

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HON. JUSTICE J.E. OBANOR
DELIVERED ON THURSDAY THE 18TH DAY OF FEBRUARY, 2021

SUIT NO.FCT/HC/CV/M/12234/2021

BETWEEN:

MR STEPHEN BULUS APPLICANT

AND

- | | | |
|--|---|-------------|
| 1. INSPECTOR GENERAL OF POLICE
NIGERIA POLICE FORCE | } | RESPONDENTS |
| 2. COMMISSIONER OF POLICE
FEDERAL CAPITAL TERRITORY | | |

JUDGMENT

By an Originating Motion filed on 24th November 2021 and predicated on Order 2 Rules 1-5 of the Fundamental Rights (Enforcement) Procedure Rules, 2009 and Sections 34 & 35 of the Constitution of Nigeria 1999 the Applicant seeks for the following reliefs: -

- “(1). **A DECLARATION** that the detention of the Applicant by the agents of the 2nd Respondent beyond the period stipulated by law is unlawful and an infringement on his fundamental right.*

- (2). **AN ORDER** enforcing the fundamental rights of the Applicant to human dignity and liberty guaranteed by Section 34 and 35 of the 1999 Constitution by directing the immediate release of the Applicant from the custody of the Respondents since 9th November, 2020 against his wish.*

- (3). **AN ORDER** of injunction restraining the Respondents by themselves or through their agents from further arresting, detaining or dehumanizing the Applicant on account of the facts of this case.
- (4). **AN ORDER** directing the Respondents to tender an unreserved apology to the Applicant for the unjust detention and inhuman treatment meted out to the Applicant.
- (5). **GENERAL AND EXAMPLARY** damages of N10, 000,000 only against the Respondents jointly and severally.
- (6). **SPECIAL DAMAGES OR COMPENSATION** at the rate of N25,000 per day from the 9th of November, 2020 till date of his release from custody being his average earning as a Range Rover mechanic.
- (7). **ANY FURTHER OR OTHER RELIEFS** that the Honourable Court may deem fit to make in the circumstances of this case”.

The application was filed along with a 16-paragraph affidavit deposed to by Mallam Saliu Abiodun, Statement containing a description of the Applicant, reliefs sought, Grounds upon which the reliefs are sought and Written Address of the Applicant’s Counsel.

By the records of the Court, the originating processes along with Hearing Notices were served on the 1st and 2nd Respondents on 14th January 2021 against 4th February, 2021 fixed for hearing of the Application. The Respondents however did not file any process in response to the application.

The application was heard on 4th February, 2021 as scheduled with the learned Applicant’s Counsel moving the substantive Originating Motion. He also sought the leave of the Court to expunge prayer no 2 on the Originating Motion, the Applicant having been admitted on bail

sometime in December 2020. The said Relief No 2 seeking for immediate release of the Applicant having been expunged is hereby struck out.

Thereafter learned Applicant's Counsel adopted his Written Address as his Oral submissions in support of the Application and urged the Court to grant reliefs sought in the Motion.

In the affidavit in support, it was averred on behalf of the Applicant by the deponent, inter alia, that he is the Applicant's co-workshop owner and the Applicant is a Range Rover mechanic. That sometime in the month of June 2019, One Mr Fredrick Longji, a staff of the FCT Universal Basic Education Board sought the applicant's assistance to recover his broken down Land Rover LR3 Jeep with Registration No Abuja KUJ 818 BK (2005 Model) black Colour. On evaluation and inspection of the LR3 Land Rover Jeep, the Applicant informed him that the engine needs replacement for it to work optimally. The applicant also informed him that the cost of the engine was about N800,000(Eight Hundred Thousand Naira) Only. Mr Fredrick Longji instructed the Applicant to sell the Land Rover LR3 jeep as he cannot afford the cost of the repairs. About a year later, one Mr Peter indicated interest in the purchase of the scrapped Land Rover Jeep and the Applicant informed Mr Fredrick Longji. Negotiation was entered into which culminated in the sale of the Land Rover LR3 Jeep in the sum of N500,000 (Five Hundred Thousand Naira) Only to Mr Peter. The Jeep was neither test-driven or certified as it was bought as seen scrap. After the purchase of the Jeep in the scrapped condition, the purchaser demanded for it to be put in working condition by the Applicant without replacement of worn-out parts arising from long out of usage. The purchaser had full disclosure of the state of the Land Rover LR3 Jeep before purchase of same from Mr Fredrick Longji. The Applicant made several appeals to the purchaser to make money available to put the Land Rover LR3 Jeep in working condition or alternatively to engage the services of another mechanic to repair the said Land Rover LR3 Jeep which request was not acceded to.

