

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT GUDU - ABUJA**

**DELIVERED ON THURSDAY THE 23<sup>RD</sup> DAY OF SEPTEMBER 2021.**

**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R.OSHO-ADEBIYI**

**MOTION NO. CV/711/2021**

**MRS. NGOZI UMEADI- - - - APPLICANT**

**AND**

**INSPECTOR GENERAL OF POLICE - - RESPONDENT**

**JUDGMENT**

Applicant filed this suit on the 9<sup>th</sup> day of March 2021 brought pursuant to Section 6(6) & Sections 34, 35, 36 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011; Order 2 Rules 1, 2, 3, 4, 5 & 6 of the Fundamental Rights Enforcement Rules 2009, Articles 4,5, 6, 7(b) and (d) of the African Charter on Human & Peoples Right (Ratification and Enforcement Act) and under the inherent jurisdiction of this Court.

It is seeking for the following reliefs:

1. A DECLARATION that the arrest and the continued detention of the Applicant since the 17<sup>th</sup> day of February, 2021, till date, by the Respondent without being charged to Court or released on bail is illegal, unlawful, oppressive and unconstitutional, as it violates the Applicant's fundamental rights to fair hearing, dignity of human person, personal liberty and right to freedom of movement as guaranteed by

Sections 34, 35, 36 and 41 of the 1999 constitution of the Federal Republic of Nigeria (As Amended) 2011.

2. AN ORDER OF THIS HONOURABLE COURT directing the Respondent to unconditionally release the Applicant from their custody forthwith.
3. COMPENSATORY AND EXAMPLARY DAMAGES of N100,000, 000.00 (One Hundred Million Naira) only, against the Respondent for the gross violation of the Applicant's fundamental rights to dignity of human person, fair hearing, personal liberty and freedom of movement.
4. AN ORDER OF THIS HONOURABLE COURT directing the Respondent to tender unreserved public apology to the Applicant in two National Dailies and any other forms of reparation that the Honourable Court may deem fit to grant.

The grounds upon which the reliefs are sought are:

- a. That by virtue of Section 46(1) of the 1999 constitution (as amended) and Order 1 Rule 2(1) of the Fundamental Rights (Enforcement Procedure) Rules, any person who alleges that any of the provisions of Chapter 4 of the Constitution to which he is entitled to has been, is being or likely to be contravened in any state in relation to him may apply to the High Court in the State for redress.
- b. That the Applicant is a Nigerian citizen who is entitled to her fundamental rights to dignity of human person, fair hearing, personal liberty and freedom of movement guaranteed by Sections 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria 1999, as Amended, 2011.

- c. That the arrest of the Applicant who is a nursing mother and her continued detention, firstly, by the Imo State Command of the Respondent, and presently, by the Respondent, from the 17th day of February, 2021, till date, violates her fundamental right to personal liberty, fair hearing, dignity of human person and freedom of movement, and consequently illegal and unconstitutional.
- d. That the Respondent has no authority whatsoever to detain the Applicant for the period of time above stated without complying with the constitutional and statutory provisions of the Laws of the Federal Republic of Nigeria.
- e. That the Respondent cannot exercise their power outside the provision of the law, and, thus; the arrest and detention of the Applicant must follow due process and procedure set down by the Constitution of the Federal Republic of Nigeria 1999 as amended and other relevant statutory provisions.
- f. That the Applicant is constitutionally entitled under Section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria as Amended (2011) to the payment of compensation and public apology from the Respondent for the gross violation of her rights to dignity of human person, personal liberty, fair hearing and freedom of movement.

Attached to the application is a 35-paragraph affidavit deposed to by **Mr.** Christopher Umeadi, the Applicant's husband whose source of information is the Applicant. From the facts deposed therein, it is the case of the Applicant that Applicant was arrested on the 17th day of February 2021, alongside her

Doctor- Dr. Stephen Irochi of Multicare Hospital Omogba at Multicare Hospital Omogba, Onitsha, by Military personnel, while in the hospital for her medical check-up. That Applicant was arrested, without informing her of the offence she committed. That Applicant was subsequently handed over to the Imo State Command of the Respondent who beat her up and was inflicted with severe injuries. That Applicant had a life-threatening sickness prior to her arrest and while in detention her condition deteriorated further due to the injuries sustained in the hands of the Respondent's agents as Applicant is being subjected to daily routine torture, beating, and manhandling over a yet to be disclosed offence. That Applicant has been denied access to her lawyers, relatives or any form of medical treatment and all efforts made to secure administrative bail for the Applicant failed.

