

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO. FCT/HC/CV/295/2020

BETWEEN:

HON. KINGSLEY CHIMA UJU APPLICANT

AND

1. THE INSPECTOR GENERAL OF POLICE

2. NIGERIA POLICE FORCE RESPONDENTS

JUDGMENT

DELIVERED ON THE 16TH DECEMBER, 2021

This application is brought pursuant to the Fundamental Rights Enforcement Procedure Rules 2009 and Section 46(3) of the Constitution of the Federal Republic of Nigeria 1999 and the inherent jurisdiction of this Honourable Court. The Applicant prayed the court for the following reliefs:

1. A DECLARATION that the intimidation, harassment, threat of arrest and detention of the Applicant by the Respondents on the instigation of the Imo State Government over allegations of fraud against the State Government without any probable cause or

reasonable suspicion constitutes an infringement on the right of the Applicant to be presumed innocent until proved guilty, to liberty and freedom of movement guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

2. AN ORDER of this Honourable Court restraining the Defendants by themselves, their agents, servants or privies from intimidating, harassing, arresting and/or detaining the Applicant pending the outcome of the investigation currently being conducted by the Economic and Financial Crimes Commission over an allegation of fraud against the Imo State Government.

3. AN ORDER enforcing the fundamental rights of the Applicant to be presumed innocent until proved guilty, to liberty and freedom of movement, by restraining the Respondents by themselves, their agents, servants or privies from continuing to harass, threaten to arrest or detain or in any manner whatsoever arresting, detaining, prosecuting or persecuting the Applicant pending the outcome of the investigation currently being conducted by the Economic and Financial Crimes Commission over an allegation of fraud against the Imo State Government.

4. A DECLARATION that the act of the Respondents marking the premises at (i) RP/111, GOVERNMENT STATION LA YOUT, OWERRI MUNICIPAL LOCAL GOVERNMENT AREA, IMO STATE (ii) WAREHOUSE A IN IMO MODERN INTERNATIONAL MARKET AT UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE, (iii) WAREHOUSE B/3RD BANK BUILDING IN IMO MODERN INTERNATIONAL MARKET AT UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE AND (iv) WAREHOUSE C IN IMO MODERN INTERNATIONAL MARKET AT UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE which the Applicant enjoys the peaceful use of as a yearly tenant for demolition on the instigation of the Imo State Government over allegations of fraud against the State Government without any probable cause or reasonable suspicion constitutes an infringement on the Applicant's right to peaceful enjoyment and use of property guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

5. AN ORDER of this Honourable Court restraining the Respondents by themselves, their agents, servants, privies or any other person howsoever described from demolishing or interfering in any manner whatsoever with the Applicant's right to peaceful enjoyment and use of premises situated at (i) RP/111,

GOVERNMENT STATION LAYOUT, OWERRI MUNICIPAL LOCAL GOVERNMENT AREA, IMO STATE (ii) WAREHOUSE A IN IMO MODERN INTERNATIONAL MARKET AT UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE, (iii) WAREHOUSE B/3RD BANK BUILDING IN IMO MODERN INTERNATIONAL MARKET AT UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE AND (iv) WAREHOUSE C IN IMO MODERN INTERNATIONAL MARKET AT UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

AND for such further or other order [s] as this Honourable Court may deem fit to make in the circumstances.

In support to this application is statement and 11 paragraphs ground A – K upon which the applicant premised this relief and also a 26-paragraph affidavit with one annexure deposed by the applicant Honourable Kingsley Chima Uju. In compliance to the Rule of this court a written address was proffer by one Tolu Oderinde, Esq. counsel to the applicant in which he formulate a sole issue for determination viz:

“WHETHER THIS HONOURABLE COURT SHOULD ENFORCE AND/OR SECURE THE ENFORCEMENT OF THE APPLICANT'S FUNDAMENTAL RIGHTS AS ENSHRINED IN CHAPTER IV OF THE 1999 CONSTITUTION AS AMENDED BY GRANTING THE RELIEFS SOUGHT IN THIS APPLICATION.”

In arguing the sole issue for determination, counsel submits that the Applicant needs not have to wait until his Fundamental Human Rights have been violated

Counsel further submitted that Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 as amended guarantees the fundamental rights of every citizen of Nigeria and empowers any person who alleges that any of his fundamental rights has been, is being or is likely to be violated to approach a court of law for redress. He referred the court to Section 46 [3] of the 1999 Constitution which provides thus: *"any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any state in*

relation to him may apply to a High Court in that state for redress."

