

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE NYANYA JUDICIAL DIVISION

HOLDEN AT NYANYA ON THE 24TH DAY OF JUNE, 2021

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/2777/18

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

CHIEF ERNEST OKECHUKWU.....PLAINTIFF

AND

- | | | |
|--|---|----------------------|
| <ol style="list-style-type: none">1. ATTORNEY GENERAL OF THE FEDERATION2. INSPECTOR GENERAL OF POLICE3. OASIS GRAND RESORT | } | ...DEFENDANTS |
|--|---|----------------------|

JUDGMENT

The Applicant's Originating Motion brought pursuant to Order II Rule 1 – 7 of the Fundamental Rights (Enforcement Procedure) Rules 2009 Section 35, 36, 41 & 46 of the Constitution of the Federal Republic of Nigeria 1999.

It prays the Court for the following reliefs:

- (1) An order declaring the arrest and detention of the Applicant from 13/08/18 to 25/08/18 by agents, men and officers of the Respondents Inspector General of Police Intelligence Response Team without bail or charging him to Court as illegal, unlawful as it amounts to a violation of the Applicants Fundamental Rights as enshrined in the 1999 constitution.
- (2) An Order releasing the Applicant on bail unconditionally.
- (3) An order for the return/refund of the sum of N200,000 unlawfully collected from the Applicant's younger brother as a condition for bail.
- (4) An order of perpetual injunction restraining the Respondents jointly and severally, their agents, servants, officers and privies from rearresting and detaining the Applicant.
- (5) N100 Million as general damages and compensation to the Applicant.

(6) Such further orders as the Court may deem fit.

The application is supported by a Statement, the reliefs sought and the grounds upon which the reliefs are sought. Succinctly, the Applicant deposes that the 3rd Respondent set in motion the arrest of the Applicant. That one of the Directors of the 3rd Respondent is a very high ranking officer with the 2nd Respondent while another Director of the 3rd Respondent is a top Immigration Officer which accounts for the reason why he was detained from 13th – 25th August 2018. That upon the receipt of the Petition by the 3rd Respondent, the 2nd Respondent did not invite or hear his own side of the story before his arrest and or detention. That officers of the 2nd Respondent invaded his shop at Building Materials Market Mararaba, Karu between the hours of 4:30 p.m – 6 p.m while he was away. That his office boy who said he was not around was slapped. That on 13/08/18 at about 7:30 to 8:30 a.m, he was arrested, tortured, beaten and humiliated by the 2nd Respondent in the presence of over hundred people inside the building

materials Mararaba Karu, Nasarawa State and was taken to 2nd Respondent office at SARS abattoir Garki and was detained by the Officers of the Intelligence Response Team (IRT) of the 2nd Respondent from 13/08/18 to 25/08/18.

That since his arrest and detention, all efforts to secure his release or bail failed despite formal application by his Counsel till on 25/08/18 when N200,000 was collected from his younger before granting him bail. That his business was closed down during the period of detention. That his family members and dependants were in trauma. He was not arraigned before any Court. He had no access to Counsel or close relations during the period of his detention. That his fundamental right were infringed upon. The Applicant's Counsel posited a sole issue for determination which is whether or not the Respondents particularly the 2nd Respondent have inherent/unlimited power to arrest and detain the Applicant unlawfully without regard to the 1999 Constitution. That the arrest and detention of the Applicant from 13/08/18 to 25/08/18 is

a breach of his right to personal liberty and dignity of his human person. That the acts of the Respondent is illegal, unconstitutional, null and void. The Applicant was not charged before the Court within the time prescribed by the Constitution. He further argued that the Applicant was not afforded fair hearing. That he was not told his offence.

The 1st Respondent Counsel relied on the Counter Affidavit filed by the 1st Respondent. It is of 5 paragraphs dated 16/11/18. The Deponent Yaga Benjamin deposes. That Applicant was arrested and detained by Officers of the 2nd Respondent. That it is the statutory and constitutional duties of the 2nd Respondent to ensure the prevention of crimes/maintenance of law and order in the society. That 2nd Respondent did what it ought to do. That the 1st Respondent will not and have not encouraged the breach of the Constitution including the infringement of the fundamental right of Nigerians. That the 1st Respondent is not a party to the facts deposed to in the Applicant's

Affidavit. That Applicant has not established a Claim against the 1st Respondent.

