

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/806/2019

DATE: : MONDAY 1ST FEBRUARY, 2021

BETWEEN:

MR. IBRAHIM AGADA APPLICANT

AND

**1. COMMISSIONER OF POLICE,
FEDERAL CAPITAL TERRITORY
COMMAND**

**2. DIVISIONAL POLICE OFFICER,
KARIMO DIVISION**

3. MR. EBERE OKORIE

RESPONDENTS

JUDGMENT

The Applicant approached this Honourable Court for the enforcement of his Fundamental Right against the Defendants jointly and severally.

The reliefs sought by the Applicant against the Defendants are as follows:-

1. A Declaration of Court that the off and on continuous arrest and detention of the Applicant by the 1st, 2nd and 3rd Respondents at the behest of the 3rd Respondent based on a spurious allegation of rape laid by the 3rd Respondent against the Applicant without the Applicant being charged to Court is a breach of the Applicant's Fundamental Human Rights as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria (1999) as amended.

2. A Declaration of Court that the 1st and 2nd Respondents are acting ultra vires of their powers by often arresting and detaining the Applicant at the behest of the 3rd Respondent for more than the constitutionally prescribed time without charging him to any court of law.
3. An Order of Court directing the 1st and 2nd Respondents to release forthwith the Applicant currently being detained at the cell of the Police Station, Karimo – Abuja at the behest of the 3rd Respondent.
4. An Order of Perpetual Injunction restraining the 1st and 2nd Respondents from further arresting, interrogating, confining and/or detaining the Applicant based on the spurious allegation of

rape made by the 3rd Respondent against the Applicant.

5. The sum of N100,000,000.00k (One Hundred Million Naira only) as general damages jointly and severally against the 1st, 2nd and 3rd Respondents for the often arrest, unlawful detention on several occasion of the Applicant, for the trauma, pains, depression deprivation, humiliation, emotional and physical torture suffered by the Applicants in the hands of all the Respondents.
6. N2,500,000.00k as the cost of this action.

The grounds upon which the reliefs are sought are as follows:-

- a. The Applicant's Fundamental Rights to Freedom of movement, Right to dignity of human person,

Right to Personal Liberty and Right to private and family life as guaranteed by sections 34, 35, 37 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) has been and currently being breached by the Respondents.

- b. The Applicant was on several occasion arrested, detained and is presently being detained at the cell of the Police Station Karimo, Abuja by officers of the 1st and 2nd Respondent at the behest of the 3rd Respondent.
- c. That the above act of the Respondents amounts to a gross violation of the Applicant's Fundamental Human Rights as his rights has been and currently being breached and violated.

In support of the application is an affidavit of 16 paragraph deposed to by one Patrick OghagbonEsq., a Legal Practitioner in the law firm of the Applicant.

It is the deposition of the Applicant that he is a car wash man, a married man with kids and currently residing at Karimo, Abuja.

That the 2nd Respondent sometime in October, maliciously accused him of raping his daughter and till date has not produced any evidence to substantiate his false claim against him.

Applicant avers that sequel to the accusation he was taken to Karimo Police Station and series of tests was conducted on the girl which result came up negative.

That Inspector Magnut asked him to defray the cost of the test conducted on the girl, which he refused,

the police detained him from the months of October, November and December, 2018.

That while he was at the cell, he was compelled by the said Inspector Magnut to sign an undertaken granting authority to the 2nd Respondent to enter into his house and confiscate his properties, with authority to sell same in order to recoup monies spent on the purported medical test vide Exhibit “A”.

That the Applicant was released on bail with stern warning that he must reimburse the 2nd Respondent.

That the Police have been putting pressure on him to reimburse the 2nd Respondent. And that it will be in the interest of justice to grant this application.

A written address was filed wherein a sole issue to with;

Whether from the affidavit deposed to on behalf of the Applicant, a prima facie case of a breach of his Fundamental Human Rights as enshrined in the 1999 Constitution of the Federal Republic of Nigeria (1999) as amended has not been established, hence entitled to all the reliefs claimed in this case.

