

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 24
CASE NUMBER: SUIT NO. FCT/HC/CV/1547/17
DATE: 30/11/2021

BETWEEN:

1. EMEKA NNAKWUE }
2. OBINNA KALU }APPLICANTS

AND

1. THE CHAIRMAN ECONOMIC AND FINANCIAL
CRIMES COMMISSION (EFCC) }
2. RALIATU A. BELLO }
3. THE CHAIRMAN INDEPENDENT CORRUPT
PRACTICES AND OTHER RELATED OFFENCES
COMMISSION (ICPC) } .RESPONDENTS
4. THE INSPECTOR GENERAL OF POLICE (IGP) }

APPEARANCES:

M.I. Adah Esq for the Applicant.
Taiwo Aromolaran Esq for the 1st Respondent.
A. I. Raheem Esq for the 3rd Respondent.

RULING

By a Motion on Notice dated 9th day of July 2019 and filed on the 12th day of July 2019, brought pursuant to Sections 35(1) and 43 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Order 11 Rules 1, 2, 3, 4 and 5, Order XI of the Fundamental Human Rights (Enforcement Procedure) Rules 2009 and Articles 1, 11 and 12 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act, Cap 10 Laws of the Federation of Nigeria, 2004 and under the inherent jurisdiction of this Honourable Court; the Applicants herein prayed the Court for the following reliefs: -

- “1. AN ORDER of this Honourable Court restraining the 1st, 3rd and 4th Respondents arresting, threatening, interrogating the 1st and 2nd Applicants on the complaint or allegation of the 2nd Respondent from the property of the 1st Applicant in Kubwa Abuja –FCT or any other place in Nigeria.***
- 2. A DECLARATION of the Honourable Court that the deceit, arrest, interrogation and harassment of the 2nd Applicant and threat of infringement of the 1st Applicant by the officers of the 1st Respondents and his officers on allegation of pure civil contract between the 1st Applicant and the 2nd Applicant without the connection or privity of the 2nd Respondent where the 1st Applicant exercised his right for sale in Section 43 of the 1999 Constitution of the Federal Republic of Nigeria as amended without jurisdiction of the 1st to 4th Respondents as a violation of the Applicants' Fundamental Right and therefore unconstitutional, illegal, null, void and of no effect whatsoever.***
- 3. A DECLARATION of the Honourable Court that the deceit, arrest, interrogation and harassment of the 2nd Applicant by the officers of the 1st Respondents on allegation on a pure civil contract between the 1st Applicant and the 2nd Applicant where the 2nd Applicant exercised his right in Section 43 of the 1999 Constitution of the Federal Republic of Nigeria as amended without any justification by the 1st Respondent as a violation of the 2nd Applicant's Fundamental Right and therefore unconstitutional, illegal, null, void and of no effect whatsoever.***

4. ***A DECLARATION of this Honourable Court that the 1st, 3^d and 4th Respondents has no right or power to claim property of the 1st Applicant for the 2nd Respondent or 'inviting the Applicants to their offices for questioning without any complaint or comprehensive investigation report contrary to Applicant's right in Section 36(6) 5 of the Constitution of the Federal Republic of Nigeria 1999 as amended is unconstitutional and illegal, null, void and of no effect whatsoever.***
5. ***A DECLARATION of this Honourable Court that Order of daily reporting made against the 2nd Applicant by the 1st Respondent at Jabi Abuja FCT office of the 1st Respondent made since 26th day of July, 2019 is unconstitutional illegal, null and void.***
6. ***A DECLARATION of this Honourable Court that the refusal or denial of the 2nd Applicant to see the petition against him or know who is framing allegation against him before his detention and Demand/Request for property documents and numerous information by the 1st Respondent is a violation of the 2nd Applicant's right to information guaranteed by Section 36(6) of the Constitution of the Federal Republic of Nigeria 1999 as amended.***
7. ***A DECLARATION of this Honourable Court that the instruction and Order of the 1st Respondent against the 2nd Applicant to be reporting his headquarters Jabi, Abuja FCT and be released to go at this will be on daily basis after the Administrative bail is illegal, abuse of unconditional bail, and infringement of the 2nd Applicant's right to time for business restraining and freedom generally as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria as amended.***
8. ***A DECLARATION that the 2nd Applicant's right to do business including Acting as agent for his means of livelihood and his family as guaranteed in the constitution of the Federal Republic of Nigeria 1999 (as amended) has been violated by the 1st Respondent.***

