

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU

ON WEDNESDAY 30th DAY OF JUNE, 2021

SUIT NO: FCT/HC/M/12479/2020

MOTION NO: FCT/HC/M/2386/2021

BETWEEN:

**MOHAMMED MAHDI SHEHU APPLICANT/
RESPONDENT.**

AND

- | | | |
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| (1) NIGERIA POLICE FORCE | } | RESPONDENTS/
APPLICANTS. |
| (2) INSPECTOR GENERAL OF POLICE | | |

RULING

By a Motion on Notice filed on 9/03/2021 and predicated on Sections 6(6), 36(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Order 15 Rule 4 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Order 10 Rules 11 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018, the Applicant seek for the following reliefs:-

- (1) An Order of this Honourable Court setting aside its judgment in **Suit No: M/12479/2020**, between

MOHAMMED MAHDI SHEHU AND NIGERIA POLICE FORCE & ANOR, same having been obtained through fraud and non-joinder of necessary party.

- (2) An Order of this Honourable Court relisting **Suit No: M/12479/2020 between MOHAMMED MAHDI SHEHU AND NIGERIA POLICE FORCE & ANOR**, for rehearing and determination on its merit.
- (3) An Order granting leave to the Respondents/Applicants herein to file and serve all relevant Court processes on the Applicant/Respondent herein.
- (4) And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

The grounds upon which this application is made are:-

- (1) On grounds of fraud, misrepresentation, non-disclosure of material facts and non-joinder of necessary party which brought about a miscarriage of justice.
- (2) The Honourable Court has the unfettered judicial powers to set aside its judgment, relist the case for a rehearing on its merit and make an order on joinder of necessary party thereto upon proper application made to it.

- (3) The leave of this Honourable Court is expedient to enable the Respondents/Applicants herein to file and serve on Applicant/Respondent herein all the relevant Court processes, and exercise their Constitutional Right to fair hearing.
- (4) On grounds of justice and to enable all issues in controversy between the parties to be resolved by the Honourable Court once and for all concerned.

The application is supported with 7 paragraphs Affidavit deposed to by DSP Onwuka Chinedu and Written Address of the Applicants Counsel.

In opposition to a grant of the application, the Applicant/Respondent on the 17/3/2021 filed a 6 paragraph Counter Affidavit deposed to by Tajuddeen Ayeni and Written Address of the Applicant/Respondent Counsel.

The application was heard on the 22/03/2021 with Counsel for the parties adopting their Written Addresses as their oral submissions for and against the application respectively. Ruling was accordingly reserved for today 4/5/2021.

In the affidavit in support, it was averred inter alia by the Deponent on behalf of the Applicants that he is a Police Officer attached to the IGP Monitoring Unit, Force Headquarters, Abuja and a member of the team of Police Investigators of the alleged criminal offences of forgery, injurious falsehood and defamation of character with intent to incite the public against the government of Kastina State and cyber –stalking and other

related offences. That the office of the Commissioner of Police in charge of legal/prosecution, force CID, Kafaru Tinubu House, Force Headquarters, Abuja on 4th December, 2020 received Originating Process on this matter, Hearing Notice and order of the trial Court. That the aforementioned processes of the Court was not received at the office of the IGP Monitoring Unit, Force Headquarters Abuja, until the 14/1/2021 and same was endorsed to the legal/prosecution Section of the IGP Monitoring Unit on the 18/1/2021.

That two days after, he was contacted on a telephone that he should make effort to duplicate the case file in the criminal case involving Muhammad Mahdi Shehu and brief Silas Onele Esq, the officer in charge of the Legal/Prosecution Section of the IGP Monitoring Unit on the next day. Due to official engagement he was unable and had to send his subordinate officer to send a photocopy of the said file to him.

He further stated that during the meeting with Chris A. Oribhabor Esq, he observed that there was a marginal difference in the name of the Applicant/Respondent herein as per the main suit and the name of the said case file i.e Exhibit NP1 (statement written by Muhammad Mahdi Shehu).

Furthermore, he avers that the current case which was been investigated by a team of police investigators at the IGP Monitoring Unit is also slightly different from the one's in Katsina State command as the current case includes cyber stalking and related offences and forgery of Certificate of Incorporation of company etc.

The Deponent continued that there was the issue of non-joinder of a necessary party and that if the Petitioner having full knowledge of the pending case(s) and/or same quashed by the High Court of Katsina State brought same or a slightly different case, the Court would have been able to hear every party to the criminal matter been investigated by the police in the said suit, if the Petitioner was joined in the suit.