That the Applicant is currently being subjected to the worse degrading and dehumanizing treatment, including but not limited to solitary confinement, flogging, beating, chaining and handcuffing the Applicant in the dreaded detention of the Respondent. That the health condition of the Applicant is deteriorating on a daily basis, and she stands the risk of losing her life, if this Honourable Court does not intervene most timeously.

That it was only on the 27<sup>th</sup> day of February, 2021, that the Applicant was merely granted limited access to her lawyer, her younger sister and husband where it was observed that Applicant can no longer move her legs and hands freely due to her deteriorating health condition, which condition required urgent medical attention, otherwise she will lose her life. That the Applicant was already scheduled to undergo a tumor surgery on the last week

of February 2021, which medical appointment has been frustrated by the arrest and detention of the Applicant.

That the Applicant was never found in possession of any arm or committing any offence known to Nigerian laws and following the failure and/or refusal of the Respondent's Imo State Command, to admit the Applicant to administrative bail or charge her to Court if she had committed any offence known to law, the Applicant instituted an application for the enforcement of her fundamental rights against the Imo State Command of the Nigeria Police in Suit No: HOW/228/2021, filed on the 3<sup>rd</sup> day of March, 2021.

That immediately after the service of the Court processes on the Respondent in the said suit, the Applicant was transferred to the Force Headquarters, Abuja, where they have continued to detain the Applicant. That the Applicant has suffered monumental damages, hardship and was consequently exposed to public ridicule and odium, on account of this illegal arrest, and unlawful detention in the custody of the Respondent. That it will serve the best interest of Justice if this application is granted for the enforcement of the Applicant's fundamental Human Rights as constitutionally guaranteed.

Filed along with the application is a written address which Applicant's Counsel adopted as argument in support of the application. Counsel raised two issues for determination, thus:

- a. Whether the Applicant's Fundamental Rights have been violated by the Respondent in the circumstances of this case?
- b. If issue no. 1 above is answered in the affirmative, whether the Applicant is entitled to damages and public apology?

Counsel arguing the first issue submitted that the violation of the Applicant's human rights to liberty and dignity of human persons, in the instant case, became so pronounced in the way and manner the Applicant was arbitrarily arrested and detained by the Respondent, and is being tortured by the agents of the Respondent as there is no order of Court justifying the detention of the Applicant in the custody of the Respondent since 17<sup>th</sup> day of February, 2021, till date.

Submitted that it is the duty of this Honourable Court to protect the right of the Applicant even before it is being infringed upon, and more especially in the present circumstance, that the Applicant's rights have been so brazenly and grossly infringed upon by the Respondent.

Counsel submitted further that the Applicant has made out a case as shown in the affidavit evidence that her fundamental rights to fair hearing, dignity of human person, personal liberty and movement, all provided for under African Charter on Human and Peoples Rights and under Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011, were grossly violated by the Respondent and urged the Court to resolve the first issue in favour of the Applicant.

Arguing issue 2, Counsel submitted that an Applicant whose arrest and detention has been held to be illegal and unconstitutional is entitled to award of compensatory damages for the infringement of his fundamental rights as guaranteed under the Nigerian Constitution and the African Charter on Human and Peoples Rights.

Counsel submitted further that Section 35 (6) of the 1999 constitution of the Federal Republic of Nigeria (as Amended) provides for the payment of compensatory damages to citizen a who is unlawfully arrested and illegally detained.

Counsel submitted finally that the Respondent has grossly abused the Applicant's fundamental human rights and thus, the Applicant is entitled to all the reliefs sought against the Respondent and urged the Court to grant all the reliefs sought by the Applicant. Counsel relied on the following authorities to drive home his argument in support of the Applicant's application.

1. Anozie V 'GP (2016) 11 NWLR (1524) 387 PGS 389-390 PARAS: 2
2. Jim-Jaja vs C.O.P. RIVERS STATE (2013) 6 NWLR (PT 1350) 225 Pg 230 Para. 2
3. Duruaku v Nwoke (2015) 15 NWLR (Pt. 1483) 417 Pages 423 and 425 paras-2 and 5
4. Emeka V Okafor (2017) 11 NWLR (PT 1577) 410 Pg. 423 Para. 1
5. Adetona & Ors V Igele General Enterprises Ltd (2011) 7 NWLR (PT 1247) 535
6. Jim-Jam V COP (2011) 2 NWLR (PT 1231) 375 PG 382 PARAS.6
7. Federal Republic of Nigeria v. Ifegwu (2003) 15 NWLR PT 848 at 133
8. Gani Fawehenmi v. Abacha (1996) 5 NWLR PT 446 at 198
9. Ubani v. Director of State Security Services (1999) 11 NWLR PT 129.
10. Theresa Onwo v. Nwafor Oko & Ors (1996) 6 NWLR (Pt 456) 584 at 604-606
11. Awoyera v. Inspector General of police (2015) I NHRLR 58

