

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN
THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY 31ST DAY OF MARCH, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

SUIT NO: FCT/HC/GWD/CV/13/2021
MOTION NO: FCT/HC/M/47/20

BETWEEN:

MRS. KHAIRAT NURUDEEN.....APPLICANT

AND

1. MUHAMMED MAMU
2. ABDUL AKEEN OSENI
3. IMAM MALIK IBA ANAS ACADEMY
4. ADO BABA ILYA }.....**DEFENDANTS**

RULING

Applicant commence this suit by Originating motion brought pursuant to section 33,34,37&46 of the constitution of the FRN 1999 (as amended) Order ii, iii &iv of the fundamental Right (enforcement Procedure) Rules 2009 and articles iv, v, vii & xix of the African Charter. On human and people's rights (ratification and enforcement) Act Cap. A10 LFN 1990 and under the inherent jurisdiction of this Hon. Court dated and filed on the 9/2/21. Applicant is praying for the following reliefs:

(1) A declaration that the acts of threat Intimidation dehumanization, suppression and mental Torture by the Respondents against the applicant constitution flagrant

violation of the applicant's right to dignity of human persons guaranteed under section 34 of the constitution of the FRN 1999 as amended and articles 3 of the African Charter on human and peoples Right Cap. A10 LFN 2004 and therefore illegal, unlawful and unconstitutional.

*(2) And all other reliefs sought as seen on the face of the originating motion. Attached to this application are a 60 paragraph affidavit deposed to by One Omalaji Temidayo the brother inland to the application, 2 exhibits, statement in support of the motion On notice and written address in support of the originating motion. The summary of the applicants case is that the applicant is a full time house wife and a Muslim woman in **Pudah** while the 1st Respondent is the administrative head of the 3rd Respondent, the 2nd Respondent is a member of staff of the 3rd Respondent, and the 4th Respondent is the caretaker or estate manager appointed to manage the property currently Occupied by the applicant.*

The 3rd Respondent is a school and co-tenant with the applicant.

That the applicant's husband is currently in abroad.

That after an oral tenancy agreement the applicant's husband took possession of a two bedroom guest room apartment with all its appurtenances thereto at Imam malite secondary school site, plot 449B,

phase 3 Gwagwalada Abuja FCT for his family since 2018 for the sum of 450, 000.00 actual rent is 400, 000.00 while the 50,000.00 being for service charges of the apartment which include security, electricity and water supply.

That the applicant two bedroom apartments has a swimming pool, lawn tennis court and two outer (visitors) toilets affixed with the applicants building sitting beside her rooms window marked out and demarcated from the school premises which is at the front part of the property.

That sometime in October, 2020 the respondent through 4th Respondent sought the applicant husband's permission. That the 3rd Respondent would like to make use of the swimming pool located within the immediate premise of the applicants.

That applicant husband consented on the condition that the swimming pool will be demarcated from the applicant's apartment with a new fence erected between them which would guarantee the applicant's privacy against intrusion and that the applicant will be given a day notice on the work considering that the applicant is in PUDAH.

That the Respondent workmen were intruding in applicant's privacy walking stealthily them behind the applicant's window peeping through it suspiciously. That the applicant's electricity supply was out off on the 11th January, 2021.

That because of the Intrusion applicant was directed by her husband not to allow the respondent access in to the compound.

That after an Interaction by the deponents, the 1st Respondent further Requested to demarcate the lawn tennis court and the two outer toilets from the applicants premises for the school use.

That instead of demarcating the swimming pool the workmen were laying blocks to cut away parts of the applicant apartment including the visited toilet.

That the workmen who said they were sent by the 1st Respondent had cut the barricade demarcating the 3rd Respondent premises and the applicant to gain access to applicants premises and after the intervention of the public (Neighbour) and the 4th Respondent the workmen were instructed to repair the barricade.

That applicant's water was disconnected on the 2/2/21 and her electricity which has caused untold hardship to the applicant. The general action of the Respondent Negatively against the applicant has subjected the applicant to ridiculous demeaning dehumanizing remarks and has caused some emotional and psychological torture.

