

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON WEDNESDAY 28TH SEPTEMBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 9, MAITAMA, ABUJA

SUIT NO: FCT/HC/CV/1998/2020

IN THE MATTER OF AN APPLICATION BY SIR (BARR.) TONY
CHUKWUELUE FOR THE ENFORCEMENT OF HIS FUNDAMENTAL
HUMAN RIGHTS

BETWEEN

SIR (BARR.) TONY CHUKWUELUE APPLICANT

AND

1. MR. NWEZE STEPHEN MAXWELL	}	RESPONDENTS
2. SEAMAN GLOBAL PROJECTS LTD.		
3. INSPECTOR GENERAL OF POLICE		
4. DSP. OJO AFEYEMI		

JUDGMENT

The Applicant claims to be an Abuja-based senior legal practitioner. The summary of his case is that he had conflicts with the 1st and 2nd Respondents over transaction with respect to landed property situate at

Lugbe 1 Extension, Lugbe, FCT, Abuja. In the course of the conflict, the 1st and 2nd Respondents lodged a petition with the 3rd and 4th Respondents, who invited the Applicant for a chat. The Applicant refused to honour the invitation upon his apprehension that the 3rd and 4th Respondents were poised to interfere with his fundamental human rights to own property; to degrade the dignity of his person and to deny him his personal liberty.

Being apprehensive that his fundamental rights were under the threat of being violated, the Applicant initiated the instant action for the enforcement of his fundamental rights, by originating motion on notice filed on 29/06/2020, by which he claimed against the Respondents the reliefs set out as follows:

- 1. A declaration that the Applicant is entitled pursuant to section 43 of the 1999 Constitution (as Amended) to acquire and own immovable property anywhere in***

Nigeria without same being taken away by any person without payment of adequate compensation.

- 2. A declaration that the oral invitation of the Applicant by the 4th Respondent without any written invitation and the reason for such invitation to enable him prepare for his defence is an infringement of the Applicant's right to respect of the dignity of his person and fair hearing and therefore a grave violation of those rights, as provided in section 34(1) and 36(1) of the 1999 Constitution (as Amended).***
- 3. A declaration that the harassment, threats, and threats to arrest the Applicant by the officers of the 3rd Respondent led by the 4th Respondent, on the prompting of the 1st Respondent over the contractual transaction the Applicant had with the 1st Respondent offends the provision of Section 35(1) of the 1999 Constitution and therefore illegal, unlawful and unconstitutional.***

- 4. A declaration that the oral invitation and threat to arrest the Applicant by the 4th Respondent on the prompting/instigation of the 1st and 2nd Respondents on a purely Civil Matter (Land Matter) is wrongful, unlawful, unconstitutional and an infraction of the Applicant's Fundamental Right Constitutionally guaranteed.**
- 5. A declaration that the action of the 4th Respondent to have declared the Applicant's Title Documents over his Lands known as plots 2329, 230, 2305, 2330, 2331 and 2332 located at Lugbe Extension 1, Lugbe FCT Abuja as "fake" without conducting any atom of investigation at the appropriate authorities to confirm the authenticity or otherwise of same and without hearing from the Applicant amounts to denial of fair hearing and therefore as provided in the 1999 Constitution (As amended) at Section 36(1).**
- 6. A declaration that the Nigerian Police is not a debt collection agency.**

- 7. An order of perpetual injunction restraining the Respondents, particularly the 3rd and 4th Respondents from further inviting, threatening, threatening to arrest the Applicant or in any way whatsoever threaten his constitutionally guaranteed rights on the account of this subject matter (Land Transaction) he has with the 1st and 2nd Respondents.**
- 8. An order of perpetual injunction restraining the 3rd and 4th Respondents or their agents, assigns etc from demanding from the Applicant the return of the sum of ₦4,000,000.00 paid to the Applicant by the 1st and 2nd Respondents as part payment of the compromised cost for destruction of the Applicant's properties by the 1st and 2nd Respondents as the said transaction is purely Civil in Nature.**
- 9. An order of Court granting the Applicant the sum of ₦1,000,000,000.00 (One Billion Naira) only as compensation from the Respondents, jointly and severally for the breach of the Applicant's Fundamental Rights constitutionally guaranteed.**

10. An order of Court pursuant to grant of all or part of the Reliefs sought by the Applicant directing the Respondents to offer in writing an apology to the Applicant.

The 1st Respondent, as the Managing Director and Chief Executive of the 2nd Respondent, on their behalves, deposed to a Counter Affidavit on 07/09/2020. He denied the Applicant's case. He alleged that the Applicant was a land racketeer who had defrauded them of the sum of ~~N~~**4,000,000.00** as a result of which they petitioned him to the Police for investigation and possible prosecution.

The Applicant filed a Further Affidavit on 19/07/2020, in further denial of the depositions in the 1st Respondent's Counter Affidavit.

On their parts, the 3rd and 4th Respondents did not file any processes in response to the originating motion; neither were they represented by counsel at the

hearing, even though the record of proceedings bear out that they were served with the originating processes and the requisite hearing notices.