9. ***A DECLARATION that the 1st Applicant has right to honour the custom of his parent and represent the family as the head of the family and sell or advertise for sale the family property as granted in the Constitution of the Federal Republic of Nigeria 1999, as amended.***
10. ***A DECLARATION that the 1st, 2nd, 3rd and 4th Respondents do not have the right or power to stop the 1st Applicant from dealing with the family property in accordance to the entire family wish in line with the custom and tradition of Igbo people.***
11. ***AN ORDER of the Honourable Court stopping the 1st, 2nd, 3rd and 4th Respondents from asking the 1st and 2nd Applicants to pay to one Raliatu A. Bello money she did not pay them or they did not obtain from her.***
12. ***AN ORDER of the Honourable Court directing the 2nd Respondent Raliatu A. Bello to go after the person she gave money if any and stop using Anti-graft, Agency or the 1st, 3rd and 4th Respondents office to violating Applicants fundamental rights/recognized and enshrined in the Constitution of the Federal Republic of Nigeria 1999 as amended.***
13. ***A DECLARATION that the hunting of the 1st Applicant for arrest and torture, or for purpose of infringing his Human Right by the 1st Respondent without any form of invitation is a clear violation of his Human Right.***
14. ***A DECLARATION that the 2nd Respondent has the right to go after whoever she alleged collected money from her by false pretence to recover same and not using the 1st, 3rd and 4th Respondents to recover the alleged money contrary to the 1st, 3rd and 4th Respondents act.***
15. ***A DECLARATION of the Honourable Court that the continuous harassment of the 1st and 2nd Applicants by the 1st Respondent servants, privies and agents based on allegation of obtaining money by false pretence, upon advertisement to***

sell 1st Applicant late Father's house on family instruction is unconstitutional, illegal, null and void and of no effect whatsoever.

- 16. AN ORDER of the Honourable Court restraining the staffs of the 1st Respondent EFCC from interfering with the property of the 1st Applicant's family without any valid Court Order.***
- 17. A DECLARATION of the Honourable Court that the art of interference of the 1st Applicant activities and the family property by the men of the 1st Respondent without any invitation or Court Order is illegal, unconstitutional, null and void and of no effect whatsoever.***
- 18. A DECLARATION of the Honourable Court that the arrest of the 2nd Applicant on the strength of the 2nd Respondent false allegation of obtaining money by false pretence without any fact or convincing documents is unconstitutional, illegal and infringement of the 2nd Applicant human right.***
- 19. AN ORDER of this Honourable Court restraining the 2nd Respondent, her agent and privies from further use of Police, EFCC, ICPC or any other security Agency from infringing on the Fundamental Human Right of the 1st Applicant or his Agent or privies from carrying out their lawful act or sale of his father's property anywhere in Nigeria.***
- 20. A DECLARATION of the Honourable Court that the marking and selling of the House in (Plot 417 Cadastral Zone 07-05) Western Street Wazobia 2/2 Kubwa Abuja FCT by the 1st Respondent EFCC on the 8th day of July, 2019 without any Court Order or pending Court case on the property is unconstitutional and illegal, null, void and of no effect whatsoever.***
- 21. AN ORDER of the Honourable Court directing the 1st Respondent EFCC to Re-open and delete the mark on the House in Plot 417 Cadastral Zone 07-05 Western Street Wazobia 2/2 Kubwa Abuja FCT for the 1st Applicant and his family.***

