

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU

ON WEDNESDAY 24th DAY OF FEBRUARY, 2021

SUIT NO: FCT/HC/M/12603/2021

BETWEEN:

EKENE PATRICK NWGBOAPPLICANT.

AND

- (1) INSPECTOR GENERAL OF POLICE... RESPONDENT.**
- (2) THE DIVISIONAL POLICE OFFICER
(DPO) (*Phase 4 Police Station, Kubwa*)**
- (3) MRS LOVETH OYAKHILOME**

JUDGMENT

By an Originating Motion on Notice filed on 2/12/2020 and predicated on Section 34(1) & S.46(1) of the Constitution of the Federal Republic of Nigeria (1999) as amended and Order 11, Rule 1, 2 & 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, the Applicant seeks for the following orders:-

- (1) A declaration that the arrest, detention and continued detention of the Applicant by the men and officers of the 1st and 2nd Respondents sometime in September, 2020 till date, without any lawful and valid Court Order and without

Charging or Arraigning the Applicant herein before any Court of Criminal jurisdiction such as your Lordships Court, when there are Courts where Applicant can be charged to or arraigned before for any offence(s) the Applicant may have allegedly been accused of Committing is not only illegal and unlawful, but grossly unconstitutional and a grave infringement of the fundamental right to personal liberty of the Applicant herein all contrary to Section 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 6 of the African Charter on Human and Peoples Right (Ratification and Enforcement), Act, CAP A9, LFN, 2004.

- (2) A declaration that the arrest, continued detention, torture of the Applicant which has put his life in grave danger by the men and officers of the 1st & 2nd Respondents sometimes in September, 2020 till date, without any lawful and valid Court Order and without charging or arraigning the Applicant herein before any Court of criminal jurisdiction is illegal, unlawful, unconstitutional and an infringement of the fundamental right to life and freedom of the Applicant contrary to Section 33 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 4 of the African Charter on Human and People Rights(Ratification and Enforcement) Act, CAP A9, LFN, 2004.

- (3) An order of this Honourable Court directing the 1st and 2nd Respondents to unconditional release the Applicant from their custody at phase 4 Police Station Kubwa, FCT Abuja or any detention centre of the Respondents where the Applicant has been illegally, unlawfully and unconstitutionally detained since he was arrested sometimes in September, 2020 till date or an Order of this Honourable Court directing the 1st and 2nd Respondents, either by themselves, or through their officers or servants to produce the Applicant herein before this Honourable Court and for the Respondents to show cause why this Honourable Court should not order the release of the Applicant forthwith from detention.
- (4) An order of this Honourable Court directing the 1st and 2nd Respondents to pay to the Applicant the sum of ₦10,000,000.00(Ten Million Naira) only as compensation and or damages for the illegal, unlawful and unconstitutional arrest and continued detention of the Applicant without charging the Applicant to Court since September, 2020.
- (5) An order of this Honourable Court directing the Respondents herein to publish an apology to the Applicant in two Daily National Newspapers for the illegal, unlawful and unconstitutional arrest and detention of the Applicant.

- (6) An order of perpetual injunction restraining the Respondents or any of them, whether by themselves, agents, privies, or whosoever purports to act on their behalf or at their instance and instruction from further arresting and detaining or causing the arrest and/or detention of the Applicant in connection with the alleged offence or any offence fabricated by the Respondents as a bait to unlawfully and unconstitutional arrest and or detain the Applicant.
- (7) Any order relief that, this Honourable Court may deem necessary to award in the special circumstances of this application.

The application is supported by a Statement containing the reliefs sought, grounds upon which the relief are sought, 11 paragraphs affidavit and a Written Address of the Applicants Counsel.

