

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 30TH DAY OF JUNE, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/M/12962/2020

BETWEEN:

PASTOR ECHEOFUN SUNDAY

APPLICANT

AND

- 1. INSPECTOR-GENERAL OF POLICE**
- 2. THE NIGERIAN POLICE FORCE**
- 3. BERNARD OJIE**
- 4. CHIEF KENJIKA L. EKEDEDE**

RESPONDENTS

JUDGMENT

This is an originating motion dated 11th day of December 2020 for the enforcement of the fundamental rights of the Applicant brought under sections 34(1) and 35(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended and Order II Rules 1, 2, and 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Articles 4 and 5 of the African Charter on Human and People's Rights (Enforcement and Ratification) Act Cap A9 Laws of the Federation of Nigeria 2004 and under the inherent jurisdiction of this Honourable Court. The grounds upon which the reliefs are sought are as follows:-

- 1) A Declaration that the Applicant is entitled to his fundamental rights to freedom of movement, personal liberty and dignity of human person

eminently entrenched and guaranteed under Sections 34(1) and 35(1) of the 1999 Constitution (as amended), Order II Rules 1, 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, Articles 4 and 5 of the African Charter on Human and People's Rights (Enforcement and Ratification) Act, Cap A9 LFN 2004.

- 2) A Declaration that the arrest of the Applicant on the 8th day of October 2020 at 10:52am by the Respondents, his detention from 8th day of October 2020, to 9th day of October 2020 at 7:30pm and assault meted on him, without an order of Court lifting the veil of incorporation being a director of Besquevision International Ltd company over a purely civil transaction that involved purchase of land and relocation of site, is unlawful and a breach of his fundamental right to freedom of movement, personal liberty and dignity of human person.
- 3) An Order of this Honourable Court directing the 3rd Respondent to release the Applicant's title to land documents seized before his bail was granted to him and the sum of One Hundred Thousand Naira (N100,000.00) collected from the Applicant before admitting him to bail forthwith.
- 4) An Order directing the Respondents to pay the sum of N50,000,000.00 (Fifty Million Naira) as compensation/damages to the Applicant for unlawful arrest, detention in custody of the Respondents from the 8th day of October 2020 at 10:52am to the 9th October, 2020 at 7:30pm without a Court Order, over a purely civil case that involved purchase of land and relocation of site and the serious humiliation, embarrassment and damage to his reputation as a resident Pastor, Dunamis International Gospel Church.
- 5) An Order of perpetual injunction restraining the Respondents or any of their agents from further harassment, arrest, detention of the Applicant over the same land (civil matter) situate at Karshi, FCT, Abuja.

6) AND for such order or further orders as this Honorable Court may deem fit to make in the circumstance of this case.

In support of the application was a statement containing the reliefs and grounds of the application, as well as a 26-paragraph affidavit deposed to by the Applicant and a Written Address.

Upon service of the originating application on the 1st, 2nd, 3rd and 4th Respondents, none of them filed any response to the application.

From the supporting affidavit deposed to by the Applicant, his case was that he was a resident pastor of Dunamis International Church, along City College Road off Abacha Road, Karu LGA Nasarawa State. Sometime in 2012 the 4th Respondent approached his company for the purchase of a plot of land by the proposed Dunamis International Gospel Church's headquarter at Karshi, Abuja and the transaction was completed via evidence of allocation of the plot to him while he paid the money to the Company account. The receipt of payment was attached and marked as annexure "B". That the proposed Dunamis International Gospel Church's headquarter was relocated to Airport Road suddenly due to lack of access road and other facilities. He also averred that the land acquired by the company is about 22 hectares out of which a plot was allocated to the 4th Respondent upon payment. The Receipt of purchase of the said 22 hectares, change of name and proposed layout is hereby attached and marked as annexure "C, C1 and D" respectively.