- 22. AN ORDER of this Honourable Court Awarding cost of N50, 000, 000.00 (Fifty Million Naira) against the 1st Respondent EFCC for the 1st Applicant's right to own and use property in Plot 417 Cadastral Zone 07-05 Western Street Wazobia 2/2 Kubwa Abuja FCT violated by way of marking and sealing the property on the 8th day of July, 2019 without his consent.**
- 23. AN ORDER of this Honourable Court Awarding the sum of N10, 000, 000.00 (Ten Million Naira) only against the 1st Respondent in favour of the 2nd Applicant for the unlawful arrest, restrained from business for three (3) days and deliberate violation of the 2nd Applicant's Fundamental Rights to movement, Association enshrined in the Constitution of the Federal Republic of Nigeria 1999 and as amended.**
- 24. A DECLARATION of the Honourable Court that the 1st Respondent EFCC does not have power and right to seal the 1st Applicant's family's property without any Court Order, and that the act of the 1st Respondent on the 1st Applicant's property is unconditional, and illegal, null, void and of no effect whatsoever**
- 25. And for any other Order or further Orders as this Honourable Court may deem fit to make in the circumstance of this application."**

The application is supported by an Affidavit of 75 paragraphs deposed to by Emeka Nnakwue, the 1st Applicant in this application, some annexures, and Affidavit of facts as well as a Written Address.

In response to this application, the 1st Respondent (the Chairman of the Economic and Financial Crimes Commission) filed a Counter Affidavit of 13 paragraphs deposed to by Samson Oloje.

In further response in opposition to this Motion on Notice, the 2nd Respondent (Raliatu A. Bello) filed a Counter Affidavit of 6 paragraphs deposed to the 2nd Respondent as well as several exhibits and a Written Address in support of same.

In response to same, the Applicant filed a further Affidavit of 16 paragraphs deposed to by the 1st Applicant in this suit.

Likewise, in further opposition to the Motion on Notice, the 3rd Respondent filed a Notice of Preliminary Objection on 3rd September 2020 which is undated as conceded by the learned Counsel to the 2nd Respondent.

The grounds predicating the Preliminary Objection are as follows: -

- “(1). This suit has not disclosed any reasonable cause of action against the 3rd Respondent.***
- (2). The Applicant’s claim for Injunction is a direct challenge to the exercise of statutory powers of the 3rd Respondent and therefore robs this Honourable Court of the jurisdiction to entertain their claims.***
- (3). The Applicant’s claims against the 3rd Respondent is speculative and constitutes an abuse of Court process.”***

In support is an Affidavit of 6 paragraphs deposed to by Iliya Markus a litigation clerk in the legal unit of the Independent Corrupt Practices and Other Related Offences Commission.

Likewise, in support of the Preliminary Objection is a Written Address which is also undated but filed on 3rd September 2019.

Meanwhile, in response to the Notice of Preliminary Objection, the Applicants filed a Counter Affidavit dated and filed on 2nd October 2019. Adopted same and made particular reference to paragraphs 5 and 6 thereof, as well as their Written Address.

Now, while moving the Notice of Preliminary Objection and adopting 3rd Respondent’s processes in this matter, learned Counsel to the 2nd Respondent A. I. Raheem Esq in his submissions before the Court conceded that their Notice of Preliminary Objection is undated but urged the Court to treat it as an irregularity.

Meanwhile, learned Counsel to 1st Respondent J.A. Arowayaro Esq also adopted 1st Respondent’s Counter-Affidavit to the Motion on Notice filed by the Applicants.

In his submissions however, learned Counsel stated that on the face of the application there are two parties which is against the rule of Joinder in fundamental rights applications. That while the Applicants can apply to be joined after filing their respective applications, they cannot file one application.

He further argued that the Chairman E.F.C.C is not a juristic personality therefore he's incapable of suing and being sued.