The gravamen of the Applicants case as disclosed in his affidavit deposed to by his elder brother is that, the Applicant is his younger brother and a business man doing business in Abuja. Also that, the Applicant is a member of Mountain of Fire Ministry where the 3rd Respondent (Mrs. Loveth Oyakhilome) is also a member. That the 3rd Respondent usually calls the Applicant to assist her in running errands whenever the Applicant is less busy with his business. That, on one faithful day, the 3rd Respondent calls the Applicant to her house at Aso Garden Estate, Kubwa, Abuja to run some errands for her which

he did and left. After some weeks, the 3rd Respondent informed the Applicant that her 9years old daughter was pregnant for him and also claimed that the Applicant herein had raped her daughter. The 3rd Respondent then informed the Applicant that she saw the Applicant sperm on her 9years old daughters' leg and as such invited the Applicant to one private hospital in Kubwa where his blood sample was taken and tested. He continued to aver that, the Applicant never saw the said test result which the 3rd Respondent claimed confirmed that, her daughter was pregnant for the Applicant after being raped by the Applicant.

He further stated that, the 3rd Respondent after some weeks informed the Applicant that her daughter was no longer pregnant for him again. After this, the 3rd Respondent waited for weeks after confirming to the Applicant that her daughter was no longer pregnant before making a formal complaint at the Kubwa Phase 4 Police Station and the Applicant was arrested and detained till date.

He (the deponent) added that, at the Police Station, the Applicants Statement was taken and he was detained for two months and never charged to any Court to be tried. That, the Applicant has been denied administrative bail by the 1st and 2nd Respondents since his detention sometimes in September, 2020. The Applicant has been subjected to degrading and inhuman treatments. Except a competent Court of law such as this Court intervenes in the circumstance, the Applicant will be continually detained and tortured at the pleasure of not men and officers of the 1st and 2nd Respondents but also the 3rd Respondent as they have done since September, 2020 when the Applicant has been

kept in detention for more than two (2) months, far beyond the period allowed under any known Nigerian Law and the provision of the Constitution of the Federal Republic of Nigeria.

The Counsel for the Applicant then urged the Court to grant the reliefs sought as doing so will do justice in this matter.

In response, the 1st and 2nd Respondents did not file their response but rather, filed a notice of Preliminary Objection on 4/2/2021. In their Preliminary Objection, the 1st and 2nd Respondent pray for the following orders.

- (1) An order of this Honourable Court striking out the name of 2nd Respondent herein.
- (2) An order of the Honourable Court striking out /dismissing this suit for lack of jurisdiction to entertain and determine same.
- (3) And for such further order(s) as the Honourable Court may deem fit in the circumstance.

The preliminary Objection was filed along with a 17 paragraph affidavit and Written Address of their Counsel.

In the affidavit, it was averred that, most of their Motion on Notice and statement in support are false and capable of misleading this Honourable Court.

That paragraphs 1, 2, 3 & 4 of the Applicants affidavit are facts within the Applicants personal knowledge.

That paragraphs 5(a), (b), (c), (d), (e), (f), (g), (h), (i), 7, 8 and 9 of the Applicants affidavit in support are false and are hereby denied.

He further averred that, the Applicant was arrested on 10/10/2020 on a serious complaint of rape of a 9years old daughter of the 3rd Respondent by the officers of the 2nd respondent. That, that period fell at the time of ENDSARS PROTEST throughout the country including FCT, Abuja. That, due to the EndSars Protest, the commissioner of Police FCT, command to whom the complaint was made directed the 2nd Respondent to keep the Applicant at Kubwa Police Station. That the Defendant had earlier been granted administrative bail through CSP Funmi B. Kolawale, and no person has come over to stand as his surety before the Commissioner of Police or O/C Anti Human Trafficking (CSP Funmi B. Kolawale). That the charge against the Applicant is already pending before FCT High Court, Maitama, waiting for the date of arraignment. He further averred that, the detention of the Applicant was on the order of a Court of competent jurisdiction. That, the Applicant ran to this Honourable Court in order to use the machinery of justice to cover his criminal acts. It is in the best interest of justice to refuse the Applicants application.

Counsel for the 1st and 2nd Respondent urge the Court to strike out this suit or even dismisses it in its entity. They attached in their Preliminary Objection a copy of the Charge and Remand Warrant.

