

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 12TH DAY OF JULY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 6
SUIT NO: CV/2097/2019

ETWEEN:

| | | | |
|-------------------------------|---|------|-----------|
| 1. BARR. SALAMATU YUSUF | } | ---- | APPLICANT |
| 2. CHIEF DAVIES IBIAMU IKANYA | | | |
| 3. BRINX GLOBAL WORKS LTD | | | |

AND

| | | |
|--------------------------------|------|------------|
| FEDERAL INLAND REVENUE SERVICE | ---- | RESPONDENT |
|--------------------------------|------|------------|

JUDGMENT

This application was initially instituted by the applicant and two others i.e. Chief Davies Ibiamu Ikanya and Brinx Global Works Ltd, for the enforcement of their fundamental rights pursuant to Order II Rules 1 and 2 of the Fundamental Rights (Enforcement) Procedure Rules, 2009, Sections 34, 35, 37 and 41 of the 1999 Constitution of Nigeria (as amended), Articles 2,6 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, and under the

inherent jurisdiction of this Court. The applicant seeks the following reliefs:

- “1. A declaration that the fundamental rights of the 1st applicant has been infringed by the respondent.*
- 2. A declaration that the fundamental rights of the applicants are being infringed by the respondents.*
- 3. A declaration that the fundamental rights of the applicants are likely to be further infringed by the respondent having regard to the circumstances of this case.*
- 4. An order of Court enforcing the fundamental rights of the applicants forthwith.*
- 5. An order of compensation, exemplary and general damages in favour of the 1st applicant and against the respondent in the sum of N35 Million and a written apology for the violation of the 1st applicants fundamental rights.*
- 6. An order of perpetual injunction restraining the respondent by itself or its officers, from further*

infringement or violation of the applicant's fundamental rights.

7. Omnibus prayer.”

The application is supported by 40 paragraphs affidavit with 2 annexures attached marked as Exhibit A and B. Also attached is the Statement containing the name and description of the applicants, reliefs sought and the grounds upon which the reliefs are sought. In support is a written address filed by A.O. Igeh Esq. Three issues were formulated therein for determination as follows:

“1. Whether this Court has the jurisdiction to enforce the applicant's fundamental rights and grant the reliefs sought for in the instant application.

2. Whether having regards to the conduct of respondents officers and the circumstance of this case, the fundamental rights of the applicants have been infringed, being infringed and likely to be infringed by the respondent.

3. Whether the applicants are entitled to the reliefs sought.”

The respondent upon being served with the Court processes, filed a motion seeking for extension of time to put in their response to the application and preliminary objection to the suit. The Respondent however failed to move the motion and upon the application of **A.O. Igeh Esq** for the applicant, the motion was struck out. Learned counsel also urged the Court to strike out the preliminary objection and the names of the 2nd and 3rd applicants. The application was granted and the motion on notice, the preliminary objection, and the names of 2nd and 3rd applicants were struck out by the Court.

Applicants counsel relied on the depositions contained in the supporting affidavit and proceeded to adopt his written submission before the Court. He then urged the Court to grant the reliefs claimed by the applicant.

Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 defines "Fundamental Right" and "Human Right" in the following manner:-

"Fundamental Right - means any of the rights provided for in Chapter IV of the Constitution, and includes any of the rights stipulated in the African Charter on Human and People's Rights (Ratification and Enforcement) Act. Human Rights - includes fundamental rights."

Order 2 Rule 1 of the Fundamental Right (Enforcement Procedure) Rules, 2009 provides that any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or likely to occur, for redress.

Fundamental rights which have been described as the minimum living standard for civilized humanity have their origin dating back to the Magna Carta, the Royal Charter of political rights given to rebellious English Barons by King John on June 19, 1215. They are rights which embrace and encompass the concepts of liberty and justice. The fundamental rights have been enshrined in the Constitution so that the rights could be inalienable and immutable to the extent of the non-immutability of the Constitution itself. See Ransome-Kuti vs. Attorney-General of the Federation (1985) 7 NWLR (PT. 6) 211 at 229-231.

It is the fact of the enshrinement of these fundamental rights in the Constitution that confers the fundamental rights the status of being over and above other human rights. See Uzoukwu vs. Ezeonu II (1991) 6 NWLR (PT. 200) 708 at 761. The question of the infringement of fundamental rights is largely a question of fact so it is the facts of the matter as disclosed in the

processes filed that are examined, analysed and evaluated to see if the fundamental rights of an applicant was eviscerated or otherwise dealt with in a manner that is contrary to the constitutional and other provisions on the fundamental rights of an individual. The law remains that he who asserts must prove, so the applicant has the onus of proving by credible affidavit evidence that his fundamental rights were breached. See Onwuamadike or vs. IGP & ors (2018) LPELR – 46039 (CA)

The applicant in the supporting affidavit averred that she is a company secretary of Brinx Global Works Ltd and on the 23/5/2019 one Kabiru Mohammed an officer of the respondent served a letter on their office requesting the Managing Director of the company to report at their investigative office, Wuse II, Abuja on the 27/5/2019 on allegation of criminal conspiracy and counterfeiting of tax clearance certificate.

