

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,**

HOLDEN AT COURT NO. 11 BWARI, ABUJA.

BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.

SUIT NO. FCT/HC/BW/CV/160/2019

BETWEEN:

SEN. JOHN OWAN ENOH APPLICANT

AND

1. ATTORNEY GENERAL & COMMISSIONER FOR JUSTICE
CROSS RIVER STATE
2. EMMANUEL ULAYI (AYADE FRONTIERS)
3. INSPECTOR GENERAL OF POLICE RESPONDENTS

JUDGMENT

DELIVERED ON THE 9TH MARCH, 2021

This is an application filed by one Sen. John Owan Enoh for the enforcement of his fundamental Human right dated 21st June, 2019 and filed on 24th June, 2019. Prayed this Honourable Court for the following declarations viz:-

- i. A DECLARATION that the threats to life, arrest, criminal prosecution, intimidation and harassment of the Applicant by the 1st Respondent on account of the Applicant's participation as Governorship candidate of All Progressives Congress (APC), at the March 9th, 2019 election and upon the 20 Respondent deriving therefore, reproduced the criminal allegations in fictitious petitions by unknown entities addressed to Governor Ben Ayade which were endorsed by Governor Ben Ayade to the

1st and 3rd Respondents against the Applicant, and published by the 2nd Respondent on Ayade Frontiers", a social media network platform on or about 17th June, 2019, or any other related fictitious criminal allegations endorsed by the Governor or His agents is illegal, unlawful, gross abuse of process and a violation of the Applicant's Fundamental Human Rights.

ii. A DECLARATION that the criminal investigations embarked upon or presided over by the 1st Respondent over alleged criminal offences with a view to incriminate the Applicant is illegal, unlawful, abuse of power and a violation of the Applicant's Fundamental Human Rights.

iii. AN ORDER OF PERPETUAL INJUNCTION, restraining the Respondents either by themselves, agents, assigns, privies howsoever called from further acts of threats to life, arrest, criminal investigations, prosecution, intimidation and harassment on account of the Applicant's participation as Governorship candidate of the All Progressives Congress (APC), in the March 9th, 2019 governorship election and upon the reproduction of the Governor Ben Ayade's endorsed fictitious criminal allegations by the 2nd Respondent, against the Applicant, published on Ayade Frontiers, a social media network platform on or about 17th June, 2019 and any other media platform print, electronic or social against the Applicant.

iv. AN ORDER directing the Respondents jointly and severally to compensate the Applicant with the sum of N5,000,000,000.00 (Five Billion Naira only) for violation of the Applicant's Fundamental Rights.

v. AND for such further orders as the Honourable Court may deem fit to make in the circumstances of this case.

In support of the application are 23 paragraphs affidavit with 3 annexure marked as Exhibit A1, A2 and A3 , a 6 paragraphs statement in support of the application for fundamental human right and a written address settled by E. E. Apen Esq. counsel to the Applicant to backup their argument.

In the said written address, counsel formulates three (3) issues for determination viz:-

1. WHETHER THE APPLICANT IS ENTITLED TO THE RELIEFS SOUGHT IN THE ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS TO LIFE, PERSONAL LIBERTY DIGNITY, FAIR HEARING, FREEDOM OF MOVEMENT AND ASSOCIATION GUARANTEED UNDER THE PROVISIONS OF SECTION 33(1) 34, 1(A), 35(1), 36(1), 2(A), 36(8), 40, 41(1), 46(1) & (2) OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED) AS WELL AS ARTICLE1, 2, 3, 4 & 5 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

(RATIFICATION) CAP 10 LAWS OF THE FEDERAL REPUBLIC OF NIGERIA 1990.

