

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

**CLERK: CHARITY ONUZULIKE
COURT NO. 11**

**SUIT NO: FCT/HC/M/12892/2020
DATE: 20-09-2021**

BETWEEN:

PRINCE ONYEKA NNADOZIE EZE.....APPLICANT

AND

- | | | |
|------------------------------------------------------------------------------------|---|-------------------|
| 1. ECONOMIC AND FINANCIAL CRIME COMMISSION
2. PRINCE (ENGR.) ARTHUR EZE | } | RESPONDENT |
|------------------------------------------------------------------------------------|---|-------------------|

JUDGMENT

(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)

By an originating Motion number M/12892/2020, dated 9/2/20 and filed same day, the applicant that is PRINCE ONYEKA NNADOZIE EZE sued the two Respondents i.e. ECONOMIC AND FINANCIAL CRIME COMMISSION AND PRINCE (ENGR.) ARTHUR EZE and prayed for the following reliefs:

- (1) A **DECLARATION** that the arrest and subsequent detention of the Applicant variously at the Headquarters of the Economic and Financial Crime Commission, Jabi, and Idiagbon House No. 5 Formella Street, Off Ademola Adetokunbo Crescent, Wuse II Abuja on Wednesday the 11th day of November, 2020, till date by the Economic and Financial Crimes Commission (EFCC) and its officers/operatives at the behest and instigation of the

2nd Respondent, is unlawful, unwarranted and unconstitutional being in contravention of the 1st Applicant's Fundamental Right to personal liberty as preserved and enshrined in Section 35 of the 1999 Constitution.

- (2) **A DECLARATION** that the continued detention of the Applicant since Sunday the 15th day of November, 2020 at the said Headquarters and the Wuse II offices of the Economic and Financial Crimes Commission (EFCC) by the Economic and Financial Crimes Commission at the behest and instigation of the 2nd Respondent without arraigning him before a Court of competent jurisdiction is unlawful, unwarranted and unconstitutional being in contravention of the enshrined in Section 35 of the 1999 Constitution.
- (3) **A DECLARATION** that the seizure and subsequent withholding of the Applicant's International Passport by the 2nd Respondent with the concurrence/assistance of the Economic and Financial Crimes Commission (EFCC) is unlawful and unconstitutional being in contravention of the Applicant's Fundamental Right to freedom of movement as enshrined and preserved under section 41 of the 1999 Constitution.
- (4) **A DECLARATION** that the 1st and 2nd Respondents' insistence that the Applicant must surrender and sign over his landed property and personal property/chattel to the 2nd Respondent as a condition precedent to the release of the Applicant from EFCC's detention is unlawful, unwarranted and unconstitutional being a contravention of the Applicant's Fundamental Right to fair hearing as enshrined in Section 36 of the 1999 Constitution.

- (5) **A DECLARATION** that the seizure and detention/withholding of the Applicant's personal property/chattel, to wit phones, jewelries, and one Samsung laptops, etc by the EFCC at the behest of the 2nd Respondent, is unlawful and unconstitutional being a contravention of the Applicant's Fundamental Right to fair hearing and right against compulsory acquisition of property as entrenched in Section 36 and 44 of the 1999 Constitution.
- (6) **A DECLARATION** that the invasion of the Applicant's home on the 11th day of November, 2020 with a multitude of men/officers and ransacking of same by a team of officers/operatives of the EFCC at the behest and instigation of the 2nd Respondent without presenting a search warrant to the Applicant is unlawful and unconstitutional being in contravention of the Applicant's Fundamental Right to private/family life as preserved in Section 37 of the 1999 Constitution.
- (7) **A DECLARATION** that the freezing of the Applicant's Bank Accounts with Ecobank Nig. Ltd, Fidelity Bank Ltd and Guaranty Trust Bank, by the 1st Respondent at the instigation of the 2nd Respondent on the mere suspicion by the 2nd Respondent that the Applicant misappropriated his funds, is unwarranted, unlawful and unconstitutional being in contravention of the Applicant's Fundamental Right to fair hearing as preserved by Section 36 of the 1999 Constitution.
- (8) **AN ORDER** directing the immediate and unconditional release of the Applicant from the EFCC's custody pending when the 1st Respondent is ready to charge him to Court for whatever offence conceived by it.