This provision has been given judicial interpretation in the case of EZEADUKWA VS. MADUKA (1997) 8 NWLR (PT. 518) 635 660-661 PAR. A,

Counsel stated that thus the Applicant is empowered as a citizen of Nigeria to approach this Honourable Court to seek reliefs aimed at enforcing or securing the enforcement his fundamental rights to be presumed innocent until proven guilty, right to liberty, right to freedom of movement and right to peaceful enjoyment and use of property as guaranteed by Sections 35, 36, 39 and 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

It is counsel contention that the Applicant needs not have to wait until his fundamental human rights have been violated by the Respondents before approaching the Court. He can approach this Honourable Court for an order protecting and enforcing his fundamental human rights when he only apprehends that his rights are likely to be breached.

Counsel submitted that the complaint of the Applicant in the instant application is that unless this Honourable Court intervenes by granting the reliefs sought, the Respondents will illegally violate his fundamental rights and he humbly submit that this Honourable Court is empowered to entertain the complaint and grant the reliefs sought.

Counsel further submitted that it is a settled principle of Nigerian law that any person accused of an offence has the fundamental right to be presumed innocent until proved guilty. He referred the court to Section 36(5) of the 1999 Constitution, which provides as follows: "*Every person charged with a criminal offence shall be presumed to be innocent until he is proved guilty*".

That this constitutional provision is designed to guarantee fair treatment of any person accused of committing any crime. In LAOYE V. THE STATE (1995) NWLR (Pt. 10) 832, the Supreme Court, in giving concrete expression to the presumption of innocence held inter alia that "*We operate a system which presumed a man innocent until he is proved guilty... to*

do otherwise will constitute an unwanted attack on our system of criminal justice".

Counsel humbly submits that the constitutional provision of presumption of innocence becomes applicable immediately a person, and in the instant case the Applicant, is accused of committing an offence as evidenced by the spurious allegations of corruption and money laundering against the Applicant aimed at decimating him politically and financially.

In explaining the presumption of innocence, Andrew Ashworth, in Four Threats to Presumption of Innocence published in The International Journal of Evidence & Proof (2006) 10 E&P 241 at 243 stated thus, *"The presumption appears to operate at two different levels-one is the criminal trial, the other is the criminal process more generally. The former, narrower, conception is the familiar principle that, where a person is charged with a criminal offence, the prosecution bears the burden of proving guilt of that offence, and that proof must be beyond reasonable doubt. But European human rights law also supports a*

second, wider, sense of the presumption of innocence: that pre-trial procedures should be conducted, so far as possible, as if the defendant were innocent. This sense of the presumption acts as a restraint on the various compulsory measures that may properly be taken against suspects in the period before trial”.

In support, counsel cited the Supreme Court case of Okike v. LPDC [2005] 15 NWLR (Pt. 949) 471 at 532, paras. D - G, and also refer the court to the case of Ajakaiye v. FRN [2010] 11 NWLR (Pt. 1206) 500 at 523, para E, where the Court of Appeal held that "A charge, as a noun, denotes a formal accusation of an offence as a preliminary step to the prosecution of an accused before a court of law".

More so, Counsel submits that it is therefore apparent from the foregoing definition of the word "charge" by the courts that a person need not be charged before a court before the duty on his accusers, particularly the investigator, to presume him innocent under the provisions of section 36(5) of the 1999 Constitution [as amended] kicks in.

Counsel made reference to the case of *Ndukwe v. LPDC* [2007] 5 NWLR (Pt 1026) 1 at 31, paras. B-H, per Onnoghen JSC, had cause to apply the word "charge" to section 36(6)(a) of the 1999 Constitution, which also contains the material words "Every person who is charged with a criminal offence.." thus:

"It is principally in the above light that one can properly appreciate the provisions of section 36 (6) (a) of the 1999 Constitution which is designed to apply not only to formal courts exercising criminal jurisdiction but also to police officers effecting arrest of a suspect, administrative tribunal or bodies or generally speaking judicial or quasi judicial bodies. In fact the current trend is to apply the principles of fair hearing or natural justice to purely administrative bodies, which are now expected to have the duty to act fairly in the exercise of their duties as such bodies particularly when their decisions affect the rights and obligations of people. When viewed in that light it becomes clear, and I hereby hold that the word "charge as contained in the said section 36 (6) (a) of the 1999 Constitution is not limited to formal charge as recognized in the Criminal Code and the Criminal Procedure Act and applied by courts but extends to complaint or information as to the offence with which a person is accused delivered to the person so

