

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 19TH DAY OF FEBRUARY, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO. FCT/HC/BW/CV/221/20

BETWEEN:

BAYO MATTEW.....APPLICANT

AND

- 1. NIGERIA POLICE FORCE**
- 2. INSP OKPANACHI ABUDU.....RESPONDENTS**
- 3. DPO BWARI POLICE DIVISIONAL DIVISION**
- 4. COMMISSIONER OF POLICE, FCT POLICE COMMAND**

JUDGMENT

On the 26/8/20 Bayo Mathew instituted this case against Nigeria Police Force, Insp. Okpamachi, DPO Bwari Area Council and COP FCT Command seeking for the enforcement of Fundamental Right. He sought for the following reliefs:

1. A Declaration that the arrest of the Applicant on the 23rd June,2020 in Bwari Police station where he had gone to see his son Kinsley Matthew who was arrested and detained at the same station in lieu of Daniel Matthew his son also a 24 years old man who was alleged that involved in homicides case at the same station Area Council, FCT Abuja by the agents

of the Respondents and his detention at Bwari Divisional Police Station Bwari Area Council FCT where he spent four (4) days in custody from the 30th June to 3rd July, 2020 and his further and continuous harassment and intimidation at FCT Police Command where he made to sign an undertaken that he must produce his son Daniel Matthew who is at large. Without being charge to Court and without informing him in writing of the facts and facts and grounds of his arrest and detention in a language that he understand amount to an infringement of his Fundamental Human Right to Dignity of Human person and personal liberty guaranteed under sections 34(1) (a) and 35 (1) and (3) of the 1999 constitution of the Federal Republic of Nigeria (as amended) and Article 5 & 6 of the African charter on Human and people's Rights.

2. A Declaration that the action and/or omission of the agents, officials, servants and/or privies of the Respondents from the 30th June to 3rd July, 2020 at Bwari Divisional Police Station Bwari Area FCT where the Applicant was detained and tortured threatened to wit: compelling the Applicant to answer questions of the agents, officials, servants and/or privies of the Respondents without allowing him first to consult with a legal practitioner or any other person of his own choice, and compelling the Applicant to sign undertaken to produce Daniel Matthew 24 years who is alleged to have been involved in homicide case at Ushafa village Bwari Area Council FCT Bwari Abuja constitutes an

infringement of Applicant's Fundamental Human Right of Nigeria (as amended) and Article 5 & 6 of the African Charter on Human and People's Rights.

3. DECLARATION that the act of the Respondents compelling the Applicant to produce Daniel Matthew whom the Applicant is not a Surety to produce and not under any obligation in law to produce the said is wrong.
4. A DECLARATION that the Respondents has no power in law to torture and/or detain the Applicant in the Police Station or the Bwari Police Station for more than time prescribed and/or stipulated by law without arraigning him before a Court of competent jurisdiction.
5. A DECLARATION that the continuous harassment and invitation of the Applicant to sign undertaken under duress with a threat to lock him up if he fails to produce his brother Daniel Matthew without properly arraigning him before a Court of competent jurisdiction constitutes gross violation of the Applicant's Fundamental Human Right to his personal liberty and Right to Fair Hearing enshrined in and guaranteed in Sections 35(4)(a) and 36(2) and (6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Article 5, 6 & 7 of the African Charter on Human and People's Rights.

6. GENERAL DAMAGES in the sum of Fifteen Million Naira (₦15, 000,000.00) jointly and severally against the Respondents for the illegal and unlawful violation of the Applicant's Fundamental Rights by agents, officials, servants and/or privies of the Respondents and a public apology.

7. AND for such further or other Order(s) as this honourable Court may deem fit to make in the circumstance of this action.

He supported the application with an Affidavit of 21 paragraph deposed to in person. It is the story of the Applicant that on the 30/6/20 he was arrested in the Bwari Police Station and was detained, tortured and spent 4 days in the police custody.