Arguing on the above, learned counsel submit that the question of infringement of Fundamental Rights is largely a question of fact and does not so much depend on the dexterous submission from the forensic arsenal of counsel on the law. That the facts of the matter as disclosed by the affidavits filed are the determining factor in whether the Fundamental Rights of an individual have been breached.

***ASSISTANT INSPECTOR GENERAL OF
POLICE & 5ORS VS ELDER ABEL EZEANYA
(2016) ALL FWLR (Pt. 830) Ratio 8, at page 1361.***

It is further the submission of the Applicant counsel that since the complaints of the 2nd Respondents is spurious, the detention of the Applicant then is a flagrant abuse of the Applicant Fundamental Right contrary to section 35 of 1999 Constitution as (amended).

Learned counsel submit that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority as provided under section 35 (6) of the 1999 Constitution as (amended).

Court was urged to grant the relief sought in the overriding interest of Justice & fair play.

Upon service, 1st Respondent filed a counter affidavit of 16 paragraphs deposed to by counsel for the 1st Respondent.

It is the deposition of the 1st Respondent that the case of rape was reported to the Nigeria Police against the Applicant, wherein the victim Miss Miracle Okorie was alleged to be Raped.

That the Applicant threatened the victim after fraudulently collecting the victim's phone thereby subduing her to his house to enable her collect her phone.

That the Applicant was invited by the police at Karimo Division and was granted bail.

And that the right of the Applicant was never breached.

A written address was filed wherein; the following issues were formulated for determination to wit;

- i. Whether considering the facts and circumstances of this suit the Applicant's Fundamental Rights has been breached by the 1st Respondent.
- ii. Whether the Applicant has established any cause of action against the 1st Respondent to warrant an injunction against him.
- iii. Whether the Applicant is entitled to any monetary as damages.

It is the submission of the 1st Respondent that Fundament Rights of the Applicant was never infringed in the whole circumstances of this case.

Counsel submit that section 4 of the Police Act empowers the Police to investigate any Crime

reported to it. And that the 1st Respondent only acted constitutionally. *EJEFOR VS OKEKE (2000) NWLR (Pt. 665) page 363 at 381.*

It is further the submission of learned counsel that the Applicant voluntarily made an undertaking dated 15th October, 2018 annexed as Exhibit “A”.

Court was urged to dismiss this application.

On his part, 2nd Respondent filed a counter affidavit of 35 paragraph deposed to by the 2nd Respondent himself.

It is the deposition of the 2nd Respondent that he merely reported to the Nigerian Police that the Applicant defiled and raped his daughter.

That the Applicant asked his daughter if she had a phone of which she answered that she had but had

no battery and Applicant promised to get her a battery and she left.

That his daughter, Miss Miracle Okorie said that as she was passing the next day, 8th October, 2018 the Applicant's friend, Mr. Michael Andem (the barber) called her and asked her why she refused to accept the Applicant's friendship request, and as she was about to talk he slapped her twice.

That she anger went looking for the Applicant to collect back her phone which he promised to fix for her and she found him at his car wash centre and demanded for her phone.

That Applicant told her that her phone was at his house and that his daughter should accompany him to his house to take the phone, and she accompanied him innocently and the Applicant raped her.

That the wife of the Applicant and the family members (his wife, little daughter, brothers) and that of Mr. Michael Andem were coming to him requesting that they want the matter settled out of the Police station which he obliged them on the condition that the Applicant and his friend should pay the cost of his daughter's medical treatments and to return his daughter's phone, which they agreed to so do.

That it was Applicant that voluntarily pledged his properties as collateral for the payment. The Applicant who came with his little baby, his brothers and Mr. Michael Andem all witnessed the voluntary agreement and the voluntary statement was never made when he was in police custody but in the process of trying to settle the matter.

Attached and marked Exhibit “P2” is the undertaking made by the Applicant and associate to pay for the medical bill as a father that he told Applicant that he had no need for his properties but that he should try to get the money to defray the cost for his daughter’s medication, so he can pardon him, which he agreed and they all left believing all is well.

That to the best of his knowledge the Police at the State Command were compiling their finding so as to arraign the Applicant and Mr. Michael Aendem in court for rape and defilement of his little daughter.