12. Ekpu v. Attorney General of the Federation (1998) 1 HRLR (P421, Para A)
13. Ondo State Broadcast Corporation v. Ondo State House of Assembly (1985) 61 NCLR 333 at 337
14. Minister of Internal Affairs v. Shuyaba (1982) 3 NCL 915 at 953.
15. W. Yahaya V. NPF, Plateau State Command (218) LPELR-46045(CA).
16. Arulogun V C.O.P Lagos & ORS(2016) LPELR-40190(CA)
17. Jimoh VS A-G Federation (1998) IHRLE Pg 513 at 523 PARA A-B
18. Chief Chinedu Eze & Anor v. I.G.P.& 4 ORS (2007) CHR at 43
19. Julius Berger (NIG) PLC V. IGP & ORS (2018) LPELR-46127(CA)
20. Igwe Okolo v. Akpoyibo & ors. (2017) LPELR-41882(CA)

The Respondent was duly served with the Court processes on the 1<sup>st</sup> of July, 2021 and hearing notices on the 13<sup>th</sup> of July 2021 and 31<sup>st</sup> of August 2021 but chose not to challenge nor controvert the attached affidavit.

At the hearing of the application on the 16<sup>th</sup> day of September, the Applicant's Counsel adopted his written address and relied on all averments in the Applicants affidavit. The Respondent's Counsel M. T. Ageba, Esq., holding brief of Christian S. Hon informed the Court that

*"We were briefed during vacation, and we have made efforts to get necessary facts from the police in order to file a response to the application but all to no avail. In the circumstances we leave it to the discretion of the Court"*

The Respondent in this case was given ample opportunity to file their counter affidavit but failed to utilize such opportunity and the law is well settled that



aparty who is not up and doing to take advantage of the fair hearing principle at his doorsteps by the trial Judge, cannot complain that he was denied fair hearing. See the case of NEWSWATCH COMMUNICATIONS LTD v. ATTA(2006) LPELR-1986(SC).

I have read the Applicant's originating motion and the affidavit evidence attached to the application together with the written address filed and the issue to be determined in this case is:

***“Whether from the circumstances and facts before this Court, the Respondent has infringed on the fundamental human rights of the Applicant.”***

It is trite law that, an applicant for the enforcement of his fundamental right, has the initial onus to show that his reliefs comes under the scope of the fundamental right and prove exactly how it was contravened. In NWANGWU & ANOR. v. DURU & ANOR (2001) LPELR7001Pg. 16-17, paras. C-B his lordship CHUKWUMA-ENEH, J.C.A held that:

*“It is well 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 relief he claims comes within the purview of the fundamental rights as encompassed by sections 30- 41 of the Constitution”.*

Now the pertinent question here iswhether what was alleged by the applicant in the supporting affidavit has been proved to show prima facie that there has been a violation of her right to dignity of human person and right to personal

liberty, fair hearing and freedom of movement as guaranteed in Sections 34, 35, 36 and. 41 respectively, of the 1999 Constitution.

To prove her case Applicant from the affidavit evidence in support of this application deposed to by the Applicant's husband, stated that all facts contained in the statement and affidavit were either facts, he got directly from the Applicant or/and saw himself andthat Applicant was arrested on the 17th day of February 2021, without being informed of her offence. That Applicant is being subjected to daily routine torture, beating, and manhandling over a yet to be disclosed offence. That Applicant was earlier denied access to her lawyers, relatives or any form of medical treatment and all efforts made to secure administrative bail for the Applicant failed.

Applicant's Counsel submitted that the Police have refused to charge the matter to Court, and the acts of the Respondent constitute a breach of the Applicant's fundamental rights and urged the Court to grant the application in the interest of justice.

It is a well-settled principle of law that facts contained in an affidavit form part of the documentary evidence before the court. Thus, where an affidavit is filed deposing to certain facts and the other party does not file a counter affidavit or a reply affidavit, the facts deposed to in the affidavit or counter affidavit would be deemed unchallenged and undisputed. Simply put, paragraphs of affidavit not denied or controverted are deemed admitted. See the cases of Lawson Jack VS SPDC (Nig.) Ltd (2002) 12 SCM 131; Ogojeifo VS Ogojeifo (2006) 1 SCNJ 6; Bank of the North VS. Adegoke (2006) 10 NWLR (PT 988) 339.

