

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 MARCH, 2021

SUIT NO: FCT/HC/CV/3568/2020

BETWEEN:

MOHAMMADU JIBIRILLA APPLICANT.

AND

- | | |
|---------------------------------|--------------------|
| (1) INSPECTOR GENERAL OF POLICE | } ... RESPONDENTS. |
| (2) DCP BEN C. IGWEH | |
| (3) SGT ADAMU GANA | |
| (4) CONSTABLE JACOB OKAWE | |
| (5) ALH. MUSTAPHA SULEIMAN | |

JUDGMENT

The Applicant approached this Court vide an Application for order of the enforcement of his Fundamental Right pursuant to Section 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Order 2 Rule 1 of the Fundamental Rights Enforcement Procedure Rules 2009 and the inherent jurisdiction of the Court. The Applicant sought the following reliefs.

- (1) A declaration, that the act of the 1st-4th Respondents forcefully taking over possession of the Applicant's property known as Plot

1958, Cadastral Zone A-2 Wuse, Abuja and currently known as No.1 Jibiro Close, off Tunis Street, Wuse Zone 6, Abuja on the instigation of the 5th Respondent without an order of a Court amounts to a breach of the Applicant's Fundamental Right to his property as enshrined in Section 43 and 44 of the Constitution of Federal Republic of Nigeria (1999) (as amended) and Article 14 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap A9 LFN, 2004.

- (2) A Declaration that the detention of the Applicant by officers of the 1st Respondent variously on the 3rd of June, 2018 at the Command Headquarter and Zone 7, Zonal Command Abuja, Headquarter of the Nigeria Police Force, at instigation of the 5th Respondent amounts to a violation of his Fundamental Right to Personal liberty as enshrined in 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.
- (3) An order directing the 1st and 2nd Respondents and their officers to vacate the Applicant's property known as Plot 1958, Cadastral Zone

A-2 Wuse, Abuja and currently described as No.7 Jibiro Close, off Tunis Street, Wuse Zone 6, Abuja which property is forcefully occupied by them without the order of any Court of Law.

- (4) An order of perpetual injunction restraining the Respondents, their Agents, Attorneys, officers or any other person by whatever name so described whether jointly or severally from entering and/or taking possession of the Applicant's property known as Plot 1958, Cadastral Zone A-2 Wuse, Abuja also described as No.1, Jibiro Close, off Tunis Street, Wuse Zone 6, Abuja, in whatever guise, or preventing the Applicant from gaining access to the said property without an order of Court of competent jurisdiction first sought and obtained.
- (5) The sum of ₦50,000,000.00(Fifty Million Naira) only, being compensation, general and exemplary damages against the Respondents jointly and severally for breach of Applicant's Fundamental Right to his property and personal liberty as guaranteed by the Constitution and the African Charter on Human and Peoples' Rights.

GROUNDS

The Applicant has the following grounds upon which the Reliefs are sought.

- (a) The Applicant is the Bona fide owner of the property known as Plot No 1958 within Wuse 1 District – A-2 also known as No.1 Jibiro Close, off Tunis Street, Wuse Zone 6, Abuja FCT evidenced in Certificate of Occupancy No.1717w. d766-471 cr-1647-10.
- (b) The 5th Respondent entered a memorandum of understanding with the Applicant to develop the remaining undeveloped part of his land first above described, pay him a total of ₦300,000,000.00 (Three Hundred Million) naira and eventually have ownership transferred to him via a Deed of Assignment.
- (c) The 5th Respondent failed to carry out any development on the property more than two years after the Memorandum of Understanding was signed nor pay the amount that was agreed but rather was negotiating with other companies to enter

into partnership with his company to develop an Estate on the Plot while holding out himself as the allottee or owner of the land.

- (d) That, the 5th Respondent further partitioned the land and had being purportedly selling same to unwary individuals without his consent or authority, resulting in his addressing a petition against the 5th Respondent to the 1st Respondent.
- (e) That, the 1st Respondent rather act on his petition, sent officers of his monitoring team to arrest and detain the Defendant for more than 8 hours at its office in the guise of carrying out investigation on a petition by the 5th Respondent against him and was only released on bail after being forced to write a statement and without showing him the content of the 5th Respondent's petition against him for which he was arrested without a warrant.
- (f) That, the 1st Respondent's officers have also at other times arrested and detained his workers and subsequently himself at

the Zone 7, Zonal Command Wuse and the Maitama Area Command of the Nigeria Police Force all in Abuja also in the guise of carrying out investigations.

