



- b. An Order of this Honourable Court directing the Respondent to pay the Applicant the sum of #1, 000,000 (One Million Naira) for unlawful detention.
- c. An Order of this Honourable Court directing the Respondent to tender a formal apology to the Applicant by publishing same in two National daily Newspapers.
- d. An Order of perpetual injunction restraining the Respondent its privies, agents, officers or representatives from further arresting and/ or harassing the Applicant based on the facts leading to this application.
- e. Such further order(s) as this Honourable court may deem fit to make in the circumstances of this case.

The Application is supported by a 10 paragraphed affidavit deposed to by Nuruddeen Musa-Umar, the Applicant's brother. In compliance with the Fundamental Rights and Enforcement Procedure Rules [referred to as FREPR], a statement was filed.

Also a written address was settled by Bala I. Dakum, Esq. counsel for the Applicant. The Respondent on the other hand filed a 5 paragraphed counter affidavit deposed to by Chidimma Nnorom a Litigation Secretary in the office of E. C Ikeji & Co, solicitors to the Respondent; attached to the counter affidavit are 4 documents marked as EC1-4. Also a written address was settled by Ikeji Ernest Chikwendu of counsel. The Applicant filed a 7 paragraphed further affidavit and a Reply on point of law.

It is stated in the affidavit thus:

Paragraphs 1 – 10

1. That I am practicing Muslim and the Applicant is my brother.
2. That by virtue of my relationship, I know the Applicant in this suit.
3. That the Applicant could not deposed to this affidavit himself because he is currently detained by the Respondent at Special

Anti-Robbery Squad (SARS) cell of the Respondent at Abattior, FCT Abuja.

4. That I am familiar with the facts of this case.
5. That I know the Applicant was arrested on the 22<sup>nd</sup> July 2019 by agent of the Respondent on his way to federal secretariat, Abuja to protest against the continued detention of Sheikh Ibraheem Zakzaky.
6. That the Applicant was arrested by agents of the Respondent and taken to Special Anti-Robbery quad (SARS) cell.
7. That no reason was given for his arrest until 27<sup>th</sup> November, 2019, when the Applicant was charged before the FCT High Court.
8. That I interacted with the Applicant on the 28<sup>th</sup> November 2019, at Special Anti-Robbery Squad (SARS) at about 10:32am and he further informed me thus;
  - a. That he does not have any criminal record.
  - b. That he is a student.
  - c. That he took ill while in detention and was denied medical attention.
  - d. That he was kept in most dehumanizing condition in an open roof cell.
9. That it is in the interest of justice to grant this application.
- 10 That I deposed to this affidavit in good faith believing same to be true to the best of the knowledge and in accordance with the provisions of the Oath Act.

The counter affidavit states thus:

Paragraphs 1 – 5

1. That I am the Litigation Secretary in E.C Ikeji & Co, Solicitors to the Respondent in this case and by virtue of my position I am conversant with the facts of this case.

2. That I have the consent of both the Respondent and my employers to depose to this affidavit.
3. That I was informed of the following facts, by Inspector Caiphas Adamu of the Nigeria Police Force, FCID, Force Head Quarters Abuja, one of the Investigating Police Officers (IPO) in this case, at the law offices of E.C Ikeji & Co, on Friday the 22<sup>nd</sup> day of May 2020 and I verily believed them to be true as follows:
  - a. That the Applicant and 59 others were arrested for attacking and brutally killing of DCP Usman K. Umar, DCP operations FCT Police Command Abuja, Mr. Precious Owolabi, a member of National Youth Service Corps attached to Channel Television, wounding of several other people, at Eagle Square Abuja on the 22<sup>nd</sup> July, 2019.
  - b. That the Applicant and 59 others were charged before the FCT High Court Abuja, in Charge No. FCT/HC/CR/32/2019 on the 28<sup>th</sup> October, 2019 at the conclusion of investigation for the offences of criminal conspiracy, culpable homicide punishable with death, attempted culpable homicide, mischief by fire, disturbance of public peace amongst others contrary to Section 97, 221, 229 etc. of the Penal Code. A copy of the said Charge is hereby annexed and marked as Exhibit “**EC1**”.
  - c. That the trial of the Applicant and the 59 others has since commenced at the High Court of FCT Abuja, No. 16, Apo, Abuja before Honourable Suleiman B. Belgore, and six witnesses have already testified and the trial is at the verge of conclusion, and the case has been adjourned to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> June, 2020 for possible conclusion of trial

