

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO ON THE 17TH DAY OF NOVEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE

NO: FCT/HC/M/10253/2020

COURT CLERK: JOSEPH BALAMI ISHAKU & ORS

BETWEEN:

JOHNSON ONOJAAPPLICANT

AND

- | | | |
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| 1. THE COMMISSIONER OF POLICE, FCT ABUJA | } |RESPONDENTS |
| 2. INSPECTOR GENERAL OF POLICE | | |

RULING

The Applicant's originating motion is brought pursuant to Section 35 and 41 of the 1999 constitution as amended, Order II Rules 1, 2, 3, 4 and 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009. It prays the Court for the following orders:

- (1) A declaration that the arrest and detention of the Applicant is contrary to Section 35 & 41 of the 1999 constitution of the Federal Republic of Nigeria as Amended.
- (2) Compelling the Respondents to tender an unreserved apology to the Applicant for the infringement of his fundamental rights.
- (3) N50 Million as general damages for the infringement of his fundamental rights.
- (4) Perpetual Injunction restraining the Respondents from re-arresting and detaining the Applicant in connection with the matter.

The application is accompanied with a Statement containing the Name and Description of the Applicant, the reliefs sought and the grounds upon which the reliefs are sought. The deponent Oliver Onoja of Karu Site, Plot 49D, Hilltop, Karu Abuja deposes as follows: that he is a brother to the Applicant. That on 31/08/19, the Applicant entered

into an agreement with a private company of the Nigeria Army situated at Mambilla Barracks to lease a JAC Tipper Vehicle for the purpose of waste collection business. The agreement is Exhibit A. That during the pendency of the lease agreement, the aforesaid JAC Tipper vehicle developed a major fault and he informed the then Military Training Officer (MTO) Nigeria Army, Mambilla Barracks who instructed him to take it to a mechanic workshop at Dei Dei Abuja.

The Applicant complied with the instruction of the MTO by taking it to the mechanic workshop where he was given another vehicle to use for his business. That sometimes in February 2020, the MTO was transferred out of Abuja and a new MTO posted to Abuja in his stead. The new MTO was briefed about the JAC Tipper vehicle. The Applicant took the new MTO to the mechanic workshop to inspect the vehicle although the mechanic was not available. That Applicant no longer has a duty of care over the

leased JAC Tipper having handed over same to the Nigeria Army through the MTO.

That Applicant's lease agreement expired in January 2020 and has not been renewed by the Company. That Applicant received a call from the new MTO's office and upon arrival was arrested and detained by the Nigeria Army in connection with the JAC Tipper vehicle which he had handed over to the MTO. That Applicant protested his innocence. That he spent about a week at the detention facility of the military police where he was tortured by the military. He was transferred to SCID on the 21/08/20. He was detained in SARS. That he was in an appalling condition. He was released on bail on 26/08/20 after paying N20,000 despite the fact that bail is free.

That Applicant was rearrested and detained by the SCID on the 31/08/20 on the allegation that it was he that ordered mechanic on phone to release the vehicle to some unknown persons. That he denied

making such a call to the mechanic and that his last call to the mechanic was in February when he took the new MTO to the mechanic workshop for inspection. The mechanic could not produce phone and sim card for investigation. The mechanic told the Police he had misplaced the phone and the sim card. The police failed to track the calls from the service provider. That he has been threatened of torture. That his right to personal liberty has been infringed. That his arrest and continuous detention is unlawful. That he has not been charged to Court for any offence whatsoever. That it is in the interest of justice to grant the application. The above are the facts in support of the application.

The Respondents were served. They failed, refused and or neglected to file a Written Address and Counter Affidavit in opposition to the application.

The sole issue for determination as raised by Applicant's Counsel is whether or not the Applicant's fundamental right has been breached and therefore entitled to the reliefs sought. Learned Counsel submits that the detention of the Applicant is unlawful and a gross violation of his Fundamental Human Rights. That the Applicant having proved the violation of his right by the Respondent is entitled to apology and damages.

The Fundamental Rights of the Applicant alleged to have been breached by the Respondent is Section 35 and 41 of the 1999 Constitution as amended. By Section 35 of the 1999 constitution as amended.

Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save as contained in sub section 1 (a) – (f). Subsection (1c) states “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.

By Subsection 4, “Any person who is arrested or detained in accordance with subsection 1(c) shall be brought before a Court of law within a reasonable time etc. Reasonable time is defined as a period of one day.

The Affidavit evidence is that the Applicant was arrested by the Nigeria Army. He was detained for about one week. He was handed out to the SCID on 21/08/20. He was released on bail on 26/08/20 after paying N20,000 for bail. He was rearrested on 31/08/20 and was only released on 15/10/20 after the service of the order of this Court directing him to be produced for the purpose of being released. He was detained on the 1st part for five days and

subsequently one month and about two weeks. He has not been charged to Court. It is clear that the Applicant's right to personal liberty was breached by the Respondents.

By Section 41(1) of the 1999 constitution, every citizen of Nigeria is entitled to move freely throughout Nigeria. The Applicant could not exercise that right as at the time he was arrested, restricted and incarcerated. Impunity and arbitrariness have no place in a society governed by law. Absolute power corrupts absolutely. No one has the power of life over anyone except by law. It is my view and I so hold that the Respondents have breached the Fundamental Human Right of the Applicants to Personal Liberty and Freedom of Movement contrary to Section 35 & 41 of the 1999 Constitution as Amended and I so hold.

Consequently, I make the following orders:

- (1) It is hereby declared that the arrest and detention of the Applicant by the Respondents is contrary to Section 35 & 41 of the 1999 constitution and therefore unlawful.
- (2) The Respondent are ordered to tender an unreserved apology to the Applicant.
- (3) The Respondent shall pay to the Applicant the sum of N5 Million as compensation for the infringement of his right to liberty and freedom of movement.
- (4) The Respondents are further restrained from arresting and or detaining the Applicant in respect of this matter save for charging him to Court immediately.

HON. JUSTICE U.P. KEKEMEKE

(HOH. JUDGE)

17/11/2020