

**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 FCT/HC/CV/2098/2017**

BETWEEN:

JOSEPH ATTAH JOSEPH ---- APPLICATION

AND

1. FEDERAL ROAD SAFETY COMMISSION
2. THE CORPS MASHAL, FEDERAL ROAD
SAFETY COMMISSION
3. THE F.C.T SECTOR COMMANDER FEDERAL
ROAD SAFETY COMMISSION ----- RESPONDENTS

JUDGMENT
DELIVERED ON THE 28TH JUNE, 2021

This an application filed by one Joseph Attah Josiah for the enforcement of his fundamental human right dated 6th June 2017 and filed same day praying this honorable court the following declarations.

1. An order enforcing the fundamental right of the applicant here in under sections 33, 34, 37 and 41 of the constitution of the federal republic of Nigeria 1999 (as amended).
2. A declaration that the action of the respondents men harassing, detention and furiously grabbing the neck of the applicant and smashing his head on the car steering on the 8th September 2016 were not only unconstitutional, but unlawful, illegal and ultra vires

their power as contained in section 33, 34, 37 and 41 of 1999 constitution of federal republic of Nigeria as amended.

3. A declaration that the action of the respondents through their employees on the 8th day of September 2016 to wit; Harassing arresting, detaining and furiously grabbing the neck of the applicant and smashing his on the car steering in a bid for him to pay the sum of N23,000 for the offence of forged document and expired tyre were not only unconstitutional but unlawful, illegal and ultra vires their powers as contained in the federal road safety commission Act.
4. An order of this Honorable court mandating the respondents jointly and severally to pay as compensation to the applicant the sum of N50,000 000.00 (fifty million naira) only for pain inflicted on him as a result of unlawful harassment, detaining his neck and smashing his head on the car steering on the 8th September 2016.
5. For such order or further orders as the Honourable court may deem fit to make in the circumstances of this case.

In support of this application are statement in support of the application, 37 paragraphs affidavit with 4 annexure exhibit A-D and a written address settle by Okwonigho Gomina Esq. Council to the applicant.

In the said written address council formulate three (3) issue for determination wiz:-

- A. Whether the fundamental right of the applicant to life, dignity of human person right to private and family life and freedom of movement have been breached or was being breached or is likely

to be breached against by the men of the responding to warrant the present application.

- B. Whether though not conceding even in the applicant had committed an offence as alleged by the men of the respondent were right to have harassed him, furiously grabbing his neck and smashing his head on the car door having shown them the receipt issued to him by the F.C.T V.I.O where he went and carried out inspection on his car about month earlier.
- C. Whether having regards to the aforesaid violation of applicant fundamental rights, the applicant is IPSO factor entitled to damages, compensation from the respondents.

In arguing the three (3) issues formulated counsel submitted that on issue.

- A. The fundamental right of the applicant to life, dignity of human person, private and family life and freedom of movement are natural rights guaranteed under chapter IV of 1999 constitution cited section 33, 34, 37 and 41 of 1999 constitution of federal republic of Nigeria. Also referred the court to section 46 of 1999 constitution that any person who alleged that any provision of chapter IV of the constitution has been is being or likely to be contravened in any state in relation to him may apply to court to that state for redress. Counsel further made reference to section 33, 34, 37 and 41 of 1999 constitution and also cited the case of A.S.E.S.A VS EKWENE on (2001) FWLR (Pt.50) at 2034 on issue B counsel further submitted that section 10 (2) (c) of the federal road safety commission Act 2007 provides as to the functions of

the respondents to the effects educating motions and members of public on the high way.

It submitted that every individual is entitled to have respect for the dignity of his person and accordingly cited S.34 (1) of 1999 constitution. Furthermore the laws do not provide that when an individual commit an offence he should be harassed his neck is grabbed and his head be smashed on the car door just as the man of the respondent did against the applicant. Cited the case of UBANI VS DIRECTOR SSS (1999) 11 MNLR PT 635 pg 129 of 149.

On issue (c) counsel submitted that the applicant is entitle to damaged and compensation having been harassed by the men of the respondent it is the position of law and the constitutional remedy urged the court to invoke section 35 (6) of 1999 constitution and also counsel referred to the case of SHAGARI VS COMMISSIONER OF POLICE (2005) ALL FWLR PT 262 pg 450 at 454 ratio 6.

Finally urged the court to resolve all issues in favor of the applicant and grant the reliefs sought.

On the other hand the respondent filed a 17 paragraph counted affidavit with two (2) annexure marked as exhibit A and B and a written address in support Umeha Remigus Chendu Esq. counsel to the respondent. In opposing this application counsel formulate lone issue for determination wiz:-

“Whether or not in the discharge of the statutory function of the respondent any of the fundamental right of the applicant was infringed upon”.

Counsel submits that the 1st respondent is a creation of a statute federal road safety commission establishment (Act) 2007 which is statutorily responsible for road safety in Nigeria cited section 10 (2) (2).

Counsel further submitted that section 10(4) (K) and (V) make it an offence to operate a vehicle with forged drivers license or insurance paper and also it is an offence for anyone to drive a vehicle without spare or with tyres whose treadings are worn out.

