

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON WEDNESDAY THE 23RD DAY OF JUNE, 2021

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N.
OGBONNAYA**

JUDGE

SUIT NO.: FCT/HC/CV/407/2021

BETWEEN:

USMAN MARAZU

----- } APPLICANT

AND

1. THE COMMISSIONER OF POLICE,
FEDERAL CAPITAL TERRITORY
 2. THE ATTORNEY – GENERAL OF THE FEDERATION
AND MINISTER OF JUSTICE
- } RESPONDENTS

JUDGMENT

On the 12th of February, 2021 Usman Marazu instituted this Suit which is predicated on FREP claiming the following:

- 1. AN ORDER AND A DECLARATION** that the Fundamental Human Rights of Applicant as guaranteed under Sections 33 (1), 34 (1) (a), 35 (1) (3) (4) (5) & (6), 36 (1) & (6), 41 (1) of the 1999 Constitution as amended of the Federal Republic of

Nigeria, Articles 3, 4, 5, 6, 7(b) and 12 of African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, CAP A9, Laws of the Federation of Nigeria are being breached by the Respondents.

2. AN ORDER AND A DECLARATION that the is entitled to being arraigned or charged by the Respondents before a competent Court of law of any purported criminal allegation in accordance with the Administration of Criminal Justice Act, 2015, Penal Code, 1999 Constitution and any relevant law of the Federal Republic of Nigeria and the overt failure of the Respondents to so charge or arraign the Applicant for a long time without any reason and yet Applicant still being kept in prison is a serious and violent violation of the laws and the Constitution of the Federal Republic of Nigeria that inheres upon this Court to release the Applicant unconditionally from prison custody.

3.(a). AN ORDER of this Honourable Court unconditionally discharging, releasing and setting the Applicant free from incarceration and prison custody and a further Order that the Respondents or any of their servants or agents shall not re-arrest or incarcerate or impede the freedom of the Applicant in respect of this matter except with the express leave of this Court.

OR

(b). AN ORDER OF COURT directing and compelling the Respondents to charge or arraign the Applicant before a competent Court of law which is the High Court within two (2) weeks of the grant of this Order, failure to do so by Respondents shall operate or mean automatically that Applicant shall be unconditionally released from prison custody or detention or a directive that Applicant be released immediately from prison custody or detention after two (2) weeks of failure of Respondents to charge or arraign the Applicant in High Court.

4. Public apology from the Respondents to the Applicant.

5. AND FOR such Order or Orders as the Court may deem fit to make in the circumstances.

That application is based on 32 grounds which are:

- (1) Adeolu Salako Esq. was engaged by the Applicant on the 26th of January, 2021 vide a letter of instruction to bring this instant application before this Honourable Court.
- (2) Immediately Adeolu Salako Esq. was engaged, he dispatched one Chiamaka Echeozo, being a Counsel in his firm, to visit and obtain information from the Applicant in prison custody at Kuje Medium Security Correctional Centre, Abuja.
- (3) The Applicant is a Truck Pusher plying his trade around Gaduwa, Abuja.
- (4) On the 15th of June, 2020 the Applicant was sleeping in his house which is a Batcher at Gaduwa junction, Abuja when soldiers stormed into the area and began to raid.

- (5) The soldiers, in the heat of the raid, suddenly burst into the batcher where the Applicant was sleeping and started accusing the Applicant of the offence of Armed Robbery.
- (6) The Applicant was picked up amongst others and was taken to the soldiers' barracks where a cloth was shown to him and he was forced to claim ownership of the cloth.
- (7) The Applicant being obvious of why he had to claim ownership of a cloth that does not belong to him and he knows nothing about immediately refused claiming ownership of the said cloth.
- (8) The Applicant was then whisked away and detained at Apo police station for two (2) weeks where he was mercilessly tortured as he was being confronted with the said offence of Armed Robbery that he never committed.
- (9) On the 2nd of July, 2020 the Applicant was transferred to the defunct Special Anti-Robbery Squad (SARS) custody popularly known as "abattoir" where he was detained for about seven (7) months till 2nd of December, 2020.
- (10) While in detention in the SARS custody, the Applicant was subjected to various forms of the worst and most degrading kinds of torture and punishment including but not limited to being beaten mercilessly with 2 inch by 2 inch wooden plank, cutlass, iron rods and so on and being hung from the ceiling amongst others.
- (11) The officers of the SARS brought already written inculpatory statements to the Applicant to append his signature, which the Applicant had no choice but to sign because of the constant beating and torture.
- (12) The Respondents refused to bring any charge against the Applicant during this period of illegal detention.
- (13) On the 2nd of December, 2020 the Applicant was brought before a mobile Court convened in the premises of the SARS office where the Applicant who was not arraigned, was transferred to Suleja Prison on the mobile Court's warrant to be detained for a period of two (2) weeks.