In further opposition, the 3rd Respondent filed her 50 paragraphs Counter Affidavit on the 1/2/2021. She averred inter alia, that she is the biological mother of Abigale Oyekhilome (the Victim), an 8years old raped victim of Ekene Patrick Nwgbo the Applicant) in this suit. That she reported the rape/defilement of her 8 years old daughter to the police at Kubwa Phase 4 Police Station and now the 3rd Respondent to this suit. That she has gone through the eleven (11) paragraphs affidavit of the elder brother of the Applicant and found that, the contents are not true, rather a calculated attempt to mislead this Honourable Court on the facts of this case. She denied paragraph 5 of the Applicant Affidavit, as they do not reflect the true facts of what happened between her and the Applicant. That she knows the Applicant as an Usher in her Church Mountain of Fire and Miracle Ministry, Kubwa sometime around December, 2019, she offered him (the Applicant) financial assistance and shelter when he was in need, but now turned out to be the greatest error of her life which has tore her peaceful home into pieces. That on her first encounter with the Applicant, he solicited for her financial assistance which she readily rendered. Subsequently, the Applicant started giving her “Prophecies” and “Visions” regarding her business, family and extended families which made her to believe him more as a man of God who can assist her with some of her spiritual problems that were overwhelming at that point in time. It was in the course of all these that she exchanged contact with the Applicant who now has more access to her and her children as our prayer partner. Sometimes around February, 2020, after her baby’s delivery on the 15th February, 2020, the Applicant called her and said “God said I should assist you in prayer.” She inquired from the Applicant how he intends to assist her in prayer whether by phone calls or how?

The Applicant said he is still in the Church and does not have anywhere to go. She later told the Applicant that, she will think about it and get back to him. After two days when she refused to get back to the Applicant, the Applicant called her again to inform her that God said he should come to her house by first week of March, 2020 so that he can assist her in prayer. That, because the Applicant has earned her trust as a result of his Prophecies and Visions coupled with the fact that around that period there was a total lockdown with no access to Church, she agreed to the Applicant request. The Applicant then moved to her house and gained full access to her house, sometimes he commence prayer from 11:00pm to 5:00am depending on how the spirit leads him.

As a result of that, she become more assured that the Applicant is truly “a Man of God” sent to liberate her from her spiritual problems. That, on 28th of July, the Applicant informed her that he will be leaving her house by the 1st week of August to continue with God’s assignment with other people who have more pressing problems than her own. That sometimes in the 8th October, 2020, which was a Friday, the Applicant come back to her house to have some prayer session with her and her children. After the prayer he decided to pass the night in her house. The next day been Saturday around 5:30am, she went to church for sanitation while her children were sleeping. She thought that since her children were sleeping, and she was more confidence that also since the Applicant is around she has nothing to fear. Alas! She was so wrong. That upon her return from the church, she was in the kitchen frying akara for breakfast when her first daughter (Abigail) 8years old, said she wants to ease herself in her bathroom, she also went to the bathroom to get something

and on entering the bathroom, she saw her daughter spotting at herself and that drew her attention. She then asked her what is the matter, she was crying feeling reluctant to speak then she ordered her to lie down which she did. She then examined her and found out that she has been raped and was totally messed up. She (the 3rd Respondent) was scared and quickly locked the door to question her. She said Ekene (the Applicant) raped and molested her and said Ekene (the Applicant) told her not tell her and threatened to kill her if she tells her. That when she was sleeping she noticed that someone was carrying her with sellotape on her mouth such that she could not shout. When she opened her eyes properly she saw the Applicant carrying her from her (the 3rd Respondents) room to the children room where the Applicant molested her. The Applicant also brought out knife and said if she tells me, he will kill her and run away.

Upon hearing this, she immediately opened the door and ran to the dining table where Ekene (the Applicant) was eating akara and confronted him with the facts. The Applicant started swearing with the bible that he did not commit the act. She in the middle of confusion, she took her daughter to Unity Hospital for medical examination. The Doctor immediately examined her daughter and confirmed that her daughter was raped as he saw sperm inside her. The laboratory attendant requested that I should bring the Applicant so that they can run test on him to know his medication status if not, he told her that, her daughter will be on medication all the days of her life.

