

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
DELIVERED ON WEDNESDAY THE 20TH DAY OF MAY, 2020.
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE .R. OSHO -ADEBIYI

SUIT NO. CV/1672/2019

IN THE MATTER OF FUNDAMENTAL RIGHT RULES 2009

BETWEEN

EGBUCHÉ MICHEAL IFEANYI-----APPLICANT

AND

**THE ECONOMIC AND FINANCIAL CRIMES
COMMISSION (EFCC) -----RESPONDENT**

JUDGMENT

This is an application brought pursuant to Sections 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The application is dated and filed on the 18th of April, 2019.

The reliefs sought as contained in the Motion on Notice are as follows:

- i. A DECLARATION that the continued detention of the Applicant by the Respondent from 11th March, 2019 till date without an order of Court constitutes an infringement of the Applicant's Rights as enshrined in Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- ii. AN ORDER of this Honourable Court directing the Respondent to release the Applicant forthwith from their custody despite meeting the administrative bail terms of the Respondent.

- iii. AN ORDER of Perpetual Injunction restraining the Respondent whether by themselves, their Agents, Privies and servants from further arresting, detaining or harassing the Applicant without an order of Court.
- iv. AN ORDER of this Honourable Court directing the Respondent to pay the Applicant the sum of Ten Million Naira (10,000,000) only being pecuniary and exemplary damages arising from the humiliation, unlawful detention and torture of the Applicant by the Respondent.
- v. AND such further order(s) as the Honourable Court may deem fit to make in the circumstances.

The Motion is supported by a statement of facts, a 13 paragraph affidavit in support and a verifying affidavit of 6 paragraphs both deposed to by Andrew Aliyu the litigation clerk in the law firm of Ojoniko & Oj law firm and a written address.

From the processes filed, the summary of the case of the Applicant is as follows; that the Applicant met one Lisa Marie Kinney-Reyes online and they both established a relationship. That Lisa Marie Kinney-Reyes lent the Applicant the sum of \$10,000.00 (Ten Thousand US Dollars) and they both agreed that the Applicant will refund the said money but the Applicant was unable to do so as a result of disappointment on return on investment and not a deliberate refusal to take home his promise to pay back the said money. That Lisa Marie Kinney-Reyes reported the matter to the Economic and Financial Crimes Commission despite several pleas from Applicant that he will pay back the said money. That the Applicant was arrested by the Respondent in his resident at No. 10 Isuofia Street Federal Housing Trans Ekulu Enugu, Enugu State for allegedly defrauding one Lisa Marie. That the Applicant has been in the custody of the Respondent at

different detention facilities from 11 March, 2019 till date. That the Applicant was refused administrative bail by the respondent despite several attempts at securing his bail by his relations, even when the bail condition was met and the address of the surety was verified the Respondent refused to release him from detention. That the arrest, detention and torture of the Applicant at different detention facilities of the Respondent from 11th March, 2019 till date is a violation of the Applicant's right to personal liberty and dignity. That his bail condition upon being verified; was fulfilled since on the 5/4/2019. That the Applicant was admitted to bail when he approached this Court to enforce the breach of his fundamental human rights.

The Applicant raised a sole issue for determination in his written address, which is;

“Whether from the facts deposed herein on behalf of the Applicant, the Respondent is in breach of the Applicant's Fundamental Rights so as to entitle the Applicant to the grant of the reliefs claimed before this Honourable Court”.

In summary, learned counsel submitted that the Applicant was deprived of his liberty by the Respondent in such an unlawful and flagrant disregard to the supreme law of the land, and made to suffer humiliating and degrading treatment. Counsel relied on **Sections 34 (1), 35 (1) and 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the case of IGP V. UBAH (2015) 11 NWLR (PT. 1471) 405 AT 439 PAR B-C**. Counsel submitted that the constitutionally stipulated time, which the Applicant ought to have been brought before the Court has long elapsed, as there are many courts of competent jurisdiction. Counsel cited section 35 (1) (c), (4) and (5) of the **Constitution of the**