- (14) The Applicant ended up being in detention in Suleja Prison for almost two (2) months until Saturday the 23rd day of January, 2021 when he was transferred to Kuje Correctional Centre without having been charged or arraigned before a Court of competent jurisdiction.
- (15) The 1st & 2nd Respondents have constantly failed, refused and neglected to charge the Applicant to a Court of competent jurisdiction, and refused to release the Applicant but used the mobile Court warrant to dump the Applicant in both Suleja and Kuje prisons.
- (16) The Applicant is suffering a lot and the continuous incarceration without trial is debilitating the health of the Applicant with almost fatal consequences.
- (17) The Applicant, who used to be bubbly and full of life, has been reduced to a pitiable bag of bones because of allegations of committing offences that he is innocent of, and being at the wrong place at the wrong time.
- (18) The Applicant had made a statement before the SARS and yet the Respondents refused to charge the Applicant before a competent Court of law.
- (19) The Applicant has not been charged before any competent Court of law for any crime, yet dumped in detention for almost one (1) year on no valid detention warrant by any competent Court of law.
- (20) The mobile Court is not a competent Court of law with jurisdiction to detain the Applicant of any offence whatsoever.
- (21) The Applicant is entitled to be charged to a competent Court of law if there is any allegation of crime against him.
- (22) There is not in existence any First Information Report (FIR) or application to prefer a charge against the Applicant.
- (23) Up till this moment, the Applicant has not been charged to Court and arraigned accordingly and is suffering in prison detention.

- (24) There are competent Courts with criminal jurisdiction spread all over FCT Abuja and its suburbs, within a radius of forty kilometers which Applicant can be tried but the Respondents have refused to charge him to a competent Court for any purported crime.
- (25) The right to life of Applicant is threatened by the Respondents.
- (26) The human dignity of Applicant is being trampled upon by Respondents.
- (27) The Applicant's liberty is being infringed upon.
- (28) The Applicant is not being given the opportunity to be heard before a Judge.
- (29) The Applicant does not want further degrading treatment again.
- (30) The Applicant does not want to die in custody but wants to live.
- (31) The Applicant wants the prayers sought to be granted.
- (32) It is the High Court that has jurisdiction to try the matter of the Applicant.

The Counsel on behalf of the Applicant filed an Affidavit of four (4) paragraphs. He attached a letter of authorization by the Applicant to stand for him in this case. That document is marked EXH A.

In the Written Address, the Plaintiff Counsel raised a lone Issue for determination which is:

“Considering the circumstance of this, whether the Applicant is entitled to the grant of this application against the Respondents as guaranteed under S.33 (1), S.34 (1) (a), S.35 (1) (3) (4) (5) & (6), S.36 (1) & (6), S.41 (1) and S. 46 (1) of the 1999 Constitution as amended of the Federal Republic of Nigeria as well as Articles S.

3 – 7 (b) (d) and Article 12 of African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, CAP 9, Laws of the Federation of Nigeria 2004.”

That from the Affidavit in support of the application, the Applicant was sleeping in his house, a batcher, at Gaduwa, Abuja when the men of the military broke into the said Batcher and whisked him away to their barrack and force him to admit the ownership of a shirt.

That long detention of the Applicant without charging him to Court is an abuse of his extant right as set out in this application. That it violates S. 35 (4) & (5) of the 1999 Constitution as amended. That there are several Courts within 40 Kilometers radius from his place of arrest at Gaduwa where the Respondents should have arraigned him or charged him before any Court for any offence. That the action of the Respondents is an infringement of the Applicant’s Right as stated. The referred to the following cases:

**Abubakar V. Kano State & Anor
(2019) LPELR – 48970 (CA)**

**Danladi V. Dangiri & Ors
(2014) LPELR – 24020 (SC)**

That **S.35 (4)** mandated that the Applicant be tried within two (2) months of his arrest or detention since he is in custody or be released unconditionally or on such condition that will ensure his appearance for trial. That that is the entitlement of the Applicant as set out in **S.35 (4) & (5) of the 1999 Constitution as amended.**

That Applicant is entitled to fair-hearing within a reasonable time. That failure of the Respondent to charge him to Court infringes on his Right to fair-hearing so also the continuous incarceration without charging him to Court and proving any allegation against him. It denied him chance to defend himself. That absence of First Information Report (FIR) or application to proffer a charge against him infringes his constitutional Right.

