

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE ASMAU AKANBI – YUSUF
DELIVERED THE 27TH DAY OF JANUARY 2021**

SUIT NOS: M/11507/2020

BETWEEN

1. KAZUGA MATHEW
2. EMMANUEL AMODU
3. AUSTINE WODI

APPLICANTS

AND

1. THE INSPECTOR GENERAL OF POLICE
2. THE COMMISSIONER OF POLICE FCT, COMMAND
3. MR. GODDAY A. (INVESTIGATING POLICE OFFICER
FCT COMMAND ABUJA)

RESPONDENTS

JUDGMENT

The Applicants issued an application for the Enforcement of their Fundamental Rights brought pursuant to Order II Rules 1,2 & 3 of the Fundamental Right (Enforcement Procedure) Rules 2009; Sections 35, 41, 46 (1) & (2) of the 1999 Constitution of the Federal Republic of Nigeria as Amended; Articles 5, 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap 10 Law of the Federation of Nigeria, 2004 and under the Inherent Jurisdiction of this Court. The Application was filed on the 4th day of November, 2020.

It is supported by a Statement Pursuant to Order 11 Rule 3 of the Fundamental Rights (Enforcement Procedure) and the three (3) Affidavits of Jonah Abu Mathew, Danlami Baba and Samson Ebgeri Jimba. The written address in support of the Application was settled by Gbenga Ajibulu Esq. on behalf of all the Applicants. The Application was served on all the Respondents on the 1/12/2020.

On the 15th day of December, 2020, Ani Patrick chikezie Esq appeared for the Applicants; he argued the Application and judgment was reserved. It is the case of the Applicants as stated in the three affidavits that while on hunting expedition on the 1st day of October, 2020 along Kwaita- Kwali road, a team of Policemen, all operatives and agents of the Respondents in a commando style picked and beat them up mercilessly; that they whisked them away to the Special Anti-Robbery Squad (SARS) in Garki; that they were detained in Garki for over two weeks and due to the disbandment of (SARS) they were transferred to the Respondents cell at the Area Command office in Maitama – Abuja FCT. The Applicants further states that they have been in detention since 1st October, 2020 without been charged to court or admitted to bail. The Applicants concluded that they have been in detention for more than thirty days and that there are courts within forty (40) kilometers radius from the Area Command’s office Maitama – Abuja, FCT.

Gbenga Ajibulu Esq. on behalf of the Applicants formulated two issues for determination. The issue is

- a. whether the arrest and continuous detention of the applicants for over thirty (30) days in the cells of the 3rd Respondent from the Special Anti-Robbery Squad office Garki-Abuja, FCT to the Area Command’s Office Maitama-Abuja, FCT, without charging them to court for any offence even when there are courts of competent jurisdiction within a radius of 40m Kilometers, is constitutional and /or justified in law”.
- b. Whether the Applicants are entitled to compensation and damages

It is the argument of learned counsel that the arrest and detention of the Applicants for over thirty days without charging them to court is a clear breach of Section 35(4) and 5(a) of the Constitution; that the Respondents breached the rights of the Applicants without any justification. He referred the court to EDA V COP; FALODE V AG LAGOS STATE; MITTEE V AGF, SECTION 43 & 44 OF THE CFRN; OLUTIDE & ORS V HAMZAT & ORS.

On the second issue, learned counsel for the Applicants submits that the Applicants are entitled to compensation. He relied on SECTION 35(6)CFRN;

MITTEE V AGF (SUPRA); OKONKWO V OGBOGU; OCEANIC SECURITIES INTERNATIONAL LTD V BALOGUN & ORS.

He urged the court to grant the Application.

It is settled beyond any argument that the Respondents have the powers to arrest any citizen; however the arrest and detention must be subject to the provisions of the laws regulating arrest and detention.

