

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 12TH DAY OF FEBRUARY, 2020

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

JUDGE

SUIT NO. FCT/HC/BW/CV/220/20

BETWEEN:

KINGSLEY MATTEW..... APPLICANT

AND

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

JUDGMENT

On the 26/8/20 the Applicant, Kingsley Mattew Instituted this action against the Respondents-NPF, Insp. Okpamachi Abuh, DPO Bwari Police Division, COP FCT Command Claiming the following:

- 1.A Declaration that his arrest on the 23/6/20 in Jigo village Bwari Area Council in FCT Abuja by agents of Respondent and his detention at Bwari Police Division from 23rd June to 22nd July, 2020 and the continuous harassment and intimidation at the FCT Command on subsequent invitations to the Police by the FCT**

Police without charging him to Court or informing him in writing the reason for his long arrest and detention is a violation of his fundamental right to dignity of his human person, personal liberty as guaranteed under S.34(1)(a) and S.35 (1) & (3) 1999 CFRN as amended and Art.5 & 6 African Charter.

- 2. Declaration that action of the Respondents and their servants, privies and agents subjecting him to torture without allowing him to first consult his legal Practitioner of his choice and compelling him to produce Matthew Daniel Mathew who is alleged to have committed Culpable Homicide at Ushafa Village, constitute an infringement of his right by Art.5 & 6 of African Charter.**
- 3. Declaration that the act of the Defendant compelling him to produce the said Daniel Matthew when he is not his surety and not under any obligation under the law to produce violate his right.**
- 4. Declaration that the Respondents have no power to torture/detain him for more than the prescribed period without charging him to Court.**
- 5. Declaration that the continuous harassment and invitation to sign undertaking under duress with threat to lock him up if he fails to produce Daniel Matthew without arraignment in Court is gross abuse of his Right to fair hearing as**

guaranteed in S.34 (4) (a) & 36 (4)& (6) 1999 CFRN and Art.5-7 African Charter.

6. Damages of ₦30, 000,000.00 (Thirty Million Naira) against the Defendant jointly and severally for the Respondents unlawful and illegal actions against him.

He supported application by Affidavit of 30 paragraphs. A copy of the undertaking to produce the said Mathew made on 14/8/20.

In the Written Address he raised an issue for determination which is:

“Whether from the facts and surrounding circumstances of this case the fundamental rights of the human person, personal liberty and fair hearing of the Applicant has been violated such as to entitled him to the Reliefs sought against the Respondent.”

Answering the question in the Affirmative the Applicant submitted that Fundamental Right is a right which stand above all ordinary right and is equally constitutionally guaranteed. He referred to the case of:

Hassan V. EFCC (2014) 1 NWLR (PT.1389) 607 @ 636 Para C – D

The said alleged violated rights are provided and guaranteed by the Constitution and are as listed under the FREP Rules 2009 and specifically mentioned too. Under CAP 4 CFRN as amended particularly at **S.34, 35 and 36**. Also, in **Article 5, 6 & 7 African Charter**

on Human and People Right. He cited in details the provisions of S.34, 35 & 36 as well as Art. 4, 5 & 6 African Charter.

He submitted that he was arrested on 23/6/20 in lieu of Daniel Matthew. That he was detained for 30 days and was released on 22/7/20. That while in detention he was tortured by the Respondents and their agents. He was never was never told what crime he had committed to warrant the detention for 30 days. That he never stand surety for the Daniel Matthew. That his arrest and long detention and further invitation after bail, harassment, intimidation without being charged to Court and without being informed of what his crime was amount to infringement of his right to personal liberty and dignity of his human person. That Respondents have no power to torture and detain him for 30 days without charging him to Court. That having shown that his rights have been violated he is entitled to be indemnified in damages. He referred to the case of:

Agbakoba V. Director DSS (1998) 1 HRLRA 252 @275 Para G – H

That violation of those rights must attract penalty against the Respondents. He referred to case of:

Igwe & Ors V. Ezeanochie & Ors (2010) 7 NWLR (PT.1192) 61 @ 94 Para D – P

He urged Court to resolve the issue in his favour as that the action of the Respondent in arresting and detaining him violated the provision of **S.7 ACJA 2015**

which provide that a person shall not be arrested in place of a suspect. That he has shown that there was unjustifiable violation of his fundamental right by the agents, official servants and privies of the Respondents. That he has demonstrated in great details that his right has been violated and as such is entitled to remedies for the unjustifiable violation of his right. He urged the Court to grant his Relief.