accused or charged in a language that he understands with sufficient details of the alleged offence. The information may not necessarily be in writing as when a police officer, in the course of his duties, arrests a person for an offence. He is duty bound to inform him of the "charge" for which he stands arrested in a language that he understands and the detail of the nature of the offence. You may call it a caution if you wish. It is usually on that basis that the suspect is cautioned before he volunteers a statement in answer to the "charge" or allegations against him. What later takes place in court of law where a formal charge is drafted, filed and a copy served on the accused to which he formally pleads either guilty, or not guilty is a formality required by the specific provisions of the Criminal Procedure Act, which in this case does not apply to the 1st respondent".

He further commends to the court the decision of the Court of Appeal in AHMEDV. COP, BAUCHI STATE [2012] g NWLR (Pt. 1304) 104 at 126, paras. A –C.

Counsel stated that it is clear that the right of a person (accused of committing an offence/s) to be presumed innocent does not remain dormant until he has been charged to court.

He submits therefore that this Honourable Court ought to grant the reliefs sought in this application in order to enforce the fundamental right of the Applicant to be presumed innocent even at this stage of purported investigation of the unfounded and insupportable accusation that he has committed an offence of corruption.

Counsel further submitted that Section 44 of the 1999 Nigerian Constitution (as amended) is clear on the point that (i) a citizen of Nigeria is entitled to the peaceful use and enjoyment of his property and (ii) a citizen of Nigeria cannot be deprived of his peaceful use and enjoyment of his property except in a manner and for the purposes prescribed by law.

He stated that the Applicant has placed evidence before this Honourable Court showing that the premises situated at (i) RP/111, GOVERNMENT STATION LAYOUT, OWERRI MUNICIPAL LOCAL GOVERNMENT AREA, IMO STATE (ii) WAREHOUSE A IN IMO MODERN INTERNATIONAL MARKET AT UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE, (iii) WAREHOUSE B/3RD BANK BUILDING IN IMO MODERN INTERNATIONAL MARKET AT UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE AND (iv) WAREHOUSE C IN IMO MODERN INTERNATIONAL MARKET AT

UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE which the enjoys the peaceful Use of as a yearly tenant has been marked for demolition by the Respondents on the instigation of the Imo State Government. He referred the court to paragraphs 21-25 of the affidavit in support of the originating motion. also Exhibit 2 attached to the affidavit in support of this application.

That the Applicant has also placed evidence before this Honourable Court showing that the intending demolition of the said premises is (i) a part of the effort to intimidate and harass him and (ii) without any probable cause or reasonable suspicion and on trumped up charges of corruption and money laundering. He refers the court to paragraphs 21-25 of the affidavit in support of the originating motion.

It is counsel submission that the intending demolition of the said premises which the Applicant enjoys the peaceful use and enjoyment of as a yearly tenant, as part of the effort to intimidate and harass him, without any probable cause or reasonable suspicion and on trumped up charges of corruption and money laundering cannot be said to be for the purposes or in a manner prescribed by law.

That the Applicant adopts the totality of his arguments at paragraphs 3.07-3.18 above and further submitted that the Applicant's right to be presumed innocent of committing an offence until he has been charged and pronounced guilty by a court of law also extends to the Applicant's right to the peaceful use and enjoyment of his property.

Counsel submitted that the point, the Applicant is simply trying to make is that if the Applicant is presumed innocent until proven guilty by a court of law in respect of the allegations of corruption and money laundering against him, then the Applicant's right to the peaceful use and enjoyment of his property cannot be taken away for the commission of the said offence until he has been proven guilty of the commission of the said offence by a court of law. However, what the Respondent on the instigation of the Imo State Government are trying to do is to deprive the Applicant of his right to peaceful use and enjoyment of property on trumped up charges of corruption and money laundering without having to charge and obtain a conviction against him in a court of competent jurisdiction. That this behaviour is alarming and should not be encouraged.

To further buttress the point above, counsel cited the case of ALARAPON V. OMOTARA & ORS (2019) LPELR-46385(CA) @ PG. 23-26, PARAS E-A.

Counsel submits therefore that this Honourable Court ought to grant the reliefs sought in this application in order to enforce the Applicant's right to the peaceful use and enjoyment of the said premises and prevent the Respondents from violating the said right on trumped up charges of corruption and money laundering.

Counsel further stated that the facts show that the allegations against the Applicant are politically motivated and unless this Honourable Court intervenes the Respondents would act to arrest, detain the Applicant and unlawfully demolish his premises in total abuse of power.