He added that there was no clause in the deed of assignment and receipt of purchase for reallocation/or refund of money in the event that the proposed Dunamis International Gospel Church relocates its headquarters to another place. He stated that upon the relocation of the proposed Dunamis International

Gospel Church's headquarters to Airport Road, most of the buyers of the 22 hectares inclusive of the 4th Respondent demanded for a refund or reallocation to a new site which was well developed. He further stated he told the 4th Respondent as well as the others to be patient for the said 22 hectares of land to be sold and have their funds released to them by the company and the 4th Respondent refused. He added that the land the 4th Respondent purchased existed and there was no form of encumbrances in any form. He attached a copy of the title document to the land and marked same as annexure "C".

He added that the problem that the 4th Respondent had with the land was that it was not yet developed due to the relocation of Dunamis International Gospel Church's headquarters to Airport Road. He maintained that the 4th Respondent instigated the 1st Respondent to arrest the Applicant, publicly handcuffed him as a hardened criminal in the society regardless of the fact that he told the Police officers that he was a Pastor with Dunamis Church, adding that he did no wrong or committed any crime as alleged by the 4th Respondent. He revealed that the 3rd Respondent was the Police officer who led the team from the Inspector-General of Police Special Anti-Robbery Squad that arrested the Applicant on the 8th October 2020, brutalized him, detained him at the SARS detention facility at Guzape and forced him to pay ₦100,000.00 (One Hundred Thousand Naira) only to the 3rd Respondent and release the title documents to his personal land in Karshi to the 3rd Respondent with a view to conduct a search and hand over the document to the 4th Respondent as an exchange for the land he wanted in a developed area. He added that the worth of the Applicant's land in Karshi is far above what the 4th Respondent paid for as same was valued currently at Five Million Naira (₦5,000,000.00), contrary to the sum of Two Million Four Hundred

Thousand Naira (N2,400,000.00), he paid for the plot at the then proposed Dunamis International Gospel Church's headquarter.

He maintained that the Applicant's arrest was at the instance of the 4th Respondent (Chief Kenjika L. Ekedede) who allegedly petitioned the office of the Inspector-General of Police as the Applicant was informed by the 3rd Respondent. He contended that the Applicant knew as a fact that the Respondents never obtained an Order of the Court lifting the veil of incorporation before they arrested the Applicant as one of the directors of Besquevision International Ltd from which the 4th Respondent purchased land. He added that he knew as a fact that the company was a distinct entity from the owner in any transaction the company entered with anybody and that he also knew as a fact that the essence of corporate legal personality of a company protected the owners until a Court Order lifting the veil of incorporation was made before the owners of the company could be made to face any wrong done by the company or personal assets of the directors and subscribers could be taken.

He asserted that his arrest, assault, detention, humiliation, public embarrassment, and handcuffing meted on him by the Respondents at the instance of the 4th Respondent was done without any order of court lifting the veil of incorporation of the company. He averred that the land transaction that happened between the Company which he was one of the directors and the 4th Respondent was a purely civil matter. He maintained that the thread of unfounded and spurious allegations by the 4th Respondent, no matter how well captioned it might be brought, ought not to have warranted the 1st to 3rd Respondents to embark on his arrest knowing full well that it was a land matter. He averred that since his public arrest, handcuffing, humiliation, assault, and

detention, he had lost his hard-earned goodwill, good reputation, public image as a Pastor before the members of his congregation who saw him being treated as a common criminal and those who heard the story. He urged this Honourable Court to activate the constitutional safeguards enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 as amended by granting the reliefs sought by the Applicant.

In his Written Address in support of his application which he adopted on the 30th of March, 2021 as his argument in support of the application, Learned Counsel for the Applicant raised one main issue for determination by this Honourable Court which is:-

Whether in the circumstance of this case the Applicant is entitled to the prayers contained in the motion paper?

From the issue raised by the Applicant in this case, the sole issue for determination in the case is whether the Applicant has established infringement of his fundamental rights against the Respondents and if so, whether he is entitled to the reliefs sought.