Federal Republic of Nigeria 1999 (as amended), the cases of **BENSON V. COP (2016) ALL FWLR (PT. 840) 1255 AT 1272 PAR D** and **ASST. INSPECTOR GENERAL OF POLICE V. EZEANYA (2016) ALL FWLR (PT. 830) 1349 AT 1371-1372 PAR E-H** and **Section 4 of the Police Act, CapP23 LFN 2004**. Counsel submitted that any breach of the provisions of the fundamental rights provisions renders the act subsequent to that breach a nullity and he relied on the cases of **ASST. INSPECTOR GENERAL OF POLICE V. EZEANYA (2016) ALL FWLR (PT. 830) 1349 AT 1371PAR H** and **AMOO V. ALABI (2003) FWLR PT 174 PG 198 At 211 paras E**. Counsel further submitted that it is the law that where the fundamentally guaranteed right of a person is violated, the courts have been enjoined not to shy away from ordering a proper remedy in favour of the victim. Counsel referred the court to the case of **NAWA V. ATT. GENERAL CROSS RIVER STATE (2008) ALL FWLR (pt. 401) 807 at 842 C-O** and **Section 35 (4) of the Constitution**. Finally, counsel urged the Court to grant the reliefs as well as the orders sought.

On the award of exemplary damages, Counsel cited **ONOGORUWA V. INSPECTOR GENERAL OF POLICE (1991) 5 NWLR (pt. 193) 593; AKULEGA V. BENUE STATE CIVIL SERVICE COMMISSION & ANOR (2001) 12 NWLR (Pt. 728) P. 524; SHELL PETROLUM DEVELOPMENT COMPANY OF NIGERIA LIMITED (2015) 14 NWLR (PT. 1479) 307 AT 346 PARC** and **Section 35 (6) of the Constitution**. Counsel urged the court to grant all the reliefs sought.

The Applicant filed a 13 paragraph further affidavit dated 3rd May, 2019 in support of the Motion on Notice. The Applicant also filed a Reply to the counter-affidavit of the Respondent dated 1st July, 2019 and annexed two (2)

documents. Applicant also filed another further affidavit in response to Respondent's further counter affidavit dated 1st July, 2019, and attached to it is a document marked Exhibit W. O. and a written address. The Reply to the counter-affidavit filed by the Applicant was essentially anchored on the fact that the Applicant was admitted to bail (on 22/5/19) when he approached this court to enforce the breach of his fundamental human rights. In the written address attached to the Applicant's reply to Respondent Counter Affidavit, in summary counsel submitted as follows;

- a. That failure of the Applicant to fulfil the bail condition granted on the 12/3/19 does not amount to the breach of the Applicant's right to liberty.
- b. That the failure of the Respondent to release the Applicant on bail on 5/4/19 after fulfilling the bail condition is wrong, unconstitutional and a breach of his right.
- c. That the release of the Applicant on the 22/5/19 after 47days of fulfilling his bail condition upon being reviewed is a breach of the Applicant's right to liberty.
- d. That the court should hold S. 35 (6) of the Constitution close to chest to order the payment of compensation as stipulated and as per his relief.
- e. That the current suit borders on the breach of Applicant's right to liberty and not the same with the charge being faced in Court 35 of FCT High Court Jabi to constitute abuse of court process.

Counsel urged the Court not to be swayed by the sentiments of the criminal charge being faced by the Applicant but to address this case based on its merit, according to the laws so cited and in the interest of justice. At the hearing, learned counsel to the Applicant W. O. Onate, Esq., relied on the

paragraphs of all the affidavits filed and adopted the submissions contained in the written addresses.

In opposition, the Respondent filed a counter-affidavit of 23 paragraphs with 8 annexure marked as Exhibit EFCC 1 to EFCC 8 and a written address. The Respondent also filed a 7 paragraph further counter affidavit with 2 annexure marked Exhibit EFCC 9 & EFCC 10 and a 13 paragraph further and better counter affidavit dated and filed 2/7/2019.

The case of the Respondent in summary is as follows; that the Respondent received a complaint from one Lisa Marie Kinney-Reyes against the Applicant for obtaining by false pretence the sum of \$10,000.00 USD (Ten Thousand Dollars). That the complainant alleged that the Applicant who claimed to be one Tommy Solis from Elgin Illinois informed her under the assumed identity that he was in Scotland on a job without access to his fund and needed the sum of \$10,000.00 USD (Ten Thousand Dollars) to fund equipment and supplies and thus defrauded the Complainant. That in the course of the investigation consequent upon the allegation as contained in the complaint wherein the name of the Applicant featured prominently and facts discovered in the investigation, he was arrested after surveillance at a bank premises in Enugu. That when the Applicant attended the Respondent's office he was promptly informed of the allegations against him and was promptly granted administrative bail on the conditions to provide a level 16 Civil Servant residing in Enugu or an individual who owns a property in Enugu but he failed to provide any surety. The conditions were reviewed for the Applicant to provide two (2) serving Directors in any of the Federal Ministry/Agencies with landed properties in Abuja Municipal Area as sureties and a deposit of his