I had proceeded to examine the totality of the facts deposed in the affidavit evidence placed before the Court by the contending sides in this case, together with the totality of the written arguments canvassed by their respective learned counsel in the written submissions filed alongside their processes.

It is reckoned that the question of infringement of fundamental rights is largely a question of facts. The provisions of **Chapter IV** of the **Constitution** clearly set out the specific fundamental rights that are preserved for citizens; the breach or threatened breach of which could be lawfully redressed as the case may be.

As also correctly submitted by learned counsel for the 1st and 2nd Respondents, the law remains trite that he who asserts must prove; therefore, the Applicant who

has prayed the Court for reliefs in this action has the onus of placing before the Court sufficient material facts required to sustain the reliefs claimed, failure of which the Court will be entitled to dismiss the action. See Union Bank of Nigeria Ltd. Vs. Ozigi [1994] 3 NWLR (Pt. 333) 358; Onah Vs. Okenwa [2010] 7 NWLR (Pt. 1194) 512 @ 535.

As I proceed, it is also very pertinent and significant to quickly emphasize and put in proper perspective, the duty of the Court, whilst entertaining claims under the Fundamental Rights Enforcement Procedure. That duty is certainly not to conduct a criminal investigation, inquiry or trial; neither is it to establish the guilt or innocence of any party as relating to any allegation of crime. Its essence is also not to establish the liability or otherwise of a party with respect to whatever civil transactions he/she may have been involved or engaged with another party. The focal essence of the

FREP is simply and strictly for the Court to enforce the protection of citizens' fundamental rights preserved by **Chapter IV** of the **Constitution** and the other recognized Human Rights Instruments, where an infringement is established or perceived.

The procedure under the **FREP Rules**, pursuant to the provisions of **s. 46(1)** of the **Constitution**, entitles any person who alleges that any of the provisions of **Chapter IV** of the **Constitution** and any other recognized Human Rights Instruments which make provisions for the fundamental liberties of citizens, has been, is being or is likely to be contravened in relation to him/her, to apply to the appropriate Court in the state where the infringement occurred or perceived to occur, for redress.

The case put forward by the Applicant, as deposed in the Affidavit evidence he placed at the Court's disposal, seems clear and narrow. He had conflicts with

the 1st and 2nd Respondents, who themselves dealt in the business of real estate, regarding certain land issues. He claimed the 1st and 2nd Respondents encroached on his plots of land in Lugbe 1 Extension, Lugbe, FCT, Abuja; and that in the process they demolished some structures he had thereon. According to the Applicant, he had a meeting with the 1st and 2nd Respondents and that they agreed to pay him some money in excess of **₦6,000,000.00** as compensation for the structures purportedly demolished on his said plots of land. He further claimed that the 1st and 2nd Respondents paid him the sum of **₦4,000,000.00** leaving a balance of **₦2,700,000.00** to be paid to him; that when, on 16/06/2020, he requested his Property Manager, one **Mr. Onyeka Iwuchukwu**, to approach the 1st and 2nd Respondents to demand for payment of the balance of the amount as agreed as compensation, the said **Mr. Iwuchukwu** got arrested by the 4th Respondent; that it was after his intervention

and visit to the office of the 4th Respondent on the same date that the man was released.

The Applicant further alleged that whilst he was at the office of the 4th Respondent on 16/06/2020, the 4th Respondent informed him that the 1st and 2nd Respondents wrote a petition against him concerning his plots of land in Lugbe; that he demanded for a copy of the said petition, but same was not made available to him; and that he left copies of the title documents of the said plots of land with the 4th Respondent.

The Applicant further alleged that the following day, 17/06/2020, the 4th Respondent began to call him on the phone repeatedly to request that his attention was required at the office of the Special Tactical Squad of the 3rd Respondent; and that the 4th Respondent accused him that the land documents he submitted were fake; and that he also asked him to refund the sum of

~~₦~~4,000,000.00 paid to him by the 1st and 2nd Respondents.

The Applicant, being apprehensive that his fundamental rights were under the threat of being breached, neither reported to the Police nor refunded the said sum of ~~₦~~4,000,000.00. Rather, the Applicant quickly approached this Court to file the instant action in order to secure the protection of his fundamental rights.

The 1st and 2nd Respondents, in their Counter Affidavit, confirmed that they petitioned the Applicant to the Police on the ground that they discovered, after conduct of searches, that the documents relied upon by the Applicant to allege that the 1st and 2nd Respondents encroached upon his plots of land were fake documents; and that he obtained the said sum of ~~₦~~4,000,000.00 from them fraudulently.

The 1st and 2nd Respondents further stated that none of the documents of title the Applicant attached to his Affidavit in support of the present action, which he relied upon as the basis for his claim that his plots of land in Lugbe were encroached upon, bore his name. According to them, this was part of the basis of their demand for a refund of the said **₦4,000,000.00** and the reason for their lodging a petition with the Police.

As I had clearly pointed out earlier on, the duty of the Court, when entertaining a claim for the enforcement of fundamental human rights, is not to engage in investigation or trial of allegations of crime; or to dabble into the merits of civil transactions in which parties before it are engaged.