The Respondents were served which the Originating Processes on the 4/9/2020. They did not file any Counter Affidavit to challenge the Suit. The Court ensured that they were served with Hearing Notices too. But they did not enter appearance and they did not have any legal representatives. That means that his judgment is based on the submission made by the Applicant.

It is the law that once a party has been sued with an application like in the instance case, he must or at least the law requires that he files a Counter in opposition. It is also trite and has been held in plethora of cases that unchallenged facts are deemed admitted. Again where a respondent fails, after been given all ample opportunities to have his say, fails to do so, it is deemed that such Respondent has nothing to say and has invariably admitted the facts or any allegation there to.

The Constitution provides in CAP 4 all the right of a citizen any of which is breached entitles the applicant to remedy.

The same Constitution had provided that where any of such right is breached, threatened to be breached, the person affected can seek redress on a High Court. That is what the applicant has done in this case.

Again where such rights are alleged to have been infringed it is incumbent on the Applicant to establish with facts vividly that such right has been breached. It is until such is done that the onus shifts to the Respondent who must also establish that their action was not a breach of the facts as alleged and that their action was done following a procedure permitted by law.

Again the Constitution provided that any person arrested and detained should be taken to Court within a reasonable time which will not be more than 48 hrs where there is account within 40 Km radius or at least within a reasonable time where investigation has not been concluded.

It is important to note that the police has a right both under the Constitution and **S.4 Police Act** to arrest detain and interrogate and prosecute offenders. But they must do so following due procedure permitted by law. Where such procedure is not followed then it is held to be illegal and unlawful.

S.7 ACJA 2015 Provides that:

“A person SHALL NOT be arrested in place of a suspect”

This means that though the police has a right to arrest and detain yet they have no right to arrest a person in place of a suspect.

In this case the Applicant had alleged that haven arrested and detained for 30 days, between 23rd June to 22nd July 2020 without being charged to Court. He was also not informed in writing why he was arrested by the Respondent. Again he was arrested in the stead of Daniel Matthew who he said is wanted for committing culpable homicide. That he never was surety to the said Daniel. That he was forced to make an undertaking to produce the said Daniel who is at large.

That he was asked to be reporting to the said police station ever since after his release on administrative bail. He had alleged also that each time he reports to the police he will spend the whole day there. That the undertaking was forced on him as the Respondent wrote out the said undertaking for him to copy. The Respondent did not respond or challenge all these fact which means that they have admitted them.

From the facts as stated by the Applicant in his Affidavit in support of this application which the Respondent did not challenge. It is glaringly clear that the Respondent violated his rights as alleged. To start with the arrest without charging him to Court violates his rights and it is also unlawful. Again the detention for 30 days from 23/6/20 to 22/7/20 is also a violation of his personal liberty. The long incarceration is a violation of the Constitutional provision which provide

that a suspect should not be detained for more than 48 hrs without been charged to Court. So failure to charge the Plaintiff to Court is a violation of his Constitutional guaranteed right. So this Court holds.

Again arresting the Applicant in the place of his brother Daniel who is an adult aged 24 years alleged to have committed an offence of culpable homicide is also illegal and violates **S.7 ACJA** which prohibits arrest another person in place of suspect. There is no doubt that the right of the Applicant's right to personal liberty and dignity of his person were violated by the Respondent. Torturing the Applicant is also against the law. Such act is frowned at by the laws of our land. So also forcing the Applicant to undertake to produce a person who absconded from the custody of the Respondent is a violation of his right to liberty. Asking him to report to the police since after administrative bail was granted is equally illegal and unlawful, as it violate his liberty, personal dignity and freedom of movement as provided in **CAP 4 1999 CFRN**.

The Applicant has ably established that his right were violated he is therefore entitled to be compensated by way of damages in accordance with the provision of **S.35 (6) 1999 Constitution as amended**.

Having proved his case established the allegation of violation of his right by Respondent this Court holds that this application is meritorious and the Court grants the relief to wit:

Reliefs 1 – 5 granted

The Court hereby order that the Respondent pay to the Applicant the sum of ₦150, 000.00 (One Hundred and Fifty Thousand Naira) for violating his said right.

Again the Respondents are hereby jointly and severally prohibited from arresting the Applicant in connection to the issue of the Culpable Homicide which his brother Daniel Mathew is alleged to have been committed notwithstanding the so called undertaking.

This is the Judgment of this Court.

Delivered today the ____ day of _____ 2021 by me.

**K.N. OGBONNAYA
HON. JUDGE**