Being the company secretary, she informed the Chief Executive Officer of the company who instructed her to

go in his stead. On the 24/5/2019 she visited the respondent's office with the company's tax consultant Mr. Isaac Ibiloye. The applicant averred that she was humiliated, insulted, abused and interrogated despite her explanation that the company did not engage in any tax fraud or counterfeiting of tax clearance certificate. She even explained that this might be a case of identity theft, because the company never bided for any contract where it presented tax clearance.

She protested the abuse and verbal assault requesting to be properly addressed with dignity. Mr. Mohammed Kabiru took her to their superior officer who also humiliated her and harassed her to remove her glasses, but she refused stating that she should be treated with dignity and not as a common criminal. The superior officer shouted at her that she was under arrest. She was taken and forced to write a statement which was dictated to her. The applicant further alleged that a photographer was brought who took snap shots of her

against her will with the personnel of the respondent watching and laughing. She was forced to pay the photographer for the services she did not engage him for. She was then asked to bring a civil servant of grade level 12 to secure her bail. She was eventually released to Mr. Ibiloye after being thoroughly embarrassed and her finger prints taken. She was also forced to write an undertaking to produce the Managing Director of the company on the 17/6/2019, or pay N5 Million and be prosecuted.

Applications for the enforcement of fundamental rights are granted once the rights of the applicants are shown to have been breached, or threatened. Courts rely on the facts contained in the affidavits for and against the application in determining these applications. See Opara & anor vs. Diamond Bank Plc & anor (2011) LPELR – 4268 (CA).

As stated earlier, the respondents were served with the originating motion and hearing notices served on

them for their appearance, but they failed to appear. Therefore, they leave the case of the applicant unchallenged and uncontroverted. The burden of proof on the applicant is therefore discharged on minimal proof. See Malle vs. Abubakar (2007) All FWLR (part 360) 1569 at 1607.

In order to succeed in an action for breach of fundamental rights, the applicant must prove to the smallest detail that the arrest or intended arrest, or breach of the fundamental rights was unlawful in the sense that the laid down procedure was not followed. See Ene & ors vs. Basse & ors (2014) LPELR - 2354 (CA) (Per Uzo - Ndukwe Anyanwu JCA at page 25. The onus thereafter shifts to the respondent to prove that the arrest and detention of the applicant were lawful. See Abiola vs. Abacha (1998) 1 HRLRA page 453, Udeagha vs. Nwogwugwu (2013) LPELR - 21819 (CA), Agbakoaba vs. SSS (1994) 6 NWLR (part 351) 4.

The applicant alleges that her fundamental rights to Dignity of Human Person Section 34(1), Personal Liberty Section 35 and Freedom of Movement Section 41, have been, are being or likely to be infringed upon by the respondents.

It is clear from the depositions contained in the affidavit that the applicant was arrested, harassed, intimidated, pictures taken of her against her will and made to pay for same, and threatened by the respondent.

Now the general tenor of the Federal Inland Revenue Service (Establishment) Act, 2007, Section 8(1)(e) and Section 35 provides:

“The service shall:

(e) in collaboration with the relevant law enforcement agencies, carryout the examination and investigation with a view to enforcing compliance with the provisions of this Act.”

Again Section 35 of the Act provides:

“35. (1) The Service shall employ Special Purpose Tax Officers to assist any relevant law enforcement agency in the investigation of any offence under this Act.

(2) Notwithstanding anything to the contrary in any other enactment or law, the Service shall have the power to investigate or cause investigation to be conducted to ascertain any violation of any tax law whether or not such violation has been reported to the Service.

(3) In conducting any investigation under subsection (2) of this section, the Service may cause investigation to be conducted into the properties of any taxable person if it appears to the Service that the lifestyle of the person and extent of the properties are not justified by his source of income.

(4) Where any investigation under this section reveals the commission of any offence or an attempt to commit any offence, the Service shall, pursuant to section 48

of this Act, undertake the prosecution of the offences.”

A compound reading of the above provisions reveals that the respondent is empowered to carry out investigation for offences committed under the Act in collaboration with law enforcement agencies, and to prosecute where necessary. However, what is very obvious is that the respondent's are not empowered by any law to harass, intimidate, and humiliate any citizen.