That he never instigated the police to constantly arrest or detain the Applicant and to the best of his knowledge it is not true that the Applicant was detained beyond 24 hours or was constantly arrested

and constantly detained by the Police as he is always sighted in his barber shop daily doing his business, till date.

A written address was filed wherein the following issues were formulated for determination:-

1. Whether considering the facts and circumstances of this suit the Applicant's Fundamental Right has been breached by the 2nd Respondent.
2. Whether the Applicant has established any cause of action against the 2nd Respondent to warrant an injunction against him.
3. Whether the Applicant is entitled to any monetary claims as damages.

Learned counsel argued on issue one whether considering the facts and circumstances of this suit

the Applicant's Fundamental Right was been breached by the 2nd Respondent.

The Fundamental Right of the Applicant have not been infringed in the circumstances of this case as he only performed his Responsibility as Nigeria citizen by reporting to the police a crime committed and the police had only done their work in accordance to section 4 of the Police Act.

Learned counsel submit that Applicant voluntarily made an undertaken he attached to his application and now wants to renege and coming to court to shield against criminal investigation. ***A.G ANAMBRA STATE VS CHRIS UBA (2005) 15 NWLR (Pt. 974) 44 at 67.***

On issue two; Whether the Applicant has established any cause of action against the 2nd Respondent to warrant an injunction against him.

Learned counsel submit that the Applicant has not established any cause of action against the 2nd Respondent and that can be gleaned from the writ of summons and affidavit in support of the writ. ***UBN VS UMEODUAGU (2004) 11 MJSC Page 127 at 135 – 136.***

On issue three; Whether the Applicant is entitled to any monetary claims as damages.

It is the submission of the 2nd Respondent that the Applicant alleged that he was arrested and detained by the police at the instigation of another but could not prove his arrest and detention. ***FAJEMROKUN***

*VS C.B (C1) NIG.LTD (2002) 10 NWLR (Pt. 774)
95.*

Counsel finally urged the court to dismiss this application.

Applicant upon service filed further and better affidavit wherein Applicant avers that he did not rape the said Miracle Okorie as the allegation was unfounded as his name was defamed.

COURT:- It is instructive to state from the onset that the Applicant has withdraw his Reliefs 1, 2, 3 and 4 leaving only the relief for general damages.

I shall therefore, beans my judicial search light on the originating summons to certain whether the Applicant is entitled to the reliefs sought.Procedurally speaking, application for enforcement of Fundamental Human Right is made

by way of Motion on Notice stating grounds and affidavit in support which serves as evidence.

I shall now beam my search light on the application to ascertain whether a case of breach of Fundamental Right is established.

Be it known that it is the constitutional duty of court to develop the common law, and to so do that within the matrix of the objective and normative value suggested by the constitution and with due regard to the spirit, purport and object of the bills of rights.

It is equally the legal duty of police to protect citizen through law and structures designed to afford such protection. There is the need for the police to have regard to the constitutional provision and bindingness of Bill of Rights on the state and its structures.

Permit me to observe that detention, no matter how short, can amount to breach of Fundamental Human Right. But that can only be so if the detention is adjudged wrongful or unlawful in the first place.., that is if there is no legal foundation to base the arrest and or detention of the Applicant.

Where there is basis, the detention must be done in compliance with the provisions of law and in line with civilised standard known to modern society.

Procedurally speaking, application for enforcement of Fundamental Human Right is made by way of motion on notice stating grounds and affidavit in support which serves as evidence.

It is the evidence of Applicant as distilled from his affidavit that he was arrested, detained by the

Respondents without recourse to his Fundamental Rights as provided by law.

The question that naturally follow is, from the affidavit in support of the application in view, can it be said that the Applicant has established the case of breach of Fundamental Human Right against the Respondents?

The Applicant stated that he was arrested and detained from October to December before he was released.

Who took the Applicant on bail?

Why did the Applicant refuse to deposed to the fact that he was surety by somebody?

Applicant stated copiously that the 1st Respondent agent has been inviting and threatening him with

further arrest, if he did not reimburse the 2nd Respondent the money he spent in conducting tests on his daughter.