- d. That the offences for which the Applicant and the 59 others are standing trial are capital offences which carry death sentence, and the Applicant and all the other Defendants in the case made confessional statements admitting the commission of the crime which confessional statement of the Applicant is hereby annexed to this Counter Affidavit and marked Exhibit “**EC2**”.
- e. That the Applicant and the 59 others were not immediately charged to Court after their arrest because of the nature of the offences involved which carry death sentence and also due to the large number of Defendants involved, as investigation could not be completed within a short time.
- f. That a person arrested on allegation of having committed a capital offence can be detained for more than forty eight hours to properly conduct investigation into the allegation before charging him to Court.
- g. That from the evidence available at Trial Court, through the testimony of the six prosecution witnesses and the confessional statement of the Applicant, there are reasonable grounds for believing that the Applicant and the 59 others committed the offences.
- h. That the trial of the Applicants at the FCT Abuja High Court, will not be unduly delayed as the prosecution has already called six witnesses and is ready to call the remaining four witnesses at the next adjourned dates so as to conclude the case at the FCT High Court expeditiously to conclusion.
- i. That the Respondent denies as false, paragraphs 3, 4, 5, 6, 7, 8 and 9 of the Affidavit in support of the Applicant’s Originating

- Motion for Enforcement of his Fundamental Right and deny all the depositions contained therein except where expressly admitted.
- j. That furthermore paragraphs 3, 4, 5, of the Applicant's Affidavit in support of his application are denied, contrary to the said paragraphs, the Applicant was arrested at Eagle Square Abuja when Applicant and many others staged a violent protest leading to the death of DCP Usman K. Umar, DCP Operations FCT Police Command Abuja, Mr. Precious Owolabi, a member of National Youth Service Corps attached to Channel Television and injury to several other people.
  - k. That Applicant made confessional statement admitting being member of the proscribed Islamic movement of Nigeria popularly known as Shi'ites and admitted in his statement to have participated in the violent protest that led to the death of many people including Deputy Commissioner of Police Usman K. Umar in Abuja. That it was as a result of the action involving the Applicant and 59 others on the 22<sup>nd</sup> of July, 2019 that resulted to the Federal Government of Nigeria to proscribe to the Organization, the Islamic Movement of Nigeria. A copy of the gazette publication proscribing Islamic Movement of Nigeria dated the 26<sup>th</sup> day of July 2019 is hereby annexed and marked Exhibit "**EC3**".
  - l. That the Applicant on his arrest, was taken to FCT Police Command Abuja, and from there he was remanded in Kuje Correctional Center by the Order of the FCT High Court from where he is undergoing trial for the alleged offences of criminal

conspiracy, culpable homicide punishable with death, attempted culpable homicide, mischief by fire, disturbance of public peace amongst others. That the Applicant has filed a Motion for Bail at the High Court of FCT, before Honourable Justice S.B Belgore, sitting at High Court 16, Apo Abuja, a copy of the said Motion is hereby attached and marked Exhibit **“EC4”**.

- m. That the Applicant came all the way from Zamfara State, armed with dangerous weapons and joined others to stage the violent protest at Eagle Square Abuja to force the Federal Government to release their leader Sheikh Ibraheem Zakzaky, who is standing trial for various offences and the protest led to the killing of innocent Nigerians and destruction of government properties.
- n. That paragraphs 6, 7 and 8 of the Applicant Affidavit are denied, contrary to the said paragraphs, Applicant was informed promptly in the language he understands of the allegation against him before he volunteered his statement which is marked as Exhibit **“EC2”** to this Counter Affidavit and Applicant was promptly charged to Court on the 28<sup>th</sup> October, 2019 at the conclusion of investigation.
- o. That paragraphs 8(b) of the Applicant’s Affidavit is denied, contrary to the said paragraphs there is nothing before the Court to show that the Applicant is a student as the Applicant did not attach any admission letter to his Affidavit in support of his application.

- p. That the Applicant claimed to be a student and yet he left his school in Zamfara State to come to Abuja to stage the violent protest that led to the killing of people and destruction of properties.
  - q. That it is not true that the Applicant took ill while in detention and Applicant did not exhibit any medical report to show that he had been ill while in detention.
  - r. That the right of the Applicant has not in any way been infringed upon by the Respondent because Applicant was arrested on allegation of having committed capital offences and he was investigated and duly charged to Court as provided by the law.
4. That it will not be in the interest of Justice to grant this application because it will prejudice the prosecution of the Applicant in the criminal charge against him before the FCT High Court.
  5. That I depose to this Affidavit in good faith conscientiously believing its content to be true to the best of my knowledge and information and in accordance with the Oaths Act.

It is stated in the further affidavit of the Applicant thus:

1. That I am a legal practitioner in the law firm of B.I Dakun & Co. (Applicant's Counsel).
2. That the Applicant could not depose to this affidavit himself because he is currently detained by the Respondent at Kije Correctional Service FCT, Abuja.
3. That I am familiar with the facts of this case by virtue of my employment and information given to me by the Applicant when we visited him at the Kuje Correctional Centre on 23<sup>rd</sup> November 2020 at about 2:21pm which I believe him to be true.