Moreover it was submitted that it was in the lawful exercise of these powers that the officers of the respondent flagged down the applicant and booked him for alleged traffic offence of operating with forged drivers license and worn out tyres.

Counsel submitted that the applicant once filed a suit before HON. M.A Nasir which the court ordered the applicant to pay fine and have his car released and the payment of the fine as stipulated in the notice of offence sheet is an expression of admission of guilty and disposed himself of the right to prosecution. Cited the case of MOSES EDIRU VS FEDERAL ROAD SAFETY COMMISSION (2016) 4 NWLR (Pt.1502) at 209 and AKIN AKINYEMI VS ODUWA INVESTMENT CO. LTD 2012 LPELR 8270 SC.

It is further submitted that section 10 (5) and 10 (5) (h) of federal road safety commission establishment Act 2007 gave the respondent power to arrest any person suspected of committing or having committed an offence under the Act and also power to impound any vehicle. The applicant cannot be seen to claim that his right to freedom of movement or any fundamental right at all was infringed upon.

It contend that the suit of the applicant disclosed no cause of action against the respondents the applicant upon arrest was rightly informed of the nature of traffic offence allegedly committed in language he understand and was booked accordingly cited section 35 (3) 1999 constitution, AG. FED VS AG. ABIA STATE 631 SC 2001 LPELR and PATKUN INDUSTRIES LTD VS NIGER SHOES MANUFACTURING COMPANY LTD (1988) LPER 2909 (SC).

More so counsel submits that the allegation against the respondent by the applicant's neck was grabbed and his head smashed on the 1st respondent. The medical report disclosed that the applicant is medically fit so the applicant did not sustained any injury or loss ansed from the act of the respondent and he is entitle to any compensation reference was made to the case of S.P.D.C VS NWABUEZE (2018) LRELR CD.

Conclusively counsel urged the court to dismiss the application with substantial cost. In reply to the counter affidavit the applicant filed 10 paragraph further and better affidavit dated 28 – Nov – 2017 and written address attached to it.

Having gone through all the process filed for and against this application and also the argument conversed by both counsel for and against this application except for the mode of couching the issue formulated by both parties to my understanding are co-related and interwoven in determining this application I will like to adopt the lone issue formulated by the respondent. wiz:-

“Whether or not in the discharge of the statutory functions of the respondent any of the fundamental right of the applicant was fringed upon”.

No doubt the constitution of the federal republic of Nigeria, 1999 (as amended), is very clear unambiguous uncompromising and categorical about the right of its citizen, (both those who are on the right side of the law and those who are reasonably suspected of being on the wrong side of the law). However such rights are not absolute. It is a general principle of law that for an applicant to succeed for enforcement of his fundamental human right under chapter IV of the 1999 constitution (as amended) has the initial onus of showing that the relief he claims comes within the purview of fundamental rights as encompassed by sections 33-45 of the constitution. This is borne out by the principle of section 46 of the 1999 constitution see the case of *NWAGWU VS DURU* (2000) 13 WRN pg 158 in this case the applicant is seeking for the enforcement of his fundamental rights which of his fundamental rights he believes has been infringed upon by the respondent.

I have painstakingly gone through the averments in support of the application and the 1st – 3rd respondent in a bid to get a clear picture of what actually transpired in order to determine whether the applicant's fundamental right has indeed been infringed upon.

Unless and until a party's breached right comes within the purview of those rights as clearly protected by constitution. The constitutional provision and the adjectival arrangement equally put in place cannot be exploited to remedy whatever the party has suffered. See the case of *HASSAN VS EFCC* (2014) NWLR PT 1389 pg 607 at 612 ratio 6 at pg 624 paras G-H and *EJEFOR VS OKEKE* (2000) 7 NWLR PT 665 pg 363 at ratio 6.

Section 33 (1) of 1999 constitution every person has a right to life and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

Section 34 (1)

1. Every individual is entitled to respect for the dignity of his person and accordingly.
 - a. No person shall be subjected to torture or to inhuman or degrading treatment
 - b. No person shall be held in slavery or servitude and
 - c. No person shall be required to perform forced or compulsory labour
2. For the purposes of subsection 1 (C) of this section, forced or compulsory labour does not include.
 - (d) Any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well being of the community; or

Section 37

“The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected”.

Section 41 (1)

“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 there from.

Going by the provision of the constitution as enumerated, I shall now proceed to consider the evidence and submission of counsel.

In the instance case, the applicant claims that the 1st - 3rd respondent harassed and detained him, which he alleges as an infringement of his rights to life, respect for dignity of one person, right to privacy and right to freedom movement.

The order reliefs bother on enforcing the fundamental right of the applicant herein under sections 33, 34, 37 and 41 of the constitution of the federal republic of Nigeria 1999 (As amended), and an order for award of damages and compensation for the alleged infringement. However these allegation were vehemently denied by the respondents. The complaints of the applicant as stated in paragraphs 8, 9, 21, 22 and 35 for ease of reference to produce some of these paragraphs.