international passport but he was unable to produce sureties to that effect too. That investigation was concluded and a single count charge with No. CR/276/2019 bordering on offence of obtaining money by false pretence was filed on the 9th of April, 2019 against the Applicant and his conspirator who is at large. That on the 16th of May, 2019 the Applicant was brought before FCT High Court 35, Jabi for his arraignment but he could not take his plea due to the bereavement of the presiding judge. That the case was adjourned to 25th June, 2019 for arraignment and the Applicant through his representatives applied to the Respondent to release the Applicant pending the adjourned date for arraignment and undertook to make him available anytime he is needed. That the Respondent desirous of granting the Applicant bail further reviewed the bail terms and he was released to a surety pending the date of his arraignment. That at no time was the rights of the Applicant breached by the Respondent.

The Respondent in their written address raised a sole issue for determination to wit: “Whether the Applicant is entitled to the reliefs sought”

The address filed by the Respondents is basically to the effect that the constitutionally guaranteed rights of Applicant was not in any manner infringed. Learned counsel submitted that the onus is on the Applicant to establish that certain facts exist as per facts deposed to, to be entitled to the reliefs sought. Counsel submitted that if there is a reasonable suspicion that a person has committed an offence, his liberty may be tampered with so as to prevent him from committing an offence. Counsel also submitted that the Respondent have not in any way unlawfully detained the Applicant. Counsel submitted that the Applicant cannot maintain or sustain the claim that his fundamental right has been breached, nor claim any malice towards his

person when he was granted administrative bail while investigation into the case against him continued but he failed to meet the conditions. Counsel further submitted that once a person is offered bail but could not fulfill the condition any further time spent in custody by that person until he satisfies the condition for bail cannot be properly regarded as unlawful detention. Counsel submitted that it is conceded that the constitutional right to personal liberty is sacrosanct but it is submitted that no citizens' liberty or freedom is absolute. Counsel submitted that the request for an order restraining the Respondent from performing her statutory duty would amount to meddling and interfering with the role or duties of a law enforcement agency by the judiciary. Counsel also submitted that the Applicant has failed to prove his case. Learned counsel further submitted that compensation is not awarded as a matter of course but at the discretion of the court which must be exercised both judicially and judiciously. That the court's discretion here is only exercised by guided principles where a litigant succeeds in his suit. Counsel urged the Honourable court to dismiss Applicant's application as being frivolous and abuse of the court process because the Applicant is already being investigated in respect of his actions and activities that led to this Application. He cited the following authorities;

- i. **FAJEMIROKUN V. COMMERCIAL BANK (2009) 2 MJSC (pt. 11) 114 at 140 para C.**
- ii. **OYEWOLE SUNDAY V. ADAMU SHEHU (1995) 8 NWLR (pt. 414) 484**
- iii. **EKWENUGO V. FRN (2001) 6 NWLR (PT. 708) 171 AT 185**
- iv. **HASSAN V. EFCC (2004) 1 NWLR (PT. 1389) C.A. 607**
- v. **AUGUSTINE EDA V. COMMISSIONER OF POLICE BENDEL STATE (1982) 3 NCLR (PT. 219) AT 228.**
- vi. **FAWEHINMI V. IGP (2002) 7 NWLR (PT. 767) 606 AT 686-687**
- vii. **PETER V. OKOYE & ANOR (2002) FWLR (PT. 110) 1864.**

viii. SECTION 35 (1) (C) OF THE 1999 CONSTITUTION OF THE FRN

ix. SECTIONS 131 – 133 OF THE EVIDENCE ACT 2011 ETC.

It is worthy of note that Prayer two (2) on the motion paper asking for an order of this Honourable Court directing the Respondent to release the Applicant forthwith from their custody despite meeting the administrative bail terms of the Respondent has been overtaken by event as can be seen in paragraphs D & E of the Respondent's further counter affidavit, paragraph 10 of Respondent's further and better counter affidavit, paragraphs 9 and 10 of the Applicant's further affidavit in response to Respondent's counter affidavit and paragraph 8 of the Applicant's Reply to the Respondent's further counter affidavit where both parties avers that the Applicant has been released on bail. Having said that prayer 2 on the motion paper is hereby struck out.

I have carefully read through the processes filed by the respective parties, equally seen the exhibits annexed and have given deep and thoughtful consideration to all issues raised. The simple issue calling for determination is:

“Whether the Applicant, in the circumstances of this case is entitled to the reliefs sought”.