4. That I have also read the counter affidavit filed by the Respondent and the facts contained therein are not true.
5. That in response to the counter affidavit, I state further thus;
  - i. That I know the Applicant came to carry out peaceful protest when he was arrested.
  - ii. That the Applicant had no weapon and did not kill Precious Awolabi, DCP Usman K. Umar or any other person and did not wound any person on the said date.
  - iii. That the Applicant does not belong to any proscribed organization as the alleged proscription of Shiites was done after the arrest of the Applicant.
  - iv. That the Applicant was not informed of his offence as required by law if he was same would have been attached.
  - v. That the Applicant was only arraigned in court until the 27<sup>th</sup> November, 2019.
  - vi. That the Islamic Movement in Nigeria (IMN) was not proscribed as at 22<sup>nd</sup> July 2019 when the applicant was arrested.
6. That it is in the interest of justice to grant this applicant.
7. That I depose to this affidavit in good faith believing same to be true to the best of my Knowledge and in accordance with the provisions of the Oath Act.

I have carefully gone through the affidavits evidence as well as the arguments for and against the application; I am of the firm view that the only issue for determination is *whether the Applicant is entitled to the reliefs sought.*

It is the submission of Learned counsel for the Applicant that the arrest and detention of the Applicant is contrary to the provisions of S.35 (1) CFRN. He states that assuming there were allegations of

crime against the Applicant; no matter how grave the allegations may appear, the Applicant is still presumed innocent; that the Respondent could have charged the Applicant to court where he is suspected to have committed an offence. Counsel referred the court to **IBORI V FRN (2009) 3 NWLR (PT. 1127) 94 PARAS C-D**. He argued further that the treatment meted on the Applicant was deliberate, thus a gross violation of the Applicant's fundamental rights to freedom of liberty and presumption of innocence. He urged the court to grant the reliefs of the Applicant and cited **IGWE V EZEANOCHIE (2010) 7 NWLR (PT 1192) 61**; **EKANEM V A.I.G.P (2008) 5 NWLR PT. 1079**.

It is the submission of counsel for the Applicant that the Applicant has established that his fundamental rights guaranteed under Sections 34 and 35 of the 1999 Constitution have unjustly been denied; that the burden is on the Respondent to show that the provision of section 35 (3) of the Constitution was complied with. Counsel relied on **ONYEMEH & ORS V EGBUCHULAM & ORS (1996) LPELR 2739 (SC)**; **EDIBO V STATE (2007) LPELR 1012 (SC)**.

It is not in dispute that the Applicant was arrested by the Police on the 22<sup>nd</sup> July, 2019 [see paragraph 5 of the affidavit in support and paragraph 3a of the counter affidavit]. The contention of the Applicant is that his arrest and subsequent detention is a gross violation of his rights as recognized by the Constitution: that no reason was given for his arrest until the 27<sup>th</sup> November, 2019 when he was arraigned before the FCT High Court; this assertion was however denied by the Respondent via exhibit EC2, the statements of the Applicant dated the 3/08/2019.

Furthermore, it is not in dispute that the Applicant was arrested during a protest in Abuja [see paragraph 5 of the affidavit in support & paragraph 3a of the counter affidavit]; whether the protest was lawful or unlawful is not issue for this court to decide. However on the strength of

exhibit ECN 2, it appears to me that the Applicant knew why he was arrested; the Applicant who had the opportunity to either admit or deny making exhibit ECN 2, that is, his statement attached to the counter affidavit never made reference to it in his further affidavit.

It is not in doubt that the right to personal liberty is a fundamental and inalienable right of every citizen of Nigeria; however, the right to personal liberty is not absolute going by the provisions of the Constitution. See also **ALHAJI MUJAHID DOKUBO-ASARI v. FEDERAL REPUBLIC OF NIGERIA (2007) LPELR-958(SC)**

It is thusly provided in the Constitution of the Federal Republic of Nigeria as follows:

Section 35 (1) 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—

- (a) In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
- (b) By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;
- (c) For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence

Section 35 (4) any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of -

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(5) In subsection (4) of this section, the expression "a reasonable time" means -

(a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day; and

(b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

Section 35 (7) provides; nothing in this section shall be construed:

a. In relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence.