She was so confused and do not know where to run to. She tried to reach out to some of her friends and Pastor of her church and pleaded with them to meet her at the hospital. She was able to

bring the Applicant to the hospital. Her friend an Air Force Officer and her Pastor joined them. Shortly after their arrival the test result of her daughter and that of the Applicant came and it was medically confirmed that it was the Applicant who raped her daughter. With all these evidence, the Applicant still denied the offence. It was at this point, that the Doctor advised her to inform the Police to get them involved in the case. That before the arrival of the Police, the Applicant had escaped through the hospital fence. That all efforts to apprehend the Applicant by the Police were to no avail. Thereafter, the Applicant called her to apologize for what happened and said it was the devil and he has gone to their church in Kubwa to confess his crimes and that she should please forgive him. She then told him to come to the house. The Applicant said he was advised by the Pastor Okolo and Pastor Mike not to go to her house that her husband has put CID around the house waiting to arrest him.

I then told the Applicant that it was false news. It was because of this the Applicant came over to the house so that we can talk it over. When the Applicant comes to the house to beg her, she was able to reach out to the Police Officers from Phase 4 who were able to arrest the Applicant.

She was shocked when she got to the station and heard that the Applicant wrote in his statement that he was sleeping with her and her daughter, a statement that has now tore her marriage apart.

That even the officers at the station after hearing the initial statement of the Applicant that he was sleeping with her and her daughter made caricature of her and referred to her as “a

disgrace to women fold.” That she knows of a fact and swears that there is nothing between her and the Applicant apart from prayer assistance he was rendering to her which has now put her in this total mess. That it was at the station that she discovered that it is the second time the Applicant will rape her daughter and threatened her not to inform her. The Applicant later made a counter statement on video which was also in writing with the police that, it was Pastor Okolo and Mike that advised him when he went to the church for confession to say he is sleeping with her and her daughter to prevent him from going to jail. The statement of her daughter was also taken at the Police Station.

That because of the sensitivity and nature of the offence committed by the Applicant, and the punishment attached to it, the case was transferred to the Police Criminal Investigation Department (CID) Headquarters in Area 11, where the matter is presently being prosecuted. That upon further enquiries, on the status of the matter, she was informed that the suspect was remanded in Suleja Prison on the order of Court. That apart from the psychological trauma cause by the action of the Applicant to her beloved daughter, the action of the Claimant has completely ruined her marriage.

Counsel for the 3rd Respondent urged the Court to dismiss the application.

I have carefully read and digested the averments in the affidavits of the parties and submissions of their Learned Counsel.

The cardinal issue that calls for determination is whether or not the Applicant has made out a case to justify the grant of the reliefs sought in the Motion paper.

As aforesaid, the 1st and 2nd Respondent did not file a Counter Affidavit but rather filed a Notice of Preliminary Objection and under prayer No.2, seeks for an order of this Honourable Court striking out/dismissing this suit for lack of jurisdiction to entertain and determined same. For the reason that it is the law that challenge to jurisdiction is a threshold issue and when raised the Court is under a duty to determine it before proceeding further I will also first consider and determine the Preliminary Objection of the 1st and 2nd Respondents first and thereafter “If necessary” consider and determined the Originating Motion.

The ground upon which the Preliminary Objection is predicated is that:-

- (1) The suit is incurably incompetent as the proper party is not before this Honourable Court.
- (2) The 1st Respondent is only a nominal party and not proper party in this suit.
- (3) The 2nd Respondent is not a juristic person as he is not known to law.

The Preliminary Objection prays the Court for the following orders.

- (1) Order of this court striking out the name of the 2nd Respondent.
- (2) An Order of the Honourable Court striking out/dismissing this suit for lack of jurisdiction to entertain and determine same.
- (3) And For such further order(s) as the Court may deem fit in the circumstances.