2. WHETHER THE 1ST RESPONDENT HAS INVESTIGATIVE POWERS AND THEREFORE CAN TAKE AND PRESIDE OVER INVESTIGATION OF CRIMINAL ALLEGATIONS OR CRIMINAL OFFENCES ALREADY BEING INVESTIGATED BY THE 3RD RESPONDENT.
3. WHETHER THE APPLICANT IS NOT ENTITLED TO DAMAGES

On issue one, counsel submitted that from the supporting affidavit, the relevant laws on the foregoing issues, the Applicant is indeed entitled to all the relief sought in the enforcement of his fundamental human rights cited section 33(1), 34, 1(A), 35(1), 36(1), 2(A), 36(8), 40, 41(1), 46(1) &(2) of the 1999 constitution of the Federal Republic of Nigeria (As Amended) and under Article 1, 2, 3, 4, &5 of the African Charter on Human and Peoples Rights (Ratification) Cap 10 Laws of the Federal Republic of Nigeria 1990.

Further cited the case of *NAWA V. Attorney General of Cross River State* (2008) ALL FWLR Pt. 40, pg. 807 at 831 paragraphs E-G.; *Mallam El Rufai Vs. House of Representatives & ors* (2003) ALL FWLR Pt. 178; *Ndah Vs. A. G. Bendel State* (1979) 12 A. A. 133. Counsel urged the court to grant the relief sought by the Applicant.

On issue two, it is counsel submission that the 1st Respondent does not have investigative powers and cannot assume, takeover or preside over the investigation of allegations of criminal offences that are already being investigated by the 3rd Respondent. Cited section 211 (1) (a)5, (b) and (c) of 1999 constitution (As Amended) and also cited the case of Adegun V. A. G. Oyo State (1987) 1 NWLR Pt. 53 SC Pg. 678 – 721.

Counsel urged the court that the misapplication and misuse of non existence powers by the 1st Respondent has severally injured the fundamental rights of the Applicant and the Applicant is entitled to the reliefs sought.

On issue three (3), counsel submitted that all manners of threats scandalous humiliating treatments physical assault and damage to his property as a result of the very personal political vendettas, wicked, malicious and baseless criminal allegations fabricated and sponsored by Governor Ben Adaye using the instrumentality of the 1st Respondent and his agents the 2nd Respondent, Conclusively urged the court to grant the prayers of the Applicant.

In response to this application the 1st and 2nd Respondent filed a motion for Extension of time to file their counter affidavit

which same was heard and granted as prayed on 4th November, 2019.

The 1st and 2nd Respondents filed a 25 paragraphs affidavit dated and filed on 24th November, 2019, also a written address in compliance to the rule of this court was proffers by one Canice I. Nkpe Esq. In the said written address, counsel formulated two (2) issues for determination viz:-

1. whether the Applicant has put before this Honourable Court enough material facts to substantiate a breach of any of the rights contained in Chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which would entitle the Applicant to an action under the Fundamental Rights (Enforcement Procedure) Rules, 2009?
2. Whether this Honourable Court can grant the reliefs sought by the Applicant.

In opposition, counsel argued issue one in which he submitted that the entire application are worthless and lacking in merit and in substance and further submits that, in the entire affidavit in support of his application the Applicant failed to identify which of his fundamental right has been or is about to be breached. Is it right to life, personal liberty, dignity, movement or fair hearing?

It is trite that no matter how well a counsel presents his address, it cannot take the place of evidence, having not put any evidence before the court on which of the Applicant's right has been breached in the affidavit attached to the application.

Counsel cannot in the address care defect and urged this court to so hold. Counsel cited the case of Okafor V. Lagos State Government (2017) 4 NWLR Pt. 1556 pg. 404 at 433 paragraphs G-H and case of Fajemrokin V. C. B. (C. T.) Nig. LTD. (2002) 10 NWLR (Pt. 774) page 95 at 110 paragraphs F – G.

Counsel further submitted that assuming the 1st and 2nd Respondents have in fact, made complain to the 3rd Respondent against the Applicant, would this court have the powers to grant the Applicant's relief 1, 2, and 3?