- (g) That, the 1st and 2nd Respondents have stationed 3rd and 4th Respondents on his land fully armed to prevent him from entering or taking possession of his land.
- (h) That, he has not been informed by the 1st Respondent's and its officers of any offence he has committed for which he is being harassed.
- (i) That, he is aware of the protection guaranteed him by the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the African Charter on Human and Peoples' Rights and he has decided to explore and harvest them through this Court.
- (j) The 1st – 4th Respondents have no power to enforce in whatever guise the civil terms of a Memorandum of Understanding between the Applicant and the 5th Respondent

- (k) The petitions/complaint (if any) by the 5th Respondent to the 1st Respondents officers were made mala fide and aimed at using the officers of the 1st Respondent to harass and deprive the Applicant the right to his property and in the process his right to personal liberty.
- (l) That, between June 2018 till date the officers of the 1st Respondent have been harassing him in the guise of carrying out investigation without arraigning him in Court for any offence.

In support of the application are supporting statement and 35 paragraphs Affidavit deposed to by the Applicant himself. The Affidavit has attached to it 9 exhibits marked MJ1 – MJ9. The Applicant's Counsel also filed a Written Address representing legal argument in support of the application.

The gravamen of the Applicants case as disclosed in his affidavit is that, by a letter of offer of a Statutory Right of Occupancy over a piece of Land measuring about 9060 M2 and known as Plot No.1958 within Wuse 1 District A-Z also known as No.1 Jibiro Close, off Tunis Street Wuse Zone 6, Abuja, FCT by the Hon. Minister of the FCT. That the Right

of Occupancy is evidenced by in Certificate of Occupancy No.1717w. d766Z-47/cr-16647-10 dated 4th April 2018.

That upon receipt of the title documents and approved building plan, he commenced the construction of a 6 bedroom Duplex with a Pent House on part of the land which building is currently a finishing stage. That sometimes in February, 2012, the 5th Respondent approached him with a proposal to enter into a Memorandum of Understanding with his company Caliphate Global Investment Ltd to develop an estate on the undeveloped part of the land described above. He undertook to provide finances to enable him to obtain the Certificate of Occupancy for the plot which was under process at Abuja Geographic Information Systems (AGIS).

Upon the Agreement in principle, he (the 5th Respondent) brought to the Applicant a prepared copy of the Memorandum of Understanding, prepared by the 5th Respondent's Counsel one Anthony Agbouhahor Esq. That the Applicant signed on the understanding that a formal agreement will be prepared and executed later when the terms of the Memorandum of Understanding would have been performed, by the 5th Respondent's company. That upon the Execution of the Memorandum of Understanding the 5th Respondent in line with one of the terms of the Memorandum of Understanding to provide finances to enable the Applicant process and obtain the Certificate of

Occupancy paid a total sum of ₦33,500,000.00 (Thirty Three Million Five Hundred Thousand Naira) only via the Applicant company Multi-Feeds Global Exim Ltd's account with Access Bank.

Two years after the signing of the Memorandum of Understanding, the 5th Respondent failed to carry out any construction work on the land as contained in the Memorandum of Understanding but rather proceeded to the land to remove and sell the roofing sheet in the six bedroom Duplex, pull down the frames, removed and sold out the iron gate on the land. The Applicant directed his Counsel to draft a letter terminating the Memorandum of Understanding and demanding that the 5th Respondent comes for refund the monies received for the processing of the Certificate of Occupancy less the cost of the roofing sheet, frames and Iron Gate removed or destroyed.

That upon the receipt of the termination letter, the 5th Respondent engaged the services of thugs to prevent the Applicant and his workers from getting access to the land, while he also discovered that the 5th Respondent was also making surreptitious moves to enter into agreement with some companies holding out his company as the owner of the plot to develop housing estate and represent himself as the owner of the land to unsuspecting buyers whom no agreement was reached transferring title of the land.