That the steps and planned steps of the Respondents as narrated in the affidavit in support of this application amount to misfeasance in public office.

Counsel further stated that the standard is that the prosecutor not just the courts must proceed from the premise that the suspect is innocent of that crime until proven guilty.

Moreover, in this case the Respondents have been activated to proceed from the premise that the Applicant is guilty even before embarking on their witch-hunt, camouflaged as an investigation, this clearly evinces an intention to persecute, witch hunt and bring a finding of guilt against the Applicant at all cost. This is gross malicious process, misfeasance in public office and prosecutorial misconduct.

It is Counsel contention that the fact that the instant instigation of the Respondents to arrest the Applicant and demolish the above-mentioned premises is in furtherance of the plan of the Imo State Government to politically decimate him and stultify his rising political profile in Imo State unless he joins the All Progressives Congress (APC) is a classic example of an abuse of power which the law must not permit or ratify.

Counsel stated that the rationale for misfeasance in public office is that executive or administrative power 'may be exercised only for the public good' and not for ulterior or improper purposes. He cited the case of JONES V SWANSEA CITY COUNCIL [1990] 1 WLR 54, 85F and also Three Rivers DC V Bank of England [2003] 2 AC 1 HL, the House of Lords clarified the elements of this civil wrong as follows:

1. The conduct must be that of a public officer, exercising power in that capacity;
2. The officer must either intend to injure the claimant by his or her acts or knowingly/recklessly act beyond his/her powers;
3. And thereby cause damage to the claimant;
4. In circumstances where he or she knew the act would probably cause damage of this kind.

He stated that It is a widely acceptable saying that the law Courts are the hope of the common man. The Applicant has now as a last resort to this Honourable for protection from the gross abuse of power of the Respondents which is likely to breach his rights to liberty, freedom of movement and peaceful use and enjoyment of property. The Applicant has approached this Honourable Court not in a bid to prevent the Respondents from carrying out their statutory functions. NO!

It is counsel contention that the fact that an agency of the Federal Government has the power under a statute to carry out some acts does not mean that the said act can be or should be

carried out for ulterior motives and in violation of the fundamental human rights of the Nigerian citizens.

Furthermore, it is the Applicant's counsel humble contention that the Nigeria Police Force even though it has the power to investigate all crimes and take appropriate action, ought not to be allowed to exercise such powers for the ulterior motives of some persons which are politically motivated. The Nigeria Police Force works or should work for all Nigeria citizens and not just the few.

He submitted that the Applicant has placed evidence and facts before this Honourable Court showing that the instant instigation of the Respondents to arrest the Applicant is in furtherance of the plan of the Imo State Government to politically decimate him and stultify his rising political profile in Imo State.

The Applicant has also placed evidence before the court showing that the intending demolition of the above-mentioned premises is (i) a part of the effort to intimidate and harass him and (ii) without any probable cause or reasonable suspicion and on trumped up charges of corruption and money laundering. It is the Applicant's humble submission that this Honourable Court as the

last hope of the common man ought not to close its eyes to this gross abuse of power by the Respondents.

Counsel therefore urges this Honourable Court is obliged to grant the reliefs sought in this case in order to prevent the Respondents from abusing their powers and from misfeasance in public office. That this Honourable Court has the power to grant the reliefs sought in order to enforce and secure the Enforcement of the Applicant's Fundamental Rights. Cited Section 46 (2) of 1999 Constitution and Order XI of FREPRU 2009; DILLY v. 1.G.P & ORS (2016) LPELR-41452 (CA) Pg. 35-36, Paras. C-E. and FRN V. IFEGWU [2003] 15 NWLR (Pt. 842) 113 at 216-217, paras C-B.

In conclusion, counsel submitted that it is tyrannical, unconstitutional, Illegal, Ultra vires and to be abhorred for any law enforcement agency to just decide on a whim or for ulterior motives to arrest, detain a person, demolish his premises and thereafter to look for an excuse for such an act as seems more and more common today in Nigeria. And the court is the only one that can bastion between the democratic rights of the citizen and such abuse of power.

Counsel urged the court to resolved in favour of the Applicant on the sole issue set out above, intervene and grant the reliefs Sought by the Applicant for the reasons stated above.

On the other hand, the defendants in this suit neither appear in court nor file any process in defence and from the record of the court, the defendant were duly served on different occasion and same was endorsed by the office of the defendant duly stamped and signed with the commissioner of police stamp.