In determining the Preliminary Objection, Learned Counsel formulated to two issues:-

- (1) “Whether from the facts and circumstances of this case, the 2nd Respondent/Applicant is a juristic personality.” i.e competent party.
- (2) And whether if question number one is answered in the negative the suit becomes incompetent and liable to be struck out/dismissed by this Honourable Court.

On the 1st issue, it has to be said, it is trite like the Learned Counsel has opined that the 2nd Deponent is not a juristic person and therefore not a competent party. This finding is derived from the provisions of Sections 214, 215 (1) (a) & (2) and Section 13(1) of the Nigeria Police Act 2020. I also rely on the decision in **UNITED TIPPERS DRIVERS ASSOCIATION V. REGISTERED TRUSTEES OF RCCG & ANOR (2016) LPELR 40161 (CA)**.

Accordingly the 1st issues on the negative the 2nd Defendant is not a competent party, and in line with prayer one on the Preliminary Objection the name of 2nd Respondent is hereby struck out.

The 2nd issue which is:-

“Whether if the question (issue) is answered on the negative the suit becomes incompetent and liable to be struck out/dismissed by the Court.”

Is to be considered now. The question to be asked is, where there is more than one party sued or suing, where one party is found to be incompetent does it render the suit incompetent as a whole or in its entirety. The answer has to be no. I refer to the words per **NIMPAR J.C.A** in **UNITED TIPPERS DRIVER ASSOCIATION V. REGISTERED TRUSTEES OF RCCG & ANOR** supra where his lordship said.

“Where the parties in court are incompetent or non juristic persons, the proper order to make is that of striking out the suit and not dismissal.

However in a situation where there is more than one party sued, that fact alone cannot render the entire suit incompetent, the suit is incompetent only with respect to the non juristic persons.”

Accordingly I find that the suit is not incompetent and prayer two of the Preliminary Objection fails and it is dismissed.

Having dealt with this Preliminary Objection and having found the suit is competent against the 1st and 3rd Respondent I will proceed to look at the merit or otherwise of the originating motion.

I have gone through the reliefs sought supported by grounds upon which the application was filed, the supporting affidavit and the Written address in support of the application on the one hand and the Counter affidavit and Written Address of the 1st and 3rd Respondents on the other hand.

The issue “whether in the circumstances of this case the Applicants right to life and personal liberty as enshrined and guaranteed by Section 33 and 35 of the Constitution of FRN 1999 (as amended) and Articles 4 & 6 of the African Charter on Human and peoples right is not violated and the Applicant entitled to the reliefs sought, has been formulated.

It is worthy to note that reliefs 1 and 2 as claimed by the Applicant are declaratory in nature thereby predicating the success of the other reliefs on them.

Indeed, it is trite that where declaratory reliefs are sought, as in the present suit, the Applicant must satisfy the Court by cogent and reliable proof in evidences in support of his claim. **See:-**
AGBAJE V. FASHOLA & ORS (2008) 6 NWLR (Pt.1082).

It is the Affidavit evidences of the Applicant as clearly stated in paragraphs of the affidavit that he was arrested sometimes in September 2020 and has been detained in custody of the 1st Respondent till date of filing this suit. That the Applicant was neither granted bail nor was he charged to court by the Respondents since he was unlawfully arrested and has been detained for more than two months since September, 2020. Further, that he was arrested upon a complaint made by the 3rd Respondent alleging Rape. As a result of the continuous detention by men of the 1st Respondent the Applicants life has been put in gross danger. That his detention was illegal, unlawful and unconstitutional.

On its part, the 1st Respondent has, in his Counter Affidavit, countered the affidavit evidence of the Applicant by stating it was investigating a criminal case of rape of a 9 year old daughter of the 3rd Respondent. And that the Applicant was arrested on the 10/10/2020 during the ENDSARS PROTEST.

That paragraph 5, 7, 8 and 9 of the Applicants affidavit in support are false and are denied. That Applicant was granted administrative bail through CSP Funmi B. Kolawole, but that he could not provide surety. That the Applicant has been charge before a competent court (See Exhibit P1).