The Applicant in this case is urging this Court to grant her reliefs as claimed as her fundamental human right was breached particularly Section 34, 35, 36 and 41 of the 1999 Constitution as amended.

Applicant in this suit is still being detained without being released on bail or charged to Court. Respondent on the other hand, has failed to justify the continued detention of the Applicant in their custody. The Fundamental Right that Applicant is seeking to enforce is the right to dignity, personal liberty, fair hearing, and freedom of movement guaranteed by the 1999 Constitution as amended.:

*Section 34. (1) Every individual is entitled to respect for the dignity of his person, and accordingly-*

*(a) No person shall be subject to torture or to inhuman or degrading treatment;*

*(b) -----*

*(c) -----*

The Applicant from the affidavit evidence particularly in paragraphs 7, 11(ii)(iii)(iv) stated

*7 "That upon the arrest of the Applicant by the Military personnel, she was subsequently handed over to the Imo State Command of the Respondent who beat her blue and black, and inflicted her with severe injuries."*

*"ii. That the Applicant is being subjected to daily routine torture, beating and manhandling over a yet to be disclosed offence. "*

*"iii. That the Respondent has also denied the Applicant access to any form of medical treatment."*

*“iv. That the Applicant is currently being subjected to the worse degrading and dehumanizing treatment, including but not limited to solitary confinement, flogging, beating, chaining and handcuffing the Applicant in the dreaded detention of the Respondent.”*

These pieces of evidence was not controverted by the Respondent.

Also, Section 35 of the 1999 Constitution provides:

*‘every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law’*

Section 35 (1)(c) of the 1999 Constitution goes on to specify the circumstances in which an individual's right to personal liberty might be revoked, including summoning him before a court in execution of a court order or upon reasonable suspicion that he has committed a criminal offense. In this case there is no evidence before me that the Applicant committed any criminal offence or was even reasonably suspected to have committed any offence. Even if the Applicant was alleged to have committed a criminal offence, her fundamental human right ought to be respected and should be charged to Court within a reasonable, which the Respondent blatantly failed to do.

Subsection 4 of Section 35 (4) of the 1999 Constitution (as amended) further provides that any person arrested or detained should be charged to Court within a reasonable time. Where the person is detained in an area where there is a competent Court within 40-kilometre radius then such arrested or detained person should be charged to Court within a period of one day and if

there is no court within the 40-kilometre radius, such person must be charged to court within two days of his arrest and detention. The continuous detention of the Applicant without informing her of her offence, torturing of the Applicant, initially denying her access to her legal representation, or failing to charge her to Court, violates her right to personal liberty, right to fair hearing and the right to freedom of movement, ordinarily guaranteed in Sections 34, 35, 36 and 41 of the 1999 Constitution.

I must add at this point that the powers of the police are clear and duly stipulated and carrying out their duties should be done in accordance with the law. Those in charge of protecting the citizens shouldn't be the ones perpetuating the violation of citizens' rights.

The Respondent has been unable to demonstrate the reasonability of the Applicant's continued detention without charging her to court since February 17, 2021; additionally, the totality of the Applicant's evidence was not only unchallenged but also uncontroverted, and the law is settled, leaving the Court with no choice but to deem the Applicant's affidavit as admitted and proved and I therefore hold that all the averments in the affidavit of the Applicant as the true state of affairs and the Applicant has successfully proved her case to be entitled to the reliefs sought.

Accordingly, I hereby order as follows;

1. I hereby declare that the arrest and the continued detention of the Applicant since the 17<sup>th</sup> day of February, 2021, till date, by the Respondent without being charged to Court or released on bail is illegal, unlawful, oppressive and unconstitutional, as it violates the

Applicant's fundamental rights to fair hearing, dignity of human person, personal liberty and right to freedom of movement as guaranteed by Sections 34, 35, 36 and 41 of the 1999 constitution of the Federal Republic of Nigeria (As Amended) 2011.

2. That the Respondent is hereby ordered to release the Applicant unconditionally from their custody forthwith.
3. That the Respondent is hereby ordered to pay the sum of N50,000,000.00(Fifty Million Naira) only, as COMPENSATORY AND EXAMPLARY DAMAGES to the Applicant for the gross violation of the Applicant's fundamental rights to dignity of human person, fair hearing, personal liberty, and freedom of movement.
4. Thatthe Respondent is hereby ordered to tender unreserved public apology to the Applicant in two National Dailies.

Parties: Parties absent.

Appearances: Barbara T. Onwubiko, Esq., for the Applicant. Respondent not represented.

**HON. JUSTICE M. R. OSHO-ADEBIYI**  
**JUDGE**  
**23<sup>RD</sup> SEPTEMBER 2021**