

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 TUESDAY 16th DAY OF FEBRUARY, 2021

SUIT NO: FCT/HC/M/12857/2020

BETWEEN:

FUNMILAYO OLATUNDE NYA PLAINTIFF.

AND

- | | | |
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| <p>(1) INSPECTOR GENERAL OF POLICE & 6ORS
(2) ACP A. A. ELLIMAN (<i>Officer in Charge I.G.P Monitoring Unit</i>)
(3) S. P. USMAN (<i>Admin Officer I. G. P Monitoring Unit</i>)
(4) INSPECTOR UGBANAWAYI SAMUEL
(<i>Inspector I.G.P Monitoring Unit</i>)
(5) WILLIAM JOSIAH
(6) MOSES AARON
(7) ENVIROMENTAL EXPRESSION LTD</p> | } | .. DEFENDANTS |
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JUDGMENT

The Applicant in this matter approached this Court vide originating Motion for the enforcement of his Fundamental Human Right and sought for the following:-

1. A Declaration that the continued harassment, intimidation, arrest and detention of the Applicant by the Respondents without justification is unlawful, illegal and a gross violation of the Applicants fundamental right to personal

dignity and liberty as guaranteed by Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

2. A Declaration that any issue, friction or misunderstanding that might arise from the reallocation of the quarry site from the 7th Respondent to the Applicants company is purely civil and has been resolved by the issuing authority (Ministry of Mines and Steel Development).
3. A Declaration that the actions of the 1st to 4th Respondents in harassing, intimidating and finally arresting and detaining the Applicant pursuant to the Petition of the 7th Respondent relating to aforementioned re-allotment by the Ministry of Mines and Steel Development of the quarry site to the Applicant is unlawful, illegal, abuse of office and clearly outside the duties of the 1st to 4th Respondents as specified by law.
4. An Order of injunction restraining the 1st – 4th Respondents whether by themselves or their officers, agents, servant, privies or otherwise howsoever called from further arresting, harassing preventing the Applicant from quarrying or excavating at her quarry site, or in any manner infringing on the freedom and liberty of the Applicant.
5. An Order of this Court for the Respondents to pay to the Applicant the sum of ₦76,000,000.00 (Seventy Six Million Naira only) for the loss of revenue caused by the Respondent's prevention of the Applicant from quarrying

at the site after showing them compelling evidences of ownership of the quarry site in the past eight months.

6. An Order of this Court mandating the Respondents to apologies to the Applicant in a National Newspaper and pay her the sum of ₦10,000,000.00 (Ten Million Naira only) as compensation for the unlawful harassment, arrest and detention of the Applicant at the Asokoro police station, Abuja.
7. An Order of this Honourable Court mandating the Respondents to pay to the Applicant the sum of ₦2,000,000.00 (Two Million Naira only) being legal fees paid to her Solicitors.
8. And for such further or over orders the Court may deem fit to make in the circumstances.

GROUNDS

The Applicant has the following as grounds upon which the application was brought to Court.

- (a) A person can only be deprived of his personal liberty under the exceptions in Section 35(1) of the Constitution of the Federal Republic of Nigeria 1999 and or upon reasonable suspicion that the Applicant committed a criminal offence. The Applicant did not commit any criminal offence and there are no reasonable grounds whatsoever for suspecting that she committed any

criminal offence to justify the harassment, intimidation, arrest and subsequent detention by the Respondents.

- (b) The re-allotment of the Applicant's company quarry site which was erroneously allotted to the 7th Respondent after the Applicant complained to the Ministry of Mines and Steel Development was purely a civil matter which was resolved by the Ministry after the matter was reported to them. The 5th to 7th Respondents were duly informed by the issuing authority that the quarry site which was erroneously allotted to them belongs to the Applicants Company, they had no business involving the 1st to 4th Respondent to arrest and detain the Applicant.
- (c) The 1st – 4th Respondents had no business harassing, intimidating, arresting and subsequently detaining the Applicant for allotment of quarry site which was resolved by the issuing authority. The decision to re-allot the site to the Applicant can be challenging at the Court by 5th -7th Respondents in civil suit than using the police to perform the function of the Court.

In support of this application is an affidavit of 26 paragraphs deposed to by the Applicant herself. Attached to the Affidavit are 7 exhibits marked A - F.

The case of the Applicant as distilled from the affidavit in support of the Originating Motion is that the Applicant is the Managing Director of Concord International Mining Industry Nigeria Limited. And that based on a petition filed with the 1st and 2nd Respondents, by the 5th and 6th Respondents, who are

directors of the 7th Respondent. The 1st – 4th Respondents arrested and detained the Applicant based on a civil dispute over mining right.

The Applicant further avers that the 7th Respondent was wrongly and mistakenly allotted part of the quarry of the company she manages. And that she informed the Ministry concerned and that 5th and 6th Respondents were duly informed but maintained that they were well connected and would teach the Applicant a lesson. That this led to her arrest and detention by the 1st and 2nd Respondent at Asokoro Police Station in Abuja.