Counsel cited section 4 of Police Act, counsel stated that the 3rd Respondent is charged with the responsibility of among other things, the investigation of all allegation of crime and no court has the power to restrained the 3rd Respondent from performing their constitutional duties. Cited the case of I. G. P V. Ubah (2015) 11 NWLR Pt. 1411 pg. 450 paragraph F.

On issue two (2), counsel analyzed all the 3 reliefs sought by the Applicant and found that all the reliefs are not relief that would be granted under chapter 4 of the 1999 constitution for a

claim to qualify as falling under the Fundamental Right (Enforcement Procedure) Rules. It must be clear that the principal reliefs sought by the Applicant is for the enforcement of fundamental right and not to redress a grievance that is ancillary to the principal relief which is not itself Ipso facto a claim of Fundamental Right.

Counsel referred the court to the cases of Iheanacho V. N.P.F (2017) 12 NWLR pt. 1580 pg. 424 at 456 paragraphs D-G and Emeka V. Okoroafor (2017) 11 NWLR pt. 1577 11 NWLR pg. 410

In conclusion, counsel urged the court to dismiss the Applicant's application with cost for being frivolous and lacking in merit.

The Applicant filed further and better affidavit against the 1st and 2nd Respondents counter affidavit.

The further affidavit contained 13 paragraphs with 3 annexure marked as Exhibit A4, A5 and A6 and also a reply on point of law.

Having carefully stated the facts of this application and the responses of the Respondent and all the argument canvassed by both counsel for and against this application, it is my humble believe that by virtue of the provision 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 the case of *Adams V. A. G. Federation* (2006) Vol. 4 LNRN Pg. 46 pp. (5) 56.

It is also good to say that every person in Nigeria has the right to go about his or her own business unmolested or unhampered by anyone except in exceptional circumstances, such as when he is found to have violated the law of the land.

It is in this respect that, it is said that human rights are not absolute in some given circumstances. So therefore, from the record of the Court process as filed, the Applicant is of the view that he was being arrested, harassed by the Respondents' agent that being so, the law has given them the power to quickly intervene in such a situation whenever a report is placed before them in their office or when they observed that there is a possibility of breach of the peace.

In other words, by virtue of Section 4 of the Police Act Cap 359 LFN 1990, the 3rd Respondent as Police officers are empowered by law to protect life and property of the citizen/persons, prevent and detect crimes, apprehension of offenders, preservation of law and order and the due enforcement of all laws and regulations etc. see the decision in the cases of *Dr. Onoforuru V. I.G.P* (1991) 5 NWLR (pt. 193) pg. 593 at 645

paragraphs 4; Fawehimin V. I. G. P. (2007) 7 NWLR (pt.767) page 481 at 503 ratio 4.

Be that as it may the law has indeed given the Police power to arrest and detain any person suspected of having committed a criminal offence see. Section 24 (1) of the Police Act. equally Section 35(1) (c) of the 1999 Constitution further reinforced such Police power to arrest and detain anybody reasonable suspected of having committed a crime. That's to say the Applicant who is seeking the order of Court against the 1st to 3rd Respondents cannot be an exception of the power given to the Police by law if at all he found to have committed any offence whatsoever.

On the other hand the 1st respond by the provision Section 211 of 1999 constitution (As Amended) provide thus:

The Attorney General of a state shall have power:-

- a. To institute and undertake criminal proceedings against any person before any a court of law in Nigeria other than a court martial in respect of any offence created by or under any law of the house of Assembly.
- b. To take over and continue any such criminal proceedings that may have been instituted by any other authority or person and,

- c. To discontinue at any stage before Judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person,”

Subsection (3) provides thus:

“In exercising his power under this section the Attorney General of a State shall have regards to the public interest, the interest of justice and the need to prevent abuse of court process.”