- (9) **AN ORDER** compelling the Respondents to immediately release to the Applicant his international Passport, and personal chattel, including title Deeds, phones namely Samsung phone and iPhone.
- (10) **AN ORDER** of Injunction restraining the Respondents from deploying the facilities of the 1st Respondent to infringe howsoever on the Fundamental Rights of the Applicant to fair hearing, freedom of movement, right to private/family, right to personal liberty and freedom from compulsory acquisition of property on account of the 2nd Respondent's fabled suspicion of misappropriation of his funds.
- (11) **AN ORDER** directing the 1st Respondent to unfreeze the Bank Accounts of the Applicant with these Banks to wit: Ecobank Nig. Ltd, Fidelity Bank Ltd, Keystone Bank, Access Bank, UBA and Guaranty Trust Bank Plc; or at all; the particulars of which accounts are listed on grounds upon which the reliefs are sought.
- (12) The sum of **N1,000,000,000** (One Billion Naira only) against the 1st and 2nd Respondents jointly and severally being exemplary damages for the Respondent's flagrant and oppressive contravention of the Applicant's Fundamental Rights.

The application vide the originating Motion referred to above was brought pursuant to **Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and section 46 of the 1999 Constitution (as amended)**.

In support is a statement pursuant to **Order II Rule 3 Fundamental Rights (Enforcement Procedure) Rules, 2009** and therein enumerated are the names and description of the Respondents

and Reliefs sought by the Applicant and 16 grounds upon which the Reliefs are predicated.

Furthermore, one Mrs. Amarachi Chinonso Eze, a Civil Servant of No. 5 Ifeanyi Ararume Street, Mabushi, Abuja deposed to a 25 paragraphs affidavit setting out facts upon which all the application rested and the affidavit is also dated 9/12/2020.

Attached to the affidavit is Exhibit A which is the petition written by the Applicant's Counsel to the then Acting Chairman of the 1st Respondent.

Lastly, in support is a six page written address and two further affidavit. One is a 18 paragraphs deposed to by the Applicant. Attached to this further affidavit is Exhibit A which is Court Order admitting the Applicant to bail in the sister case.

Second further affidavit is of 11 paragraphs and filed on 8/3/21. It is in response to the counter-affidavit of the 2nd Respondent.

Upon service of the Originating Motion on the 1st Respondent, they filed a 6 paragraphs affidavit dated 6th January, 2021 and deposed to by one Samson Oloje Exhibits A – H and a written address dated 16/12/2020 was filed along with it.

They also in addition and upon service of the Applicant's further affidavit on them, they also filed two further counter-affidavit dated 8/3/21 and 29/3/21.

In his part, the 2nd Respondent in opposition to the grant of reliefs filed a 12 paragraphs counter-affidavit filed on the 12/2/21 and deposed to by one PRINCE IKE EZE and filed along with it is a written address dated 12/2/21 filed the same day. They were deemed properly filed on 9/3/21.

On the 8/7/21 after dealing effectively with some preliminary Motions and issues as filed and raised by both parties, we moved attention to the Originating Motion number M/12892/2020.

Mr. Anachebe SAN moved the application *brevimanu*. The learned SAN after referring to all the processes filed, submitted that if the Court finds that the 1st Respondent at the instigation of the 2nd Respondent detained the applicant for more than 24 hours (because there is a Court within jurisdiction) without a Court Order, then the Court should enter Judgment in their favour.

He submitted further that it is very reprehensible, oppressive and unconstitutional for an investigative authority to take steps to arrest or froze the account of suspect for purposes of procuring evidence to sustain a futuristic charge. He contended that even after the initial Order has expired they still continue to detain the Applicant. These are facts admitted by the 1st Respondent. For all these submissions he referred the Court to the case of **FAWEHINMI VS. I.G.P (2002) 7 NWLR (PT. 767) 606** and paragraphs 5 (n), 5(o) of the counter-affidavit of the 1st Respondent filed on 6/1/21.