That the safety of the applicant and her children is not guarantee while she is still in lawful possession.

The Respondent attempted to stop the applicant from parking her car at her usually car space and told the gate man to stop opening and closing the gate for the applicant. This action is contrary to section 42 of the 1999 constitution as amended; Applicant submits that she is entitled to the declaratory reliefs sought, Injunction and compensation. In the nature of general damages granted for any wrong done to a party.

The 1st 2nd & 3rd Respondent filed a Counter Affidavit. The said Counter Affidavit is dated and filed the 15/2/21 deposed to by the 1st Respondent Muh'd mamu wherein he admitted paragraphs 4 to 7. 1st Respondent avers that 2nd & 3rd Respondent had informed the applicant's husband and obtained consent and permission from the 4th Respondent who is the caretaker of the property to renovate and improve the school swimming pool badminton court and the toilets constructed mainly to serve the swimming pool site for the school sporting activities. The 3rd Respondent embarked on the construction of demarcating the swimming pool site but the applicant came and removed the blocks put on it which could protect the applicant and her children from falling into the pool.

The 1st Respondent discovered that the applicant has been tapping light illegally from the internal electrical connection of the prepaid Metre belonging to the 3rd Respondent which has in turn caused damages to the wires of the Metre.

The electrical company was called for professional advice.

1st Respondent avered that the applicant's water was not disconnected by any of the Respondents but the 3rd Respondent borehole which is the source of water was bad and in need of urgent repair as the 3rd Respondent also buys water.

That none of the Respondents have threatened, Intimidate, oppressed, assaulted, harassed, humiliate dehumanized, oppressed and mentally tortured the applicant.

That the letter written by 2nd Respondent to the applicant about the demarcation of the pool does not constitution threat to wife.

That the applicant has suppressed material facts of good intention of the Respondent and that 1-3rd Respondent will be prejudicial by the grant of this application Exhibit A1 A2 A3 & B1 are attached to this Counter Affidavits.

That the 1st Respondent deposed to a Counter Affidavits dated the 5/2/21 and avered that he admits paragraph 4 to 7 of the applicant affidavit.

That the applicants' husband paid 450,00 as rent excluding utility bills and services charges as alleged by the applicant.

That the applicant's flat has 2 separate AEDC electrical connections from that of the 3rd Respondent.

That the swimming pool and badminton court are not part of the guest house apartment and that the 4th Respondent will be highly prejudiced by the grant of the applicant's reliefs and prayed the court to dismiss this application.

The applicant filed a further and better affidavit of 16 paragraphs dated and filed on the 22/2/21. Wherein he attached 2 exhibits marked exhibit KN¹ & KN² Deponents denied paragraphs 5a-h, 6,7,8,9,10,11 of the 1st, 2nd 23rd Respondent Counter Affidavit and 4th Respondents paragraph 6a-e and 7 of his Counter Affidavit Deponents averred that the swimming pool lawn tennis/badminton court and two toilets are part of the applicant premises demarcated with barb wire which separated the applicants apartment from the 3rd Respondent premises.

That the applicant and her family have been living with the said swimming pool since 2018 and did not need safety and that Respondents sought permission from applicant husband to demarcate the pool. The 1st Respondent cut off electricity supply in order to humiliate and torture and there has never been any fire problem. The applicant has never had a separate source of electricity from that of the 3rd Respondent that the applicant attempted to stop the Respondents workmen when they forcefully and unlawfully intrudes into her privacy and deny her use of the appurtenances.

That the applicant's husband bargained the rent of the apartment for N400.00 but the 4th Respondent insisted on 450,000.00. That amount

includes service charge. The applicant does not have separate electrical and water supply as the guest house was originally part of the 3rd Respondent premise, the 1st Respondent Admitted at the police station. Cutting off applicants water and electricity supply and refused to restore when instructed by the police applicants also filed to address on part of law. 1st, 2nd, & 3rd, respondent filed a further Counter Affidavit dated filed on the 26/2/21 and attached 6 exhibits A5,B4,B5,B6 D & exhibit C 4th Respondent filed a further Counter Affidavit dated 26/2/21 and attached one exhibit-Exhibit B-3. 4th Respondent filed a written address attached to his further counter affidavit dated 26/2/21.

