

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO-JUDGE
DATED THE -----DAY OF -----2021

SUIT NO: FCT/HC/CV/876/2017

BETWEEN:

ACHILE OPALUWA.....APPLICANT

AND

- 1. DIRECTORATE OF ROAD TRAFFIC SERVICES**
- 2. MINISTER OF THE FEDERAL CAPITAL TERRITORYR**
- 3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY**

O.L UWAIFO ESQ FOR THE APPLICANT

G.O. OKWOLI- ROTIMI- ESQ FOR THE RESPONDENTS

JUDGMENT

By a Motion on Notice dated and filed on the 9th of February 2017, brought pursuant to **Section 44 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and Article 14 of the African Charter on Human and People's Rights.**

The Applicant is praying the Court for the following Orders: -

1. A Declaration that the Respondent's Seizure and Impoundment of the Applicant Automobile Brown Colour Mazda 626 with Registration Number AA168 NDG and Chassis Number JMZGD143201111506 is Unlawful, Illegal, and contrary to the Provisions of **Section 44(1) of the Constitution of the Federal Republic of Nigeria.**
2. A Declaration by this Honourable Court that the forceful deprivation of the Applicant, arising from the Seizure of the said Brown Colour Mazda 626 with Registration Number AA168 NDG and Chassis Number JMZGD143201111506 by the Respondents since the 27th of January 2015 to date, is wrongful, Illegal, Oppressive and Unconstitutional.

3. An Order by this Honourable Court directing the Respondents to forthwith and unconditionally release and return to the Applicant, through his Counsel, the Applicant's Brown Colour Mazda 626 with Registration Number AA168 NDG and Chassis Number JMZGD143201111506.
4. A Declaration that the 1st Respondent demand and decision that the Applicant should pay the Sum of Twenty Five Thousand Naira (N25, 000.00) which was later reduced to Ten Thousand Naira (N10, 000.00) for the release of the Applicant's Car without hearing the Applicant's response on the issue of the Seizure of the said Car is Arbitrary, Unlawful, and contrary to the Provisions of **Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended)**.
5. An Order of Perpetual Injunction restraining the Respondents, jointly and severally, whether by themselves, Officers, Agents, Servants and Privies from further seizing or permanently detaining the Applicant's Brown Colour Mazda 626 with Registration Number AA168 NDG and Chassis Number JMZGD143201111506.

5a. The Sum of Four Thousand Naira (N4, 000.00) per day as the cost of hiring taxis for conveyance of the Applicant and Members of his Family to and from work as well as daily engagements as a result of the unlawful seizure of the Applicant's car from 27th January 2015 to the Day of Judgment of this Honourable Court.
6. The Sum of Twenty Five Million Naira (N25, 000.000.00) as general damages jointly and severally against the Respondents for wrongful, unlawful and continuous seizure, permanent detention, Possession and the custody of the Applicant's Brown Colour Mazda 626 with Registration Number AA168 NDG and Chassis Number JMZGD143201111506 since 27th of January 2015.
7. 20% Interest on the Judgment Sum from the date of Judgment until final liquidation.
8. And for such Order(s) as this Honourable Court may deem fit to make in the Circumstances.

Grounds upon which this Application is brought are as follows

1. That against the intendment and in complete violation of the Provisions of **Section 44 and 36 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and Article 14 of the African Charter on Human and People's Rights (Ratification and Enforcement Act)**, the Respondents have since the 27th of January 2015 to date, forcefully seized from the Applicant Mazda 626 with Registration Number AA168 NDG and Chassis Number JMZGD143201111506 and have completely taken over Possession/Control of the Applicant's Vehicle without the Applicant's consent and without any justification whatsoever and has refused to return same up to date despite repeated demands by the Applicant from the Respondents.
2. That the Respondents have no Right, Interest, Power and/or Authority whether under the Constitution **of the Federal Republic of Nigeria 1999 (As Amended)** or under any other Law for the time being in force in the Federal Republic of Nigeria to permanently deprive any person without any justification whether in Law or in Equity from the peaceful use and enjoyment of his Property or to forcefully seize and detain for their personal use the vehicle of the Applicant and to continue to use the said vehicle despite repeated demands have been made by the Applicant contrary to the existing Law of the Land.