On its part – the 3rd Respondent in her Counter affidavit contend the evidences of the Applicant by stating that she discovered from her daughter Abigail that the Applicant had raped her and reported same to the police at Kubwa and that the matter was later transferred to the CID Headquarter at Area 11.

From the totality of evidence before the court as aptly stated in affidavit in support of the application and further affidavits of the 1st and 3rd Respondents, there was arrest and detention of the Applicant on account of a complaint by the 3rd Respondent for the offence of rape against the Applicant.

There are questions to be asked here

Firstly, what fundamental right of the Applicant has the 3rd Respondent breached or infringed upon?

The answer has to be none. There is no evidence that the 3rd Respondent did anything beyond reporting the case to the police. The 3rd Respondent has no control on arrest, detention or investigative power of the police and cannot be responsible for actions carried out by the police after lodging a complaint.

On these I agree with submission of Learned Counsel for the 3rd Respondent where he relied on the decision in **NWANGWU V. DURU (2002) 2 NWLR (Pt.751)** of 265 where the Court rightly captured the position as thus:-

“Where an individual has lodged a complaint to the police by way of petition, and the police have thereupon on their own proceeded to carry out arrest and detention, the act of imprisonment is that of the police. . .”

In view of the finding above case against the 3rd Respondent fails and it is dismissed.

As for the case against the 1st Respondent.

The second question that must be asked is whether from the totality of facts before the Court the Fundamental Right of the Applicant under Section 35(1) of the 1999 CFRN has been infringed upon by the 1st Respondent.

It is worthy of note that the Applicant's arrest and detention was lawful on the basis of a complaint lodged by the 3rd Respondent. This fact is clear even to the Applicant. What is in issue is whether his detention was lawful with regard to provision of Section 35(1) of the Constitution.

The Applicants affidavit avers that he has been detained longer than the period prescribed by law.

Section 35(1) of the Constitution of the FRN 1999 (as amended) guarantees the personal liberty where it provides thus:-

“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.”

(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.”

Subsection 4 further provides:-

- (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...”

The term “Reasonable time” was defined to mean one day where there is a Court within a radius of 40km and two days or such longer period where there isn’t one within a radius of 40km.

It must be noted at this point that there is an exception to subsection 4 of Section 35.

Subsection 7 provides thus:-

“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 offences.”

It is clear from the Affidavit before the Court that the Applicant was arrested on suspicion of committing the offence of rape a

capital offence. It is in evidence that he was arrested on the 10/10/2020 and his statement was taken on the 15th October 2020. It is in evidence that he was given administrative bail but could not furnish a surety. This fact has not been contradicted. It is also in evidence that he was ordered to be remanded in prison custody by a Court on the 25/11/2020 see Exhibit P2. And the Applicant was charged to a Court of competent jurisdiction on the 1st of February 2021 see Exhibit P1.

The Applicant in this case has made effort vide his affidavit deposition to sway this Court to believe that he was unlawfully arrested and detained, by the Respondent and that he was tortured and not taken to Court within a reasonable time thereby violating his rights under Section 33 and 35 of the 1999 CFRN (as amended) but has failed in the effort.

The Applicant being suspected of committing the offence of rape a capital offence rendered the claim of an infringement under Section 35 of the Constitution untenable. There is no evidence of torture or threat to life to be gleaned from the deposition of the Applicants affidavit.

Finally, I find that there is no right of Applicant known to law breached here worthy of any judicial injunction by way of order.

I shall refuse this application because it is most unmeritorious and specially packaged to emotionally sway the Court into agreeing with it.

In view of the earlier findings and this, the suit has failed and is hereby dismissed.

SGND.
HON. JUDGE
24/2/2021

LEGAL REPRESENTATIONS

- (1) Onu S. Achem Esq, for the Applicant.
- (2) John Ijagbemi Esq, for the 1st and 3rd Respondent
- (3) Bamikole A. P. Folorunso Esq, for the 3rd Respondent.