

**IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
14TH DAY OF MARCH, 2022**

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

SUIT NO. FCT/HC/CV/130/2020

MOTION NO. M/467/2022

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

DIYOKE MARTINS OGBONNA

APPLICANT

AND

- 1. THE NIGERIA POLICE FORCE**
2. COMMISSIONER OF POLICE FCT COMMAND
RESPONDENTS **}**
3. EVER ROOFING COMPANY LTD

RULING

The substantive application is a Notice of Application for the Enforcement of the Applicant's Fundamental Rights brought pursuant to Order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009.

The second application seeks for bail.

The Applicant in the substantive application seeks for:

- (1) A DECLARATION that the arrest and continuous detention of the Applicant since November 2021 till date at the detention facility of the 1st Respondent by men of the 1st Respondent and or their agency or servants upon the complaint of the 3rd Respondent is a violation of the Applicant's right as guaranteed by Sections 35, 36 and 46 of the 1999 Constitution and the African Charter on Human and Peoples Right (Ratification and Enforcement) Act.

- (2) A perpetual injunction restraining the Respondents, their servants, agents and or privies from further interfering in any manner whatsoever with the Applicant's enjoyment of

his fundamental rights to personal liberty in relation to the subject matter.

(3) ~~₦~~50,000,000 as damages against the Respondents for the flagrant violation of the Applicant's right to personal liberty and a public apology in two national dailies.

(4) Cost of the action.

Learned Counsel relies on the Statement containing the name and description of the Applicant, the reliefs sought and the grounds upon which the reliefs are sought.

In the said Affidavit filed in support, the deponent, Chioma Nwokenna of Suite F35, Efab Mall Extension, Area 11, Garki, Abuja deposes that:

- 1) Applicant was a staff of the 3rd Respondent.
- 2) That in the first week of November 2021, the 3rd Respondent wrote a petition to the

2nd Respondent alleging that the Applicant stole about 15 roofing sheets from its company.

That Applicant who spent about 4 days in Gwagwa Police Station was transferred to the office of the 2nd Respondent. The Applicant has been detained in the facility of the former SARS of the 1st Respondent since November 2021.

- 3) All efforts to secure the bail of the Applicant proved abortive.
- 4) That the health of the Applicant is deteriorating.
- 5) That he has suffered psychological trauma. That he is being beating and tortured daily.

The facts in the second application for bail are the same. These applications were served on the Respondents. The 1st and 2nd Respondents ignored

the Court. They failed to avail the Court their own side of the story.

The 3rd Respondent filed a Counter Affidavit to the substantive application. The 3rd Respondent is however not opposing the application for bail but canvassed that it was improperly joined as it does not have power to grant the Applicant bail.

Learned Counsel to the 3rd Respondent urges the Court to strike out the name of the 3rd Respondent in the application for bail.

In its Affidavit filed against the substantive application, the deponent, Christian Mbanefo states:

That the 3rd Respondent indeed wrote a Petition to 2nd Respondent complaining about its missing 15 roofing sheets, which were in custody of the Applicant.

That the 3rd Respondent does not know what transpired thereafter.

That 3rd Respondent reasonably suspected the Applicant who was the 3rd Respondent's Storekeeper as the person who stole the said 15 roofing sheets in his custody.

That it did not instigate the 1st and 2nd Respondent.

That 3rd Respondent does not know how 1st and 2nd Respondent are going about their investigation.

I have read and considered the addresses of Counsel. Section 35 (1) of the 1999 Constitution of the Federal Republic of Nigeria states:

"Every person shall be entitled to his personal liberty and no person shall be deprived of such

liberty except in the case mentioned in subsection 1 (a) – (l).”

The 3rd Respondent in its Affidavit states it wrote a Petition to the 2nd Respondent against the Applicant in respect of its 15 roofing sheets allegedly stolen by the Applicant.

That it reasonably suspects the Applicant as having stolen the said roofing sheets.

By Section 35 (1) (c) of the Constitution, the liberty of a person can be curtailed 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.

The law is that any person who is arrested or detained in accordance with subsection (1) (c)

aforementioned shall be brought before a Court of law within a reasonable time.

Reasonable time in the instant case is 24 hours. The Applicant's deposition is that he was arrested and detained since November 2021. Today is 14/03/2022. We are in a constitutional democracy.

Impunity is for the barbarians. Nigeria is not a Banana Republic. This country is governed by law. Nobody or institution is therefore above the law.

Chapter IV of the 1999 Constitution (as amended) is sacrosanct. No institution or person has a right to trample on the right of citizens except as permitted by law.

The 1st and 2nd Respondents have not put any evidence before the Court despite the service of Court processes. I therefore believe the Affidavit of the Applicant as it relates to them.

The 3rd Respondent's averment is that it merely reported the theft and did nothing more. That it performed its civic duty by reporting that its 15 roofing sheets were allegedly stolen by the Applicant and did nothing more.

The Applicant has not shown by Affidavit evidence that the 3rd Respondent actually participated in the incarceration of the Applicant beyond reporting the Applicant to the 2nd Respondent.

In the circumstance, the case is not proved against the 3rd Respondent. The Applicant's freedom of association is also breached by the 1st and 2nd Respondents.

In totality, It is my view and I so hold that the fundamental rights of the Applicant as enshrined in Sections 35 and 36 of the 1999 Constitution (as amended) are breached by the 1st and 2nd Respondents and I so hold.

The Applicant is entitled to compensation. Their impunity must stop. The Nigerian citizens are not goats. They are human beings entitled to human rights. Security agencies are creation of the Constitution. They are to protect and enforce the law not to gag, humiliate and frustrate citizens. I shall award exemplary damages.

I hereby rule as follows:

- 1) It is declared that the arrest and continuous detention of the Applicant since 2021 till date at the 1st Respondent's detention facility since November 2021 by men of the 1st Respondent and or their agents and privies is a violation of the Applicant's rights as guaranteed by the 1999 Constitution and the African Charter on Human and Peoples Rights.
- 2) ₦50,000,000 (Fifty Million Naira) as compensation by the 1st and 2nd Respondent in favour of the Applicant.

- 3) The 1st and 2nd Respondents shall tender an apology to the Applicant in two National Dailies.
- 4) The 1st and 2nd Respondents are restrained from arresting the Applicant except as permitted by law.
- 5) ~~₦~~100,000 (One Hundred Thousand Naira) as cost of this action.
- 6) The 1st and 2nd Respondents are hereby ordered to release the Applicant forthwith and or Bail is granted to the Applicant in the sum of ~~₦~~200,000 (Two Hundred Thousand Naira) or one (1) Surety in the like sum.
- 7) The Surety shall be the owner of a Statutory Right of Occupancy within jurisdiction.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
14/03/2022

Parties absent.

Chibuzor C. Ezike, Esq. for the Applicant.

Osita Ibekwute, Esq. for the 3rd Respondent.

COURT: Ruling delivered.

(Signed)

Hon. Judge

14/03/2022