Filed in support of the Application is a Twenty Seven (27) Paragraph Affidavit deposed to by the Applicant, Achile Opaluwa, also attached are Five Annexures, the Applicant's Statement in Support and his Written Address dated the 9th of February 2017.

In response, the Respondents filed a Thirty One (31) Paragraph Joint Counter Affidavit via a Motion on Notice dated the 30th of September 2019, the Counter Affidavit is deposed to by Engr. Gbenga Ojewumi, a Principal Officer of the 1st Respondent, also filed in support of is a Written Address of Counsel.

In response to the Counter Affidavit, on the 25th of November 2019, the Applicant filed a Nineteen (19) Paragraph Further Affidavit, which had an Exhibit.

Learned Counsel adopted their Processes and the Case was further adjourned for Judgment.

In essence the Applicant's position is that a Brown Colour Mazda 626 with Registration Number AA168 NDG and Chassis Number JMZGD143201111506 was given to him by his Father-in-Law to ease transportation burden of him and family members, he attached the Vehicle Documents as **Exhibits A1 - A5**.

According to the Applicant, on the 27th of January 2015, while attempting to drop off his Sister-in-Law by Durumi Bus Stop, he was accosted by a Truck driven by Men and Officers of the 1st Respondents in conjunction with Armed Police Men, who accused him of being a Commercial Driver trying to drop off a Passenger. All explanations by him, his wife and Sister-in-Law fell on deaf ears and they were taken to Durumi Police Station for unexplained reason.

On getting to the Police Station, the arresting Officers collected his Car Keys, leaving him, his wife and Sister-in-Law stranded all morning in the Police Station without any communication from the Police Officers. No written Statements were taken at the Police Station and neither did the 1st Respondent that accompanied them to the Police Station, officially inform them of their offence.

About 3pm on the day he was taken to the Police Station, the Officers of the 1st Respondent took his vehicle to their office, and thereafter, he was requested to present the Vehicle Particulars, which he immediately presented to the Officers, and the particulars was confirmed to be in order.

Subsequently, the Officers instructed them to go get "clearance" from Durumi Police Station before the vehicle is released to them. He and family members returned to the Police Station and requested for the clearance, but they were simply told to go collect their vehicle and sort themselves out as the Police Officers would not give them clearance since no Statement was taken from them and also the Vehicle was not in their Possession.

According to the Applicant, he and family members went back and forth between the Police Station and the 1st Respondent's Office five times in respect of collecting a "clearance". At the end of the day, they were all left alone without any explanation or communication from the Officers and the 1st Respondents.

The Officers and men of the 1st Respondent later insisted that he had to pay a Settlement Fee of N25, 000.00 before the Vehicle be released.

After a lot of pleading by the Applicant from the 27th of January 2015 to the 29th of January 2015 for his vehicle to be released, and to no avail, the Applicant then requested for an Official Proof from the Officers to show that his Vehicle

was in their Possession, that was when he was issued a Charge Sheet on the 29th of January 2015.

The Applicant further pleaded with the Officers and men of the 1st Respondent, and the fine of Twenty Five Thousand Naira (N25, 000.00) was then reduced to Ten Thousand Naira (N10, 000.00) but he could not afford it, and since then, the Officers and Men of the 1st Respondent has held on to the Vehicle.

The Respondents gave their own side of the story that on the 27th of January 2015, some Policemen and Officers of the 1st Respondent engaging in ensuring free flow of Traffic, found the Applicant dropping some Passengers at an Illegal Park at Garki, Area 3.

According to the deponent, the 1st Respondent's men politely enquired from the Applicant why he was dropping Passengers at the illegal park, rather than explaining, the Applicant became aggressive stating that they had no right to ask him for explanation.

In order to forestall a breakdown of Law and Order, the Policemen in company of the Officials of the 1st Respondent invited the Applicant and his Passengers to Durumi Police Station for further enquiry.

The Passengers failed to come to the Police Station with the Applicant.