He was subsequently ordered to be reporting to the said police station where he normally spend the whole day without an opportunity to fend for his family. That the said detention violated his rights to the dignity of his human person, personal liberty as guaranteed under S.34 & 35 1999 CFRN and Art. 5 & 6 African Charter on Human and Peoples Right.

He also alleged that the said detention was not done in accordance with the procedure permitted by law.

In the written Address he raised an issue for determination which is

“Whether from the facts and surrounding circumstance his said fundamental Right- personal liberty dignity of his human person and fair hearing were violated such that he is entitled to the Reliefs sought.”

Answering the sole issue in the affirmative he submitted that those rights has been violated by the Respondent. That the violation is unconstitutional. That the Court is duty-bound to protect such right. Hence this application. He relied on the case of:

HASSAN Vs EFCC (2014) 1 NWLR (PT.1389) 607@636
PARA C-D

That the said alleged violated right were all contained in CAP 4 1999 CFRN as amended particularly S. 34(4) & 35 (1)-(6) and S.36 (4) (5) & (6) as well as Art. 5 & 6 African Charter.

That he was arrested on 30/6/20 “in lieu of Daniel Matthew, a 24 years old Electrician and was detained for 4 days and was only released on the 3/7/20. That he was arrested detained and was tortured while in detention without knowing the offence he has committed or the reason for his detention. That he never stood as surety to the said Daniel Matthew. That the said arrest, detention and continuous invitation, harassment and intimidation by the Respondent without being informed in writing why he was arrested and detained is a violation of his right.

That the respond not charging him to Court after the arrest and detention within the time prescribed in the Constitution within 48 hrs is also a violation of his rights. That the respondents have no justifiable reason to detain him. That the onus is on the Respondents to justify the violation of his right and to show why they should not indemnify him in damages as provided by the Constitution. He referred and relied on the case of:

AGBAKOBA Vs DIRECTOR DSS & ANOR (1998) 1 HRLRA 252 @ 275 PARA C-H

That the violation of his right attracts penalty against the Respondents. He laid credence in the cases of

IGWE & ORS Vs EZEANOCHIE & ORS (2010) 7 NWLR (PT. 1192) 62@ 94 PARA D-F

He urged the Court to resolve the sole issue in his favour. That the action of the Respondent also violates the provision of S.7 ACJA 2015 which provides that no person shall be arrested in place of another person or suspect.

That he has shown both his Affidavit and Written Address that there was unjustifiable violation of his right by the officials agent and privies of the Respondent. That he has demonstrated that he is entitled to remedies for the unjustifiable violation of the said fundamental rights. He urged Court to uphold that his constitutionally guaranteed rights has been violated and therefore should grant his reliefs as sought.

The Respondents were served on 4/9/20 originating processes and several Hearing Notices. But they did not file any response in challenge of the suit. They did not even enter appearance or had any legal representation in Court. So this Judgment is based on the processes filed by the applicant.

It is the law and had been held in several Court decisions that any proof of violation of any or the rights of our citizen as provided in CAP 4 1999 CFRN attracts condemnation from Court and also some sanction which

can be in pecuniary form and/or attract an apology in a National daily.

The Court frowns at the violation of any citizen's right. It is also the law that any arrest, detention that is not done in accordance with a procedure permitted by law. (See S.35 CFRN) is illegal and unlawful.

Also it is the law that any person arrested should not be detained for more than 48 hrs without being charged to Court. Also any person arrested must be informed in a language he understand the reason for his arrest. Such information should be in writing. So any arrest that is longer than 48 hours violates a citizen's right and is frowned at by the Court.

The Constitution as well as Ord. 2 Fundamental Rights Enforcement Rules 2009 provides that any citizen who alleged that any of those rights under CAP 4 1999 CFRN has been, is being and had been violated has a right to seek redress in Court. That is exactly what the Applicant has done in this case. Also the law provide that anyone who has established that any of those rights has been, is been or threatened to be violated is entitled to compensation. This means that it is therefore incumbent on the applicant or any one alleging such violation to establish that and effectively discharge the onus with cogent facts and concrete evidence as the circumstance warrants.

