

**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/614/2019

BETWEEN:

HANNATU TALATU OKOH --- APPLICANT

AND

1. THE NIGERIA POLICE FORCE
2. THE INSPECTOR GENERAL OF POLICE
3. FREDERICK TAIWO LAKANU –
(DEPUTY INSPECTOR GENERAL
OF POLICE (RETIRED))
4. THE COMMISSIONER OF POLICE,
FEDERAL CAPITAL TERRITORY
(FCT) POLICE COMMAND
5. ABDUL YARI - (DEPUTY COMMISSIONER
OF POLICE (CID) FEDERAL CAPITAL
TERRITORY POLICE COMMAND)
6. BARAU - (DEPUTY SUPERINTENDENT
OF POLICE (CID) FEDERAL CAPITAL
TERRITORY POLICE COMMAND)
7. WINNERS OKIGBO - (INVESTIGATING
POLICE OFFICER (CID FEDERAL CAPITAL --- RESPONDENTS

JUDGMENT
DELIVERED ON THE 23RD JUNE, 2021

This matter is an application by the applicant for the enforcement of his fundamental rights. In the said application, the claimant claim against the Respondents as follows:

1. An order to enforce the Applicant's Fundamental Rights to Life, Dignity of Human Person, Personal Liberty, Fair Hearing, and freedom of Movement in terms of the reliefs sought in the statement accompanying the affidavit in support of the application.
2. An order of this Court compelling the Respondents to produce the Applicant who is presently in the detention of the Respondents since the 2nd day of December, 2019 before this Honourable Court pending the hearing and determination of the instant action for the enforcement of her violated fundamental rights by the Respondents.
3. An order of this Court directing the Respondents to admit the Applicant on the bail already granted to her by the 5th Respondent having produced a level 14 civil servant as surety to perfect her bail requirement which requirement surpassed the bail conditions of the Respondents.
4. An order of injunction restraining the Respondents, their agents, privies, or any officer or person acting under their command from harassing, threatening to further detain the Applicant perpetually or taking further steps in connection with this suit.
5. An Order of Court restraining the 3rd Respondent or any other person under his instruction or behest (including but not limited to all the other Respondents) from further violating the fundamental

rights of the Applicant who the Respondents have detained in their custody at the behest of the 3rd Respondent from the 2nd day of December, 2019 up till the time of the filing of the instant suit.

6. Order of Court directing the Respondents to tender unreserved apology to the Applicant to be published in at least one newspaper circulating nationwide; and to pay the Applicant a compensation of N50,000,000.00 (Fifty Million Naira) only for violating the fundamental rights of the Applicant; and virtually closing down the business concern of the Applicant for all the days that the Applicant was arrested, detained, and tortured by the operatives of the 1st, 2nd, 4th, 5th, 6th, and 7th Respondents at the order of the 3rd Respondent.
7. A perpetual injunction restraining the respondents, their servants, agents, and privies from harassing, threatening to arrest, arresting, torture and detaining the Applicant.
8. A Declaration that the arrest, torture, detention and continuous detention of the Applicant by the Respondents is a breach and abuse of the Applicant's Fundamental Rights as enshrined in Sections 33, 34, 35, 36, and 41 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and the African Charter on Human and People's Rights.
9. And for such further order(s) that this Honourable Court may deem fit to make in the circumstance.

The grounds upon which the application is brought are as stated in the process. The applicant filed an affidavit of six (6) paragraphs in support of the application. The defendants were served with the processes in this case but they never filed a counter affidavit or

statement of defence in defence of the matter. When the matter came up on 22nd June, 2020 counsel for the applicant adopted its written address and urge the court to enter Judgment in favour of the applicant.

The constitution of the Federal Republic of Nigeria 1999 as amended particularly part 4 thereof made provision for the protection of the fundamental rights of every citizen of Nigeria. Sections 35, 41 & 46 of the constitution of Federal Republic of Nigeria 1999 thereof specifically guarantee the right to liberty of a citizen in that no citizen can be detain or his rights to liberty curtail unlawfully. In similar vein sections 34 (1) of the constitution of Federal Republic of Nigeria 1999 as amended guarantees a citizen right to the dignity of persons and the freedom of movement section 46 of the constitution of Federal Republic of Nigeria 1999 as amended thereof provide that any person whose fundamental rights has been violated or threatened to be violated can approach the court that is the is the High Court of a State or the Federal High Court to enforce his fundamental rights.

In the present suit the applicant has approach this court alleging that is fundamental rights to personal liberty, the rights to life, rights to human dignity, rights to fair hearing and rights to freedom of movement as enshrine in the constitution of F R N and the African charter on human and people rights has been violated by the Respondents.