Learned Counsel to the Applicant submitted that the Applicant was arrested on the 8th of October 2020, brutalized, humiliated, and detained in police custody for purely civil matters involving the purchase of land and re-allocation which same is in violent breach of the Applicant's fundamental rights to personal liberty, freedom of movement, dignity of human persons and fair hearing. He cited the case of ***Dibiav. Igwu (1998) 9 NWLR (Pt. 564) 78 at 85.***

Learned Counsel further submitted that the Applicant being one of the directors of the company has been detained, assaulted, and brutalized for about 40 hours

without any order of a court of competent jurisdiction lifting the veil of incorporation.

He submitted that this Honourable Court stands between the Applicant and the Respondents to defend the Constitution of the Federal Republic of Nigeria, particularly as it relates to personal liberty and fair hearing. He cited the case of ***Governor of Lagos State v. Ojukwu (1986) 1 NWLR (Pt. 18) at 648 Supreme Court per Oputa JSC.***

On whether the detention of the Applicant offended his rights as guaranteed in Chapter IV of the Constitution, Learned Counsel submitted that this Honourable Court had a constitutional duty to declare the arrest and detention, unlawful and to protect the Applicant, an innocent citizen, from paying for what was not a crime which was the subject of exercise of statutory power of the 1st Respondent as contained in the Police Act. He further stated that the doctrine of corporate personality is to the effect that a company was distinct in law from the owner. He cited the case of ***Salomon v. Salomon & Co. Ltd (1897) CA 22.***

Learned Counsel also submitted that the personal liberty of the Applicant was trampled upon illegally when the Respondents incarcerated him without following a due process of law by lifting the veil of incorporation and contrary to the fundamental rights guaranteed under the 1999 Constitution as provided for in section 35 Chapter IV of the Constitution.

He further contended that personal liberty of a citizen was crucial and so has been eulogized in several ways in some jurisdictions including the United States as typified in the famous statue of liberty. An infraction of the right would result in compensation and an apology from the appropriate authority or person. He cited the case of ***NWANGU v. DURU (2002) 2 NWLR (Pt 751)265 at 279.***

Learned Counsel further submitted that the 1st to the 3rd Respondents had no statutory power under the Police Act to hear and determine any matter involving or relating to title of land. He cited the provisions of section 4 of the Police Act 2004 as amended which dwells on the functions of the Nigerian Police Force. He then urged the Court to grant the Applicant's reliefs.

By nature, an action for the enforcement of fundamental rights embodies in it a declaratory relief which places a duty upon the Applicant to first establish an infringement of his fundamental rights before establishing his entitlement to other reliefs which he claims are arising from such infringement. In such an action, the Applicant has a duty to place before the Court vital evidence in proof of his case. In ***FAJIMIROKUN v. C.B. (CI) NIG LTD (2002) 10 NWLR (PT 744) 94***, the Court of Appeal per Sanusi JCA (as he then was) stated that:

“For an application alleging infringement of fundamental rights, to succeed, the applicant must place before the court all vital evidence regarding the infringement or breach of such rights. The burden shifts to the respondent after that. Where that has not been done, or where scanty evidence was put in by the applicant, the trial court can strike out such application for being meritless.”

The issue for determination in this matter is whether the Applicant has established his allegation of infringement or breach of his fundamental rights by the Respondents as to entitle him to the reliefs he seeks.

First of all, I have to clarify some issues. This is a fundamental rights enforcement proceeding. It is not a proceeding under the Companies and Allied Matters Act. The question before this Honourable Court is not whether the circumstances were such as to necessitate the lifting of the veil of incorporation

of Besquevision International Ltd. The question is whether the relationship between the Applicant and the 4th Respondent and the transaction binding them was of such a nature as to justify the intervention, or, more appropriately, the interference of the 1st to 3rd Respondents. It is therefore strange that Learned Counsel for the Applicant would make so much heavy weather of the procedure and principle of lifting the veil of incorporation. Is Learned Counsel for the Applicant indirectly informing the Court that the company Besquevision International Ltd was an instrument or vehicle of fraud for the veil of incorporation to be lifted or that the Applicant acted in collusion with the 4th Respondent or any other person to defraud the company?