Applicant further stated that he was forced to enter into agreement to reimburse the 2nd Respondent vide Exhibit “A”.

Whereas the Respondent stated that it was the Applicant and family that sought for settlement of the matter out of police station. And that the Applicant willingly gave out his property to the Respondent as means of settling the issue.

The question that readily comes to mind is, was the Applicant compelled to execute Exhibit “A”.

A peruse of the said Exhibit will reveal that it was signed by the Applicant and witnessed by his wife and brother.

Qst.. Does it means that both the wife and the brother were forced to sign the agreement?

Indeed, this fact is not before me and I cannot speculate.

All this assertion was not backed up with evidence for the court to peruse through.

On his part, the 2nd Respondent maintained that, the test conducted on his daughter dated 14th January, 2018 revealed that the hymen was breached. And the said Exhibit was annexed as Exhibit “P1”.

Indeed, it takes two to speak the truth, one to speak and another to hear. In this case both Applicant and Respondents have spoken and the Judge has heard from all.

The liberty to make any accusation is circumscribed both by the right to make it, the duty not to injure another by the accusation and the right of any appropriate redress in the court.

AKILU VS FAHENMI (No. 2) (1989) (Pt. 102) 122

It is true that the police have a duty to protect life and property and to detect crime. All these must be done within the confines of the law establishing the police and the constitution of Federal Republic of Nigeria 1999 as amended under the Police Act section 4 of the police Act provides thus:

“The police shall be employed for the prevention and detention of crime, the apprehension of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are

directly charged, and shall perform such military duties within or without Nigeria as may be required by them by, or under the authority of, this or any other Act.”

It truly therefore, means that when a suspect is arrested on a reasonable suspicion to have committed a crime, he shall be treated within the confines of the law.

Question... Has the Applicant in view, been treated within the provision of law?

Poser ... Has his liberty not been curtailed? For the purpose of clarity, I shall re-produce relevant portion of section 35(1)“every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with procedure permitted by law:-

- a) *“For the purpose of bringing him before a court in execution of the order of court or upon reasonable suspicion of him having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.”*

Section 35(1) of the constitution of Federal Republic of Nigeria 1999 as amended specifically provides that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not be kept in such detention for a period longer than the maximum period of imprisonment presumed for the offence.

See 35(4) which also provides that any person who is arrested or detained in accordance with (1)(c) of this section shall be brought before a court of law

within a reasonable time, and if he is not tried within a period of two months from the date of his arrest or detention in the case of a person who is in custody or entitle to bail, or three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

The expression of reasonable time under sub (4) of the constitution means one day where there is court of competent jurisdiction within a radius of 40 Kilometers, or two days or such longer period as the circumstances may be considered by the court to be reasonable.

It is certainly not merely of some importance but it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

A wrongdoer is often a man who has left something undone, not always one who has done something...

Richard Joseph Daley, an American Politician who lived between 1902–1972 once said, “Get the thing straight once and for all” the policeman isn’t there to create disorder, the policeman is there to preserve disorder.

Ignorance of law excuses no man, not that all men know the law, but because it is an excuse everyman will plead, and no man can tell how to refute him.

The procedure for the enforcement of Fundamental Human Right certainly is not an outlet for fraudsters

to claim innocence and seek protection after committing crime. It is a procedure opened to frank and upright people whose inalienable rights would have been or about to be infringed upon by the very people who have the power to protect such rights or other persons who wield other unauthorised powers.

Applicant in the application in view, has stated in his affidavit in support that he was innocent of all allegation against him.

A perusal of the Applicant's affidavit, will reveal that there is no single document to buttress the facts of his detention by the 1st Respondent beyond the constitutional period allowed by law.

The Applicant affidavit revealed that he is indeed economical with the truth.

I shall therefore dismiss this originating motion for above reasons.

Accordingly, suit No. FCT/HC/CV/806/19 is hereby dismissed.

Justice Y. Halilu
Hon. Judge
1st February, 2021

APPEARANCES

Godwin S.O – for the Applicant.

Ephraim Chioke – for the 2nd Defendant.

Other Respondents not in court and not represented.