The complainant made a complaint to the Divisional Police Office of the 2nd Respondent located at Apo Resettlement and the Applicant was arrested on the 9th day of November 2020. The Applicant's attorney vide letter dated 23rd November 2020 wrote to the Commissioner of Police (2nd Respondent) demanding for the release of the Applicant. The Divisional Police Office of the 2nd Respondent refused to release the Applicant on bail or have him charged to Court despite repeated demand and entreaties.

In his Written Address, Chris Ohene Esq of Counsel for the Applicant raised a sole issue for determination thus: -

“Whether or not the Applicant’s fundamental right to liberty and human dignity have been breached by the Respondents in the circumstance of this case.”

Treating the issue, the learned Counsel submitted that the Applicant has a right to liberty which cannot be deprived. The law requires that where a person is arrested on the allegation of having committed an offence, he must be taken to Court within time allowed by the Constitution. He contended that from the totality of the facts averred in the affidavit in support, the Respondents have infringed on the constitutional right of the Applicant by detaining and continue to detain him since 9th November 2020 when the Applicant was arrested.

Counsel referred to **Section 35 of the 1999 Constitution(As amended)** for Applicant's right to liberty **and Article 6 of the Charter on Human and People's Rights (Ratification and Enforcement) Act CAP A9 LFN 2004 referred to as African Charter** which provides that “ Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.” Learned Counsel next referred to **Section 34 of the 1999 Constitution** to contend that the detention and continuous detention of the Applicant since 9th November 2020 amounts to breach of the Applicant's constitutionally guaranteed right to dignity of his person. Dwelling

further, he maintained that **Article 5 of the African Charter** provides that “every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.” He called in aid **FAJIMIROKUN V C.B(C.I.) NIG LTD (2002)10NWLR(P.T.744) 94** to submit that the Applicant having placed before the Court all vital evidence regarding the infringement or breach of the Applicant’s rights, the burden shifted to the Respondent to prove otherwise. Finally he urged the court to resolve the issue in favour of the Applicant, the Respondents having failed to file counter affidavit and a written address in opposition to the application are deemed to have admitted all the facts and issues raised therein. He commended to the court the case of **IBRAHIM V. JUDICIAL SERVICE COMMISSION KWARA STATE (2009) WLR 141 AT 157.**

I have read and digested the Applicant’s affidavit in support and Written Address of his Counsel.

The cardinal issue that calls for determination in this matter is whether or not the Applicant has made out a case to justify a grant of the reliefs sought in the Originating Motion vis-à-vis the provisions of Section 34 and 35 of the 1999 Constitution of Nigeria.

As aforesaid, I have given due consideration to the averments in the Applicant’s affidavit and submissions of his learned Counsel in support of the application. By the records, the 1st and 2nd Respondents did not file any Counter Affidavit or any other process controverting the averments in the Applicant’s affidavit in support of the application. The settled position of the law is that averments in an affidavit not controverted by the adversary despite the opportunity he had are deemed admitted by the Court and in the circumstances, is under a duty to act on them unless it does not believe them. See: **OBUMSELI & ANOR V. UWAKWE (2019) LPELR-46937 (SC); NB PLC V. AKPERASHI & ANOR(2019) LPELR-47267 (CA); CONT. LTD V UAC N.P.D.C. PLC (2003) 13 NWLR (PT. 838) P. 594; ADAMU V**

AKUKALIA (2005) 11 NWLR (PT. 936) P. 263 and MALGIT V DACHEN (1998) 5 NWLR (PT. 550) P. 384. In this case, the 1st and 2nd Respondents having been served with the Applicant's application with the affidavit in support on 14th January 2021 but they failed to file a Counter Affidavit within 5 days as allowed them by Order II Rule 6 of the Fundamental Rights (Enforcement) Procedure Rules 2009 or even thereafter controverting the averments in the Applicant's affidavit are deemed to have admitted them and the Court is under a duty in the circumstances to accept and act on them.

