

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 7TH DAY OF JULY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 6
SUIT NO: CV/1467/2020

BETWEEN:

KEMA CHIKWE ----- APPLICANT

AND

INSPECTOR GENERAL OF POLICE ----- RESPONDENT

RULING/JUDGMENT

The Applicant filed the instant Motion on Notice for the enforcement of her fundamental human right. The motion was filed on the 17th March, 2020 and is brought pursuant to Order II Rules 1,2,3,4,5, and 7 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, Section 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and Articles 5,6 and 7 of the African Charter on Human and Peoples Right. The Applicant prayed this Court for the following reliefs:

1. A declaration that the continuous harassment, intimidation and threat of detention of the Applicant by the Respondent, his staff, agents and privies is illegal, unconstitutional, unlawful and amount to violation of the Fundamental Human Right of the Applicant.
2. An order restraining the Respondent and his agents or persons acting on his behalf or for him from further intimidating, harassing and threatening the freedom, liberty and dignity of the Applicant in connection with the subject matter of this application.
3. Cost of this suit assessed at N5,000,000.00 (Five Million Naira).

In support of the application is an affidavit of 17 paragraphs duly sworn to by the Applicant herself. Also, accompanying the application is the Statement of facts together with the grounds upon which the reliefs are sought.

Learned Counsel for the Applicant, Tony Ogbulafor Esq. also filed a written address which was adopted by Chibuike E. Soronnadi Esq. on the 1st February, 2021. In their written address, Learned counsel raised a sole issue for determination as follows:

“Whether from the facts as stated above the Applicants fundamental right to dignity of human person and liberty is not being threatened by the Respondent.”

Learned Counsel referred this Court to the Provisions of Order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure Rules) 2009 and Section 34(1) of the Constitution of the Federal Republic of Nigeria 1999, (as amended) and submitted to the effect that from the facts deposed to in the affidavit accompanying this application, it is clear the Applicant’s fundamental rights were likely to be infringed upon by the Respondent.

Counsel submitted further that the Applicant's right to dignity of human person has been infringed upon and her right to personal liberty is likely to be infringed upon by the actions of the Respondent. He urged the Court to hold that the continuous harassment, intimidation, threat or detention of the Applicant by the Respondent is illegal, unconstitutional and amount to violation of her fundamental right to dignity of human person. Counsel cited and referred this Court to a host of judicial decisions including the following:

1. Dibia vs. Igwe (1998)9 NWLR (Part 520) 78 at 85.
2. Okonkwo vs. Ogbogu (1996)37 LRCN 580.
3. Nkpa vs. Nkume (2001)6 NWLR (Part 710) 373 – 374.
4. F.B.N. Plc. A.G. FED. (2018)7 NWLR (1617) page 121 at 174 – 175.
5. Ihenacho vs. N.P.E. (2017)12 NWLR (Part 1580) 424 at 429 – 432.

The Respondent was duly served with the Motion on Notice together with hearing notice, and the endorsed copies were filed by the Bailiff of this Court. However, the Respondent elected not to file any response to the Originating Motion and thus the applicant proceeded with hearing.

Generally, human rights are the basic entitlement of all human beings in any society. They pertain to humans by virtue of their humanity. The apex Court in **Ransome Kuti & Ors. vs. A.G. Federation (1985) LPELR – 2940 (SC)**, held as follows:

“..... what is the nature of a fundamental human right? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence.”

Thus, a Court called upon to enforce or protect the human right of a person must appreciate that it has a

sacred duty to perform not only to the claimant but to all humanity. The correct approach therefore in a claim for the enforcement of fundamental right is to examine the reliefs sought, the grounds for such reliefs and the facts relied upon. Where the facts relied upon disclose a breach of the fundamental right of the Applicant as the basis of the claim, then there is redress through the enforcement of such right under the Fundamental Rights (Enforcement Procedure) Rules. See: Sea Trucks (Nig) Ltd. vs. Anigboro (2001) LPELR - 3025 (SC), Tukur vs. Governor of Taraba State (1997)6 NWLR (Part 510) 549.

The law is settled that an Applicant for the enforcement of his fundamental right under Chapter IV of the constitution has the initial onus of showing that the reliefs he claims comes within the purview of fundamental right as encompassed by Sections 33 - 45 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This is borne out by the principle of Section 46

of the Constitution. See: Nwagwu vs. Duru (2002)13 WRN, page 158.

The Applicant herein averred that her husband was invited by agents of the Respondent on or about 13th December, 2019 at the instance of one Jerry Chukwueke who had a land transaction with her husband. As a result of her husband's health condition, he was unable to travel from Owerri to Lagos.

According to the Applicant, on the 16th December, 2019 her husband reported at the office of the Respondent's agents in Lagos and he was interrogated and released on bail on self-cognizance after he was made to undertake to repay Jerry Chukwueke by the end of March, 2020. The Applicant further averred that since 5th March, 2020 officers of the Respondent led by one Inspector Biyi have been bombarding her with calls and text messages telling her to bring her husband to their office failing which they will arrest and detain her indefinitely. That the said

Inspector Biyi and his colleagues have placed the Applicant under constant harassment, intimidation and threat of detention.

The Applicant finally averred that her only involvement in the whole transaction was that she undertook to ensure that her husband would report to the office of the agents of the Respondent on 16th December, 2019 when he gets stronger in health, and he did report accordingly whereby the Respondent granted him bail on self-cognizance.