More so the position of the law is that for a claim to qualify as falling under fundamental rights it must be clear that the principal relief sought is for the enforcement or for securing the enforcement of a fundamental right and not from nature of the claim to redress a grievance that is ancillary to the principal relief which itself is not Ipso facto of claim for the enforcement of fundamental right, where the alleged breach of a fundamental right is ancillary or incidental to the substantive claim of the ordinary civil or criminal nature it will be incompetent to constitute the claim as one for the enforcement of a fundamental right. See the cases of ABDULHAMID Vs. AKAR (2006) 5 SC (Pt.1) pg 44 (2006) LPELR 24 (SC) 24 paras C-G UNIVERSITY OF ILORIN Vs. OLUWADARE (2006) 14 NWLR (Pt.1000) pg 751 SC paras F-G.

Also section 46 of 1999. Having stated all the authorities and statutory provision above, now back to applicant application the prayers and the relief sought whether fall within fundamental right enforcement claim and/or whether the Respondent violate such fundamental rights of the applicant.

The main crux of the applicant application and the prayers and the relief sought which I earlier reproduced is that the Respondent are threatening his life, arrest, criminal prosecution, intimidation and harassing the applicant which claim to violate his fundamental right as a citizen of Nigeria.

However with cortical & trad of the applicant deposition in his affidavit in support of this application the applicant hampered on his right under Section 33 (1) 34 (1)(a), 35 (1), 36(1)2 (a) 36 (8) 40 (1) 46 (1) and (2) of 1999 constitution which to my humble view the applicant went off track by assuming his claim are purely fundamental right case for what is before the case of the main issue are not case of fundamental human right and the claim of fundamental human are just an celerity to the main issue which cannot be Ordinarily dealt with under fundamental right enforcement suit.

Assuming without conceding the applicant case is purely fundamental right enforcement claim the applicant didn't place

any material fact before the court to warrant the grant of this application.

It is settled principle of law that for a person to succeed in application for enforcement of fundamental right such person must prove and place before the court when, how and where his right was violated. See the case of OLA Vs. UNIVERSITY of ILORIN (UNI ILORIN) (2014) 15 NWLR Pt.1431 pg 543 at 462.

A mere disposition in supporting affidavit will not warrant the grant of the applicant application without placing cogent evidence to prove the violation of his right.

Assuming without conceding the applicant deposing in his further affidavit in paragraph 4 (b) that the men of the 3rd Respondent arrest and detain him on the 13th, 14th and 15th March 2019 such arrest and detention cannot be said the 3rd Respondent has violated his right under section 35(1). More so under the same section 35 sub (4) (a & b) curtail the applicant fundamental right.

At this juncture I am satisfied that the applicant constitutional right under section 33 (1), 34 (1) (a), 35 (1), 36 (1) (2) (a) 36 (8), 40, 41 (1), 46 (1) (2) of 1999 constitution (as Amended) was not breached no doubt fundamental human right is a personal property of every citizen and which same was guaranteed under the gran norm laws of the land (1999

constitution as Amended) and the court is the last hope of a common man, where he run to get relief or enforce his fundamental human right but in so doing the applicant must prove to the court that his was or about to be violated and he is not under any impediment of law or restriction by in enforcing his fundamental right in Order to help the court to grant his application. **"He who come to equity must come with clean hands"**

Moreover the court has decided that it trite law that court should not speculate the evidence but decide on the evidence presented before it. The court is only entitle to rely on the evidence before it and not on speculation. See the case of IGABELE Vs. STATE (2006) 6 NWLR Pt.975 pg 100 at 119 para F-G (S.C).

For a person therefore to go to court to shelled against a criminal investigation and prosecution is an interference of the power given by the constitution to law officers in the control of criminal investigation the applicant in this case has no legally recognizable right to which the court can come to his aid, this claim is not the one that the court can take cognizance and the applicant cannot expect a Judicial fiat preventing a law officer in the exercise of their power enstrine in the constitution.

So I found no merit in this application, I hold that this application lacks in merit and the application relief sought is hereby refused and dismissed accordingly. And no cost is awarded.

APPEARANCE

The Applicant not in court and not represented.

C. I. Nkpe Esq. for the Respondents.

Sign

Hon. Judge

09/03/2021