What degrades or devalues a person's exalted estimation of his societal status or standing amounts to an assault on the dignity of that person. But before the conclusion that such person's dignity has been eroded is reached it must be shown that the act complained of falls within the context of Section 34(1) of the 1999 Constitution, as amended, indicating the act complained of subjected the person to torture or to inhuman or degrading treatment or the person was held in slavery or servitude or the person was required to perform forced

labour or compulsory labour. See Rhodes & anor vs. IGP & ors (2018) LPELR – 44118 (CA).

In Zaman vs. State (2015) LPELR – 24595 (CA) the Court held:

“Every individual is entitled to the respect for the dignity of his person.”

The right to dignity of human person, under Section 34 of the Constitution is not a nebulous one. The Constitution is clear on what it entails. That Section provides:

“34 – (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.”

In this case, the applicant was verbally abused, harassed to remove her glasses, snap shots of her taken against her will, detained but later released on bail after taking her finger prints. The Respondent's overstepped their official bounds and threw caution to the wind by abusing their powers. The applicant was subjected to degrading treatment and treated like a common criminal eventhough she did not commit any offence.

The humiliation, harassments, embarrassment and detention of the applicant are wanton abuse of the powers of the respondent. The fundamental right to freedom of movement, privacy or dignity of the applicant were breached by officers of the respondent.

The onus herein had shifted to the Respondent's to justify their actions against the applicant. This they have failed to discharge. This is moreso as the Respondents though served with the originating motion did not file any response in opposition. Thus, the averment in the supporting affidavit remained unchallenged and

uncontroverted. The trite position of the law is that the facts therein are deemed admitted. See Registered Trustees of Acts of the Apostles Church vs. Fatunde (2010) All FWLR (part 510) page 662, A.G. Lagos State vs. Purification Tech (Nig) Ltd (2003) 16 NWLR (part 845) page 1, Adeleke vs. Iyanda (2001) 13 NWLR (part 729) page 1.

Having held that the fundamental rights of the applicant has been infringed upon by the respondent. Reliefs 1, 2 and 3 shall be granted as prayed as it relates to the 1st applicant.

For Relief 5 which is for N35 Million exemplary and general damages in favour of the 1st applicant and a written apology from the Respondent. An applicant seeking redress for infringement of his fundamental right is entitled to, in addition to the relief as to declarative or injunctive, award of damages. It is therefore safe to conclude that a finding that a fundamental right of a Nigerian citizen has been infringed upon attracts

compensatory damages and in some cases, exemplary damages. See Abiola vs. Abacha (1998) 1 HRLRA, 447, Punch (Nig) Ltd vs. A.G. Federation (1998) 1 HRLRA 448.

When a breach of the right is proved, the victim is entitled to compensation, even if no specific amount is claimed. See Arulogu vs. COP Lagos & ors (2016) LPELR – 40190 (CA).

This Court has taken into consideration the undeserved embarrassment meted out to the applicant and in the circumstance and with the unchallenged evidence to work with, this Court is inclined to grant the relief for damages.

As regards the second leg of Relief 5 which is for a written apology, subsection 6 of Section 35 provides for consequences against the authority or person responsible for the violation of the personal liberty of a citizen. It provides thus:

“Any person who is unlawfully arrested or detained shall be entitled to compensation and public

*apology from the appropriate authority or person;
and in this subsection, ‘the appropriate authority
or person’ means an authority or person specified
by law.”*

In the case of Jum–jaja vs. COP Rivers State (2013)
22 WRN 39 at 56, the Court held:

*“....once the appellant proved violation of his
fundamental right by the Respondents, damages
in form of compensation and even apology should
have followed.”*

The essence of the above is that persons, officers or agents of state who in the ordinary course of the discharge of their official duties or functions may be involved in the deprivation of a citizens right to personal liberty, must strictly observe and comply with the provisions of subsections 1 – 5 of Section 35 of the 1999 Constitution. Where they curtail or deprive a person of his/her liberty, the person shall be entitled to compensation and public apology from them since the

curtailment or deprivation would in the circumstance be unlawful. See Aqua vs. Archibong (2012) LPELR - 9293 (CA), Akpan vs. FRN (2011) LPELR - 3956 (CA). This Court will also grant this leg of Relief 5.

Relief 6 is for perpetual injunction. The respondents acted beyond their official duties. And without much ado, this relief will be granted as prayed.

In totality, judgment is entered for the Applicant in the following terms:

- A declaration is made that the fundamental rights of the 1st Applicant have been, and are likely to be further infringed by the Respondent having regard to the circumstances of the case.
- I award the sum of N1,000,000.00 (One Million Naira) as general damages in favour of the 1st Applicant against the Respondent.
- I order that the Respondent shall tender a public apology to the 1st Applicant for the violation of her fundamental right.

- The Respondent or its officers are hereby restrained by an order of injunction from further infringement or violation of the 1st Applicant's fundamental rights.

Hon. Justice M.A. Nasir

Appearances:

A.O. Igeh Esq – for the Applicant

Respondent absent and not represented