I further directed on 2nd December, 2021 that the defendant be served with another hearing notice and adjourned the matter to 9th December, 2021 for hearing. Upon the service to the defendant, the defendant reneged to enter appearance nor file any process.

This is a fundamental human right case which was instituted since last year October 2020, with several adjournment in order to give the defendants opportunity to defend or put on defence still nothing come out from the defendants.

On the 9th December, 2021 I was left with no option than to allow the applicant to move his originating motion.

I have perused the applicant application and the argument canvassed in support of the application for enforcement of fundamental right.

No doubt fundamental right 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 and what has been done by our constitution since independent.

... is to have these rights enshrined in the constitution so that the rights could be "immutable" to the extent of the "non-Immutability" of the constitution itself."

See the case of Incorporated Trustees of Paragigm Initiative for Information Technology Development & 2 Ors VS. A. G. F & 2 Ors and Ransome-Ikuti VS Attorney General of the Federation (1985) 2 NWLR PT. 6 pg. 211.

Without been much labored, the defendant/respondent who were served with the said application have refused to file any counter. It is trite that silence means admission. It is further settled that, where a party intends to challenge any averment in an affidavit evidence, that averment must be specifically denied and

failure to do so means that the averment are true, and the court is bound to act on it. See Oshafunmi & Anor vs. Adepoju & Anor (2014) LPELR-2307 (CA) and Anogwie & orss Vs. odom & ors (2016) NGCA 90.

In light of the unchallenged and uncontroverted averment of the applicant application which the Respondent/Defendant have all the ample opportunity to re-act but chooses not to, I have no option than to grant the applicant application and the reliefs sought therein. Judgment is hereby entered in favour of the applicant and all the relief sought in the application is granted as prayed. **It is hereby declared viz:-**

1. **That** the intimidation, harassment, threat of arrest and detention of the Applicant by the Respondents on the instigation of the Imo State Government over allegations of fraud against the State Government without any probable cause or reasonable suspicion constitutes an infringement on the right of the Applicant to be presumed innocent until proved guilty, to liberty and freedom of movement guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

2. **That** the Defendants by themselves, their agents, servants or privies are hereby restrained from intimidating, harassing, arresting and/or detaining the Applicant pending the outcome of the investigation currently being conducted by the Economic and Financial Crimes Commission over an allegation of fraud against the Imo State Government.

3. **That** the fundamental rights of the Applicant is hereby ordered to be presumed innocent until proved guilty, to liberty and freedom of movement, by restraining the Respondents by themselves, their agents, servants or privies from continuing to harass, threaten to arrest or detain or in any manner whatsoever arresting, detaining, prosecuting or persecuting the Applicant pending the outcome of the investigation currently being conducted by the Economic and Financial Crimes Commission over an allegation of fraud against the Imo State Government.

4. **That** the act of the Respondents marking the premises at (i) RP/111, GOVERNMENT STATION LA YOUT, OWERRI MUNICIPAL LOCAL GOVERNMENT AREA, IMO STATE (ii) WAREHOUSE A IN IMO MODERN INTERNATIONAL MARKET AT UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE, (iii) WAREHOUSE B/3RD BANK BUILDING IN IMO MODERN INTERNATIONAL MARKET AT

UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE AND (iv) WAREHOUSE C IN IMO MODERN INTERNATIONAL MARKET AT UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE which the Applicant enjoys the peaceful use of as a yearly tenant for demolition on the instigation of the Imo State Government over allegations of fraud against the State Government without any probable cause or reasonable suspicion constitutes an infringement on the Applicant's right to peaceful enjoyment and use of property guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

5. **That** the Respondents by themselves, their agents, servants, privies or any other person howsoever described from demolishing or interfering in any manner whatsoever with the Applicant's right to peaceful enjoyment and use of premises situated at (i) RP/111, GOVERNMENT STATION LAYOUT, OWERRI MUNICIPAL LOCAL GOVERNMENT AREA, IMO STATE (ii) WAREHOUSE A IN IMO MODERN INTERNATIONAL MARKET AT UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE, (iii) WAREHOUSE B/3RD BANK BUILDING IN IMO MODERN INTERNATIONAL MARKET AT UBOMIRI LOCAL GOVERNMENT AREA, IMO STATE AND (iv) WAREHOUSE C IN IMO MODERN

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Federal Republic of Nigeria, 1999 (As Amended).

APPEARANCES:

Tolu Oderinde, Esq. for the Applicant

The Respondent no in court.

Sign

Hon. Judge

16/12/2021