The Applicant avers further that because the Respondent had refused the Applicant entry into the site by intimidation, arrest under the pretext of investigating the Applicant had suffer losses amounting to ₦76,000,000.00 (Seventy-Six Million Naira only).

And that this transaction that gave rise to the petition of the 7th Respondent and the subsequent arrest and intimidation of the Applicant is purely civil.

In line with law and procedures, Grounds upon which the application was filed was also annexed.

A Written Address was also filed wherein three (3) issues were formulated for determination to wit:-

- (1) Whether the Arrest and Detention of the Applicant by the 1st – 4th Respondent on a matter that is purely contractual and civil in nature and without reasonable suspicion of the Applicant

committing any offence or arraigning her in a Court of Law is not an infringement of her Fundamental Rights to Personal Liberty, dignity and freedom of movement contrary to Section 34, 35 and 41 of the 1999 Constitution (as amended).

- (2) Whether from the facts presented and documents filed, the transaction between the Applicant's company, 7th Respondent and the Ministry of Mines and Steel Development is not civil and contractual in nature and therefore totally outside the duties of the 1st to 4th Respondents.
- (3) Whether the Applicant is not entitled to the relief sought and reasonable compensation.

Learned Counsel for the Applicant argued the above issues succinctly in urging the Court to grant this application.

It is to be noted at this point that the 1st to 4th Respondents never came to Court and were not represented by Counsel despite having been duly served with the processes. While Idris Abubakar Esq, appeared for the 5th to 7th after the Applicant has adopted his address who made oral submissions on point of law unbehalf of the 5th to 7th Respondent to address on point law on behalf of the 5th – 7th Respondent. The 5th – 7th having not filed any processes on the date of the hearing.

Although, the Court allowed him to address the Court, looking at the provisions of Fundamental Right Enforcement Procedure

Rules 2009 particularly Order II Rules 5 to 7, particularly Rule 6 which provides.

“Where the Respondent intends to oppose the Application, he shall file his Written Address within 5 Days of the service on him of such application and may accompany it with Counter Affidavit.”

The Counsel should not have been heard. He’s submissions as made on that day becomes untenable and of no effect is accordingly hereby expunge from the Courts record.

Notwithstanding, the resultant lack of defense to the application it is trite that where a Court is called upon to make declaration of right, it is incumbent on the party claiming to be entitled to the said Declaration (Like in this matter) to satisfy the Court by evidences and not the admission or lack of defense of the adverse party. **See: - SAMES V. IGBE & ORS (2011) LPLR 4412.**

I have gone through the reliefs sought, supported by the grounds, affidavit and written address in support of the application. I wish to at this point address the 3 issues formulated by the Learned Counsel for the Applicant. It has to be said that this other two issues are dependent on the 1st issue which deals with the crux of this matter.

The first issue, which is:-

“Whether the Arrest and detention of the Applicant by the 1st to 4th Respondent on a matter that is purely contractual and civil in nature and without reasonable suspicion of the Applicant committing any offence or arraigning her in a Court of Law is not an infringement of fundamental rights to personal liberty, dignity and freedom of movement contrary to Section 34, 35 and 41 of the 1999 CFRN (as amended).

Is indeed pertinent to the success of the Applicant’s case.

I have considered the Affidavit in support of the application and legal argument canvassed by the Counsel in the written address. And given that, it is the law, that matters filed under the Fundamental Right Enforcement Procedure Rules, 2009 are fought and won vide affidavit evidences, the averments on the affidavit of the Applicant are unchallenged. And must be believed.

Looking further at this issue, it is important to consider what evidence if any is in the affidavit in support.

In paragraph 15 of the supporting affidavit the Applicant avers thus:-

“The 5th and 6th Respondents boasted that they were well connected and would teach the Applicant a lesson she would never forget in

her life. They got men of the 1st and 2nd Respondents to arrest and detain the Applicant at Asokoro Police Station in Abuja.”

On how the above arrest and detention was achieved the Applicant further avers in paragraph 16 & 24 thus:-

- 16 “That the 1st to 4th Respondents requested for the titles Documents of the Applicant and after going through the documents of the Applicant which shows clearly that the disputed site belongs to the Applicant, Declared them fake without confirming from the Issuing authority (Ministry of Mines and Steel Development) despite protest and plea from the Applicant for them to verify the documents. On the strength of this false declaration of Applicant’s document as fake, she was detained by the 1st to 4th Defendants until she was taken on bail by one Ijeoma Dikeocha around 10pm on Saturday.”
- 24 “That the transaction that gave rise to the petition of the 7th Respondent and the subsequent arrest and detention of the Applicant is purely civil, her arrest and detention is illegal, unlawful, null and void.”

Meanwhile Counsel for the Applicant in the Written Address in paragraph 4.5 summarized above 3 averments as thus:

“The Applicant was arrested by the 1st to 4th Respondents via a petition written by the 5th & 6th & 7th Respondents.”

