

The evidence even by the Applicant is that he was released the same day.

There is no evidence stronger than the admission of the Applicant himself.

In my humble view the liberty of the Applicant was not curtailed. His right to personal liberty was not breached and if it was, it was in accordance with a procedure permitted by law.

Section 44 of the 1999 Constitution states:

“No moveable property or any interest in immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in a manner and for the purposes prescribed by a law etc.”

In paragraph 35 of the Applicant’s Affidavit, he deposes that his Honda CRV (SUV) with Registration No. KSF 936 DK was seized by the Operatives of the 1st Respondent and is still in their custody till the time of filing the application. The

1st Respondent's answer to the above deposition is that the Honda CRV of the Applicant is the proceed of fraud.

In the 2nd Respondent's Counter Affidavit particularly in paragraphs 6 and 7, it states that the piece of land the subject matter of this furore was duly allocated to SEAFLOW INTERNATIONAL INVESTMENT LTD.

That the Applicant being a Director of the Company has the capacity to sell the piece of land.

The above is from the 2nd Respondent who paid N10 Million for the piece of land.

The question therefore is, wherein lies the fraud.

The 2nd Respondent entered into a land transaction with the Applicant.

He was well aware of the predicament of the Applicant in claiming or asserting possession. A Power of Attorney and Deed of Assignment was executed in his favour.

He later found out that it was difficult or impossible for him to acquire possession.

All the 2nd Respondent is interested in is the refund of his money since he cannot be given possession by the Applicant.

The question therefore is whether the 1st Respondent is the appropriate authority to intervene and retrieve the 2nd Respondent's fund.

The answer is No. The seizure of the Applicant's Honda CRV is to ensure that the said money is refunded.

When a contract or a commercial transaction fails, and there is no agreement between parties, the only option opens to an aggrieved party is the Court. Law enforcement agencies and in this instance the EFCC should mind its business as provided under the EFCC Act.

It is a form of gluttony for the 1st Respondent to wrestle from the Court the functions it is not statutorily empowered to perform.

The 2nd Respondent should not look for a short cut to get his money back. From the evidence, he visited a deity or kinsmen in Anambra and now EFCC. He should approach the Court which is the proper place for remedy.

In the circumstance of this case, it is my view and I so hold that the Applicant's right to moveable property which is his CRV (SUV) car Reg. No. KSF 936 DK was breached by the 1st Respondent for the reasons given above.

Prayers 1 and 4 fail. They are accordingly dismissed.

It is hereby adjudged as follows:

1. The seizure and detention of the Applicant's Honda CRV (SUV) car Reg. No. KSF 936 DK and vehicle particulars on the 18/01/17 till date by the 1st Respondent is unlawful, illegal and unconstitutional.
2. The 1st Respondent is hereby ordered to release the said Honda CRV (SUV) car with Reg. No. KSF 936 DK to the Applicant forthwith.
3. The 1st Respondent is further Ordered to pay to the Applicant the sum of N100,000 as compensation for the breach of his right to acquire and own property.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

14/05/20