Learned Counsel cited the case of **AGBONMAGBE BANK V GENERAL MANAGER J. B. OILIVANT (1961) ALL NLR 116.**

Counsel urged the Court to dismiss this application for being grossly incompetent.

Now, before proceeding to consider the merits or otherwise of the Preliminary Objection of the 3rd Respondent and even the main suit, I find it imperative to first of all consider the issue raised by learned Counsel to the 1st Respondent i.e T. A Arowayaro Esq while addressing this Court on 29th September 2021.

The issue is on the propriety or otherwise of joining more than one Applicant in Fundamental Rights applications.

Indeed, I have taken judicial notice of the fact that two Applicants jointly filed this Motion on Notice for Enforcement of their Fundamental Rights.

The names listed as Applicants on the originating process are: -

- (1). Emeka Nnakwue
- (2). Obinna Kalu

On the position of the law regarding this issue, I hereby commend the decision of the Court of Appeal in the case of **UDO V ROBSON & ORS (2018) LPELR-45183 (CA), where the Court, per Adah, J. C.A, held at Pages 18 – 25, Para C – A** as follows:-

“...The contention of Learned Counsel for the Respondents that it is proper in law for two or more persons to apply jointly for the Enforcement of their Fundamental Rights cannot be sustained. The decision of this Court in KPORHAROR case (Supra) is the current decision of this Court. By the doctrine of stare decisis, I am

bound by the earlier decision of this Court. I cannot in any way deviate from it. I hold in the circumstance that it is not proper to join several Applicants in one Application for the purpose of securing the enforcement of their Fundamental Rights. This issue is resolved in favour of the Appellant.”

See also the case of **KPORHAROR & ANOR V YEDI & ORS (2017) LPELR-42418 (CA)**.

Likewise, in a more recent decision, the Court of Appeal has held in the case of **CHIEF OF NAVAL STAFF ABUJA & ORS V ARCHIBONG & ANOR (2020) LPELR-51843**, as follows: -

“.....Neither the 1999 Constitution nor the Fundamental Rights (Enforcement Procedure) Rules 2009 defines the word “person” but in the context of Section 46 (1) of the Constitution and order 1 Rule 2 (1) of the Extant Fundamental Rights (Enforcement Procedure) Rules, it refers to an Individual. The Objective used in both provisions in qualifying who can apply to a Court to Enforce a right is “any” which also denotes to singular and does not admit pluralities in any form. It is thus an individual right as opposed to collective right. I am however, not unmindful of the preamble to the extant Rules which encourages and welcomes public interest litigations in human rights field which in effect provides that no human Rights case may be dismissed or struck out for want of locus standi. The contention here is not on the rights of the Applicants to institute the action but rather on the propriety of bringing joint action.The fact in this case is similar with that of UDO V ROBSON & ORS (Supra) wherein this Court per Adah, J. C. A, held that it is improper for two or more persons to apply jointly for the Enforcement of their Fundamental Rights. Perhaps, it may be necessary to restate the legal position that preamble does not prevail over the clear words used in the operative part of an enactment. It does not control the plain words of the enactment.....in the light of the forgoing and considering the fact that there is no ambiguity in the words used in both Section 46 (1) of the 1999 Constitution and order 1 Rule 2 (1) of the Fundamental Rights (Enforcement procedure) Rules 2009; cannot override the plain words used in both the Constitution and the extant Rules. I cannot therefore deviate from the previous decision which

prohibits joint and or group application for the Enforcement of Fundamental Rights.”

In the circumstances therefore, going by the above decisions of the Court of Appeal, I must say that this Court being bound by the Doctrine of stare decisis, has no option than to follow suit.

Consequently therefore, although the Applicants have the right to apply for the Enforcement of their Fundamental Rights as provided for under Section 46 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), joint or group Application for such Enforcement is not the acceptable mode for commencing such action. I so hold.

In view of this, this suit with No. FCT/HC/CV/2439/2019, be and is hereby struck out for being incompetent.

Signed

Hon. Justice S. U. Bature
30/11/2021