

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA**

SUIT NO: FCT/HC/BW/CV/5/2019

BETWEEN:

BARR. JIM .O. ELUENI --- APPLICANT

AND

1. ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC)

2. MS ERUOTOR RUTH ONOTAKAROMA

3. MR. MIKE {IPO EFCC, Edo State Office} --- RESPONDENTS

JUDGMENT

DELIVERED ON THE 29TH JUNE, 2021

This is a motion on Notice brought pursuant to sections 34, 35 and 46 of the Constitution of the Federal Republic of Nigeria 1999, order II of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Articles 4 and 6 of the African Charter on Human and Peoples flights (Cap. A9 Laws of the federation of Nigeria 2004. We are by this motion on Notice praying your Lordship for the following reliefs.

- I. A DECLARATION that the incessant harassment, intimidation, invitation or threatening of the Applicant with arrest and detention by the respondent is illegal and unconstitutional as it violates the Applicant right to human dignity and personal liberty guaranteed by sectors 34 & 35 of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and articles 5 &6 of the African Charter on Human and People's Rights (Ratification and enforcement) Act (CAP A9) laws of federation of Nigeria 2004.

- II. A DECLARATION that issues relating to a shareholder/ investor selling 50% of his/her shareholding in a company which is still at the preliminary stage to commence operation which asked the shareholder to wait for the final takeoff of the company before her shares of 50% is paid to her are civil issues which do not concern the EFCC or any law enforcement agent for that matter.
- III. AN ORDER Restraining the Respondents whether by themselves, their officers, agent, privies, servants or any person howsoever from further harassing, intimidating the Applicant over the subject of this suit forthwith.

AND FOR SUCH FURTHER ORDER(s) as the Honorable Court may deem fit to make in the circumstance of this case.

The application is supported by a 29 paragraphed affidavit deposed to by BARR. JIM .O. ELUENI and statement in compliance with order II rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009

He rely on all the paragraphs of the affidavit as well as the statement accompanying the application.

The applicant counsel raised a sole issue for determination thus:- whether or not the applicant is entitled to the relief claim. He submit that by section 46 of the Constitution of the Federal Republic of Nigeria 1999 enjoins people in the category of the Applicant to approach this Honourable Court for the enforcement of their Fundamental Rights. See also Order II Rule 1 of the fundamental Rights (Enforcement Procedure) Rules 2009.

The Section provides:

"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"

See Effiong V. Ebong (2006) 18 NWLR (pt 1010) 109 at pp 126-127 para G-H. See also University of Ilorin V Oluwadare (2003) 3NWLR (pt 806) 557 at p.583 Para F.

The importance of applications such as this was emphasized in the Fundamental Rights Enforcement Procedure Rules 2009 in paragraphs 3(g) of its Preamble which provides as follows:

"Human Rights suits shall be given priority in deserving cases, where there is any question as to the liberty of the applicant or any person; the case shall be treated as an emergency."

The Supreme Court has emphasized the importance of Fundamental Rights in the case of F.R.N. V. Ifegwu (2003) 15 NWLR (PT 842) 113 where per Uwaifo JSC held at page 184 thus:

"The position of the Courts is quite crucial in this regard for the purpose of safe guarding the constitutional rights of persons through effective intervention whenever, in an appropriate case, it is shown that such rights have been violated, is likely to be violated...If I may say so, as far as this Court is concerned (and happily this is the trend), whenever an aspect of personal liberty is properly raised in any

proceeding, the focus on the constitutional question is intense and intensive, and a solution which projects the essence of the constitutional guarantee is proffered."

Tobi, JSC in his contributory Judgment in F R N V. Ifegwu (supra) at pages 216-217 had this

to say:

"The Fundamental rights entrenched in the constitution are very important, so much so that an individual whose rights have been infringed or contravened has the right to seek redress in a competent Court of law. Fundamental Rights inhere in man because they are part of a man. If a hierarchical order of our laws is drawn, fundamental rights will not take a pride of place but the first place"

He submit with respect that S 46 of the Constitution of the Federal Republic of Nigeria 1999 and the Fundamental Rights (Enforcement Procedure) Rules 2009 vest in an individual who alleges that any of the provisions of Chapter 4 has been, is being or is likely to be contravened or infringed in any state in relation to him to apply to a high Court in that state for redress See the Supreme Court case of F R N Vs. Ifegwu (2003) 15NWLR (pt 842) 113 where the Court considered in Section 42 of 1979 Constitution and which is identically worded with S L 6 of Constitution of Federal Republic of Nigeria 1999 and the Fundamental Rights(Enforcement Procedure) Rule 1979 which is also similar to the Fundamental Rights (Enforcement Procedure) Rules 2009.

It is his submission also that as it is, the Enforcement procedure is in three limbs. Thus where there is the likelihood that the Fundamental right of an individual will be contravened such as that of the Applicant in

this case, the Court will be called in aid to protect the Fundamental Rights of the person. See per Tobi JSC in F.R.N V. Ifegwu at 216 para G-H, see also Effiong V. Ebong (2006) 18 NWLR (pt 1010) 109 at pp 126-127 paras G-H

CONCLUSION

The Applicant has shown that the Respondents are likely to infringe or contravene his fundamental rights with the likelihood of his arrest and subsequent detention without any lawful justification. It is only this Honorable Court that can intervene and come to the aid of the Applicant by granting all the reliefs sought herein.

He respectfully urge the court to grant all the prayers of the Applicant.

From the record of court, it is clearly shown that the respondents were duly served with the process on the 8th November, 2019 at about 1446 hours. Unfortunately none of the three respondents appear or filed any reply to the applicant's claim.

In other word, there has not been any challenge to the declaration 1-3 sought by the applicant to that extent therefore, its trite law that an unchallenged disposition, shall always be taken and act upon it by the trial court to be the true position.

In conclusion, and in view of this above reasons stated, couple with these decisions, I hold and grant all the three reliefs sought by the applicant as follows:-

- I. That the incessant harassment, intimidation, invitation or threatening of the Applicant with arrest and detention by the respondent is illegal and unconstitutional as it violates the Applicant right to human dignity and personal liberty

guaranteed by sectors 34 & 35 of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and articles 5 &6 of the African Charter on Human and People's Rights (Ratification and enforcement) Act (CAP A9) laws of federation of Nigeria 2004.

- II. That the issues relating to a shareholder/ investor selling 50% of his/her shareholding in a company which is still at the preliminary stage to commence operation which asked the shareholder to wait for the final takeoff of the company before her shares of 50% is paid to her are civil issues which do not concern the EFCC or any law enforcement agent for that matter.
- III. That the Respondents whether by themselves, their officers, agent, privies, servants or any person howsoever are restrained from further harassing, intimidating the Applicant over the subject of this suit forthwith.

I so hold

APPEARANCE

E. Jatto Esq. for the Applicant.

The 1st, 2nd & 3rd Respondents are not in court.

Sign
Hon. Judge
29/06/2021