Whilst at the Station; the Applicant admitted using the Vehicle for Commercial Purposes at the Park and pleaded for forgiveness. The Applicant was asked to produce his Vehicle Particulars, but he could not, and based on that fact, his Vehicle was impounded by the Policemen and kept in the 1st Respondent's Removed Vehicle Park pending the production of the Particulars, while the Applicant kept the keys to the Vehicle.

The Applicant was only able to produce the Vehicle Particulars on the 29th January 2015 and his Papers were found to be irregular, some of the Paper Particulars indicated that the Vehicle was licensed for Commercial Purpose, while others were for Private Purpose and it was also noted that the Vehicle did not belong to the Applicant.

The implication of the Applicant's infraction was explained to him, he then pleaded with them by opting to pay the penalty Fee, which was reduced from Twenty Five Thousand Naira (N25, 000.00) to Ten Thousand Naira (N10, 000.00) on compassionate ground. Instead of regularizing his Vehicle Particulars as well as paying the Penalty to enable him remove his Vehicle, the

Applicant resurfaced over a year later with Court Processes claiming infringement of his Fundamental Rights as well as asking for Damages.

The Respondents denied the fact that the Applicant was taking his Wife and Sister-in-Law to work and stated rather that he was using the Vehicle as Commercial Taxi without due Registration, and they further denied the fact that the Applicant had been spending the Sum of Four Thousand Naira (N4, 000.00) for transportation.

Finally, the deponent stated that the Applicant was asked to make a Statement on the 29th of January 2015, which he declined pleading with them that the matter should not be taken to Court.

In response to the Respondents' Counter Affidavit, the Applicant denied all the assertions of the Respondents stating that he was not told to regularize his Vehicle Particulars, as his documents were up to date. According to him, a formal Charge Sheet was given to him on the 29th of January only when he went to ask for Proof that his Vehicle was in the 1st Respondents custody.

He maintained the fact that his Vehicle Keys were taken from him, as his Vehicle was impounded and the Passengers were his family members, who had to rely on hiring cabs for their daily movement.

The Applicant finally maintained that he was never asked to make Statement at the Police Station, as the Police said that their functions were to provide Security at the instance of the Respondents and to ensure there is no breakdown in Law and Order.

The Applicant raised a Sole Issue for determination "***Whether the Applicant is entitled to the reliefs sought given the facts deposed to in the Affidavit***" While the Respondents also raised a Sole Issue "***Whether the Applicant is entitled to the relief sought given the facts deposed to by the Parties in their respective Affidavits***".

After a Careful consideration of issues raised by learned Counsel, the Court finds that the issue before it is "***Whether this Application is Meritorious***".

It goes without saying that the observance of Human Rights is a tribute to the Rule of Law. In the Case of **JOSEPH ODOGU VS A.G. FED (1996) NWLR PT 456 AT PG 508**, a Fundamental Right was defined as a Right guaranteed in

the Nigerian Constitution and is a right which every person is entitled, when he is not subject to the disabilities enumerated in the Constitution, to enjoy, by virtue of being a human being. These rights are so basic and fundamental that they are entrenched in a particular chapter of the Constitution. In the Case of **NEMI VS A.G. LAGOS STATE (1996) 6 NWLR PT 452 AT 42**, The Court of Appeal held that if those rights guaranteed under Chapter 4 of the Constitution are to be meaningful, they must be thoroughly examined from every angle and determined in an action complaining of their breach. When breached, they are to be addressed in all circumstances as appropriate.

The Applicant has filed an action for the Enforcement of his Fundamental Right against the Respondents under **Section 44 of the 1999 Constitution of the Federal republic of Nigeria**.

The Court will first deal with some Preliminary issues before delving to the Main Issue.

Firstly, the Arguments that the Vehicle did not belong to the Applicant is neither here nor there, in that the Applicant had stated that he was given the Vehicle by his Father-in-Law and there has not been any evidence brought before the Court to show that the Owner of the Vehicle Arch. Ajibogun D.P. has reported his Vehicle as stolen or that in-fact he never gave the Vehicle to the Applicant to use.

Secondly, it can be seen that the Vehicle Particulars marked as **Exhibit A1** and **Exhibit A2** by the Applicant are for Commercial Purpose while **Exhibit A4** and **Exhibit A5** are meant for Private Vehicle.