Having reproduced the submission of both counsel for and against and the reliefs enter in the applicants counsel. It became imperative to look at the entire application and the applicability of the law relied on by the applicant in the application. On whether there is a threat to life section 33 of the constitution of the FRN1999 state:

Every person has a right to life and no one shall be deprived.

(1) Intentionally of his life save in execution of the sentence of a court in respect of a criminal offence.

Applicant brought her application pursuant to section 33 of the 1999 constitution based on Exhibit B. In paragraph 29 of her affidavit in support of motion on notice.

That in the said letter the Respondent threatened the applicant that she should not hold them (Respondent), Responsible for whatever may happen to her in the premises see exhibit B.

The last sentence of Exhibit B in my mind does not constitute a threat to life but rather exemption from any responsibility if anything happened to jeopardize the sanctity of applicant privacy.

See **INTEGRATED FINANCE LTD VS. NPA & ANOR (2019) LPELR 49321 CA. IN EBULUE & ORS VS. EZEBRO (2018) LPELR**. The court held that any verbal threat to kill should not be ignoredthe claimant must show that the threat was directly uttered or delivered to him.....i do not see or perceived any threat life as perceived by section 33 of the constitution by exhibit B.

On section 34, 37 of the constitution by paragraph 9am of applicants affidavit in support of motion it states that the applicant and her husband consented to the use of the swimming pool on the condition that the pool will be demarcated from the applicants apartment with a new fence created between them which will guarantee the applicant's privacy against intrusion by any person. By paragraph 9m the applicant gives consent to demarcate. A fence cannot be erected without the presence of workmen Exhibit A attached by applicant to her application shows a copy of a receipt for 450,000.00 being payment for guest house at Imamalik secondary school site, Applicant Paragraph 9c states that the understanding of applicants husband was that N50,000.00

was for annual service charges including security, electricity and water supply. In paragraph 8E of their further affidavit her source of supply has been from the general supply to the entire premises mutually enjoyed by both the applicant and the 3rd Respondent. She has never enjoyed separate independent power supply despite demand by her husband to 4th Respondent why would applicant pay N50,000.00 for electricity security and water when she can get it free from the 3rd Respondent. Both the application and the Respondents contradict section 115 (2) of the Evidence Act see paragraphs 46,47,51, 52 of the applicant affidavit in support of the motion on notice and paragraphed 9 &10 of the 1st, 2nd and 3rd Respondents Counter Affidavits.

The applicant avers in their further affidavit that their affidavit was unchallenged and therefore admitted by the Respondent. Respondent Exhibit A1, A2, A3 are facts admitted as its shows the Respondent forcefully and unlawfully Intruding into the applicants privacy. Exhibit A1, A2, A3 are computer generated pictures see paragraph 56 of the Respondents Counter Affidavits. The above exhibits contravened. See 84(4) of the Evidence Acts therefore in admissible see also **BRILA ENERGY LTD VS. FRN (2018) LPELR 43926 (CA)**. See also **OMISORE VS. AREGBESOLA (2015)**. It was held that any piece of electronic evidence that does not comply with legal requirement of an authentication certificate see section 84 (4) Evidence Acts is not admissible in evidence. More so applicants paragraphs 9m applicant consent to a fence to demarcate the swimming pool. It is settled that a

party should be consistent in the pretention of his case see **EDIBIRE VS. EDIBIRE (1997) 4 NWLR (PART 498) 168, OTU & ANOR VS. AM & ORS (2013) LPELM -21405 CA**, on whether there is no specific denial of facts in respondent Counter Affidavits. The court in **MAINSTREET BANK & ORS VS. AMOS & ANOR (2014) LPELR 23361 CA**. it was held that a fact contained in the affidavit cannot be deemed admitted if it is either expressly or by necessary Implication denied, the Respondents Counter Affidavits implies denial of the facts in applicants affidavit as denial does not necessary have to be express section **ADEGBOYEGA VS. AWE (1993) 3 NWLR (PT 280) PG 224**. Exhibit A5 of 1st to 3rd Respondent further counter shows receipt of 3rd Respondents rent of N4, 500.000 being payment for 22 rooms, badminton, Handball courts and swimming pool area. While applicants exhibit issued by the same shows a payment of N450,000.000 being payment for guest house at Imam malik see school site.