As the Respondents did not put any admissible evidence on the other side of the scale of balance there is nothing against which the Applicant's evidence as contained in his affidavit can be weighed. The evidence stands unassailed and in the circumstances, there is no basis for the Court to disbelieve them. The Court therefore accepts them as true and correct.

These said, the Court is yet under a duty to examine the evidence adduced by the Applicant vis-à-vis the provisions of Sections 35 and 34 of the 1999 Constitution of Nigeria to determine whether or not the Applicant made out a case to justify a grant of the reliefs sought in the Originating Motion.

Section 35(1) of the 1999 Constitution of Nigeria (as amended) ("the Constitution") guarantees to every person his right to personal liberty and no person shall be deprived of that right except in accordance with the exception provided for under the Section and procedure permitted by law. The Section provides: -

"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 cardinal exception to the provision can be found in Section 35(1)(c) which provides that the person can be deprived of his right to personal liberty for the purpose of bringing him before 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. Section 35(1)(4) on its part provides that any person who is arrested or detained in accordance with subsection (1)(c) of the Section shall be brought before a Court of law within a reasonable time. Section 35(1)(5) defines the phrase “reasonable time in these words:

“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 kilometres, 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”.*

By the foregoing provision of the Constitution it is discernible that the right to personal liberty guaranteed by Section 35(1) of the Constitution is not absolute as same can be curtailed in any of the circumstances set out under Section 35(1)(a) to (f) of the Constitution. Where however an arrest or detention is made based on any of the exceptions, the person must be brought before a Court of law within a reasonable time which must not, at most exceed two days or such other period as a Court may consider reasonable. Where therefore an arrest or detention of a person is made outside or inconsistent with these exception, the arrest or detention will be considered wrongful and by the provision of Section 35(1)(6) the person shall be entitled to compensation and public apology from the authority or person which detained him. The authority or person here means an authority or person specified by law. See generally: - ***DOKUBO-ASARI V FEDERAL REPUBLIC OF NIGERIA (2007) 12 NWLR (PT. 1048) P. 320.*** It is however worthy of note that where there is evidence of arrest and detention, the burden of proving that the arrest and detention was lawful lies on the person who carried out the arrest and detention. See: ***EJEFOR V OKEKE (2000) 7 NWLR (PT. 665) P. 363.***

With respect to right to dignity of one's person, Section 34(1) of the Constitution provides inter alia: -

“Every individual is entitled to respect for the dignity of the person, and accordingly –

(a). No person shall be subjected to torture or to inhuman or degrading treatment.

(b). No person shall be held in slavery or servitude; and

(c). No person shall be required to perform forced or compulsory labour”.

Exceptions to the foregoing right have been provided in Section 34(2)(a) to (e) of the Constitution.

The word “torture” was defined in ***UZOUKWU V EZEONU (1991) 6 NWLR (PT. 200) P. 708*** as “putting a person through some form of pain which could be extreme. It also means to put a person in some form of anguish or excessive pain. It covers a situation where a person's mental orientation is very much disturbed that he cannot think and do things rationally as the rational human being he is.

By the records of this court there is no evidence on when the applicant was released on bail. The learned Applicant's counsel in the course of his oral submission in court informed the court that the applicant was released on bail sometime in December 2020. The court notes that sometime in December 2020 is not a specific date to assist the court in calculating the number of days the applicant was unlawfully held in detention and the court is not allowed to engage in conjecture or speculation to arrive at that. It is also settled position of law that submission of counsel no matter how good it is, cannot take the place of evidence. The above notwithstanding, it is the Applicant's uncontroverted evidence that he was arrested on the 9th day of November 2020 by the Respondents and detained. That despite the Applicant's attorney letter dated 23rd November 2020 written to the

Commissioner of Police (2nd Respondent) demanding for the release of the Applicant. The Divisional Police Office of the 2nd Respondent refused to release him on bail or have him charged to Court despite repeated demand and entreaties.

As earlier pointed out, neither the 1st nor 2nd Respondents filed a Counter Affidavit or process controverting the above averments in the Applicant's affidavit. This was despite the opportunity they had as allowed them by the Fundamental Rights (Enforcement Procedure) Rules 2009.

