

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE NYANYA JUDICIAL DIVISION**  
**HOLDEN AT COURT NO. 8 NYANYA-ABUJA ON THE 26<sup>TH</sup> DAY OF**  
**OCTOBER, 2020**  
**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**  
**SUIT NO:FCT/HC/CV/1830/2020**

**COURT CLERK: JOSEPH BALAMI ISHAKU**

**BETWEEN:**

**CLP ISAAC MANGS.....APPLICANT**

**AND**

**INSPECTOR GENERAL OF POLICE .....RESPONDENT**

**RULING**

The Applicant's Motion on Notice dated 15/06/20 and filed the same date is brought pursuant to Section 34(1), 35(1), (4), 5, 6, Section 36 and 41 of the 1999 Constitution and order 2 (1) of the Fundamental Right Enforcement Procedure Rules 2009 and under the inherent jurisdiction of the Court.

The application prays the Court for:

1. A declaration that the continuous detention of the Applicant in the Nigeria Prison Kuje since 2005 is a violation of the Applicant's fundamental right to (1) Dignity of human person, personal liberty, fair hearing and freedom of movement as enshrined in Sections 35(1), 34(1), 4, 5 & 6, 36 and 41 of the

1999 Constitution of the Federal republic of Nigeria (as amended)

2. An Order declaring the detention of the Applicant since 2005 in Kuje Prison as unlawful and unconstitutional.
3. An Order directing the unconditional release of the Applicant from Kuje Prison as his continued detention violates his right to liberty, right to freedom of movement, right to dignity of human person and right to fair hearing.
4. N900 Million as general damages and compensation for the gross violation of the Applicant's fundamental right.
5. An Order of Mandatory Injunction restraining the Respondents whether by himself, his officers, servants, agents, privies or howsoever named from further detaining, re-arresting, torturing, intimidating, threatening or infringing the Applicant's fundamental rights as guaranteed in the Constitution.

6. A Written apology to the Applicant by the Respondent.
7. Cost of the action.
8. And for such Order or other Orders as the Court may deem fit to make in the circumstance.

Learned Counsel relies on the 16 paragraphs Affidavit filed in support of the application.

Succinctly, the deponent deposes:

1. That Applicant is a serving Police Officer attached to 21 PMF, Abuja.
2. That Applicant has never committed any crime before his arrest on 30<sup>th</sup> November, 2005.
3. That he was arrested on the 30<sup>th</sup> November 2005 and arraigned in a Magistrate Court along with one Chinedu Eze and was later arraigned before Hon. Justice Talba of the High Court of the FCT, Gudu on the 29/06/2006.
4. That after about 11 years of trial and 12 years of detention which trial stalled for almost two years, the Applicant and 2<sup>nd</sup> Defendant made an

application to the Hon. Chief Judge for reassignment on the 14/06/17 on the ground that the trial was taking too long amongst other grounds.

5. The attention of the Hon. Judge was drawn to the said letter on 20/06/17. The 2<sup>nd</sup> Defendant withdrew from the letter after his Lawyer prevailed upon him before the day's proceeding started.
6. The Court severed the Charge and proceeded with the trial of the 2<sup>nd</sup> Defendant while awaiting the Hon. Chief Judge's response in respect of the 1<sup>st</sup> Defendant's letter.
7. The Applicant wrote another letter adopting his earlier application and asked that the Hon. Chief Judge considers the application.
8. The Hon. Chief Judge while on Prison visit said he would not transfer the case to another Judge and that Justice Talba should conclude the case.
9. That his Lawyers apply to the Court for record of proceedings to enable them enter a defence.

10. The Applicant's Counsel filed a Motion to recall prosecution witness. The Motion was heard and the Hon. Judge ruled that the case be returned to the Hon. Chief Judge for reassignment to another Judge.
11. Judgment was later delivered on 2/05/19 in favour of the 2<sup>nd</sup> Defendant while the fate of the Applicant hangs in the sky from then till date as he is presently not before any Court since 2017 that he made the application for reassignment.
12. That the Applicant has been forgotten in Prison by the Respondent who took him to Court since 2005.
13. That several applications both verbal and written to the C.J's Office on his behalf yielded no result. That deponent was 15 years when his father was arrested but she is now 30 years without fatherly care.
14. The charges against the Applicant and 2<sup>nd</sup> Defendant were allegedly committed jointly.

15. That herself, siblings and mother have undergone untold hardship and difficulties of life due to the arrest and continuous detention of the Applicant.
16. That they have dropped out of School.
17. that this application is neither to undermine this Court nor overreach the Prosecution or Respondent but to protect the sanctity of the citizens' right under a constitutional democracy.
18. That granting the application will enable the Applicant an opportunity or a level ground to exercise his right to fully defend the charges levelled against him and for the Court to determine same on the merit if the Respondents elect to revisit the charges.
19. The Applicant is a serving Police Officer who can be located at any time.
20. That it is in the interest of justice to grant the application.

The Respondent filed a Counter Affidavit although out of time. I shall regard same as an irregularity but nevertheless consider it as Respondent's reaction.