It is a settled principle of company law that a company acts through its members in a general meeting, board of directors, managing director, or any officer or agent duly authorized by the company by means of a resolution to that effect. See section 89 of the Companies and Allied Matters Act, 2020. However, under the circumstances envisaged in section 90 of the Companies and Allied Matters Act, 2020, acts of officers or agents may not be acts of the company. See also ***Dike v. Kay-Kay Construction Limited (2017) 14 NWLR (Pt. 1584) 1 CA***. It is my considered view that whether the acts of the Applicant came under section 89 or section 90 of the Companies and Allied Matters Act 2020 should not be the preoccupation of the Learned Counsel for the Applicant. As far as this application is concerned, Learned Counsel should have paid more attention to the nature of the transaction between the company of the Applicant and the 4th Respondent instead of wondering why his client should be arrested, without a prior lifting of the veil of incorporation, over a transaction involving the company. Learned Counsel should always be circumspect whenever they are drafting processes and advancing legal arguments before the Court so that they

do not, in their ambitious desire to impress their clients and the Court, embark on a wild goose chase and unnecessary academic voyage and irredeemably jeopardize the case of their clients.

Having said that, I must state that I have carefully gone through the processes and the statement of fact and affidavit in support of the application. I am of the firm belief that this matter is one that comes within the purview of the fundamental rights enforcement proceedings, and I shall proceed to treat it as such.

From the deposition of the Applicant, the allegations raised against the Respondents was that the Applicant's, arrest, assault, detention, humiliation and public embarrassment was done without any order of Court by the 1st to the 3rd Respondents at the instance of the 4th Respondent and that same were in breach of the Applicant's fundamental rights to personal liberty, freedom, dignity to human person and fair hearing. At the root of this egregious breach of his fundamental rights was a dispute relating to a transaction involving the sale of a plot of land at the proposed Dunamis International Gospel Church's headquarters at Karshi, Abuja. See paragraphs 4 – 11 of the affidavit in support of the application. Transactions relating to land are purely civil in nature and do not admit of any form of intervention by the Police. Involving the Police in a civil transaction is therefore unwarrantable and *ultra vires* of the powers of the Police as delineated in section 4 of the Police Act 2020 as amended.

The Courts have condemned repeatedly and in no uncertain terms the unfortunate practice of law enforcement agencies abdicating their constitutional and statutory duties to engage in mediating meddlesomely in civil disputes. In ***Skye Bank Plc v. Njoku & Ors (2016) LPELR-40447 (CA)*** the Court of Appeal

held that: **“...a party that employs the Police or any law enforcement agency to violate the fundamental right of a citizen should be ready to face the consequences, either alone or with the misguided agency... The Police have no business helping parties to settle or recover debt...”**See also **EFCC v. Diamond Bank Plc & Ors (2018) LPELR-44217(SC) per Bage, JSC; Omuma Micro-Finance Bank Nig Ltd v. Ojinnaka (2018) LPELR-43988 (CA); Abah v. UBN Plc & Ors (2015) LPELR -24758 CA; and Okafor & Anor v. AIG Police Zone II Onikan & Ors (2019) LPELR-46505(CA)** among others.

The Applicant further provided facts which ground the reliefs sought and some reliefs not sought. The 1st to 3rd Respondents at the instance of the 4th Respondent arrested and detained the Applicant without any order of court to that effect. See paragraphs 12, 13, 15, 16 and 17 of the affidavit in support of the application. This is in gross violation of his rights to personal liberty and freedom of movement. The Applicant afforded the court the graphic details of his intense humiliation and monumental embarrassment which he suffered at the hands of the Respondents. Publicly handcuffing a citizen who was not caught in the course of committing a violent crime or who had not been pronounced guilty by a court of competent jurisdiction is, indeed, a breach of the citizen's right to dignity of the human person.