He said further that the parties are *ad idem* that the account was frozen. But that the 1st Respondent subsequently applied for a frozen Order. We are equally *ad idem* that the freezing Order was made to last 21 days. See paragraph E of their 2nd counter-affidavit and Exhibit B thereof.

Mr. Anachebe SAN finally adopted his written address as his full argument and urged the Court to grant the application with substantial damage of N1 Billion.

Mr. M. I. Buba of Counsel to the 1st Respondent, opposed the grant of this application. He referred to Exhibits C and D of the 1st Respondent's counter-affidavit and submitted that the alleged

unlawful detention of the Applicant by 1st Respondent was based on a valid Order from a Court in this jurisdiction. The learned Counsel argued that when applications are made to Court, litigants have no control over the hearing of the application (Yes. But you must wait for the Court to pronounce the Order before you can act).

Mr. Buba further argued that there is no evidence in the Applicant's supporting affidavit to prove his claim for reliefs 7th and 11th contained in the Originating Motion as paragraphs 17, 18 and 19 of the supporting affidavit are speculations as the Applicant has not made any attempt to withdraw his money and was refused by the Bank. According to Mr. Buba, even if Banks refused to honour his demand, it would amount to breach of contract and not breach of Fundamental Rights to warrant the inclusion of reliefs 7th and 11th in this suit.

Finally, learned Counsel adopted his written address as his argument and urged me to dismiss the application as there is a cogent and verifiable evidence before the Court that the 1st Respondent applied for and obtained a valid Order of Court to freeze the accounts of the Applicant in certain Banks for purposes of investigation and prosecution. He referred to Exhibit F and G attached to the counter-affidavit and Exhibits E and F of counter-affidavit, Exhibit J attached to the 2nd further counter-affidavit and Exhibit I of the 1st counter-affidavit.

Counsel to the 2nd Respondent, Mr. Adeyele SAN similarly took his turn to oppose the grant of this application. He referred to all the 12 paragraphs of their counter-affidavits and Exhibit A which is their letter written to the 1st Respondent his written address. He adopted the written address as his arguments and urged me to dismiss this application.

By way of adumbration, the learned SAN submitted that the 2nd Respondent has not committed any error against the Applicant talkless of Fundamental Rights. All he did was to report to the appropriate agency of government Commission of an offence in his company.

He further submitted that in view of the Court's Judgment in the earlier Suit No. FCT/HC/M/12894/20, a sister case, decided on 23-6-21, his preliminary objection pending before the court should be struck-out. That preliminary objection is hereby struck-out.

Finally, the learned Silk urged me to dismiss this application for lacking in merit.

In a short reply, Mr. Anachebe SAN, referred to paragraph 4(e) of the 2nd counter-affidavit of the 1st Respondent and Exhibit B thereof and submitted that the accounts of the Applicant remains frozen even after the Court's Judgment in the Sister case. He finally urged me to grant this application.

The above in brief, are the materials and argument laid before this Court in the application under scrutiny.

ISSUES FOR DETERMINATION

Mr. Adeyele SAN of Counsel to the 2nd Respondent (Prince Engr. Arthur Eze), in his written address submitted one issue for determination; to wit:

“Whether on the facts of the case, the Applicant has made out a case for the enforcement of their Fundamental Rights, and the reliefs, including exemplary damages, sought by them”

The learned Counsel to the applicant was at *ad idem* with the above issue as framed by Mr. Adeyele SAN word for word. I need not repeat it.

However, Mr. Buba of Counsel to the 1st Respondent, split the issues into two. They are:

- (1) Whether the 1st Respondent is in breach of the Applicants' Fundamental Rights?
- (2) Whether the Applicants are entitled to the reliefs sought?

With due respect to Mr. Buba, there is no need to proliferate issues. The two issues listed by Mr. Buba can conveniently be subsumed and treated in the lone issue formulated by the two learned SANS in this case. So, I have no hesitation nor difficulty in adopting that lone issue as the issue for determination in this case. For clarity cum emphasis, the issue for consideration is.