The Counter Affidavit is of 17 paragraphs. The Deponent Inspector Mustapha Ibrahim of the Force CID Legal/Prosecution Unit deposes.

1. That the Applicant is a dismissed Police Officer Charged for the offence of Armed Robbery and Murder of one Bala Dodo who he robbed and killed on 30/11/2005. The Charge is Exhibit NPF1.
2. The Applicant's statement dated 4/12/05 and post mortem examination of the deceased is Exhibit NPF2 and NPF 3 while the pictures of the deceased person are Exhibits NPF 4, NPF 5 and NPF 6.
3. That the delay of trial was not caused by the Respondent rather his Counsel M.D. Owolabi Esq was the person who Counselling Applicant to write a Petition against Hon. Justice Talba.
4. That CSP Ezekiel did not threaten the Applicant but rather refused to take bribe to compromise the prosecution's case.
5. That Chinedu Eze was discharged and acquitted.

6. That Applicant does not have a right to enforce as an armed robber and murderer awaiting trial.
7. Applicant's rights were not violated.
8. That if Applicant is released he will disappear and will not stand trial.
9. That Applicant is standing trial for the offences of
  - a. Conspiracy
  - b. Armed Robbery
  - c. Murder.
10. That the Police is desirous of prosecuting the Applicant to a logical conclusion.
11. That if released, he will kill all the Prosecuting witnesses.
12. That it is in the interest of justice to refuse the application.

I have also read the Applicant's Further & Better Affidavit.

The question for determination in my view is whether or not the Fundamental Right of the Applicant as enshrined in Sections 34(1), 35(1) (4) ,(5) and (6),



Sections 36 and 41 of the 1999 Constitution as amended are breached.

Section 34 of the 1999 Constitution deals with respect for the dignity of person in that no person shall be subjected to torture or to inhuman or degrading treatment.

That no person shall be held in slavery or servitude.

It seems the Applicant's argument is that his continuous detention is an infringement of his fundamental right.

By Section 35(1), Every Person shall be entitled to his liberty and no person shall be deprived of such liberty save in the cases mentioned hereunder.

1. In execution of a sentence or Order of Court in respect of a criminal offence of which he has been found guilty.
2. By reason of his failure to comply with the Order of a Court or in order to secure the fulfilment of any obligation imposed upon him by law.

3. For the purpose of bringing him before a Court in execution of the order of a Court or upon reasonable suspicion of having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence.

Subsection 4 states:

*“Any person who is arrested or detained in accordance with subsection 1(c) of this Section shall be brought before a Court of law within a reasonable time and if he is not tried within a period of*

*a. Two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail or*

*b. Three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him be released either unconditionally or upon such conditions as are reasonably*

*necessary to ensure that he appears for trial at a later date.”*

Section 36 (4) of the 1999 Constitution as amended states:

*“Whenever any person is charged with a criminal offence, he shall unless the Charge is withdrawn be entitled to a fair hearing in public within a reasonable time by a Court or tribunal.*

*(5) Every person who is charged with a criminal offence shall be presumed innocent until he is proved guilty.”*

From Exhibit AE-I attached to the application, the Applicant was arraigned with one other on the 13<sup>th</sup> day of July 2006.

There were several adjournments necessitated by the Prosecution and the Defendant’s Counsel.

There was no evidence to suggest that the Court did not sit.

The Court having been tired of the various excuses of the prosecution and the unending applications for adjournment foreclosed the prosecution and adjourned for defence on 8/11/16.

On the 24<sup>th</sup> day of April 2017, the defence opened. The 1<sup>st</sup> Defendant refused to defend the action. He said he had no confidence in the Court. He sought for the reassignment of the case.

There were several occasions when the Applicant's Counsel asked for adjournment, on some occasions necessitated by a change of Counsel. The Applicant therefore shares in the blame for the delay in the trial.

The 2<sup>nd</sup> Defendant's case was concluded and judgment delivered.

It is therefore the unwillingness of the 1<sup>st</sup> Defendant/Applicant to proceed with his defence that has thrown him into this quagmire. It is after the Court

dismissed the Applicant's 'No Case Submission that the Applicant and Counsel decided not to make themselves available for trial.

See pages 56, 57 and 58 of the Exhibit AE, the record of Proceedings of the criminal trial.

As fate will have it, the Hon. Judge has now been elevated to the Court of Appeal.

As the law stands today, the case has to start *denovo*.

The Applicant cannot now cry wolf, where there is none having been part of the reasons why his trial lasted for so long. He cannot eat his cake and have it neither can he benefit from his wrong. He contributed to the breach of his right. He cannot therefore hold another person responsible.

The application lacks merit and it is accordingly dismissed.

Despite the above, the Applicant will not remain in custody *ad infinitum*.

The Respondent is ordered to retrieve the case file and arraign the Applicant afresh in a Court of competent

jurisdiction or ensure that the case file is reassigned within two weeks from now.

.....  
HON. JUSTICE U.P. KEKEMEKE  
(HON. JUDGE)  
26/10/20.