The Respondent as stated earlier did not file any counter affidavit to deny, challenge or controvert the facts contained in the Applicant's affidavit. The law is that where an affidavit is not challenged by a counter affidavit, the facts deposed to in the affidavit remain unchallenged. Further, the law is settled that facts in an affidavit not challenged, not contradicted and not controverted by a party are deemed admitted by him unless such facts on the face of them will lead to absurdity if accepted as being the

truth of what they try to establish see: A.G. Rivers State vs. Ude (2006)7 SC (Part 11) page 81, Zenith Banl Plc. vs. Bankolas Investment Ltd. & Anor. (2011) LPELR - 9064 (CA).

Now, the only question, that begs for an answer is whether the Applicant's fundamental right guaranteed under the 1999 Constitution of the Federal Republic of Nigeria has been breached.

It is pertinent to state at this juncture that the fundamental right of a citizen guaranteed under Chapter IV of the 1999 Constitution are not absolute. There is no doubt that the Respondent i.e. the Police, have unfettered powers of arrest, detention and investigation of person(s) suspected to have committed an offence pursuant to Section 35(1)(c) of the 1999 constitution and under the Administration of Criminal Justice Act, 2015. The Police in the legitimate discharge of their duties cannot be sued in Court for breach of fundamental right. See: Atakpa vs.

Ebetor (2015)5 NWLR (Part 1447) pages 549 at 574,
Ukeagbu vs. National Broadcasting Corporation (2007)14
NWLR (Part 1055) 551.

In the instant case, the Applicant deposed in the supporting affidavit that she had been placed under constant harassment and intimidation to either produce her husband or be arrested and detained indefinitely. The applicant herein was not involved in any dealing with the complainant, nor has she committed any offence. The Respondent has no power to put the applicant to constant harassment or threaten her with arrest under the circumstances.

It should be noted that any person who is afraid that his fundamental right is about to be breached may approach the Court for his right to be protected. In fact, Order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 provides as follows:

–“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 is likely to occur, for redress.”

Therefore, it was well within the rights of the applicant to approach this Court for redress. See Emeka vs. Okoroafor & ors (2017) LPELR – 41738 (SC), Uzoukwu vs. Ezeonu 11 (1991) 6 NWLR (part 200) 708. In IGP & ors vs. Ikpila & anor (2015) LPELR – 40630 (CA) the Court held:

“The essence of the promulgation of the fundamental right enforcement procedure is to protect Nigerians fundamental right from abuse and violation by authorities and persons.”

In this instance, the applicant's right to dignity of human person and right to personal liberty are likely to be infringed upon by the actions of the Respondent, if they are not restrained. This is moreso, as the respondent has not denied any of the assertions made by the applicant.

On the whole, based on the affidavit evidence before this Court, I hold that the continuous harassment, intimidation and threat of detention of the Applicant by the officers of the Respondent is illegal and unconstitutional and a violation of the Applicant's fundamental rights enshrined in the constitution.

The Respondent and/or his agents or persons acting on his behalf are hereby restrained from further intimidating, harassing and threatening the freedom, liberty and dignity of the Applicant in connection with the subject matter of this application.

It is noted that the applicant claimed for cost of the suit assessed at N5,000,000.00 (Five Million Naira). The

Court has to take into account the interest of both parties considering that a successful litigant is entitled to the payment of costs. In this instance, the amount being claimed as costs seems to be in the realm of solicitors costs. In the case of Michael vs. Access Bank (2017) LPELR – 41981 1 at 48 – 49, Ugochukwu Anthony Ogakwu, JCA stated thus:

“It seems to me that a claim for solicitors fees which does not form part of the cause of action is not one that can be granted...In Guinness Nigeria Plc vs. Nwoke (part 689) 135 at 159, this Court held that a claim for solicitors fees is outlandish and should not be allowed as it did not arise as a result of damage suffered in course of any transaction between the parties. Similarly, in Nwanji vs. Coastal Services Ltd (2004) 36 WRN 1 at 14 – 15, it was held that it was improper, unethical and an affront to public policy to have a litigant pass the burden of costs of an action

including his solicitors fees to his opponent in the suit.”

Similarly, in the case of Ihekwoha vs. ACB Nig Ltd (1998) 10 NWLR (part 571) 590, the Court per Akpabio JCA, had on this issue succinctly pronounced inter alia thus:

“The issue of damages as an aspect of solicitors fees is not one that lends itself to support in this country.”

See also Ibe & anor vs. Bonum (Nig) Ltd (2019) LPELR – 46452 (CA), In RE: Glaxosmithkline Consumer Nig. Plc (2019) LPELR – 47498 (CA), Mrs. Ene Umo vs. Mrs. Cecilia Udonwa (2012) LPELR – 7857 (CA). Thus, the claim for the sum of N5,000,000.00 (Five Million Naira) being cost of prosecuting the suit is refused.

In totality I enter judgment in favour of the applicant in the following terms:

- A declaration that the continuous harassment, intimidation and threat of detention of the applicant by the respondent or his agents is illegal, unconstitutional, unlawful and amounts to a violation of the fundamental rights of the applicant.
- The Respondent and/or his agents are hereby restrained from further intimidating harassing and threatening the freedom, liberty and dignity of the applicant in connection with this application.
- Cost of N5,000,000.00 (Five Million Naira) is refused and accordingly dismissed.

Hon. Justice M.A. Nasir

Appearances:

Chibuiké E. Soronnadi Esq – for the applicant

Respondent absent and not represented.