“Whether on the facts of the case, the Applicant has made out a case for the enforcement of their Fundamental Rights, and the reliefs, including exemplary damages, sought by him”

At this juncture, it is now proper to turn attention to the main issue in this case. The starting focus is the facts of this case as found by this court. They are:

- (1) 1st Applicant was arrested on 11/11/20.
- (2) EFCC applied to Federal High Court (FHC) for an order of remand on 13/11/20.

- (3) Application was granted by FHC per A. R. Mohammed J. on 19/11/20. See Exhibit C of the 1st Respondent counter-affidavit. See paragraphs 4(b), 4(e) and 4(f).
- (4) Another application was made on 2/12/20 for extension of the remand order. It was granted on 9/12/20. See Exhibit D and paragraph 4(g) and 4(h).
- (5) 1st Respondent applied to Court on 2/12/20 to frozen the accounts of the applicant. The application was made on 2/12/20, see Exhibit E. No order granting the application was Exhibited. But there was a letter dated 14/12/20 from EFCC to the DCR of FHC asking for enrolled order. See paragraph 5(o).
- (6) The enrolled order was given later but it expired and they made another application for extension of the said order. The application was made on 25/2/21. See paragraph 5(c) of 2nd counter-affidavit of 1st Respondent.
- (7) No Exhibit to show that the application for extension of the order was granted.
- (8) Applicants' house was searched without any search warrant. At least none was exhibited for the Court to see.
- (9) Some properties of the applicant like his bag containing title Deeds, Samsung and iPhone were seized. See paragraphs 6 of supporting affidavits.
- (10) The 2nd Respondent petitioned the 1st Respondent alleging criminal misappropriation of his fund, criminal breach of trust etc. against the applicant.

With the above facts firmly made out from the affidavit evidence, the way is now clear to focus finally on the only issue for determination. As a reminder, the issue is whether on the fact of this case, the Applicant has made out a case for the enforcement

of his Fundamental Rights and the reliefs including exemplary damages sought by him.

At this juncture, I have four questions to ask;

- (1) Was there any arrest of the applicant made by the Respondents?
- (2) Was there any detention of the applicants?
- (3) Was there any seizure of the applicant's properties by the Respondents?
- (4) Was there any freezing of the applicant's account at the instance of the Respondents?

In answering the above query, I have to separate the 1st and 2nd Respondents. In relation to the 1st Respondent, I would answer all the above 4 questions in the affirmative. It was the 1st Respondent (EFCC) that arrested the applicant, detained him at their pleasure, seized his properties and caused his accounts to be frozen. All these were not denied by the 1st Respondent. The only excuse they gave was that they applied to Court to endorse all the above. And that in one instance, the Court gave them the required order but it lapsed. Even at this, there is no evidence of that lapsed order. Before that, there was an order procured in the FHC after the arrest and detention were effected beyond the stipulated constitution provisions of 24 hours. In fact, in this case the arrest and detention were for about eight (8) days.

In all these unfortunate scenarios, there is no evidence of 2nd Respondent being involved. Apart from the fact that the 2nd Respondent wrote a petition to 1st Respondent, there is nothing more to show that he made any arrest, detain, confiscate or freeze the applicant's accounts of course, he has no such powers and couldn't have wielded any. All those arguments of the applicant's Counsel and insinuation that he instigated the 1st Respondent in their operational activities is of no moment. True, the

2nd Respondent wrote a petition to the 1st Respondent vide Exhibit A of the 1st Respondent counter-affidavit; there is no where in that Exhibit A (petition) that he said the 1st Respondent should arrest, detain, seize or freeze any account. All he did was to complain about activities of some named people whom he claimed he trained up to Universities, brought up and even helped to find job. The last paragraph of his petition speaks clearly of all he desired for the Commission. He wrote:

“In view of the above, I urge the Commission to cause comprehensive and encompassing investigation into the fraudulent activities of these individuals through their Bank accounts and all the accounts linking their BVN from 2010 till date including that of their wife and children’s with a view to recover my money and bringing them to justice as their fraudulent activities is hampering on the sustainable growth and development of my companies both local and international.”

How the 1st Respondent goes about their investigation is entirely their own business. He had no hands in it.