That the Applicant later discovered that the 5th Respondent and his company were ex-convicts for the offences relating

to Land Racketeering he wrote a petition to the 1st Respondent but rather than act on his petition in a dramatic turn of events he was arrested on the 3/6/2018 by the 1st Respondent monitoring team in a purported complaint by the 5th Respondent. The Applicant was detained from 11.00am to 8.30pm before he was released on bail. That on the 29th of September 2020, the Applicant received information that his workers on site have been arrested by Maitama Area Command of the Nigeria police. That on arrival at the command, he was informed that they have been taken to Zone 7 and there the officers told him that he was the one they were looking for and arrested and detained him from 10.00am to 6.30pm when he was released on bail. Subsequently, the 2nd Respondent posted the 3^{rs} and 4th Respondents armed with rifles to remain at the plot to prevent him and his workers from gaining access to the land while allowing the 5th Respondent free access to the land. That there is a pending suit between the Applicant and the 5th Respondent and his company in respect of the plot in **Suit No. CV/1494/2018** before this Court.

That there is an existing order of interlocutory injunction restraining the 5th Respondent access to the land pending the determination of the matter. That the 1st - 4th Respondents have not informed the Applicant the offence for which he was arrested and detained but repeatedly told investigation is still on and he could be re-arrested. That his arrest on two occasions has caused him physical and

psychological trauma. That it is in the interest of justice to grant the application.

Learned Counsel for the Applicant formulated two issues for determination.

- (1) Whether having regard to the facts and circumstances of the transaction leading to this application as contained on the affidavit, Evidence, the 1st – 4th Respondents have acted “ultra vires” their constitutional and statutory powers in their attempts to interfere in the civil disagreement between the Applicant and the 5th Respondent arising from the Memorandum of Understanding and in the process violating the Applicant’s Right to property and personal liberty as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the African Charter on Human and Peoples Right on the instigation of the 5th Respondent.
- (2) If the above issues is answered in the affirmative, whether the Respondents are not thereby jointly and severally liable to the Applicants claim for compensation, general and exemplary damages thereby.

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

It is to be noted, at this point, that the Respondents never come to Court nor were they represented by Counsel even after serving of originating processes and other notices were served on them.

I have carefully gone through the reliefs sought as by the Grounds, the Affidavit and Written Address in support of the application.

The first issue formulated in the Written Address i.e

“Whether having regard to the facts and circumstances of the transaction leading to his application as contained in the Affidavit, the 1st - 4th Respondents have acted “ultra vires” their constitutional and statutory power in their attempts to interfere in a civil disagreement between the Applicant and the 5th Respondent arising from the Memorandum of understanding and in the process violating the Applicant’s Right to property and personal liberty as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the African Charter on Human and Peoples’ Right on the instigation of the 5th Respondent.”

Is indeed pertinent to the success of this suit.

It is trite that where the Court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the said Declaration to satisfy the Court by evidences and not the admission or lack of defence of the adverse party **See: SAMES V. IGBE & ORS (2011) LPELR 4412.**

From the endorsement on the face of the originating process, the Applicants seek two declarations.

- a. A declaration that the act of 1st – 4th Respondents forcefully taking over possession of his property known as Plot 1958, Cadastral Zone A-2 Wuse Abuja and currently known as No. 1 Jibiro Close, off Tunis Street, Wuse Zone 6, Abuja on the instigation of the 5th Respondent without an order of a Court amounts to a breach of the Applicant's Fundamental Right to his property as enshrined in Sections 43 and 44 of the Constitution of the Federal Republic of Nigeria (1999) (as amended) and Article 14 of the African Charter on Human and Peoples Rights (Ratification and enforcement) Act CAP A9 LFN 2004.

- b. A declaration that the detention of the Applicant by officers of the 1st Respondent variously on the 3rd of June 2018 at the Command Headquarter
- c. and the Zone 7, Zonal Command Headquarter, Abuja, at the instigation of the 5th Respondent amounts to a violation of his Fundamental Right to Personal Liberty as enshrined in Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended and Article 6 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act CAP A9 LFN 2004.

