

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON MONDAY, THE 8TH DAY OF MARCH, 2021

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

JUDGE

SUIT NO.: FCT/HC/BW/M/357/20

BETWEEN:

MR CHADO IBRAHIM

PLAINTIFF

AND

1. COMMISSIONER OF POLICE FCT

2. ASP USMAN MOHAMMED

(C.P. Monitoring unit FCT Police)

3. MISS ABIGAIL SULE

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RESPONDENTS

JUDGMENT

By An Application for the Enforcement of Fundamental Rights filed on the 25/8/20 coming up before this Honourable Court the Applicant is praying for the following reliefs:

1. A Declaration that the continuous harassment, intimidation, detention and threat of the applicant's liberty by the 1st to 3rd in particular

the 2nd respondent of FCT police commissioner of Police monitoring Unit FCT Abuja since the 2nd day of August 2020 is unconstitutional, illegal and unlawful and violates the Applicant fundamental right to personal liberty, and freedom of movement guaranteed by section 35 and 41 of the 1999 constitution (as amended) and also similar provisions in the Africa Charter on Human and Peoples Rights (Relegation and Enforcement) ACT, CAP A9 LFN (2004) (as amended).

2. AN ORDER of this Honourable Court restraining the 1st and 2nd Respondents, either by themselves, agents, privies, representatives and/or by what so ever means they may choose to come from further inviting, arresting, detaining, harassing and embarrassing the applicant in respect of a debt of N378,000 (Three hundred and Seventy Eight Thousand naira) only.
3. AN ORDER of this Honourable Court awarding the cost of Ten Million Naira (N10, 000,000.00) only against the 1st and 2nd respondents in favour of the applicant for psychological trauma and general damages suffered, jointly and severally in favour of the Applicant.
4. AN ORDER of this Honourable Court awarding the cost of Five Hundred Thousand naira (N500,

000.00) only, being the cost of filing and prosecuting this matter against the 1st, 2nd and 3rd Respondents.

5. And for such further order(s) this Honourable Court may deem fit to make in the circumstances of this case.

COURT:

The prayers in this Case are deemed adopted as if same is set here seriatim. The Defendants – 3 in all – 1 & 2 Defendants are the Commissioner of Police and ASP Usman Mohammed. The 3rd Defendant is Miss Abigail Sule who according to the Applicant was his girl friend for 16 years they fall apart in the course of the relationship the 3rd Respondent Miss Abigail Sule lent Money total ₦378, 000.00 (Three Hundred Seventy Eight Thousand Naira) only to Chado Ibrahim the Applicant it was on 5 instalment. When the relationship collapse Miss Sule came after the Applicant to pay her what he owes her.

In order to get her money back she employed the service of 1st & 2nd Respondents Commissioner of Police and ASP Usman Mohammed who is the C.P Monitoring Unit at the FCT Police Command. The Plaintiff felt that the harassment, intimidation, torture, arrest and detention by the 1st & 2nd Respondents infringed his right as the matter between him and the 3rd Respondent was purely on commercial ground and that the police have no right to meddle into the issue. That action of the 1st & 2nd Respondent at the instigation of the 3rd Respondent

infringed his right to liberty dignity of his person freedom of movement.

He want a declaration in that their action is illegal unlawful and unconstitutional and as such they should be restrained from further arrest and intimidation. He had been detained since 2/8/20 before he filed this action on 25/8/20.

He want the Court to restrain the Respondents from further harassment intimidation on the issue concerning the money he borrowed from the 3rd Respondent. ₦378, 000.00

He also want ₦10, 000,000.00 (Ten Million Naira) as compensation for the intimidation, psychological trauma and general damages he suffered.

₦500, 000.00 (Five Hundred Thousand Naira) cost of the Suit

Omnibus.

He filed Affidavit of 17 paragraphs and Written Address. In the written address he raised an issue which is:-

“Whether the Fundamental Right of the Applicant has been, is been or likely to be further breached infringed by 1st, 2nd & 3rd Respondents against provision of CAP 4 of the 1999 CFRN especially S.34 & 41 as a result of the money he borrowed from the 3rd Respondent who was his friend for 16 years.”

The Plaintiff Counsel submitted that S. 34(1) of the 1999 Constitution as amended provides for protection of all

citizens against inhuman treatment. That in this case he has shown that the Respondent infringed his rights under that section of the Constitution.

Again that the Police is not empowered to act as debt recovery agent that he had admitted owing and agreed to pay the 3rd Respondent with time. That by S.46(1) he has a right to report the infringement of his right by the Respondent and that action of the Respondent infringed on his personal liberty and freedom of movement. He referred to the case of:

Anakwe V. COP
(1996) 3 NWLR (PT.436) 320

Abacha V. Fawehinmih II
(2000) 4 SC (PT.11)

Director of State Service V. Olisa Agbakoba
(1999) 3 NWLR (PT.593) 3 @ 4 SC

He urged the Court to grant the relief.

The 1st & 2nd Respondents were served. The 3rd Defendant was given the process after going through it she dropped it and refused to accept and acknowledged the documents. See the Affidavit of the Court Bailiff.

It is the Law that once a fact are set out in an Affidavit that it takes another Affidavit to counter such fact. Whoever asserts must prove with cogent and credible fact. That is a mantra chanted in our Count on daily bases. Again any unchallenged facts which are properly brought before a party who ought to challenge same but failed to do so is said to remain unchallenged and are deemed and taken to be the facts and true.

All the Respondents were served with the Originating Processes filed by the Plaintiff challenging the infringement of his right. All the Defendants were equally served Hearing Notices about the scheduled dates for Hearing, they refused to come to Court even out of respect or courtesy. Today the Plaintiff Counsel had moved their application even as I read this Judgment, the said application is not challenged unchallenged facts are deemed admitted.

Again it has been held in plethora of cases and is contained in the sacred letters of the Ground Norm the Constitution S.215 that the Police duty does not include acting as debt or recovery agency S.4 of Police Act as states so. That means that once Police acts as debt recovery agency their action is ultra vires, illegal and unlawful null and void and be an actionable wrong against the Police. See Order 2 Fundamental Right Enforcement Procedure Rules.

Today in this case the Plaintiff Chado Ibrahim had claimed that Police violated his right under CAP 4. By arresting, detaining, harassing and torturing him because of the debt of ₦378, 000.00 which he owed to this long term girl friend. A debt he did not deny that he had also agreed to refund the money to the 3rd Respondent. Yet Police continued to detain, harass and threatened to harass and detain his further. Hence he came to this Court to seek redress.

Police has not denied these facts. The 3rd Respondent has not also denied those facts too. They all had ample opportunity to do so, but failed refused to do so for reasons best known to her. This Court believed him and

as such holds that the action of the Police is illegal, unconstitutional and unlawful and an infringement of his extant right as contain in the Application therein.

This Court therefore holds that this application is meritorious. The Plaintiff has established that his right was infringed by the action of the 1st & 2nd Defendant at the instance of the 3rd Defendant.

The Court therefore order and grant Prayer 1 & 2.

The Court order the 1st & 2nd Respondents to pay ₦100,000.00 (One Hundred Thousand Naira) to the Applicant for infringing on his rights.

Applicant to bear cost of the Suit.

This is the Judgment of this Court.

**Delivered today the ____ day of _____ 2021 by
me.**

K.N. OGBONNAYA
HON. JUDGE