[Underlined

emphasis mine]

As stated earlier the contention of the Applicant is that he was arrested and detained beyond the period recognized by the Constitution; this was however controverted by the Respondent. The Respondent deposed that the Applicant and 59 others were arrested for attacking and brutally killing some persons mentioned in exhibit

EC1. [See paragraphs 3a & 3j of the counter affidavit as well as exhibit EC1 attached]; that due to the number of suspects involved investigation couldn't be completed within a short period of time; [see paragraph 3e of the counter affidavit]

I have considered the arguments for and against the Application; particularly the fact that it is not only the Applicant that was arrested and detained, this can be gleaned from exhibit EC1, therefore it is quite clear that investigation into the alleged offences against such number of persons could not have been concluded within a short period of time. The exhibit EC1 is the charge filed against the Applicant and 59 others on the 28/10/19; the Applicant was charged along with others in count one for the offence of conspiracy to commit culpable homicide punishable with death; count two for the offence of conspiracy to commit mischief by fire; count three for the offence of conspiracy to commit disturbance of public peace; count four charged with the offence of culpable homicide punishable with death; count five is also the offence of culpable homicide causing the death of one PRECIOUS OWOLABI; count six for the offence of causing grievous hurt to the person of ASP BALA IBRAHIM MAGAJI; Count seven for causing grievous hurt to the person of ASP SANI SHEHU, Count eight for causing wrongful damage and loss to the National Emergency Management Agency by destroying brand new Mercedes Benz water tanker fully equipped Mercedes Benz special intensive care unit, Emergency Ambulance bay, vehicle with registration number 02R-05-FG, fully equipped with emergency medical instrument, drugs and other medications (ii) one rescue tender vehicle with Reg. No 02R-168-FG, (iii) one generator set, a 24 inch. LG Television and a dwelling place used for the custody of the said properties belonging to NEMA, Count nine for assembling with others at the Federal Secretariat Abuja with intent to use criminal force or show of criminal force to compel the authorities of the

Federal Government of Nigeria to release Sheik Ibrahim EL-zakzaky from custody.

Going by the above, it appears the Applicant was arrested and detained upon a reasonable suspicion of having participated in the killing of the persons mentioned in EC1 and the Respondent deemed it necessary to invoke section 35(7) (a) of the CFRN. Since it is not in contention that exhibit EC1 is not in existence or that the Applicant is not standing trial before a court; also considering the allegations against the Applicant and the number of suspects on the charge sheet, I am of the view that the Respondent acted within the provisions of the law.

It is the law that where a person is arrested or detained in respect of a capital offence and by virtue of section 35(7) Constitution, his right to absolute liberty can be curtailed pending the conclusion of the investigation of the alleged offences and as can be gleaned from the exhibit EC1, it is clear that some of the offences stated therein are capital in nature, I therefore do not hesitate to hold that the arrest and detention of the Applicant is within the provisions of the Constitution.

In **ALHAJI MUJAHID DOKUBO-ASARI v. FEDERAL REPUBLIC OF NIGERIA (2007) LPELR-958(SC)** the Supreme Court held thus:

*“The above provisions of Section 35 of the Constitution leave no one in doubt that the section is not absolute. Personal liberty of an individual within the contemplation of **Section 35(1) of the Constitution** is a qualified right in the context of this particular case and by virtue of **subsection (1)(c)** thereof which permits restriction on individual liberty in the course of judicial inquiry or where, lightly as in this case, the appellant was arrested and put under detention upon reasonable suspicion of having committed a felony. A person's liberty, as in this case, can also be curtailed in order to prevent him from*

*committing further offence(s). It is my belief as well that if every person accused of a felony can hide under the canopy of **Section 35 of the Constitution** to escape lawful detention then an escape route to freedom is easily and richly made available to persons suspected to have committed serious crimes and that will not augur well for the peace, progress, prosperity and tranquility of the society. I find support in so saying from Irikefe's JSC (as he then was) earlier pronounced in the case of **Echezue v. Commissioner of Police** (1974) NMLR 308 at page 314.”*

Furthermore, the Applicant deposed to the fact that he is a student; he however failed to support his assertion with cogent or credible evidence. It is common knowledge that a student upon gaining admission into any school must possess a means of identification or at least, a document to show that he is a student of a particular school. None of these documents or any other evidence to support the assertion was provided by the Applicant.

Again, the Applicant stated in Paragraph 8c of his affidavit in support that when he took ill while in detention, he was denied medical attention. This assertion was not supported with any cogent or documentary evidence.

On the whole, I find as a fact that the Applicant's right to personal liberty can be curtailed where it appears that his act is inimical to the peace of the country. Consequently, the application lacks merit and same is hereby dismissed.

**ASMAU AKANBI- YUSUF**  
**[HON. JUDGE]**

**APPEARANCES**

Blessing Aderemi Esq. for the Applicant.  
E. C Ikeji Esq. for the Respondent.