He continued that on the 24/2/2021, he went to the office of the Registrar of Court 44 of the FCT, Abuja to make enquiry as to the adjournment date or current position of the suit, he was informed by the Registrar of the said Court that judgment had been delivered by the Honourable Court against the Respondents/Applicants herein who were in default of appearance and defence of the said suit. That on the next day, he applied for the Certified True Copy of judgment in the said suit and he was issued same on the 1st March, 2021. He studied the CTC and was then instructed by the IGP Monitoring Unit to make appropriate application to the Honourable Court to set it aside and relist the suit for a rehearing of its merit.

Further, he averred that he had prepared the proposed Counter Affidavit with annexed exhibits as well as Written Address in the said suit and copy of the proposed processes in defence of the said suit marked as Exhibit NP3.

He further averred that the office of the Commissioner of Police in charge of Legal/Prosecution which usually receives processes of Court at its secretariat at the relevant time of receipt of the said suit had a major electric problem at the place where processes of Court are kept before been dispatched to

appropriate offices for necessary action, which resulted to a near fire disaster/which would have gulped the entire building but for the intervention of the Police Officers within the office premises.

This made the said suit with so many other ones to be mixed up amongst with suits already disposed of in Court. That when the items displaced during the incident were been re-arranged to proper place, later same Police Officers discovered the said suit in that place in addition to some others. That the inability of the Respondents/Applicants herein to defend the suit was not a deliberate act of refusal to do so as the reasons for their absence at the trial have been sufficiently explained above. That the overriding interest of justice will be served better, if this application is granted.

Concluding, Learned Counsel for the Respondents/Applicants elying on the 3 unmarked Exhibits attached to the affidavit urged the Court to grant their humble application in the interest of justice.

The Learned Counsel for Respondents/Applicants formulated three (3) issues for determination to wit:-

- (1) Whether it is not within the inherent powers of this Honourable Court to set aside its judgment in appropriate circumstances, relist suit and make an order for rehearing of same.
- (2) Whether the Petitioner to the Police in the weighty allegations of crime made against the

Applicants/Respondents herein and cohorts is not a necessary party to the suit of the Applicant/Respondent herein in **Suit No: M/12479/2020 between MOHAMMED MAHDI SHEHU AND NIGERIA POLICE FORCE & Another** and

- (3) Whether the granting of this application has the tendency of prejudicing the Applicant/Respondent herein as a party in litigation.

Learned Counsel for the Applicant argued the above issues succinctly in urging the Court to grant the application.

In its Counter Affidavit, it was averred inter alia on behalf of the Applicant/Respondent that the Applicant/Respondent commenced this suit by filing an Originating Motion for the enforcement of his Fundamental Human Rights. The Applicant/Respondent admits paragraph 4 of the Respondents/Applicants affidavit where they (the Respondents/Applicants) equally admitted in paragraph 6(M) of their affidavit that the Hearing Notice, the Originating Motion with the Affidavit and Written Address and Court Order for Wednesday 9/12/2020 (directing the Respondents/Applicants to produce the Applicant/Respondent) before the Court (on Wednesday 9/12/2020 were all served on the Respondents/Applicants by the Court bailiff on Friday 4/12/2020. That the negligence and/or failure of the Respondents/Applicants to competently handle their internal affairs should not be transferred to or visited on the Applicant/Respondent.

In reaction to paragraph 5 of the Respondents/Applicants Affidavit, the Applicant/Respondent averred that even after the office of the IGP Monitoring Unit, Abuja received the processes from the office of the Commissioner of Police in charge of Legal/Prosecution at the same Force Headquarters on Thursday 14/1/2021 (as claimed), it still took close to 2 months (i.e Tuesday 9/3/2021) for the Respondents/Applicants to file this application. That the Respondents/Applicants application is in bad faith as all steps taken in this matter were with the careful observance of due process to ensure fair hearing was extended to the Respondents/Applicants at each stage.

In further opposition to this application, it was averred that besides the Hearing Notice served on the Respondents/Applicants (Exhibit B), this Honourable Court ordered on Wednesday 9/12/2020, when the matter came-up, that the matter be further adjourned in bid to give the Respondents/Applicants an opportunity to react, if they so desired. Accordingly, Hearing Notice was served by the Bailiff for Monday 14/12/2020. Unsurprisingly, the Respondents/Applicants failed and/or refused to respond to the matter yet again, but considered it appropriate to released the Applicant/Respondent from custody after he has spent 12days (299 hours) in detention instead of honouring the Courts order, served on them to produce the Applicant/Respondent.