I will now look at what is before the Court and see if the Applicant has indeed made out a case deserving of the two sought declarations above.

It is the law, that matters filed under the Fundamental Right Enforcement Procedure Rules of 2009 are fought and won vide affidavit evidence.

The Applicant affidavit in support of the application averred that sometimes in February 2012 the 5th Respondent approached him with a proposal and he entered into an agreement evidenced by an Exhibit MJ3 – Memorandum of Understanding wherein the 5th Respondent through his company Caliphate Global Investment Ltd was to develop an estate on the undeveloped part of the Applicant's property

described in paragraph 7 and 8 of the Affidavit. That 2 years after the signing of the memorandum of understanding the 5th Respondent failed to carry out any construction but rather proceeded to remove and sell the roofing sheets in an existing building on the property.

The Applicant then decided to terminate the agreement and the 5th Respondent engaged thugs to prevent the Applicant from accessing the property. That when the 5th Respondent started presenting himself to unsuspecting buyers as title holder to the property, the Applicant reported the matter to the police. But that in a dramatic turn of events on the 3rd of June 2018 the IGP monitoring team came to his house and arrested him on the complaint filed by the 5th Respondent. And that on the 29th of September 2020 he was arrested again on the same issue. That since then the 2nd Respondent posted the 3rd and 4th Respondent to the property to prevent the Applicant access to it. That there is pending suit on the property. See: Exhibit MJ8 and an interlocutory injunction restraining the 5th Respondent and his company from entering or carrying out any activity on the land pending determination of the suit. See: Exhibit MJ9. That the 1st – 4th Respondents being aware of the pendency of the suit and the interlocutory order have ignored them and preferred to protect the 5th Respondents access to the property.

These are facts unchallenged by the Respondents.

I will for clarity produce at this point the two section of the Constitution of the Federal Republic of Nigeria. 1999 the Applicant predicates his application on.

Section 43 provides:

Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

Section 44, “No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by law. . . . that. . . .”

I dare to ask, has the right of the Applicant to lawful possession of his property been breached by the Respondents. It is in evidences that he entered into a memorandum of understanding with the 5th Respondent as “owner” of the property and the 5th Respondents Company as “Developer.”

It is also in evidence that High Court of the FCT has restrained the 5th Respondent or persons acting on his behalf to having any activity on the property pending determination of the suit filed by the Applicant. The 5th

Respondent acting through the 1st to 4th Respondent are wrongly depriving the Applicant from access to his property and thereby infringing on his right to peaceful possession of his property enshrined in Sections 43 and 44 of the Constitution of Federal Republic of Nigeria 1999 as amended and I so declare.

Having made the 1st declaration as prayers. I will now consider the second declaration. For clarity Section 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 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.”

Although by the provision of the Police Act, the police has the power of arrest and detention of a person upon reasonable suspicion of him having committed a crime, It is not clear to me what offences was committed. Why has the Applicant not been arraigned up till now. Why is the police i.e 1 – 4 Respondents safeguarding the property for the 5th Respondent instead of the order of Court.

Even if I assume there was a valid complaint regarding the land in 2018 why was the Applicant still subjected to arrest

and detention in year 2020 without been arraigned. It is clear to me that the 1st – 4th Respondents had engaged unlawfully in taking side in civil dispute over right or interest on the property in question. The action of the 1st – 2nd Defendant arresting the Applicant is in defensible especially in the light of the pending suit and Court Order Exhibits MJ8 and MJ9. I find that the arrest and detention of the Applicant by the 1st and 2nd Defendant is on the bidding of the 5th Respondent is not lawful and infringes on the Applicants Fundamental right as enshrined in Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and I so declare.

In view of the two Declarations above. Prayers C and D on the originating motion are hereby granted as prayed.

Having found the Respondents jointly and severally in breach of the Applicants Fundamental Right to Personal Liberty the Respondents are to pay to the Applicant jointly and several the sum of ₦5,000,000.00 (Five million Naira) only being compensation.

This is the Judgment of this Court.

SGND
HON. JUDGE
24/3/ 2020

LEGAL REPRESENTATION

(1) Paul O. Oshomomo for the Applicant.