By the uncontroverted evidence of the Applicant that he was arrested on the 9th day of November 2020 and detained till 23rd November 2020 when the applicant's attorney wrote a letter to the 2nd Respondent but to no avail. I have gone through the said letter of the Applicant's attorney and I am convinced that the applicant was still in detention as the time of writing the letter. Arithmetically, it is evident that the Applicant was detained for a period of about fourteen days without releasing him on bail or having him charged to Court. The Court is satisfied that the Applicant has established that he was detained beyond the two days allowed by Section 35(1)(c) and 35(1)(5) of the Constitution. Therefore the detention undoubtedly is in violation of the Applicant's right to personal liberty guaranteed by Section 35(1) of the 1999 Constitution.

With regard to the Applicant's right to dignity of his person as guaranteed under Section 34 of the 1999 Constitution, the court has perused through the facts deposed in the affidavit in support of this application which was unchallenged and is convinced that the applicant having been unreasonably and unlawfully kept in detention for more than the period allowed by law was subjected to mental torture and inhuman treatment as condemned in ***UZOUKWU V EZEONU (Supra)*** wherein torture was defined as "... It covers a situation where a person's mental orientation is very much disturbed that he cannot think and do things rationally." What this translates to is that the Applicant has made out a case to justify a declaration that his right to dignity of his person was violated.

By reasons of the foregoing findings, the Court resolves the sole issue raised above in favour of the Applicant against the Respondents. In consequence, the declaration sought in relief 1 of the Originating motion is granted as prayed.

The Court having found that the Applicant's fundamental rights to dignity of his person and personal liberty were violated and the Court having been given a discretion under Order 46(1) of the Constitution to make such order or give such directive as it may consider appropriate for the purpose of enforcing or securing the enforcement of the Applicant's right, in order to forestall a further arrest and detention of him by the Respondents with respect to same subject grants relief 3 of the Originating Motion. An Order of Injunction is granted restraining the Respondents by themselves or their agents from further arresting, detaining or dehumanizing the Applicant on account of the facts of this case.

In relief no. 4, the Applicant seeks for an order directing the Respondents to tender an unreserved apology to him for the unjust detention and inhuman treatment meted out to him. As aforesaid, Section 35(6) gives the Court discretion to make an order in that regard. This being the case, the Court is minded to grant relief 4. It is however worthy of note that the Applicant has not asked for a written public apology as stipulated by Section 35(6) of the Constitution. This implies that an ordinary apology to him by the Respondents will assuage him. In the light of this, the Respondents are directed to render an apology to the Applicant for the violation of his fundamental rights to personal liberty and dignity of his person as guaranteed under the Constitution.

In relief nos. 5 and 6 the Applicant seeks for General and Exemplary damages of N10,000,000.00 only against the Respondents jointly and severally and Special damages or Compensation at the rate of N25,000 per day from 9th of November, 2020 till date of his release from custody being his average earning as a Range Rover mechanic. Section 35(6) of the Constitution allows the Court to award

compensation to any person unlawfully arrested and detained by any person or authority specified by law. In this case the 1st Respondent is an authority created by Section 215(1) of the Constitution with duties and functions set out in Section 4 of the Police Act. The 2nd Respondent is authority working under the authority and supervision of the 1st Respondent. The Court having found the Respondents violated the Applicant's rights as aforesaid, the latter is entitled to an award of damages by way of compensation to assuage him for the violation he suffered on account thereof. The award of the damages however is at the discretion of the Court which discretion it exercised judicially and judiciously based on the circumstances of the matter.

In this case, taking into consideration the unconstitutional number of days in which the Applicant was kept in the Respondent's detention facility in show of high handedness with its attendant mental torture, pain and anguish which the applicant went through these fourteen days , the Respondents are ordered to pay exemplary damages assessed and fixed at N2,500,000.00 to the Applicant while the award of Special damages at the rate of N25,000 per day from 9th of November, 2020 till date of Applicant's release from custody being his average earning as a Range Rover mechanic cannot be granted because it falls in the realm of special damages which must be proved specifically. There is no deposition in the affidavit in support of this relief and evidence by the applicant on his earnings and how he arrived at N25,000 per day was not led. Therefore this relief cannot be granted. It is hereby refused.

Finally, the Applicant having succeeded, the Respondents are ordered jointly and severally to pay a cost assessed and fixed at N100, 000.00 to the Applicant.

SIGNED
HON. JUDGE
18/2/2021.

LEGAL REPRESENTATIONS

- (1). Chris Ohene Esq for the Applicant.

- (2). No legal Representation for the Respondents.