The matter proceeded on Monday 14/12/2020 and was adjourned for judgment on 18/12/2020 and Hearing Notice for date of judgment were also served on the Respondents/Applicants.

He continued that Suit **No: FCT/HC/M/12479/2020** was instituted as a Fundamental Rights Enforcement Procedure action which by its nature ordinarily requires speedy determination.

The release of the Applicant/Respondent from unlawful detention after he has spent 12days (299 hours) was the rational for instituting the action against the Respondents/Applicants (the infringers).

The Applicant/Respondent also denied paragraph 6 (c) of the Respondents/Applicants affidavit that there is no “marginal” difference in the name of the Applicant/Respondent. That this is a rather cheap and vexatious attempt to invoice the Courts jurisdiction after claiming on the motion paper that what they are after is “rehearing and determination on the merits”

Further, the Applicant/Respondent denied paragraph 6(d) of the Respondents/Applicants affidavit as at when the Applicant/Respondent Fundamental rights Enforcement Procedure action was filed i.e the basis for the investigation did not include “Cyber Stalking” as can be seen in Exhibit I, J and K.

The Applicant/Respondent also averred that contrary to the misguided indication in paragraph 6(g) of the Respondents/Applicants affidavit, there is absolutely nothing to “defend” since judgment has since been delivered without fraud, misrepresentation, non-disclosure of facts considered to be material by the Respondents/Applicants or non-joinder- the

allegations. Also that, there was no concealment or misrepresentation of facts considered to be material by the Respondents/Applicants contrary to paragraph 6(j) of the Respondents/Applicants affidavit. It would be in the interest of justice and paractice generally, if this application is discountenance with severe cost to set example.

The Applicant/Respondent attached to the Counter Affidavit several Cetified True Copy of Certificates of Service, Hearing Notices, Court Order etc which are marked as Exhibit A – K.

Learned Counsel for the Applicant/Respondent formulated a sole issue for determination to wit:-

“Whether the Respondents/Applicants are entitled to the reliefs sought.”

I have carefully read and considered the Motion Pappar, affidavit in support of the application, exhibit attached therewith and accompanying the address of Counsel for the Respondents/Applicants on the one part and the Counter Affidavit with exhibits and the address of the Counsel for the Applicant/Respondent on the other part.

I agree with the Learned Counsel for the Applicant/Respondent on the issue for determination i.e “whether the Respondents/Applicants are entitled to the reliefs sought.” Every other question demanding an answer is well situated within the issue.

Firstly both parties agree that this Court has the power to set aside its judgment in appropriate circumstances. It is the contention of the Respondents/Applicants that the judgment of this Court (Exhibit NP2) was obtained through fraud or misrepresentation, non disclosures of material facts and non joinder of necessary party.

I have perused the averments in the affidavit in support of the application and I do not see any evidence of sufficient proof as to the alleged acts of fraud or misrepresentation by the Applicant/Respondent.

Looking at the decision in Exhibit NP2, the Court found that the Applicants/Respondents detention was unlawful and the averments of the Respondents/Applicants has not show that the decision was obtained relying on fraud or misrepresentation by the Applicant/Respondent. It is trits that he who asserts must prove facts asserted beyond reasonable doubt. “See Section 135 of the Evidence Act. The Court therefore requires a strong case to be established before it will set aside its judgment on ground of allegation of fraud. **See:- BANGUL V. JINGI (2017)LPELR – 43270 (CA).**

Another contention of the Respondents/Applicants is that a necessary party has not been joined found as a party in the matter. i.e the Petitioner to the police.

It is settled law that where all a person does “as held in **RAPH V. HUSGBOWO & ORS (2018) LPELR – 45253 (CA)**, is to lay a complaint/Petition before the law enforcement agencies (in this case the IGP). He cannot be found liable for how the police

conduct their investigation and requirely the detention of the suspect.

There is nothing before that even remotely suggest that the finding of unlawful detention of the Applicant/Respondent by the Respondents/Applicants cannot attend stated simply on the ground that the Petitioner was not made a Party to the suit.

The averments in paragrph 4 – 6 of the affidavit in support establish that processes for the suit were duly served on the Respondents/Applicants on the 4th of December 2012 in a suit under the Fundamental Rights Enforcement Procedure Rules and that it was only on the 24th of February 2021 that Counsel went to Court to inquire about the date for hearing of the matter. This attitude cannot be excused. To set aside the decision of the Court in the face of such.....is to do to justice to the Applicant, Respondent.

I find no merit whatsoever in this application. It is vexatious and frivolous and is hereby dismissed with Cost of ₦500,000.00.

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HON. JUDGE
30/6/2021.