I therefore have no difficulty in agreeing with Mr. Anachebe SAN, that 1st Respondent did not deny the arrest of the Applicant on 11/11/20. They also conceded that they did not obtain any order to detain him beyond 24 hours. In fact, they conceded in their Exhibit ‘C’ that they detain applicant for extra 8 days. The subsequent order pursuant to which the applicant was detained expires on 3/12/20. Even at that, they (1st Respondent) still detain the applicant for another extra 5 days.

It is pathetic and highly unfortunate that while all these was going on, there was a subsisting order of this Court granted on 11/12/20 wherein I made a specific order granting him bail. The order was served on 1st Respondent. Yet, they still refused to release him.

Furthermore, the order of this Court made on 11/12/20 defroze the accounts of the applicant was brazenly ignored: I must stress the fact that there was no prior order from any Court authorising the freezing of the Applicant's account is abnormal.

The order brought by the 1st Respondent was later in time as it was brought long after this Court's order was served on them. It was even an order that expired on 6/1/21. And as at the time this application was taken and heard in Court, the 1st Respondent still remain in disobedience of this Court's order.

In all, I find the action of the 1st Respondent to be unjustifiable. They held the applicant, detained him beyond the required period all in the name of investigation. They even made searches, seized properties and freeze his accounts without any such warrant or Court order. This is very arbitrary and a clear show of power. It is wrong, not only wrong, it is also unlawful. In **FAWEHINMI VS. IGP (2002) 7 NWLR (PT. 767) 606**, the Supreme Court, held:

“It is unlawful to arrest until there is sufficient evidence upon which to charge and caution a suspect. It is completely wrong to arrest, let alone, caution a suspect, before the police look for evidence implicating him”

The argument of Mr. Buba of Counsel to the 1st Respondent that they have power to cause investigation vide **Section (1) (a) of EFCC Act 2004** and that by virtue of **S.35(1) of the 1999 Constitution** they

can detain the applicant for purposes of investigation missed the point by a wide margin. Nobody has denied the power to arrest and investigation. See paragraph 2.1, 2.2, 2.3, 2.5, 2.6, 2.7 and 2.8 of his written address.

Now, I agree with Mr. Adeyele SAN that the 2nd Respondent cannot be faulted for reporting reasonable commission of a crime to the 1st Respondent. That is what a sensible citizen should do. I also agree that the international passport of the 1st applicant was seized by the 2nd Respondent. As for paragraph 7(i) of the counter-affidavit deposed to by Prince Ike Eze, the said passport is in the custody of the Federal High Court as a condition for bail of the applicant in another case. This paragraph was not denied and in fact the particulars of the passport in question was not stated. See paragraph 4.5, 4.9 and 5.1 of the learned Silk's written address at pages 4, 5 and 6.

In effect, I found merit in this application against the 1st Respondent only. Meaning the application succeeds in part.

For emphasis, I hereby grant the 1st, 2nd, 4th, 5th, 6th, 7th, 8th, 10th and 11th in favour of the applicant.

The applicant has also claim N10 billion against the 1st and 2nd Respondents jointly and severally as exemplary damages for contravening of the applicant's Fundamental Rights.

Exemplary damages are awarded where the conducts of the Respondent is oppressive, arbitrary and unconstitutional. See **ELIOCHIN NIG. LTD & ORS VS MBADIWE (1986) 1 NWLR (PT. 14) 47.** See also **WILLIAMS VS. DAILY TIMES OF (NIG) LTD (1990) LPELR-3487 (SC)**

In this instance, I have not found any arbitrariness, or oppressiveness in the arrest made by the 1st Respondent. They acted upon a petition alleging commission of a crime. That to me is

very proper and certainly constitutional. They only fell into a grave error when they detained the applicant beyond the constitutionally prescribed period and in flagrant disobedience of this Court's order.

And it is for that reason that I award a sum of N10,000,000 (Ten Million Naira) only as damages in favour of the applicant and against the 1st Respondent only. We should remember that damages are awarded as a result of what the law presume to be the direct or probable consequence of the act complained of but the quantification thereof is at the discretion of the court.

.....
Suleiman Belgore
(Judge) 20-9-21