By virtue of the provisions of **Section 35(1) and 36(6) of the 1999 Constitution (as amended)**, every citizen of Nigeria is entitled to his personal liberty and no person shall be deprived of his liberty except as stipulated by the Constitution or statute. **See Adams V. A. G. Federal (2006) Vol. 4 INRN (pg. 46) pp (5) 56.** It also goes to say that every citizen of Nigeria has the right to go about his or her own business unmolested or unhindered by anyone except in a justiciable circumstance, such as when he is found to have violated the law of the land.

It's in this respect that, it's said that human right is not absolute in some given circumstances. For the Applicant to claim his fundamental rights under **Section 35(1) of the 1999 Constitution (as amended)** was breached, he must demonstrate that his personal liberty was curtailed by the Respondent and that the curtailment is not in furtherance to **Section 35 (1) (a) (f) of the 1999 Constitution (as amended)** and also that **Section 35 (2) – (5) of the 1999 Constitution (as amended)** were not complied with by the arresting officers. In the instant case the Applicant alleged that he was arrested on the 11th of March, 2019 and has been refused administrative bail after meeting all the bail conditions. That he met the bail conditions since the 5th of April, 2019 but he was released on the 22nd of May, 2019. That he was in the custody of the Respondent for 47 days after he was granted administrative bail and that he fulfilled the bail conditions.

In response, the Respondent in paragraphs 9 (o, p, q & r) of the Respondent's counter affidavit and paragraph 7 (e) of the Respondent's further and better counter affidavit submitted that the Applicant was granted administrative bail initially on the 12/3/19 and attached exhibit EFCC 4 in proof. Respondent submitted that the Applicant could not meet the conditions of bail hence a review of the bail conditions on the 16/3/19 and attached exhibit EFCC 5 in proof, yet the Applicant could not meet the bail conditions despite the review. Respondent further averred that on the 16th of May, 2019 the Applicant through his legal representative applied to the Respondent to release the Applicant pending the adjourned date for the arraignment in the criminal case and undertook to make him available anytime he is needed and in proof of this attached exhibit EFCC 9. That thereafter the Respondent reviewed the bail terms and he was released to a surety, they attached the bail bond as

exhibit EFCC 10. The Applicant in opposition to the exhibit EFCC 10 stated that while the Applicant has approached this court to enforce the breach of his fundamental right, the respondent went behind and called the former counsel that was representing him a certain Ernest Nwoye, Esq. without the knowledge of the current counsel and made him to issue exhibit EFCC 9. However, there is no documentary evidence showing that the said Ernest Nwoye Esq. was debriefed. The Applicant in his Reply to the Respondent's further counter affidavit attached exhibit W. O. Titled; **“WITHOUT PREJUDICE. RE:APPLICATION FOR PLEA BARGAIN ON BEHALF OF EGBUCHE MICHEAL IFEANYI”** and in paragraph 7 stated and I quote “It is our client's instruction that while he was in detention, his family members instructed Ernest Nwoye Esq. to represent him while he was unable to reach us. Hence, that led to the letter dated the 22nd March, 2019 and other correspondence from him. We hereby withdraw the said letter dated the 22nd, March, 2019”. However the said letter is not before the court and the court cannot speculate on the content of the letter.

I have carefully gone through the affidavit of parties; the question is where is the document evidencing the fact that the administrative bail conditions were met and the verification of the surety's address conducted? No single document, in the custody of the Applicant was produced before this Court to support the statements. In a matter for the enforcement of Fundamental Human Right, it is not proof beyond reasonable doubt; rather proof is based on preponderance of evidence and balance of probabilities. The onus of proving enforcement of Fundamental Human Right is on the Applicant and this onus does not shift until he has proved same on a preponderance of evidence and balance of probability that the proof shifts to the Respondent and continues to

shift till it stops on the party who fails to discharge the burden. Hence, the onus of proof unlike criminal cases is not strict as it shifts from time to time.

The Supreme Court Per NGWUTA JSC held:

“the burden of proof here means the burden of adducing evidence and this may shift depending on the preponderance of evidence. It rests on the party who would fail if no evidence at all or no more evidence were led on either side” Also see MESSRS LEWIS & PEAT (NRI) LTD VS A. E. AKHIMIEN (1976) 1 ALL NLR (PT.1) PG.460.