Section 35 of the 1999 Constitution [as amended] states thus;

- (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 a procedure permitted by law:
 - (a) In execution of the sentence or order of a Court in respect of a criminal offence of which he has been found guilty;
 - (b) By reason of his failure to comply with the order of a Court or in order to secure the fulfillment of any obligation imposed upon him by law;
 - (c) For the purpose of bringing him before a Court in execution of the order of a Court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
 - (d) In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
 - (e) In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their case or treatment or the protection of the community; or
 - (f) For the purpose of preventing the unlawful entry of any person into Nigeria or, of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.
Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

- (2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.
- (3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.
- (4) Any person who is arrested or detained in accordance with subsection (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:
 - (a) Two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
 - (b) 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 be 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.
- (5) In subsection (4) of this Section, the expression “a reasonable time” means:
 - (a) In the case of an arrest or detention in any place where there is a Court of competent jurisdiction within a radius of forty kilometers, a period of one day; and
 - (b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the Court to be reasonable.
- (6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, “the appropriate authority or person” means an authority or person specified by law.
- (7) Nothing in this Section shall be construed:
 - (a) In relation to subsection (4) of this Section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and

(b) As invalidating any law by reason only that it authorizes the detention for a period not exceeding three months of a member of the armed forces of the Federation or a member of the Nigeria police Force in execution of a sentence imposed by an officer of the armed forces of the Federation or of the Nigeria Police Forces, in respect of an offence punishable by such detention of which he has been found guilty.

The unchallenged evidence before this court reveals that the Applicants while on hunting expedition on the 1st October 2020 were arrested and have since then been in detention. The Respondents were served with this Application on the 1/12/2020; they however failed to file a response via counter affidavit to the Application. See ISAAC OMOREGBE v. DANIEL PENDOR LAWANI (1980) LPELR-2655(SC) where the Supreme Court stated thus; *"...where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the Court seised of the proceedings to act on the unchallenged evidence before it"*

Also in ELIZABETH MABAMIJE v. HANS WOLFGANG OTTO (2016) LPELR-26058(SC) the Supreme Court held as follows:

"No counter-affidavit was filed by the Appellant. Where facts deposed to in an affidavit have not been controverted such facts must be taken as true except they are moonshine. See Alagbe v. Abimbola 1978 2 SC p.39. Where an affidavit is filed, deposing to certain material facts and the other party does not file a counter-affidavit to dispute the facts, the facts deposed to in the affidavit would be deemed unchallenged and undisputed".

I have carefully taken the facts into consideration; it appears there were no legal basis for the arrest and detention of the Applicants from the 1st of October, 2020 till the date this Application was taken, and also no Counter affidavit to controvert the depositions stated in the affidavits. It is also not in evidence that the Applicants have been charged to court or admitted to bail. The freedom and personal liberty of the Applicants is guaranteed by the Constitution. In the absence of any contrary evidence before the court, I hold that the arrest and

detention of the Applicants by the Respondents from the 1st October,2020 till the date this matter was heard is against the letters of the Constitution as same is illegal, unlawful and unconstitutional. It is in this regard that Reliefs 1, 2 and 3 are hereby granted and I order as prayed therein

Furthermore, the Courts have laid the factors to be considered in the award of damages having found that the arrest and detention of the Applicants is illegal and unconstitutional. The essence of the award of damages is to compensate the Applicants for the damages suffered as a result of the action of the Respondents. Section 46 (2) of the 1999 Constitution provides for the Court hearing an application for enforcement of fundamental rights to make such orders as it may consider appropriate and to which the person who makes the application may be entitled; it confers on a High Court special jurisdiction to deal with cases of violation of fundamental right of any person within the borders of this country. Section 46(2) provides; subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provision of this section and give such directions as it may consider appropriate for the purpose of enforcing or-securing the enforcement within that state of any right to which the person who makes the application may be entitled under this chapter. See THE NIGERIA POLICE FORCE & ORS v. MRS. SHERIFAT AZEEZ OMOTOSHO & ORS (2018) LPELR-45778(CA)

Consequently, having resolved that the arrest and detention of the Applicants is illegal, unlawful and unconstitutional, I hold that they are entitled to be compensated for being unjustly, unlawfully and illegally arrested and detained.

For the sake of clarity, the following Orders are made against the Respondents.

1. An Order is made for the enforcement of the Applicants' fundamental rights to personal liberty, private and family life, freedom of movement and dignity of persons.
2. It is hereby declared that the continuous detention of the Applicants at the Area Command Maitama from the 1st day of October, 2020 till date without arraignment or bail is illegal, unlawful and unconstitutional.
3. The Respondents are hereby ordered to release the Applicants forthwith.

4. I award One Million Naira (N1, 000,000:00k) as compensation to each of the Applicants against the Respondents jointly and severally.
5. #20,000 as cost of the suit.

ASMAU AKANBI-YUSUF
(HON. JUDGE)

APPEARANCES:

Abdulkarim Audu, For the Applicant
Defendant absent and not represented