The Applicant stated in **Paragraph 8 of his Further Affidavit** that the function of the Respondent is to issue Vehicle Particulars and not his and did not know why he was issued such documents.

The Respondent never stated any reason why such Vehicle Documents were issued, even though they stated in their Counter Affidavit that the Vehicle was given for Commercial use.

The Court agrees with the Applicant that indeed it is the duty of the Respondents to issue out the Right and Proper Vehicle Papers. The Respondent cannot on one breath say the Vehicle Particulars are irregular and on another breath say the Vehicle was meant for Commercial Purpose. The Respondents are trying to pick a purpose, which they feel is more favourable to their Case.

Also on the issue of Driver's Licence, the Applicant tendered a Copy of his Licence, which showed that he had a Valid Licence on the 27th of February 2015 when this incidence occurred. Further, as seen in **Exhibit A6**, the Applicant's Alleged Offence was not one of Vehicle Particulars and Driver Licence but that of Illegal Parking.

It is this Illegal Parking and the Subsequent Acts of the Respondents that ensued that formed this Main Issue under Consideration, which is whether the Applicant's Right was infringed in the process.

According to the Applicant's Narration of Events, he was dropping off his Sister-in-Law by Durumi Bus Stop when the Respondent and Officers of the Police accosted him, accusing him of being a Commercial Vehicle when he dropped off Passengers in an Illegal Parking Spot.

The Governing Code amongst other Codes for all Road Users is as contained in the **Federal Capital Territory Road Transport Regulations 2005**, which makes it mandatory for all Road Users to strictly adhere to it, whilst the Respondents are to enforce this Code. In doing so, they must exercise their duties/functions within the ambit of the Law.

Section 105 (1) of the Federal Capital Territory Road Transport Regulations 2005 states that no Person shall, on FCT Expressway, permit the loading or off-loading of any Passenger or Goods from ANY Motor vehicle except at Designated Locations or that the vehicle has broken down. **Section 122** goes on to state that no Driver, Person or Group of Persons shall cause any Commercial Motor Vehicle to load or off-load any Passenger or Passengers except at Government Designated Motor Parks or Bus Stops.

By these Sections, whether the Vehicle is a Commercial or Private, a Driver is NOT permitted to drop-off his Passenger except at Government Designated Locations/Motor Parks.

The Applicant had argued in his Main Application that he was dropping off his Sister-in-Law at Area 3 Junction by Durumi Bus stop whilst in his further Affidavit he stated that he merely dropped her off at Area 3 Junction where she will take a Cab to her Office.

The Respondent denied these facts and stated he was dropping off the Passenger at an Illegal Park. The Law is trite that he who asserts must prove, reference is made to the Case of **CHILKIED SECURITY SERVICES & DOG FARMS LTD VS SCHLUMBERGER (NIG) LTD & ANOR (2018) LPELR -44391 (SC)**.

The Court expected that the Applicant's Wife and Sister-in-Law would have deposed to an Affidavit for the purposes of corroborating the assertions of the Applicant.

Further **Exhibit A6**, which is tagged as the Traffic Offence Analysis, shows behind the sheet that the Applicant signed a Column where he opted to pay the penalty as against going to Court. Looking further, it will also be seen that the Spot ticked was under the heading of Improper Parking "Operating in an Illegal Park", which had the Penalty as N25, 000.00 (Twenty Five Thousand Naira).

Section 151 (1) of the **Federal Capital Territory Road Transport Regulations 2005** states that A Road Traffic Officer shall have Power to issue a Notice of Offence to an Offender who he reasonably believes has committed any offence specified in these Regulations, and where the Offender opts to waive his right to a Court Trial, shall pay the prescribed penalty to an appointed Licensing Office and present the original receipt to the Officer.

(2) The Notice of Offence shall be set out in the MVA 23A set out in **Schedule 1**.

From the above Section, the Respondents were right to have issued the Applicant with the Traffic Offence Analysis.

The Applicant has also stated that his Vehicle has been impounded since 2015 upto date because he has not been able to pay the Fine imposed by the Respondents. **Section 169 of the same Regulation** provided that in any of these Regulations for the imposition of fine, the Vehicle which is the Subject of the Offence, shall be impounded by either a Police Officer or a Road Traffic Officer and may not be released until such fine is paid.