In prove of this, the applicant depose in her affidavit that she was arrested by the police on 2nd December, 2019 and taking to the F.C.T Command Headquarters of the Police Abuja. That there at she was

informed that her company account was used to commit fraud by her husband and that she will be kept in custody until her husband was arrested. That even she produce a surety, the Respondents still refuse to release her and they insisted that she will only be release if she paid the N9,000,000.00 (Nine Million Naira) received by her husband. As at the time the applicant brought this suit on 16th December, 2019, she was still in detention and she has not been charge to any court.

The law is well settle, that he who alleges must prove see the case of Oyebanji Vs. A. G Osun State (2004) 51 W.R.N page 94 at 113. It is further the law that facts in an affidavit which are not contradicted are taking as the true by the court and the court is free to use same to determine the case. See the case of A.C.B Plc Vs. N.T.S Nig Ltd (2007) 1 NWLR (Pt.1016) 596 at 605. Proof required in such circumstance where there is no counter affidavit is minimal see the case of Ozigbu Eng. Co. Ltd Vs. Iwuamadi (2009) 16 NWLR (Pt. 1166) 44.

As earlier said, the claimant in her affidavit depose that she was arrested on account of an alleged fraud committed by some other person. This facts has not been contradicted by the Respondent. It is unlawful for a person to be arrested for an offence which he did not commit. It will also be unlawful to arrest a person instead of another person who committed a crime. Such arrest not only unlawful but should be deprecated by the court.

The applicant also depose that she was detained by the Respondents from the 2nd day of December, 2019 without been granted bail even when she provided a surety in fulfillment of the bail condition placed

by the Respondents. Again this facts have not been contradicted by any of the Respondents. Section 35 (4) of the constitution of Federal Republic of Nigeria 1999 as amended of the constitution provide that any person arrested or detained by the police or any law enforcement agency must be taking before a court within 48 hours of the arrest. Also where a person cannot be taking to court within that period of time that person should be release on bail on condition or on no condition. In essence where a person is detained lawfully on the suspicion of having committed a crime except a capital offence he cannot be detained beyond 48 hours without been granted bail or charge to a court. Any detention beyond this period without the order of a court is illegal, a breach of the constitution and a violation of the fundamental rights to personal liberty of the person so detained.

In the instant case, the applicant was detained from the 2nd of December, 2019 to the 7th January, 2020 when she breathed the air of freedom. It must be noted that the offence for which she was detained is aailable offence and she was not even the offender. I must pause here to say no individual, Organization or Government agency is above the law. An arrest of a spouse for the offence committed by the other spouse is unknown to law. In facts this has been outlawed by the administration of criminal justice Act.

I cannot see why a responsible Organization or Government Agency like the police will in this current age and time recklessly arrest a person for the offence committed by another person even when they are aware that such act has been outlawed. I have no difficulty in holding that the action of the Respondents in arresting and detaining

the applicant for over one month without releasing her on bail or charging her to a court of competent Jurisdiction is not only unlawful and illegal but amount to a violation of her rights to freedom to personal liberty and movement as enshrined in sections 35 (6), 41 & 46 of the constitution of Federal Republic of Nigeria 1999 constitution as amended. See also the case of Ibe Vs. Ajise (2020) 10 NWLR (Pt.1731) C.A 129 to 132 paras F-G.

I have carefully peruse the several paragraphs of the applicant affidavit and I have fail to see any scintilla of evidence proffered there in suggesting that the Respondents violated the applicant right of human dignity or fair hearing. If anything the Respondents upon arresting the applicant promptly inform her of the reason for her arrest. In the light of this, I hold that this claim by the applicant for the violation of her rights to human dignity and fair hearing has not been violated.

I am ready to hold, and I do hold that the applicant has proved instead a violation of her fundamental rights to freedom of movement and rights to personal liberty were violated or breached by the Respondent I so hold.

The applicant has also claimed that she is entitle to a compensation in the sum of N50,000,000.00. (Fifty Million Naira) the law has been well settle that the court can award compensation to a person whose fundamental rights has been violated. See the case of Minister of Internal Affairs Vs. Shugaba (1982) 3 NCLR 915 and F.B.N Plc Vs. AGF (2018) 7 NWLR (Pt.1617) SC.121 at 161.

I shall award to the applicant against the Respondents jointly and severally in the sum of N10,000,000.00k (Ten Million Naira) the Respondents are also restrained by themselves, their servants and/or employee from arresting, harassing torturing and/or detaining the applicant on account of an allege offence and the account of the applicant No: 0037902354. Diamond/Access Bank BUOMKO NIGERIA LIMITED and her personal account No: 0022369876 G.T Bank Plc. And finally Union Bank Plc No: 0117697404 name of HANNAI'S DE MERCHANT NIGERIA LIMITED. Which are place on post no debt are ordered to be uplifted and allow the applicant access to the account's listed above.

This is the Judgment of this court.

APPEARANCE

I. O. Nweze Esq. for the applicant.

The Respondent not in court.

Sign

Hon. Judge

23/06/2021