Since agreement of tenancy was oral see pare 9 (a) of applicants affidavit in support there is nothing else before the court apart from these receipt Exhibit A & Exhibit A1 contrary to the claim made by the applicant that the applicant 2bedroom guest room cause with appurtenance like swimming pool, lawnten is court 2 outer visitors toilets as claimed by applicant in paragraph 9 further affidavit and paragraph 7A of further affidavit, Respondent Exhibit B4, B5,B6 are admission.

The Respondent Exhibit D which is the statement on oath is undated and unsigned by the commissioner for oath therefore such statement is not legally acceptable section **BUHARI VS. INEC (2008) 12 SCNJ 1 AT 91. SEE ALSO ONYECHI EROKWU VS. JACKSON N. EROKWU (2016) LPELR 41515.** It is the reliefs sought rather than the facts in support that determines whether an application was rightly commenced under the Enforcement Rules. See **BUKER VS. HON. MINISTER FEDERAL MINISTRY OF HEALTH (2018) LPELR45381 CA.** Generally it is essentially. The duty of the applicant to establish his claim from the entire affidavits and the exhibits attached to the application same failed to satisfy the requirement of section 135 & 137 of the evidence act. I have critically examined the affidavit or further and better affidavit attached to the applicants application unfortunately I am not convince for this reliefs to be granted by this court more particularly the requirement of the enforcement procedure rules have not been complied with. Fundamental rights are not absolute. See **PHARMABASE NIG LTD VS. OLATOKUNBO (2020) 10 NWLR PT 1732 PAGE 386 @ Ratio 10:** It is not the fact that constitutes the claim under the procedure for enforcement of fundamental Right (enforcement procedure) Rules. Rather it is the allegation of the infraction of the applicants fundamental Right that is relevant. See Pharmabase (Nig Ltd) supra. It is Imperative that the court should critically examine the reliefs sought by the applicant, the grounds for seeking the reliefs and the facts contained in the statement accompanying the application and relied on for the relief sought. Where the facts relied on disclose infringement of the

fundamental right of the applicant as the main or basis of the claim, then it is a clear case for the enforcement of such right through the Fundamental Right (enforcement procedure) Rules.

In **TUKUR VS. GOVERNMENT OF Taraba State 1997, 6 NWLR (PT 510) 549-574-575**. The Supreme Court held as follows:

When an application is brought under the Fundamental Right (Enforcement Procedure) Rules 1979, a condition precedence to the exercise of the court jurisdiction is that the enforcement the of the fundamental right or the security of the enforcement thereof should be the main claim not an **Accessory** claim. Enforcement of fundamental right or securing the enforcement thereof should from the applicants claim as presented, be the Principal or fundamental claim as presented, And not **accessory** claim. See also the **FEDERAL MINISTRY OF INTERNAL AFFAIRS & ORS VS. BLUGIBA DERMAN (1982) 2 NCL 915** in while the principal or main claim was a declaration that the order was ultra virus and that the same constituted a violation of the applicants fundamental right to Personal liberty, privacy and freedom to move freely throughout Nigeria. However, where the main claim or principal claim is not the enforcement or securing the enforcement of a fundamental right, the jurisdiction of the court cannot be properly invoked or excised as the court will be incompetent to do so. See university of **ILORI & 1 OR VS. IDOWU (2006) 12 SCM (PT2) 517-525** **SEE ALSO JADE VS. UNIVERSITY OF AGRICULTURE, MARKUDI (2004) 14 WRN A 1, (2004) 5 NWLR (PT 865) 208 (2004) 1 SC (PT 11) 100**

at 111 PER ARIWOOLA JCA PP 26-29 PARAGRAPH G-A. I live considered all the paragraphs gently of the affidavit am not convince at all that the reliefs sought fulfill the condition for claim to be granted basically based on the cases cited above consequently the application is hereby refused.

Signed
Hon. Judge
31/3/2021