The question therefore is whether, in the totality of the circumstances of the present case, and on the basis of the material facts placed before the Court, the

Applicant has established the violation or threatened violation of any of his fundamental rights as alleged?

As gathered from the materials placed before the Court, the Applicant's invitation for a chat by the 4th Respondent on 17/06/2020, was conveyed by telephone call. The said invitation, as confirmed by the two contending sides, was sequel to a petition lodged by the 1st and 2nd Respondents to the 3rd and 4th Respondent against the Applicant. According to the 1st and 2nd Respondent, they had lodged the petition when they discovered that the Applicant purportedly misrepresented to them that he owned the plots of land upon which they had paid him compensation of **₦4,000,000.00**; whereas the search they conducted later revealed that the title documents of the plots of land relied upon by the Applicant to obtain the compensation from them did not bear his name; and they suspected that the Applicant had defrauded them.

I must state, at first, contrary to the contention of the Applicant's learned counsel, that the Police, in carrying out their statutory duty of crime detection, investigation or prosecution, inter alia, are not under any legal obligation to write a formal letter to invite a suspect to be questioned. As such, it cannot be said that the 4th Respondent had exceeded the boundaries of his statutory duties to have placed a phone call to the Applicant to invite him for questioning as was done in the present case. I so hold.

Furthermore, considering the case put forward by the 1st and 2nd Respondents, it cannot be said that they did not have a strong reason to have suspected foul play in respect of their transactions with the Applicant, bordering on fraud; to have necessitated their lodging a petition to the 3rd Respondent against him.

In my view, mere telephone calls placed to the Applicant without the manifestation of any overt act on

the part of the 3rd and 4th Respondents tending to suggest that they were poised to curtail the Applicant's fundamental rights, cannot be accepted as evidence of violation or threatened violation of the Applicant's fundamental rights. I so hold.

The Applicant had alleged threats and harassment on the part of the 3rd and 4th Respondents; yet supplied no iota of evidence of such threats to violate his fundamental rights. There is no evidence of any threat to deny the Applicant his fundamental rights to personal liberty, to own property in any place of his choice as he is entitled. In the same vein, the Applicant did not establish any threat of degrading or inhuman treatment or threatened inhuman treatment meted out to him by any of the Respondents.

The Applicant, as a senior legal practitioner that he claimed to be, ought also to know and appreciate that, as a responsible citizen, he was also under civil

obligation to honour invitation civilly extended to him by the Police; more so when he was informed that the invitation was pursuant to a petition lodged against him by the 1st and 2nd Respondents.

The Applicant's learned counsel contended that the 3rd and 4th Respondents allowed the 1st and 2nd Respondents to manipulate them into accusing the Applicant of procuring fake land documents; whereas he failed to heed the invitation extended to him for discussions that could shed more light on the petition lodged against him.

I hold that the totality of the Applicant's allegations in this action are at best speculative, a figment of his imagination, not backed up by real evidence.

Rather than honour the 4th Respondent's invitation, the Applicant rushed to Court to file the instant application, thereby stalling the process of investigation of the petition lodged against him by the 1st and 2nd

Respondents. It has been held in several decided authorities, and as alluded to by learned counsel for the 1st and 2nd Respondents, that for a person to approach the Court to be shielded against investigation of allegations of or upon suspicion of commission of a crime, or criminal prosecution, will amount to interference with powers conferred by the **Constitution** on law enforcement agencies, to carry out such investigations and possible prosecution. See Fawehinmi Vs. IGP [2007] 7 NWLR (Pt. 665) 481; A. G. Anambra State Vs. Uba [2005] 15 NWLR (Pt. 947) 44.

It is my view, after a careful assessment of the totality of the facts deposed by the Applicant to support the instant action, that he merely filed this suit with the sole aim of obstructing or stalling the 3rd and 4th Respondents from further investigating the allegations

of fraud lodged against him by the 1st and 2nd Respondents.

But I daresay that no responsible Court will grant an order of injunction to perpetually shield any citizen from being investigated or prosecuted for allegations of commission of crime. See also Bamidele Vs. Commissioner for Local Government [1994] 2 NWLR (Pt. 329) 568; Peter Vs. Okoye [2002] FWLR (Pt. 110) 1864.

In the overall analysis therefore, I hold that this suit is bereft of any iota of merit or substance whatsoever. The Applicant has failed woefully to place any materials before the Court to establish that the Respondents evinced any real threat to violate any of his fundamental rights catalogued in the application. The action is completely speculative, pre-emptive and deliberately filed to stall investigation of petition lodged against the Applicant by the 1st and 2nd

Respondents with the 3rd and 4th Respondents. The suit shall be and is hereby accordingly dismissed.

OLUKAYODE A. ADENIYI

(Presiding Judge)

28/09/2021

Legal representation:

Ifeanyi M. Nrialike, Esq. (with **Collins N. Onah, Esq.**) – *for the Applicant*

Okey Gideon Agbo, Esq. – *for the 1st and 2nd Respondents*