Learned Counsel to the 1st Respondent posited two issues for determination which are:

1. whether from the entirety of the facts, the Fundamental Right of the Applicant has been breached.
2. Whether application discloses a cause of action.

Learned Counsel canvasses that Fundamental Rights are not absolute. That grounds exist upon which such rights can be curtailed. That 2nd Respondent acted in line with the provisions of the law. That Applicant's arrest and detention was lawful and that it was upon reasonable suspicion.

Relies on Section 4 of the Police Act. That Applicant's Affidavit did not disclose any breach of Applicant right by

the 1st Respondent. That Applicant has no cause of action against the 1st Respondent. It is not every matter in which a federal body is involved that the Attorney General can be made a party. That the A.G. is a mere spectator in this matter. Learned Counsel urges the Court to strike out the name of the 1st Respondent.

The 2nd Respondent reacted by filing a Notice of Objection dated 15/09/20 and Counter Affidavit to the Originating Motion. The motion prays the Court to strike out the name of the 2nd Respondent for lack of jurisdiction. The grounds for the objection as set out on the face of the motion paper:

1. The 2nd Respondent/Applicant is not a natural person capable of violating fundamental human rights.
2. The names of the officers who violated his right are not mentioned.
3. That officers and men of the Nigeria Police Force are not in the employment of the 2nd Respondent/Applicant.

4. The suit does not disclose a cause of action.

Learned Counsel canvasses that the suit is not competent. He argued that by Regulation 341 of the Police Act, in the individual exercise of his power as a police officer, every Police Officer shall be personally liable for any misuse of his powers or for any act done in excess of his authority. That in the circumstance of the above the 2nd Respondent cannot be proceeded against. The Applicant failed to disclose the factual situation to support his claim against the 2nd Respondent.

The Applicant's argument is that the Preliminary Objection is devoid of substance. That the name of the IPO and Team leader were mentioned in the Applicant's Further Affidavit. This is a fundamental human right application brought pursuant to the Fundamental Rights/Enforcement Procedure Rules 2009.

By Section 46 of the 1999 Constitution and the Fundamental Rights Enforcement Procedure Rules "**Any**

person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress”.

The Applicant alleges in his application that his right to personal liberty, movement and fair hearing were breached by the Respondents. In my humble view he has established a cause of action against the 2nd Respondent by his Affidavit. The Applicant copiously mentioned the 2nd Respondents men of the Intelligence Response Team as those who violated his right.

Regulation 341 of the Police Act & Regulation cited by the 2nd Respondent's does not apply in this case. The 2nd Respondent and his men were not acting in their individual capacity. They were alleged to have breached the rights of the Applicant in the course of the exercise of their duties, moreso the 2nd Respondent is clothed with legal personality

by statute. He can sue and be sued. He is capable of breaching the fundamental rights of citizens. The Notice of Preliminary Objection lacks merit and it is dismissed.

I now proceed to the 2nd Respondent Counter Affidavit deposed to on 22/10/18. He deposes vide Inspector Joshua Yohanna that on 23/08/18, a Complaint of criminal conspiracy, theft and receiving stolen properties was made by Alasa Isaac, the G. M. of 3rd Respondent against the Applicant and others. The Complainant alleged that Applicant and others at large including one Samuel (Surname unknown) who was a security guard employed by the 3rd Respondent conspired with the Applicant and stole 3rd Respondent's building materials which were placed in containers in the premises of the 3rd Respondent for the purpose of renovation. That he volunteered a confessional statement and admitted the crime. That there was an attempt to settle the matter. That Christopher Felix who was implicated by the Applicant in his confessional

statement was arrested and he also confessed. That they conducted a search at the shop of the Applicant and 7 of the stolen water pumping machines were recovered. That he was granted bail on 25/08/18. That he was arrested on 23/08/18 and released on 25/08/18. That since then investigation is ongoing to apprehend fleeing suspects. That he was not tortured or beaten. They did not receive N250,000 or any money from the younger brother of the Applicant. That none of the applicant right was breached. That it is not in the interest of justice to grant the prayers sought. The 2nd Respondent also rely on his further Counter Affidavit sworn to on 16/09/20 stating that the 2nd Respondent has been charged to Court on 28/02/19.