What beats the mind of the Court is why a Person, who claims that the Vehicle was given to him to ease the transportation burden of both himself and his family, will leave his Vehicle for over Five(5) Years in the custody of the Respondents, and then go ahead to pay daily the Sum of Four Thousand Naira (N4, 000.00) for transportation. Even if the Vehicle Keys were seized by the Respondent as claimed by the Applicant, he would have gone ahead to make the payment of the Sum of Ten Thousand Naira (N10, 000.00) issued on the Traffic Offence Analysis and if his Keys were not then released to him, he would have had a Case before the Court of Law where the Respondents would have been held liable.

The Respondents has claimed the Applicant committed a Road Traffic Offences, and even the Constitution, the fulcrum of the Applicants action allows for the detention of Property if the need arises.

It is the right of every person in this country to seek any remedy or relief available in our Courts for the relief of any injury done to or infraction of his civil right and obligation. However it is also the duty of any person seeking this remedy or relief to establish by credible evidence his entitlement to the remedy, or relief unless by the Pleadings or the Admissions by the Defendant of his entitlement, See **BAKARE VS ACB LTD (1986) 3 NWLR (PT26) 47 @ 60 SCN.**

In Conclusion, the Court finds that the Respondents acted within the scope of their duties, therefore, the Court finds that: -

- 1) A Declaration can not be made that the Respondent's Seizure and Impoundment of the Applicant Automobile Brown Colour Mazda 626 with Registration Number AA168 NDG and Chassis Number JMZGD143201111506 is Unlawful, Illegal, and contrary to the Provisions of **Section 44(1) of the Constitution of the Federal Republic of Nigeria.**
- 2) A Declaration that the forceful deprivation of the Applicant, arising from the Seizure of the said Brown Colour Mazda 626 with Registration Number AA168 NDG and Chassis Number JMZGD143201111506 by the Respondents since the 27th of January 2015 to date is illegal, cannot be made.
- 3) An Order by this Honourable Court directing the Respondents to forthwith and unconditionally release and return to the Applicant, through his Counsel, the Applicant's Brown Colour Mazda 626 with Registration Number AA168 NDG and Chassis Number JMZGD143201111506 is hereby ordered after the payment of the Sum of Ten Thousand Naira has been paid by the Applicant.
- 4) An Order of Court is denied in regard to the Fourth Declaration seeking for the Order of Court to hold that the demand and decision of the 1st Respondent for the Applicant to pay the Sum of Twenty Five Thousand Naira (N25, 000.00) which was later reduced to Ten Thousand Naira (N10, 000.00) for the release of the Applicant's Car, without hearing the Applicant's response on the issue of the Seizure of the said Car was Arbitrary, Unlawful, and contrary to the Provisions of **Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended)**
- 5) The Court declines to make an Order for Perpetual Injunction restraining the Respondents, jointly and severally, whether by themselves, Officers, Agents,

Servants and Privies from further seizing or permanently detaining the Applicant's Brown Colour Mazda 626 with Registration Number AA168 NDG and Chassis Number JMZGD143201111506.

6) The Sum of Four Thousand Naira (N4, 000.00) per day as the cost of hiring taxis for conveyance of the Applicant and Members of his Family to and from work as well as daily engagements as a result of the unlawful seizure of the Applicant's car from 27th January 2015 to the Day of Judgment of this Honourable Court cannot be granted. The Applicant failed to show positive evidence that these Sums were expended in the first instance.

7) The Claim for the Sum of Ten Million Naira (N10, 000.000.00) as General Damages jointly and severally against the Respondents for Wrongful, Unlawful and continuous Seizure, Permanent Detention, Possession and the Custody of the Applicant's Brown Colour Mazda 626 with Registration Number AA168 NDG and Chassis Number JMZGD143201111506 since 27th of January 2015 was not established and therefore dismissed.

8) 20% Interest on the Judgment Sum from the date of Judgment until final liquidation also fails.

Judgment is entered for the Respondents.

HON. JUSTICE A.A.I. BANJOKO
JUDGE