In the process of this illegal and unlawful arrest and detention, the documents of title to the Applicant's personal land was seized from him by the 3rd Respondent who purported to be conducting a search on the document and who has held onto the documents since then. See paragraphs 13 – 16 of the affidavit in support. Apart from the fact that this is tantamount to a breach of the Applicant's right to acquire and own immovable property anywhere in Nigeria, this shameful conduct is an *ultra vires* conduct on the part of the officers involved in the act. It

is bad enough that the Police officers got themselves involved in a civil dispute; it is utterly reprehensible for them to turn themselves into land registry officers, a jurisdictional sphere that is not contemplated in section 4 of the Police Act, 2020.

The 1st to the 4th Respondents have neither appeared nor filed any response to this suit in opposition despite all opportunities granted them to do so. The trite position of the law is that they are deemed to have admitted the averments contained in the Applicant's supporting affidavits. See the case of **OGOEJEOFO v. OGOEJEOFO (2006) LPELR- 2308 (SC) per Muhammed JSC (as he then was) at page 14 paras G-B**. See also **YAR'DUA AND ORS v. YANDOMA AND ORS (2014) LPELR- 24217 SC per Muhammed JSC at page 69 paras E-G**. Also see **UGWUANYI v. NICON INSURANCE PLC 2013 LPELR 2009 2 SC per Chukwuma-Eneh JSC**.

Based on the Respondents' refusal to appear or file any response to the application, I therefore have no hesitation in regarding the facts averred in the Applicant's supporting affidavit as having been admitted, same having not been contradicted or challenged by any Counter-Affidavits. I agree with the learned Counsel that this Honourable Court ought, in the circumstances, to activate the constitutional safeguards enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 as amended.

In this matter, it is clear from the unchallenged and uncontroverted affidavit evidence of the Applicant that the arrest and detention of the Applicant for about 40 hours offended his fundamental rights as guaranteed in Chapter IV of the Constitution as same were unlawful. In **FAJIMIROKUN v. C.B. NIG LTD (2002) 10 NWLR (PT. 744) 94**, the Court of Appeal per Sanusi JCA (as he then was),

held that where the Applicant has placed evidence of infringement of his fundamental rights before the Court, the burden then shifts to the Respondent to provide legal justification for the said infringement. In the present case the Respondents have not filed any response, let alone provided any such justification. The Applicant has clearly shown in his supporting affidavit, which is not challenged or controverted by the Respondents, that his arrest and detention was unlawful and unconstitutional and in violation of his rights as guaranteed in Chapter IV of the Constitution. This is clearly in contravention of sections 34, 35, 36, 41 and 43 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

Therefore, I must resolve and hereby do resolve the sole issue for determination in this case in the affirmative and hold that the Applicant has established the infringement of his right to dignity of the human person, right to personal liberty, right to fair hearing, right to freedom of movement, and right to acquire and own immovable property anywhere in Nigeria.

I must state, however, that though the Applicant has not asked specifically for declaratory reliefs in respect of the infringement of his right to acquire and own immovable property anywhere in Nigeria as entrenched in section 43 of the same Constitution, he has, in his affidavit in support of the application, made out a solid case of the infringement by the Respondents of this right. Though the Court has been held not to be a Father Christmas that grants reliefs that are not sought by a party in a suit before it, it is my firm belief that this case is one instance where the Court will play the role of a Santa Claus by granting a relief that has not been sought specifically by an Applicant, more so, as the facts in the affidavit convincingly ground the relief.