Para 8: That on being asked by the said officer, I obediently showed the officer my driver's license, consequent upon which I was asked by the officer to park my car.

Para 9: That I was told by the officer that my car tyre has expired and further asked me to follow him to their office at Wuse zone 7.

Para 21: That consequently the officer became infuriated and inebriated with power and in an attempt to cease my phone, grabbed my neck and smashed my head on the car steering.

Para 22: That, that was all I knew, and that the next time I woke up was around (14:00 hours) 2:00pm when a man introduced himself as Dr. Williams at wuse District Hospital and said that

men of the federal road safety commission brought me here in a salon car.

Para 35: That as a result of the pains inflicted on me by men of the respondents on the 8th day of September 2016, I could not do anything neither did move out to carry out my daily business, hence I was indoor for over one month.

This averment by the applicant are extensively countered by the 1st – 3rd respondents' counter Affidavit, specifically in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 and also the annexure marked Exhibit "B", which is a court order with suit No: FCT/HC/CV/2573/2016 directing the Applicant to pay imposed on the Applicant by respondents. The respondents submitted that it was in the lawful exercise of the powers granted them by the Federal Road Safety Establishment (Act) 2007.

The task before me, is to apply the clear provisions of sections 33, 34, 37 and 41 of the 1999 constitution (As Amended) to determine whether or not in the discharge of the statutory functions of the respondent any of the fundamental right of the Applicant was infringed upon.

In considering this application, account obviously cannot act on speculative observations and therefore bare allegations unsupported by credible evidence which lacks the required credibility and cogency and will be discountenanced with. See the case of (GABELE VS STATE (2006) 6 NWLR (PT. 975) pg. 100 at 119 NWLR F.G, the supreme court held thus: "The court has decided that, it is trite law that, court shall not speculate on evidence presented before it. The court is only entitled to reply on the evidence before it and not speculation". From the foregoing, the Applicant has not put material facts and evidence to show that, his

fundamental human rights was infringed upon or is likely to be breached and for a court to grant this application, is the duty of the applicant to prove his fundamental human rights was infringed upon by the act of the respondents. The applicants Affidavit and annexure and written Address are so bare, to act on it and grant this applications.

The act of the respondents did not in any way trample upon the Applicants fundamental right to life. The constitution provides under section 33(1); "Every person has a right to life, and no one shall be disproveed intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria."

The constitution goes further in sub-section 2 (b) to state this;

"In order to effect a lawful arrest on to prevent the escape of a person lawfully detained";

The Respondents being a statutory establishment Act, the Federal Road Safety Establishment Act, 2007, to;

"..... members of the corps shall have power to arrest and prosecute persons reasonably suspected to having committed any traffic offence....." see section 10 (4), FRSC, Act, 2007.

The applicant, has failed to prove that his fundamental right has been infringed upon by the respondent. The constitutional provision of right to dignity of human person seeks to protect a person from being subjected to torture, inhuman or other dicey treatment amongst others. See section 34 (1) of the 1999 constitution as amended.

The Applicant has furnished this Honourable court with "Exhibit C" The medical certificate of fitness from Wuse District Hospital signed by Dr. G.O Williams, where he state in paragraph 4 that;

"Primary assessment did not reveal any physical injury or focal neurological abnormality and the pupils were normal and reactive". He goes further in paragraph 5,

"..... About 30 minutes after IV dextrose treatment, the patient regained full consciousness and narrated his encounter with FRSC officers who brought him to the hospital. However, it was reported by the nurse on duty that the patient did not wait for further review by the medical team before self discharge later in the evening".

The Applicant has fallen short of proving this infringement against the respondents. The fundamental human right to private and family life as entrained in section 37, of the 1999 constitution seeks to guarantee telephone conversations and telegraphic communications. The applicant has not placed before this court evidence to show that his telephone conversations or telegraphic communication where the interpretation of section 37, is that telephone conversations and telegraphic communications are guaranteed by the constitution and are protected and considered to be confidential. Such communications are not to be transmitted or communicated to third parties. The Applicant has not shown otherwise. The right to freedom of movement as contained in section 41 of the 1999 constitution has equally been left unproved. A court of law can only act on the basis of the evidence placed before it. See *AGBI VS OGBEH* (2005) 8 NWLR pt. 926 pg. 40 – 67.

A fundamental rights enforcement matter is a serious matter. The court will not declare an applicant's right (s) to the infringed simply because he says so and in the absence of credible evidence or proof.

The materials also supplied by the applicant in the circumstance must also not be such that incredible, improbable or sharply falls below standard, expected in a particular case. See NEKA B.B.B MANUFACTURING CO. LTD VS ACB LTD. (2004) 2 NWLR (pt. 858) finally, the issue raised for determination is answered in the negative, the applicant's claims therefore fail and same is accordingly dismissed.

The issue has been resolved in favour of the respondents against the applicant. I so hold.

The reliefs sought are hereby refused and dismissed. And no cost is awarded.

APPEARANCE

Parties not in court.

Sign
Hon. Judge
28/06/2021