I have also read the Counter Affidavit of 3rd Respondent and all other processes. I have equally considered the Written addresses of Counsel. The Applicant's allegation or action is simple and short. That his right to personal liberty, fair hearing and freedom of movement were breached in that he was arrested by the agents of the 2nd Respondent and

detained from the 13th of August 2018 to 25th day of August 2018. That the 3rd Respondent instigated his arrest.

Section 35(1) of the 1999 Constitution:

“Every person shall be entitled to his liberty and no person shall be deprived of such liberty save and in accordance with a procedure permitted by law –

1(c) For the purpose of bringing him before a Court in execution of the order of a Court or upon reasonable suspicious of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offences”.

Section 41 (1) states:

“Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom”.

The Applicant in his Affidavit deposed he was arrested on 13/08/18 till 25/08/18. The 2nd Respondent by his admission

stated the Applicant was arrested on 23/08/18 and released on 25/08/18 and not 13th/08/18 to 25/08/18.

Section 35(4) states that any person who is arrested or detained in accordance with sub section 1(c) of this section shall be brought before a Court of law within before a Court of law within a reasonable time...”.

Section 35 sub section 5 defines reasonable time to be a day in a place such as Mararaba or Garki where there is a Court of competent jurisdiction within a radius of forty kilometre.

By the 2nd Respondent's admission the Applicant was detained for 2 days. I also believe the evidence of the Applicant that N200,000 was extorted from his brother. The Applicant did not avail the Court the Petition written by the 3rd Respondent on the basis of which the Applicant was arrested and detained. In an application such as this, the Court is not interested in the veracity of the allegation or suspicion against the Applicant. The question is whether his arrest and detention follows the procedure permitted by

law. The Applicant was not charged to Court until 28/02/19. Six months after the commission of the alleged offence. I believe the evidence of the Applicant that he was arrested on 13/08/18 and granted bail on 25/08/18. See Exhibit IRT 1 signed on 13/08/18. I could also see the attempt to temper with the date.

In my humble view, the liberty of the Applicant was curtailed and his movement restricted unlawfully and illegally. It has been held often by this Court that the liberty of a citizen cannot be tampered with even for a moment except their strong reasons to the contrary. The 2nd Respondent is not above the law. The Nigeria Police should be sensitive, learn to do things the right way. They should subjugate themselves to the Constitution and ensure strict adherence to the Constitution particularly Chapter 4.

To have an egalitarian society the police must be dedicated to the Constitution otherwise we shall be far from evolving

into a modern society. There is no iota of evidence against the 1st Respondent. It seems to be a stranger or by stander. The 2nd Respondent is a creation of law. He can sue and be sued. The 1st Respondent is not a necessary party. It is improperly joined. No case has been made against it. The name of the 1st Respondent is accordingly struck out.

From the evidence of the Applicant, all the 3rd Respondent did was to lay a complaint against the Applicant and others and no more. By Section 4 & 23 of the Police Act, it is the sole duty of the Police and no one else to investigate and detect crimes. It is also their duty to arrest. There is no evidence to suggest that the 3rd Respondent also took part in the arrest and detention. It is within the right of a citizen to report the commission of an alleged crime to the Police which they did. The 3rd Respondent can therefore not be held liable for performing a civil right. The action also fails in respect of the 3rd Respondent.

However Judgment is entered in favour of the Applicant against the 2nd Respondent as follows:

1. The arrest and detention of the Applicant from 13/08/18 to 25/08/18 by agents, men and officers of the 2nd Respondent's Intelligence Response Team without bail or charging him to Court is illegal and unlawful.
2. The 2nd Respondent shall return the sum of N200,000 unlawfully collected from Applicant younger brother as a condition for his bail.
3. The 2nd Respondent men, agents, privies are hereby restrained from rearresting and or detaining the Applicant in respect of this matter except as permitted by law.
4. N200,000 (Two Hundred Thousand) Naira as compensation for unlawful detention.

.....

HON. JUSTICE U.P. KEKEMEKE

(HOH. JUDGE)

24/06/2021