Besides, fundamental rights enforcement proceedings are *sui generis* proceedings and the courts hearing fundamental rights suits are enjoined to be liberal in construing the relevant provisions of Chapter IV of the Constitution. Specifically, paragraph (3) of the Preamble to the Fundamental Rights(Enforcement Procedure) Rules, 2009 stipulates what it considers to be the overriding objectives of the Fundamental Rights (Enforcement Procedure) Rules, 2009. Of interest in this regard are sub-paragraphs (a), (b), (c), (d) and (f) of paragraph (3) of the Preamble. I have taken the liberty to reproduce the above provisions *in extensor* below:-

Paragraph 3:

“The overriding objectives of these Rules are as follows:

(a)The Constitution, especially Chapter IV, as well as the African Charter, shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedoms contained in them and affording the protections intended by them.

(b)For the purpose of advancing but never for the purpose of restricting the applicant’s rights and freedoms, the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions. Such bills include:

- (i) The African Charter on Human and Peoples' Rights and other instruments (including protocols) in the African regional human rights system.**
- (ii) The Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations human rights system,**
- (c) For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the Court may make consequential orders as may be just and expedient.**
- (d) The Court shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented.**
- (f) The Court shall in a manner calculated to advance Nigerian democracy, good governance, human rights and culture, pursue the speedy and efficient enforcement and realization of human rights.**

On the whole, Judgment is hereby entered in favor of the Applicant against the 1st to the 4th Respondents as follows:-

- 1) That the Applicant is entitled to his fundamental rights to freedom of movement, personal liberty and dignity of human person as entrenched and guaranteed under sections 34(1) and 35(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended, Order II Rules 1, 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and**

Articles 4 and 5 of the African Charter on Human and People's Rights (Enforcement and Ratification) Act, CAP. A9 Laws of the Federation of Nigeria 2004.

- 2) That the arrest of the Applicant on the 8th of October 2020 at 10:52am by the Respondents, his detention from the 8th October 2020 to the 9th of October, 2020 at 7:30pm without a Court Order and the assault meted on him is unlawful and a breach of his fundamental right to personal liberty and dignity of human person.**
- 3) That the seizure by the 1st to 3rd Respondents of the documents of title to the Applicant's personal land under the purport of conducting a search at the land registry but with intent to hand over same to the 4th Respondent is a violation of the right of the Applicant to acquire and own immovable property in Nigeria as enshrined in section 43 of the 1999 Constitution.**
- 4) That the 3rd Respondent is hereby ordered to release the Applicant's document of title to his personal land which documents were seized from him before bail was granted to him.**
- 5) That the 3rd Respondent is hereby ordered to return to the Applicant the sum of ₦100,000.00 (One Hundred Thousand Naira) only which he extorted from the Applicant under the pretence of processing the Applicant's bail from the illegal and unlawful detention of the Applicant at the detention facilities of the 1st to 3rd Respondents.**
- 6) That the Respondents are hereby ordered to jointly and severally pay to the Applicant the sum of ₦3,000,000.00 (Three Million Naira) only for the gross violation of his fundamental rights to the dignity of the human person, right to personal liberty, right to fair hearing, right to freedom of**

movement and his right to acquire and own immovable property anywhere in Nigeria.

- 7) That the Respondents are hereby ordered to tender a public apology to the Applicant for the humiliation, embarrassment and damage done to his reputation as a resident pastor of Dunamis International Gospel Church and the public apology should be published in a newspaper with a wide circulation in Abuja and its environs.
- 8) That the Respondents are hereby restrained from further harassing, arresting, detaining or otherwise infringing on the fundamental rights of the Applicant in relation to the same land situate at Karshi, Federal Capital Territory, Abuja, being the subject of the civil transaction between the 4th Respondent and the company of the Applicant.

This is the Judgment of this Honorable Court delivered today, the 22nd of June, 2021.

HON. JUSTICE A. H. MUSA
JUDGE
22/06/2021

APPEARANCES:

FOR THE APPLICANT:
O.S. OGUCHE, Esq.

FOR THE RESPONDENTS:
NONE