It is trite law that once an allegation is made against a person via Affidavit such a person has a right and duty to respond to the allegation by stating challenging or countering those allegation. Failure to do so means that

such person has admitted the allegation as contained in such Affidavit. But it is imperative to state, that notwithstanding that, the Court is still duty bound to look into the facts to ensure that the applicant has actually established the allegation and had effectively discharged that onus placed on him. Where, after due consideration

of those fact, the Court holds that the applicant has discharged such onus, it will hold that the violation has been established. But that can only come after the Defendant had been given ample opportunity to defend/challenged those facts and they fail or refused to challenge them. In that case the Court will hold that the Respondents has violated the rights as alleged. This means that the Court does not assume that once the Respondent does not challenge the application that the Applicant is entitled to the Reliefs sought. It is not automatic.

In this case the Respondent have not challenged this application though they were giving ample opportunity and all the leverages to challenge this application and to be heard. But they failed to do so. They did not enter appearance or have any legal representation in Court or filed any process in challenge of this suit.

The Applicant has alleged that he went to Bwari Police Division office on 30/6/20 when he was informed that his son Kingsley Mathew was arrested. That on getting there to know why he was arrested, he was in turn detained by the same police who inform him that they are looking for another son of his –Daniel Mathew. That the said Daniel is an electrician. That he was detained

when he told them that he does not know the where about of the said Daniel aged 24. The detention was from 30/6/20 to 3/7/20 when he was released after he was forced to make an undertaking to produce the said Daniel as part of the Bail condition. He alleged that he was humiliated, tortured by the police and was kept in cell with hardened criminals who equally tortured him. That he did not commit any offence criminal or civil. That though he is on administrative bail, there is every likelihood that the Defendants especially 1st – 4th Respondents will arrest and detained him if he fails to produce Daniel. That Daniel is an adult who has being living outside his house, doing his business and travelling to do business throughout the country. Hence this application.

The Respondent did not challenge this application. It is the law that once there is detention for more than 48 hrs it amounts to violation of the Fundamental right of the citizen. This applicant was detained for 4 days between 30/6/20 and 3/7/20 without being charged to Court.

That is a violation of his right. So this Court holds. This is because the 1st -4th Respondent detained the applicant for more than 48 hrs without charging him to Court. The act of the Respondent violated the Applicant's right to personal liberty and freedom of movement. Again torturing and humiliating the applicant and placing him in the same cell with criminal equally violated his right. Though his arrest was done with a procedure permitted by law in that he was informed why he was been detained. But detaining him because Respondents were looking for Daniel, his adult son is a violation of S.7

ACJA. So this Court hold. The police have no right to detain the applicant in lieu of Daniel Mathew no matter that Daniel is his son. The said Daniel is an adult who is old enough to face his offences. Forcing the Applicant to make the undertaking as condition for Bail is equally a violation of his right so this Court also hold.

Subjecting him to mental torture in that if he does not produce Daniel he will be rearrested is a violation of his right too. So also the harassment, psychological and otherwise equally violated and still violates his right as that makes him to live in fear. The onus is on Respondent to deny those fact but they did not challenge this allegation. That means that the onus is still on them and that they have admitted all those allegations.

This Court therefore hold that the 1st -4th respondent violated the right of the applicant and that the applicant is entitled to the Relief sought to wit:

1. Relief 1-5 granted.
2. Respondent are thereby ordered not to arrest, detain or harass and intimidate or further arrest and detain the Applicant in relation to the case concerning the Daniel or in lieu of the same Daniel Mathew as it relate to the allegation of the homicide case allegedly involving the said Daniel.
3. The 1st -4th Respondent are to apologise to the Applicant for the said violation of his right.

The Respondents are also to pay the Applicant the sum of ₦150, 000.00 (One Hundred and Fifty Thousand Naira) only for violating his right.

This is the Judgment of this Court.

Delivered today the day of 2021 by me.

K.N.OGBONNAYA
HON. JUDGE.