Hence the onus is on the Applicant to discharge his burden of proof, which Respondent has shifted to him by credible affidavit evidence that his fundamental rights were breached.

On whom lies the burden of proving infringement of fundamental human right the Court of Appeal in **ISYAKU & ANOR V. COP YOBE STATE & ORS (2017) LPELR-43439(CA)** states as follows;

“..... The Appellants had the obligation to lead credible and cogent evidence in proof of these allegations and this is because in civil cases, the general onus is on the claimant to prove to the satisfaction of the Court the assertions made in support of the contentions upon which he meets his case. Where a claimant fails to discharge the onus of proof upon him at the close of his case, a defendant is not obliged to adduce any evidence in rebuttal....In other words, in a civil suit, the person who asserts has the primary burden of proving the assertion. The failure of the defendant to prove or his refusal to testify cannot alleviate the primary burden

on the claimant ---- This is explained by the maxim "ei qui affirmat non ei qui negat incumbit probatio which means the burden of proof lies on one who alleges, and not on him who"

Also, the Court in ALHAJI ABDULRAZAK SALISU TSANYAWA v. ECONOMIC & FINANCIAL CRIME COMMISSION & ANOR (2018) LPELR-45099(CA) Per NDUKWE-ANYANWU J.C.A in pg. 14 paras A-F held

"The 1st Respondent was within its rights to investigate crimes is covered by Section (1) (C) of the 1999 Constitution (as amended). This section provides for the arrest based on reasonable suspicion. The onus is on the Appellant to place sufficient material before the Court to show that his Fundamental Rights were breached. This was not done. However, the 1st Respondent stated in its affidavit, that the Appellant was arrested but granted bail the same day. Apparently the Appellant could not meet up with the bail requirements and therefore stayed in EFCC custody for 3 days. The Appellant's failure to meet up with the bail requirement cannot be blamed on the 1st Respondent. Moreover, the Appellant did not allege that the bail terms were stringent or unreasonable. Having failed to prove any of the above, it cannot therefore be said that the Fundamental Rights of the Appellant was breached.....

It is therefore my view that the Respondent's affidavit shifted the evidential burden on the Applicant and Applicant failed to discharge the onus shifted to him. In my humble and respected view, the claim of the Applicant is

unfounded, as no evidence is placed before this Honourable Court to substantiate the allegations. To this end therefore, having found the Applicant not able to prove his allegation against the Respondent, the prayers sought fails and I so hold.

On the relief for perpetual injunction, Section 6 and 7 of the EFCC Establishment Act 2004 empowers the EFCC to investigate cases of this nature and the EFCC's investigation and subsequent arrest of the Applicant is justifiable in my opinion. The Court in *IGP & ANOR v. UBAH & ORS*(2014) LPELR-23968(CA) Per IYIZOBA, J.C.A. in (Pp. 27-28, paras. D-C) held

"The order of perpetual injunction restraining the appellants is unconstitutional because it is an interference with the powers given by the Constitution to Police Officers to investigate and prosecute crimes. See Attorney General Anambra State v. Chief Chris Uba (2005) 15 NWLR (Pt. 947) 44; where Bulkachuwa JCA held: "For a person, therefore to go to court to be shielded against criminal investigation and prosecution is an interference with powers given by the Constitution to law officers in the control of criminal investigation. The plaintiff has no legally recognizable right to which the court can come to his aid. His claim is not one the court can take cognizance of for it has disclosed no cause of action. The plaintiff cannot expect a judicial fiat preventing a law officer in the exercise of his constitutional power." It is indeed trite that no court has the power to stop the Police from investigating a crime and

whether to or how it is done is a matter within the discretion of the Police”.

In view of the above therefore, it’s absolutely clear that arrest and detention by law enforcement agents will not amount to an infringement of Fundamental Right if done in accordance with the law and procedure as enshrined in 1999 constitution (as amended) as held in this instant case. Therefore, granting an order of perpetual injunction against the Respondent would not just inhibit the function of the Economic and Financial Crimes Commission (EFCC) but will frustrate the essence of establishing the commission. Also, the Applicant not being able to prove his case is not entitled to damages, and I so hold.

In conclusion, the Applicant being unable to prove the breach of his fundamental human right against the Respondent, his application fails and is hereby dismissed accordingly.

Parties: Parties absent.

Appearances: W. O.Onate, Esq., for Applicant. H. M. Mohammed, Esq., for Respondent.

**HON. JUSTICE MODUPE .R. OSHO-ADEBIYI
JUDGE
20TH MAY2020**