That the torture, degrading treatment, inhuman treatment and discretion of his fundamental Right entitles him to public apology and compensation going by **S. 35 (6) of the 1999 Constitution as amended.**

They urged Court to grant the Reliefs sought based on those facts as contained in the Affidavit as doing so will serve as deterrent to the Respondents.

COURT:

The sacredness of the provisions of CAP 4 of the 1999 Constitution of the Federal Republic of Nigeria which are predicated on the Fundament Right of the citizens of Nigeria cannot be quantified or equated with any other provision of the Constitution. It is the very pillar upon which the Constitution and the law stand. The said provisions are so sacred that any attempt by anyone, be it the citizenry or the leader or the led, to infringe any of those provisions, attracts punishment of apology or payment of damages as compensation. Those Rights are not absolute though and can only be tampered with by a procedure permitted by law. So where the Right is tampered with outside the procedure permitted by law, it is said that there is an infringement or breach of such Right. The Court frowns at any one both to the leader

and the led that attempts or actually infringes on those rights or any of them.

The FREP Rules had provided the steps which a citizen can take and the procedure the Court can follow and consider where there is allegation of infringement of any of those Rights. One of those provisions is that no citizen shall be detained for more than twenty four (24) hours where there is Court within forty eight (48) Kilometers radius from the detention point or for more than two (2) months in other extreme cases as the circumstance of the case will warrant.

In this case, the Applicant had alleged that he was arrested from his house where he was sleeping in his batcher at Gaduma on the 5th of June, 2020. That since then he had gone from Apo Police Station where he was detained initially to the SARS (Abattoir) office and subsequently taken to Suleja Prison and currently dumped at Kuje Prison. That all these while, he had never been arraigned before any Court of competent jurisdiction. That no charge was proffered and no First Information Report (FIR) filed in any Court against him.

That the Court should hold and declare that the inability of the Defendants to proffer a charge or file any First Information Report (FIR) is an infringement of his Right. That the inhuman and degrading treatment meted to him while in detention is also an infringement of his Right as set out in CAP 4 of the 1999 Constitution of the Federal Republic of Nigeria as enshrined.

He had urged the Court to so hold and Order that he be either charged by a Court of competent jurisdiction or to

be released unconditionally. That Court should also Order the Respondents to apologize to him.

The Respondents were served but they did not respond or challenge or controvert the case of the Applicant and the facts in the Affidavit in support of the case. The Court ensured that they were duly served with the Application and Hearing Notices.

It is the law that an unchallenged fact is deemed to be admitted by the party who ought to so challenged or controverted the fact but failed to do so. The Court deems it so. But the Court still has the duty to consider in great details, the facts upon which allegation of infringement is based to see if such action as alleged actually breached the Rights as claimed before it can grant the Reliefs sought in such application.

In this case, the Applicant, through the facts disclosed by his Counsel in the Affidavit, based on the authorization given to him by the Applicant – **EXH 1**, has established in great details his ordeal in the hand of the Security Operatives who had detained him on allegation of conspiracy to commit robbery and how they had forced him to state and accept that he is the owner of a shirt. He has lamented his long incarceration at the various places he referred to in the Affidavit. These facts are raw, credible, vivid and accurately stated.

It is not in doubt that the Applicant has been detained for close to ten (10) months without trial or being charged to Court. Bail had not been granted to him too administratively or by the Court. These facts were not denied by the Respondents. The Constitution frowns and condemns any act of long detention and incarceration

without charging to Court. This Court believed him. Those facts were not controverted by the Respondents though they were given all opportunity to do so. Not controverting and not challenging those facts makes this Court to hold that those facts are deemed and are actually admitted by the Respondents.

That is why this Court holds that this application by the Applicant is meritorious and that he has established that his Right was infringed by the action of the Respondents based on the long detention without charging him to Court and also because of the torture and inhuman treatment meted out to him while in the long and continuous detention.

This Court therefore Order that Reliefs No. 1 & 2 are granted as prayed.

On Reliefs No.3, the Respondents are to release the Applicant immediately without any further delay. They are barred from arresting him in relation to this case.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2021 by me.

**K.N. OGBONNAYA
HON. JUDGE**