Considering the above averments and the Counsels submission and also the fact as stated by the Applicant that she had to be taken on bail, it is clear to this Court that the Applicant was indeed taken into custody. What is not clear however is on what date, the content of the petition and how long she had been in the custody of the 1st-4th Respondent. The Applicant has, it would seem, decided not to be detailed in her averments as to the circumstances of the alleged arrest and detention.

Notwithstanding, it remains trite that facts deposed to in affidavit that are not challenged are deemed admitted. See: - **MADU V. THE STATE (2011) LPELR 3973**. / Also once a party has averred to facts in an affidavit, it behoves the adverse party to contradict these facts in a Counter affidavit if they do not represent the true position.

However, there is an exception to this general rule, where averments in the affidavit in support of an application are contradictory or if taken together are not sufficient to sustain the Applicants prayers, then a counter affidavit is most unnecessary. See: - **CHIJOKE AGU V. OKPOKPO (2009) LPELR**

8280 (C.A) and ORUNLOLA V. ADEOYE (1996) NWLR (Pt.401).

The Counsel for the Applicant submitted that the detention of the Applicant was unconstitutional and therefore unlawful especially when the Applicant was arrested without reasonable suspicion of committing an offence as required by Section 35(1) (c) of the 1999 (CFRN) as amended. The Counsel further submitted that the Applicant was arrested by the 1st to 4th Respondent via a petition written by 5th, 6th & 7th Respondents.

Here, the Counsel like the Applicant acknowledges that there was petition leading to the arrest and detention. The question that begs for an answer is what was the petition alleging. Was it alleging the commission of a criminal offence.

Section 4 of the Police Act provides thus:-

... “The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged...”

By this provision the police (like in this matter 1st to 4th Respondent) shall have the power of arrest and detention of a person upon reasonable suspicion of him having committed a crime. Of course, thus power comes with responsibility to ensure that it is done within the ambit of the law.

The Applicant in this case has maintained that her arrest and detention was not lawful and an infringement on her fundamental right even though alluding that the 5th, 6th and 7th Respondent had filed a petition before the 1st -4th Respondents (who happen to be members of the Nigerian Police) before the arrest and detention.

Paragraph 16 of the supporting affidavit is most revealing, and I produce same Thus:-

“That the 1st to 4th Respondents requested for the title documents of the Applicant and after going through the documents of the Applicant which shows clearly that the disputed site belongs to the Applicant, declared them fake without confirming from the issuing authority (Ministry of Mines and steel Development) despite protest and plea from the Applicant for them to verify the documents. On the strength of this false declaration of the Applicants document as fake, she was detained by the 1st to 4th Respondents until she was taken on bail by one Miss Ijeoma Dikeocha around 10pm on a Saturday.”

It is clear to me that a request was made for the Applicants title documents following the petition, and after inspecting the documents, they were suspected to be fake and the Applicant was taken into custody and later released on bail. These are facts as adduced by the Applicant.

It is sad that no mention was made of the content of the petition, no date was mentioned as it is usual with application of this

nature, no a time frame between actions of the 1st to 4th Respondents. All these leaves room for speculation, and in law it is trite that speculation must never take the place of facts.

Although, it is trite that detention no matter how short , can amount to breach of fundamental human right, the detention must be adjudge wrongful or unlawful in the first place. That is there is no legal foundation to base the arrest and/or detention of the Applicant.

In all I find that, even without the counter to contradict the facts as averred by the Applicant, they cannot sustain any infringement of her fundamental right under Section 34, 35 & 41 of the 1999 (CFRN) (as amended). Accordingly I find the 1st issue against the Applicant.

On the second issue, i.e

“Whether from the facts presented and documents filed, the Transaction between the Applicant’s Company, 7th Respondent and the M of Ministry of Mines & Steel Development is not civil and contractual in nature and therefore totally outside the duties of the 1st to 4th Respondent.”

The facts before the Court clearly points to a civil dispute between the Applicant & the 7th Respondent. However, this issue cannot be resolved without knowledge of the content of the petition filed before the 1st to 4th Respondents. Also given that it was the Applicant and not her company that was reported to

the 1st to 4th Respondents. As such the issue becomes untriable and I find against the Applicant.

On the 3rd issue ie:-

“Whether the Applicant is not entitled to the relief sought and reasonable compensation.”

In view of the finding of the Court on the 1st issue, the issue must be resolved against the Applicant.

Before I rule on the Applicant’s prayers/reliefs sought I want to say that Fundamental Right Enforcement Procedure is clearly not a procedure opened to all manner of perceived infractions. The Applicant may well be entitled to some reliefs using other means of seeking redress.

Finally, I find that all prayers fail in view of my findings on all issues and secondly dismissed the application.

SIGNED
HON. JUDGE
16/2/2021

LEGAL REPRESENTATIONS.

1. Egbuchulam Adanna Esq, for the Applicant
2. Idris Abubakar Esq, for the Defendants

